A CONSTRAINED AND CAUTIOUS LIBERALISM:
WESTERN AUSTRALIAN PARLIAMENTARY ELECTORAL HISTORY 1829–1901

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Abstract

A Constrained and Cautious Liberalism: Western Australian Parliamentary Electoral History 1829–1901

The Australian colonies have often been lauded as a ‘democratic laboratory’ for their introduction, in the nineteenth century, of advanced and innovative electoral reforms. Colonial Western Australia (WA) attained representative and responsible self-government approximately thirty years after the other Australian colonies and, as a consequence, is seldom acknowledged as a contributor to this celebrated reformist tradition. Instead, WA’s electoral development is usually dealt with superficially or dismissively in historical accounts. Typically, WA is represented as having simply followed the path from crown colony absolutism to advanced liberalism that its sister colonies had trailblazed a generation earlier. Some historical accounts are more critical, characterising WA as a ‘delinquent laggard’ for its delayed development, and attributing this delay largely to the supposed conservatism and torpor of Western Australian colonial society.

This thesis challenges the neglect and negative representations in the scholarship dealing with WA’s electoral history, arguing that they do not sufficiently acknowledge the range of challenges that constrained WA’s political development. These challenges included a small population, a backward economy, a late introduction of convictism, and a succession of governments at Westminster that—in the wake of New Imperialism—sought to delay WA’s independence. This thesis demonstrates that notwithstanding these formidable constraints, colonial Western Australians desired and consistently petitioned for elected representation; demonstrated an informed interest in electoral matters; and were prompt adopters and, on occasion, initiators of the liberal electoral reforms that had earned the sister colonies the democratic laboratory epithet.

This thesis further contends that WA’s colonial legislators did not unreflectingly emulate the electoral development of the sister colonies. Rather, having the opportunity to evaluate decades of electoral practice in the sister colonies, WA adopted a cautious and circumspect approach to implementing electoral reform: one which sought to avoid the short-lived ministries, parliamentary deadlocks and tumultuous legislatures for which ‘aggressive’ nineteenth-century Australian democracy was often vilified. As will be shown, WA implemented advanced liberal electoral provisions while still maintaining stability and probity in its political system.
This chronological study of WA’s quest for, attainment, and development of elected legislative institutions from the foundation of the colony until WA entered the Federation, fills a number of gaps in historical knowledge, replaces many crude misrepresentations with a more contextualised and nuanced depiction of WA’s electoral development, and establishes WA as a successful exemplar of the democratic laboratory tradition.

As well as leading to a more accurate understanding of WA’s electoral evolution, this thesis also enriches the wider study of nineteenth-century liberalism and contributes to those studies which chart the spread of elected Westminster-style parliamentary democracies in the British Empire.
Acknowledgements

I wish to express my gratitude to my supervisor, Winthrop Professor Jenny Gregory AM, for her dedicated guidance and learned and incisive contributions to my work. It has been an honour and a pleasure to work with Jenny.

I wish to acknowledge the vision of former Western Australian Electoral Commissioner Dr Ken Evans for commissioning the original research on Western Australian parliamentary elections upon which this thesis has built. I would also like to thank succeeding Electoral Commissioners Lynn Auld and Warwick Gately AM for continuing to support a research project which they did not initiate (not a common phenomenon in the public sector!).

I would like to express my gratitude to two friends who have painstakingly reviewed this work. Rob O’Connor QC, renowned as one of Australia’s most eminent taxation lawyers, has proven a meticulous proof reader and I thank him for his generosity in making time to read my work so forensically. Adjunct Professor John Nethercote, notwithstanding his own publishing deadlines, also generously made time to read and review my thesis, and his knowledgeable and thoughtful suggestions have been very gratefully received. Any mistakes, or ‘unfortunate’ expressions, in this text are solely, perversely, my responsibility.

I would also like to express my appreciation to my parliamentary colleagues and friends Adjunct Professors Dr Harry Phillips AO and David Black AO for their works of electoral and constitutional research, which have been acknowledged in many places in the following pages, and for their encouragement and support. I would also like to thank the late Dr Peter Johnston for explicating, expertly and very lucidly, several abstruse constitutional issues.

I am beholden to almost the entire library community of Australia—but particularly to Dr Lise Summers at the State Records Office of Western Australia, to the staff at the Battye Library, and to the librarians at the Scholars Centre and Law Library at the University of Western Australia—especially UWA Reference Librarian Ilze Jonikis. I would also like to express my appreciation to librarians Russell Hamilton and Andrew Lewis at the Parliament of Western Australia, to Jasha Bow and Janine Philbey at the South Australian State Electoral Office, and to Dorothy Shea at the Tasmanian Supreme Court, for their assistance in sourcing difficult-to-obtain statutes and primary materials.
Lastly, a loving and heartfelt thank you to my family—Jean, Greg, Imogen, John and Andrew. Having their daughter/wife/mother work at Parliament, where exclusive cognisance permits back-to-back 14-hour shifts during parliamentary sitting weeks, has not been easy for them. For me to then shut my study door and write about Parliament on the weekends must have been beyond galling. I cannot thank them enough for their patience and good-humoured support. And I absolutely forgive all three children for resisting my suggestion that they study Politics and Law at school.
Declaration for Thesis Containing Published Work

This thesis is sole-authored, but is largely based upon research and writing which I undertook for a book published in 2008 by the Western Australian Electoral Commission (WAEC): *Highest Privilege and Bounden Duty: A Study of Western Australian Parliamentary Elections 1829–1901*. Prior to commencing work on the WAEC book I was enrolled at UWA and under the supervision of Professor Jenny Gregory AM, and the intention was always that I would produce two texts from my research: the WAEC monograph and this thesis. There is some overlap between the two texts, but the book did not prosecute a thesis. Rather, it provided a straightforward chronological account of WA’s parliamentary development with a strong emphasis upon, and considerable description about, each general election in the period covered in the study. Although I have used material from the WAEC book throughout this thesis, the interpretation of the material is entirely new and original and it has been augmented by considerable new research. In short, the contents of the WAEC book have been used like extensive research notes. In addition, in 2012, I had a chapter entitled, “Beyond the Ambitions of Chartism”: The Attainment of Women's Suffrage in Western Australia’, which was based on an aspect of my research, published in a book produced by the Parliament of Western Australia: *Making a Difference—A Frontier of Firsts: Women in the Western Australian Parliament 1921–2012*. 
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### Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>BPP</td>
<td><em>British Parliamentary Papers</em> (Irish University Press Series)</td>
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<td>CO</td>
<td>Colonial Office (England)</td>
</tr>
<tr>
<td>CSR</td>
<td>Colonial Secretary’s inward (received) correspondence</td>
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<tr>
<td>Hansard</td>
<td><em>Hansard’s Parliamentary Debates</em> (Great Britain)</td>
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<tr>
<td>JP</td>
<td>Justice of the Peace</td>
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<tr>
<td>MLA</td>
<td>Member of the Legislative Assembly</td>
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<td>MLC</td>
<td>Member of the Legislative Council</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>NSW</td>
<td>New South Wales</td>
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<td>SROWA</td>
<td>State Records Office of Western Australia</td>
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<td>SRP</td>
<td><em>Swan River Papers</em></td>
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<tr>
<td>TLC</td>
<td>Trades and Labour Council</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
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<td>WA</td>
<td>Western Australia</td>
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<tr>
<td>WAPD</td>
<td><em>Western Australia, Parliamentary Debates (Hansard)</em></td>
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<td>WCTU</td>
<td>Woman’s Christian Temperance Union</td>
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Note on Quotations

Within this thesis, spelling in quotations has not been corrected or modernised. ‘Sic’, however, has not been used as it would be intrusive. Accordingly, ‘burthens’, ‘encreasing’, ‘extention’, ‘conduction’, ‘bye gone’, ‘by-and-bye’, ‘disfranchise’, ‘favor’d’, ‘in-as-much’, ‘honorable’, ‘endeavor’, ‘partizans’, ‘common place’, ‘publichouse’ and ‘Pilbarra’ are how the words appear in source documents. Similarly, capitalisation and punctuation have been left as they appear in sources. Thus, ‘house of commons’ is printed in lower case in the quotation from E.L. Woodward in the introductory chapter and, occasionally, an em-rule will be preceded by a comma. Spacing before punctuation marks has not been retained, however, because it is often difficult to determine, particularly in manuscript sources, whether a space before a colon or comma is intentional or not.

References reproduce the titles of correspondents as they are recorded in despatches. Accordingly, Governor James Stirling, after receiving his commission as Governor, is variously addressed as ‘Governor Stirling’, ‘James Stirling’ and ‘Captain Stirling’. If a correspondent’s title changes—such as Sir Henry Holland becoming Lord Knutsford—this is advised.

Discussion of parliamentary debate on Bills is complicated by the fact that, with the exception of Western Australia’s Constitution Bill 1889, copies of Western Australian Bills from the colonial period have not been preserved and clauses are not always identified clearly in parliamentary debate. Accordingly, in most cases, this thesis refers to, and quotes from, the relevant ‘section’ in the enacted legislation rather than the ‘clause’ from the Bill.
Politics are vulgar when they are not liberalised by history, and history fades into mere literature when it loses sight of its relation to practical politics.

Sir John Seeley
Introduction

Western Australia’s Constrained and Cautious Liberalism

The Australian colonies have often been celebrated as ‘pacemakers for the world’ and a ‘democratic laboratory’ for their enactment of progressive and innovative electoral provisions—particularly in comparison with England from whence they derived their constitutional and electoral templates. This reputation is justified given the Australian colonies legislated for a suite of advanced electoral measures including adult suffrage, short parliaments, secret ballot, payment of Members of Parliament (MPs) and state funding of election expenses many decades before the British Parliament. Colonial Western Australia (WA), however, due to the late attainment of both representative and responsible government, and the correspondingly delayed opportunity to implement electoral reform, is seldom recognised as a participant in this reformist tradition. Indeed, much historical writing about Australia deals cursorily with WA’s attainment of electoral institutions, and even more perfunctorily with the colony’s introduction of electoral reform. Typically, WA is depicted as simply following the trajectory from crown colony absolutism to advanced democracy trailblazed by the sister colonies a generation earlier—a trajectory to which WA seemingly contributed nothing new. A long-standing and less benign variation to this ‘mere addendum to the story of the east’ treatment of WA’s electoral evolution in the historiography, is the characterisation of the colony as a ‘delinquent laggard on a recognised path of development’—a perspective which stigmatises Western Australian society as politically backward, apathetic and ultra-conservative or, as the colonial theorist Edward Gibbon Wakefield phrased it in 1849, ‘so stagnant, tame, and torpid, as to have no politics’.2


This thesis contests these representations, submitting that they do not adequately take into account the formidable challenges which impeded WA’s political development and constrained the capacity of colonial Western Australians to acquire and develop electoral institutions to their liking—and at a time of their choosing. These challenges included a minuscule population distributed over an isolated one-million-square-mile land mass, a backward economy, a late introduction of convictism, and a coming to political maturity which coincided with a succession of conservative governments at Westminster and the commencement of the age of New Imperialism. This thesis proposes that notwithstanding these challenges, colonial Western Australians ‘ardently desired’ and consistently sought elected representation, demonstrated an informed interest in electoral issues, and implemented liberal electoral reforms when they gauged it appropriate and judicious—or had secured the *imprimatur* of the Colonial Office—to do so.\(^3\)

This thesis further contends that WA’s colonial legislators did not unreflectingly emulate the constitutional-cum-electoral development of the sister colonies, even if, in the words of one Western Australian MP in 1897: ‘We frequently look to the other colonies for proper and safe guidance in our political actions’.\(^4\) Rather, having the opportunity to evaluate decades of electoral practice in the sister colonies, Western Australians were determined ‘to stamp on our statute book legislation which is the result of observation, experience, and careful conclusion of what to avoid’.\(^5\) What Western Australians particularly sought to avoid were the unseemly patronage, revolving-door ministries, parliamentary deadlocks and bear-pit legislatures—to say nothing of the outward-facing gun slots in the façade of the Parliament of Victoria—for which nineteenth-century Australian ‘aggressive democracy’ was often pilloried.\(^6\) Above all, colonial Western Australians aimed, in a fairly hard-nosed fashion, to craft an electoral framework which would suit the circumstances of their colony. This aim was forcefully articulated by the prominent Western Australian MP, Stephen Parker, in 1883:

> What we virtually desire here is, not simply to follow in the wake of any particular colony so far as our new Constitution is concerned; what we desire, and what we are aiming at, is to endeavor to establish a Constitution such as we consider will best answer our own requirements.\(^7\)

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\(^7\) *WAPD*, 2 November 1888, p. 184.
As will be discussed, WA’s colonial legislators adopted those liberal electoral innovations which functioned successfully elsewhere; rejected or re-worked those which had proven problematic; and, in a number of cases, initiated landmark electoral reform in advance of Britain and the sister colonies. Indeed, although seldom acknowledged in historical accounts, WA with its ‘magnificent distances’ was a world pioneer in introducing postal voting, and was also the first Australian jurisdiction to transfer arbitration of disputed elections from in-house parliamentary committees, where bias was difficult to subdue, to the judiciary. As is better known, WA at Federation, along with South Australia, was one of the first polities in the world to have advanced, as W.G. McMinn has claimed, ‘beyond the ambitions of Chartism’ by enfranchising women. Accordingly, this thesis holds that far from being a mere addendum, WA’s colonial electoral history enriches the study of nineteenth-century liberalism—a tradition which ‘came to Australia as an integral part of the colonisation process’, as Ian Cook has underlined, and which, according to Stuart Macintyre, ‘shaped the public culture of this country’.

This thesis will, furthermore, contribute to those studies which map the spread of elected Westminster-style parliamentary democracies in the British Empire. WA’s participation in this ‘imperial drama’, as Peter Cochrane has described it, is poorly documented and this gap in knowledge impoverishes the wider narrative because the Western Australian case study is substantially different from that of the other Australian colonies. In broad terms, with the exception of New South Wales (NSW), the Australian colonies experienced very brief periods of part-representative government; they achieved self-government almost as a job lot in the mid-1850s with the support, if not exhortation, of successive administrations at Westminster; and they bedded down substantial electoral reform within a decade—followed by thirty years in which, according to Brian de Garis, they ‘rested on their oars’ regarding democratic provisions. WA, by contrast, underwent a ‘prolonged period of political tutelage’, not attaining part-representative government until 1870 and thereafter encountering almost two decades of resistance from governments in Britain when petitioning for self-government. Cochrane has observed that the British colonies’ constitutional development was ‘informed by experience elsewhere in the empire … Their

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consciousness was comparative, their coordinates were global'. As one of the last British colonies to accede to self-government, WA was well placed to overview the diversity of templates within the British Empire, and the way WA’s legislators discriminated amongst the competing models when framing electoral provisions enriches the story of Greater Britain’s ‘common constitutional progress’—particularly in what Marian Simms has designated the under-researched area of ‘cross-colonial policy-learning’.

Charting WA’s electoral history also provides insights into Western Australian society as it evolved from foundation to Federation. As W.A. Townsley has observed:

> A key to the understanding of the early history of a community lies in the study of its institutions. For even if those institutions have been fashioned elsewhere and transplanted in an alien soil, the way in which they come to be adapted to and developed in the new environment reveals something of the character of the community whose interests they serve.

Incontrovertibly, one of the most important institutions in any society—‘fundamental to its legitimacy’ as Norm Kelly has put it—is its elected legislature and, as a corollary, the laws which determine who can be elected to it. Indeed, electoral laws have a pre-eminent status within polities, as Douglas Rae has emphasised, because they help to determine who writes other laws. Interestingly, however, in the limited writing dealing with the development of electoral institutions in colonial WA, there is a preoccupation with a putative conservative character of the community, with WA frequently depicted as being under the thrall of a deeply conservative elite, often referred to as the ‘Six Hungry Families’ or, in academic parlance, a ‘conservative oligarchy of entrenched class interests’. Within this strand of commentary, WA’s quest for elected representation and pursuit of liberal electoral reform is largely downplayed or elided—or, if acknowledged, the motives for reform and the timing of its adoption are frequently impugned as the tactical manoeuvring of an embattled elite reforming in Burkean fashion to ensure its preservation. (In contrast to South Australia,

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14 Cochrane, Colonial Ambition, p. 7.
19 The epithet ‘Six Hungry Families’ was used extensively in nineteenth-century Western Australian press and parliamentary debate; Charlie Fox, ‘The View from the West’, in Martyn Lyons and Penny Russell (eds), Australia’s History: Themes and Debates, UNSW Press, Sydney, 2005, p. 83.
This thesis contests the view that WA’s colonial legislators were particularly prone to expediency, given expediency, compromise and concession are the common denominators of most political reform. More broadly, this thesis challenges the foregrounding in the historiography of a conservative, reform-averse cast to the WA community. This interpretation debuted as passing references in the first history of WA, that of W.B. Kimberly in 1897, and has been reiterated and amplified in some subsequent texts—particularly by historians operating from a Left critique: a group which Hugh Collins posits has ‘largely defined the present understanding of ideology in Australia’. While it is appropriate to acknowledge the prominence of conservatives in colonial WA—particularly the Colonial Office-appointed officials in the Legislative Council who on occasion delayed or blocked electoral reform at the behest of their Imperial paymasters—it is important to recognise that most settlers in WA, including conservatives, were genuine proponents of liberal electoral rights, perceived as their birthright as Britons, as long as such rights did not jeopardise the stability of WA’s fledgling polity. This cautious approach to change was legitimate and reflected how reform was often managed elsewhere, including by liberals. As Roger Congleton has observed:

> Shifts to democratic governance in the nineteenth century were rarely sudden and did not require radical breaks with older institutions. Rather, new systems of governance emerged gradually, as long-standing political institutions were revised a little at a time.

It is well documented that in Britain and the sister colonies, as Geoffrey Serle has stated, ‘Very few … liberals supported the whole democratic programme’, and, as Macintyre has argued, many liberals demonstrated ‘voracious pragmatism’, viewing liberalism as a ‘cumulative project that had to be built up over time from the materials at hand’. Renowned Whig, Thomas Babington Macaulay (along with radicals John Bright and Orator Hunt), for example, did not regard manhood suffrage as a sound proposition for Britain at the time he importuned MPs at Westminster to pass the First Reform Act; arch-liberal William Gladstone opposed secret voting almost up to the passing of the Ballot Act 1872;

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and the ‘revered patron’ of Australian liberalism, George Higinbotham, was initially vehemently opposed to payment of MPs.\textsuperscript{24} As Macintyre has concluded of the cumulative project: ‘However universal the liberals might consider their axioms, colonial liberalism embodied colonial circumstances’ because it was ‘an axiom of the science of government that the form of politics should match the state of social development’.\textsuperscript{25} Additionally, as Jan Kociumbas has commented, the ‘liberal formula’ only allowed ‘major political concessions while introducing modern hegemonic strategies to educate the workers and control their demands’.\textsuperscript{26}

With respect to WA’s electoral development, however, a number of historians have passed verdicts which do not acknowledge the colony’s circumstances and which are infused with the values of their own time, rather than those of the period under review—setting up what Marilyn Lake has designated ‘a court of judgement, calling the past to account for its failings’.\textsuperscript{27} Of this critical stance, Helen Irving has aptly cautioned:

\begin{quote}
Such critics share a determination to measure democracy by idealised standards that would be difficult, and perhaps undesirable, to meet even today. They fail to contextualise Australia’s constitutional processes either in the light of what was politically possible at the time or according to the practices of other comparable countries.\textsuperscript{28}
\end{quote}

The historiographical pitfalls of not taking context and circumstance into account were summarised well by W.K. Hancock in the 1950s: ‘how can the historian avoid falsification of the past if he confronts it with questions which could never have occurred to the men who lived in it?’\textsuperscript{29}

Accordingly, this thesis re-assesses the pursuit of elected representation and electoral reform by colonial Western Australians within the parameters of what was politically possible at the time. It acknowledges the contribution of both conservatives and liberals in this quest because, as is the case with the reform-minded conservatives, the voices of liberals are frequently muted and their motives misinterpreted in the historiography. In

\begin{footnotes}
\footnotetext{24}{Macintyre’s description of Higinbotham in \textit{A Colonial Liberalism}, p. 124. Also see Walter Bagehot’s comments regarding the alarm of Radicals at the prospect of household suffrage in 1867: ‘Many Radical members who had been asking for years for household suffrage were much more surprised than pleased at the near chance of obtaining it; they had asked for it as bargainers ask for the highest possible price, but they never expected to get it’—quoted in John K. Walton, \textit{The Second Reform Act}, Methuen, London, 1987, p. 29.}

\footnotetext{25}{Macintyre, \textit{A Colonial Liberalism}, pp. 8 and 31.}

\footnotetext{26}{Jan Kociumbas, \textit{1770–1860: Possessions}, Oxford University Press, Melbourne, 1992, p. 212. Also note Charles Pearson’s comment: ‘What I wish to point out is that democratic institutions such as our own make compulsory education a necessity’—quoted in Macintyre, \textit{A Colonial Liberalism}, p. 153.}


\footnotetext{29}{W.K. Hancock, \textit{Country and Calling}, Faber and Faber, London, 1954, p. 215.}
\end{footnotes}
short, through re-visiting and re-evaluating existing research and filling in the many gaps in Western Australian colonial electoral history, this thesis seeks to present a more complete, contextualised and nuanced depiction of WA’s electoral development—and one which recognises WA’s participation in the democratic laboratory.

Having traced the tour d’horizon of this thesis, this chapter will now address the paucity of research into the electoral history of colonial WA. Then, following a review of the limited literature which exists, it will outline the scope and structure of this study, discuss the range of sources used, and indicate the themes explored. Before doing this, however, it is helpful to clarify some of the terminology used—in particular, ‘electoral’, ‘liberalism’, ‘conservatism’ and ‘representative government’. There is considerable variation and inconsistency—often intentional—attending their use by contemporary participants as well as in the academic literature.

Keywords by Any Other Name

‘Electoral’ institutions, provisions and reform in this study connote entities, statutes and practices related to elections, i.e. elected legislatures, the franchise, voting systems, voter and candidate qualifications and disqualifications, voter registration, payment of MPs and electoral administration. In quoted sources, different terms are commonly used. Thus, ‘constitutional’ is frequently used synonymously with ‘electoral’, because electoral rights were perceived as constitutional rights and because electoral reform was frequently secured through, or by amending, constitutional provisions. Likewise, ‘parliamentary’ reform is used interchangeably with ‘electoral’ reform in many sources because much electoral reform—e.g. widening the franchise or paying MPs—affected the composition of parliaments. Finally, in much discursive writing, electoral provisions or reforms are termed ‘great political questions of the day’, ‘democratic achievements’ or ‘devices of radical democracy’. Indeed, it is commonplace in discourse and writing to find the word ‘electoral’ conflated with, or subsumed within, ‘political’ and ‘democratic’. Inescapably, an electoral history is a political study—as Robert Pastor has underlined, elections are ‘the supreme political act’—but the focus of this thesis is colonial WA’s quest for and attainment of elected legislative institutions, and subsequent implementation of electoral reform.

‘Liberalism’ and ‘conservatism’ are more contentious terms. Some commentators query whether the taxonomy is even workable in the Australian colonial context, which largely

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functioned without a party system. The English aristocrat Harold Finch-Hatton, for example, snorted in the 1880s that Australia’s politicians were ‘a succession of selfish, sordid adventurers’ and that it was ‘absurd to distinguish the members of either party as Conservatives or Radicals, as it is to call them politicians, since the transparent motive of all of them is to plunder the colony’. However, while factions and freelancers (Independents) may have operated in place of parties in the Australian colonies, and patronage may frequently have trumped policy and principle, the assessment of the *West Australian* newspaper in 1889 still holds:

> Although the Conservative Party, and the Liberal Party do not exist in the Australian colonies, as the terms are understood in the United Kingdom, it would be incorrect to say that there is not both a Conservative and a Liberal temper of mind, each admirable in its way, among Australians ...  

Even with this caveat, the terms are troublesome, as R.M. Crawford has cautioned:

> The colonists used the familiar labels, ‘conservative’ and ‘liberal’, though parties were slow to develop; but these terms, as many realized, were misleading. There were few conservatives who defended the concept of a traditional, hierarchical society; and the difference was hardly more than this, that ‘liberals’ would go a little farther and a little faster.  

Indeed, James Jupp has claimed that ‘Few Australian [colonial] politicians were prepared to call themselves conservatives’. It is notable that when the Labor Party emerged towards the end of the nineteenth-century, the terminology became no clearer, with the party depicting itself as ‘SIMPLY LIBERALISM UP TO DATE’, and the *Age* newspaper concluding in 1901 that the Labor Party was ‘the advance guard of liberalism’.

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31 Wright in *A People’s Counsel*, for example, writes that colonial Victorian politics was ‘propelled by factions and personality rather than by parties and ideology. Political parties as they are now understood did not exist’, p. 63. Similarly Gordon Combe, with reference to the South Australian colonial scene, quotes a local newspaper from 1860: ‘We cannot enter into any analysis of party gains and losses, for the very cogent reason that we have had no defined parties. The old titles Whigs and Tories never had significance here, and even the terms Liberal and Conservative fail to convey any definite meaning’, *Responsible Government in South Australia*, Parliament of South Australia, Adelaide, 1957, p. 93.


33 *West Australian*, 28 January 1889.


36 Both quotations from Humphrey McQueen, *A New Britannia*, 4th edn, University of Queenslands Press, St Lucia, Qld, 2004, p. 185.
The obverse of conservatives espousing liberal sentiments is that ‘Where property may be possessed by every industrious man’, as the *Age* commented in 1855, ‘democracy itself becomes conservative’. Andrew Heywood has enlarged this observation:

> The radical, even revolutionary edge of liberalism faded with each liberal success. Liberalism thus became increasingly conservative, standing less for change and reform, and more for the maintenance of existing—largely liberal— institutions.

Further bedevilling the terminology is the frequency with which individuals or groups blurred, inverted or conflated the use of the terms ‘conservatism’ and ‘liberalism’—often strategically to deflect or disarm critics. Earl Grey, for example, spruiked the First Reform Act, which enfranchised much of the (male) English middle class, as ‘the most aristocratic measure that ever was proposed in Parliament’. This semantic tactic was frequently used in WA. In 1892–1893, for example, the Bill which would bestow manhood suffrage on the Legislative Assembly was pitched by the Government as a ‘conservative measure’ in the nominated Legislative Council and as ‘a very liberal and radical measure’ in the popularly elected Legislative Assembly, with one Member of the Legislative Council (MLC) dubbing it a ‘liberal-conservative measure’. Indeed, the simultaneous invocation of both sides of the political spectrum by MPs was routine in colonial WA. Thus, Henry Lefroy could announce in the Legislative Assembly in the 1890s without being jeered at, ‘I am … conservative in my views to a certain extent, and also, I hope, liberal’.

This deliberately ambivalent usage also featured in the other Australian colonies. Douglas Pike has commented on the practice, and rationale behind it, in South Australia:

> For nearly a century the Legislative Assembly was dominated by independents. They knew no party allegiance, but followed alternately the whims of themselves and their constituents. They called themselves conservative-democrats, intent on making the best of both political worlds; and their views were shared for the most part by the voters they represented. Extremists were rarely elected …

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37 Quoted in McQueen, *A New Britannia*, p. 181.
41 *WAPD*, 17 July 1893, p. 102.
42 Douglas Pike, *Paradise of Dissent: South Australia 1829–1857*, 2nd edn, Melbourne University Press, Carlton, Vic., 1967, p. 481. According to Raymond Wright, the ‘best of both political worlds’ mindset was equally prevalent in colonial Victoria: ‘In the 1850s the Parliament of Victoria comprised conservative, liberal and radical-populist elements. Proponents, however, rarely held such views with unshakeable conviction … as the century passed a liberal-conservative interpretation of political, economic and social priorities came to predominate. That is, there was widespread political agreement that ‘progress’, ‘growth’, ‘development’, ‘wealth’, ‘well-being’, ‘the public interest’ and any number of other such ideals were worth pursuing. What mild disagreement did exist was focused on the means adopted.’ See Wright, *A People’s Counsel*, p. 63. This blurring of ‘isms’ occurred in Britain with Robert
Notwithstanding these qualifications, an identifiable ‘Conservative and a Liberal temper of mind’, as the *West Australian* described it, was evident in colonial Australia. Those championing a conservative ideological position often held, as Heywood has put it, ‘a pessimistic, even Hobbesian, view of human nature’, privileged stability and property rights above political rights, and were more circumspect in enacting electoral reforms which would open up the political system and entail power-sharing with non property-owners.\footnote{Heywood, *Political Ideologies*, p. 71.}

Liberals, by contrast, championed the rights and freedoms of the individual *vis-à-vis* the state, although, as Domenico Losurdo has argued, nineteenth-century liberalism contained ‘macroscopic exclusion clauses’ in which the individual rights of slaves, women, people of colour and papists, amongst others, were disregarded.\footnote{Domenico Losurdo, *Liberalism: A Counter-History*, trans. Gregory Elliott, Verso, London, 2014, p. 181.} Liberals advocated representative government as the ‘ideal type of the most perfect polity’, in John Stuart Mill’s words, because, as Macintyre has underlined, it provided a ‘check against despotism and an expression of the principle that all citizens were free and equal in political rights’.\footnote{John Stuart Mill, *Considerations on Representative Government* [1861], in *Three Essays: On Liberty, Representative Government, The Subjection of Women*, Oxford University Press, London, 1975, p. 199; Macintyre, *A Colonial Liberalism*, p. 5.}

In furthering their aims, liberals, accordingly to Walter Bagehot, also demonstrated an openness to new ideas.\footnote{Walter Bagehot, ‘The Conservative Vein in Mr Bright’, in *Bagehot’s Historical Essays*, edited by Norman St John-Stevas, Anchor Books, New York, 1965, p. 229.}

As stated at the beginning of this chapter, the Australian colonies were often lauded as being amongst the ‘most advanced democracies in the world’ in their efforts at liberalising the body politic.\footnote{Robert Lowe quoted in I.D. McNaughtan, ‘Colonial Liberalism 1851–1892’, in Gordon Greenwood (ed.), *Australia: A Social and Political History*, rev. edn, Angus & Robertson, London, 1974, p. 102.} Undoubtedly, only possessing what W.D. Rubinstein has termed a ‘midget “elite”’; not having to ‘contend against the traditional restraints of established church, military services, and landed aristocracy’, as Collins has submitted; and, as a result, developing a comparatively egalitarian society in which the bulk of the populace did not feel threatened by reform, according to Mark McKenna, radically altered the political lineaments in the Australian context—giving conservatives less to conserve and fewer to do the conserving.\footnote{W.D. Rubinstein, ‘Elites in Australian History’, in Robert Manne (ed.), *The New Conservatism in Australia*, Oxford University Press, Melbourne, 1982, p. 80; Collins, ‘Political Ideology in Australia’ p. 151; Mark McKenna, ‘Building “A Closet of Prayer” in the New World: The Story of the “Australian Ballot”’, in Sawer, *Elections: Full, Free & Fair*, p. 60. William Pember Reeves has observed of the ‘absence’ of aristocracy, state church and standing army in Australia: ‘… Liberalism, in the English sense, might have seemed likely to languish through lack of foes to conquer’, *State Experiments in Australia and New Zealand*, 2 vols, Grant Richards, London, 1902, vol. 1, p. 60.}
The final clarification relates to ‘representative government’. This term is conventionally used to describe the part-representative—and irresponsible—administrations instituted under the terms of the Australian Colonies Government Act of 1850. Under the same Act colonies subsequently progressed to responsible self-government—which was also ‘representative’, although seldom designated as such.

A Cinderella Study of the Cinderella Colony

The electoral history of colonial WA is under-examined: large swathes of the area are unresearched or under-researched and, of that which has been covered, much has been dealt with superficially and by recycling material from sometimes less than reliable secondary sources. Indeed, apart from *Highest Privilege and Bounden Duty: A Study of Western Australian Parliamentary Elections 1829–1901*, upon which this thesis is substantially based; election statistics compiled by David Black; a modest number of theses and articles examining sub-topics or sub-periods of colonial electoral history; and some chapters in general histories, there is no substantial body of literature examining Western Australian colonial electoral history. Further, few works contextualise the subject within the framework of Australian colonial liberalism or the development of the Westminster model of parliamentary government.

One reason the area is under-researched is because colonial electoral history is often perceived to be, as a nineteenth-century Western Australian parliamentarian bemoaned, ‘an exceedingly dry one for discussion’. Inescapably, the area requires painstaking research amongst official primary documents, including *Government Gazettes*, election returns and election petitions—many in barely legible manuscript form. Thomas Carlyle, who immersed himself in electoral archives to research the election of the Long Parliament, wrote of such documents: ‘We had long heard of Dulness, and thought we knew it a little; but here first is the right dead Dulness, Dulness its very self!’ Dryness can particularly be the case with the study of electoral systems—‘usually seen as a big “turn-off”’, according to David Farrell—and electoral law, which requires explication of bills, statutes, ordinances and other legal instruments and scrutiny of parliamentary debate. While British historians have produced magisterial studies of key English electoral legislation, particularly the First

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49 Isla Macphail, *Highest Privilege and Bounden Duty: A Study of Western Australian Parliamentary Elections 1829–1901*, Western Australian Electoral Commission, Perth, 2008. Bibliographic information will be provided for the other publications referred to when they are discussed individually later in this chapter.


and Second Reform Acts and the Ballot Act, this has not been the case in Australia. As Graeme Orr, Bryan Mercurio and George Williams commented just over a decade ago, ‘Electoral law, as a scholarly discipline in Australia, is only beginning to emerge’. Further, examination of electoral law from an historical, as opposed to a legal or political science perspective, is almost non-existent in Australia.

Another reason contributing to the limited research into WA’s colonial electoral history is the long-standing predominance of social history in Australian university history departments. Since the 1960s the focus of academic history throughout the Western world has increasingly pivoted from ‘top down’ studies to ‘bottom up’ ones. That is, studies of ‘a small cadre of white males’, engaged in public—and often political—spheres which had traditionally been ascendant in history departments were increasingly replaced by studies of ‘the anonymous and the diurnal’ lives of ‘ordinary people’ and, in particular, the hitherto systematically overlooked worlds of Indigenous history and women’s history. This shift in focus has been so pronounced in history departments worldwide that J.M. Kousser commented in 1990 that ‘political history as a whole has been deserted, disorganized, denigrated, and divided’, and William Leuchtenburg has sardonically noted that ‘by the mid-1980s the status of the political historian within the profession had sunk to somewhere between that of a faith healer and a chiropractor’. While these assessments are too extreme for WA, which saw significant political history published during the 1970s and 1980s (largely commemorating the state’s sesquicentenary of foundation and centenary of self-government), it is nonetheless the case that social rather than political histories have been to the fore in WA in recent decades.

Of the limited research specifically on electoral matters, the most useful is contained in Black’s volumes of election statistics which aggregate election dates, constituency details, candidate profiles and political office-holders, providing a repository of Western Australian

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55 It is encouraging to note that political scientist, Dr Harry Phillips, in 2008 produced an extremely informative book-length historical overview of post-colonial electoral law in WA which is now in its third edition—Electoral Law in the State of Western Australia: An Overview, 3rd edn, Western Australian Electoral Commission, Perth, 2013.


electoral data for analysis. De Garis and Black have written very perceptively of WA’s constitutional and political development, and their work draws on meticulous primary research. Their writing, however, is mainly situated within general histories and necessarily takes a broad view with little detailed consideration of electoral law and practice. A similar observation applies to Kimberly’s and J.S. Battye’s earlier coverage of electoral law and practice in their respective histories. In a similar fashion, Sir Hal Colebatch in his centenary paean to Western Australian ‘progress’; Sir John Kirwan in his commemorative booklet marking a hundred years of the Legislative Council; Frank Crowley in his comprehensive history of WA; and, most recently, Geoffrey Bolton in his somewhat shorter one, despatch WA’s colonial political development in a handful of pages with minimal attention to electoral reform. Of more concern, Crowley has made some mistakes regarding electoral matters, which will be addressed later, although he has atoned with a more robust and penetrating political analysis in his biography of WA’s first Premier, and leading proponent of political reform, John Forrest.

Some solid research has been undertaken for a small number of theses which examine aspects of the political situation of colonial WA. As most have narrow terms of reference or timeframes, however, no comprehensive picture emerges through them of WA’s political evolution—and discussion of electoral matters is usually peripheral. That said, theses by K.H. Rogers, John McKenzie and Peter Boyce have informed analysis in this thesis.


Four Western Australian theses have engaged directly with electoral themes in colonial WA. The comments that follow, should be read in the context of these works often being the first extended piece of research undertaken by undergraduates in a fairly limited span of time. In an area with little published research, these theses have filled many specific gaps in knowledge.

The first, William Heseltine’s 1950 honours thesis, provides a well-researched study of the latter stages of WA’s quest for responsible government; the push-back from the Imperial Government; and the enactment of, and description of the principal electoral provisions within, the Constitution Act 1889 which inaugurated self-government. Detracting from the work, however, is Heseltine’s over-emphasising of the ‘ultra’ and ‘diehard’ conservative character of colonial Western Australians and Governors; his under-emphasising of the impact of local reformers; and his rose-tinted view of ‘t’othersiders’—i.e. immigrants from the eastern colonies who came in the wake of the gold strikes of the early 1890s.

Peter Biskup’s 1959 honours dissertation features six pages on WA’s early enfranchisement of women, with this material expanded in his article of the same year. While there is careful research underpinning Biskup’s dissertation, it is nevertheless a flawed and troubling work. Backlighting his thesis is a conviction, like Heseltine’s, that WA’s Establishment comprised adamantine conservatives, and inadequate recognition is given to the genuine attempts by liberals, and some conservatives, to enfranchise women. Consequently, Biskup portrays women’s enfranchisement solely as a conservative ‘stratagem’—a ‘ruse de guerre’ and ‘supply before demand’—to counteract the increasing voting clout of radical t’othersiders on WA’s goldfields: an expansion of an argument first advanced by the militantly left-wing historian (and former New Zealand Labour Party Minister) William Pember Reeves in 1902. Biskup accordingly downplays the advocacy of Western Australian feminists and that of the committed liberals in the Western Australian Parliament who supported women’s enfranchisement each time it was proposed, even though they acknowledged it was likely to advantage the conservative Forrest Government. Further, Biskup’s dismissal of women’s enfranchisement as supply before demand is simplistic and inaccurate. Indeed, Biskup’s work is characterised by crude and

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unsupported generalisations such as ‘the majority of Australian women had little interest in learning of any kind’ and women are the ‘spoilt darling of the law’ (demonstrably not the case in 1899 or 1959).68

Unsurprisingly, a number of feminist historians have challenged Biskup’s position that the ‘fair sex’ (passim) were simply ‘passive recipients’ of an undesired (and undesirable) boon, and have emphasised the activism of women, particularly those associated with the Woman’s Christian Temperance Union, the Karrakatta Club and the Woman’s Franchise League.69 An early example of this revisionist writing is Gail Reekie’s 1981 article, in the feminist journal Hecate, which discussed the ‘seriousness of intent’ with which women campaigned for their enfranchisement in WA.70 Other notable publications that acknowledge women’s role in securing the franchise include those by Kirsten Lees, Patricia Crawford and Judy Skene, Dianne Davidson, and Betty Carter.71

Tom Stannage’s 1967 master’s thesis, ‘Electoral Politics in Western Australia: 1884–1897’, provides a detailed examination of the political scene in WA in the period leading up to, and including the first years of, self-government.72 It presents solid research from archival sources and acknowledges the role of liberals and radicals—particularly those involved with contemporary reform associations and political leagues. Detracting from Stannage’s work, however, is his overselling of the conservative nature of the Establishment and the ‘country conservativism’ versus ‘urban democracy’ ‘dialectic’—a simplistic ‘dividing the world into the friends and enemies of progress’ so deplored by Herbert Butterfield—which leads to skewed, and occasionally mistaken and inconsistent, interpretations of electoral issues in the period.73

Stannage argues, for example, that WA’s conservatives in 1877 ‘perpetuated proxy voting’ which was ‘non-existent in England and colonial officials were generally agreed on the desirability of transplanting English political usage’.74 Apart from the fact that proxy voting

74 Stannage, ‘Electoral Politics in Western Australia’, pp. iv and 17.
did—and still does—exist in England, WA did abolish it in 1877. Curiously, however, Stannage does not credit WA’s legislators for being early transplanter of those provisions of the English *Parliamentary Elections Act 1868* which transferred arbitration of disputed elections from Parliament to the courts—a key electoral reform.

Stannage’s misapprehension of the application of Imperial statutes in the colonial context is more concerning. He erroneously claims that WA from 1870 to 1890 was under the constitutional framework of ‘Imperial Act 33 Vic. No. 13’. In fact, this was a Western Australian Ordinance framed under the aegis of the 1850 Imperial Act 13 & 14 Vict., c. 59, *An Act for the better Government of Her Majesty’s Australian Colonies*, or, as it was more commonly known, the Australian Colonies Government Act or the Australian Constitutions Act No. 2. Stannage then refers to the 1870 Ordinance having ‘omitted’ qualifications for Members—‘amazing as it may seem’. Had this occurred, it would unquestionably have been amazing, but the qualifications were not omitted—rather, they were imported from 5 & 6 Vict., c. 76, the Imperial *An Act for the Government of New South Wales and Van Diemen’s Land* (aka the New South Wales Constitution Act or the Australian Constitutions Act No. 1), via s. XII of the 1850 Imperial Act which stated that ‘all the Provisions’ relating to qualification and disqualification of elective Members, their tenure, resignation and so forth as enumerated in the 1842 Act:

shall apply to and be in force in the Colony of Victoria, and in each of the said Colonies of Van Diemen’s Land, South Australia, and Western Australia, in which a Legislative Council shall be established under this Act, as if all such Provisions were here repeated, the Name of such respective Colony being substituted for the Name of the Colony of New South Wales.

Stannage then claims the putative qualification ‘deficiency’ was ‘remedied’ by ‘Imperial Act 34 Vic. No. 30’. Again, this statute was Western Australian and did not rectify the deficiency, because one did not exist. Other errors regarding electoral legislation appear throughout Stannage’s thesis and the work cannot always be regarded as sufficiently accurate or disinterested. (Stannage’s *The People of Perth* displays a similar over-emphasis on the conservative cast of colonial Western Australians and lack of impartiality, with, for instance, Stephen Parker’s long-standing campaign to secure self-government and liberal electoral provisions for WA being dismissed as a ‘flirtation with liberalism’.)

75 Stannage, ‘Electoral Politics in Western Australia’, p. 11.
76 Stannage, ‘Electoral Politics in Western Australia’, p. 12.
77 Stannage, ‘Electoral Politics in Western Australia’, p. 12.
78 The Act—*Representation of the People—Amendment Act 1871*—resolved an unintended disqualification regarding conditional pardon holders and introduced a number of electoral reforms.
79 C.T. Stannage, *The People of Perth: A Social History of Western Australia’s Capital City*, Perth City Council, Perth, 1979, p. 190. Heseltine, by contrast, referred to Parker as ‘the consistent champion of and leader of the
Lyall Hunt’s 1974 master’s thesis, ‘A Political Biography of Walter Hartwell James 1894–1904’, addresses the role of James as a colonial liberal and Premier—particularly James’s championing of women’s enfranchisement through counselling feminist groups and ‘acting as parliamentary spokesman for the female suffrage movement’. Bolton has described James as ‘probably Western Australia’s nearest approach to a Deakinite liberal’, and Hunt’s thesis is valuable for providing a rare portrait of a Western Australian colonial liberal, paying attention to the pursuit of electoral reform, and conveying a sense of ‘the complex relationship between liberalism and conservatism in Western Australia’—although unfortunately for only six years of the colonial period.

The scant treatment of WA’s colonial electoral history by Western Australian historians has not been rectified in Australian general or political histories. As A.G.L. Shaw commented in 1960:

> In the writing of Australian history, the story of Western Australia has very often been neglected, if not omitted … its story has been so similar to that of the eastern states, that often it has seemed enough to add something like the words “this happened in the west too.”

An instance of such treatment is Ian McNaughtan’s observation regarding the ‘striking consistency’ of the Australian colonies’ political evolution: ‘Even in Western Australia, severed by geography and history from the eastern communities, the pattern scarcely varied from theirs after transportation had ended’. And as de Garis has aptly commented with respect to following a pattern, it was ‘with an eye mainly to variations from the New South Wales pattern’ in which ‘differences were for the most part differences of degree rather than of kind’—an observation endorsed by Beverley Kingston: ‘There has been a tendency to see New South Wales as the model of colonial political development, with the other colonies merely as variants’. Historians from the other states have expressed dismay at the focus on NSW or, at best, the ‘Hume Highway hegemony’, as Geoffrey Blainey has evocatively expressed it, but it is WA which is most consistently sidelined by Australian history being seen, as Pike has remonstrated, ‘too often through eastern eyes’. Simply put,
WA attained representative and responsible self-government decades after the sister colonies—in terms of the historical record, the story had been told and the narrative had moved on. Hence, many historians have found it easier to omit or footnote, rather than accommodate, WA’s contribution to the story.

With respect to the well-documented 1850s, for example, when constitutions were being drafted for the eastern colonies under the terms of the Australian Colonies Government Act, which authorised non-convict and self-funding colonies to adopt part-representative and subsequently responsible self-government, WA had just commenced convict transportation to prime its languishing economy. Considering penury and convictism disqualified the colony for self-government, WA was thereafter comprehensively out of step with the sister colonies. The difficulty of retrofitting WA’s lagging contribution to the record was soon evident. The eminent English liberal, Sir Charles Dilke, after touring Australia in the mid-1860s, for example, wrote admiringly and exhaustively of democracy in the eastern colonies. WA, however, received only a few pages, with Dilke acerbically concluding: ‘In Western Australia, the convicts and their keepers form two-thirds of the whole population, and the district is a great English prison, not a colony’.86

Numerous other historians have similarly given WA short shrift when discussing Australia’s constitutional development. Alan Ward’s Parliamentary Government in Australia barely mentions WA; Paul Finn’s and J.M. Ward’s monographs on Australian colonial self-government omit WA altogether; and Frank Welsh’s more recent general history appends a table of Secretaries of State for the Colonies which concludes with the Duke of Newcastle’s 1859–1865 tenure—i.e. when the last sister colony, Queensland, received self-government.87 Even in Manning Clark’s multi-volume A History of Australia, consideration of WA’s political development is confronting succinct (although Clark alludes to the ‘Six Families’ thrice in The People Make Laws 1888–1915).88 Similarly, McNaughtan in his lengthy essay, ‘Colonial Liberalism’, comprehensively covers the constitutional development and liberal electoral reforms of the eastern Australian colonies, but includes only a one-sentence reference to WA.89 A number of histories are even more

89 McNaughtan, ‘Colonial Liberalism’, p. 141. The sentence: ‘Western Australia, after the twelve years of stagnation which followed the end of the convict system in 1868, had developed rapidly enough to gain responsible government in 1890’. 
dismissive in that WA’s political history is generalised with Tasmania’s. Crawford’s
*Australia* provides an example:

Only in the ‘eighties and ‘nineties did the discovery of minerals bring transforming numbers of free and
independent-minded immigrants from the other colonies to Tasmania and Western Australia. Before that
time, society in these two colonies had remained patrician, though neighbourly, and its attitude to
democratic assertions had been coloured by memories of convict labour.90

As this example illustrates, WA’s story is not only underwritten in studies examining the
1850s, but receives minimal attention in works discussing the 1890s. While instituting and
exercising fully elected self-government was the cardinal issue for WA in the early 1890s,
different issues were uppermost for the eastern colonies. Accordingly, Macintyre and
Kingston in their fine studies of Australian colonial liberalism write elegiacally of the early
1890s, with its failed strikes and collapsed markets, as signalling ‘the end of a phase in
Australian history’, in which:

[a] form of colonial liberalism that imagined itself to be clearing obstacles to the onward march of
progress and looked forward with optimism to the liberation of human capacities, gave way to a new
liberalism in which the social impulses had become far more problematic.91

Both writers clearly also found it problematic to incorporate WA’s accession to
self-government against the backdrop of an exuberant decade of gold-strikes.92 Somewhat
redundantly Kingston concedes that WA’s political development in the 1890s ‘is not
automatically included in generalizations about the other colonies’.93

As noted earlier, other studies portray WA as a delinquent laggard, seemingly utilising this
as grounds for absolving their sketchy treatment of the colony—i.e. in ‘torpid Perth’, the
‘most sleepy and stagnant of all our colonies’, there was little to comment upon.94 By way
of example, R.M. Hartwell has stated: ‘The temper of politics in the west was never as
bitter as in the east; there was too much pre-occupation with getting a living to worry
unduly about the refinements of government’.95 As shall be discussed, this dismissive
assessment of Western Australians’ engagement with political issues is invalid at any time
and was resented by Western Australians, as the protest of one MLC in 1883 attests: ‘It was

90 Crawford, *Australia*, p. 129.
p. 187.
92 Similarly, Humphrey McQueen has written of this time: ‘What the 1890s meant to most people was hard times.
Australia was gripped by economic depression and drought. The Australian dream was fading’, in *Social Sketches of
Australia*, 3rd edn, University of Queensland Press, St Lucia, Qld, 2004, p. 5.
94 First quotation, Macintyre, *A Concise History of Australia*, p. 109; second quotation, Lady Alice Lovat, *The Life of
p. 63.
a libel upon the intelligence of the community to say that they thought more of a broken culvert or a bit of bad road than they did of their constitutional rights’.  

The lack of interest and research in WA’s colonial electoral history may explain why a considerable number of histories, textbooks and educational websites feature inaccuracies about WA’s constitutional and electoral development. The following constitutes a sample. Welsh has written that colonial WA received a ‘formal administration’ in the shape of Executive and Legislative Councils in 1853 following the advent of transportation—whereas they were established in 1832 following settlement. Conversely, P.H. Lane in his constitutional study asserts that WA had acquired elected representatives by the 1850s—twenty years before the case. Marcelle Brown and Jeanette Hacket, authors of *Western Australian Introduction to Law*, erroneously comment that ‘It was not until 1893 that Western Australia achieved full self-government’. Overlooking that the first Legislative Council election occurred in 1894, one wonders what the authors perceived the status of the Government was from 1890–1893? Edward Sweetman’s short chapter on WA in *Australian Constitutional Development* is riddled with errors from misdating critical events to bestowing an honorific on Governor Fitzgerald, and the bible of Australian electoral studies, Colin Hughes and B.D. Graham’s *A Handbook of Australian Government and Politics 1890–1964* misdates (postdates) WA’s establishment of the offices of Chief Electoral Officer and Inspector of the Parliamentary Rolls.

More recently, Bolton in *Land of Vision and Mirage: Western Australia Since 1826* has claimed that Governor Hampton with ‘unexpected enlightenment’ agreed that the Legislative Council’s six un-official nominees ‘should be elected by property-owners’ in 1867. Bolton’s observation is incorrect. Hampton announced that all ‘free inhabitants’ could vote—a truly enlightened offer that, predating the passing of the Second Reform Act in Britain, disconcerted the local press and unsettled one long-standing reformer and candidate, Samuel Phillips, who declared: ‘He did not approve of the system of voting adopted in this district [Eastern District], where every settler had a vote along with his cook

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97 Welsh, *Great Southern Land*, p. 139.
and hutkeeper'.

Perhaps more unsettlingly with respect to the 1867 ‘quasi’-election or ‘selection’ is the much-repeated but incorrect claim that Hampton defied the electors of the Eastern District and nominated the just-quoted Phillips instead of the voters’ choice, Edward Hamersley. This mistake first occurs in Kimberly’s *History of West Australia* in 1897, as de Garis noted, and is repeated by Battye, Colebatch, McKenzie, Mary Bain and, finally, in 1979 by Rica Erickson who embellished the canard: ‘the governor duly nominated all the elected members except young Hamersley, selecting Phillips in his place because of his long experience in Council. Hamersley senior was justifiably furious at the snub’.

Particularly relevant to this study, a number of works incorrectly date WA’s attainment of electoral reforms, feeding the misconception that WA was indeed a delinquent laggard. L.F. Crisp’s ‘Innovation in Representational Arrangements—Lower Houses’ electoral milestones league table, for example, contains three errors amongst the eight entries for WA—all postdating the achievement of electoral reform—including ranking WA as the second last colony/state to enfranchise women. Russel Ward’s tabulated ‘Progress of “Liberalism” in the Various Colonies 1850–1900’ corrects two of Crisp’s errors regarding WA, but misdates the abolition of plural voting for the Legislative Assembly at 1907, rather than 1904—a mistake repeated by McMinn, Audrey Oldfield, Crowley and Peter Brent. The most recent ‘Schedule of Comparative Electoral Reform’, Marian Simms’s from 2006, also postdates WA’s abolition of plural voting at 1907, and while the only table to include postal voting as a category, omits WA notwithstanding that WA pioneered postal voting in Australia. Somewhat disconcertingly, the Australian Electoral Commission’s website currently lists WA’s introduction of the secret ballot at 1893, rather than 1877—an error recycled on Education Services Australia’s *Voting and Elections: Electoral Events Timeline* webpage and on australianpolitics.com’s *Secret Ballots in Australia* webpage.

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106 Simms, *From the Hustings to Harbour Views*, p. 137.

Sources

Given the paucity and unevenness of the secondary literature, this study is largely based upon primary sources—in particular, British and Western Australian official records. These documents include statutes, ordinances and draft bills; Legislative Council and Executive Council Minutes; parliamentary debates, committee reports and transcripts of evidence; despatches to and from Governors of Western Australian to the Secretaries and Under-Secretaries of State for the Colonies; electoral returns, files and correspondence from the Western Australian Colonial Secretary’s Office; and public notices and statistics from the Government Gazette and the Blue Book. Electoral legislation from the other Australian colonies has also been examined. This official material has been supplemented by non-official primary sources including editorials, articles and correspondence from newspapers and periodicals; reports of public meetings; texts of petitions and memorials; reform association platforms and minutes; candidate manifestos; political advertisements; testimony from colonists’ diaries, letters and memoirs; and commentary from travellers’ accounts. Nineteenth-century political and historical writing has also been examined as it informed opinion and debate within colonial WA.

Contemporary primary sources provide a rich trove of information, assisting historians, as Eric Evans has stated, in their quest to assess past events, ‘as far as possible, from the perspective and understanding of those who lived through them’.108 They are not, however, without limitations and drawbacks. Researchers need to be mindful not only of lacunae in records, but also of the context in which surviving records were generated and who generated them, i.e. they can be self-selecting and self-serving. Further, as Marian Aveling has underlined, the presentation of primary sources can convey an impression of ‘unedited reality’, but, as with secondary sources, primary material is subject to the historian’s mediating ‘orchestration’ of ‘selection and juxtaposition’.109 Aveling’s view is endorsed by Herman Paul, who has emphasised of the ‘performative activities’ of historians engaged in archival research: ‘They read, select, associate, interpret, define, and formulate … often, perhaps, in less than full conformity to what their methodology textbooks once told them to do’.110

Unquestionably, a shortcoming of the sources used in this thesis is that most privilege the voices of the literate middle reaches of colonial Western Australian society. This is largely

109 Marian Aveling (ed.), Westralian Voices: Documents in Western Australian Social History, University of Western Australia Press, Nedlands, WA, 1979, p. xxv.
unavoidable. Unlike Britain, where the demographic was described by the statistician Robert Dudley Baxter in 1868 as resembling ‘the Peak of Teneriffe’, ‘with its long low base of labouring population, with its uplands of the middle classes, and with the towering peaks and summits of those with princely incomes’—a ‘perfect social pyramid’, in François Bédarida’s words—WA for most of the nineteenth century has been more prosaically described by Crowley as ‘topped and tailed’.111 Founded ‘as a colony of individual private enterprise’, WA attracted settlers who were moderately affluent—often the younger sons and dependants of the gentry.112 Indeed, according to Kimberley, ‘Western Australia had for its pioneers more highly educated men of good society than perhaps any other British dependency’.113 The 1848 census confirmed the small community continued to possess a disproportionate number of what Rogers has classified as the ‘superintending’ as opposed to the ‘operative’ (or ‘helot’, to quote Stannage) class.114 This ‘palpably ruinous’ disproportion lessened after 1850 when transportation commenced and WA attracted population—forced and free—but, nonetheless, for most of the nineteenth century the often unlettered operative class left few written records.115 Nor, generally, did they comprise what Andrew Gill has termed the ‘tiny fraction of Western Australia’s very small population [who] took part in political decision-making’.116 As with the other Australian colonies, the ‘lower orders … were accustomed to look to the business and professional classes for political guidance’, according to P. Loveday and A.W. Martin.117

Notwithstanding these impediments, this thesis attempts to access non-gentry voices through what Stannage has termed ‘evidence not usually of their own making’.118 This includes reports of election meetings, which recorded questions and interjections from the floor, and correspondence to the more progressive newspapers, particularly the Fremantle Herald (aka ‘the Fremantle Radical Journal’) which—‘ex-convict in origin and permanently at odds with the local Establishment’, as Bolton has described it—provided a forum for working-class views.119 (Regrettably, few gleanings come from the Mechanics Institutes,


115 Rogers, ‘An Inquiry into the Withholding of Self-Government’, p. 68. Stannage has also argued that the ‘labouring classes’ chose ‘silence’ in colonial WA in the belief that their conditions could worsen with complaint, *People of Perth*, p. 65.


established in the 1850s, because political discussion was discouraged by the Institutes’ ‘middle class sponsors’.120)

In a similar fashion, the voices quoted in this thesis are predominantly men’s, because for most of the period under review women were excluded from the political process, with most official records being produced by male officials on behalf of male officialdom.121 This study has endeavoured, however, to recover women’s perspectives through their correspondence, and through manifestoes, articles and meeting reports during the quest for female enfranchisement.

Aboriginal people constitute another pronounced absence. Macintyre has correctly identified that, in general terms, ‘Aborigines are the absent centre of colonial liberalism’.122 Their absence, however, is particularly noticeable with respect to electoral rights. Essentially, in polities organised to protect ‘the possessing class against the non-possessing class’, as Friedrich Engels put it, Aboriginal people were perceived in all Australian colonies, as Ann Curthoys and Jessie Mitchell have underlined, as ‘the objects of government, not its makers’.123 Even WA’s most advanced and inclusive colonial liberals struggled to envisage a time when the Aboriginal population—which was mostly propertyless (dispossessed), living nomadically and illiterate—would participate in an electoral regime predicated on property, settled residence and literacy. As late as 1890 Sir William Robinson (a former and future Governor of WA) expressed the pessimistic—and unchallenged—view that: ‘I do not think we can ever look forward to a time when the aboriginal native of Australia will exercise the franchise’.124 Notwithstanding these caveats, this thesis logs all relevant discussion relating to enfranchising or restricting the enfranchisement of WA’s Aboriginal population, and refers to scholarship into the ‘racialised silences’ in Australian suffrage history and historiography by Patricia Grimshaw, Katherine Ellinghaus and Jasmina Brankovich.125

121 According to G.L. Buxton, ‘Clerking and copying in offices was still a male preserve, though in 1887 one of the [Melbourne] banks daringly engaged its first lady typist’, ‘1870–90’ in Crowley, A New History of Australia, p. 195.
122 Macintyre, A Colonial Liberalism, p. 211.
124 Robinson’s quotation appears in the House of Commons Select Committee Report on the Western Australia Constitution Bill, BPP, 1890, Colonies Australia, vol. 32, p. 189.
As well as negotiating *lacunae* in primary sources, researchers need to be alert to—and, if necessary, provide alerts regarding—bias *within* sources. This thesis, on occasion, quotes writers who express unabashedly partisan views because such views can provide insights into the mindset of particular community groups, but indicates when writers evince exceptional bias. Accordingly, G.W. Rusden’s arch-conservative *History of Australia* is cited even though it was denounced by Alfred Deakin (not an entirely impartial reviewer, obviously) ‘as untrustworthy as a partisan pamphlet well can be without deliberate dishonesty’. Equally, Reeves’s stridently left-wing *State Experiments in Australia and New Zealand* is referred to because it provides a conduit to the opinions of colonial progressives.

Bias is particularly a risk with colonial newspapers. ‘[P]olitics was their daily bread’, as Geoffrey Blainey has observed, and in WA the local press provided political commentary and, critically, the *only* reports of debates and proceedings in the Legislative Council until Hansard reporting commenced in 1876. But, as Serle has pointed out, ‘few newspapers recognized objectivity as a proper aim’—a criticism Rob Pascoe expanded when he cautioned against the ‘selective nature of what … [newspapers] regarded as newsworthy’. The usually self-avowed bias in WA’s colonial newspapers is negotiated by citing press commentary from both ends of the political spectrum. Accordingly, editorials and correspondence from ‘the Conservative organ’, the *West Australian* (and its prior incarnations), are juxtaposed with those from the *Swan River Guardian*, the *Inquirer* and the *Herald*. Additionally, press commentary in this study is in dialogue with speeches in the legislature, correspondence between the Governor and Downing Street (home of the Colonial Office), and reports of public meetings.

Another challenge with primary sources is determining how much weight to accord them. This thesis examines a range of contemporary writers whose work fed into nineteenth-century opinion, but heeds Lawrence Poston’s observation that the influence of celebrity ‘mid-Victorian sages’ and ‘prophets’ can be overstated. Clearly, however, it is not only with celebrated writers that researchers need to be circumspect. Loveday and Martin have

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129 The *West Australian* as described by the editor of the *Inquirer* 1 October 1884.
drawn attention to the ‘mistaken modern impressions of the faction system’ stemming, in part, because:

Recent historians have looked at the factions through the eyes of contemporary commentators, who indulged the expectations of the time by a grand manner of denunciation when they spoke of politics … and have accepted these denunciations uncritically.¹³¹ Notwithstanding this caution, it is useful to bear in mind Evans’s observation: ‘the point about political slogans is not whether they are true (which is rarely the case) but whether they are believed (which they frequently are)’.¹³²

Scope and Approach

This thesis chronologically charts WA’s quest for and development of elected legislative institutions from foundation in 1829, when the colony was under the unelected, technically illegal, and indisputably autocratic rule of Lieutenant-Governor Stirling, to 1901 when WA entered the Federation as a fully self-governing state with elected institutions and provisions which were, broadly, as liberal and advanced as those of the ‘ultra-democratic’ sister states.¹³³

At first blush, this study may appear a traditional, if not somewhat Whiggish, march of progress ‘history from above’, along the lines of John Cannon’s Parliamentary Reform 1640–1832.¹³⁴ Certainly, like Cannon’s work, this thesis provides a linear chronicling of the attainment of electoral reform and concentrates on this pursuit from the ‘top’, i.e. within the legislature, and largely for the reasons advanced by Cannon: that within Anglosphere societies Parliament is the locus of power and recognised arena of reform (‘the forcing grounds’ of constitutional change, according to Hartwell).¹³⁵ To which can be added that, in colonial Australia’s case, legislatures were, in tandem with the Governor, the formal conduit to Whitehall and Westminster. However, while this thesis focuses on the push for elected representation and electoral reform from within WA’s colonial legislature, it also examines the drive for representation and electoral reform from extra-parliamentary groups, including reform associations and the press.

¹³¹ Loveday and Martin, Parliament Factions and Parties, p. 3.
¹³² Evans, Britain Before the Reform Act, p. 83.
¹³³ Earl Grey’s description from a letter to Sir George Stephen, Inquirer, 22 February 1865. The illegal aspects of Stirling’s administration are discussed in the next chapter.
Also like Cannon’s history, this thesis has a lengthy timeframe. Indeed, lengthy chronological timeframes are conventional in studies of electoral reform given that the reform process is usually vigorously contested and therefore protracted.\textsuperscript{136} Whilst this can, as Cannon has conceded, provide ‘easy targets for criticism’ by ‘more specialized colleagues’, it has the advantage that the historian can ‘trace the relationship between ideas and actions—to see why arguments which are pressed ineffectually at one moment become politically viable the next’ and then ‘draw the threads together’ in a way not possible with a more compact time span.\textsuperscript{137} Cannon’s metaphor is picked up by Michael Hurst who has observed in the context of electoral history that ‘it is all too easy to lose the thread of development in jumping from one narrowly specialist work to another’, while Butterfield has usefully cautioned that drastic abridgement of complex political events can produce accounts ‘that would never be feasible if all the story were told in all its detail’.\textsuperscript{138}

In charting WA’s attainment of electoral institutions, this thesis examines the challenges which constrained the colonists in framing their constitutional and electoral architecture—and which are, in part, responsible for perceptions of Western Australian conservatism and torpor—and how these challenges were negotiated by the colonists. As outlined above, the principal impediments included WA’s lack of population and rudimentary economy which saw the colony contain fewer than 5,000 European citizens in the 1850s when the eastern colonies were drafting constitutions for representative government. Quite simply, WA did not have the critical mass to take on elected representation, nor the wealthy leisured class which traditionally provided the pool of (unremunerated) representatives. The impact of convictism from 1850 to 1868 is considered in disqualifying WA from petitioning for representative government during its duration, and for the lingering effect the large bond presence had upon the small community and, more critically, on electoral rolls. Following the cessation of transportation, WA’s prolonged period of part-representative government is assessed: during this phase the colony’s legislators were bound by the illiberal electoral provisions mandated by the Australian Colonies Government Act and also had to contend with Colonial Office-appointed Attorneys General often bent on assimilating English electoral practice rather than that of the more progressive Australian colonies.\textsuperscript{139}


\textsuperscript{137} Cannon, \textit{Parliamentary Reform}, pp. xii–xiii.

\textsuperscript{138} Michael Hurst, introduction to Seymour, \textit{Electoral Reform in England and Wales}, n.p; Butterfield, \textit{Whig Interpretation of History}, p. 102.

\textsuperscript{139} As an editorial in the \textit{West Australian} expressed it: ‘in accordance with a general practice of English Attorneys General—amounting, as we have said elsewhere, almost to a craze—to “assimilate” our law to that of the law of England and to adopt English Acts’—15 Mar 1884. Also see Edward Keane’s summation: ‘it would be better to
major impediments studied are the impact of conservative administrations in Britain from the 1870s; the intensification of interest in Empire from approximately the same time; and, as a consequence, the appointment by the Colonial Office of Governors with a mandate to dampen down WA’s quest for fully elected self-government.

Notwithstanding these constraints, and the colonists’ stated desire to obviate the mistakes and excesses of Australian colonial liberalism, this study illustrates, contrary to the predominant view in much of the historiography, that Western Australians zealously sought elected institutions, and were prompt adopters and, on occasion, initiators of the liberal electoral reforms which had earned the sister colonies the democratic laboratory epithet.

Outline of Chapters

Chapter 1 examines the electoral system in the ‘mother country’ and the democratising effect of the First Reform Act passed three years after WA’s foundation, and describes the establishment of WA’s unelected Legislative Council. Against this background, the chapter appraises the liberal proclivities evinced by the first settlers—in particular, their desire for the franchise—and reviews their early and insistent demands for an elected legislature.

The second chapter surveys the settlers’ increasing dissatisfaction with WA’s illiberal political arrangements, considers the impact of the admission of unelected non-official members to the Legislative Council in 1839, traces the colonists’ campaign to increase settler representation in the Council, and discusses the implications of the enactment of the Australian Colonies Government Act and the introduction of convictism in 1850. Also assessed is the cessation of transportation in 1868, the growing self-government movement which culminated in the 1867 Householder Petition and highly progressive ‘quasi’-elections, and gubernatorial and Colonial Office recognition of WA’s claim to representative government.

Chapter 3 examines the colonists’ continuing agitation for the franchise; the arrival of Governor Weld, a renowned liberal; the institution of representative government according to the conservative terms prescribed by the Australian Colonies Government Act; and the conduct of WA’s first official elections.

follow the practice of the other colonies than doing what the Attorney General was always dinning into their ears—following the practice of the House of Commons, and the mother country”, WAPD, 27 March 1889, p. 158.
Settler attempts to liberalise WA’s electoral laws are evaluated in chapter four. This chapter also analyses the implications of a Conservative Government coming into office in Britain—particularly the development of New Imperialism and the consequential thwarting of WA’s aspirations for fully elected self-government which, in 1874, had seen WA’s electors endorse a draft Constitution that incorporated major liberal electoral reforms.

Chapter 5 appraises Western Australians’ increasing dissatisfaction with their ‘hybrid’ and discredited model of government, and charts their protracted quest for self-government assisted by reform associations. The colonists’ continuing liberalisation of their electoral laws and their discussions about the sort of electoral system they sought under self-government are also analysed.

Chapter 6 contains an account of the drafting of WA’s Constitution for self-government and the efforts of the colony’s MLCs—‘considerably bound and tied’ by conservative conditions dictated by the Secretary of State—to fashion one which incorporated liberal electoral provisions whilst still endeavouring ‘to profit by the experience of our neighbors’—particularly avoiding the ‘evils’ flowing from the ‘instability of their administrations’.140

Chapter 7 evaluates the settlers’ attempts to further liberalise WA’s draft Constitution following its endorsement by election; appraises its reception at Westminster—which featured Imperial charges that the Bill was illiberal and a robust defence of the Bill by Western Australian delegates; and discusses its eventual ratification.

The theme of Chapter 8 is the moves of the newly instituted bicameral legislature to liberalise WA’s electoral provisions—in particular, instituting manhood suffrage for the Legislative Assembly and abolishing property qualifications for Members. The impact on electoral reform of the changing composition of the Legislative Council—from nominee to elected membership—and the influx of more politically advanced t’othersiders following the goldrushes is also assessed.

Chapter 9 examines attempts by t’othersiders and progressive Western Australians in the Parliament to secure electoral reform, particularly more equitable electoral boundaries and payment of MPs. The quest for women’s enfranchisement, an advanced reform proposed by conservative Members, is also discussed.

140 Stephen Parker, WAPD, 13 December 1892, p. 373, and WAPD, 21 March 1889, pp. 89 and 88.
Chapter 10 assesses WA’s concerted and, perforce, accelerated effort to harmonise—i.e. liberalise—her constitutional and electoral provisions with those of the eastern colonies in the lead-up to Federation. This chapter surveys the critical electoral reforms implemented in this compressed period, and pays particular attention to the movement for women’s suffrage, evaluating the diverse motives of contemporary legislators and other stakeholders and assessing the prevailing negative response to the reform in the historiography.

The Conclusion summarises the themes explored in this thesis; affirms that WA successfully negotiated participation in the democratic laboratory while contending with economic, social and demographic challenges and constraints; observes that WA, more than any of the other Australian states, continued the democratic laboratory tradition in the post-colonial period; and suggests that further interrogating some of the received views in historical accounts could open up profitable lines of research.

**In Sum …**

This thesis’s reappraisal of WA’s electoral history in the context of nineteenth-century liberalism, and its argument that colonial Western Australians consistently pursued elected representation and demonstrated a willingness to adopt, and even pioneer, liberal electoral reform when they considered they could judiciously do so, provides a new way of surveying WA’s development of political institutions. These new perspectives which recognise WA as a participant, albeit at times a constrained and cautious one, in the pantheon of the democratic laboratory, enhance the wider study of nineteenth-century liberalism, contribute to studies of the development of the Westminster model of representative and responsible self-government, and provide insights into colonial Western Australian society as it grappled with its quest for attainment of the ‘most glorious privilege as an Englishman’—the franchise.141

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Constitutional and Electoral Templates

1829–1839

When Lieutenant-Governor Captain James Stirling and his officials founded the Swan River colony in 1829 ‘upon certain wild and unoccupied Lands’ they carried the British Government’s mandate to reproduce the institutions of the mother country—‘so far as it is applicable to their new situation & circumstances’.

This long-standing aspiration for the satellite communities of the British Empire was fervently endorsed by the colonists of Greater Britain. Indeed, in 1830, petitioners for representative government in NSW cited ‘the well known repugnance of Englishmen to settle under any form of government, which differs essentially from the venerated constitution of their Native Country’.

In 1829, however, the venerated institutions of the mother country—particularly electoral institutions—were under challenge, and it has become an historical commonplace to label the early decades of nineteenth-century Britain the ‘age of transition’, the ‘age of reform’ or the ‘age of improvement’. Any study of WA’s parliamentary electoral history needs to be backlit by an awareness of this profound change in Britain, and the forces driving it, because the constitutional and electoral templates Stirling conveyed to WA for transplantation were, in the words of the Imperial historian, Sir John Seeley, ‘all ultra-English’.

1 First quotation from 10 Geo. IV, c. 22: the Act constituting WA. Second quotation from Goderich to Governor Stirling, 28 April 1831, SRP, vol. 11, p. 57. The mandate had been spelt out in the year prior to Swan River’s foundation by the Secretary of State for the Colonies, William Huskisson, who urged the ‘establishment of institutions in … colonies similar to those of the people from whom the inhabitants have sprung’—Huskisson quoted in J.J. Eddy, Britain and the Australian Colonies 1818–1831: The Technique of Government, Clarendon Press, Oxford, 1969, p. xiii. The principle was restated to the House of Commons in 1843 by Sir R.H. Inglis: ‘Nothing … could deserve the name of a colony of Great Britain, which did not represent all the interests, civil and religious, of the mother country, which was not, in fact, a miniature representation of England … He held, that they were not entitled to expatriate any portion of the people of this country unless they were also prepared to give those persons the benefit of all those institutions to which they were entitled at home’—Inglis quoted in Klaus E. Knorr, British Colonial Theories 1570–1850, University of Toronto Press, Toronto, 1944, p. 311.

2 Extract from the petition, printed in the Australian, 10 February 1830.


That Britain’s institutions in 1829 required reform to deal with the dislocations and distresses engendered by the Agrarian and Industrial revolutions preoccupies much of the literature, polemical writing and speeches from that year.\(^5\) The radical reformer Thomas Attwood in an Address on the ‘Distressed State of the Country’, for example, asserted that ‘to whatever part or interest of the country we turn our eyes, the same wretched and dismal scene presents itself … a distressed and discontented population are everywhere’—observations which were echoed by fellow radical, William Cobbett, at lectures at the London Mechanics’ Institution.\(^6\) Pointedly, both denounced the Government or, as Attwood phrased it, the ‘House of Lords’ and ‘House of Little Lords’, for this ‘National Distress’.\(^7\) While such denunciations may have been expected from radicals, especially Cobbett who had reverently escorted Tom Paine’s bones back from the United States, other publications from 1829 confirm that eminent conservatives such as Thomas Carlyle concurred that ‘reform of Government’ was urgently required.\(^8\)

According to Walter Houghton, from 1815 to 1850 the ‘tension’ between the rich and the poor in Britain was ‘almost constantly at the breaking point’.\(^9\) Indeed, that reform, ‘long repulsed and scorned’, was ‘on the point of changing her visage to that of Revolution’, as Thomas Arnold expressed it in 1830, was a palpable threat, and attention focused on Westminster because of ‘one common faith: that all things were possible through parliament, if only parliament were reformed’.\(^10\) E.L. Woodward has explained why reform of Parliament was requisite:

> the central authorities were unlikely to do anything unless parliament called upon them to act, and parliament would remain unresponsive to public opinion of a moderate kind as long as the house of commons did not properly represent the people of England. In any case the past history and traditions of Englishmen concentrated attention upon parliament, and a demand for the reform of the system of election and representation took precedence over other necessary reforms.\(^11\) [Emphasis added.]

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\(^5\) An example of such writing is Walden Fitz-John’s ‘1829, or The Present Times; A Poem, Illustrative of the Unexampled Distresses in the Manufacturing Districts’, William Moore, Huddersfield, [Eng., 1829].


\(^7\) Attwood, Distressed State of the Country, pp. 79 and 1.


\(^11\) Woodward, The Age of Reform, p. 21. Pickering supports Woodward’s observation: ‘Democracy was thus at the heart of the Chartist program, which reflected the widespread belief that politics was the principal mechanism to
This chapter will address this ‘reform of the system of election and representation’ because the unreformed English electoral system was the model familiar to WA’s early settlers, and because, as Norman Gash has commented, ‘there was scarcely a feature of the old unreformed system that could not be found still in existence after 1832’. In fact, it took more than another fifty years’ worth of legislation extending the franchise, redrawing constituency boundaries, reforming the election petition process, introducing the secret ballot, and tackling corrupt and illegal practices, before electoral law and practice in Britain started to assume its modern form. However, while many of these reforms were implemented in the Australian colonies decades before they were in the mother country, as Kingston has noted: ‘in the development of democracy, Westminster remained the model’; and, as most historians concede, Australian colonial liberals were ‘innovators or appliers of British liberal and radical ideas’. Further, it was through Imperial statutes—the 1842 Australian Constitutions Act and the 1850 Australian Colonies Government Act—that the Australian colonies progressed towards elected representation and responsible self-government. Accordingly, the English electoral system furnished not only the electoral template for WA and the sister colonies, but also a reference point for subsequent electoral reform.

The ‘present deranged system …’

At the pinnacle of institutions in the mother country in 1829 was the Parliament at Westminster to which representatives had been elected since the Middle Ages. Indeed, English electoral law and practice were essentially settled from 1295—the date of the ‘Model’ or ‘first regular parliament’—with regal writs of summons being issued by the Clerk of the Crown in Chancery to county sheriffs instructing them to organise the election to achieve social change. Even among many active trade unionists … there was an acceptance of the primacy of the political over the industrial struggle’, ‘A Wider Field in a New Country’, p. 30. Gash’s comments are echoed by O’Gorman: ‘One electoral system disappeared and gave way to one remarkably like itself. The men, the institutions, the values and the practices are remarkably similar each side of 1832’, Voters, Patrons, and Parties, p. 392.

Although this thesis refers to both ‘English’ and ‘British’ electoral practice, the terms are not used interchangeably. It is important to note, as K. Theodore Hoppen has outlined in ‘The Franchise and Electoral Politics in England and Ireland 1832–1885’ (in History: The Journal of the Historical Association of Great Britain, vol. 70, 1985, pp. 202–203) that while the electoral system of England ‘called the electoral tune’ in the United Kingdom and returned up to 70% of the Members to the Parliament at Westminster in the ‘half-century after 1832’, its electoral practices did in fact differ ‘profoundly’ from ‘those of the rest of the Kingdom’. As Hoppen continued, ‘To treat England not only as the major entity but as a surrogate for the United Kingdom as a whole is both lazy and misleading’. Accordingly, references to British electoral practice will refer to practices common to the United Kingdom, while at other times specific references will be made to English and Welsh practices, and, less frequently, to practices in Scotland and Ireland.

of two knights of the shire to represent each county, and two burgesses and two citizens to represent respectively the enfranchised towns and cities within the counties.\footnote{15}{Grego, A History of Parliamentary Elections, p. 1. According to Cornelius O’Leary, sheriffs were returning officers in the boroughs and counties until the fifteenth century, whereupon mayors and bailiffs took over the role, The Elimination of Corrupt Practices in British Elections 1868–1911, Clarendon Press, Oxford, 1962, p. 7.}

The electoral politics of the rural and urban constituencies were quite distinct—a situation largely attributable to their dissimilar franchises. The county franchise initially extended to ‘every man’, although in 1430 it was contracted by statute to ‘freeholders of forty shillings \textit{per ann.} lands or tenements’.\footnote{16}{Grenville Sharpe quoted in Thomas Hinton Burley Oldfield, An Entire and Complete History, Political and Personal, of the Boroughs of Great Britain, 3 vols, G. Riley, London, 1792, vol. 1, pp. 178 and 179. The 1430 statute was 10 Henry VI, c. 2. The contraction, however, was not as restrictive as it sounds because ‘freehold’, over time, was loosely interpreted and encompassed leases, annuities and mortgages based on freehold property. Even some posts and property attached to the church and judiciary were held to bestow the county franchise, with the result that owners of pews in churches, and parishioners tending burial grounds, successfully claimed the county franchise. See Edward Porritt assisted by Annie G. Porritt, The Unreformed House of Commons: Parliamentary Representation Before 1832, 2 vols, Augustus M. Kelley, New York, 1963 (1903), vol. I, pp. 22–23, and Seymour, Electoral Reform in England and Wales, pp. 11–12.}

The boroughs, or towns, by contrast, permitted four categories of male suffrage. ‘Freeman’ boroughs granted the suffrage to freemen—a status which could be inherited, earned by completing apprenticeships, purchased, or acquired through marrying a freeman’s daughter or widow (the last category reportedly leading, on occasion, to counterfeit or coerced marriages in close election contests).\footnote{17}{For discussion of mock or forced marriages to secure freeman status see Seymour, Electoral Reform in England and Wales, p. 35.} ‘Inhabitant householder’ franchise bestowed voting rights on resident householders paying church or poor rates.\footnote{18}{Approximately a quarter of the inhabitant boroughs granted the franchise to ‘potwallppers’, i.e. ‘inhabitant householders not in receipt of poor relief or charity’—see John A. Phillips, Electoral Behavior in Unreformed England: Plumpers, Splitters, and Straights, Princeton University Press, Princeton, New Jersey, 1982, p. 61.}

‘Burgage’ franchise was vested in ownership or rental of designated houses, although some fields, barns, stables, pigeon lofts and hog-sties also granted voting rights.\footnote{19}{See Porritt, The Unreformed House of Commons, vol. I, pp. 33–41, and O’Gorman, Voters, Patrons, and Parties, p. 35. As an interesting aside, women who owned a burgage property could transfer their voting rights to men giving such women, as Porritt has commented, the ‘most frequent, most conspicuous, and most direct’ role in the unreformed electoral system—see Porritt, The Unreformed House of Commons, vol. I, pp. 40–41.} ‘Corporation’ franchise extended to members of the borough municipal corporation. Borough franchises were occasionally differentiated by additional qualifications based on local custom, such as Berealston’s burgage voters who had to pay three-pence per annum as ‘acknowledgment to the lord’\footnote{20}{Oldfield, History of the Boroughs, vol. II, p. 218, where Oldfield scornfully recounts the case of the borough of Boston which, following House of Commons election petition committee resolutions, elected representatives at successive elections under inhabitant, corporation and freeman, and then poor-rate paying freeman franchises.}. Additionally, a number of boroughs permitted voting under two or three franchise qualifications. Further complicating the picture were numerous contradictory resolutions of partisan House of Commons election petition committees.\footnote{21}{See Oldfield, History of the Boroughs, vol. II, p. 218, where Oldfield scornfully recounts the case of the borough of Boston which, following House of Commons election petition committee resolutions, elected representatives at successive elections under inhabitant, corporation and freeman, and then poor-rate paying freeman franchises.} Unsurprisingly, in 1792, the radical, Thomas Oldfield, denounced the ‘present deranged
system’ of electoral representation in Britain as ‘intricate, inexplicable, contradictory, and ridiculous’.22

The major criticism of borough franchises, however, was that few Britons held one of any description. It has been estimated that in 1830 only forty-three boroughs had more than a thousand electors, and fifty-six had fewer than fifty.23 Compounding the lack of representation was the 1707 Act of Union between England and Scotland which froze the number of Members either country could send to Westminster from that date. Consequently, cities which developed during the Industrial Revolution could not petition for representation, while depopulated rural towns retained the right to return two parliamentary representatives.

Another feature of the British electoral system which undermined representation was patronage, or the control of electors’ voting rights by the local ‘nobleman or opulent commoner’.24 Patronage was defended as a system which quarantined key parliamentarians from the ‘vagaries of electioneering’ (such as Lord Palmerston who lost his seat in 1831 but was immediately returned to the House of Commons via a nomination borough), and which enabled aristocrats of modest means to be gifted a seat—the nurseries of statesmen argument.25 Notwithstanding that the Qualifications Act of 1710 had introduced extremely high property qualifications for MPs (£600 annual income derived from land for county candidates, and half that amount for borough and city candidates), election costs could be prohibitive and deterred most from contesting a seat without the backing of a wealthy patron.26 It has been estimated that the proportion of seats for which British patrons had the power to ‘command the return’ at the date of WA’s foundation was between 30% to 40%—estimates which exclude seats decisively influenced by patrons.27

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26 The 1710 Act is 9 Anne, c. 5: it did not apply to eldest son or heir apparent of a peer, university representatives, or those qualified to serve as a knight of the shire.
27 Quotation from O’Gorman, Voters, Patrons, and Parties, p. 20. O’Gorman provides the nomination estimate of 30% in Voters, Patrons, and Parties, p. 21, while Brock supports an 1827 estimate of just over 40% in The Great Reform Act, p. 34. It should be noted that although some degree of patronage may have been the norm for the boroughs, it was present but less overt in the counties. Basically, the county electorates were so populous (Yorkshire, the largest, had around 23,000 electors at the beginning of the nineteenth century) that, as H.J. Hanham has observed, electors ‘could not be bribed and they could not be bullied’—see Hanham, Introduction to Charles R. Dod, Electoral Facts from 1832 to 1853 Impartially Stated: Constituting a Complete Political Gazetteer, rev. edn, edited with an introduction and bibliographical guide to electoral sources, 1832–1885 by H.J. Hanham, Harvester Press, Brighton, Sussex, 1972 (1853), p. xiii. In fact, given the number of electors in counties, their representation was generally
When there was only one patron for a borough, candidates could declare, as Sir George Savile did in 1780, ‘I have been elected in Lord Rockingham’s dining-room’.\(^{28}\) When there were two patrons, however, there could be gladiatorial contests as patrons attempted to ensure their protégé’s election—although it is worth noting that comparatively few seats were contested.\(^{29}\) John Phillips records that of the forty English counties, only voters in Hertfordshire went to the polls more than thrice during the eight general elections following 1761—a level of inactivity which explains why another historian has referred to the ‘prolonged electoral coma’ of the counties.\(^{30}\) While boroughs saw more contests than counties, they, too, were ‘plagued’ by uncontested elections.\(^{31}\) A number of electorates did not see an election contest for periods of up to 170 years.\(^{32}\) Compounding the lack of elections was that, from the passage of the Septennial Act in 1716 until the introduction of quinquennial parliamentary terms in 1911, British general elections could take place up to seven years apart.\(^{33}\)

The principal reason for uncontested elections was to avoid polling expenses, which is understandable given contested English elections were, as Chris Bryant has pungently expressed it, ‘soaked in corruption’, notwithstanding stringent common law and statutory prohibitions against corruption, and the bribery oath electors were often compelled to take before voting.\(^{34}\) As H.J. Hanham has underlined of the generally small borough constituencies, their election majorities were small, so every vote counted; and until the passing of the \textit{Corrupt and Illegal Practices Prevention Act 1883}\(^{35}\) there was no cap on the money candidates could pour into campaigns.
The legal expenses incurred in contesting an election spanned employing managers, scrutineers, clerks and messengers; hiring committee rooms; funding publicity and printing; and the statutory and ‘custom and usage’ requirement that candidates share equally poll-related costs such as electoral officials’ fees and charges and the erection of polling booths. The principal illegal election expense was vote-buying. Two representatives were elected for almost all constituencies, so an elector could be a ‘straight’ voter (casting both votes for one patron’s or party’s candidates); a ‘splitter’ (giving one vote to either side); or a ‘plumper’ (voting for one candidate only and discarding the other vote). Securing both votes could amount to an astronomical £150 per elector. Generally, candidates and electors escaped with this outright corruption because, as the revered abolitionist (but vote-buying parliamentarian) William Wilberforce confessed: ‘The letter of the law was not broken, because the money was not paid until the last day on which election petitions could be presented’. ‘Treating’ in the form of election feasting was also an integral part of electoral bribery, notwithstanding legislation expressly proscribing it.

Even more confronting than tales of corruption, are accounts of electoral intimidation and violence from this period. Until the passage of the Ballot Act in 1872, voting was ‘open’, i.e. electors stood in front of the returning officer—the electoral officer authorised by statute to conduct the election—and publicly signified which candidates they supported. Voters did this collectively on election day after the reading of the writ and recitation of the various Acts against bribery and corruption by the returning officer, and the formal nomination of, and election addresses by, candidates. If the number of candidates matched the number of vacancies, electors voted them in by acclamation; if there were more candidates than vacancies, candidates with the greatest show of hands could be declared winners on the spot by the returning officer. However, as the show of hands was often an ‘unmeaning farce’, with some electors raising both hands and non-voters amongst the crowd raising hand(s) as well, unsuccessful candidates invariably requested a formal poll. When this occurred, the returning officer was statutorily obliged to declare a poll and could

37 Brock quotes this sum for the 1830 Liverpool by-election, The Great Reform Act, p. 149.
38 Wilberforce quoted in Grego, A History of Parliamentary Elections, p. 324. Election petitions had to be lodged within fourteen days of the opening of the first session of Parliament after the election.
39 As a number of historians have discussed, ‘nursing’ of electorates between elections was also often expected and this ‘annual maintenance expenditure’ could amount to hundreds of pounds a year—first quotation from K. Theodore Hoppen, The Mid-Victorian Generation 1846–1886, Clarendon Press, Oxford, 1998, p. 257; second quotation and estimated expenditure from O’Gorman, Voters, Patrons, and Parties, pp. 149–150.
40 Useful short descriptions of nominations and polling are provided by Seymour, Electoral Reform in England and Wales, p. 205, and O’Gorman, Voters, Patrons, and Parties, pp. 130–139.
41 Description and quotation from Cox, ‘Hints to Solicitors’, p. clxxii.
do so immediately but, legally, up to a day or two later, with polling extending up to fifteen days in counties and up to eight days in boroughs.\(^{42}\)

With a poll, electors voted \textit{individually} before the returning officer and/or poll clerks, who administered a variable number of oaths (allegiance, supremacy, abjuration, anti-transubstantiation, bribery) and recorded in a pollbook the electors’ names and addresses, sometimes their occupations, and for whom they voted.\(^{43}\) Polling occurred, as prescribed by statute, in ‘some open or publick place’, and candidates and their attorneys, scrutineers and clerks, as well as the public, could witness—i.e. \textit{hear}—the elector orally indicate his choice to polling officials.\(^{44}\) The elector’s vote was also frequently published in printed pollbooks or newspapers. Unquestionably, with such scrutiny, electors could be subjected to inordinate pressure to vote for certain candidates—particularly if they had accepted bribes to do so. Landlords were known to threaten wavering electors with eviction, employers had the power of dismissal, and anyone with means could threaten ‘exclusive dealing’ (only purchasing goods or services from compliant elector-providers).\(^{45}\)

There are numerous accounts of lawless and violent behaviour at elections from the unreformed and post-reform periods. As has been widely observed, there was an elaborately theatrical cast to election campaigns—processional entries of candidates into towns preceded by marching bands; colourful cockades and banners to signify party preference; bell-ringing, cannon-firing, fireworks and bonfires during campaigning; and triumphal chairing of victors at the conclusion.\(^{46}\) Gash has aptly commented that such electoral

\(^{42}\) Before 1785 polling could extend up to the forty-day limit set by 7 & 8 Will. III, c. 25. O’Gorman notes, however, that the 1 April to 17 May Westminster poll in 1784 caused such ‘enormous alarm and indignation’ that an Act was passed in the following year (25 Geo. III, c. 84) which reduced polling to fifteen days, \textit{Voters, Patrons, and Parties}, p. 135. The 1828 Act which limited borough elections to eight days is 9 Geo. IV, c. 59. The Sabbath was excluded from time limits.


\(^{44}\) 7 & 8 Will. III, c. 25.

\(^{45}\) In the 1826 general election, for example, the radical reformer William Cobbett stood for Preston, but found that the large cotton manufacturers had ‘made it clear to their employees that Cobbett was not someone they could tolerate’—see Spater, \textit{William Cobbett}, vol. 2, p. 461. It is important to note that while eviction of tenants who voted against landlords’ wishes took place, it was not a common practice as landlords had a vested interest in retaining good tenants—see Brooke, \textit{The House of Commons 1734–1790: Introductory Survey}, p. 2, and Brock, \textit{The Great Reform Act}, pp. 29 and 110 on this point.

‘pageantry’ furnished ‘One of the most potent stimulants to disorder’ because it ‘provided both the assemblages and provocations for a rough and tumble battle’.\(^47\) Accordingly, there was a number of spectacularly violent elections and, even following the First Reform Act, there were campaigns in which candidates were pelted with stones, dead animals, rotten eggs and animal excrement and electors were mobbed, stripped naked and kicked unconscious.\(^48\) Ironically, often the most fortunate electors were those who had been abducted by rival candidates and kept in custody or ‘cooping’ until close of polling.\(^49\)

Exacerbating electoral abuses was the fact that constituencies were autonomous in conducting elections, and returning officers—the statutory ‘umpire between the parties’—were frequently partisan.\(^50\) In county constituencies the returning officer was the sheriff who was appointed by the Crown—which often ensured ‘the existence of returning officers favourable to themselves’, while borough returning officers were customarily the mayor or bailiff, who were occasionally appointees of local election patrons.\(^51\) Returning officers had some discretion as to when they could call the election after receiving the writ (and early advice to a favoured candidate could provide an advantage), and they determined where the election would occur and the layout of the polling venue, such as one dodgy returning officer who constructed:

> the poll-booth in such a manner as to allow a commodious access, through the mayor’s parlour, to the voters in the interest of Halifax and Rogers, while the agents and friends of the petitioner were obliged to ascend by a ladder … \(^52\)

Returning officers also set the hours of polling and could close daily polling early notwithstanding queuing electors, as the radical candidate William Cobbett found to his detriment during an 1826 contest.\(^53\) The ‘usual allegations’ about returning officers’ corruption and partiality—particularly the ‘Artifices’ they used ‘to disqualify Legal Votes, and validate False Votes’ as part of their duty to rule on disputed franchise qualifications

\(^47\) Gash, *Politics in the Age of Peel*, p. 141.
\(^49\) Gash, *Politics in the Age of Peel*, pp. 138–140. Seymour has noted that in 1837 it cost more than £500 to ‘put the town [Lewes] in a state of siege at election time, in order to prevent the carrying off and imprisonment of electors’, *Electoral Reform in England and Wales*, p. 174.
\(^53\) See Spater, *William Cobbett*, vol. 2, p. 462. For an overview of polling proceedings and the role of the returning officer see O’Gorman, *Voters, Patrons, and Parties*, pp. 126–141. Returning officers could also influence a poll’s duration by ruling on the number of oaths to be administered, and protracting a poll could force less well-off candidates to abandon the contest. Further, returning officers could disqualify or admit Catholics, who made up a large proportion of the population in some boroughs but who were officially banned from voting until 1829, by insisting on or omitting the transubstantiation and supremacy oaths—see O’Gorman, *Voters, Patrons, and Parties*, pp. 133–134. Cobbett lost Catholic votes at the Preston election in 1826 when his Tory opponent insisted that the returning officer administer the oath of supremacy—Spater, *William Cobbett*, vol. 2, p. 461.
during an era without electoral registers—were commonplace. Blatant breaches of probity by returning officers constituted the third most common category of election petitions and could see an election declared void, or elected candidates unseated. Unsurprisingly, the Utilitarian reformer Jeremy Bentham called for the creation of a centralised Ministry for Elections in the 1830s.

Notwithstanding the reported venality and violence of the reformed and unreformed electoral scene, revisionist historians in the past few decades have questioned the scale of electoral malfeasance, and contend electors were not as passive and manipulated as nineteenth-century radicals despaired. Indeed, J.R. Vincent, Phillips and O’Gorman, have attempted to steer electoral studies away from the qualitative piling up of anecdotes and instances—generally ‘morbidly preoccupied with the unsavoury aspects of “pre-reform” electoral politics’—which, they maintain, has led to ‘neglect, contempt, and ignorance’ regarding electoral history. Instead, they have conducted longitudinal and cross-sectional analyses of quantitative evidence from pollbooks, canvassing lists, land tax registers and rate books, and argue that electors were savvier than nineteenth-century radicals recognised, using elections to extort as much as possible from moneyed patrons including provision of infrastructure for the borough. Phillips has also strongly argued that the influence of patronage in the unreformed electorate has been over-emphasised, and that most patrons ‘exerted only an informal and possibly challengeable “influence” over a Commons seat’ which was ‘not completely irreconcilable with considerable electoral freedom of choice’.

Nevertheless, even factoring in the more positive slant of revisionist historians, the unreformed electoral system was untenable. By 1829 it was manifest that the unrepresented and disaffected middle and lower orders would not tolerate their exclusion from electoral representation much longer. The death of King George IV in June 1830 was followed, in keeping with constitutional law, by a general election which, instructively, took place against the backdrop of the July Revolution in France which had despatched an

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54 Oldfield, *History of the Boroughs*, vol. III, p. 90, and vol. I, Preface, p. xvi. Prior to 1832 electoral rolls had not existed in England and Wales and electoral officials relied on a variety of methods to establish a would-be elector’s eligibility including checking burgage papers, consulting freemen rolls and administering the freeholders’ oath. The single legislative attempt to introduce registers for the counties in 1788 had been repealed within a year on the grounds that it was prohibitively expensive. The 1788 Act introducing county registers is 28 Geo. III, c. 36. See Porritt, *The Unreformed House of Commons*, vol. I, pp. 26–28, for background to this short-lived Act.

55 The most common category of election petitions related to franchise qualifications, while the second alleged bribery and corruption—see O’Gorman, *Voters, Patrons, and Parties*, pp. 165–166.


authoritarian and franchise-restricting monarch. As Edward Lytton Bulwer commented of these events in Britain: ‘The question of Reform came on, and, to the astonishment of the nation itself, it was hailed at once by the national heart’. Certainly, a key issue of the election was electoral reform, and while the Duke of Wellington’s Tory Ministry was returned, on the opening day of Parliament Wellington torpedoed his tenuous support in the legislature by declaring implacable opposition to ‘any measure’ of electoral reform. A fortnight later Wellington resigned following a hostile vote in the House of Commons.

Wellington was replaced by the long-standing advocate of electoral reform, Earl Grey, a Whig, leading a coalition of Whigs and “liberal Tory” defectors. Fortuitously, Grey’s accession to the prime ministership was matched by the coronation of a ‘more constitutionally-minded sovereign’ in William IV.65

Upon assuming office, Grey pledged his Government to electoral reform and commissioned a committee to draft a Bill for England and Wales, to correct:

- divers Abuses that have long prevailed in the Choice of Members to serve in the Commons House of Parliament, to deprive many inconsiderable Places of the Right of returning Members, to grant such Privilege to large, populous, and wealthy Towns … to extend the Elective Franchise to many of His Majesty’s Subjects who have not heretofore enjoyed the same, and to diminish the Expense of Elections ...

Tory opposition, particularly in the House of Lords, to this proposed legislation is legendary. It is worthwhile reading the speeches of Macaulay, Whig historian, advocate of electoral reform and Member of the House of Commons, who enjoined recalcitrant Members of both Houses to pass the Bill. Macaulay spoke from personal experience when he denounced the ‘monstrous disproportions’ of the English representative system, as his own seat of Calne (comprising eighteen voters in 1831) was once reviled as ‘the most degraded and rottenest, stinkingest, skulkingest of boroughs’. Macaulay insisted that reform was unavoidable because the electoral system no longer commanded respect, but underlined that if Members co-operated in the reform process, particularly by harnessing the support of the propertied and respectable middle orders who were ‘most interested in

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61 The requirement that a dissolution follow within six months of a ‘Demise of the Crown’ was repealed by s. 51 of the Second Reform Act of 1867 (30 & 31 Vict., c. 102).
63 Wellington quoted in Brock, The Great Reform Act, p. 117.
64 Evans, Parliamentary Reform in Britain, p. 24.
66 The committee comprised Lord Durham, Lord John Russell, Lord Duncannon and Sir James Graham. The quotation comes from the Preamble to the First Reform Act, 2 Will. IV, c. 45.
preserving tranquillity’, the hallmarks of the British governmental system could remain intact—therefore, ‘Reform, that you may preserve’. Unpersuaded, the Tories scuppered the First Reform Bill, precipitating a tumultuous election which returned the Whigs with a massive pro-Bill mandate.

The House of Lords, however, did not acknowledge this mandate. When the Lords rejected the Second Reform Bill rioting broke out in several major cities, and many shared the apprehensions of Mrs Bussell who wrote to her sons in WA that the ‘present ministry are … turning the country upside down. If we do not have a revolution I shall wonder’. But, as French historians still observe with disbelief, this did not happen. Nor did it happen when the Lords defeated the Whigs on an amendment to the Third Reform Bill, and Grey resigned after William IV refused to create peers of a ‘reforming persuasion’ to break the impasse. The ensuing disturbances disconcerted everyone, however; and when Wellington was unable to form an alternative Ministry—which William IV stipulated would still be required to pass ‘extensive Reform’—William promised to create compliant peers as a condition for Grey resuming the prime ministership. The creation, however, did not occur: confronted with the alternative of the ‘Bill with an addition to the peerage or the … Bill without it’, the Lords capitulated and passed the Reform Bill on 4 June 1832.

Despite massive conservative hostility, the ‘Great Reform Act’ was modest legislation. While fifty-six rotten boroughs were disenfranchised, and thirty semi-rotten boroughs lost one Member (with the freed-up seats being redistributed to unrepresented towns and under-represented counties), Macaulay’s seat of Calne, still contained only 191 electors. Similarly, while the £10 householder franchise covered most of the (male) middle class, this only resulted in 7% of the total adult population being able to vote. (Separate Reform Acts

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70 Bédarida, for example, in his study of English politics, queried ‘Was England revolution-proof?’ before concluding that it was: ‘popular agitation for the right to vote remained faithful to legal methods … So during the whole of the nineteenth century, the country experienced no Commune, no barricades, no rivers of blood, no lasting hatreds’, A Social History of England, p. 75.
72 William IV quoted in Brock, The Great Reform Act, p. 292.
73 Sir Herbert Taylor, the King’s private secretary, quoted in Brock, The Great Reform Act, p. 305.
74 The boroughs which were disenfranchised or semi-disenfranchised are listed in Schedules A and B of the Act. Statistics for Calne are sourced from Seymour, Electoral Reform in England and Wales, p. 65.
75 Statistic from Chris Cook and John Stevenson, A History of British Elections Since 1689, Routledge, Abingdon, Oxford, 2014, p. 35. The £10 household qualification enfranchised householders occupying property worth at least £10 per annum in rental value. Conflicting accounts are given as to who and how many of the ‘middle class’ were enfranchised by the First Reform Act. Evans, for example, in Parliamentary Reform in Britain, p. 28, contends that most of the ‘wealthier middle-classes’ already held a vote before 1832 and that the Act was directed at the ‘lower middle classes’—an assessment supported by Seymour who repeatedly refers to the ‘lower’ middle class being enfranchised—see Electoral Reform in England and Wales, pp. 37 and 39. Evans’s conclusion is that the 1832 Act saw the enfranchisement of ‘virtually all of what might be called the middle ranks in society’.
for Scotland and Ireland, which significantly increased these countries’ constituencies, came into law in July and August 1832.\(^{76}\)

The Act’s other objective of reducing the expense of elections was effected through the requirement that electors had to be registered which, eliminating the need to determine franchise entitlements during polling, enabled polling to be reduced to two days. Registration, combined with an increase of polling places, so successfully expedited voting that polling was contracted to one day in 1835.\(^ {77}\)

Evans has commented that, ‘In its time, the first Reform Act is best characterised as a consciously anti-democratic measure’.\(^ {78}\) Certainly, the Act’s residency provisions disenfranchised approximately 80,000 non-resident ancient-right voters (out of a pre-reform borough electorate estimated at 188,000) of whom more than half have been classified as working class.\(^ {79}\) Further, electoral registration was particularly onerous for working-class electors who often could not afford time away from work to defend their enrolment if challenged at the revision court.\(^ {80}\) Charles Seymour has quoted the following tirade from an 1832 issue of the *Poor Man’s Guardian* to illustrate working-class antipathy to the new dispensation: ‘The bill is the most illiberal, the most tyrannical, the most abominable, the most infamous, the most hellish measure that ever could or can be proposed’.\(^ {81}\) Of working-class disaffection after the Act’s enactment, Valerie Cromwell has concluded: ‘Profound disillusionment with the new house was to be one of the spurs to the organisation of the Chartist movement’.\(^ {82}\) Indisputably, with Chartism’s ‘Six Points’ radical electoral reforms were proposed: manhood suffrage, annually elected parliaments, secret ballot, equal electoral districts, abolition of property qualifications for MPs and payment of MPs.

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\(^{76}\) Representation of the People (Scotland) Act (2 & 3 Will. IV, c. 65) and Representation of the People (Ireland) Act (2 & 3 Will. IV, c. 88).

\(^{77}\) The 1835 Act is 5 & 6 Will. IV, c. 36.

\(^{78}\) Evans, *Britain Before the Reform Act*, p. 96. This is a commonly held appraisal of Whig reform. See Ward: ‘Whig reforms were essentially conservative, designed to save and not to transform the existing order’, *Colonial Self-Government*, p. 39.

\(^{79}\) Figures relating to the pre-reform working-class borough electorate are from Seymour, *Electoral Reform in England and Wales*, pp. 83–85, 88 and 94. Also see Walter Bagehot who lamented the loss of ‘variety to our constitution’ resulting from the post-1832 reduction of working-class voters, *The English Constitution*, Oxford University Press, Oxford, 2001 (1867), p. 199. Moreover, as only the freeman ancient-right franchise was capable of being passed on to heirs, the proportion of ancient-right electors fell further as time passed. In Preston, for example, 88% of males could vote in 1832, but this number had plunged to 11.6% by 1851—see Evans, *Parliamentary Reform in Britain*, p. 29.

\(^{80}\) Seymour provides an overview of electoral registration in *Electoral Reform in England and Wales*, pp. 104–164.

\(^{81}\) Seymour, *Electoral Reform in England and Wales*, p. 41.

\(^{82}\) Cromwell, *The Great Reform Bill*, p. 33.
In tracing WA’s electoral history it is important to recall that the colony was founded at this critical juncture in Britain’s electoral history—a fact not lost on British nineteenth-century colonial historians. Seeley, for example, discussed how colonies ‘received at once a peculiar stamp from the circumstances of the time’ of their founding—an argument which echoed Dilke’s observations in 1867 on the impact of differing ‘traditions of … first settlement’ on colonies.83 A perceptive analysis of the impact of the zeitgeist on foundation was provided by Lord Durham—one of the co-drafters of the Great Reform Act—in his 1839 report on the rebellious Canadian provinces in which he observed that the French in Lower Canada had frozen at the stage of their departure from France:

The institutions of France, during the period of the colonization of Canada, were, perhaps, more than those of any other European nation, calculated to repress the intelligence and freedom of the great mass of the people. These institutions followed the Canadian colonist across the Atlantic … They [the French colonists] remain an old and stationary society, in a new and progressive world … They resemble … the French of the provinces under the old regime.84

Durham’s assessment was endorsed by the British–Canadian historian Goldwin Smith who, in 1899, similarly dismissed the Canadian French of this period as ‘a surviving segment of the French peasantry before the Revolution; kindly and good, but simple-minded, uneducated, unprogressive, primitive.’85 By contrast, when discussing nineteenth-century emigration from Britain, colonial theorists, and more recent fragment theory historians and political sociologists such as Louis Hartz, Richard Rosecrance, Seymour Martin Lipset and Hugh Collins, have observed that British emigrants were imbued with the ‘radical’ tenets and ‘heady brew of … social ferment’ which featured so prominently in the political domain in the late eighteenth and nineteenth centuries.86 (E.P. Thompson designated the period ten years prior to the settlement of WA as ‘the heroic age of popular Radicalism’.87) According to Dilke, these radical tenets were soon manifested in the ‘eager burning democracy’ for which the Australian colonies became celebrated.88 In particular, as the eminent Victorian liberal, Charles Pearson, noted of British emigrants to Australia after the

88 Dilke, Greater Britain: Charles Dilke Visits Her New Lands, p. 87.
Great Reform Act: ‘They carried with them the ideas of the English middle classes at home; a strong feeling for an extended suffrage’.  

Complicated, lawless and inequitable as the English unreformed and reformed electoral systems were, they were the models with which WA’s founding settlers were familiar. Additionally, many members of the Swan River elite were connected to British MPs and county sheriffs and had undoubtedly been privy to first-hand electioneering accounts. In the following pages it will be seen how the colonists, described by Stirling as comprising ‘more than an usual number of men of property & Family’—i.e. the demographic enfranchised by the Great Reform Act—petitioned for elected representation in 1832 before, as Rusden tartly observed, the colony ‘was fledged or could procure its food’, and how WA’s first impressively liberal quasi-election, based on manhood suffrage and the secret ballot, occurred in 1867—the year the Second Reform Act enfranchised urban workers amid rhetoric that Britain was ‘Leaping in the Dark’ and ‘Shooting Niagara’. However, it took decades before Western Australians were granted an elected legislature, and the colonists’ protracted quest for the franchise is a significant component of WA’s electoral history.

The ‘Legislature … of a more simple, though less popular, character’

Due to the beat-the-French haste of his departure, Stirling landed in WA with only a letter of appointment and a ‘few general instructions’. In ‘urgent’ despatches to the Colonial Office, in which he pleaded for his ‘promised charter’ and ‘regular Commission and Instructions’, Stirling raised a fact which modern historians have confirmed—that until he

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90 Governor Stirling’s uncle, Sir Walter Stirling, was an MP for various English constituencies and was appointed High Sheriff for Kent in 1804, while his father-in-law, James Mangles, served as a High Sheriff for Surrey and was the Member for Guildford from 1832–1837—see Malcolm Uren, Land Looking West: The Story of Governor James Stirling in Western Australia, Oxford University Press, London, 1948, pp. 15 and 19. Settler Lieutenant Henry Bunbury’s father, Sir Henry Bunbury, sat in the House of Commons from 1830–1833 for West Suffolk along with colonist Edward Barrett-Lennard’s father, Sir Thomas Barrett-Lennard, the Member for Essex—see Henry William Bunbury, Early Days in Western Australia: Being the Letters and Journal of Lieut. H. W. Bunbury, edited by Lieut.-Col. W. St Pierre Bunbury and W.P. Morrell, Oxford University Press, London, 1930, p. vii; and Sir Charles Howe Fremantle, Diary & Letters of Admiral Sir C.H. Fremantle, G.C.B., Relating to the Founding of the Colony of Western Australia, 1829, edited by Lord Cottesloe, Fremantle Arts Centre Press, Fremantle, WA, 1979 (1928), p. 88. Settler Thomas Peel was a first cousin of Sir Robert Peel, a Member of the House of Commons for various constituencies from 1809 and who served twice as Prime Minister of the United Kingdom.  
92 Quotation from Boyce, ‘The Role of the Governor’, p. 19. A copy of Stirling’s letter of appointment (which included his instructions) can be found in SRP, vol. 3, pp. 44–48—see G. Murray to Captain Stirling, 30 December 1828.
received his Commission in 1832, he was wielding ‘unauthorized Powers’ and, therefore, ‘illegally controlling the settlement’.93

It was not until 14 May 1829, after Stirling had departed England, that ‘some temporary Provision’ for governing WA—in the form of Imperial Act 10 Geo. IV, c. 22—received the Royal Assent, and almost eighteen months of this Act’s five-year lifespan expired before, on 1 November 1830, an Order-in-Council was issued authorising a Legislative Council to be established under its provisions.94 At this point the Colonial Office framed Stirling’s Commission and Royal Instructions. Stirling, however, did not take custody of the paperwork until January 1832, at which stage ‘the Ruler’—as he somewhat self-deprecatingly termed himself—set about instituting the less autocratic form of Government authorised by the various documents.95

Firstly, on 6 February 1832, the newly commissioned ‘Governor and Commander in Chief’ swore in the Commandant, Colonial Secretary, Surveyor General and Advocate General (later designated Attorney General) as the Executive Council to advise him in administering Government.96 Notwithstanding repeated injunctions in the Instructions that the Governor must work in ‘concurrence’ with the Executive Council, Stirling was not obliged to accept his Councillors’ advice.97 Indeed, regarding such proffered advice, a local newspaper later scoffed that given the Councillors were career officials, their advice ‘may well be supposed to, in most instances, consist in a devout attention … to the keeping of their situations—

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93 See James Stirling to Horace Twiss, 25 August 1829, SRP, vol. 3, p. 124; James Stirling to Horace Twiss, 26 January 1830, SRP, vol. 4, p. 78; James Stirling to Lord Viscount Goderich, 17 June 1831, SRP, vol. 7, pp. 65–66; James Stirling to Sir George Murray, 10 September 1829, SRP, vol. 4, pp. 4–5; and James Stirling to His Majesty’s Principal Secretary of State, 18 October 1830, SRP, vol. 5, p. 68. It was Hartwell who stated, ‘The delay of official appointment was a constant source of complaint by Stirling as he was illegally controlling the settlement from 1829 to 1832’, ‘The Pastoral Ascendancy’, p. 52. De Garis supports Hartwell’s appraisal: ‘Whether his [Stirling’s] administration prior to that time [the receipt of his Commission] had any legal foundation is extremely doubtful’, ‘Political Tutelage 1829–1870’, p. 300. One of the first historians to make this claim was Boyce in ‘The Role of the Governor’, p. 19. Enid Russell has also discussed Stirling’s unauthorised appointment of JPs and his unauthorised exercise of authority in civil matters—see A History of the Law in Western Australia and Its Development from 1829 to 1979, University of Western Australia Press, Nedlands, WA, 1980, pp. 12–14 and 20–21.

94 The full title of the Act is: ‘An Act to provide until the Thirty-first Day of December One thousand eight hundred and thirty-four, for the Government of His Majesty’s Settlements in Western Australia, on the Western Coast of New Holland’. During its progress through Westminster it was referred to as the ‘Swan River Settlement Bill’ and subsequently was referred to as the Western Australia Act or Swan River Act. Quotation is from the Act.

95 Quotation from Pamela Statham-Drew, James Stirling: Admiral and Founding Governor of Western Australia, University of Western Australia Press, Crawley, WA, 2003, p. 191. Apparently the Commission and Instructions arrived in Perth on 3 October 1831, and Stirling received them at King George’s Sound at the beginning of 1832—see Stirling’s despatch dated 7 January 1832 thanking the Secretary of State for his appointment—SRP, vol. 9, p. 1. Also see Statham-Drew, James Stirling, pp. 202–203.

96 Clause 1 of Stirling’s Instructions. A copy of Stirling’s Instructions can be found in SRP, vol. 11, pp. 32–50; a copy of his Commission can be found in the same volume at pp. 72–85.

97 Governors were required to advise the Colonial Office when and why they did not accept the advice of their Executive Councillors and as recently as 1828 Governor Darling in NSW had been ‘sharply rebuked’ by Secretary of State Sir George Murray for ignoring his Executive Councillors—Hartwell, ‘The Pastoral Ascendancy’, p. 65.
greatly dependent upon their not thwarting the ideas of their chief”. 98 De Garis, however, has quite sensibly suggested a contrary view:

the governor’s influence over these men through their dependence on his recommendation for promotion was ineffective since they saw their future not in terms of administration in bigger and better colonies elsewhere but as landed gentlemen in Western Australia. 99

Stirling next established the Legislative Council ‘authorized and empowered’ by the Order-in-Council so that, with his Legislative Councillors, he could pass laws and ‘constitute such Courts and Officers, as may be necessary for the Peace, Order, and good Government of His Majesty’s Subjects’. 100 Notwithstanding 1832 being the year the Great Reform Act was passed, WA’s Legislative Council would not comprise elected Members because the Colonial Office deemed that the settlement was not ‘yet ripe for Institutions of this nature’ and would have to suffice with ‘the Establishment of a Legislature, & Tribunals of a more simple, though less popular, character’. 101 The decision to grant the infant colony an unelected legislature was, however, standard procedure for the Colonial Office at the time, as the following excerpt from an official memorandum outlines: ‘It has been the practice in later times to adopt, as it were, intermediate systems in passing from the absolute to the representative form’. 102 And, as J.M. Ward has underlined, all stages of a colony’s progression on this continuum were granted by British governments ‘in accordance with their own notions of what just British polity permitted and required’. 103

WA’s Legislative Council comprised the Governor, and the same quartet who formed the Executive Council. The Governor was the only member authorised to initiate legislation and he was able to refuse or reserve assent to Bills passed by the Legislative Council. 104 In addition, the Legislative Council’s ‘power and authority’ was subject to conditions and restrictions—including that it ‘shall and do conform to all such Instructions as His Majesty shall from time to time be pleased to issue for that purpose’. 105 Finally, the Council’s laws and ordinances, once assented to by the Governor, had to be forwarded ‘with all convenient Expedition’ and laid before both Houses of the Imperial Parliament for ‘Approbation or

98 Perth Gazette, 6 January 1865.
100 First quotation from cl. 9 of Stirling’s Instructions, SRP, vol. 11, p. 37; second quotation from 10 Geo. IV, c. 22.
101 Goderich to Governor Stirling, 28 April 1831, SRP, vol. 11, pp. 57–58.
104 Order-in-Council, SRP, vol. 6, p. 92. Clauses 10 to 17 of Stirling’s accompanying Instructions listed a catalogue of restrictions to the Council’s legislative remit including outright bans on framing laws dealing with divorce, naturalisation and the granting of land to unnaturalised aliens.
Disallowance”—or what one nineteenth-century constitutional authority has termed the ‘second veto’.106

The Legislative Council first convened on 7 February 1832. It departed from Westminster practice by holding sessions in camera, but otherwise sought to ‘conform to the rules of the British Parliament in … [its] proceedings’ and adopted Standing Orders based on those of the House of Commons.107 De Garis has commented that WA’s ‘more-or-less dictatorial system of government’ which ‘revolved around the governor and his officials rather than around elections, parties or cabinets’ was ‘not inappropriate’ considering the colony’s lack of population and financial dependency.108 Indeed, Gerard Carney has noted that the Legislative Council’s establishment only three years after settlement was ‘remarkably early by comparison with the constitutional evolution of NSW and Tasmania’.109 The colonists, however, according to Enid Russell, were manifestly displeased with a set-up which was ‘neither representative of nor responsible to the public’.110 As Wakefield had observed, middle class emigrants expected ‘political rights comparable with those they had possessed in Britain’, and it was a ‘received maxim’ of the English Constitution, as Oldfield underlined, ‘that no person can be free without being concerned in making their own laws’.111 Even the Colonial Office uneasily acknowledged that a legislature without representation was one of ‘those invasions upon the first principles of English law’.112

Unsurprisingly, as Battye observed, discussion of constitutional questions occupied much of the colonists’ time during these early years.113

When the new legislature, at the Colonial Office’s direction, passed legislation in May to raise revenue through imposing duties on spirits, the settlers’ displeasure turned to outrage. The colony was drained of currency and on the brink of starvation and abandonment, and that until then ‘No tithes and no taxes we now have to pay’, as George Fletcher Moore had

106 For the first two quotations see the Order-in-Council, SRP, vol. 6, p. 92, and 10 Geo. IV, c. 22. The constitutional law authority is Alpheus Todd and he is cited in Russell, A History of the Law in Western Australia, p. 44. The double veto provision was viewed by the British Government as a ‘guard against the exercise of arbitrary authority’—see Horace Twiss in the House of Commons debate on the ‘Swan River Settlement Bill’, Hansard, new series, 6 April 1829, vol. XXI, col. 465. The comparable 1823 New South Wales Act, 4 Geo. IV, c. 96, contained an almost identical provision.

107 Quotation from George Fletcher Moore, who entered the Legislative Council in 1834 as Advocate General, from his Diary of Ten Years Eventful Life of an Early Settler in Western Australia and Also a Descriptive Vocabulary of the Language of the Aborigines, facsimile edn, University of Western Australia Press, Nedlands, WA, 1978 (1884), p. 251. Also see de Garis, ‘The First Legislative Council, 1832–1870’, pp. 24–25.


110 Enid Russell, A History of the Law in Western Australia, p. 36.


112 Colonial Office memorandum, quoted in Eddy, Britain and the Australian Colonies, p. 24.

113 Battye, Western Australia, p. 138.
exulted in his song ‘Western Australia For Me’, seemed meagre compensation. William Tanner, a prominent settler, wrote to his family in England that ‘Almost everybody here have become what I may term radicals — disliking the local government’, and within months a petition framed by the ‘Land Holders Merchants and other free Settlers’ was submitted to Stirling. The crux of the petition was the violation of the constitutional principle of no taxation without representation:

That in the parent Country and in every British Settlement, excepting this Colony, the people are represented by a House of Parliament, or Assembly, comprised partly of men unconnected with the Government: we therefore view with alarm the principle of taxation adopted in this Colony which imposed burthens on the People by summary Acts of council, without allowing them a proper representation in Your Excellency’s Legislative Council, consisting entirely of Government Officers.

A Memorial addressed to the Secretary of State was more specific regarding the right to the franchise:

your Memorialists consider it highly essential that both the Agricultural and Mercantile interest should be allowed to send their own representatives to sit in the Legislative Council and trust the Home Government will grant their prayer to that effect.

By this stage Stirling was preparing to return to England to solicit aid for WA. He assured the settlers he would lay their petitions before the British Government—and just prior to his departure received an even stronger worded ‘PROTEST’ reviling the duties and demanding the franchise:

First. BECAUSE it is an inherent principle of the British Constitution, that no Englishman should be taxed unless by his own consent.

Second. BECAUSE the Measure is only the commencement of a System of Taxation, imposed by Government Officers, and is FORCED into a Law, against the UNANIMOUS voice of the People.

Third. BECAUSE this Colony … has been chiefly indebted in its rise and progress, to the spirit and enterprise of free British Emigrants: and they … have an undoubted RIGHT to be represented in the Legislative Council …

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114 Moore, *Diary of Ten Years*, p. 65. WA’s terms of settlement had granted land in proportion to the agricultural articles and labour the settlers shipped in—accordingly, the settlers had invested almost all their money in agricultural articles and labour and the little money they had remaining was required to buy necessities at prohibitively marked-up prices.


116 Petition ‘To His Excellency the Governor of Western Australia & its dependencies’, 1832, SRP, vol. 10, pp. 13–14.

While Stirling would not revoke the spirit duties, his political sympathies were aligned with the settlers. Indeed, his liberal credentials were irreproachable—he came from a pro-Whig family, had attended a school renowned for Whig tendencies, and his father-in-law was a Whig MP who had supported the First Reform Act. The colony had witnessed early proof of his liberal proclivities when he instituted an eight-hour day and a generous scale of rations for indentured labourers in 1830 and, as the editor of one of the local papers affirmed, Stirling was ‘admitted to be liberal in opinion ... [and] that the Government and Governed, form but one party’.

Stirling kept his word in England, informing Robert Hay, Under-Secretary at the Colonial Office, that he endorsed the ‘extention of the Legislature so as to admit either by nomination or election a certain portion of the Settlers unconnected with the Government’. As Hay acceded to this proposal ‘provided it be by nomination, and that the numbers be kept within reasonable bounds’, it is unsurprising that Stirling resiled from elections in a despatch only six weeks later to Secretary of State Lord Goderich, compliantly recommending, ‘The Circumstances of the Settlement seem to limit arrangements on this point to the principle of nomination’. Goderich accepted Stirling’s recommendation:

I am … fully sensible of the advantages, which would be derived from the presence at the Council of a few of the most leading men engaged in Commercial & Agricultural pursuits ... you will, therefore, consider yourself authorized to nominate to that Body two Colonists upon whose experience & discretion you can the most rely, with the addition afterwards of two more Members, should you be of opinion that such an augmentation would be desirable ...

Goderich was soon replaced by E.G. Stanley, who also supported the colonists’ demands. He requested Stirling to furnish a list of ‘Persons whom you may consider, from their general character and estimation in the Colony, to be the fittest to become Members of that Body’. Stirling despatched a list of thirty-nine ‘Gentlemen … Resident Proprietors’, but within a week of receiving it, Stanley advised:

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118 Protest ‘To His Excellency the Governor of Western Australia’, 13 July 1832, SRP, vol. 14, pp. 88–89. The Protest was handed to Stirling ‘on the eve of his departure’ according to a letter from William Lewis et al to the Secretary of State, 26 July 1832, SRP, vol. 14, pp. 84–87.
119 See Statham-Drew, James Stirling, pp. 1–12.
120 Fremantle Observer, Perth Gazette, and Western Australian Journal, 25 April 1831, SRP, vol. 8, pp. 11–12. Also see the reference to the ‘liberal sentiments entertained by our present Governor’ in the Perth Gazette, 20 February 1836.
121 James Stirling to R.W. Hay, 22 December 1832, SRP, vol. 10, p. 35.
it has appeared to me expedient to defer the execution of this measure, until after the renewal of the Act of Parliament under which the colony is governed, which will take place in the course of next year. If the Colonists, however, should evince any feeling of dissatisfaction on this point, you are at liberty to communicate to them the intentions of the King to give a more popular character to the Legislative Council than it, at present, bears.125

That the settlers might evince feelings of dissatisfaction at this outcome was putting it mildly. However, it was not simply the delay that incensed them—they repudiated nomination, which was perceived as enlarging ‘the governor’s party in the council’126 How after the reforms of 1832, as a local newspaper posed it, could they settle for other than ‘the officers to be appointed by election, which is the grand principle of the government from top to bottom’?127

The colonists, however, won one liberal concession in 1834 when Stirling moved with reference to Legislative Council Standing Order 35, ‘Strangers’, that the public be admitted to observe proceedings.128 Considering a number of colonial legislatures, including those in NSW, Van Diemen’s Land and the Cape in South Africa, conducted proceedings in closed session, this commitment to openness was celebrated by the local press.129 The concession also illustrates that Western Australians from the earliest days were comfortable introducing liberal measures in advance of other jurisdictions when appropriate—indeed, that WA’s ‘tyro Legislative Council’ could be ‘to the very forefront of best practice throughout the British empire’, as Phillip Pendas and Black have expressed it.130

In 1835 the Western Australia Act was renewed—but without any change to nominations to the Legislative Council. Opposition to the unaugmented Council increased. As Stannage noted:

125 James Stirling to R.W. Hay, 26 September 1833, SRP, vol. 12, p. 98; E.G. Stanley to James Stirling, 3 October 1833, SRP, vol. 16, p. 76.
127 The Western Australian Colonial News, 14 July 1832, SRP, vol. 14, p. 11.
128 Minutes of the Proceedings of the Legislative Council, 25 August 1834. It should be noted that while de Garis commented on p. 305 of his ‘Political Tutelage 1829–1870’ (published 1981) that ‘Meetings were open to the public from 1834 onwards’, he revised this view a decade later, suggesting that the then Council’s Standing Order no. 35 ‘implies that visitors were allowed’ from the beginning, i.e. since 1832—see ‘The First Legislative Council, 1832–1870’, p. 25. George Fletcher Moore, however, wrote in December 1834 that, ‘Our Legislative Council is now open to the public …’ which implies that previously it was not, Diary of Ten Years, p. 251. Similarly the editor of the Perth Gazette wrote on 6 September 1834 of the first meeting of the Legislative Council since Stirling’s return from Britain that, ‘His Excellency proposed that Strangers should henceforth be admitted and be allowed to be present during the discussions of the Council. The proposal was readily and most cordially acquiesced in, and the doors were accordingly thrown open’.
129 See Phillip Penda and David Black, House to House: The Story of Western Australia’s Government and Parliament Houses Over 175 Years, Parliament of Western Australia, Perth, 2004, p. 12. Similarly, when Governor Sir George Gipps opened the NSW Legislative Council to the public in 1838, it ‘won him a reputation as a liberal ruler’ according to Knight in Illiberal Liberal, p. 46.
130 Pendal and Black, House to House, p. 12.
there was hostility towards the propertied officials from landowners like W. L. Brockman and William Tanner, who felt that the officials governed in their own interests and not in those of the colonists as a whole … [and who] … felt excluded from decision-making in Swan River …

On 16 February 1835, at a public meeting in Perth, the colonists canvassed a raft of grievances. But as Battye has observed:

The real source of the trouble was unquestionably the amendment in the constitution of the Legislative Council. The colonists expected that unofficial members, whom it was proposed to add, would be elected and not nominated.

At the meeting the settlers argued they must secure elected representatives to espouse their interests and keep the Government accountable. Motions to this effect were passed unanimously and later set out in a Memorial (signed by one-third of WA’s adult males) to the Secretary of State. The key resolution underlined:

That the proposed system of Government nominating certain Members to represent the interests of the Colony in the Legislative Council … is not in accordance with the spirit of the British Constitution, and not suited to the circumstances of a free and taxed population, and that the Colonists themselves, under proper qualifications, do exercise their constitutional right of returning their own Delegates; and further, that the Government be requested to suspend the Act empowering the Local Government to call Members from the Colonists to the Legislative Council, until the Government shall deem it fit to grant us our right of returning representatives by suffrage.

After the meeting, Stirling wrote to Hay that:

… I cannot help feeling alarmed at the Injury which may be done to the Settlement by the Self Conceit and Absurdity of a few Individuals … in my opinion the immediate destruction of the Colony would be the consequence of granting them the Objects of their desire Viz. … A Representative Assembly …

Stirling was more temperate in his despatch to the new Secretary of State, Thomas Spring Rice, but was still dismissive of the colonists’ ‘principal Ground’ of complaint that ‘in the absence of a Representative Assembly they had no control over the injudicious Expenditure of their means’. On the contrary, Stirling argued that ‘the Public exercise virtually a controlling Power’ over finances—which, considering his Legislative Councillors had

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132 Battye, *Western Australia*, p. 136. The grievances included mismanaged land allocation, unwelcome revisions to the land regulations, inappropriate allocation of public works, imposition of an expensive mounted police corps and the lack of a bank.
133 The full text of the memorial appears in the *Perth Gazette*, 5 April 1835.
134 James Stirling to Robert Hay, 10 March 1835, SROWA, 390/1166/02.
135 James Stirling to Spring Rice, No. 44, 4 May 1835, SROWA, 390/1166/02. Spring Rice was, in fact, no longer the Secretary of State, but it appears that Stirling was not aware of this. Stirling forwarded the memorial to Spring Rice’s replacement on 15 October 1835—see James Stirling to the Earl of Aberdeen, No. 79, 15 October 1835, SROWA, 390/1166/02—but however, Lord Aberdeen had himself by this time been replaced by Lord Glenelg.
recently amended the Estimates against his wishes, but in line with those of the settlers—may have seemed the case. Stirling concluded that:

the Difference appears to be of little moment between a Council of officers such as there is at present established here, and one composed of Persons selected from amongst Private Individuals by the Government or elected by their fellow Colonists.

In the following year, in a despatch to yet another new Secretary of State, Lord Glenelg, Stirling went further and unequivocally rejected the ‘prevailing notion’ that the settlers could be ‘entrusted with the Appointment of its own Government’. He did, however, concede there was ‘a general if not an unanimous Desire’ by the colonists ‘to elect and appoint the Members of the Local legislature, and even the Governor himself, and that their wishes will continually tend to this object’.

Stirling never provided an explanation for his now strident opposition to elected representatives in the Council in opposition to the liberal aspirations of the colonists. Undeniably, as he advised Glenelg, the colony’s non-Aboriginal population was minuscule—approximately 2,000 including the military garrison—but this was still enough, even by reformed English borough standards, to constitute a slew of constituencies.

Possibly Stirling shared K.H. Rogers’s summation that the colonists’ desire for ‘English representative institutions in a frontier environment’ was premature because there ‘was not sufficient diversity of social and economic conditions to allow the growth of political life’. Certainly, his observation to Glenelg that:

the simplest and safest Rule – as far as I can judge will be to apportion to the Inhabitants from time to time such an Influence in these Matters, as may accord exactly with the Share which they take in providing for their own Protection, and for the Public Expenditure …

suggests he had come around to the Colonial Office’s stated preference to proceed slowly and by nomination.

No unofficial Members, nominated or elected, were installed during Stirling’s tenure, although on 11 March 1836, according to Sweetman, Stirling expressed his regret to the Legislative Council for the appointments not being made, explaining that he had been

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136 With the exception of some conflict over the Estimates in the succeeding couple of years, such an ‘unauthorised usurpation of power’ by the officials was seldom repeated—quotation from Moore, *Diary of Ten Years*, p. 298.
137 James Stirling to Lord Glenelg, No. 143, 29 August 1836, SROWA, 390/1166/02.
140 James Stirling to Lord Glenelg, No. 143, 29 August 1836, SROWA, 390/1166/02.
‘instructed not to appoint the four unofficial members, pending further instructions’. Intriguingly, Stirling’s comments are not recorded in either Legislative Council or Executive Council Minutes (according to the Perth Gazette Stirling was away from Perth on 11 March visiting York), but the Swan River Guardian corroborates Sweetman’s claim by referring to Stirling having informed his ‘cabal’—one of the Guardian’s epithets for Stirling’s officials—that he had received ‘verbal notice to delay’ appointing unofficial members ‘till the act of Parliament for Swan River which expires in the present month of December was renewed’.

Stirling complied with his Instructions, but he nevertheless urged Glenelg in two despatches written in 1836 to honour the ‘promised’ offer of unofficial nominees—‘notwithstanding that the four additional Members to be appointed by the Crown would fail in satisfying the Public Desires’. The Swan River Guardian made the same point more trenchantly: insisting the nominations should be made, so that the ‘People’ would no longer be voiceless and thereby ‘defrauded of its just rights’, but also arguing that as ‘the Governor will take good care to select his own favorites, and thus make null what the British Government call a boon to the Colonists’, the representatives ‘ought’ to be elected by the settlers—the ‘only source of legitimate Power’.

The following year the Swan River Guardian again urged the colonists to petition the King to grant ‘Four additional Members elected to the Council by the voice of the People, in order to act as a check on our present “Honorable”’. This did not occur, possibly because a belated reply to the settlers’ 1835 Memorial from Glenelg reaffirmed the British Government’s support for unofficial Members to be admitted to the Legislative Council, and directed Stirling to resubmit a list of nominees. Election of these Members, however, was emphatically ruled out by Glenelg, principally because under the Act providing for WA’s governance, ‘His Majesty is not empowered to delegate to the Local Government of Western Australia, the selection of persons to fill the office of Members of Council’, and also because:

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142 Perth Gazette, 12 March 1836; Swan River Guardian, 29 December 1836. In addition, it is almost certain that by March 1836 Stirling would have received a despatch from Glenelg, dated 24 August 1835, which confirmed in writing that the British Government was holding back on making the unofficial appointments in the short term—see Lord Glenelg to James Stirling, No. 32, 24 August 1835, SROWA, 41/1178/01.
143 James Stirling to Lord Glenelg, No. 127, 12 July 1836, and James Stirling to Lord Glenelg, No. 143, 29 August 1836, SROWA, 390/1166/02—the quotations come from the latter.
144 Swan River Guardian, 29 December 1836.
145 Swan River Guardian, 12 January 1837.
I cannot, however, conceive, that in its present state, the Colony is fitted to receive with advantage, a more popular form of Government: much less, that the Colonists can, with any degree of reason advance a claim to an Elective Legislature.  

Stirling resubmitted a list at the end of 1837, but his original list of thirty-nine nominees had shrunk to a perfunctory six. By this stage Stirling was contemplating retirement—it appeared his successor would resolve the matter. Notwithstanding the non-appointment of settler representatives during his tenure, Stirling had steadfastly pressed for them and was described as ‘an entire and liberal promoter of every good and liberal institution’ in the Address presented to him upon his departure in 1839.  

**Press, Petitions and Protestations**

If electing parliamentary representatives is a conduit through which citizens have their say, it should be noted that WA’s colonists still had other means of conveying their views. In fact, Stirling and the Colonial Office were bombarded with the colonists’ opinions and possibly considered the unrepresented settlers were not materially disadvantaged—especially considering most Britons were unenfranchised and compelled to express themselves through extra-parliamentary means. Indeed, in 1872, the French historian Hippolyte Taine celebrated the traditional recourse by Englishmen to ‘plain speaking and perpetual public meetings’:

> the newspapers, and public meetings comprise one great universal parliament and a great many small ones dotted about all over the country, which prepare the ground for, supervise, and complete the work of the two Houses.

The Swan River colony was well served by local newspapers. During the settlement’s first seven years eight newspapers were published and for most of the colony’s existence there were at least two weekly newspapers. These newspapers kept the public informed of political events around the world—the First Reform Act was the lead topic in the inaugural issue of the *Perth Gazette* on 5 January 1833—and Stirling discovered, as did Governor

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148 For the nominees, see the Schedule to Stirling’s despatch to the Secretary of State, No. 231, 1 December 1837, CO 18/18, Reel 303, p. 537.  
149 Quotation from Battye, *The Cyclopedia of Western Australia*, vol. 1, p. 288.  
150 See de Garis for an excellent summary of how, ‘In the absence of elections and elective institutions, local and central, other outlets for the venting of personal grievance, other channels for the expression of opinion, and other methods of formulating consensus took on added importance’, ‘Political Tutelage 1829–1870’, p. 309.  
151 Hippolyte Taine, *Notes on England*, trans. Edward Hyams, Thames and Hudson, London, 1957 (1872), p. 180. Woodward has pointed out that ‘In 1815 there were 252 newspapers circulating in the United Kingdom’—a figure which did not include the ‘mass of periodical and pamphlet literature’—*The Age of Reform*, pp. 28 and 29.  
Darling earlier in NSW, that ‘The People are taught by the Papers to talk about the rights of Englishmen and the free Institutions of the Mother Country’.  

Stirling, undoubtedly, was particularly incensed by the *Swan River Guardian* which was vitriolically critical of him, the unelected officials who comprised the Legislative Council, and the Council’s lack of settler representation. The *Swan River Guardian* folded in 1838, but was succeeded two years later by the almost equally critical *Inquirer*, which for decades would voice the settlers’ interests and maintain pressure for improved settler representation in the Council. It is also interesting to note that the Swan River press, while crusading for elected representatives, frequently portrayed itself as a forum for public opinion somewhat akin to a Parliament—or, as the *Swan River Guardian* put it: ‘a FREE PRESS’ was the settlers’ ‘only Representative’. Somewhat ironically, this view of the watchdog and advocacy roles undertaken by the press was endorsed by the Colonial Office—and then cited as a justification for not granting elected legislatures to colonies.  

In addition to the press, the Swan River colonists frequently held meetings—some taking place in semi-official forums such as the Western Australian Agricultural Society and the York Society—forums which Kimberly and de Garis have referred to as quasi-parliaments—and many concluded with a petition or protest for transmission to Downing Street.  

In one of his first despatches to the Colonial Office, Stirling reported a ‘natural tendency to complain’ on the part of many colonists. Battye and Kimberly repeatedly refer to this ‘spirit of agitation and complaint’, with Battye concluding that if the settlers had channelled their energy into resolving their grievances themselves, there would have been less to complain about. With regards to the constitution of the Legislative Council and lack of elected representation, however, the colonists could not effect the change. But, as the

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153 Governor Darling quoted by Hartwell, ‘The Pastoral Ascendancy’, p. 54.  
154 The *Swan River Guardian* folded largely due to the enactment of legislation requiring newspaper proprietors to provide prohibitively expensive sureties against potential libel suits—see Margaret Anderson and Andrew Gill, ‘The History of the Swan River Guardian, or, the Death of the Free Press in Western Australia in 1838’, *The Push from the Bush: A Bulletin of Social History*, no. 10, 1981, pp. 4–30.  
155 *Swan River Guardian*, 8 June 1837.  
156 Secretary of State Huskisson acknowledged in 1828, for example, in respect to NSW, that ‘The existing government was neither arbitrary nor despotic, for there was a free press, which had a due influence and control over public affairs’—see F.G. Clarke, *The Land of Contrarieties: British Attitudes to the Australian Colonies 1828–1855*, Melbourne University Press, Carlton, Vic., 1977, p. 42. Clarke at the same reference comments that ‘Confidence in the value of the local press made imperial officials disinclined at that time to graft elective principles on to the constitution of New South Wales’.  
158 James Stirling to Horace Twiss, 26 January 1830, SRP, vol. 4, p. 77.  
159 Quotation from Kimberly, *History of West Australia*, p. 157. See Battye, *Western Australia*, pp. 150 and 211. Rogers also discussed the tendency of the colonists to complain, particularly without putting forward ‘definite proposals’ to ameliorate the situation—see ‘An Inquiry into the Withholding of Self-Government’, p. 87.
Inquirer urged, when confronted with ‘a cause of evil, when it is beyond the power of our legislature to interfere with it’, ‘it is nevertheless a duty we owe ourselves to record our sentiments on this most important point on every occasion’.\textsuperscript{160} This was sage counsel considering that the sister colonies only secured elected representation following ‘vigorous’ and ‘continuous’ agitation, as Hartwell has described it.\textsuperscript{161} In other words, the settlers’ only course was to harass the British government until representative institutions were granted. This was the course WA’s colonists would take.

\textsuperscript{160} Inquirer, 30 April 1845.

\textsuperscript{161} Hartwell, ‘The Pastoral Ascendancy’, pp. 61 and 66.
Discontent

1839–1867

Stirling’s successor, Governor John Hutt, was authorised to swear-in four non-official Members of the Legislative Council, and did so on 4 January 1839. The nominees included the wealthy landowner William Tanner, one of the official Members’ sturdiest critics (he co-founded the Inquirer newspaper the following year to bolster his attacks on the Government) and prominent settlers William Locke Brockman, George Leake and Thomas Peel. Notwithstanding settler demands that the non-official Councillors be elected, the Colonial Office stipulated that their tenure would be for the duration of their residence in the colony—which could result in appointment for life, as a later Secretary of State conceded. At the inaugural session of the newly constituted legislature, Hutt—a Whig described by Battye as possessing the ‘truest spirit of liberality and tolerance’—expressed his pleasure that, ‘The Government of Western Australia has by this measure made a most important step in advance in-as-much as it is assimilated more nearly to the constitution of our own Country’. Moreover, he continued, it was a source of congratulation that the official Members would no longer have to endure the odium of being simultaneously the framers and executors of the law. The colonists, however, continued to view the official Members (interchangeably referred to as Executive or salaried Members) as ‘gentlemen who voted against their own consciences’ because they were obliged to vote as instructed by the Governor. Further, as the Governor held a deliberative and casting (or double) vote, the Executive contingent could always carry a decision. The admission of non-officials to

1 The Order-in-Council authorising the appointments was dated 1 August 1838. Hutt issued a Proclamation on 3 January 1839—two days after arriving in WA—notifying the colonists of the appointments (published in the Perth Gazette on 5 January 1839), and the 1839 Blue Book records the date of appointment as 3 January. The swearing-in of the unofficial Members is recorded in Legislative Council Minutes, 4 March 1839, SROWA, 311/1250/1.
2 Thomas Peel was a cousin of Sir Robert Peel, who became Prime Minister of England in 1834.
3 Lord Buckingham to Governor Hampton, No. 45, 9 July 1867, SROWA, 4753/1182/02.
4 Battye, The Cyclopedia of Western Australia, vol. 1, p. 289. Hutt’s comments are from Legislative Council Minutes, 4 March 1839, SROWA, 311/1250/1.
5 Inquirer, 23 October 1867. Also see E.W. Landor’s comments: ‘In the Legislative … [Council] there are the Government party, consisting of the Colonial Secretary and the Attorney General, who prove their loyalty and devotion by adhering to His Excellency the Governor on every division, and (according to general belief) would rather vote against their own measures than against the representative of their Queen’, The Bushman; Or, Life in a New Country, Richard Bentley, London, 1847, pp. 217–218. Also see Heseltine, ‘The Movements for Self-Government in Western Australia’, p. 12, for a discussion of the requirement that the official Members had to vote as instructed by the Governor.
6 A casting vote was not mentioned in the Western Australian Governor’s Royal Instructions, and was first used—and then queried and overturned—in 1841. In 1847 Acting Governor Irwin used it again and requested the Secretary of State’s ‘decision’ as to whether he had acted correctly—see Irwin to Earl Grey, No. 54, 13 September 1847, SROWA, 390/1166/05. The Colonial Office confirmed the Governor should hold a double vote—see Russell, A History of the Law in Western Australia, p. 40.
the legislature, while regarded by the Colonial Office as a ‘cautious prelude to a later grant of representative institutions’, and one that would give colonists political experience, hardly constituted a semblance of the British Parliament.\(^7\) When a similar model had been introduced in NSW in 1823, William Wentworth had denounced it as a ‘strange, unconstitutional monster’ and a ‘wretched mongrel substitute for a colonial assembly’.\(^8\)

Western Australians were similarly displeased with their new unelected set-up. According to Kimberly:

> dissatisfaction was bound to arise with a government in which ... [the settlers] had no direct representation. One strong tenet in the political religion of the Englishman is that he is quite competent to govern himself. He objects to be governed by a body in which he has no practical vote ... Anything approaching autocratic government or an oligarchy is as wormwood to him. He agitates, and complains, and dogmatises.\(^9\)

Kimberly is correct. Until Western Australians secured the right to elect representatives, they protested, remonstrated and petitioned unceasingly—their sense of grievance heightened after 1843 when the first parliamentary elections took place in Australia to provide a two-thirds elected Legislative Council—‘a British Parliament in miniature’, as the *Inquirer* phrased it—for NSW.\(^10\)

Contrary to Michael Roe’s observation that ‘During the 1840s Western Australia’s scantly population wrestled not with constitutional debate, but with basic issues of land and labour’, one of the first major challenges to WA’s unelected legislature occurred in 1845 when the colony was experiencing an economic downturn—a seeming textbook example of ‘hunger politics’.\(^11\) In a Memorial addressed to the Governor and the Legislative Council, the


\(^8\) Wentworth quoted in Cochrane, *Colonial Ambition*, p. 17.


\(^10\) *Inquirer*, 29 November 1843. The NSW elections also replicated British electoral practice with the wearing of candidates’ colours, rioting, and a death toll of two. An account of election day in Sydney, 15 June 1843, is given by M.M.H. Thompson in *The Seeds of Democracy: Early Elections in Colonial New South Wales*, Federation Press, Sydney, 2006, pp. 114–116. The death toll was reported by Governor Sir George Gipps to Lord Stanley in a despatch dated 18 July 1843, reprinted in F.K. Crowley, *A Documentary History of Australia*, 5 vols, Nelson, West Melbourne, 1973–1980, vol. 2, pp. 48–50. Six of the 24 elective seats in the NSW Legislative Assembly were allocated to the Port Phillip area. John Hirst describes the Melbourne poll thus: ‘These first elections in Melbourne were conducted in public and ended in the good old English way with a riot. The mounted police and then the army were called out to control it. Houses were damaged; shots were fired; several men were injured’, *Making Voting Secret: Victoria’s Introduction of a New Method of Voting That Has Spread Around the World*, Victorian Electoral Commission, [Melbourne, 2006], p. 9.

\(^11\) Michael Roe, ‘1830–50’, in Crowley, *A New History of Australia*, p. 97. With respect to the politics of hunger, the radical William Cobbett, for example, used to claim: ‘I defy you to agitate a fellow with a full stomach’, while fellow radical Richard Cobden wrote in 1857: ‘The country is prosperous & therefore in a state of political apathy’—Cobbett quoted in Asa Briggs, ‘Reform and the Social Structure of Three English Cities’, in Cahill, *The Great Reform Bill of 1832*, p. 47, and Cobden quoted in Kinzer, *The Ballot Question*, p. 68. However, George Rudé has argued the contrary. He highlights that ‘famine’ rarely stimulated collective social protest and he quotes in corroboration Dr Woodham-Smith’s observations of the great Irish Famine: ‘the mass of the Irish people lay helpless and inert; indeed as blow after blow fell, they appeared too weakened to protest’, *Protest and Punishment: The Story...
petitioners questioned mock ingenuously why, ‘surrounded by the elements of wealth, abundance of rich land, an industrious and intelligent population, a genial climate, and a geographical position possessing extraordinary commercial advantages’, they could be in this ‘most critical position’:

The circulation has been drained; immigration has ceased; emigration has commenced; the revenue is falling; property has been rendered almost valueless; trade has been nearly annihilated; our energies have been prostrated; and public confidence is at an end … 12

The inescapable conclusion was that this situation ‘could not coexist under a sound system of legislation’. Or, as the Inquirer bluntly expressed it: ‘we owe the destruction of our naturally fair prospects to some of the measures of the government, either home or local, or both’.13 In particular, the Inquirer implied there was no-one in the local legislature voicing the settlers’ interests to the Home Government.

The petitioners’ objective was that the Legislative Council would conduct a ‘searching investigation’ into the Memorial’s claims and ‘devise such remedies as may remove the evils complained of’.14 When the Memorial, at Leake’s instigation, was considered, however, the Councillors decided it was unnecessary to call witnesses, and their official response concluded that:

… most of the allegations therein contained are either incorrect or greatly exaggerated, and in either case are unreasonable and of a mischievous tendency … this Council … is of opinion that the best remedy for the temporary embarrassments under which individuals may be suffering from too sudden a transition from a state of fictitious abundance to one of more wholesome and substantial reality, is to be found in a steady perseverance in those habits of self denial, industry, and patriotic exertion … 15

This cavalier dismissal of the colonists’ grievances by the officials-dominated Council forcibly underlined to Leake the need to bolster settler representation within it. A month later he reminded the Councillors that an unfilled vacancy in one of the non-official positions meant an ‘undue preponderance was thus given to the votes of the Official Members’.16 (Leake diplomatically overlooked that another non-official position had, since 1842, been filled by a salaried officer of the Crown, the Colonial Judge, William Mackie—a situation which Hutt had conceded to the Secretary of State, when recommending Mackie,

\[\text{of the Social and Political Protesters Transported to Australia 1788–1868, Oxford University Press, Melbourne, 1978, p. 39.}\]

12 Quotations taken from the copy of the Memorial printed in the Inquirer, 30 April 1845.
13 Inquirer, 30 April 1845.
14 Quotations from the Memorial.
15 Legislative Council Minutes, 19 and 26 June 1845, SROWA, 311/1250/2.
16 Legislative Council Minutes, 16 July 1845, SROWA, 311/1250/2.
could be seen to ‘strengthen the hands of Government’. Leake subsequently moved that the British Government appoint another two Members who did not hold paid office under the Government so as to maintain an equilibrium in the votes. This, however, was rather too much equilibrium for the official Members who defeated the motion.

Two years later the *Inquirer* launched an assault on the Legislative Council (again with an unofficial position vacant and salaried Mackie holding another) claiming it:

> is now an unreal mockery—a farce—nothing more than a delusion on the settlers; giving them the shadow deprived of substance—a sop to quiet their grumbling, by allowing them to indulge the pleasing fancy that they have representatives.

A few months later the paper resumed the attack, outlining that vacancies in the Legislative Council had recently been spurned by leading colonists:

> that so important an office as that of Legislative Councillor has literally gone begging, is one that must show the Government how much their arbitrary proceedings in carrying measure after measure by the mere force of official votes, have been disliked and repudiated by the respectable portion of our community … the Council, as it is at present constituted, sanctions acts … which would be entirely rejected, had the colonists a proper and adequate representation. An entire change of our Colonial Legislature is much needed, as the people have virtually no voice in matters brought before it, as was intended by the Home Government.

In 1848 dissatisfaction with the unelected Legislative Council again came to a head, with the *Inquirer* claiming that even the Executive Councillor bloc within it acknowledged that:

> the Legislative Council, as it is now constituted, does not adequately represent the opinions of the community, or, rather, that their power of so doing is completely nullified by the great preponderance of Government officials possessing seats in the two Councils … the necessity of a change is now for the first time unanimously admitted.

This *volte-face* came in the wake of a report into the constitution of the Council initiated by a recently appointed non-official Member, Robert Nash. The report outlined that with the Governor’s double vote; Mackie’s occupying of a non-official place; and the addition in 1847 of another official, the Collector of Revenue, the Council stood at seven Government

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18 Legislative Council Minutes, 24 July 1845, SROWA, 311/1250/2.
19 The vote took place on 31 July 1845.
20 *Inquirer*, 12 May 1847.
21 *Inquirer*, 13 October 1847.
22 *Inquirer*, 9 August 1848.
23 Nash gave notice on 13 July 1848 that he would move ‘at the next meeting’ of the Legislative Council that a committee be appointed to report into the Council’s constitution, and the Council discussed his motion and appointed the committee on 20 July 1848—see *Perth Gazette*, 15 and 22 July 1848. Prior to his appointment in March 1848, Nash had spent fifteen months in the Council as Acting Advocate General.
Members versus three genuinely non-official, rendering the non-official Members’ ‘position and influence in the Council merely nominal, having no power to prevent, modify, or even delay, any law, import, or vote, however injurious it may appear to themselves and the entire public’. 24

Because the Executive’s ‘absolute power … has always been much disliked by the public’, the report recommended reducing the official membership, enlarging the unsalaried membership, or doing both, and that a unanimous negative of the unofficial Members should have the same effect as the Governor’s veto. While the Perth Gazette claimed the official Members were not prepared ‘to go so far’ as to surrender the Governor’s casting vote, Acting Governor Irwin, as his despatches to the Secretary of State disclose, was willing to surrender his double vote and forgo voting privileges altogether except in the case of an equally divided Council. 25 Furthermore, Irwin supported the non-official Members wielding a veto. 26 As these changes had the support of the unsalaried Members as well as Mackie and the Advocate General, there were sufficient numbers in the Council to adopt the report and its recommendations. 27

Richard Madden, the recently arrived Colonial Secretary, realised this and was dismayed at the prospect of these ‘very extensive alterations in the Constitution of the Legislative Council’ being passed—believing ‘the Government would be rendered utterly ungovernable’ for the new Governor, Captain Charles Fitzgerald, who was due in WA within weeks. 28 Madden ‘took the liberty of whispering [his] fears’ to Irwin, who brushed them aside, and in desperation Madden proposed an amendment that would ‘disconcert the plans … of premeditated hostility to the just influence of the home Government’. 29 Madden’s amendment was tactically deft. It recommended adding three or four non-official Members to even up numbers in the Council, which seemed a significant improvement. 30 However, even four additional non-official Members would still leave the now augmented official bloc, with Mackie’s vote and the retention of the double vote, in command of the Council. 31 Possibly having second thoughts, Irwin and Moore, in Madden’s words, ‘deemed

24 A copy of the report appears in the Inquirer, 2 August 1848, and in the Perth Gazette, 29 July 1848. Quotations are from the Inquirer report.
25 Perth Gazette, 29 July 1848. See Irwin’s despatch to Earl Grey, No. 53, 3 August 1848, SROWA, 390/1166/05.
26 See Irwin’s comments in the Inquirer’s report. Also see Richard Madden to Governor Fitzgerald, 18 August 1848, SROWA, 390/1166/05 where it is reported that Irwin supported the unsalaried Members having a veto ‘with respect to all money bills etc’.
27 For the Attorney General’s support see Richard Madden to Governor Fitzgerald, 18 August 1848, SROWA, 390/1166/05.
28 See Richard Madden to Governor Fitzgerald, 18 August 1848, SROWA, 390/1166/05.
29 Richard Madden to Governor Fitzgerald, 18 August 1848, SROWA, 390/1166/05.
30 The amendment appears in both newspaper versions of the report.
31 Additionally, as Madden subsequently confided to Fitzgerald, it was ‘hardly to be expected’ that four would be ‘given’—Richard Madden to Governor Fitzgerald, 18 August 1848, SROWA, 390/1166/05.
it expedient’ to support the amendment rather than the report’s original propositions and, with the votes of the other officials, it was carried. Irwin forwarded the amended report with a covering despatch warmly endorsing the equalisation of the Council to the current Secretary of State, (the third) Earl Grey.

The proposed enlargement of settler representation was welcomed by the *Inquirer* which observed that it:

> will be a great step gained. The first of a series of those progressive improvements in our Legislature we hope soon to see effected, until the number of the population and state of the colony entitles us to a free representation.

Within days, however, Fitzgerald landed and wrote to Grey, vehemently deprecating the ‘remodelling’ of the Council.

Notwithstanding Fitzgerald having ‘a fair share of the autocrat in his composition’, according to colonist J.T. Reilly, even he recognised the current imbalance was an affront to the colonists (who had forcibly expressed their discontent with the ‘mere non-entity’ Council in a Memorial which had greeted his arrival), and he concluded his letter by requesting appointment of two more non-official Members. In a despatch which crossed with this one, however, Grey advised Fitzgerald of impending legislation at Westminster which would introduce ‘the principle of popular representation into the Governments of Van Diemen’s Land & of South Australia by the addition of Elective Members to their Legislative Councils’—i.e. granting them the two-thirds elected blended legislature which NSW had received under the 1842 Australian Constitutions Act, and that:

> by the same measure, the Legislative Council of Western Australia shall be empowered to pass an Ordinance adding Elective Members in the same proportion to its own members; whenever the inhabitants shall, by Petition, have declared themselves generally favorable to such a change, and prepared for the sake of obtaining it to take upon themselves that part of the charge for the Civil Government of the Colony, which is now met by the annual Grant of Parliament.

Fitzgerald replied that, although WA was not *financially* able to advance to a representative Council, the colonists ‘are not without hope that Your Lordship will give them the nearest approach thereto namely an equal (or more nearly so) number of unsalaried Members in

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32 Richard Madden to Governor Fitzgerald, 18 August 1848, SROWA, 390/1166/05.
33 Acting Governor Irwin to Earl Grey, No. 53, 3 August 1848, SROWA, 390/1166/05.
34 *Inquirer*, 9 August 1848.
35 Charles Fitzgerald to Earl Grey, 21 August 1848, SROWA, 390/1166/05.
36 J.T. Reilly, *Reminiscences of Fifty Years’ Residence in Western Australia*, Sands & McDougall, Perth, 1903, p. 73; second quotation from the Memorial—reprinted in the *Inquirer*, 2 February 1848.
37 Earl Grey to Charles Fitzgerald, No. 26, 3 August 1848, SROWA, 391/1182/38–39. The NSW Act is 5 & 6 Vict., c. 76.
proportion to the salaried ones’. 38 At the least, Fitzgerald requested one additional non-official Member. Indeed, Fitzgerald admitted experiencing ‘more than common anxiety on this subject’ because all the Council’s unsalaried non-official Members had had the poor form to leave WA or die since his first despatch on the subject, and the ‘objectionable disproportion’ in the Chamber left him in a ‘position of some embarrassment’ considering it was a ‘subject upon which much discontent has and does prevail’. 39

The Colonial Office approved replacements for the existing non-official vacancies, but advised Fitzgerald that no change to the numbers or composition of the Council would be sanctioned until impecunious WA could relieve the British Treasury of the charges currently defrayed by parliamentary grants. 40 The Colonial Office did make a major concession, however, in endorsing the nomination of Lionel Samson, a Jewish merchant, to the Legislative Council. Until 1858 Jews were disqualified from sitting in the House of Commons and, as de Garis has noted, the Colonial Office could not confirm a precedent for the appointment of a Jew to any legislature in the British Empire. 41 Samson’s appointment (he was first proposed in 1844) is, thus, a significant illustration of WA progressing beyond illiberal practice and conventions in Britain and Greater Britain. Indeed, at approximately the time Samson was sworn in (20 December 1849), the British Parliament was embroiled in the controversy of the Jewish banker Lionel Rothschild having been elected MP for the City of London for the second time (1847 and 1849), but being barred from taking his seat. 42

There was one more major call for elected representation before the advent of convict transportation to the colony in 1850. Westminster had requested the Legislative Council to frame depasturing regulations, and the Council committee appointed to draft them, composed of major landowners, produced spectacularly self-interested recommendations. 43 This outraged the colonists who, as Battye has commented, had long viewed the Councillors as a ‘favoured few’ who governed ‘almost entirely in the interests of themselves and their friends’. 44 At a public meeting in Perth, the ‘odious, intricate, inconsistent, narrow-minded, and injurious regulations’ were unanimously denounced, and

38 Charles Fitzgerald to Earl Grey, No. 61, 4 July 1849, SROWA, 390/1166/05.
39 Charles Fitzgerald to Earl Grey, No. 61, 4 July 1849, SROWA, 390/1166/05.
41 Hutt’s recommendation of Samson in his despatch to Lord Stanley (No. 19, 10 April 1844, SROWA, 390/1166/04) sparked off a detailed discussion in the Colonial Office regarding the status of Jews in colonial legislatures—see CO 18/37, Reel 435, pp. 224–233. I am indebted to de Garis for this interesting piece of detective work in the Colonial Office files: see his ‘The First Legislative Council, 1832–1870’, p. 30, and fn. 50 on p. 38.
42 The Perth Gazette reported Baron Rothschild finally taking a seat in the House of Commons on 22 October 1858.
43 The committee members possessed almost half the alienated land in WA according to Battye, Western Australia, p. 194.
44 Battye, Western Australia, p. 226.
a prominent colonist, John Wall Hardey, proposed ‘amid many noisy manifestations of approbation’ that:

as the settlers have no confidence in certain Members of the Executive Council, that a Memorial to the Home Government be drawn up embodying substantial reasons for the same, and praying their removal …

and that the settlers be allowed to select—i.e. elect—their Legislative Councillors from the list of eligible candidates periodically approved by Her Majesty. Hardey’s resolutions passed unanimously, but were not pursued because Fitzgerald defused the situation by amending the most contentious of the pasturing regulations.

In 1850, as foreshadowed by Grey, Westminster passed the Australian Colonies Government Act which provided for part-elected representative government—in Pike’s summation, ‘a hybrid constitution, halfway between autocracy and representation’—for those Australian colonies able to afford it, i.e. all except WA. Ironically, in the same year, impoverished and under-populated WA accepted its first boatload of convicts, and, as Hartwell has commented, with penal status added to its empty coffers, the colony now ‘violated two canons of self-government’.

It is not surprising, however, that WA accepted convicts a decade after transportation had ceased in NSW. WA’s non-Aboriginal population totalled a meagre 4,622 according to the 1848 census (NSW, by contrast, had a population nearing 189,000) of whom, the Western Australian Almanack observed, an ‘undue proportion’ had ‘habits and education [which] are supposed to render them averse to manual labour’. More critically, WA’s economy suffered a disabling shortage of funds—compounded by the British Government repeatedly refusing the colony loans or authority to raise them. By 1849, when one dispirited settler wrote that ‘money is not to be had in the Colony, all is barter’, WA was regarded, according to a leading British administrator, as ‘one of the most striking failures as a colonial

46 The amendments were notified in the Government Gazette, 9 October 1849.
settlement of any that belonged to the British Empire’. Indeed, in the following year Fitzgerald advised the Secretary of State that, ‘So great was the prevailing despondency and depression … all classes of colonists are leaving as opportunities occur’.

In response to this financial crisis a number of settlers—particularly the influential Avon Valley pastoralists and metropolitan merchants—lobbied for the introduction of convicts, confident that with convicts would come forced labour and a massive injection of Imperial funds to maintain the convict establishment. Their predictions were correct: with the introduction of transportation in 1850, money flowed into WA through the provision of infrastructure and supplies for the convict establishment, and through employment opportunities with the autonomous and better-funded convict civil service. Distasteful as chain gangs and curfews were to the settlers, convict funds and labour successfully stimulated WA’s economy.

It is interesting to note that although it was widely held that the Colonial Office would discontinue any sort of elected government while WA was a penal settlement—as had been the case in the eastern colonies—Western Australians for the duration of the convict period (1850–1868) condemned the constitution of the Legislative Council and, on occasion, its lack of elected representatives. Indeed, only one year after the introduction of transportation, the local press denounced the colony’s ‘despotic Government’ as being ‘utterly unfitted … for the position they occupy as legislators’, while Battye has commented of the early 1850s:

> almost every act of the Council had met with disapproval, and changes in the membership were continually advocated; but when those changes were made they do not appear to have brought about any modification of the public attitude. It is quite evident that the object aimed at in this dissatisfaction was a representative Council ...


52 Fitzgerald quoted in Reilly, *Reminiscences of Fifty Years’ Residence*, p. 72.


54 The convict civil service was a sub-branch of the Imperial civil service which answered to the Home Office.

55 See F.K. Crowley and B.K. de Garis, *A Short History of Western Australia*, 2nd edn, Macmillan, Melbourne, 1969, p. 24. Certainly, the Secretary of State, Lord Stanley, had made it quite explicit to the Governor of Van Diemen’s Land in 1842 that: ‘The sole reason for which Her Majesty’s Government have not felt justified in proposing to Parliament the extension to Van Diemen’s Land of a similar form of Legislature … [i.e. two-thirds elected] as in New South Wales is the incompatibility which they consider to exist between the grant of such a form of constitution and the continuance of transportation to the Colony’. Similar objections to Van Diemen’s Land receiving the benefits of the 1850 Australian Colonies Government Act were only removed when ‘dispatches from Pakington and Newcastle [successive Secretaries of State for the Colonies] had announced the cessation of transportation to the island, thereby clearing away the barrier of convictism which Stanley had earlier described as an insuperable obstacle to constitutional advance’. Last two quotations from Clarke, *Land of Contrarieties*, pp. 48 and 71.

56 *Perth Gazette* quotation from Kimberly, *History of West Australia*, p. 166; Battye, *Western Australia*, p. 217. Battye also commented of press criticism at this time: ‘The newspaper files of the period repeatedly voiced
WA overcame one impediment to an elected legislature in the mid-1850s when it dispensed with the annual parliamentary grant-in-aid from Britain (relying instead on the ‘lavish expenditure’ underpinning the convict system). In anticipation of this, Marshall Waller Clifton, a non-official Member described as ‘the spokesman for liberalism’ and representing ‘popular opinion in the Council’, moved in 1853 that the time had arrived that WA should take upon itself:

[the] whole charge of the establishment and expenses heretofore voted in aid of its Revenue by the Imperial Parliament … whereby the Colonists will be placed in a position to demand when they see fit to do so an Elective Legislative Council …

Which, as the Minutes record, was not seconded.

Clifton was more successful the following year when he again raised the matter in the Council. This time he acknowledged that ‘the Colony is not in a position to demand the right to an Elective Council’—an assessment confirmed by Fitzgerald: ‘The Home Government would never allow us a Representative Assembly while we were a penal settlement, nor were we yet in a position to carry one out’. Nonetheless, Clifton insisted that ‘there was an universal wish among the people for a greater voice in the government of the country’, and he proposed an increase of three non-official Members. After considerable discussion, Clifton acceded to Fitzgerald’s request that the motion be amended to recommend ‘two’ and, thus amended, the motion passed. Notwithstanding Clifton’s concession, the resolution was subsequently repudiated by Fitzgerald who advised the new Secretary of State, the Duke of Newcastle, that the Council already possessed a ‘sufficient amount of collective and deliberative opinion for the wants of the Colony’ given its scanty population.

**Another Governor Joins the Fray**

In 1855 Arthur Kennedy assumed the governorship. Almost immediately he was instructed by the latest Secretary of State, Lord Russell, to provide his opinion regarding the disapproval of the actions of the Council as a whole as of members individually’; *Western Australia*, fn. 1, p. 217.

57 Reilly, *Reminiscences of Fifty Years’ Residence*, p. 80. The sums were indeed lavish with Kimberly reporting that the Imperial Government ploughed an average of £90,597 per annum into WA in the first ten years after the introduction of convictism, *History of West Australia*, p. 178.

58 First quotation, de Garis, ‘The First Legislative Council’, p. 32; second quotation from Arthur Kennedy to Henry Labouchere, No. 4, 4 January 1856, SROWA, 390/1166/08; Clifton’s quotation from Legislative Council Minutes, 11 April 1853, SROWA, 311/1250/2.

59 First quotation, Clifton paraphrased by Fitzgerald in Charles Fitzgerald to Duke of Newcastle, No. 89, 25 August 1854, SROWA, 390/1166/07; second quotation from Proceedings of the Legislative Council, 30 May 1854, reported in the *Perth Gazette*, 2 June 1854. All the following quotations come from the same report.

60 Charles Fitzgerald to Duke of Newcastle, No. 89, 25 August 1854, SROWA, 390/1166/07.
constitution of the Council. Given Russell’s despatch ended with a reminder of the Colonial Office’s ‘general policy which I think is in favor of the present constitution of the Council’, Kennedy—a career Governor described by de Garis as ‘more concerned with pleasing the Colonial Office than propitiating the colonists’—obligingly replied:

I have no reason to suppose that the public have not implicit confidence in the Legislative Council as now constituted, and I think that the individual respectability and independence of that body fully entitle them to that confidence ... I am of opinion that there is not now any general desire on the part of the public or any section of the Legislative Council for change. I lean to the opinion that any change in the present organization of the Council would only tend to unsettle the public mind, and that there is no judicious medium between that which exists, and an Elective Council ...

A different Secretary of State, Henry Labouchere, responded—but he, also, was ‘not disposed to think that any advantage would be derived from increasing the number of members of the Legislative Council which as at present constituted appears to possess the confidence of the community’.

Kennedy and Labouchere were soon disabused of their sanguine appraisal of settler confidence in the legislature. Little more than twelve months after Kennedy’s arrival, the Council passed an unpopular licensing Ordinance which led, on 6 August 1856, to the largest public meeting ever convened in WA to protest against the Ordinance and, more significantly, to take into consideration petitioning Her Majesty’s Government to amend the constitution of the Legislative Council. Impassioned speeches were made urging those present to ‘claim their rights as Britons’, and a resolution calling for the number of official and unofficial Members to be equalised and for the latter to be elected by the free settlers was passed unanimously.

Kennedy soon let Labouchere know his views about these proposals:

The sanity of this project may be inferred from the fact that the total male population above 15 years is 5,100, 3,000 of whom are convicts or expirees, and this population is scattered over a territory 500 by 300 [miles].

61 Lord John Russell to Arthur Kennedy, No. 9, 30 May 1855, SROWA, 391/1182/45–46.
63 Henry Labouchere to Arthur Kennedy, No. 11, 14 April 1856, SROWA, 41/1178/38.
64 The requisition for the meeting was published in the Inquirer, 6 August 1856. The Ordinance tightened up rules surrounding the sale of alcohol and excluded conditional pardon holders as licencees. (As a point of clarification, between 1844 and 1870 Western Australian Acts were entitled ‘Ordinances’—see Russell, A History of the Law in Western Australia, p. 41.)
65 Quotation from the meeting report in the Perth Gazette, 8 August 1856. Also reported in the Inquirer, 13 August 1856.
66 Arthur Kennedy to Henry Labouchere, No. 99, 6 October 1856, SROWA, 390/1166/08.
Kennedy, however, was not only troubled that if an elected Council were instituted, the right to vote would soon extend to the ex-convict class—‘originally criminals of the deepest dye’. He was also concerned that if suffrage were withheld from the bond class, the evils of electoral patronage still prevalent in Britain would prevail:

Were the right of suffrage narrowed, a local Solicitor and the Cashier of the Bank, who own or influence the local press and control all money transactions, would virtually nominate the Council unless the Government embarked in a system of corruption which would create a worse evil.

Such a situation, he wrote, would deter ‘suitable and respectable candidates [who] would not come forward and expose themselves to the obloquy and misrepresentation which all who differ from these gentlemen are subjected to’. Finally, Kennedy urged that ‘the introduction of the elective principle into the Legislature of this Colony as at present circumstanced is simply impracticable’, because there was ‘no possible or safe machinery’ to conduct elections in the vast territory—‘even assuming there was material to choose from’. Labouchere, although renowned in England for his ultra-liberal views, tersely replied that Her Majesty’s Government was not prepared, under present circumstances, to recommend the introduction of elected Members into WA’s legislature.67

Perhaps Lionel Samson, who had supported the resolution at the meeting, suspected this would be the outcome. He resigned, presumably, as Kimberly has suggested, ‘to testify his conviction that the presence of non-official members in the Legislative Council was powerless for good’.68 Two years later, Clifton, similarly claiming ‘the present number of non-official members is powerless for good’, also resigned from the ‘FARCE and a SHAM’ Council after again failing to persuade it to pass motions to enlarge the non-official bloc by two Members and modify its constitution.69 In reporting Clifton’s resignation, the Perth Gazette revealed that no unofficial Members had attended Council meetings for some time: a boycott which the editor applauded because the Council was ‘an engine of unconstitutional oppression—the arena of all that is false in words and works’ and one in which no ‘honorable or independent’ gentleman could participate ‘without incurring public reproach and contempt’.70

The remedy, according to the Perth Gazette, was for representative government to be instituted in WA. Many settlers concurred. Indeed, the Perth Gazette had recently reported

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68 Samson resigned in October 1856. Kimberly, History of West Australia, p. 184.
69 Quotations from Clifton’s resignation letter as printed in the Perth Gazette, 29 October 1858.
70 Observations and quotations from the Perth Gazette, 22 October 1858 and 29 October 1858. The non-official Members, particularly those from the countryside, often missed sittings because of the (unremunerated) expense involved in attending. The editor of the Inquirer criticised them for their absenteeism on 5 February 1868.
another meeting in Perth protesting against the Legislative Council’s violation of the constitutional principle of no taxation without representation, and announced in November 1858 that committees in Perth, Fremantle, Swan, York, Toodyay and Bunbury were organising signatures for a petition—which the paper printed in full and urged everyone to sign—calling for the two-thirds elected legislature provided by the Australian Colonies Government Act.71 Nothing came of the petition movement, but Samson, vowing to pursue ‘a platform of political reform’, accepted reappointment to the Council in March 1859.72 A year later, however, he was again expressing disillusionment with the role of the non-official Members:

whenever he, or other nominees, got up to address the council he was received and greeted with sarcastic looks and gestures, and the members of the Executive … knew they had, the whole power in their own hand. He was aware that the nominees were perfectly powerless, and under the present constitution that they were useless … 73

Samson spoke not only for the other disaffected non-officials, but for many discontented colonists, when he advised the Council that it was now time that Western Australians obtained the franchise and legislated for themselves.

**Going ‘the whole hog’**

At the end of 1864 the Inquirer had a scoop: private letters from impeccable sources rumoured that transportation to WA would soon be ceasing.74 With the cessation of transportation, the principal hurdle to representative government would fall. The editor of the Inquirer enthused:

> It is unnecessary for us to state that an alteration in our present form of Government is … an absolute essential to progress; and long before the final breaking up of the Convict Establishment in this Colony, we hope she will be in possession of a Government in which the principle of representation is recognized.

Following this plug for representation, however, the editor cautioned against following the example of the sister colonies who had not reproduced the institutions of the mother country in instituting their ‘popular’ governments—and, as a result, had ‘gone too far’.

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71 See the Perth Gazette, 27 August 1858, 19 November 1858, 3 December 1858 and 10 December 1858. A copy of the petition appears in the 19 November issue. Perhaps it was this failed petition which Samuel Burges was referring to at the 21 February 1868 public meeting for representative government when he stated: ‘He recollected former efforts where the whole affair fell through from lukewarmness’—Inquirer, 26 February 1868.
73 Proceedings of the Legislative Council, 27 September 1860, reported in the Inquirer, 3 October 1860.
74 Inquirer, 16 November 1864. The editor’s ensuing comments come from this issue of the newspaper.
While the defects of the other Australian colonies were not catalogued, the *Inquirer*’s readers would have understood the allusion. The sister colonies upon, or shortly after, attaining self-government had demonstrated what Simms has termed ‘precocious democratisation’, generally opting for such un-English electoral practices as manhood suffrage and abolition of property qualifications for MPs in their Lower Houses, and triennial parliaments and secret ballot.\(^{75}\) These electoral reforms had been Chartist demands, and although Chartism had collapsed in Britain in 1848, a number of Chartists had, voluntarily or otherwise, relocated to Australia in the period preceding the attainment of self-government in the eastern colonies—where, it has been widely argued, they were ‘an encouragement to democracy in Australia’ and, according to Pickering, ‘helped to shape opinion during the crucial period when the colonists were drafting and refining their own constitutions’.\(^{76}\)

Regrettably, since this time, the NSW and Victorian legislatures had achieved notoriety with their sizable cohorts of boorish, drunken, venal and patronage-seeking Members and frequently tumultuous sittings—with the consequence that democratic electoral provisions were often stigmatised for having given ‘place to noisy and illiterate vulgarity’.\(^{77}\) Australian liberal, George Higinbotham, for example, wrote despondently of the Parliament of Victoria in 1859: ‘It is a mere rabble of political desperadoes … Every man is for himself and parliamentary life has degenerated into a mere scramble’, and his radical contemporary, Daniel Deniehy, lamented the presence of ‘men without intellect, education, high standing, or important services’ in the NSW Parliament.\(^{78}\) Indeed, what John Hirst has called ‘the failings of Australian democracy’ made compelling newspaper copy, and were so frequently excoriated in *The Times* and other British newspapers that a pro-reform writer in 1867 would refer to ‘the English dread of Australian politics’.\(^{79}\)

\(^{75}\) Simms, *From the Hustings to Harbour Views*, p. 123.


\(^{77}\) *Inquirer*, 30 November 1864. An excellent study that looks at the NSW Parliament of this time is J.B. Hirst’s *The Strange Birth of Colonial Democracy: New South Wales 1848–1884*, Allen & Unwin, Sydney, 1988 (chapter 11, ‘Disgust’, pp. 173–193, is particularly useful). With respect to patronage, Loveday has outlined in partial extenuation, that in the absence of parties and party discipline at the time, ‘patronage was of the utmost importance to a ministry in its struggle to win and hold a majority’ in the legislature—an assessment endorsed by Hirst: ‘Regular supporters were rewarded with jobs and troublesome opponents were removed with jobs … All appointments to the public service were made to serve political ends’—see Peter Loveday, ‘Patronage and Politics in New South Wales, 1856–1870’, in R.N. Spann and G.R. Curnow (eds), *Public Policy and Administration in Australia: A Reader*, John Wiley, Sydney, 1975, p. 241; Hirst, *The Strange Birth of Colonial Democracy*, pp. 177 and 179.


Nevertheless, ‘let the defects of their system be what it may’, the editor of the *Inquirer* resumed his theme:

looking at what has been done in the direction of material progress by colonies under representative Government … we cannot but allow that gigantic strides have been made, and that political freedom and material prosperity have been co-existent.

Conversely, WA’s decorous, but unelected, legislature:

now weighs like an incubus on the Colony. The best of rulers must fail under the system, for he is not a free agent. With the kindliest motives, a Governor is a despot in his relation to the people; with every wish to be independent, he is a slave in his relation to the Secretary of State.

Within weeks the rumour was confirmed and the despatch from the new Secretary of State, Edward Cardwell, to WA’s latest Governor, John Hampton, announcing transportation would cease within three years, was printed in the press. But even before Cardwell’s despatch was delivered to Hampton, notices for a ‘PUBLIC MEETING!!!’ ‘with a view to memorializing His Excellency the Governor and Council to adopt the modified forms of Constitution’ available under the Australian Colonies Government Act were placed in the local newspapers.

On 21 February 1865 ‘sixty of the most influential members of our small community’ met and a majority resolved that ‘the time has now arrived when it is proper to take advantage of the Imperial Act of 1850, authorizing, under certain conditions, the constitution of a new legislative body’. Under the terms of the Act, the next step was for ‘not less than One Third in Number of the Householders within the Colony of Western Australia’ to petition for elected representation—whereupon ‘it shall be lawful’ for the Legislative Council to pass an Ordinance amending the constitution of the Council so that it would comprise two-thirds elected representatives and one-third Crown nominees. A committee was appointed at the meeting to draft the petition and collect signatures.

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80 Cardwell’s despatch was dated 26 November 1864 and was reprinted in the *Inquirer*, 18 January 1865, and in the *Perth Gazette*, 20 January 1865.

81 A copy of the notice appears in the *Perth Gazette*, 6 January 1865, and in the *Inquirer*, 11 January 1865. The meeting, which had been requisitioned in the first week of January by some of the colony’s leading settlers, was strategically scheduled for the day before the Perth Races ‘when persons from all parts of the colony will probably be in Perth in greater numbers than can be hoped for at any other time’—quotation from the *Perth Gazette*, 6 January 1865.

82 Quotations from the meeting come from the report in the *Inquirer*, 22 February 1865. A full report also appeared in the *Perth Gazette*, 24 February 1865.

83 Section IX of 13 & 14 Vict., c. 59.

84 The petition was drafted at a meeting held a few days later on 24 February; a copy of the petition appears in the *Perth Gazette*, 3 March 1865.
Some present at the meeting, however, expressed reservations. They argued that the quest for elected representative government under the terms of s. IX of the Act (which stipulated twice that WA must bear the full charge of its civil establishment free of parliamentary grants from Britain) was ‘rather premature’; that ‘through the withdrawal of imperial aid, the colony would collapse’; and that WA would struggle to find enough men of means able to devote their time to the unpaid position of Legislative Councillor. Others warned against the ‘floodgates of free representation’ (understandable given the pronounced bond element within the community), while one old settler, possibly recalling English elections before he emigrated, recoiled at the prospect of being ‘harassed by elections and other annoyances’. These fears were shared by the editor of the *Inquirer* who had suddenly resiled from major constitutional change—presumably concerned that fully-fledged responsible government would follow—and who had started expressing the view that ‘there are few real evils to redress’ in the current system and ‘we are … as well governed as any place in the world’.

The editor of the *Perth Gazette*, by contrast, was resolutely pro-representative government and repeatedly reminded readers that WA had already dispensed with British parliamentary grants. Furthermore, the *Perth Gazette* championed the ‘good common sense’ and local experience of the settlers, affirming they would make ‘capable’ legislators if given the opportunity. Above all, the *Perth Gazette* derided the ‘dead-alive nominee state of dependency’ and ‘perfect vassalage’ the colony was languishing under, and urged the settlers to pursue the ‘true British feeling of a desire for political rights’. Over the following months 1,303 householders in the colony did just that and signed the petition.

Meanwhile, Hampton, described by Stannage as ‘a high Tory autocrat’ with no enthusiasm for representative government, raised the subject of constitutional amendment in Executive Council and invited the Councillors’ ‘unbiased’ opinion. In particular, he sought Attorney General George Stone’s counsel regarding the prevailing view that the Council was bound to comply with the prayer of such a petition. Stone, who was opposed to the proposed constitutional change, expressed ‘no doubt on the question’ that the words ‘it shall be lawful’ for the Council to amend the Constitution were not compulsory but merely

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85 Quotations from the *Inquirer*, 22 February 1865.
86 *Inquirer*, 21 June 1865 and 7 June 1865. Also see the *Inquirer*, 5 July 1865: ‘the new Council will in reality be hardly one whit more powerful for good or harm than the present one’.
87 *Perth Gazette*, 17 February 1865, 24 February 1865 and 3 March 1865. The *Perth Gazette* had explicitly pointed out that WA did not receive Imperial grants when the earlier abortive Householder Petition was being signed in 1858—as did the wording of the original petition—see *Perth Gazette*, 19 November 1858.
88 *Perth Gazette*, 3 February 1865.
89 *Perth Gazette*, 24 February 1865 and 6 January 1865.
permissive. Indeed, apart from the Colonial Secretary and the Comptroller General of Convicts (the latter official was added to the Executive, but not Legislative, Council in 1852) who were guardedly in favour of the petition ‘provided it is signed by a majority of the right thinking people in the Colony’, the remaining Executive Councillors—all Colonial Office appointees and not settlers—believed that the campaign for a part-elected Council was ‘premature and that the people should be saved from themselves’. The Surveyor General dolefully prophesied the ‘change would be a great evil and lead to a state of anarchy and confusion’.

Samson presented the Householders’ Petition to the Legislative Council on 29 June 1865, and a committee was appointed to investigate the validity and ‘class’ of each signature. Hampt0n meanwhile forwarded a copy of the petition to Cardwell with the advice that while he had:

"carefully abstained from any interference or expression of opinion in the matter, and have now left the Official Members of the Legislative Council wholly free to act as they may see fit with reference to the proposed change ... I deem it right to state I have reason to believe that a large majority will vote against it."

This despatch has been repeatedly misinterpreted by historians who, perhaps taking a cue from Kimberly and Battye, have argued that Hampton’s comment that a ‘large majority will vote against it’ referred to the colonists. The colonists, however, were not going to be presented with any opportunity to vote on whether they could have a vote—only the Legislative Councillors could vote on that question, and Hampton was already apprised of the negative views of the Executive Council bloc within it.

The committee reported on 18 August that even after excising 150 invalid signatures there was a total of 1,153 householder petitioners (including twenty-four ‘Females’ who would not acquire a vote under the new dispensation) which was more than one-third of the estimated 2,709 householders in the colony. Hampton accordingly put the motion that the petition was in accordance with the requirements of the Act. The motion passed unanimously. Hampton then inquired of Stone whether the Council was obliged to progress

91 Legislative Council Minutes, 29 June 1865, SROWA, 311/1250/2.
92 John Hampton to Edward Cardwell, No. 125, 21 July 1865, SROWA, 390/1166/10.
94 Proceedings of the Legislative Council, 18 August 1865, reported in the Perth Gazette, 25 August 1865. Also reported in the Inquirer, 23 August 1865.
it, and Stone reiterated his opinion that ‘it shall be lawful’ to amend the Constitution was merely discretionary and was armed with a report citing supportive legal precedents.\(^95\)

Samson was undeterred. He had the signatures confirming that Western Australians wanted to ‘go the whole hog’ for part-elected representative government and he therefore moved that the prayer of the petition be complied with.\(^96\) Before the vote was taken, however, John Wall Hardey, a non-official Member, proposed the following amendment:

\[
\text{the constitution of the Legislative Council may be improved to meet the present requirements of the Colony, by an addition of two Non-Official Members, and the term of office of all Non-Official Members limited to three years, instead of for life ...}\(^97\)
\]

The amendment was carried, and an outraged Samson submitted a ‘Protest’ which concluded with the following stinging observation:

\[
\text{if the Legislative Council are to have the power of rejecting the Petition of one-third of the Householders, they may reject a similar Petition signed by every Householder in the Colony, and may never consent to suppress their own body as at present constituted.}\(^98\)
\]

At this dramatic point Hampton prorogued the Council—which would not reconvene until mid-year the following year. He sent the report, amendment and Protest for Cardwell’s determination, with the advice that while he believed the ‘form of Government and Legislature now in operation here appear to me to be peculiarly well adapted’ to the colony:

\[
\text{The petition for a partly elective Council would seem to indicate that … the Legislative Council does not now possess the confidence of the community … I am convinced that it will be impossible to arrest the progress of the movement under consideration, unless some concession is now made. I therefore recommend that the request contained in the amendment should be acceded to …}\(^99\)
\]

Hampton signed off after mentioning that he would probably soon also be forwarding a pro-amendment Memorial.

This Memorial circulated over the next few months but only mustered seventy-two signatures—and it, too, registered a preference for the additional Members to ‘be elective

\(^95\) Stone’s report appears in full in Legislative Council Minutes, 18 August 1865, SROWA, 311/1250/2. For Stone’s earlier opinion in the Executive Council see Executive Council Minutes, 17 June 1865, SROWA, 1058/2/6/6.

\(^96\) Proceedings of the Legislative Council, 18 August 1865, reported in the Perth Gazette, 25 August 1865.

\(^97\) Hardey had first raised this equalisation proposal at the Freemasons’ Hotel meeting on 21 February 1865—see Perth Gazette, 24 February 1865.

\(^98\) Samson’s Protest appears in the Perth Gazette, 25 August 1865.

\(^99\) John Hampton to Edward Cardwell, No. 147, 22 August 1865, SROWA, 390/1166/10.
by the people’. Perhaps the fact that even the conservative element in WA desired elections, motivated Hampton’s suggestion to Cardwell in a subsequent despatch that:

to whatever extent I might be allowed any voice in the matter, I should endeavour to nominate the persons most acceptable to the free inhabitants generally, and fairly representing every interest throughout the Colony—a very difficult task which I would be glad to see delegated to Electors.

This quasi-proposal for elections, following his earlier comments in the Legislative Council that he would willingly consult the colonists’ wishes before making future nominations of non-official Members, immediately assumed the status of a pledge in the community.

Western Australians waited an unconscionably long time for Cardwell’s response. The 1866 session of the Council concluded without a reply and neither had one arrived when sittings resumed in June 1867. But, while Hampton speculated with a touch of smugness that ‘great embarrassment and complications in other Colonies under an Elective Legislature might have induced the Secretary of State to defer his decision’, the local newspapers fumed about the standard Colonial Office ‘routine’ of ‘provoking coolness’ and ‘contemptuous neglect’.

But to be fair, in 1866–1867 the British Government was preoccupied with momentous constitutional and electoral change of its own. According to Gertrude Himmelfarb, Westminster in 1867 faced ‘perhaps the decisive event, in modern English history’—consideration of a Reform Bill which would transform England ‘into a democracy and … [make] democracy not only a respectable form of government … but also, in the opinion of most men, the only natural and proper form of government’. The British quest for electoral reform in the mid-1860s was also a chief topic in WA with the local press reporting proceedings in exhaustive detail (including which parliamentary sittings the Prime Minister, Lord Derby, missed because of gout). So, while Western Australians awaited the determination of their constitutional future, the Imperial Parliament was debating the crucial issues—particularly, an appropriate basis for the suffrage—that eventually the local

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100 A copy of the Memorial appears in the Inquirer, 6 September 1865.
102 Hampton made his offer in the Legislative Council immediately after the rejection of the Householders’ Petition, but he didn’t go so far as to offer elections. See Proceedings of the Legislative Council, 18 August 1865, reported in the Perth Gazette, 25 August 1865.
103 Legislative Council Minutes, 13 July 1866, SROWA, 311/1250/2. See the Inquirer, 23 January 1867 and 7 August 1867, and the Perth Gazette, 4 January 1867, for quotations.
104 Gertrude Himmelfarb, Victorian Minds, Weidenfeld and Nicolson, London, 1968, p. 333. Contemporary electoral authority Edward Cox wrote after the passage of the Second Reform Act that: ‘The Working Class are now the majority of the borough voters’ and ‘Undoubtedly, this is the class that will henceforth turn the scale at an election’, ‘Hints to Solicitors’, pp. clvi and clvii.
105 Perth Gazette, 18 October 1867. The Inquirer and Perth Gazette also covered reform movements elsewhere in the world: for example, on 17 May 1867 the Perth Gazette discussed the reform of the Italian Constitution on the same page that it covered the British reform movement.
legislature would have to consider. Accordingly, it is useful to survey the Second Reform Act because the arguments for and against it at Westminster informed political discussion in WA—discussion which, according to de Garis, was ‘dominated by talk of constitutional change’ for the colony.\textsuperscript{106}

**Dishing the Whigs**

As with most legislation designed to extend electoral rights, the Second Reform Act had a chequered and contested passage. The saga commenced on 12 March 1866 when William Gladstone, Chancellor of the Exchequer and Leader of the House of Commons, introduced a Reform Bill into the Commons on behalf of Earl Russell’s Liberal Ministry. The thrust of the Bill was to extend the franchise to the more prosperous members of the urban working class, the so-called labour aristocracy, by lowering the borough franchise from £10 to £7 and by enfranchising £10 lodgers in the boroughs. If the Bill had passed, it would have seen the first extension of the suffrage since 1832.\textsuperscript{107} But it did not pass: dissident right-wing Liberals, dubbed the ‘Adullamites’, with the support of the Tories, defeated the Bill because they feared it went too far (notwithstanding Gladstone’s admission that the Bill would ‘give the working class less power than it had had before the passage of the first Reform Act’).\textsuperscript{108}

As the Adullamites’ leader, Robert Lowe, spat out in Parliament:

> If you want venality, if you want ignorance, if you want drunkenness, and facility for being intimidated; or if ... you want impulsive, unreflecting, and violent people, where do you look for them in the constituencies? Do you go to the top or to the bottom?\textsuperscript{109}

In fact, Lowe continued, if they were not careful they would end up with mob rule and corrupt politicians like Australia. (And as a former Member, nominee and elected, of the NSW Legislative Council during the 1840s, Lowe spoke from first-hand experience.) Indeed, much of the reform debate in England at this time, as Humphrey McQueen has noted, referenced Australian experience with democracy—particularly, according to McQueen, because ‘the privileged political position of Australian working men vis-à-vis their English counterparts was appreciated in both countries’.\textsuperscript{110} But, also, it must be

\textsuperscript{106} De Garis, ‘Political Tutelage’, p. 323.
\textsuperscript{107} The Bill was the seventh measure seeking to widen the franchise submitted to Westminster in the past fifteen years—Himmelfarb, *Victorian Minds*, p. 338.
\textsuperscript{108} Himmelfarb’s paraphrase from *Victorian Minds*, p. 342. Himmelfarb has outlined that the Conservatives also opposed the Bill lest it ‘seat the Whigs for a lifetime’, as Disraeli put it, *Victorian Minds*, p. 343.
\textsuperscript{109} *Hansard*, 3rd series, 13 March 1866, vol. CLXXXII, cols 147–148. Interestingly, Lowe had earlier championed the petition which requested the Imperial Parliament to halve the existing franchise in the 1842 NSW Constitution Act when it was considering extending a measure of representative government to the other Australian colonies under the 1850 Australian Colonies Government Act—see Hirst, *Australia’s Democracy*, pp. 38–39.
\textsuperscript{110} McQueen, *A New Britannia*, p. 180.
conceded, because of the well-publicised failings of Australian democracy referred to above.

Notwithstanding considerable public protest at the sinking of the 1866 Reform Bill, Russell resigned, lamenting ‘the general apathy of the South of England on the subject of Reform’.111 A minority Conservative Government led by Lord Derby took office on 28 June 1866, and at the beginning of 1867 the Conservatives ‘took the country by surprise’, as the Perth Gazette described it, by introducing their own Reform Bill into Parliament—a Bill which rapidly evolved into a far more radical measure than the legislation which they had helped to torpedo the previous year.112

The Conservatives proposed male household suffrage hedged about with various number-culling safeguards (such as two-year residency requirements and personal payment of rates) and offset by ‘fancy franchises’ and dual-voting provisions which would bestow an additional vote on worthy non-working-class recipients—such as graduates and professionals. Before the Bill was introduced on 18 March, three leading Conservative Cabinet Ministers, including the recently appointed Secretary of State for the Colonies, Lord Carnarvon, resigned in dismay that their party was attempting to ‘outbid the Liberal party in the market of liberalism’.113 Undeterred, the Conservatives’ Bill became substantially more liberal over the ensuing months as the safeguards and fancy franchises were discarded or amended in Parliament—indeed, the Commons even debated, and defeated, John Stuart Mill’s motion for women’s enfranchisement—and when the much mutilated and improved upon’ Bill passed, it extended the borough franchise to all male rate-paying householders and £10-a-year lodgers who met a twelve-month residency requirement.114

While household franchise was still short of the Chartist demand for manhood suffrage, it was a huge advance. Gladstone observed that ‘we have, I think, practically adopted the principle that every man who is not disabled in point of age, of crime, of poverty, or through some other positive disqualification, is politically competent to exercise the

112 Perth Gazette, 17 May 1867.
113 Quotation from Himmelfarb, Victorian Minds, p. 348. The Perth Gazette on 13 September 1867 recounted an anecdote that Lord Derby had confessed that he “defended the bill only because it “dished the Whigs””.
suffrage’. The Act increased the English–Welsh electorate by almost a million voters, and legislation extended the reform to Scotland and Ireland in the following year.

Interestingly, however, as Himmelfarb has observed, the supposedly anomalous carriage of this liberal reform by conservatives affronted many British historians, adumbrating, as shall be suggested later, a similar sceptical response in Australian historiography to the conservative Forrest Government’s early enfranchisement of women.

WA’s ‘Leap in the Dark’

On 9 September 1867 Hampton received a despatch from the Duke of Buckingham, the latest Secretary of State, approving equalisation of the official and non-official Members of the Council and limitation of the non-official Members’ tenure to three years, as recommended in Hardey’s amendment. The rejected Householders’ Petition and Samson’s Protest were not mentioned. Almost immediately after the despatch was made public, a meeting was requisitioned to consider:

the subject of the proposed appointment of Non-Official Members to the Legislative Council, and of devising some means of taking the sense of the Colonists as to the particular persons to be recommended.

Basically, the colonists had to determine how to deal with Hampton’s pledge to consult the wishes of the colonists in nominating Councillors—or, as the Inquirer expressed it, ‘in point of fact, electing them’.

The ‘numerously-attended and highly respectable’ meeting took place in Perth on 14 October 1867. Predictably, some present denounced the Colonial Office concession, agreeing with the editor of the newly launched Fremantle Herald that ‘the pretended boon’ was ‘a sham and a delusion—worthless—worse than worthless—an injury and an insult’. Their view was that the colonists should ‘decline to accept any alteration to the constitution

116 Elector statistics from Cowling, 1867: Disraeli, Gladstone and Revolution, p. 17. Representation of the People (Scotland) Act 1868 (31 & 32 Vict., c. 48) and Representation of the People (Ireland) Act 1868 (31 & 32 Vict., c. 49).
118 Duke of Buckingham to John Hampton, No. 45, 9 July 1867, SROWA, 4753/1182/02. Before Hampton even sighted this despatch, some Western Australians in London, hearing of the Secretary of State’s decision, wrote to Buckingham ‘On behalf of the colonists of Western Australia’, requesting that he increase the non-official contingent to eight and remove the Governor’s original vote. See Messrs Sanford, Burges and Habgood to the Duke of Buckingham, 24 July 1867, SROWA, 4753/1182/02.
119 The first public notice appeared in the Inquirer, 25 September 1867.
120 Inquirer, 23 October 1867.
121 Full reports of the meeting appeared in the Inquirer, 16 October 1867, and in the Perth Gazette, 18 October 1867. Quotations are from the Inquirer report, unless specified.
122 Herald, 14 September 1867.
of the Legislative Council unaccompanied by the Elective Franchise’—which, as the *Herald* had recently reminded readers, was ‘their birthright as Englishmen’. 123 Most at the meeting, however, argued more pragmatically that it was inevitable that ‘We would have Responsible Government by-and-by’, and that the concession amounted to a ‘step in the right direction’ and an ‘instalment’ of reform that should be seized. 124

The meeting unanimously resolved that:

> the colony has not yet arrived at such an advanced stage as to render “Responsible Government” desirable, but that an alteration in the present form of government is absolutely necessary, and that such alteration should consist in the election of non-official members of Council by the inhabitants.

Edward Newman then put ‘the proposition of the day’:

> That it is desirable that the colonists should at once, so far as circumstances will permit, endeavour to establish the principle of election; and that with this view the settlers in the different districts be invited to hold public meetings for the purpose of nominating the particular persons to be recommended to the Governor for appointment as unofficial members; and that for this purpose the Colony may be considered to be divided into the following electoral districts, each making choice of one member:—the Northern District (Champion Bay) one; the Eastern District (Culham to Beverley) one; the South District (Bunbury, Vasse, &c., including King George’s Sound) one; the Victoria Plains and Swan Districts, including Bindoon, Gingin, &c. one; Perth, one; Fremantle, one. 125

After a ‘Hear, hear’ for Charles Manning’s Burkean observation that selected Members ought to be representative of ‘the colony generally, and not that of any particular interest’, the motion passed unanimously, and a ‘central committee’ was appointed to co-ordinate selections. 126

Notwithstanding the central committee, there was little that was centralised about the colony-wide selection process. The meeting had endorsed Newman’s contention that ‘There should be no dictation to the districts in the modus operandi of selection’, because ‘it would be a most invidious task in any way to point out to the committees the mode of planning their course for business. He considered if they could not do that themselves they ought not to enjoy such privileges’. Reporting the meeting, the *Perth Gazette* suggested speakers:

123 *Inquirer*, 16 October 1867, and the *Herald*, 14 September 1867.
124 In fact, from comments made at this meeting, and in editorials of the period, it appears that there was wholesale confusion in the colony as to whether the upcoming constitutional change would involve representative or responsible government, with the terms being bandied around indiscriminately. Representative government under the terms of 13 & 14 Vict., c. 59 would give the colonists elected representatives in the legislature, but not an elected and, therefore, responsible Executive. The Executive would continue to be appointed by, and remain responsible to, the Secretary of State.
125 First quotation from the *Perth Gazette*, 18 October 1867.
126 A Mr Bickley proposed an alternative set of boundaries that was almost identical to Newman’s but which included a seventh electorate for the Albany area. Considering that Hampton was only prepared to nominate six selected Members, however, it is not surprising that this amendment was ‘entirely lost’.
carefully abstained from expressing any opinions as to how the selection is to be made, very justly considering that as His Excellency expressed no opinion on the subject they had neither right or authority to bind the people down to any course of procedure.127

A likelier explanation, however, is that the colonists, facing an election without electoral infrastructure, adopted as a default template the English electoral model whereby each county was responsible for the conduct of its own elections through the sheriff. Accordingly, the Perth meeting devolved all aspects of the selections—type of poll, franchise qualifications, date and hours of polling, number of polling booths, appointment of scrutineers etc—to the districts on the understanding that their resident magistrate, the district equivalent of a county sheriff, ‘would direct the business of the district committees’ as the returning officer.128

The central committee met within days and wrote to the Colonial Secretary, Frederick Barlee, requesting that Hampton ‘favor them with any remark or suggestion he may be pleased to make for their guidance’.129 Barlee replied that the Governor was ‘glad’ that the selection process by ‘the free inhabitants generally’ was under way, but had no suggestions to make.130 (Hampton, in fact, was so determined to keep the Government at arm’s length from the selections—because they were not ‘a strictly official matter’—that permission was refused for election-related notices to appear in the Government Gazette.131) The central committee then despatched a circular letter to leading figures in the districts urging them to hold elections because ‘it is desirable at once to endeavor to establish the principle of election by the settlers, in preference to leaving the members to be selected by the Governor’, and emphasised that although selection via public meetings—British hustings style—seemed the obvious way to proceed:

it is, of course, open to those interested, to take the sense of the inhabitants in some other manner, if they prefer it; the meeting in Perth having carefully abstained from dictating any particular line of proceeding.132

The central committee then organised Perth’s selection. The poll was scheduled for 11 November 1867 at the Perth Court House, and, notwithstanding the local press constantly blackguarding the NSW and Victorian parliaments for ‘anarchy’, ‘mobocracy’ and ‘crises—crises—crises’, the committee determined to follow practice in the sister

127 Perth Gazette, 1 November 1867.
128 Inquirer, 16 October 1867.
131 Note by Colonial Secretary Barlee on a letter from the Fremantle Resident Magistrate, 4 November 1867, SROWA, CSR, vol. 596/9.
colonies, rather than the mother country, in several key areas. First, they opted for manhood (i.e. white British male) suffrage—although they excluded ticket-of-leavers. (Women did not receive a mention. Nor did Aboriginal people, although in the same year the New Zealand Parliament enacted legislation establishing four seats in the House of Representatives to be elected exclusively by Maori men.) While there was general community acceptance that manhood suffrage was appropriate, given Hampton’s specific reference to ‘free inhabitants’ making the selections, the Inquirer and Perth Gazette expressed the hope that this liberal franchise was a one-off for the selections and would not establish a precedent. Indeed, the editor of the Fremantle Herald pondered, ‘But what will Downing Street think and say?’ at the colony taking its own ‘leap in the dark’—‘the consequences of which at home the boldest of the Tory Cabinet trembles’.

The central committee also deviated from English practice by choosing secret ballot rather than open voting. This decision was not unexpected considering that from the very earliest days in WA there had been support for this liberal electoral reform (viz. the ‘Cheers’ at a meeting of the Guildford Agricultural Society in 1834 when a speaker recommended that, when the colonists acquired elected representatives in the Legislative Council, such representatives should be ‘chosen by ballot’) and that local organisations frequently used the ballot for electing committee members, even though in Britain at that time the ballot was, according to Goldwin Smith, ‘a name of revolutionary terror’. In addition, all five sister colonies had, between 1856 and 1859, adopted the ballot and reported model elections as a consequence. The form of ballot enacted by the Australian colonies, however, was a variant on already existing secret voting systems. The colonial Australian Electoral Acts stipulated that electors were to use a uniform ballot paper supplied at the polling place by electoral officials (usually printed but, technically, in some colonies ‘printed or written … according to the form of the Schedule’) instead of, as elsewhere, voting papers—often coloured or otherwise ‘recognizable from a distance’—provided by electors themselves or by candidates and parties. Further, the Australian Electoral Acts directed that ballot papers were to be marked unobserved in a separate compartment rather than, as customary

133 First two quotations from the Perth Gazette, 27 September 1867; third quotation from the Inquirer, 18 September 1867.
134 Maori Representation Act 1867 (31 Vict., No. 47).
135 Herald, 16 November 1867.
overseas, at a table surrounded by polling officials and candidates’ scrutineers. While the version of ballot the central committee proposed was not the more expensive Australian ballot, it was nonetheless significant that secret voting had been adopted in principle, considering that in England advocacy for the ballot was, according to Bruce Kinzer, currently at a nadir within the community and the Parliament. Finally, the committee proposed to copy the practice of the eastern colonies and omit public nominations on polling day. This ‘most un-English style of conducting the affair’, however, was condemned by the *Inquirer* which objected that without nomination speeches, electors might not know which candidates would commit themselves to securing the elective franchise if elected. The sheriff and general public also remonstrated against the absence of nominations, so the central committee capitulated and agreed to permit them.

The five other districts took their proffered autonomy literally. Champion Bay, which had provided the largest number of signatories to the Householders’ Petition, ‘disdainfully’ refused to hold an election. Instead, at a meeting in Greenough, fifty-nine of the ‘principal inhabitants’ of the area resolved to repudiate the concession because ‘The people asked for a right to elect & they will be satisfied with nothing short of the Elective Franchise’. Further resolutions condemned the Council for its ‘illegal’ rejection of the petition and censured Hardey. The other districts, however, accepted the concession, and the press was soon featuring notices urging ‘Free Residents’ to attend meetings to organise their poll.

The first selection occurred in Perth and the *Inquirer* reported that proceedings ‘stirred up memories of election strife and excitement in the Parent Country’. In fact, from the *Inquirer’s* report, the election—‘for to all intent and purpose it was an Election’—had much of the festive aspect of a provincial British poll: the whole town was decked in candidates’

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138 Kinzer, *The Ballot Question*, pp. 1–2 and 73–95. Within five years, however, Liberal Prime Minister, William Gladstone—a recent and lukewarm convert to secret voting—would overbear a hostile House of Lords, to enact the *Ballot Act 1872* and introduce Australian-style ballot voting. It is interesting to note that considerable attention was paid by the British 1869–1870 Select Committee on Parliamentary and Municipal Elections and the Imperial Parliament to evidence that the Australian ballot promoted ‘pure and peaceful elections’ which were ‘entirely free from intimidation, riot or disorder’—quotations from Kinzer, *The Ballot Question*, pp. 121 and 125–126. Also see Kinzer at pp. 270–271 where he refers to the usefulness of ballot-related reports provided to the Colonial Office by the Australian Governors. (The reports, entitled ‘Papers Relative to the Operation of the System of the Ballot in the Colonies’, can be found in *BPP*, 1871–73, Colonies Australia, vol. 26, pp. 9–28.)

139 *Inquirer*, 6 November 1867. This view was shared by the *Perth Gazette*, 1 November 1867. Public nominations would also be done away with in Britain with the passing of the *Ballot Act 1872*.

140 Kimberly, *History of West Australia*, p. 219. Somewhat curiously, Crowley has written that the Champion Bay area ‘respectfully declined to avail itself of the Governor’s offer to hold an election’, *Australia’s Western Third*, p. 54.

141 Quotations from the Minutes, which include the resolutions, of the meeting, 14 November 1867, SROWA, CSR, vol. 596/15. A full report of the meeting appears in the *Perth Gazette*, 29 November 1867. The resolutions and Memorial were forwarded to the Secretary of State by Hampton on 26 December 1867.

142 *Inquirer*, 13 November 1867.
colours, flags were everywhere, and the volunteer band played through streets accompanied by a placard-covered omnibus. The poll commenced at 2 pm in the court house with the sheriff explaining proceedings and making it explicit to the crowd of ‘male adults of all classes’ that while they could vote on the present occasion, ‘it was to be clearly understood that the concession must not be considered as a precedent for future elections’. Three candidates were then proposed and seconded, with two making brief speeches. Polling took place until 5 pm and, within half an hour, the sheriff announced that Julian Carr, who had pledged himself to support ‘universal suffrage, Representative Government and liberal measures’, had been elected by a generous margin.143

In the following weeks the other selections occurred. Most committees observed ‘the same rules as had worked so well’ in Perth—i.e. a public-meeting style election, voting by free residents, public nominations and secret ballot.144 The Swan District committee, however, could not reconcile itself to manhood suffrage and insisted on a very English £10 householders and forty-shilling freeholders property qualification.145 This qualification was ridiculed by the press and challenged by about thirty constituents an hour before the poll, but the committee refused to capitulate, and approximately forty votes were rejected for lack of qualification.146 The Fremantle committee also attempted to restrict the franchise to ratepayers, or tenants paying not less than £10 annual rent, but jettisoned the qualification in favour of manhood suffrage after public protest.147 The non-urban electorates permitted outlying settlers to vote by post or proxy (by authorising an agent to deliver voting papers on an elector’s behalf), while in the sprawling Southern and Eastern districts the committees ran several polling places and aggregated votes at the conclusion of polling.

As with the Perth selection, there was excitement in the districts when polling occurred. In Fremantle the ‘day was observed as a general holiday by nearly all classes’—shops closed at 10 am; the town was plastered with placards, posters, streamers and flags; the volunteer band paraded up High Street; electors wore paper cockades; and the winning candidate, Walter Bateman, was shouldered to Harwood’s Hotel where he stood drinks.148 As the Herald correspondent observed, it ‘reminded one of Election times in the Mother Country’—a droll assessment considering the Fremantle election had been touched by scandal, with rumours circulating, although later denied, that Captain Finnerty had

143 Herald, 16 November 1867.
144 Inquirer, 20 November 1867.
145 Inquirer, 27 November 1867.
146 Perth Gazette, 6 December 1867.
147 See Minutes of the Fremantle Committee Meeting—Perth Gazette, 15 November 1867, and the report of the Fremantle selection, Perth Gazette, 22 November 1867.
148 Quotation from the report in the Inquirer, 20 November 1867. The most comprehensive report of the Fremantle election is in the Herald, 23 November 1867.
attempted to coerce the Pensioner Guard under his control to vote for Edward Newman.\textsuperscript{149} As a precaution, the town crier had been despatched to inform Fremantle’s citizenry that ‘the Ballot protected them’.\textsuperscript{150} The regional elections were more muted, but the Bunbury poll, conducted on the same weekend as the annual Agricultural Society meeting and ball, was reportedly ‘really exciting’ with flags and campaign placards ‘in great profusion’.\textsuperscript{151}

While the selections in the different districts were commendably liberal and uniform in the end, the fact that local committees were authorised to do as they wished troubled the Western Australian press. Editorials expressed concern that with districts ‘all differing from each other’ and decisions being made ‘according to the caprice of a few who put themselves forward and assumed the power of dictating how it was to be’, there would be ‘great diversity of opinion—great confusion, and in all probability—no conclusive result’.\textsuperscript{152} That from the commencement of WA’s electoral history there was an impulse towards standardising electoral rights and election conduct, rather than permitting each constituency to elect Members ‘according to its own fancy’—an impulse fortified, as Marian Sawer and Norm Kelly have underlined, where there is an absence of strong local authorities—would make it easier for electoral matters to be transferred to the control of a single co-ordinating agency, as they soon would be, unlike the county-by-county administration of elections in Britain.\textsuperscript{153} But, as Sawer has outlined, this was not only a Western Australian impulse:

\begin{quote}
The Australian colonies were remarkable for the early development of the role of professional electoral administrator. This was unlike most of the world where electoral administration remained amateur in nature, an additional duty piled on officials when the need arose, and was usually highly localised and often very partisan.\textsuperscript{154}
\end{quote}

The last selection took place on 14 December. When writing to Buckingham to nominate the settler-selected Members to the Legislative Council, Hampton incensed the intransigent

\begin{flushright}
149 *Herald*, 23 November 1867.
150 *Herald*, 23 November 1867.
151 *Inquirer*, 11 December 1867.
152 The first and third quotations are from the *Herald*, 9 November 1867; the second, from the *Perth Gazette*, 21 May 1869.
\end{flushright}
non-electors of Champion Bay by recommending their vacancy be filled by Hardey, who had polled last in the Swan selection with a mortifying four votes.\textsuperscript{155}

Overall, the trial elections had passed off extremely well, as Hampton acknowledged to Buckingham: ‘although the selective proceedings have unavoidably been to a considerable extent informal and irregular, the result has been very salutary’.\textsuperscript{156} More than salutary when it is considered that seventeen candidates contested the five seats and over 2,000 colonists voted out of a population of 21,000 which, as McKenzie noted, confirmed ‘the Colonists were prepared to make use of such liberties as were granted them, and that there were plenty of men able and willing to stand for election to serve in the Council’.\textsuperscript{157} Indeed, the selections had been infinitely more civilised than the 1865 general election in Britain which had been marred by rioting and house burnings and, according to \textit{The Times}, ‘more profuse and corrupt expenditure than was ever known before’.\textsuperscript{158}

Hampton, reassured by the settlers’ exemplary conduct, recommended that Buckingham:

\begin{quote}
concede to the duly-qualified inhabitants of the Colony a legal right, at the end of the three years, to elect a number of non official members of the Legislative Council equal to the number of official members, always provided a casting vote is reserved for the Governor as at present … I have good reason to believe that such an arrangement would be generally acceptable, and I know for certain that many influential Colonists who in the year 1865 were strongly in favor of the partly elective Council provided for in the 9th Section of the 13 and 14 Victoria, Cap: 59, would for some time to come be satisfied by the proposed concession with a properly-defined franchise.\textsuperscript{159}
\end{quote}

Considering \textit{all} the selected candidates had pledged to secure the franchise for Western Australians, Hampton’s counsel was sound and timely.

It was also exactly what Buckingham wished to hear. In canvassing the proposed equalisation of the Council earlier in the year, a Colonial Office Minute stated that triennial

\begin{footnotesize}
\textsuperscript{155} Part of Hardey’s poor showing is due to the fact that immediately after his nomination he urged electors to vote for William Brockman rather than himself because two merchants had already been elected to the Council in the selections and he didn’t want to split the agricultural vote in Swan and ‘risk the return of another merchant’—see the \textit{Perth Gazette}, 6 December 1867. The \textit{Perth Gazette}, however, called Hardey’s ‘assigned motive for retiring from the contest at Guildford … a very shallow blind to conceal the fact that he had not the slightest chance of obtaining a seat’—13 December 1867. The six selected/nominated Members in the order they appeared in the 1868 Western Australian \textit{Blue Book} were: J.W. Hardey (Champion Bay), J.G.C. Carr (Perth), W. Bateman (Fremantle), J.G. Lee Steere (Southern District), W.L. Brockman (Swan) and S.P. Phillips (Eastern District). The W.L. Brockman, returned for Swan was the same W.L. Brockman listed in the 1839 \textit{Blue Book} as one of Governor Hutt’s first non-official settler nominees to the Legislative Council.
\textsuperscript{156} John Hampton to Duke of Buckingham, No. 220, 27 December 1867, SROWA, 390/1166/10.
\textsuperscript{157} McKenzie, ‘Survey of West Australian Politics’, p. 3. WA’s population at 30 June 1866 was given at 21,065 by the \textit{Inquirer}, 7 August 1866. This total would have included women and minors, who would not have been entitled to vote.
\textsuperscript{158} A summary of the 1865 election can be found in Donald C. Richter, \textit{Riotous Victorians}, Ohio University Press, Athens, [Ohio], 1981, pp. 63–64. \textit{The Times} quotation comes from Evans, \textit{Parliamentary Reform in Britain}, p. 65.
\textsuperscript{159} Governor to the Secretary of State, No. 220, 27 December 1867.
\end{footnotesize}
nomination of Councillors would be a considerable inconvenience for the Colonial Office, recommended WA institute proper elections, and advised that a confidential despatch be sent to Hampton advising that ‘the Secretary of State would be quite prepared to entertain that mode of proceeding if the Governor should think fit to propose it’.\textsuperscript{160} It was no surprise, therefore, that Buckingham responded to Hampton’s despatch by approving the names forwarded and advising: ‘I see no reason why after the first term of three years shall have expired, the Constitution of the Council remaining unaltered, the unofficial members should not be elected by the people’.\textsuperscript{161}

When informed of this despatch most Western Australians would rejoice that the franchise would become a right and not a concession. But, as shall be seen, when elections were placed under the control of British-appointed officialdom, instead of the settlers, WA would no longer follow what Dilke in 1867 had admiringly referred to as the ‘eager burning democracy’ of the sister colonies, but would be reined in to walk in lockstep with electoral practice mandated by Imperial statutes decades earlier.\textsuperscript{162} Having had to fight for electoral representation, Western Australians would also have to fight for electoral reform.

\textsuperscript{160} CO 18/43, Reel 1646, p. 277.
\textsuperscript{161} Lord Buckingham to Governor Hampton, No. 40, 27 March 1868, SROWA, 4753/1182/03.
\textsuperscript{162} Dilke, \textit{Greater Britain}, p. 87.
Hampton’s satisfaction with the 1867 selections was not widely shared. The Herald ridiculed the ‘amusing absurdities’ of the ‘Selecto Elective Farce’ and advocates of representative government dismissed the selections as ‘wholly illegal, there were no writs issued, no registry of voters’.¹ The Perth Gazette editorialised that it was ‘almost universally recognised’ that it was essential that Western Australians secure the ‘right to be represented in the colonial legislature’, rather than go through another ‘queer sort of unauthorised election’.² Battye has correctly noted that rejection of the Householders’ Petition strengthened public opinion in favour of representative government and, as de Garis has commented, settler demand for an elected legislature also intensified because of Hampton’s ‘autocratic tendencies plus the colony’s growing maturity and prosperity’.³ This chapter will chart the colonists’ pursuit of representative government which culminated in the first official, and less liberal, election in 1870.

Kimberly’s verdict of the selections was that Western Australians ‘so readily accepted this irresponsible method of electing representatives’ because they believed the reconfigured semi-elective Legislative Council would contain a bloc of non-official Members committed to securing representative government.⁴ The new Council could not convene, however, until Hampton received an Order-in-Council ratifying its membership—and then a new Householders’ Petition would need to be presented. Accordingly, the feisty memorialists from Champion Bay, saddled with the despised and city-based Hardey as their representative, immediately initiated the petition.⁵ A public meeting was convened on 21 February 1868 at which chairman and Legislative Councillor-elect, James Lee Steere,

¹ Herald, 9 November 1867 and 16 November 1867. The ‘wholly illegal’ quotation is actually William Burges’s, but it was seconded by Henry Gray, the secretary of the Champion Bay Reform Association—see the Perth Gazette, 28 February 1868;
² Quotations from the Perth Gazette, 21 February 1868 and 21 May 1869. Also see the Inquirer, 26 February 1868.
⁴ Kimberly, History of West Australia, p. 219.
⁵ The Perth Gazette reported as early as 29 November 1867 that two members of the Northern District Householders’ Petition committee, Kenneth Brown and Major Logue, were about to travel to Perth to prepare the new petition and that the committee was calling for a February 1868 ‘Meeting of Delegates from each District in the Colony’ to facilitate signature gathering. The Champion Bay settlers had long had a reputation for being assertive about their political and economic rights—a point made in Peter Cowan’s study, Maitland Brown: A View of Nineteenth Century Western Australia, Fremantle Arts Centre Press, Fremantle, WA, 1988, passim, but particularly on p. 37 where Bishop Mathew Hale’s assessment of them is quoted: ‘the people no doubt are a most difficult set to deal with’.
announced ‘there would be no long speeches made upon the desirability of the settlers obtaining electoral rights, it being generally agreed their minds were made up on that point’.6 A motion in favour of petitioning for representative government was carried unanimously; the wording of the previous 1865 Householders’ Petition was adopted verbatim; and the canvass of the colony began.7

Three months later, when the district committees were collecting signatures (in competition with a petition calling for increased public works and immigration, which also requested the ‘elective privilege’), the Perth press published two despatches from the Secretary of State.8 In the first, Buckingham informed Hampton that the Legislative Council had not acted illegally in rejecting the 1865 Householders’ Petition because the words, ‘it shall be lawful’ to amend the Constitution in the Imperial Act, conferred a ‘discretion’ and were ‘not imperative’.9 The second despatch confirmed the appointment of the non-official Members selected by the colonists, and assented to Hampton’s proposal that in future such Members could be elected by the colonists.10 This was the first the colonists had heard of Hampton’s recommendation that real elections be instituted in WA—thirty-six years after such rights had first been sought.

The Inquirer urged the settlers to accept the concession. To buttress the case against pursuing the Australian Colonies Government Act version of representative government—and responsible government, which the editor was convinced would rapidly follow—the Inquirer ran leaders and articles highlighting the ‘incessant conflict and anarchy’ of the eastern colonies’ legislatures and the risks of ‘wanton and wasteful expenditure’ and ruinous taxation by ‘vampire Ministries’ under self-government.11 The editor of the Perth Gazette, conversely, urged the case for the conventional statutory model of representative government and could not ‘too forcibly remind our readers that the way to secure that, is for EVERY HOUSEHOLDER TO SIGN THE PETITION’.12

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6 Lee Steere quoted in the Perth Gazette, 28 February 1868. Also see the Inquirer, 26 February 1868, for a report of the meeting.
7 Perth Gazette, 28 February 1868.
8 A copy of the second petition is reprinted in the Inquirer, 20 May 1868.
10 Lord Buckingham to John Hampton, No. 40, 27 March 1868, Perth Gazette, 15 May 1868. The Order-in-Council appointing the Members was passed on 4 May 1868.
11 The most comprehensive attack by the Inquirer on self-government in the eastern colonies was on 10 June 1868, from which these quotations are sourced, but previous—and subsequent—issues also denounced these legislatures; see 19 February 1868, 22 April 1868, 13 May 1868 and 28 April 1869. The paper even maligned self-governing New Zealand, recently under the command of Premier Frederick Weld—who, the hapless editor was not to know, would become WA’s next Governor—Inquirer, 10 June 1868.
12 Perth Gazette, 15 May 1868.
To facilitate the Colonial Office in making the required constitutional changes for WA, Buckingham directed Hampton to provide a ‘Report describing the Electoral Divisions, and the Franchise, which you would propose, and explaining the reasons on which they are founded’. Hampton, whose gubernatorial term had almost expired, however, considered it would be more appropriate to leave these recommendations to his successor (and was subsequently condemned by the press for his inaction).

In the following month the Householders’ Petition reached the requisite number of signatures, but the organising committee decided against submitting it to the Legislative Council, ‘preferring not to risk its loss during the present session … when the Governor has expressed his desire not to assent to the adoption of any important measure which might embarrass his successor’. Instead, gathering of signatures would continue, and the petition would be held over for Governor Sir Benjamin Pine, reportedly WA’s new Governor, who, it was hoped, would receive it favourably. This optimism seemed justified: Pine had, as the Perth Gazette commented, administered the Government of Natal, where a ‘legislature similarly constituted with that we ask for, has been in vogue for the last eleven years’.

Hampton departed in November and Lieutenant-Colonel John Bruce, the Commandant, became Acting Governor, and, ‘in monthly expectation’ of Pine’s arrival, also adopted a holding pattern with the administration. When advised six months later, however, that Pine had accepted another posting, and the process of seeking a new Governor for WA would recommence, Bruce was compelled to act. The Legislative Council had to pass the Estimates and, further, there were press reports that the Householders’ Petition committee had decided to submit the petition. Bruce, accordingly, faced the prospect that the petition could be adopted under his interim administration.

Presenting an incoming Governor with a legislature committed to major constitutional change as a fait accompli would presumably disconcert any acting administrator. But this

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14 See the editorial in the Perth Gazette, 28 May 1869.
15 Perth Gazette, 14 August 1868.
16 See the Perth Gazette, 14 August 1868, for a report of Pine’s appointment. An unofficial report of Pine’s appointment appeared in the Perth Gazette on 10 July 1868. Hampton was informed of Pine’s appointment in a despatch from Lord Buckingham, No. 83, 1 July 1868, which he received on 2 September 1868. Pine, however, was unwilling to take up the Western Australian appointment and repeatedly deferred his departure, with the sanction of the Colonial Office, while he lobbied for a superior posting. His deferrals were relayed to the Western Australian administration in two despatches: No. 115, 15 September 1868, and No. 8, 31 December 1868— SROWA, 4753/1182/03.
17 Perth Gazette, 14 August 1868.
18 John Bruce to Lord Granville, No. 97, 20 May 1869, SROWA, 390/1166/11.
19 Lord Granville to John Bruce, No. 28, 22 February 1869—received by Bruce on 13 April 1869, SROWA, 4753/1182/04.
20 Perth Gazette, 23 April 1869. Also see John Bruce to Lord Granville, No. 97, 20 May 1869, SROWA, 390/1166/11.
was particularly the case for Bruce who was implacably opposed to such change in WA, believing it could ‘jeopardise the properties of all, by giving the reins of power into the hands of a body of men possessing no stake in the colony’. Bruce had been the seconder to Hardey’s amendment to the first Householders’ Petition. He decided the most effective strategy to pre-empt the second petition was to fast-track the electoral report requested by Buckingham, ‘with the view of being enabled to inform the Legislative Council that the necessary measures had been actually taken to give full effect to the concession of the Secretary of State’. Like Hampton and Buckingham, Bruce hoped this concession would satisfy enough signatories to the petition to see the movement fail.

Making Bruce’s administration even more fraught, the non-official Member for Fremantle, Walter Bateman, had been pressured into resigning by a group of ‘influential gentlemen’ (including two unsuccessful candidates, Edward Newman and Robert King, from the previous year’s Fremantle selection) who were concerned that Bateman’s recent ill-health would force him to miss the impending session of Council and its crucial vote on representative government. Bateman’s letter of resignation made it explicit that his resignation was tendered ‘in order that the ELECTION of a QUALIFIED person may ensue’—because ‘I feel it absolutely necessary that Fremantle should not be unrepresented during the next Session’.

As there was no longer a pre-approved list of nominees signed off by the Colonial Office, there was no mechanism to replace Bateman other than by the protracted process of nomination to the Secretary of State and confirmation by Order-in-Council. On Tuesday 18 May 1869 a letter from Colonial Secretary Barlee was received by the influential gentlemen informing them of this, and conveying an extraordinarily ill-judged offer from Bruce: ‘His Excellency will be prepared at once to transmit to England for approval, the name of any gentleman who may, in the opinion of those gentlemen … be a fit and proper person to represent Fremantle in the Legislative Council’.

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22 John Bruce to Lord Granville, No. 97, 20 May 1869, SROWA, 390/1166/11.
23 Quotation from the Colonial Secretary’s letter, 18 May 1869, printed in the Perth Gazette, 28 May 1869. The letter soliciting Walter Bateman’s resignation also appeared in this edition of the Perth Gazette.
24 Bateman’s resignation letter was dated 13 May 1869; the text of the letter was published in the Perth Gazette, 28 May 1869. A copy of the resignation letter, signed by Walter Bateman, was re-sent on 15 May 1869.
25 In despatch No. 40, 27 March 1868, Buckingham informed Hampton that 'Provision will be made for enabling the Governor to fill up vacancies caused by death or resignation, until Her Majesty’s pleasure shall be signified'; however, in despatch No. 70, 22 May 1868, Buckingham wrote that: ‘I have only to observe that should any new appointment become necessary, such appointment will have to be made by Order in Council as heretofore’—SROWA, 4753/1182/02.
26 Quotation from the Colonial Secretary’s letter, 18 May 1869, printed in the Perth Gazette, 28 May 1869.
The ‘self-constituted arbitrators of the destinies of Fremantle’ kept Bruce’s offer a ‘profound secret’. They decided to call the colony’s first snap poll on the upcoming Saturday afternoon—‘postponing all public notice till the morning of the meeting’—at which their preferred candidate (who happened to be one of themselves) would be nominated. When the plan was revealed on the Thursday morning, there was indignation at the ‘horrible conspiracy on the part of a few to defraud their fellow townsmen out of their rights to share in the selection of a representative’. The town crier was despatched to warn the citizenry that ‘their liberties were in danger’, and a ‘crowded to the doors’ public meeting was held that night at which it was resolved that if it was good enough for the influential gentlemen to organise the selection of Bateman’s replacement, it was good enough for the citizens of Fremantle to do so. The meeting decided that a by-selection would take place on 3 June based on household suffrage and conducted by secret ballot.

The following day Bateman, realising his replacement could not be confirmed before the opening of the Legislative Council, successfully revoked his resignation. The townsfolk of Fremantle, nevertheless, decided to proceed with their by-selection in case ‘a vacancy should happen, which with the greatest possible delicacy and good taste they publicly as well as privately argued must happen within a short period’. Election day was commensurately farcical. The local resident magistrate refused to have anything to do with proceedings and, consequently, without a returning officer, preparations had not been made for the poll; a letter from the Crown Solicitor condemning the by-selection as ‘absurd’ and ‘folly’ was read out; an unresolved dispute took place as to what constituted householders; and numerous speakers—some jumping onto tables and being threatened with a police escort out of the hall—pointed out that an election could not take place without a vacancy. Finally, to the ‘derisive cheers of the assemblage’, the be-ribboned candidates withdrew their nominations. Possibly the best verdict on the whole unseemly proceeding was that of an anonymous correspondent to the Perth Gazette:

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27 Inquirer, 26 May 1869. Also see the Herald, 22 May 1869.
28 Inquirer, 26 May 1869. However, also see Robert King’s repudiation of these allegations in the Herald, 29 May 1869.
29 Perth Gazette, 28 May 1869.
30 Inquirer, 26 May 1869.
31 Copies of Bateman’s letter revoking his resignation and Bruce’s permitting him to do so (dated 22 May 1869) were printed in the Perth Gazette, 28 May 1869.
32 Perth Gazette, 4 June 1869. In this action they were fortified by another ill-judged decision by Bruce who, on 25 May, informed the three candidates currently contesting the non-vacancy, that he was ‘still quite willing to forward to England by the next mail, the name of any person who may be acceptable to the Inhabitants of Fremantle as their Member, and thus in the event of the occurrence of a vacancy, avoid … delay’. A copy of this letter appeared in the Herald, 5 June 1869.
33 Quotations, and account, from the by-selection report in the Inquirer, 9 June 1869. Also see the by-selection report in the Perth Gazette, 4 June 1869. The Crown Solicitor’s letter to Resident Magistrate John Slade was printed in the Perth Gazette, 11 June 1869.
34 Perth Gazette, 4 June 1869.
Mr. Editor, is it not enough to make a man blush that he is a Western Australian, to read in public print such scenes as occurred in Fremantle last week … It is, Sir, the duty of every colonist who respects law and order to put an end to this state of things, and to impress on the Government the absolute necessity of immediately on the meeting of the Legislative Council, to take into consideration the Householder’s Memorial, and settle once for all what is to be our form of Government. I for one would sooner have no Representatives than again see them elected as they were last time.\textsuperscript{35}

The Legislative Council opened on 26 June 1869. When the Householders’ Petition was not presented, Bruce announced that the prolonged absence of a Governor could no longer justify the electoral report requested by Buckingham remaining in abeyance and that it should be provided without further delay.\textsuperscript{36} To further disarm the advocates of the Householders’ Petition in the Council, Bruce expressed his ‘entire confidence in the rightmindedness of the non-official members’, and proposed that a committee consisting of one official Member and all the non-official Members prepare the electoral report.\textsuperscript{37}

The report was tabled in the Council on 5 July. It was a curious blend of liberal and conservative electoral provisions because the committee—anticipating that the Australian Colonies Government Act model of representative government would inevitably follow—complied with the provisions governing the institution of representative government prescribed in this Act. Accordingly, the committee recommended the property and residency restrictions for the franchise laid down in s. IV of the 1850 Act, instead of the universal suffrage of the 1867 selections, and also recommended the introduction of an extremely high property qualification for Members (which s. XII of the 1850 Act directed was to be imported from s. VIII of the 1842 Australian Constitutions Act).\textsuperscript{38} While both these restrictive qualification provisions had been liberalised or discarded in Britain and the sister colonies, WA under the terms of the 1850 Act was compelled to adopt them in the first instance—although empowered by the same Act to alter them once representative government was established. The committee was not bound by statute as to how the new legislature was to be elected, however, and chose to retain the secret ballot utilised in the 1867 selections even though Britain still used open voting.

Two days later Lee Steere presented the Householders’ Petition—signed by an impressive two-thirds of WA’s householders (1,649 signatories)—but, sceptical of its chances with

\textsuperscript{35} Perth Gazette, 4 June 1869.
\textsuperscript{36} Legislative Council Minutes, 26 June 1869, SROWA, 311/1250/2.
\textsuperscript{37} Legislative Council Minutes, 26 June 1869, SROWA, 311/1250/2.
\textsuperscript{38} A copy of the report appeared in the Inquirer, 7 July 1869, and the Perth Gazette, 9 July 1869.
Bruce in charge and pro-petition Bateman absent, he successfully moved that consideration of the petition be held over until the new Governor had been installed.39

Bruce forwarded the electoral divisions and franchise report to the new Secretary of State, Lord Granville, with the forthright assessment that ‘Much dissatisfaction prevails at the principle of election having remained so long in abeyance’ and advised that ‘no time should be lost in bringing to maturity the modified form of Representative Government sanctioned’ by Buckingham.40 Bruce also acknowledged that the colony’s incoming Governor—recently confirmed to be the former New Zealand Premier, Frederick Weld—might be prepared to ‘countenance’ representative government, in which case the report’s recommendations could be useful and brought into operation. Bruce concluded by recommending Granville’s authority be granted immediately, instead of at the end of the selected nominees’ three-year term, assuring him that the non-official Members would willingly resign so as to give immediate effect to the proposed constitutional changes.

The subject of resignations, willing or otherwise, would clearly have been on Bruce’s mind. Two days previously he had informed Granville that Bateman had resigned again and that he, Bruce, had authorised the people of Fremantle to organise a new selection ‘after a manner prescribed by themselves’.41 In his intimation that the new Governor might countenance representative government in the colony, however, Bruce was perhaps somewhat disingenuous—Weld was renowned, as the Inquirer had put it, as a published ‘authority on the principles and practical effects of representative institutions’ and had been a long-standing advocate of self-government in New Zealand.42 Certainly the Perth Gazette, in announcing Weld’s appointment, hoped from his record that he would be ‘desirous to adopt the modern ideas of self-dependence and onward progress’ in WA.43

39 Legislative Council Minutes, 7 July 1869, SROWN, 311/1250/2.
40 John Bruce to the Lord Granville, No. 138, 19 July 1869, SROWN, 390/1166/11.
41 John Bruce to Lord Granville, No. 139, 17 July 1869, SROWN, 390/1166/11. The Fremantle by-selection was held on 9 August with the winning candidate, Edward Newman, pledging ‘to support the People’s Memorial’—see the Inquirer, 11 August 1869. As with the previous abandoned by-selection, the townsfolk of Fremantle chose a poll based on household suffrage and the secret ballot.
42 Inquirer, 22 December 1869. Weld’s first published plug for representative government was in an 1851 pamphlet, Hints to Intending Sheep Farmers in New Zealand—see Jeanine Graham, Frederick Weld, Auckland University Press, [Auckland], 1983, p. 33. In 1848 Weld was involved in a reform association which sought representative government in New Zealand; in 1853 he won a seat in the new representative General Assembly on a ‘platform’ of ‘opposition to the nominated upper house’; subsequently, he agitated for responsible government and self-reliance in New Zealand—see Graham, Frederick Weld, pp. 51–57. For a comprehensive discussion of Weld’s political career in New Zealand see chapters 5 and 6 in Graham.
43 Perth Gazette, 14 May 1869.
'Going the Whole Hog’—Attempt Two

Weld arrived at Albany on 18 September 1869 and overlanded to Perth, running a gauntlet of welcoming addresses—of which many expressed a ‘desire for constitutional changes’, as he informed Granville.44 Weld was sworn into office on 30 September and a month later he commenced a series of rural rides to gauge the colonists’ views on the subject.45

While on his first tour, Weld received a despatch from Granville instructing him to report on the proposed change to the colony’s constitution—i.e. to report on Bruce’s electoral and franchise report.46 While Weld felt it would be premature to do so, he sent a confidential despatch from Champion Bay outlining that he had encountered ‘an almost universal sentiment of dissatisfaction prevalent regarding the present form of government, coupled with a moderate and reasonable tone’.47 Two days later, at a public dinner in Geraldton, Weld shared his views on the question of representative government for WA:

> from my early days I have studied representative institutions; for years I have helped to work them … before I left England, Lord Granville stated that in selecting me for the post I now hold, he had selected me as one who had advocated in the colonies those principles of self-reliance and self-government which had made England what she is, and which alone could raise the colonies to a high position. I cannot therefore but respect and sympathize with those whose aspirations tend in that direction … It would be to me a very great disappointment to leave this country without seeing those principles in full and safe operation … I will endeavor … to lead and guide the steps of the colonists who I hope will in a short time—and the sooner the better for me—arrive at self-government, which of all others is most adapted for Englishmen.48

Weld’s comments were, as the press reported, ‘received throughout the colony with an immense degree of satisfaction’.49

On 1 March 1870, after touring the south of WA, Weld wrote to Granville that he felt sufficiently briefed to provide his views upon the subject of constitutional change in WA.50 Weld then outlined that although his ‘own abstract belief [is] that representative government is that form which is best suited to the wants and genius of British Colonists’, he had considered it his duty to explain to the colonists the challenges and drawbacks of

44 Frederick Weld to Lord Granville, No. 1, 18 September 1869, and No. 30, 12 October 1869, SROWA, 390/1166/11.
45 Frederick Weld to Lord Granville, No. 32, 1 March 1870, SROWA, 390/1166/11.
46 Lord Granville to Frederick Weld, No. 103, 13 September 1869—received by Weld on 22 November 1869, SROWA, 4753/1182/04.
47 Frederick Weld to Lord Granville, 30 November 1869, SROWA, 390/1174/47.
48 Weld’s speech was reprinted in the <i>Perth Gazette</i>, 17 December 1869. Weld expressed similar views at other public banquets—see the <i>Perth Gazette</i>, 25 February 1870, for the full text of his Bunbury address.
49 <i>Perth Gazette</i>, 7 January 1870.
50 Frederick Weld to Lord Granville, No. 32, 1 March 1870, SROWA, 390/1166/11. Weld’s ensuing observations come from this despatch.
such a system—particularly, that it would inevitably lead to self-government, which most of the colonists claimed not to want yet. Nonetheless, he found that ‘no voice is raised in favour of the maintenance of the present system’. Weld, himself, viewed it as an unsuccessful compromise:

which balancing the official and non-official parties equally, and placing the Governor as president in a half elected house enabled him barely to pass his measures by his casting vote compels him either to sit silent when his policy is discussed or personally to descend into the arena and as it appears to me places both him and the members of the Council in an unbecoming and false position.

Furthermore, Weld was troubled by the liberal franchise and general *ad hocery* of the recent selections given the colony’s considerable convict population: ‘I have a very strong opinion that the exercise of universal suffrage and the absence of all legal regulation of Elections might be in the present circumstances of this Colony in a high degree dangerous’. Believing, however, that WA had ‘already arrived at that point when it is impossible to retrace steps already taken, and almost equally difficult and dangerous to remain as we are’, Weld concluded that representative government was inevitable—and, possibly, perilous to delay any further:

I see no reason to suppose that under the present system the Colonists will ever become more fitted for self government, and I greatly dread that if its introduction be long deferred they will become far less fitted, – at present there are still men amongst them whose English Education and English reminiscences would guide them in the almost forgotten path …

Within a fortnight Weld received a confidential despatch in which Granville confirmed he could see no reason why the form of Government provided by the Australian Colonies Government Act should not be adopted if Western Australians desired it.51 Granville, a renowned liberal, continued:

It can scarcely be doubted that this alteration in the Constitution will lead speedily to the establishment of responsible Government. The changes now made, therefore, should be as far as possible so devised as to facilitate that result.

That Granville assented to constitutional change, did not, however, guarantee it would occur. The petition could again be defeated in the Council—and the numbers, as the press was fond of speculating, would be close.52 As McKenzie has summed up, despite support for representative government within the community and most of the press, there was considerable opposition from the official nominees in the Legislative Council who feared

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51 Lord Granville to Governor Weld, 28 January 1870, SROWA, 391/1223/251 (received 13 March 1870). This letter was in reply to the earlier confidential despatch Weld has sent from Champion Bay.
52 See the discussion of ‘tolerably certain’ versus ‘uncertain’ votes for the change in the *Perth Gazette*, 20 May 1870.
the change would usher in responsible government with ‘attendant rashness in public affairs’ (and who were also apprehensive about losing their official positions).\textsuperscript{53}

Weld immediately advised the press of Granville’s approval, and commenced drafting a Bill in accordance with the provisions of the Act.\textsuperscript{54} The advocates of the petition were galvanised. Meetings in support of representative government were held throughout WA and were characterised by the passing of resolutions ‘to guard against any procrastination in getting the new system into work’—with the Fremantle meeting resolving to ‘urge upon His Excellency the necessity for a comprehensive and liberal form of Representative Government’.\textsuperscript{55}

The Legislative Council convened on 23 May 1870 and Weld’s despatch to Granville endorsing representative government was read aloud. Then, prior to introducing the Constitution Bill, Weld informed the Councillors that if they voted against the first reading he would regard that as a ‘contemptuous rejection’.\textsuperscript{56} The Bill was read a first time.

When the Council reconvened two days later, Weld moved the Bill’s second reading and advised Members that ‘he had tried to consider the question as a colonist, and as such he should vote in its favor’.\textsuperscript{57} Lee Steere seconded the motion and immediately moved that the long-shelved Householders’ Petition be read. After this occurred, the set-piece speeches on representative government commenced. Every Councillor spoke, with Attorney General Stone tersely announcing ‘he had seen reason to change his opinions’ since he voted against the petition in 1865—with his vote immediately cancelled by Samuel Phillips who had ‘also altered his opinion since the last occasion’ and decided to dishonour his pro-representative government selection pledge. Finally, the second reading was put. It passed seven votes to five with Commandant Bruce, Surveyor General Roe, Collector of Revenue Lefroy and Hardey and Phillips voting against it.

The following day the Councillors formed a committee of the whole. While they had ‘no power to deviate in any degree’ from the principal provisions mandated by the Imperial Act and had to ‘accept or reject them in their entirety’, as Weld advised, they were competent to

\textsuperscript{53} McKenzie, ‘Survey of West Australian Politics’, p. 11. F.R. Beasley in ‘The Legislative Council of Western Australia’ supports McKenzie’s assessment, writing that the Council was ‘by no means convinced that the Colony was ripe for representative government’ and ‘was not then prepared to sign its own death warrant by introducing the necessary Bill’, \textit{Res Judicatae}, 3, 1947, p. 149.

\textsuperscript{54} \textit{Perth Gazette}, 27 May 1870.

\textsuperscript{55} \textit{Perth Gazette}, 8 April 1870.

\textsuperscript{56} Proceedings of the Legislative Council, 23 May 1870, \textit{Perth Gazette}, 27 May 1870. (Weld had successfully moved a suspension of Standing Orders on 23 May to expedite the second reading.) Subsequent quotations come from this report of the proceedings.
deal with certain procedural matters, including electoral boundaries, the number of Members to be elected and the mode of election.\(^\text{58}\) The Councillors, however, appeared largely satisfied with the Bill as drafted and concluded their clause-by-clause consideration by 27 May 1870 with minimal amendment.\(^\text{59}\) With a nice sense of occasion, Weld scheduled the third reading for WA’s Foundation Day. Accordingly, the Constitution Bill was passed and received the Royal Assent on 1 June 1870, immediately prior to Weld and the Councillors attending the opening of the Perth Town Hall.\(^\text{60}\)

‘At Last She Moves’

At the Town Hall ceremony Weld referred to the advent of representative government as ‘the commencement of a new era’, and concluded his address with the often-repeated phrase, ‘At last she [the colony] moves’.\(^\text{61}\) But what exactly did WA’s ‘new Constitution Act’ deliver to the colonists?\(^\text{62}\)

In compliance with the Australian Government Colonies Act, which specified that a representative council established under its provisions must consist of a ratio of one-third nominated Members to two-thirds elected, s. 1 of WA’s Legislative Council Ordinance directed that the Council was to comprise eighteen Members—twelve elected and six appointed by Her Majesty.\(^\text{63}\) The remainder of the Ordinance detailed how this was to be done—i.e. the document doubled as WA’s first Electoral Act, setting out procedures for ‘ensuring the orderly, effective, and impartial conduct of such elections’.\(^\text{64}\)

\(^\text{58}\) Quotations from Weld’s Governor’s Speech, Proceedings of the Legislative Council, 23 May 1870, *Inquirer*, 25 May 1870. See s. IX of the Australian Colonies Government Act for the electoral matters left to the Council’s discretion.

\(^\text{59}\) For a report of the committee stage of the Constitution Bill see the *Inquirer*, 1 June 1870.

\(^\text{60}\) Frederick Weld to Lord Granville, No. 77, 21 June 1870, SROWA, 390/1166/11. Curiously, however, some confusion, both contemporary and modern, has been expressed regarding Weld’s authority to give the Royal Assent to the Constitution Bill. In the 2001 High Court case, *Yougarla* v. *WA*, 207 CLR 344, 387. In fact, there was no requirement under the 1850 Act for the Constitution Bill to be laid before the Imperial Parliament or reserved for Her Majesty’s approval, as Bills seeking responsible government to be so reserved and laid before the Imperial Parliament were required by the Australian Colonies Government Act to be reserved and laid before the Imperial Parliament. And such approbation by the Imperial Parliament subsequently received from Her Majesty was simply the pro forma approbation or disapprobation every Western Australian Ordinance previously assented to by the Governor would receive. The editor of the *Perth Gazette* in 1865 summed up the situation quite clearly for similarly mistaken ‘Correspondents’: ‘There is no necessity that we “wildly beseech the Home Government for leave to elect our own rulers.” That leave the Imperial Parliament has by the Act 13 and 14 Vict. c. 59, already given us without, we believe, any reference home being necessary. We have to comply with certain conditions, and upon our proving we have done so, our wishes must be carried out’—*Perth Gazette*, 17 February 1865.

\(^\text{61}\) *Perth Gazette*, 3 June 1870.

\(^\text{62}\) Described thus by the new Secretary of State, Lord Kimberley, in his despatch No. 62 to Governor Weld, 30 September 1870, SROWA, 4753/1182/05.

\(^\text{63}\) See s. IX of 13 & 14 Vict., c. 59.

\(^\text{64}\) See the Preamble to the Ordinance: the words are taken from the 1850 Australian Colonies Government Act where they are used repeatedly.
Much was routine. Section 2 listed WA’s ten electoral districts (Perth, Fremantle, Geraldton, York, Toodyay, Swan, Greenough, Wellington, Vasse and Albany, with the boundaries delineated in Schedule A), and s. 3 directed that the populous Perth and Fremantle districts would return two Members apiece, while the remainder would return a single Member. De Garis has correctly underlined that this distribution was ‘decidedly unequal in terms of population’, but it nonetheless provided representation of WA’s scattered and often sparsely populated regional areas of settlement, while satisfying the claims of the two populous metropolitan electorates for a commensurately greater say.65 The election in each district would be conducted by a returning officer appointed by the Governor (s. 5).

Magistrates’ clerks were ‘required and empowered’ by s. 7 to compile alphabetical electoral lists of those entitled to vote within the district, with these registers to be completed by 10 April every year and made available for public viewing, without cost, at the local magistrate’s office a week later. Although s. 8 outlined that ‘Any person who shall desire to have his name inserted in any such Electoral List shall … apply personally or otherwise to the clerk’, it appears that some magistrates’ clerks compiled the electoral lists based on their local knowledge and without would-be electors applying for registration, which was not compulsory.66 Nonetheless, the Perth Gazette urged readers that it was one of their ‘political duties’ to check that their name had been entered on the register.67 Section 8 also prescribed the appeal process for those refused registration (i.e. lodging a written and signed ‘Notice of Claim’), and made provision for registered electors to ‘object to any other person as not entitled to have his name retained’ on the electoral list. Lists of these claims and objections were to be compiled and displayed at magistrates’ offices by the end of April with resolution taking place, after public notice, in the following month at the local Court of Petty Sessions constituted as an electoral revision court (ss. 8–9). Section 9 outlined that the revision court would also generally update and correct the electoral lists, with the names of deceased, incapacitated or disqualified electors being ‘expunged’. To discourage false testimony, s. 10 directed that all parties and witnesses were to be sworn and subject to the ‘pains and penalties … [of] wilful and corrupt perjury’, while s. 13 discouraged vexatious litigation by awarding costs against those initiating unsuccessful objections. Once ‘revised and settled’, the electoral lists were to be delivered to the district returning officers who were to copy the entries alphabetically into books (interchangeably referred to as the

65 De Garis, ‘Constitutional and Political Development’, p. 43.
66 Perth Gazette, 24 June 1870.
67 Perth Gazette, 24 June 1870. Perth Gazette readers were again reminded to register on 22 July 1870.
electoral list or roll of electors) with written or printed copies also having to be prepared for distribution on payment of a five shilling fee (ss. 11–12).

The Legislative Council Ordinance did not stipulate who was entitled to be on the electoral roll. Section 7 stated that ‘all the provisions … concerning the qualification and disqualification of Electors’ enumerated in the 1850 Australian Colonies Government Act shall apply (notwithstanding these qualifications having been extensively liberalised in the eastern colonies since 1850). In fact, determining the franchise qualifications for those male British subjects over the age of twenty-one who did qualify was a convoluted and confusing process, which is perhaps why the Perth Gazette paraphrased the qualifications in the lead-up to the first election:

the ownership for six months previously of a freehold estate of the value of £100, free of encumbrances; the occupation for six months previously of a dwelling-house of the clear annual value of £10; a leasehold, with three years to run, of the same value; or a depasturing license of the like value.68

Electors were also entitled to vote in every electorate in which they met these qualifications, i.e. plural voting was permitted, as it was in Britain and all the sister colonies except South Australia.

The principal disqualification called into operation from the 1850 Act was that:

no Man shall be entitled to vote who has been attainted or convicted of Treason, Felony, or other infamous Offence in any Part of Her Majesty’s Dominions, unless he have received a free Pardon or one conditional on not leaving the Colony for such Offence (s. IV).

This provision blocked WA’s conditional pardon holders, who were permitted to leave the colony, from voting. This was not the Act’s intention, so Weld flagged that this would be the first section of the Ordinance to be amended.69

Women, of course, were not enfranchised under the Ordinance (although two months earlier they had been permitted to attend their first public meeting in WA).70 As de Garis has observed, there was ‘no serious discussion’ at the time regarding women’s enfranchisement and he quotes a Geraldton newspaper, the Victorian Express, which commented that as women already had ‘more than they can do well in all that appropriately belongs to them, to

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69 See Weld’s comments at the third reading stage of the Legislative Council Bill as reported in the *Herald*, 4 June 1870.
70 For references to Western Australian women attending their first public meeting see the *Perth Gazette*, 24 April 1868, and the *Inquirer*, 29 April 1868.
add the civil and political duties of men, would be unjust and oppressive’. Nevertheless, Barlee, in a toast to the ‘Ladies’ at the Town Hall gala luncheon, at which the ladies, sequestered in the gallery, merely observed proceedings, made the usual sop:

He knew that in returning members to represent the various districts in the new Council, the ladies would in reality be those who chose the members. He would advise those who sought the suffrages of the people, if they deserved success, to get on the right side of the ladies, and as for voters, boldly as they might come forward to give what they might desire should be supposed to be their own votes, that was all nonsense, they would simply represent the votes of the particular ladies under whose good influence they were; he implored the ladies to send forward the best men in the country …

Naturally, women could not be candidates for election, but nor could many men. The qualification for Members, called into operation from s. VIII of the 1842 Australian Constitutions Act (via s. XII of the Australian Colonies Government Act) debarred all but the wealthy—with only British subjects over twenty-one years of age and in possession of freehold property worth £2,000 ‘above all Charges and Incumbrances’, or of the annual value of £100, being entitled to stand. So even if William Brockman had expansively declared in the Legislative Council, during the debates on representative government, that he would not be ‘too proud’ to sit with Members who wore ‘the butcher’s apron or the baker’s cap’, it would be unlikely that he would have that novel experience until the new Council liberalised this thirty-year-old provision too. The reasons why a Member would forfeit his seat included the standard blacklist from Australian colonial constitutions: failure to attend two consecutive parliamentary sessions without permission, swearing allegiance to a foreign prince or power, treason, insanity, insolvency or bankruptcy, or being ‘convicted of Felony or any infamous Crime’ (s. XVI of the 1842 Act). The term of office for all Members, elected or nominated, was also derived from the 1842 Act and was five years unless the Council was dissolved earlier—which placed the frequency of WA’s elections mid-way between the triennial elections of Victoria and South Australia and the septennial ones in Britain.

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72 Barlee’s Town Hall speech appears in the Perth Gazette, 3 June 1870.
73 Section XII of the AustralianColonies Government Act directed that, with a couple of nominated exceptions, ‘all the Provisions’ in the 1842 Australian Constitutions Act should also apply to the other colonies once they achieved representative government ‘as if all such Provisions were here repeated, the Name of such respective Colony being substituted for the Name of the Colony of New South Wales’. The full title of the Australian Constitutions Act is An Act for the Government of New South Wales and Van Diemen’s Land (5 & 6 Vict., c. 76); the Act was slightly modified two years later by An Act to explain and amend the Act for the Government of New South Wales and Van Diemen’s Land (7 & 8 Vict., c. 74).
75 See s. XXI of the Act.
Procedure for the conduct of elections, as set out in the Ordinance, was a blend of contemporary electoral practice in Britain and the sister colonies. For an election, the district returning officer would receive a writ from the Governor (organised through the Colonial Secretary’s Office) directing him to arrange and publicise a poll to take place from 10 am to 6 pm on a single, nominated day (ss. 14, 19, 20 and 21). (Most of the sister colonies’ Electoral Acts, upon their accession to elective representation, followed English practice and closed polling by 4 pm, which prevented many working-class electors from attending a polling place. That WA opted for a worker-friendly 6.00 pm shutdown from the commencement of representative government should be acknowledged.) The returning officer was to determine if more than one polling place was required in the electoral district and, if so, provide each with a copy of the electoral roll and a deputy returning officer and other clerical staff (ss. 16–17)—although, owing to expense, there was only one polling place per electorate in WA until the 1880 general election.

On election day the returning officer would open nominations and if no more candidates nominated than the number of Members to be returned, he would declare him/them duly elected (s. 20). If there were more candidates than vacancies, the returning officer would call for a show of hands separately for each candidate (s. 20). If this was inconclusive, and a candidate or not fewer than six electors on his behalf requested a poll, then voting papers containing the elector’s signature and property details and the full name of his preferred candidate(s) were to be handed in immediately at this and any other polling places (ss. 20–21). The voting paper was any sheet of paper with the requisite details appearing on it, because with nominations taking place on polling day, there was no opportunity to pre-print voting papers with candidates’ names. In the Perth and Fremantle electorates, where two Members were to be returned, electors could fill in two candidates’ names on their voting paper or plump for one.

Although the use of voting papers was an advance on electors having to indicate their vote out aloud to polling clerks in Britain, many colonists considered that with clerks and scrutineers clustered around the hustings, their signed votes would not necessarily remain secret. The stipulation in s. 20 that British-style open voting, rather than the Australian secret ballot, was to be used in WA may seem curious given the successful use of the ballot

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76 Section 31 of the South Australian Electoral Act 1858 (22 Vict., No. 12) permitted voting from 9.00 am to 5.00 pm. NSW extended polling to 6 pm with the Parliamentary Electorates and Elections Act 1893 (56 Vict., No. 38). It was not until 1884 that moral panic about the lower orders misbehaving ‘after dark’ at elections was sufficiently allayed to permit extension of polling until 8 pm in England—see Kinzer, The Ballot Question, p. 169, for a discussion of ‘after dark’ voting. The UK Act which extended hours of polling was the Elections (Hours of Poll) Act 1885 (48 & 49 Vict., c. 10). South Australia was the first Australian jurisdiction to legislate that ‘No day other than Saturday shall be fixed as polling-day’—via s. 87 of the Electoral Code 1896 (59 & 60 Vict., No. 667). WA would not hold its first Saturday poll until 1917.
at the 1867 selection and 1869 Fremantle by-selection; its recommendation by the electoral report committee appointed by Bruce; and the fact that all the sister colonies used, and extolled, it. Brent has argued that the choice confirms a pronounced ‘tendency’ for WA ‘to look for inspiration to the mother country, rather than other antipodean colonies’. The decision was not made, however, by the largely pro-ballot colonists, but by Weld who, as his most recent biographer has pointed out, had expressed opposition to the secret ballot when a Member of the New Zealand Parliament. And, as Kinzner has demonstrated, Weld’s viewpoint was commonplace at the time—particularly in England where it was widely held, to quote Lord Palmerston, that ‘publicity in the exercise of all great functions is an essential principle of the British constitution’. 79

If during polling the returning officer thought fit, or was requested to do so by any two electors entitled to vote in that district, he was authorised by s. 21 to ask an elector any or all of four prescribed questions: Are you the person who has signed this voting paper? Are you the person whose name appears on the electoral roll for XYZ property? Have you voted previously in this election for this district? Do you still hold the qualification for which you were registered? Those who gave a wrong answer were excluded from voting (s. 25). In addition, if impersonation was suspected—which was a misdemeanour and another ground for refusing the vote—the elector could be required to make an oath or affirmation to the effect that he was the person on the electoral roll (ss. 22, 25 and 43). If would-be electors refused to answer the statutory questions or take the oath/affirmation, they could not vote; if it were proved subsequently that they had lied, they would ‘suffer the like penalties as persons convicted of wilful and corrupt perjury’ (ss. 23–24). Section 21 empowered electors to authorise, in writing, a proxy or agent to deliver a voting paper on their behalf—a convenient provision in WA where the polling place could be a couple of days’ ride away, or where an elector owned property in other, possibly remote, electorates. In this situation the elector was compelled to answer the four prescribed questions in writing and make the

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78 Graham, Frederick Weld, p. 66. Over time Weld acknowledged the benefits of the secret ballot and he included it in his 1874 Constitution Bill. See his despatch to the Secretary of State, No. 95, 11 August 1874: ‘I have always seen strong theoretical objections to the ballot, but have at the same time ever held and publicly said that practically it might work well and disappoint the anticipations of both its advocates, and its opponents, that belief seems to have been justified by results in England, and secret voting has certainly given satisfaction in the Colonies. As the Ballot is now an established institution both in England and Australia I think it ought to be established here also’—SROWA, 390/1166/13.
79 Lord Palmerston quoted in Kinzer, The Ballot Question, p. 69. While opposition to the secret ballot in Britain was more virulent on the conservative side of politics—the diminution of aristocratic influence at elections was unlikely to be a selling point for the Tories—a number of prominent liberals such as John Stuart Mill and Lord Russell also very publicly repudiated secret voting. Similarly, a number of leading Chartists had misgivings about secret voting as a principle, while even those Chartists in favour of the ballot were opposed to introducing it without manhood suffrage (the ballot was actually dropped from the 1848 Chartist petition)—see Kinzer, The Ballot Question, pp. 33, 47–50.
oath/affirmation in the presence of a JP, who also had to witness and countersign the elector’s signature on the voting paper (ss. 21–22).

Although not specified in the Ordinance, the voting system was the simple plurality first-past-the-post system used in Britain and the sister colonies, although it is interesting to note that a correspondent to the Inquirer in 1870 recommended adoption of the new system of proportional representation proposed in Britain by Thomas Hare and being promoted by John Stuart Mill.80 If the vote was tied, the returning officer, otherwise disqualified from voting in any district poll for which he was the returning officer, was to decide the poll by casting vote (s. 28). The election concluded, the returning officer was instructed by ss. 29–30 to endorse the writ with the name(s) of the successful candidate(s) before returning it to the Governor and to send the sealed voting papers to Perth where they were to be retained by the Clerk of the Legislative Council for five years in case there were disputed returns.81

If there were concerns that an election was invalid, an election petition could be submitted to the Legislative Council for referral to and determination by the Chief Justice who was empowered to ascertain the ‘sufficiency’ of a returned Member’s qualifications; reject or admit votes; unseat a returned Member and declare an unsuccessful candidate duly elected instead; or rule an election ‘absolutely void’ (ss. 31–37). It was only two years previously, with the passing of the Parliamentary Elections Act 1868, that England reverted to having the courts, rather than partisan election committees, try election petitions, so WA, under the guidance of its liberal-minded Governor, had demonstrated a prompt take-up of English electoral reform in handing arbitration of disputed elections to the Chief Justice—especially considering all the sister colonies exercised parliamentary jurisdiction over petitions and only slowly relinquished this control—with South Australia surrendering exclusive jurisdiction to a Court of Disputed Returns as late as 1969.82

To limit vexatious petitions, s. 36 directed that petitions could only be submitted by a candidate at the disputed election, by one-tenth of the electors on the roll for that district, or by a Legislative Councillor, while s. 35 provided that costs were to be awarded against

80 Inquirer, 10 August 1870. See Chapter VII of Considerations on Representative Government for Mill’s discussion of the ‘transcendent advantages’ of Hare’s propositions—quotation from p. 256.
81 Although not stated in the Constitution, Members were barred from taking their seat in the Legislative Council until the Governor had physically received the writ.
82 See Kristen Walker, ‘Disputed Returns and Parliamentary Qualifications: Is the High Court’s Jurisdiction Constitutional?’, UNSW Law Journal, vol. 20, no. 2, 1997, pp. 263–264. The 1868 UK Act is 31 & 32 Vict., c. 125. Some of the colonies/states had hybrid tribunals before handing over jurisdiction to the courts. South Australia, for example, in s. 35 of its Electoral Act 1855–6 (19 Vict., No. 10) directed that the South Australian election petition ‘Court’ comprise eight MPs and that the ‘junior or the sole acting Judge of the Supreme Court shall be the President of such Court’. (It is interesting to note that WA was similarly prompt in adopting the key legal reforms of the English Judicature Acts of 1873 and 1875—see Catriona Cook et al., Laying Down the Law, 9th edn, LexisNexis Butterworths, Chatswood, NSW, 2015, p. 31.)
unsuccessful petitioners. The principal grounds for voiding an election—bribery and corruption—were dealt with comprehensively in s. 38 which proscribed a range of activities capable of influencing the vote of electors: payments, gifts, promises, inducements, hiring and treating and, on the negative side, threats or intimidation. Those convicted of bribery or corruption could be fined up to £200 or sentenced to a maximum of six months in gaol; and, in the case of a candidate, whether guilty in person or through the actions of an agent, he would also lose his seat and be disqualified from sitting in the Legislative Council until the next general election (ss. 38–41). Meanwhile, electors who received or solicited largesse could face a £50 fine (s. 42). Of these fairly punitive provisions the observation of the *Perth Gazette* is worth noting: ‘Heavy penalties are provided against bribery, but the ballot would be a better preventive by making it useless’.83

**At Last She Votes**

Although the Legislative Council Ordinance was only assented to on 1 June 1870, s. 7 directed that the first electoral lists were to be ready by 1 August of that year. This was because Weld intended to ‘put the new Electoral machinery into operation with the least possible delay’ and issued the writs for the colony’s ‘first bona fide election’ on 18 July.84 In keeping with the English tradition of entrusting the conduct of county elections to the sheriff, WA’s gazetted returning officers consisted of the colony’s sheriff, for the Perth electoral district, and the colony’s quasi-sheriffs, the resident magistrates, for the other electorates.85 Again, like the original English county elections, WA’s regional elections were to take place in the local magistrate’s court house, although in Perth and Fremantle larger venues were appointed (Perth Town Hall and the Odd Fellows’ Hall respectively).86 WA’s elections, like those in Britain and most of the sister colonies, were also staggered, with the first election set down for 11 October at Geraldton and the last in the Wellington district on 9 November.87 In addition, as in Britain and other British colonies, an unsuccessful candidate at an earlier election could try again at a subsequent one—something Weld had done in New Zealand in 1861.88 As de Garis has commented, staggered elections also made it easier for those with scattered property holdings to vote in

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83 *Perth Gazette*, 10 June 1870.
84 Frederick Weld to Lord Granville, No. 57, 23 April 1870, SROWA, 390/1166/11; second quotation from the *Perth Gazette*, 29 July 1870.
85 The notice appointing returning officers and polling places first appeared in the *Government Gazette* on 28 June 1870. All appointed returning officers were listed in the 1870 Blue Book as holding the office of sheriff, resident magistrate or acting resident magistrate.
86 *Government Gazette*, 28 June 1870.
87 Election dates for the period of representative government in WA are taken from Black and de Garis, *Legislative Council of Western Australia: Elections and Electoral Law 1867–1890*.
88 Graham, *Frederick Weld*, p. 71. William Gladstone had also done this in the 1868 British general election when he was returned for Greenwich after his defeat in South-West Lancashire. It was widely expected that Henry Gray, the unsuccessful candidate for Geraldton, would try again at the adjacent Greenough district—*Perth Gazette*, 21 and 28 October 1870.
a number of elections. Unlike British elections, however, at which official election costs were borne equally by candidates until 1918, s. 44 of the Legislative Council Ordinance directed that ‘All necessary and reasonable expenses’ incurred during the ‘first’ election, if approved by the Governor, were to be paid from public funds—a provision existing in all the sister colonies. Notwithstanding the ‘first’, WA’s coffers underwrote official costs for subsequent elections, which, as McQueen has approvingly noted, furthered democracy by ‘subverting’ money politics.

With the issue of the writs, the old Council and the colony’s original Constitution ceased to exist, and public notices by returning officers, spiels by candidates and election committees, and reminders to ‘REGISTER, REGISTER, REGISTER’ filled the press. With the exception of Albany and Greenough, all seats were contested, and it appears from newspaper reports that the real elections were not markedly dissimilar from the 1867 selections with all the paraphernalia of ‘home electioneering’—rosettes, bunting, placards, banners, shouldering or chairing of successful candidates etc.—again being resorted to. The 1870 election campaign did, however, see one innovation: publication of requisitions (formal written requests) inviting people to nominate. Over the years these requisitions, accompanied by long lists of signatures, became increasingly elaborate and complimentary to the candidates and, while a candidate did not require a requisition to stand, opponents would make much of the absence of a requisition, or one with few signatories.

As with British elections, the unenfranchised also participated in the 1870 elections, with ‘the ladies, Heaven bless them!’ and the ‘noisy representatives of the “great unwashed”’ reportedly parading in their favoured candidates’ colours. At the Fremantle election, a contemporary diarist recorded that Aboriginal people also became involved: ‘People both

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89 De Garis, ‘Constitutional and Political Development’, p. 46.
90 An excellent overview of the funding of election costs in the Australian colonies was provided in ‘Papers Relative to the Operation of the System of the Ballot in the Colonies’ in BPP, 1871–73, Colonies Australia, vol. 26, pp. 9–28. Indeed, these papers—solicited by Secretary of State, Lord Kimberley—provide a highly useful summary of general electoral law and practice in the Australian colonies in 1870. The UK Representation of the People Act 1918 (8 Geo. 5, c. 64) introduced a £150 deposit for candidates in place of the requirement that they defray official election expenses.
91 McQueen, Temper Democratic, p. 3.
92 For the expiry of 10 Geo. IV, c. 22 see s. X of 13 & 14 Vict., c. 59. For examples of notices and advertisements see the Perth Gazette, 22 and 29 July 1870.
93 Quotation from the Herald, 22 October 1870. All the local papers provided comprehensive coverage of the elections.
94 See, for example, the letter to the editor from ‘AN ELECTOR’ in the West Australian, 31 January 1889, which sneeringly contrasted Captain Fawcett ‘without any requisition’ being challenged by William Paterson who, ‘in response to over 70 electors, came forward as a candidate’, while, during the same general election, a correspondent from Northam criticised Samuel Hamersley for challenging ‘entirely on his own account, having, so far as I can learn, never been asked by a single elector to come forward as the representative of this important agricultural centre’—West Australian, 1 February 1889.
95 For the ‘ladies’ reference, see the Herald, 22 October 1870; for the ‘great unwashed’, see the Inquirer, 2 November 1870.
black and white were gathered in large groups around the busy public houses discussing with all the gusto of fanatical ranters the coming events of the day.96 Indeed, the editor of the Inquirer urged all settlers to ‘share in the general gathering’ and ‘respect the occasion’ as a sort of civic duty.97 Unlike British elections, however, the local ones:

were carried on with the greatest decorum and order … [and] will be memorable for the absence of drunkenness and, rioting, too often the unfortunate sequence of “electioneering” in the mother country, as well as in our more favored and prosperous Australian settlements … —as the Perth Gazette smugly commented.98

A striking feature of the 1870 elections, in contrast to the 1867 selections, was the uniformity of the official conduct of the district elections. The Perth Gazette commented unfavourably on the only reported divergences from this procedural uniformity and rebuked Perth’s returning officer, Alfred Hillman, for two infractions. First, Hillman was criticised for closing polling for a one-hour lunch break, which, the editor correctly insisted, was contrary to the Ordinance which only authorised an adjournment ‘in a case of riot’.99 More seriously, Hillman was censured for having ‘garnished’ the Town Hall with police officers who, while they made themselves useful distributing voting papers, were also ‘ostentatiously and officiously obtruded upon the sight of the people’ to ensure order—with the Sub-Inspector of Police actually silencing an elector for cheering a candidate during nominations. This policing of electors was condemned by the editor who underlined that ‘this was a public meeting for an election, at which the people have every right to give free expression to their sentiments’.100

The principal difference between the 1867 and 1870 elections, however, was open voting and it soon became evident that the earlier practice was preferable. Under the new regime, the returning officer called for a show of hands and declared the results, but this was a signally inaccurate method of gauging votes.101 At the Perth election the returning officer announced, after a show of hands, that candidates Edmund Birch and Terrence Farrelly were elected but, after a poll was demanded, Julian Carr and Luke Leake were returned.
with huge margins. A similar reversal took place at the Fremantle election. Furthermore, open voting’s show of hands required all district electors to be present simultaneously and could prove a boisterous proceeding, especially as it followed the often rowdy public nomination of candidates. Thus, while Dilke commented admiringly of polls in the sister colonies at this time, at which electors proceeded in an orderly fashion to the ballot box under secret voting and where there were no running tallies of results to keep people milling around the polling place, that ‘elections pass off in perfect quiet’, the same could not be said of the West.

Additionally, if the show of hands was inconclusive and a poll demanded, as it was in all the contested elections in 1870, then the elector marked a ballot paper instead of recording an oral vote before officials, as occurred in England. But as the colonists realised, this ‘half-and-half system’ did not guarantee an elector privacy ‘unless he chose to take away his voting paper and fill it up elsewhere’, because electors completed their ballot in front of the returning officer and scrutineers. The *Perth Gazette*, in particular, expressed concerns that, in WA’s numerically small rural constituencies, there could be considerable opportunity for intimidation and coercion of electors by their creditors. Supporters of secret ballot, however, drew heart from the fact that only months previously Westminster had considered a Bill to introduce the ballot and abolish public nominations—and thereby ensure ‘perfect purity of election’ and avert ‘the scenes of profligacy and riot invariably attending open voting’. (Both reforms were achieved in Britain in 1872 with the passing of the Ballot Act.)

Apart from reservations about open voting, WA’s first official elections had been successful. Soon, however, WA would chafe, as had the sister colonies, against what the *Herald* derided as ‘our present hybrid abominable form of “Representative Government” with a permanent and irresponsible Executive’. But, unlike the sister colonies, WA’s path to self-government would be ‘difficult and tortuous’ as the following chapters will show.

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102 *Perth Gazette*, 21 October 1870.
103 *Herald*, 22 October 1870.
104 Dilke, *Greater Britain*, p. 137. The following, for example, is a description of the 1857 election in South Australia: ‘Polling day passed off with exemplary quietness and good order. There was no progressive promulgation of the state of the poll. There was nothing to attract a crowd, no incentive to inflame partisanship’—see Combe, *Responsible Government in South Australia*, p. 76.
105 First quotation from the *Perth Gazette*, 1 July 1870; second from the *Perth Gazette*, 21 October 1870.
106 *Perth Gazette*, 10 June 1870; a fuller discussion of the editor’s concerns appeared on 1 and 15 July 1870.
107 See the discussion of the British Bill in the *Perth Gazette*, 15 July 1870.
108 *Herald*, 19 April 1873.
109 David Black, “‘At Last She Moves’—The Advent of Responsible Government in Western Australia, 1890”, in *The House on the Hill*, p. 16.
4

Dissatisfaction

1870–1875

John Quick and Robert Garran’s verdict of colonial Australian part-elected representative government was that although only containing ‘the feeble germs of Representative Government … it was nevertheless drawn on lines capable of development and expansion with the growing wants and aspirations’ of the community.¹ This chapter will address the pronounced dissatisfaction of Western Australians with their new political system, in particular, its irresponsible and irremovable executive, and analyse what Boyce termed the ‘tide of agitation’ to secure self-government.² It will also examine Weld’s attempts, in his draft constitution for self-government, to adopt major liberal electoral reforms while simultaneously avoiding the mistakes and excesses of aggressive democracy as manifested in the sister colonies.

The ‘landowners’ and merchants’ club’

WA’s first election under representative government returned what has been described as ‘a certified list of the colony’s leading gentry’ to take seats in what ‘looked very much like a landowners’ and merchants’ club’—although, notwithstanding the large number of rural electorates, a preponderance of merchants was returned.³ Those elected were: John Bussell, Julian Carr, James Drummond, Thomas Gull, Luke Leake, Major Logue, John McKail, John Monger, William Moore, Edward Newman, George Shenton and James Lee Steere. Weld’s official nominees consisted of the Colonial Secretary, Frederick Barlee; the Attorney General, Robert Walcott; and the Surveyor General, Malcolm Fraser. The non-official nominees were former selected Member, Samuel Phillips (who did not attempt election after reneging on his selection pledge to support representative government); pastoralist and former resident magistrate, Maitland Brown; and businessman, William Marmion. Of Marmion’s appointment, Weld reported to Kimberley that:

³ Crowley, Australia’s Western Third, p. 69. By the time the second last election took place (in Vasse), it was a much-debated issue that the majority of candidates elected thus far belonged to the mercantile sector with the Inquirer’s report of the Vasse election canvassing the ‘notion of the commercial interest becoming too strong in the New Council’—Inquirer, 16 November 1870. According to de Garis, nine of the twelve elected Councillors belonged to the ‘mercantile community’, ‘Constitutional and Political Development’, p. 47.
though not elected he received a large measure of support at the present election for the Fremantle District, which is slightly underrepresented in proportion to its importance and population, he may also in a sense be considered as representing a large minority. [Weld’s underlining.]

As de Garis has noted, Weld’s appointment of ‘squatters’ Phillips and Brown similarly ‘redressed the balance’ regarding the underrepresented landowners. Because elected Members outnumbered nominees, and the Governor would no longer sit in the legislature, some argued that the Governor was thereby rendered a ‘comparatively powerless’ and ‘ornamental’ figurehead. But, in fact, it was the Governor’s prerogative to summon, prorogue and dissolve the Council; only he could recommend Bills appropriating revenue; and he could veto legislation. Additionally, the Governor’s ‘virtually absolute’ power to nominate the non-official Members enabled appointment of Councillors supportive of Government policies. To quote Kimberly’s assessment of the new constitutional order, ‘the Crown’s prerogative was stronger than the People’s rights’. However, as Crowley has countered, given that elected Members constituted a significant majority in the Chamber, ‘their views had … to be closely considered by the Governor’.

Furthermore, Members held the power of the purse in that they could refuse to pass supply. The new representative legislature, which first met on 5 December 1870 in a purpose-built legislative hall adjacent to the Town Hall, was authorised to pass laws for the ‘Peace, Welfare, and good Government’ of WA—‘Provided always, that no such Law shall be repugnant to the Law of England, or interfere in any Manner with the Sale or other Appropriation of the Lands belonging to the Crown … or with the Revenue thence arising’ and did not impose differential customs duties. As previously, there were additional conditions and restrictions on the Council’s legislative remit specified in the Governor’s

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4 Frederick Weld to Lord Kimberley, No. 162, 7 December 1870, SROWA, 390/1166/11.
6 First quotation from the Perth Gazette, 9 December 1870; second quotation from the Perth Gazette, 13 January 1871. With the Governor out of the Chamber, Colonial Secretary Frederick Barlee was aptly depicted by the Perth Gazette on 12 August 1870 as ‘the representative of the government in the Legislature’ as well as the natural ‘guide’ and ‘leader’ of proceedings. In recognition of the fact that the Colonial Secretary was now almost a ‘de facto premier’, the position was also given official precedence in the Executive Council after the Governor—quotation from de Garis, ‘Self-Government and the Evolution of Party Politics’, p. 329. For the Colonial Secretary’s promotion within the Executive Council see Executive Council Minutes, 13 May 1871, SROWA, 1058/2/6/7.
7 The Governor’s dominance of Executive Council was untouched. Heseltine has provided a useful summary of the Governor’s powers with respect to the Executive Council in ‘The Movements for Self-Government’, pp. 6 and 9–10; quotation p. 7.
8 Kimberly, History of West Australia, p. 224. According to Boyce, during the period of representative government ‘the governor retained to the last the full vesture of prime ministerial power’, ‘The Role of the Governor’, p. 248.
9 Crowley, Australia’s Western Third, p. 54.
10 For a discussion of the new Council premises see Pendal and Black, House to House, pp. 32–41. See ss. XIV, XXVII, and XXXI, 13 & 14 Vict., c. 59. The Council under these sections also could not levy duties on supplies imported for Her Majesty’s Troops, or levy duties inconsistent with any treaties entered into by the British Government.
Instructions and, as hitherto, legislation had to be forwarded to the Secretary of State for Her Majesty’s confirmation or disallowance.\(^\text{11}\) Additionally, stipulated laws—in particular, those altering electoral boundaries, creating new electorates, or increasing the number of Members—had to be reserved for the signification of Her Majesty’s pleasure, while laws amending the manner of electing Members, or the qualifications of electors or Members, or altering the Constitution to move towards self-government, had to be reserved and tabled in the Imperial Parliament.\(^\text{12}\)

Of particular interest to the new Council was the authority given by s. XXXII of the Australian Colonies Government Act to alter its own electoral provisions—and the first Bill introduced was, as foreshadowed by Weld, the amending Representation of the People Bill. The Bill proposed enfranchising (otherwise qualified) conditional pardon holders who had been unintentionally excluded by the wording of the 1850 Act, and it also proposed enfranchising pastoral licence holders and leaseholders whose leases had less than the previously prescribed three years to run. Not anticipated, however, was that the Bill would propose abolishing property qualifications for MLCs—‘following the precedent set them in England and in all the Australian colonies’ as Barlee informed the Chamber.\(^\text{13}\) (Tasmania, in fact, retained property qualifications for Members until 1901.) The elected Members, however, mindful of the ‘rabble of political desperadoes’ (Higinbotham’s description) who had entered the sister colonies’ legislatures after this liberal reform was enacted, had reservations about abolishing property qualifications altogether and Lee Steere—having assumed the status of leader of the elected Members—successfully moved the Bill’s referral to a select committee composed entirely of elected Members.\(^\text{14}\)

Given the belief that without a property qualification ‘the House would be soon full of “stump orators”’, the committee recommended retaining, but halving, the candidate property qualification.\(^\text{15}\) In this cautious and incremental reform they were significantly liberalising the qualification without exposing the legislature to the threat of ‘mixture and debasement’ experienced by the sister colonies after they jettisoned Member qualifications without having first educated their ‘future masters’ up to the task, to cite Lowe’s famous

\(^{11}\)See s. XXXII, 5 & 6 Vict., c. 76.

\(^{12}\)See s. XXXI of 5 & 6 Vict., c. 76 (as amended by s. VII of 7 & 8 Vict., c. 74) for laws that had to be reserved and s. XXXII of 13 & 14 Vict., c. 59 for those that had to be tabled at Westminster.

Although confronting to read today, the Members’ reservations were typical of the times. Anthony Arblaster has underlined that ‘Fear of the “Mob”, of the propertyless’ was a ‘constant theme within liberalism’ in the nineteenth century (let alone conservatism), while Mill commented, in Considerations on Representative Government, that both liberals and conservatives were united in a desire to keep the propertyless out of Parliament: ‘They care comparatively little who votes, as long as they feel assured that none but persons of their own class can be voted for’.

The committee further proposed that those convicted of treason or felony be banned from taking a seat in the Council; that officers holding Government appointments be barred from the Council as elected Members (although, as nominee Member Maitland Brown sourly observed during the debate on the Bill, Government employees were probably unelectable anyway ‘as they were looked upon by the public at large as servile sycophants’); that £10 householders could vote in their electoral district if they changed address as long as they had resided somewhere else within the same electorate for six months prior to the election writ being issued; and that the franchise be extended to lodgers who for six months prior to an election had paid board and lodging at the rate of £40 per annum.

Barlee robustly defended the original Bill in a speech described as a ‘counterblast’, but a majority of the House supported the committee’s recommendations (except the board and lodging franchise which was regarded as too complex to implement) and the significantly altered Bill passed. Weld, in a Message to the Council, criticised the amendments and urged the Members to reconsider. The elected Members, however, remained unrepentant: the Bill stood as passed and was reserved for Her Majesty’s approval.

The acrimonious tussle over the Representation of the People Bill was not an isolated one. As with the sister colonies, WA’s hybrid Council soon became ‘less a legislative body than

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19 Newman, WAPD, 11 January 1871, p. 104. The difficulties involved in establishing a lodger franchise almost saw lodgers miss out again in 1889 when the Legislative Council debated a motion to enfranchise lodgers under responsible government—see WAPD, 26 March 1889, pp. 142–146.

20 Message from the Governor—No. 16, WAPD, 16 January 1871, pp. 116–117.
Indeed, as early as August 1872 a conflict between the two groups over protective tariffs culminated in free-trader Weld withholding his assent to a Bill which would have levied a duty on imported flour. In defending his exercise of the gubernatorial veto, Weld outlined to the Council, immediately prior to proroguing it, that in his opinion: ‘An Act so pregnant in results affecting the future of the colony … cannot pass into law without a previous appeal to the country’ [i.e. an election]. Weld continued that he felt additionally justified in enabling the colonists to determine the issue via election, because he had received and was proclaiming in the Council from that day (17 August 1871), Her Majesty’s assent to the Council’s An Act to Amend the Representation of the People, and to Alter the Property Qualification of Members of the Legislative Council, so the colony now had an expanded electorate which, following the usual constitutional course, had to be consulted.

The writs for WA’s first early general election were issued on 2 March 1872 with the elections scheduled over a four-day period commencing on 25 June. With the exception of Bussell and Moore, all the elected Members nominated. Half the seats were uncontested, however, and there was, as the Inquirer observed, a ‘paucity of candidates’—with only three challengers for Fremantle and two for the remaining electorates. Indeed, there were significantly fewer candidates than the preceding election, which, as McKenzie has noted, was not the anticipated consequence of halving the property qualification for Members. Interestingly, while protection was the dominant election issue, candidates were also interrogated regarding their views as to whether WA should move towards self-government if the Executive continued to thwart the ‘voice of the people as expressed through their representatives’.

21 First quotation, McMinn, A Constitutional History of Australia, p. 37; Crowley, Australia’s Western Third, p. 70. In 1888 the Colonial Secretary, Sir Malcolm Fraser, reminisced that this period in the Council’s history was ‘conducted I may almost say on party principles, and we had a great many fights here on various questions’, WAPD, 12 October 1888, p. 8. However, the differences of opinion in Council did not usually result in Government Bills being defeated, as Boyce noted in ‘The Role of the Governor’, pp. 249–250. David Clune has commented of the blended NSW Legislative Council at its formation in 1843: ‘The atmosphere was adversarial from the beginning. Almost everything the Government tried to do was met with a persistent, relentless hostility’, ‘1843: The Year it All Began’, Australasian Parliamentary Review, vol. 26(1), p. 31.

22 WAPD, 17 August 1871, p. 105.

23 WAPD, 17 August 1871, p. 105. Weld was unable to call the election immediately because, as he explained to the Members: ‘Under the law, fresh electoral rolls cannot be made up before April, and revised before June, 1872’; accordingly he could only ‘prorogue this Council, with a view to a dissolution’, WAPD, 17 August 1871, p. 105.

24 Because Weld did not dissolve the Council until 10 March 1872, there was some confusion as to when the writs were actually issued. The editor of the Perth Gazette, for example, incorrectly informed his readers that the writs were issued on the same day as the dissolution—see Perth Gazette, 15 March 1872.


26 Perth Gazette, 12 April 1872.
Notwithstanding the Inquirer’s prediction that the elections would be ‘decidedly dull’, Vasse and Greenough experienced torrid polls. In Vasse a bitter contest developed between candidates Thomas Carey and David Eedle, who had a fraught personal relationship. In the early stages of the campaign both addressed electors at meetings at which Carey had to be restrained from bringing up ‘matters of personal disputes and strife’ in retaliation against Eedle’s earlier ‘References of the most ungenerous and unmanly kind’. Their supporters then battled it out in the local revision court, challenging the claims of electors whom they believed would vote for the other side. The Inquirer reported the revision proceedings and censured the overt bias of the revising magistrates:

Eedle’s supporters have raised objections to 25 names on the list of voters, passed, it must be remembered, by the Clerk of Courts. Carey’s supporters object to 23. As proceedings went on, it at once became apparent that the majority of the magistrates were determined to and did, in the most unblushing manner, throw out every voter opposed to their favourite ... The spirit shown was positively disgraceful.

The revision court concluded, Joseph Harris, the local resident magistrate and returning officer, accompanied Carey as he toured the district collecting proxy votes. A Memorial was immediately sent to Weld requesting that someone else be appointed returning officer for the upcoming election. While there was not enough time to replace Harris, he was officially warned to observe strict impartiality. Election day in Vasse was predictably tumultuous: at nominations, Eedle’s proposer launched a sulphurous attack on Carey and his supporters and, despite warnings from the returning officer, he continued until the returning officer adjourned proceedings—which made this the first legal adjournment of an election in WA.

In Greenough, the former Member was the well-regarded George Shenton, who had been elected unopposed in 1870 and whose re-election in 1872 was seen as assured. Shenton was absent from WA for the entire election period and although his brother, Edward Shenton,

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28 Inquirer, 13 March 1872.
29 I am indebted to Margaret Allnutt’s article, ‘Elections in the South West: 1867, 1870, 1872; David Eedle and Others’, Early Days, vol. VI, pt. VII, 1968, pp. 43–56, for information regarding the Vasse election, although I have also drawn upon campaign election reports from the Inquirer.
30 First quotation from a letter to the Herald quoted in Allnutt, ‘Elections in the South West’, p. 50; second quotation from the Inquirer, 8 May 1872.
33 Allnutt, ‘Elections in the South West’, p. 52. A whole paper could be written about Joseph Harris: as well as complaints regarding his partiality as a returning officer, he was almost sacked in 1874 for condoning smuggling as the sub-collector of customs in his district and for ‘general incompetence to discharge for the public benefit, the functions of R.M ...’—see Executive Council Minutes, 1 April 1874, SROWA, 1058/2/6/8. Harris was retained, but only after a pledge was extracted that he would resign when the Governor so demanded. This occurred in 1880 when Harris’s age and infirmities, and an embezzling clerk in his office, forced the issue. See Executive Council Minutes: 1 April 1874, 21 April 1874, 31 July 1874, 24 February 1880, 22 March 1880 and 1 September 1880, SROWA, 1058/2/6/8.
34 Inquirer, 3 July 1872.
and colleague, Charles Crowther, acted as electoral agents, and a group of supporters formed an election committee (which reportedly did not meet), the *Perth Gazette* later congratulated Shenton for being returned with ‘no canvassing on his part’. Indeed, all Shenton’s election supporters seemed to take upon themselves was to post supportive notices in the press and persuade Crowther to finance a ball and supper at the Greenough Hotel on election night. Unfortunately for Shenton, Henry Gray, a long-standing campaigner for constitutional reform, perceived the ball to be an inducement to vote for Shenton and, hence, bribery under the Legislative Council Ordinance. Literally as nominations were commencing, Gray arrived at the polling place claiming that, after considerable pressure, he had finally consented to offer himself as a candidate. In reality, he was nominating because as a candidate he would be entitled under s. 36 of the Legislative Council Ordinance to lodge an election petition to unseat Shenton.

When nominations opened Shenton was proposed and seconded *in absentia*. When it came to Gray’s turn, however, his seconder, Logue, launched into a denunciation:

> He … was sorry to say that Mr. Gray’s actions were like those of the runaway horse and the mad bull, and the consequence was that any matter he had much to do with invariably came to grief, and for that reason he did not think he would do in council.

Unsurprisingly, Gray ‘sprang up’ to defend himself, only to be admonished by the returning officer that this was not the occasion for candidates to address constituents. While most candidates did deliver policy speeches at election meetings prior to election day, they usually also made a short speech at nominations, so this was a decidedly unfair ruling, especially considering the provocation. The enraged Gray ‘continued with determination’ at which the returning officer called police to clear the court, and WA’s second electoral adjournment occurred. Eventually order was restored and a poll taken which Shenton won by an overwhelming majority. That evening, at Shenton’s victory ball, ‘dancing was kept up till nearly day-dawn’.

Gray did not dance. He immediately set about taking affidavits from electors in a bid to have the election overturned due to ‘bribery, corruption, and undue influence on the part of [Shenton’s] electioneering agents and committee’. Bribery and corruption were claimed

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35 *Perth Gazette*, 12 July 1872.
36 *Inquirer*, 10 July 1872.
37 Quotations about the Greenough election come from the report in the *Perth Gazette*, 12 July 1872.
38 From election reports it appears most candidate speeches were brief, but the returning officer at the Vasse election ensured this by placing a five-minute speech limit on the candidates—see the *Inquirer*, 10 July 1872.
39 The results were seventy-five to eighteen—*Perth Gazette*, 12 July 1872.
40 Quotation from Henry Gray’s ‘Election Petition’ to the Legislative Council, *WAPD*, 31 July 1872, p. 5.
on the grounds that the ball and supper constituted treating, while to support claims of undue influence Gray had electors swear that if they did not vote for Shenton, a wealthy merchant referred to as the Rothschild of the Swan River colony, they would be ‘sold up tomorrow’. Shenton, meanwhile, who had arrived back in WA on the day of the Greenough election, was unaware of Gray’s plans to unseat him and that an election petition would be tabled in the newly convened Legislative Council a month later.

A number of other complaints were made of the 1872 election. The registration process was criticised for being too slow; there were objections that some magistrates’ clerks refused to register legitimate claimants; and the heavy-handed attitude of some returning officers and clerks of court was also censured. Complaints were also made of the revision court process—where outright bias, as in Vasse, was matched by spectacularly discourteous and peremptory treatment of claimants and witnesses by officials in other courts. Most complaints, however, concerned ‘the shameless and shameful abuse of the system of voting by proxies’ in almost every electorate. In a post-mortem of the election, the Inquirer deprecated the ‘evils’ of this ‘unprincipled electioneering dodge’, in particular:

the practice resorted to by the partisans of many of the candidates at the recent election of perambulating the district, accompanied by a justice of the peace and other persons of influence and position, thereby by mere force of persuasion, cajolery, or intimidation, crushing down a flexible elector into seeming acquiescence, and elbowing aside less favored candidates, with tongues not so fluent, principles less elastic, and influence less powerful.

In the Inquirer’s view, if proxy-voting abuses had not occurred, and a true secret ballot had operated, election results would have been materially different. The article concluded with a plea that a Member of the newly elected Council would raise the matter in the legislature.

The new Council convened on 30 July 1872. There were few changes amongst the elected Members: Thomas Carey and William Pearse replaced Bussell and Moore and, in Swan, William Brockman had ousted Thomas Gull by three votes—making Gull WA’s first sitting Member to be defeated. There was significant change within the unofficial nominee cohort, however, because Weld—although he had undertaken not to veto any new Tariff Bill—appointed nominees whom he had ascertained were free-traders. Accordingly, Alfred Bussell and Wallace Bickley replaced Phillips and Brown, who had supported the Tariff

42 See the Inquirer, 27 March 1872 and 3 April 1872.
43 The 24 May 1872 Perth Gazette report of the revision process at the York Court House reads like a comedy script.
44 Inquirer, 17 July 1872. Also see Thomas Gull’s attack on the ‘abuse of the existing system of proxy-voting’ in the Inquirer, 3 July 1872.
Bill. This fairly autocratic action, following the previous year’s gubernatorial veto, ‘raised the political temperature’ in the Council, as de Garis has observed, and persuaded some that self-government might need to be taken on sooner rather than later.⁴⁶

On the second day of the session the Attorney General presented Gray’s election petition to unseat Shenton. In compliance with the Legislative Council Ordinance, the petition was forwarded to the Chief Justice, Archibald Burt, for determination. As the case would not be heard in one-judge Perth until June–July the following year, however, Shenton continued to represent Greenough. Considering the controversial nature of his own election and the fact that he represented a northern district, Shenton was probably more than particularly interested in the discussions relating to election management and increased representation for the north that soon arose in the Council.

The first electoral matter canvassed in the Legislative Council, however, was on 6 August 1872 when Newman inquired whether the Government intended to introduce a Bill to regulate voting by introducing the secret ballot.⁴⁷ Barlee answered guardedly that the Government was keen to observe how the recently passed Ballot Act operated in England before changing the system—but conceded he was aware of the numerous objections to the current system of proxy voting, and that proposals for reform would be carefully considered by the Government.⁴⁸ At this point, Lee Steere, a rural Member, expressed concern that abolishing proxy voting would ‘virtually disfranchise’ a large proportion of country electors who were unable to reach polling places on election day.⁴⁹ But, after a little more discussion, ‘the matter dropped’, as Hansard recorded it.⁵⁰

Also dropped was a Bill to increase the number of Legislative Council Members. This increase had been flagged by Weld in his Governor’s Speech when he referred to giving a Member to the northern district of Roebourne—a district which he stated now had special claims to separate representation—and, as this would place another nominee seat at his disposal (to maintain the statutory ratio between elected and nominee Members), he also proposed hiving off the Murray and Williams area from Fremantle and giving that district a Member to provide the second unofficial Member.⁵¹ The Bill was introduced by Barlee on

⁴⁸ WAPD, 6 August 1872, p. 26. Barlee actually referred to the English ‘Ballot Bill’; however, the measure had received the Royal Assent on 18 July 1872.
⁴⁹ WAPD, 6 August 1872, p. 26. As mentioned previously, notwithstanding the provision in the Legislative Council Ordinance for multiple polling places, the practice throughout the colony had been to appoint only one polling place per electorate.
⁵¹ WAPD, 30 July 1872, pp. 2–3.
6 August 1872, but opposed by Lee Steere because the proposed northern electorate would contain only twenty-four electors—who, he argued, were already represented by Logue, the Member for Geraldton.\textsuperscript{52} Lee Steere moved that the Bill be read a second time in six months—a parliamentary fiction by which a Bill is disposed of entirely.\textsuperscript{53} As eleven of the Councillors (all elected Members) supported Lee Steere’s motion, the Bill was defeated. While the minuscule number of electors in Roebourne was the reason advanced for defeating the Bill, McKenzie has suggested that there were a number of other reasons including that the south did not want to increase the might of the north, concerns that the new Members would increase the Government’s sway in the Council, and that the elected Members were so incensed by Weld and Barlee’s control of the legislature they opposed the Bill for opposition’s sake.\textsuperscript{54}

Whatever the reasons, the Government was unbowed. Given the need to head off separatist sentiment in the north it could not afford to capitulate. When the following session opened, Weld requested the Members to consider favourably essentially the same Bill, because the northern district yielded considerable revenue to WA and its ‘interests are special and very important’.\textsuperscript{55} Accordingly, the Increase of Members in Legislative Council Bill was first read on 1 July 1873 and on the next day Logue tabled a petition from forty-three northerners requesting that the Council no longer deny the northern district the privilege of elected representation in the legislature.\textsuperscript{56}

One sure vote in support of the Bill, however, was lost when Chief Justice Burt delivered his verdict in the \textit{Gray v Shenton} election petition case three days later. Burt declared that Shenton’s agents—even if acting without Shenton’s authority or knowledge—\textit{had} breached the bribery and corruption provisions of the Legislative Council Ordinance by holding the ball. As such, the Greenough election was void and Shenton not duly elected.\textsuperscript{57} While Gray saw Shenton unseated, he was dismayed that Burt, after ruling the ball an illegal act, had ordered a scrutiny of votes and subsequently determined there were more ‘pure and uncorrupted votes’ cast for Shenton (i.e. electors swore on oath that they had not been invited to the ball, or were uninfluenced by the ball in voting for Shenton) than were cast

\begin{footnotes}
\footnotetext[52]{\textit{WAPD}, 13 August 1872, p. 46.}
\footnotetext[53]{\textit{WAPD}, 13 August 1872, p. 47.}
\footnotetext[54]{McKenzie, ‘Survey of West Australian Politics’, pp. 60–62.}
\footnotetext[55]{\textit{WAPD}, 23 June 1873, p. 2.}
\footnotetext[56]{\textit{WAPD}, 2 July 1873, p. 11.}
\footnotetext[57]{Justice Burt’s decision on the petition was handed down in two stages: he initially declared the election void on Monday 30 June 1873, then on Saturday 5 July 1873, after the scrutiny of votes, he declared it absolutely null and void. Burt’s certificate to the Legislative Council, informing them of the decision, appears in \textit{WAPD}, 7 July 1873, p. 19. For the full reports of the trial see the \textit{Inquirer}, 2 and 9 July 1873.}
\end{footnotes}
for Gray. Therefore, Gray was still not the outright winner and a new election had to be held—which Shenton, under s. 39 of the Legislative Council Ordinance, was disqualified from contesting.

The Greenough by-election took place on 22 July 1873. Gray was again trounced—this time by Crowther, the erring electoral agent whose actions had caused the voiding of the election in the first place. The result appears to confirm the observation of the distinguished electoral historian Charles Seymour, that ‘the voiding of an election or the light thrown by a parliamentary investigation upon the corrupt management of an election, involved no disgrace’ to a candidate in the nineteenth century.

On 25 July 1873 the Increase of Members in Legislative Council Bill to create the Northern District and Murray and Williams District electorates passed its third reading. Clearly, since the last session, the elected Members had reversed their position. But whatever the motivation for their about-face, there is no reference to it in Hansard as literally all the reported debate on the Bill dealt with a series of radical resolutions moved by Lee Steere during the committee stage: to double the number of Members to be returned by all single-Member electorates, to limit the number of unelected Members in the Legislative Council to four official Members (the existing three plus the Colonial Treasurer), to include elected Members in the Executive Council, and to regulate proxy voting.

The first three proposals were derided by Barlee, not supported by Lee Steere’s fellow elected Members, and withdrawn. The resolution regarding the regulation of proxy voting was, however, welcomed by Barlee who suggested outright abolition might be preferable to Lee Steere’s palliative motion to ‘to obviate many of the abuses attendant upon it’. The resolution was accordingly affirmed by the House but, following some inconclusive debate by manifestly unprepared Members a week later, Lee Steere surrendered this resolution, too, and proposed the issue be postponed to the next session. Undeterred, however, Lee Steere proposed a last-minute amendment to the Bill which was successful—that

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58 Quotation from the report of the scrutiny in the Inquirer, 9 July 1873. Also see the Inquirer, 23 July 1873, for Henry Gray’s letter of protest regarding the scrutiny. Cox has provided a useful overview of the difference between unseating a successful candidate after proving a single case of bribery and the subsequent need to prove a majority of legal votes in the other candidate’s favour, after the illegal votes have been struck out, to enable the rival candidate to claim the seat, in his ‘Hints to Solicitors for the Conduct of an Election’, pp. clxxxiii–clxxxiv.

59 Under s. 39 disqualification applied until ‘the time of the next general election’, which ruled out preceding by-elections.

60 Seymour, Electoral Reform in England and Wales, p. 194.

61 Legislative Council Act Amendment Act 1873 (37 Vict., No. 22).

62 See WAPD, 11 July 1873, pp. 39–49, for the debate. According to McKenzie, Lee Steere ventilated some of his grievances about representative government, as well as his proposals to improve the system, in the Western Australian press several months prior to the debate, ‘Survey of West Australian Politics’, p. 64–65. A copy of Lee Steere’s open letter canvassing the issues is in the 19 April 1873 issue of the Herald.

63 Lee Steere, WAPD, 11 July 1873, p. 41.
candidates would have to provide written notice of their intention to nominate to the returning officer—and that a public notice regarding such nominations was to be affixed to the court house door until election day. The Government endorsed this amendment, with the result that for succeeding elections candidates were obliged by s. 6 of the Legislative Council Act Amendment Act 1873 to provide written notice of their intention to nominate at least ten days before the election. Consequently, while public nominations would still occur on election day, dramatic eleventh-hour surprises, such as Gray’s, would not.

Although Lee Steere’s earlier resolutions were not successful, his forceful speeches supporting them articulated a profound sense of disillusionment and frustration with representative government in practice: ‘I think nearly every elected member of this Council will go with me when I state that our present Constitution has not worked well and never can work well, and is ill-suited for the requirements of this colony, or any other’. In particular, Lee Steere deplored the time-wasting humiliation of ‘having taken part in what has been the mere farce of this House being called together to register the edicts of the Executive’. (Complaints, which McKenzie has correctly noted, echoed criticism being levelled at representative government by sections of WA’s press. The solution, according to Lee Steere, was self-government, which he had endorsed on the hustings during the 1872 election campaign, but reluctantly he acknowledged WA could not afford it and would be unlikely to furnish ‘a sufficient number of gentlemen … to form two distinct parties, which would be necessary under Responsible Government’. Hence, the ‘compromise’ of his resolutions by which the Executive Council would be ‘popularized’ and the Legislative Council strengthened.

Although Barlee had been vitriolic in demolishing Lee Steere’s resolutions, deriding them as ‘so crude, so unworkable, so altogether unstatesmanlike’, he favoured self-government and acknowledged the present system was ‘accepted as a transitional form of Government, a stepping stone from one constitutional system to another’ and also that it was Weld’s desire to prepare WA for eventual self-government. That said, Barlee believed Lee Steere’s resolutions to ‘tinker up’ the Constitution were a recipe for disunion and

64 WAPD, 21 July 1873, p. 66.
65 Only five days’ notice was required by s. 6 for by-elections, or if an election was to be held within a fortnight of a session of Council fixed by Proclamation.
66 WAPD, 11 July 1873, p. 39.
67 WAPD, 11 July 1873, p. 41.
68 See McKenzie, ‘Survey of West Australian Politics’, p. 64.
69 WAPD, 11 July 1873, p. 39. For Lee Steere on self-government during the election campaign, see his Bunbury campaign speech reported in the Inquirer on 1 May 1872 (but also see his more conservative views in the Inquirer on 10 July 1872).
70 WAPD, 11 July 1873, p. 40.
71 WAPD, 11 July 1873, pp. 45 and 44.
The Surveyor General also rejected Lee Steere’s proposals as half measures, arguing ‘he was in favour of going the whole animal or none’.

Within a month Weld wrote a confidential despatch to Kimberley regarding these constitutional questions, in which he stated that while ‘transition forms [of Government] are often necessary evils’, WA’s ‘hybrid’ one—‘an irremovable Executive responsible to the Crown placed face to face with a Legislature responsible to the people’—was singularly unpopular. (This was an opinion he knew Kimberley shared, given Kimberley was on record stating that ‘the worst possible form of government is that having representative institutions with irresponsible ministers’.) But, Weld continued, the idea of self-government was also ‘unquestionably unpopular in the country, and strenuous endeavours to make it popular have so far utterly failed’. Amongst the Councillors, however, Weld believed there could be majority, if not unanimous, support for the change if it were known that some members of the current Executive would be prepared to remain in office under self-government—and he advised that Lee Steere had given notice that at the next session of Council he would be introducing a motion for self-government.

Weld received a secret despatch from Kimberley a few months later which, although counselling him not to initiate any changes to the existing arrangements, confirmed that ‘Her Majesty’s Government would not be disposed to resist any widespread and sustained desire which might hereafter prevail in the Colony for responsible Government’.

‘Going the whole animal or none’

As advised by Weld, in the 1874 session of the Council Lee Steere moved that:

> it would tend much to the future progress of the colony to establish here a system of Responsible Government; and that a select committee be appointed to draw up a Constitution and bring up a Bill to carry out that object …

Lee Steere then explained why the time was appropriate for this ‘momentous’ change. In his view, public opinion had changed significantly during the past year and the vast majority of the colonists now favoured elected self-government; the Council was all ‘cordial unanimity’; and Weld, whose term was soon to conclude, had the requisite

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72 *WAPD*, 11 July 1873, pp. 48 and 46.
73 *WAPD*, 11 July 1873, p. 49.
74 Frederick Weld to Lord Kimberley, 11 August 1873, SROWA, 390/1174/47.
75 Lord Kimberley quoted in the *Herald*, 26 April 1873.
76 Lord Kimberley to Governor Weld, 17 October 1873 (received 10 December 1873), SROWA, 391/1223/253.
77 *WAPD*, 22 July 1874, p. 49.
78 *WAPD*, 22 July 1874, p. 49.
knowledge and experience to see the new system implemented. Lee Steere then stressed that their constitutional regime was never meant to be more than a ‘stepping-stone to that of responsibility’, and that WA had the benefit of the ‘varied experience [of the sister colonies] as precedents to guide us’ and could thereby ‘avoid the errors they committed’. Crowther, a recent convert to self-government, immediately proposed an amendment: that an Address should be presented requesting the Governor to introduce the required Bill. While the Council debates do not provide background to the amendment, Crowther subsequently disclosed to his constituents that the elected Members believed that Weld, who had been instrumental in bringing self-government to New Zealand, would frame a better Constitution Bill than the committee proposed by Lee Steere. Crowther’s amendment was affirmed without division.

The following morning an Address on the subject of constitutional change was presented to Weld. A return Message from Weld extolled the Members for the unanimity, moderate tone and absence of party feeling which had characterised their debates on self-government. The Message concluded with the following pledge:

... [I] will cause a Bill to be prepared and introduced into your Council; and in the event of your passing it ... will recommend that Her Majesty’s assent be given to it, and that the system of Ministerial Responsibility be with the least possible delay established ...

In deference to the representations of country Members, who were eager to return to their homes and affairs (and who were accumulating unrecompensed accommodation expenses in Perth) the new Constitution was drafted in record time.

The speed with which the Bill was drafted—it was discussed in Executive Council on 31 July—was due, according to the *West Australian*, to its having been ‘mainly copied’ from the *Constitution Act 1855–6* of South Australia. Certainly, there are resemblances between the Western Australian Bill and the South Australian Act. According to Hirst, the South Australian Constitution was the most democratic of the sister colonies’ constitutions;

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79 *WAPD*, 22 July 1874, p. 49. The *Inquirer* newspaper informed readers only a week later (29 July 1874) that it was ‘currently reported that His Excellency Governor Weld has been appointed Governor of Tasmania, and that he will assume the administration of the affairs of that colony in November or December next’.
80 *WAPD*, 22 July 1874, p. 51.
81 *WAPD*, 22 July 1874, p. 51.
82 *Western Australian Times* (the new masthead for the *Perth Gazette* since 3 July 1874), 18 September 1874.
83 Message from the Governor—No. 3, *WAPD*, 23 July 1874, p. 56.
84 See Barlee for reference to the country Members’ request, *WAPD*, 3 August 1874, p. 69.
85 *West Australian*, 6 March 1889. For the discussion of the Bill in Executive Council see Executive Council Minutes, 31 July 1874, SROWA, 1058/2/6/8. The South Australian Constitution Act is 19 Vict., No. 2.
thus, it was an appropriate one for the liberal-minded Weld to have favoured.\textsuperscript{86} Nevertheless, Weld and Barlee undoubtedly surveyed the other Australian colonial constitutions—all of which contain swathes of identically worded text.

The Bill was introduced on 3 August 1874. To expedite its passage, Barlee sought permission at the first reading to make a lengthy statement explaining the principles which guided the Government in framing it, hoping thereby to avoid extensive debate later.\textsuperscript{87} Indeed, the desire to avoid any delay became an integral part of the Government’s strategy in relation to the Bill, with Barlee warning that Weld believed the Bill as it stood would probably meet the concurrence of Her Majesty’s Government, and therefore was one he could recommend for assent—but that significant amendments could compromise Weld’s endorsement and its likely acceptance in Britain and also lead to ‘interminable correspondence, in the shape of controversy between the Imperial Government and the Government of this colony’.\textsuperscript{88} Barlee, however, reminded the Councillors that the Bill as currently drafted could be amended at any time after it had become law.

Barlee then reviewed the draft Constitution.\textsuperscript{89} The new Parliament would comprise a Legislative Assembly consisting of twenty-five Members and a Legislative Council consisting of eleven Members.\textsuperscript{90} The property qualification for MLAs would be lowered to match the fairly modest property qualification currently required to qualify for the franchise, i.e. it would be virtually abolished, while MLCs would be nominated by the Governor and Executive Council jointly—initially for a period of seven years and thereafter for the term of their natural lives (the tenure in the nominated Legislative Councils in NSW and Queensland).\textsuperscript{91} In addition, the Governor and Executive Council would have the power to create additional Legislative Councillors, giving them the capacity to ‘swamp’ the Upper House to ensure a majority.\textsuperscript{92} While both Chambers would have legislative powers, Barlee outlined that the Legislative Council would not have power to originate money Bills or impose, alter or rescind taxes—standard provisions in the sister colonies’ constitutions.\textsuperscript{93}

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\textsuperscript{86} Hirst, \textit{Australia’s Democracy}, p. 54.
\textsuperscript{87} \textit{WAPD}, 3 August 1874, p. 69.
\textsuperscript{88} \textit{WAPD}, 3 August 1874, pp. 69–70. Also see Barlee at pp. 76–77.
\textsuperscript{89} I have been unable to locate a copy of the 1874 Constitution Bill either at the Western Australian Parliament or the State Records Office of Western Australia. Discussion of the Bill is pieced together through parliamentary debates—particularly Barlee’s lengthy discussion of it at the first reading stage—and newspaper articles. Barlee’s first reading speech appears at \textit{WAPD}, 3 August 1874, pp. 69–78.
\textsuperscript{90} \textit{WAPD}, 3 August 1874, pp. 74–75.
\textsuperscript{91} \textit{WAPD}, 3 August 1874, pp. 72–74.
\textsuperscript{92} \textit{WAPD}, 3 August 1874, p. 74.
\textsuperscript{93} \textit{WAPD}, 3 August 1874, p. 71.
\end{flushleft}
Barlee would have known that a Chamber of nominees with lifetime appointments, with the prospect of more being manufactured at will to force through Government legislation, would have been anathema to the elected Members. To justify these ‘conservative’ measures he appealed to the Members’ pro-British sensibilities: ‘it is considered exceedingly desirable that the Constitution of every English community should as far as practicable, be based on the principles of the Constitution of the Parent State’.\textsuperscript{94} And presumably the Councillors would have known that the majority of British colonies with bicameral legislatures had nominated Upper Houses.\textsuperscript{95} Indeed, the better-read Members would have recalled that the constitutional authority Walter Bagehot had recently described the power of creating additional Members of the House of Lords the ‘safety-valve’ of the English constitution—enabling the Executive to ‘make a majority’ to ensure the will of the people was not thwarted by the ‘resistance of the second chamber’.\textsuperscript{96}

The real reason for a nominated Upper House, however, Barlee depicted fairly melodramatically. Principally, he argued, in sparsely populated WA, where the working classes preponderated in number over the propertied classes and where the colony’s increasing prosperity (and possible future gold discoveries) could see the colony ‘inundated by political demagogues, who will endeavor to hound the people on to demand revolutionary reforms’, the Government believed it was crucial to install a conservative bulwark.\textsuperscript{97} This bulwark would be composed of those who by ‘social position, by character, by education, by their stake in the country and by their experience not alone in the colony but elsewhere’, would act as a ‘salutary check’ on a Lower House elected by the people and ‘liable to be carried away by the popular feeling of the hour’.\textsuperscript{98}

For similar reasons—that ‘the working classes of this colony, under the existing franchise, have enormous power’—Barlee outlined that the franchise would not be lowered to manhood suffrage as in the eastern colonies.\textsuperscript{99} (Considering the number of ex-convicts in WA at this time, McKenzie has commented that it would have been ‘a bold man indeed who openly advocated manhood suffrage in Western Australia of the “Seventies”’.\textsuperscript{100}) However, although Barlee depicted working-class ascendancy in pejorative terms, claiming it resulted in ‘class legislation’ by a class:

\textsuperscript{94} \textit{WAPD}, 3 August 1874, pp. 70–71.  
\textsuperscript{95} Of twenty-three bicameral legislatures, only nine Upper Houses were elected—the \textit{Western Australian Times}, 25 September 1874.  
\textsuperscript{96} Bagehot, \textit{The English Constitution}, pp. 161–162.  
\textsuperscript{97} Barlee’s full speech appears in \textit{WAPD}, 3 August 1874, pp. 69–78; quotation from p. 74.  
\textsuperscript{98} \textit{WAPD}, 3 August 1874, pp. 73 and 71.  
\textsuperscript{99} \textit{WAPD}, 3 August 1874, p. 70.  
\textsuperscript{100} McKenzie, ‘Survey of West Australian Politics’, p. 77.
liable to be actuated by the impulse of the moment, liable on such impulse to do all sorts of wild and unreasonable things, in times of popular excitement, influenced by unworthy people actuated by unworthy motives …

he was also vitally concerned that the interests of the lower orders were protected and not stifled by the existing class ascendancy.\textsuperscript{101}

In fact, while he repudiated the ‘liberal’ model of some of the neighbouring colonies, which ‘has for its object the placing of all political power in the hands of the working classes’, he has been aptly described by Stannage as a Gladstonian liberal, and by Boyce as evincing radicalism.\textsuperscript{102} The avowedly ‘conservative’ model he proffered:

to guard the interests of all classes, so that while full protection is afforded for the propertied classes the rights of the working classes should be equally respected, and that no preponderance should be given to one over the other …

would have been dismissed as a radical’s pipe dream only half a century earlier.\textsuperscript{103}

Furthermore, the Bill included a significant measure of electoral reform to strengthen the position of working-class voters. Proxy voting, largely a mechanism for the propertied to cast their plural votes, was to be abolished (but rural electors, the true proxy or absent voters, would not be disenfranchised because the number of electorates would be increased to twenty and additional polling places would be established within each electorate). The Bill also proposed to implement the secret ballot fully, i.e. electors would receive a printed ballot paper that they would take into a private compartment and fill in unobserved.\textsuperscript{104} Again, this change would principally benefit working-class electors, as it was they who were most likely to be subject to undue influence from employers or shopkeepers.

In short, the Bill was, as Barlee put it, ‘more or less democratic’ but with ‘a strong conservative element’—a perfect pitch to win over conservatives within the Council and the community, and also to appeal to the new Tory Government in the mother country which, under the leadership of Benjamin Disraeli, had come into office earlier in the year.\textsuperscript{105}

Lee Steere and the other elected Members undoubtedly shared the Government’s dread of the lower orders’ voting clout, and the prospect of them gaining the upper hand in

\textsuperscript{101} \textit{WAPD,} 3 August 1874, pp. 71 and 73.

\textsuperscript{102} \textit{WAPD,} 3 August 1874, p. 76; Stannage, \textit{The People of Perth}, p. 188; Boyce, ‘The Role of the Governor’, p. 214.

\textsuperscript{103} \textit{WAPD,} 3 August 1874, p. 70.

\textsuperscript{104} \textit{WAPD,} 3 August 1874, p. 75. For discussion of the mechanics of the proposed secret voting provisions, see the \textit{Inquirer,} 19 August 1874.

\textsuperscript{105} \textit{WAPD,} 3 August 1874, p. 77.
Parliament and introducing their own class legislation. However, notwithstanding J.M. Ward’s assessment that a nominated Chamber was a safer and more flexible safeguard of conservatism than an elected one, and one less likely to be in deadlock with an elected lower House, a Chamber of life-seated nominees was hardly going to be acceptable to Lee Steere when the obstructiveness and flouting of the public will by the existing crop of nominees was largely driving his current push for self-government.\footnote{Ward, \textit{Colonial Self-Government}, p. 320.} The liberal elected model was their preference.

The second reading for the Constitution Bill was set down for two days later. Lee Steere promptly organised a public meeting for the same day with the aim of memorialising the Legislative Council to postpone the Bill’s second reading so as to give the public an opportunity to examine its provisions and express an opinion.\footnote{A report of the meeting appeared in the \textit{Western Australian Times}, 7 August 1874. The meeting was also reported in the \textit{Inquirer}, 12 August 1874. Ensuing account and quotation are from the former newspaper.} With one notable exception (J.T. Reilly, who argued that delaying self-government was prejudicial to the colony’s best interests) the assembled speakers concurred that the Constitution Bill should receive ‘full, free, and fair expression of opinion’ throughout WA—particularly regarding the question of whether a nominated or an elected Upper House would be preferable. One speaker even recommended an appeal to the country, correctly observing that the question of self-government had never been an election cry, but as none of the elected Members present took up this suggestion, the original resolution was passed and signatures collected.

Armed with 142 signatures to his postponement petition, Lee Steere was the first to speak in the Legislative Council that night. After his petition was read, and Barlee had moved the Constitution Bill’s second reading, Lee Steere’s multi-pronged assault on the proposed Upper House began. First, he argued that a steep property qualification for Legislative Council Members \textit{and} Legislative Council electors, as existed in those sister colonies with elected Upper Chambers, would provide an adequate safeguard against ‘aggressive democratic ascendancy’:

\begin{quote}
 an Upper House so elected would represent the property, wealth, and intelligence of the country. Surely men of that class, bound to the colony by every conceivable tie, would prove a more effectual check upon hasty or crude legislation than nominees appointed by the Governor of the day—men who are here to-day and away tomorrow … who may possess no property whatever, nor any other stake or interest, in the colony.\footnote{\textit{WAPD}, 5 August 1874, p. 79.}
\end{quote}
Lee Steere adverted to the ‘evil … power invested in the Governor’ of ‘swamping’ the Upper House with new Members to carry pet measures, and derided as ludicrous Barlee’s notion that WA could emulate constitutional practice in the mother country by instituting a nominated Upper House:

the feelings and political proclivities of the lower orders in England were of a highly conservative nature, and they … manifested every respect and esteem towards the aristocracy, or upper classes. Here it was very different; here we were more on a footing of equality; here there were no traditional class distinctions; and our Upper House would not be looked up to with the reverential respect with which the lower orders regard the House of Lords in England. 109

The last argument was particularly astute, and echoed comments made less than a decade earlier by Bagehot who, citing WA as an example, declared that ‘Equality is not artificially established in a new colony; it establishes itself’, and that, as a consequence, attempts to ‘transplant to the colonies a graduated English society … have always failed at the first step’ because the ‘rude classes at the bottom felt that they were equal to or better than the delicate classes at the top’. 110

Lee Steere also deprecated the fact that the Bill was being hurried forward and proposed:

That in consideration of the absence of three elected members, and the advanced period of the session; and in order to give time for an expression of public opinion relative to the provisions of the Constitution Bill, the consideration of the second reading thereof be postponed for four months. 111

Barlee was at his merciless ad hominem best in defeating Lee Steere’s motion, accusing Lee Steere of ‘inconsistencies’, ‘fallacies’ and even a ‘species of mental mania’. 112 Barlee then spelt out the cause of Lee Steere’s sudden change of opinion: that there were features in the Bill that Lee Steere did not approve of, but that he did not have enough support within the Council to carry his objections at the committee stage and, therefore, needed to harness outside agitation. 113 The serious consequences of deferring the Bill were itemised by Barlee: the colony would be a laughing-stock among the sister colonies, the Estimates would need to be held over, and WA would be left ‘in a state of political chaos’ for Weld’s successor. 114

109 WAPD, 5 August 1874, pp 79–80.
110 Bagehot, The English Constitution, p. 32. Also see Clarke’s observation: ‘To a certain extent British concepts were transportable, but it was a fantasy for Englishmen to imagine that the social levelling inherent in a pioneer environment could be halted or reversed by the importation of the cultural values of Britain’s middle and upper classes’, The Land of Contrarieties, p. xiv.
111 WAPD, 5 August 1874, p. 81.
112 WAPD, 5 August 1874, p. 82.
113 WAPD, 5 August 1874, pp. 84–85.
114 WAPD, 5 August 1874, pp. 85–86.
Most of the Members then spoke, but the celebrated unanimity regarding self-government had evaporated. Some Members were opposed to the nominated Upper House, others supported it; some thought their constituents should be consulted, others not.\textsuperscript{115} When put to division the motion was lost, twelve votes to five, and the Constitution Bill was second read.

The next day Weld consulted the Executive Council as to whether it would now be advisable to pause and dissolve the Parliament. The Councillors, including Barlee, unanimously recommended dissolution, upon which Weld proceeded to the Legislative Council and advised that to prevent the appearance of haste in such an important matter, and to give the country an opportunity of expressing its opinion, he would dissolve the Council.\textsuperscript{116} A fortnight later the election writs were issued and the elections were set down from 23 September to 6 October.\textsuperscript{117}

Weld’s ‘wise discretion and true constitutional judgment’ in calling the poll was applauded—especially by the press which ran non-stop editorials, bulging correspondence columns and background articles on self-government and the pros and cons of elected versus nominated Chambers.\textsuperscript{118} This included extended discussion of the third Earl Grey’s proposal that less populous colonies might be better off abolishing their second Chamber and instituting a unicameral legislature containing a small inner-circle of nominees.\textsuperscript{119}

As expected, the most debated detail of the proposed Constitution was whether the Upper House should be nominated or elected, and, if elected, an appropriate basis for the franchise. What was perhaps not expected was the complexity and sophistication of the debate on the hustings and in the press. Predictably, many denounced nomination as the Bill’s ‘fatal objection’ and, like Lee Steere, objected to life-seated appointees opposing themselves to democratically elected Members and acting as a clog on legislation—particularly legislation which ‘did not go to promote their own selfish purposes and the special interests of their class’.\textsuperscript{120} (And, as Wright has noted, the assessment that nomineeism was intrinsically divisive and ran counter to the democratic tendencies of the

\textsuperscript{115} \textit{WAPD}, 5 August 1874, pp. 78–90, for the whole debate.
\textsuperscript{116} Executive Council Minutes, 6 August 1874, SROWA, 1058/2/6/8; \textit{WAPD}, 6 August 1874, p. 91.
\textsuperscript{117} The election for the isolated North District took place on 20 October, but sitting member Maitland Brown, who was re-elected unopposed, subsequently decided to sit for the seat of Geraldton to which he had also been elected unopposed. A by-election for the North District held on 31 December returned Samuel Burges.
\textsuperscript{118} \textit{Western Australian Times}, 14 August 1874.
\textsuperscript{119} Earl Grey’s proposal was referred to throughout the campaign. A copy of Grey’s letter to Henry Parkes, which outlined Grey’s views with special reference to the NSW Parliament, was reprinted in the \textit{Western Australian Times}, 13 October 1874.
\textsuperscript{120} \textit{Inquirer}, 19 August 1874 and 5 August 1874.
age was articulated in the other Australian colonies.\textsuperscript{121}) But election of a privileged few property-holders by a privileged few property-holders was also unpopular, being seen by many, somewhat ironically, as less democratic and more conservative than nomination by the Governor-in-Council. Under nomination, it was argued, candidates with limited wealth, but with intelligence and experience, could be selected, whereas a stiff property qualification for candidates and electors would simply see the rich get in and class interest, class division and deadlocks institutionalised as, it was frequently pointed out, they were in Victoria. Clearly, the notion that property should have automatic sway within the political system was under challenge within WA, with the \textit{Inquirer} dismissing the idea as a ‘relic of feudalism’ and ‘not any guide to judge of the possessor’s fitness for either the judicious or wholesome exercise of political privileges’.\textsuperscript{122}

The seemingly unavoidable drawbacks of both Upper House models was the reason at least five (successful) candidates who advocated nomination on the hustings confessed that, while it was their ‘present leaning’, they could be persuaded otherwise by argument or by their constituents’ wishes.\textsuperscript{123} Other candidates opted for a unicameral legislature to skirt the problem, agreeing with the \textit{Inquirer} that a bicameral system in a sparsely populated and rudimentary colony was anomalous and anachronistic—no more than a ‘burlesque imitation of old world institutions’.\textsuperscript{124}

Despite various misgivings and reservations, most candidates accepted the Government’s line that there should be some brake mechanism on the popularly elected Legislative Assembly, as was the case in the sister colonies. Not so the \textit{Inquirer} which argued that:

\begin{quote}
Our principal aim in regard of the Legislature should clearly be to make it, according to its ideal, fully representative of the whole people. We have no class amongst us who need to be guarded against. Equal justice for all is the best security for all.\textsuperscript{125}
\end{quote}

\textbf{The Mandate}

Considering the 1874 election was characterised by the usual high number of uncontested seats and paucity of candidates as preceding elections, and that only two seats were not recontested, it is unsurprising that all but one of the former Members were returned.\textsuperscript{126} As

\begin{footnotes}
\footnote{\textsuperscript{121} Wright, \textit{A Blended House}, p. 127.}
\footnote{\textit{Inquirer}, 9 September 1874.}
\footnote{Quotation from Charles Crowther, \textit{Western Australian Times}, 18 September 1874. The other waverers were Luke Leake (Perth), William Marmion (Fremantle), Walter Padbury (Swan) and John Monger (York).}
\footnote{\textit{Inquirer}, 5 August 1874. The leading unicameralists were Edmund Birch (Perth) and William Pearse (Fremantle).}
\footnote{\textit{Inquirer}, 29 July 1874.}
\footnote{The member who lost his seat, Thomas Carey of Vasse, reportedly did so because he spent a large part of the campaign ‘betraying’—i.e. campaigning for the challenger to—the popular Lee Steere in the adjoining electorate of}
\end{footnotes}
most of the former Members had advocated self-government, the verdict of the constituencies was in favor of the proposed change, as Lee Steere triumphantly summed it up. Weld also reappointed his four previous nominees who supported the cause. The Members favouring an elected Upper House, however, were still in a minority, so Lee Steere’s strategy of calling upon outside influence had failed. It had also, probably, been fatal to the Bill.

When the Council met on 18 November 1874 Weld advised the Members that they must temporarily suspend their quest for self-government because:

> knowledge derived from recent personal communication of the views of Her Majesty’s Government, and of the conditions they may see fit to impose in regard to constitutional changes, will probably enable my successor to throw fresh light on that important question ...

The Councillors acquiesced. Their compliance was fortunate considering Weld had recently received a telegram from the new Secretary of State, Lord Carnarvon, urging such a stay of proceedings until the new Governor’s arrival.

Weld’s successor, William Robinson, was sworn in on 11 January 1875. From his briefings with the Colonial Office, Robinson was aware that the new Conservative Government in Britain, led by Disraeli, was entirely opposed to granting self-government to WA. Such a position towards the self-governing aspirations of one of its colonies was a complete turnaround from the previously supportive and encouraging attitude of successive liberal administrations, which had believed as ‘a form of political orthodoxy’, that if:

> we pursue a liberal policy, and extend to them [the colonies] the dearest privilege of Englishmen—the privilege of self-government, and do not vexatiously intermeddle with their internal affairs … we shall bind them to us with chains which no power on earth may break …

Manifestly it was also in polar opposition to Granville’s relaxed observations to Weld only five years earlier that it ‘can scarcely be doubted’ that WA’s move to representative government would soon lead to responsible self-government. But the new Government’s approach was not unexpected given Prime Minister Disraeli’s recent dramatic reappraisal of

Bunbury—see William Spencer’s nomination of Lee Steere as reported in the *Inquirer*, 14 October 1874. However, according to McKenzie, Carey lost because his ‘profession (surveyor) earned him the opprobrious title of “Government man”’, ‘Survey of West Australian Politics’, p. 87.

Weld also reappointed his four previous nominees who supported the cause.

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127 WAPD, 25 January 1875, p. 31.
128 WAPD, 18 November 1874, p. 2.
129 Referred to in Frederick Weld to Lord Carnarvon, No. 136, 19 November 1874, SROWA, 390/1166/12.
131 Lord Granville to Governor Weld, 28 January 1870, SROWA, 391/1223/251.
the value of Empire—a reappraisal spurred largely by the increasing might and Imperial ambitions of other foreign powers. The consequence of this for the expectant Western Australians was that their new Governor’s mission was, in his words, ‘to endeavour to persuade them that they were not then fit for responsible government’.  

Robinson briefed Executive Council of this on 18 January 1875. The Legislative Council met four days later and a Message from Robinson was read out: a single sentence introducing a lengthy despatch from Carnarvon which commenced with an expression of surprise and regret that Weld had drafted a Constitution and permitted a second reading without consulting Her Majesty’s current Government. Carnarvon then outlined that while the reproduction of the ‘free institutions of the Mother Country’ was an appropriate and inevitable outcome for WA, and an outcome to which Western Australians and administrators in England should direct their efforts, he believed that in WA’s financially underdeveloped and underpopulated state (in which, he pointedly reminded them, of the colony’s 8,000 adult males, ‘between 5,000 and 6,000 are persons formerly transported as convicts’) the movement was ‘somewhat premature’. Accordingly, the despatch concluded by dismissing any prospect of self-government in the short term:

… I feel it my duty, though not a grateful one to me personally, to withhold any hasty consent, and to interpose at least such prudent delays as will secure a full and dispassionate consideration of a decision which is fraught with such important consequences to the Colony.

A marathon debate ensued in which many Members expressed their own feelings of great surprise and regret at Carnarvon’s despatch. Lee Steere, the first to speak, concluded a spirited defence of the self-government movement, and the fact that ‘the decision of the

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132 While Disraeli has often been accused of hypocrisy, or at least opportunism, over his 1872 espousal of Empire, Stanley R. Stembridge has contended that Disraeli had shown a long-standing, even if qualified, regard for Empire, ‘Disraeli and the Millstones’, Journal of British Studies, vol. 5, no. 1, 1965, pp. 122–139.
134 See the House of Commons Select Committee Report on the Western Australian Constitution Bill, BPP, 1890, Colonies Australia, vol. 32, p. 185.
135 Message from the Governor—No. 1, containing Lord Carnarvon to William Robinson, 18 November 1874, WAPD, 22 January 1875, pp. 28–30.
elections was accepted on all hands as substantially the decision of the country’ on the matter, with twenty resolutions.\footnote{WAPD, 25 January 1875, p. 32.} The principal one was No. 4:

They would, however, ill fulfill the pledges they have made … if they, specially elected after a dissolution on the question of Responsible Government, did not fully and emphatically bring under the consideration of Her Majesty’s Government, their adherence to the views they have advocated, their reasons for arriving at these views, and … urge upon the Secretary of State to recommend Her Majesty to sanction the amended Constitution they have sought.\footnote{WAPD, 25 January 1875, p. 34.}

Maitland Brown, claiming to represent the ‘respectable minority’ of colonists opposed to self-government, promptly proposed twelve counter-resolutions which, in essence, supported Carnarvon’s despatch.\footnote{WAPD, 25 January 1875, p. 37.} After hours of fervid debate, including ‘instantly repressed’ uproar in the Strangers’ Gallery during Brown’s defence of the status quo, a division was called.\footnote{WAPD, 25 January 1875, p. 38.} While the official and unofficial nominees had not participated in the debate because it was held to be a matter ‘entirely for the elected representatives of the people to deal with, without any intervention or influence being brought to bear by the Government’, all Members were permitted to vote.\footnote{Barlee, 25 January 1875, p. 48.} Brown’s counter-resolutions were defeated fifteen votes to three; Lee Steere’s original resolutions were put and carried by the same margin— with all Weld’s nominees supporting them.\footnote{The three members who voted against self-government were Maitland Brown, Edward Hamersley and the newly elected member for Perth, George Randell—\textit{WAPD}, 25 January 1875, p. 48.}

The following day Robinson prorogued the House and forwarded the resolutions to Carnarvon in a confidential despatch, in which he advised that matters had gone too far to permit the question to be delayed for any great length of time and that it was threatened that many of the leading Legislative Councillors would resign if self-government was refused.\footnote{William Robinson to Lord Carnarvon, 26 January 1875, SROWA, 390/1174/47.} Robinson hedged his bets, however, by also observing that ‘if the leaders of the movement could be reconciled to delay the Country would readily submit to it also’. By the following month, when he sent his formal report on the subject, Robinson had come to the view that the self-government movement could be halted. He recommended that Carnarvon:

Refuse absolutely to entertain the question for the present on the grounds of the isolated & scattered character of the population, & the insufficiency of men of the necessary means and experience to enable them to devote their thoughts & personal attention to Legislative duties.\footnote{William Robinson to Lord Carnarvon, 18 February 1875, SROWA, 390/1174/47.}
Robinson, however, still conceded that such refusal could ‘swell the ranks of the agitators, who are backed up as it is by the whole press of the Colony’. He also informed Carnarvon that he had sent his Executive Councillors a confidential Minute explaining the propriety of them henceforth toeing the Government line. Robinson concluded by stating that Carnarvon’s response was awaited by the Legislative Council with some anxiety.

A month later, however, Robinson sent a telegram and a despatch to Carnarvon requesting that his Lordship delay responding because Barlee, conscious of the impossible situation he was in—bound to support the Colonial Office’s line, but personally favouring self-government—had requested a year’s leave so that he would be absent when the subject was next debated. Robinson was jubilant:

As Mr Barlee’s departure if only for a time will be a great blow to the Responsible Government party, I have thought it desirable your Lordship should be made aware of his intention … should your Lordship think proper … [to] refuse to sanction that change for the present. The fact of Mr Barlee being away when your Lordship’s answer arrives will so dispirit his party that no trouble of any consequence need be anticipated.144

The Council reconvened on 30 November, by which time Robinson had received Carnarvon’s decision that postponing constitutional change was necessary because His Lordship believed that the immediate introduction of self-government would be injurious to WA’s interests.145 In his Governor’s Speech, Robinson advised the Members of Carnarvon’s determination. This round was definitely Carnarvon’s as the Members’ Address-in-Reply conceded:

Those who are in favour of the immediate adoption of that form of Government will doubtless feel some disappointment at the postponement of the accomplishment of their wishes, but it is evident that further agitation at the present time and under existing circumstances would be undesirable, and therefore His Lordship’s decision will no doubt be accepted in the sprit in which it has been arrived at.146

Lee Steere, however, was not prepared to surrender the cause. In the Address-in-Reply debate he proposed amending the wording of the above-quoted paragraph to register only

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144 Robinson sent a telegram and confidential despatch on the same day. Quotations are from the despatch: William Robinson to Lord Carnarvon, 20 March 1875, SROWA, 390/1174/47. Two days earlier Robinson had also forwarded Barlee’s application for the position of Lieutenant-Governor of Natal, along with a glowing testimonial from himself—see William Robinson to Lord Carnarvon, No. 32, 18 March 1875, SROWA 390/1166/13. The importance of Barlee as leader of the self-government movement was confirmed by comments later made by Sir Thomas Cockburn Campbell, who entered the Legislative Council in 1871, that his own ‘advocacy of Responsible Government’ ceased from when ‘our leader left us’ and the ‘party’ was ‘dissbanded’, WAPD, 15 July 1878, p. 233.


146 WAPD, 30 November 1875, p. 7.
disappointment, and to delete its reference to embargoing further agitation.\textsuperscript{147} Considering the Members realised that the quest for self-government was, for the present, futile, and that some of the waverers were showing an inclination to join the Government party, as Robinson put it, Lee Steere’s amendment would probably have failed.\textsuperscript{148} Brown, however, launched an offensive tirade against the self-government movement that immediately incensed the elected Members.\textsuperscript{149} Even the Acting Colonial Secretary’s suave assurances that postponement of agitation referred only to the immediate present, and did not preclude future action on the question, did not assuage them.\textsuperscript{150} Lee Steere’s amendment passed ten votes to nine and, as the majority of the ‘noes’ were Robinson’s now tamed nominees, this was a triumph for the elected Members. But it was a hollow triumph: everyone accepted that self-government was ‘shelved for the present’, as Robinson subsequently remarked in a confidential despatch to Carnarvon.\textsuperscript{151} For good measure, the Colonial Office promoted Barlee to the lieutenant-governorship of British Honduras.\textsuperscript{152}

As early as 1838, Lord Durham had denounced hybrid representative government as ‘a mockery, and a source of confusion’.\textsuperscript{153} It had proven unpopular in all the Australian colonies, but most of them were only subjected to it for five or six years. WA would chafe under it for two decades. However, as de Garis has aptly commented: ‘After five years of excitement the colony moved into calmer political waters in the mid 1870s and remained there for almost a decade’.\textsuperscript{154}

\textsuperscript{147} WAPD, 1 December 1875, p. 9. 
\textsuperscript{148} See William Robinson to Lord Carnarvon, 1 December 1875, SROWA, 390/1174/47 for reference to the ‘waverers’. 
\textsuperscript{149} Brown’s speech is at WAPD, 1 December 1875, pp. 9–11. 
\textsuperscript{150} WAPD, 1 December 1875, p. 16. 
\textsuperscript{151} William Robinson to Lord Carnarvon, 21 December 1875, SROWA, 390/1174/47. 
\textsuperscript{153} Durham quoted in McMinn, A Constitutional History of Australia, p. 19. 
Governor Robinson had assiduously carried out his Imperial instructions to thwart self-government in WA. The threat eliminated, he worked equally assiduously with the colonists to improve the political system they were perforce stuck with. During the ensuing years Western Australians were granted several key electoral advances from Weld’s aborted Constitution Bill, as well as other leading-edge liberal reforms relating to purifying elections and enhancing election management. In the following decade the colonists would also resume their quest for fully elected self-government along the liberal lines of the sister colonies.

**Purifying Elections**

Two days after the Government’s humiliating defeat on Lee Steere’s amendment to the Address-in-Reply, the Attorney General, Henry Hocking, introduced a Bill ‘to Amend the Law Relating to Election Petitions, and to Provide More Effectually for the Prevention of Corrupt Practices at the Election of Members of the Legislative Council’. The Bill proposed that future election petitions would be submitted directly to the Supreme Court within twenty-one days of the gazettel of winning candidates—and to obviate the dodge of candidates paying electors after petitioning concluded, a twenty-eight day time limit commenced at any time after a corrupt payment was made. The Bill also proposed that a single elector could petition, that the presiding justice could compel attendance of witnesses, and that petitions could not be withdrawn without leave of the Supreme Court and notice being given in the electorate and the petitioner being liable for the respondent’s costs.

The Bill further guarded against parties colluding to evade their day in court by empowering the Supreme Court to substitute a petitioner and retain the original petitioner’s security for costs, and directed that an election petition trial was to proceed even if the

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1 The Bill was introduced on 3 December 1875; the quotation is from the long title of the Act when passed. The short title is the *Election Petitions Act 1875* (39 Vict., No. 10). For the ‘Rules as to Proceedings on Election Petitions in Western Australia, made by the Supreme Court, pursuant to the Act 39 Vict., No. 10’, see Report A 9, in *Votes and Proceedings of the Legislative Council, Second Session, 1876*, np.
2 Sections 2 and 3(2) of the *Elections Petitions Act 1875*. Section 3(2) extended the lodgement period to sixty days for the remote Northern District.
3 Sections 2, 13 and 17 of the *Elections Petitions Act 1875*. 
respondent resigned his seat, and could proceed notwithstanding the death of the petitioner or respondent, or the respondent refusing to defend the case, as substitute petitioners and respondents could be admitted.4

The Bill also increased penalties for bribery. Candidates, agents and canvassers convicted of such offences would be banned for seven years from being elected to the Legislative Council, from being registered as a voter and from voting ‘at any election’ in WA, and from holding municipal or judicial office or being a JP—provisions which, like most of the Bill’s clauses, had been copied from the English Parliamentary Elections Act 1868.5 The candidate, as previously, also forfeited his seat.6 Additionally, a candidate who knowingly employed an agent or canvasser who had within the seven years preceding such employment been found guilty of any corrupt practice would have his election automatically voided upon petition.7 A prohibitive security of £500 demanded from a petitioner before action could proceed, and which under specified circumstances could be forfeited, discouraged vexatious litigation.8 In short, the Bill’s provisions expedited the election petition process while making it less liable to evasion or vexatious litigation.

The Bill passed on 16 December 1875.9 On the same day, William Burges, a recently appointed unofficial nominee, possibly trying to capitalise on the consensus in the Council with respect to improving elections, moved that the House request the Governor to introduce:

a Bill to put an end to proxy voting, and to establish the ballot and secret voting at elections, as at present obtained in England. Freedom of election was the basis of constitutional liberty and he trusted the House would support the motion.10

This motion would undoubtedly have pleased the Inquirer. After the 1874 election it had reprinted almost verbatim the article exposing electoral abuses, and urging electoral reform, which it had featured after the 1872 election.11 But while the Members concurred that WA’s electoral system required reform, some demurred that abolishing proxy voting altogether

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4 Sections 9, 17 and 19–20 of the Elections Petitions Act 1875.
5 Sections 25 and 27 of the Elections Petitions Act 1875.
6 Section 25 of the Elections Petitions Act 1875.
7 Section 26 of the Elections Petitions Act 1875.
8 Sections 3(4) and 24 of the Elections Petitions Act 1875.
9 Royal Assent was granted on 21 December 1875. As the Act was not retrospective it did not affect Charles Crowther. Nor did it affect the inaugural disqualified Member, George Shenton, who had been returned to the Legislative Council six weeks previously in a by-election for the seat of Toodyay.
10 WAPD, 16 December 1875, p. 48.
11 See the Inquirer, 7 October 1874. The Herald also condemned proxy-voting abuses—see editorials on 23 May and 25 April 1874, while the Western Australian Times, in an editorial on 18 December 1874, referred to influential settlers with ‘the proxies of the majority of the voters of his district within the leaves of his ledger’. If anything, proxy-voting abuses were worse in the 1874 election which featured ‘blank’ proxy-voting papers being signed by electors—see the Inquirer, 30 September 1874.
was premature in WA’s often massive electorates, ‘unless the country was prepared to multiply polling booths *ad infinitum*, and to provide other expensive machinery for ensuring voting by ballot alone’. The motion was accordingly amended, before being passed, to request Robinson to introduce legislation to amend proxy voting and restrict the operation of the system to distances greater than fifteen miles from the nearest voting place.

Robinson did not allude to the requested measure at the opening of the next session. When the Government’s intention was queried, the Acting Colonial Secretary, Anthony O’Grady Lefroy, replied that, although in favour of introducing voting by ballot, in view of WA’s vast distances, the change would involve establishing numerous additional polling places, at an expense which the Government did not feel justified in recommending.

Discussion of proxy voting and secret ballot soon cropped up again, however, during debate on proposed amendments to voting provisions in the *Municipal Institutions’ Act 1871*—amendments which, by a legal technicality, extended the municipal franchise to unmarried female ratepayers. The Government’s proposal that municipal elections, currently conducted by ballot, would henceforth follow parliamentary election practice, was vehemently opposed by George Randell who declared that ‘the general feeling of the country—shared in by this House—is in favor of the ballot’. A majority supported Randell’s amendment which deleted the requirement for municipal electors to sign and put their name and address on the ballot paper.

During debate on the Bill, sentiment in the House was so pro-ballot that Lee Steere floated the suggestion that the Governor should again be memorialised to bring in legislation to introduce ballot voting. A week later Randell moved that His Excellency be requested to introduce in the next session a Bill to limit proxy voting to electors who lived more than fifteen miles from a polling place or who produced a medical certificate attesting to their

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12 Fraser, *WAPD*, 16 December 1875, p. 48.
13 *WAPD*, 16 December 1875, p. 49.
14 See Minutes of the Proceedings, 10 August 1876, *Votes and Proceedings of the Legislative Council, 1875–76*, p. 16.
15 *Municipal Institutions’ Act 1871* (34 Vict., No. 6). When Randell asked the Attorney General whether female ratepayers would be enfranchised by the amended Act, Hocking replied that he ‘was not altogether prepared to answer the question at that moment, but that, according to the provisions of the Shortening Ordinance,—unless there was something in the subject or in the context repugnant to the interpretation—every word, in all local Ordinances, importing “masculine” gender and “singular” number, was to be construed as also meaning “feminine” and “plural,” respectively. His present impression was that, under the clause now before the committee, females would be entitled to qualify as electors’—see *WAPD*, 21 August 1876, p. 83. Also see Biskup, ‘The Westralian Feminist Movement’, p. 76, for argument that this was a ‘somewhat valueless precedent’, because so few women qualified. This principle was not regarded as applying to later Electoral Acts—see Walter James, *WAPD*, 10 August 1898, pp. 911–912.
16 *WAPD*, 25 August 1876, p. 105.
inability to vote in person.\textsuperscript{18} The motion was unanimously affirmed. As to why he abandoned the call for the secret ballot, Randell shared during debate his conviction that the existing system—but for ‘the loose mode in which it was carried into effect’—\textit{could} ‘ensure perfect secrecy’.\textsuperscript{19}

At the opening of the 1877 session Robinson announced that the Government would introduce legislation to abolish proxy voting \textit{and} introduce the secret ballot.\textsuperscript{20} In this rare instance of the Members receiving more than they requested, Robinson acknowledged that concerns WA’s finances could not afford the increase in polling places required to make the secret ballot work within the ‘great extent of our territory’ were mistaken, and that by:

making use of thirty-two Police Stations, three Telegraph Offices, and four selected Stations, nineteen-twentieths of the whole population will be brought within a radius of not exceeding fifteen miles from one or other of the polling places.\textsuperscript{21}

He continued that even if the difficulties and costs were greater than anticipated, the time had come to deal with matter. The Members were not particularly gracious about the concession, or Robinson’s conversion, however, with even one of the unofficial nominees remarking that ‘he did not think the House would be likely to give the Government credit for voluntarily introducing that measure. They had, rather, been forced to bring it forward’.\textsuperscript{22}

The principal features of Robinson’s Ballot Bill were abolition of proxy voting and the introduction of the new system of voting in which electors ‘alone and in private’ would mark their vote by placing a cross within the square opposite the name of their preferred candidate on a printed ballot paper, which they would then deposit folded into a locked ballot box.\textsuperscript{23} A range of other electoral reforms of an equally liberal nature (to be discussed) made the Bill basically a supplementary Electoral Act to the Legislative Council Ordinance, with which, as cl. 2 of the Bill stipulated, it ‘shall be taken and read together as one Act’.

When the Attorney General’s review of the Bill’s provisions concluded, the Members discussed improvements. Some urged that the Bill not vary, as it did quite materially, from the UK \textit{Ballot Act 1872} on which it was based—and which, according to Maitland Brown,
‘had been found to work admirably at home’. Further, as Hirst has suggested, for those who were conservatively minded, ‘democracy defended as British was tamed and quarantined’, an observation endorsed by Brent who has commented that Britain having adopted the ballot made it ‘safe for WA to do so as well’.

Other Members, however, advocated additional electoral reforms in the Bill similar to, and in some cases in advance of, measures in the sister colonies’ ballot legislation. Indeed, the debate on the Bill’s provisions and amendments during the committee stage exemplified well the extent to which WA’s colonial legislation, although borrowing extensively from British statutes because of the training and preferences of Colonial Office-appointed Attorneys General, was often re-configured to incorporate the more liberal provisions of the sister colonies’ constitutions.

On the key matter of introducing the secret ballot—five years after England and almost two decades after the last Australian colony had adopted it—the Members wholeheartedly supported the Bill. They also endorsed the Bill’s proposal to dispense with public nominations on election day (a reform not instituted in NSW until 1893). Henceforth, the returning officer would simply announce who had duly become candidates in accordance with the statutory provisions—i.e. who had submitted a written nomination form at least ten days before election day—and restrict those allowed in the polling place to officials, electors casting a ballot, scrutineers and constables.

The elected Members, however, were not pleased that the Government had opted to abolish, rather than, as requested, simply limit, proxy voting—notwithstanding the Bill safeguarding the voting rights of an estimated 95% of country constituents by providing additional polling places. It was not, however, the 5% of rural electors who had a long return trip on polling day that most troubled the Members, but rather those colonists who owned property in distant electorates and who, without some means of tendering a vote when absent from the electorate, would forfeit their plural votes. Lee Steere accordingly moved that a new clause be inserted (becoming s. 10 in the Act) to enable electors who lived more than thirty miles from a polling place, or who would not be within the electorate on polling day, to vote. Under s. 10, such electors could ‘demand’ a vote prior to the election from a duly

24 Ballot Act 1872 (35 & 36 Vict., c. 33); WAPD, 17 July 1877, p. 38.
26 It is interesting that during debate Brown referred to the Ballot Bill as being ‘pretty nearly a transcript of the English Act’ to have the Attorney General retort: ‘No, it is not.’—WAPD, 17 July 1877, p. 38.
27 See ss. 4, 7 and 8 of the Ballot Act 1877.
appointed and gazetted resident magistrate, police magistrate or justice who had been issued with specially printed blank ballot papers and counterfoils.\textsuperscript{28}

This measure would introduce the first official instance of postal voting in Australia (although s. 10 votes could be returned to the returning officer by means other than post, e.g. by an agent).\textsuperscript{29} According to Brent, until 2008 this was a ‘forgotten reform’, even by Hughes and Graham, and ‘lost in the official history’, with the credit for introducing postal voting being claimed by South Australia, which introduced a version in 1890.\textsuperscript{30} Indeed, Brent claims that WA’s \textit{Ballot Act 1877} introduced the ‘first non-ordinary voting provisions under an Australian ballot system of voting’ in the world.\textsuperscript{31} Even with respect to conventional postal voting, the measure was progressive: it was only in 1865 that England instituted arrangements which enabled country clergy to vote by post.\textsuperscript{32}

Many in WA correctly maintained, after the Bill passed, that proxy voting had been abolished, even though \textit{proxy} continued to be used to describe s. 10 votes (and still is by some historians).\textsuperscript{33} As late as 1893, an exasperated Premier Forrest stated of absentee voting:

\begin{quote}
Some persons call it proxy voting, but it is not proxy voting at all; because voting by proxy is to get someone else to vote for you, whereas the practice I refer to is the voter’s own deliberate act, just as if he were personally present at the election.\textsuperscript{34}
\end{quote}

Stannage has commented unfavourably on the supposed retention of proxy, and thereby plural, voting in 1877. He refers to proxy voting being ‘saved’ to protect plural votes and thus becoming part of the armoury of ‘country conservatism’, notwithstanding his acknowledgement that ‘the proxy vote was a negligible electoral factor’ (e.g. the seven absent voters out of 213 electors on the Moore electoral roll in 1896).\textsuperscript{35} Indeed, a large proportion of absent voters were not metropolitan plutocrats, but simply country constituents whose property interests simply straddled adjacent electorate boundaries. It is

\begin{footnotesize}
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  \item To keep a cap on the number of officials issuing such votes, and also because of the expense and inconvenience of printing and despatching the blank ballot books around the colony, the Members were advised that authorisation would not be extended to \textit{all} the colony’s JPs. In the 1880 election, for example, only the resident magistrates, the Perth Police Magistrate and two additional justices were gazetted. See \textit{WAPD}, 27 July 1877, p. 72, and \textit{Government Gazette}, 13 January 1880.
  \item As discussed in chapter 2, voters in rural electorates had been permitted to return their ballots by post in the strictly unofficial ‘selections’ of 1867.
  \item Brent, The Rise of the Returning Officer’ pp. 190–194; quotations from pp. 190 and 193.
  \item Brent, ‘The Rise of the Returning Officer’, p. 192.
  \item Vincent, \textit{Pollbooks}, p. 22.
  \item De Garis, for example, refers to s. 10 votes as proxy votes in ‘Constitutional and Political Development’, p. 45.
  \item \textit{WAPD}, 4 October 1893, p. 1035.
  \item \textit{WAPD}, 4 October 1893, p. 1035.
  \item Stannage’s whole Appendix 1 ‘Some Demographic and Voting Characteristics of the Electorate in Relation to Constitutional Changes’ (pp. 42–70) from his thesis contains a useful analysis of proxy voting in Western Australia from 1884–1897.
\end{itemize}
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important to note that there had not been widespread calls for the abolition of plural voting in WA—although such calls did come with the formation of Liberal Association Leagues in the 1880s. WA’s tolerance of plural voting, however, is unremarkable considering that, with the exception of South Australia, which did not permit plural voting when it instituted self-government, neither the ultra-democratic sister colonies nor the mother country had abolished the practice. (NSW and Victoria did so in 1894 and 1899 respectively, for their Lower Houses, and the other Australian legislatures followed early in the twentieth century. The United Kingdom retained plural voting until 1948. 36) Rather, what Western Australian colonists and the press had railed against since 1870 were abuses in the proxy voting process—and the changes made in Robinson’s Ballot Act eliminated these.

Accordingly, harassment of electors, including some who lived close to polling places, by ‘proxy hunting’ candidates and JPs would no longer occur; absent votes would be under the provisions of the secret ballot; candidates would no longer have to compete for the services of JPs to attest absent votes and, therefore, were on an even footing; and, as a corollary, JPs would finally be released from the quasi-role of ‘electioneering agents’ within their districts. 37

A major feature of the Bill which displeased the Members, however, was that the printed ballot papers would be numbered on the back, with the matching number appearing on the ballot paper’s counterfoil, a provision lifted from the UK Act, which had copied it from the Victorian Electoral Act. 38 Considering that under the Ballot Bill, returning officers had to mark the elector’s name on the electoral roll and then record it on the counterfoil, there was concern that a returning officer could subsequently compare ballot papers and counterfoils and determine who had voted for whom. 39 The Attorney General explained that the numbering and counterfoil provisions were imperative, in case of an election petition, to enable the Supreme Court to ‘trace up’ the votes of any elector ‘with a good horse’ who may have voted at the central and district polling places in his electorate or, alternatively, who may have been accused of bribery or corrupt practices. 40 Given that multiple voters under the Bill would be subject to naming and shaming in the Government Gazette and up to two years’ imprisonment, it was unlikely there would be many offenders, and this traceability feature, with the exception of Victoria, had not been adopted by the other

36 The information on plural voting comes from Crisp, Australian National Government, p. 137. Crisp incorrectly puts WA’s abolition date as 1907; it should be 1904 (and 1964 for the Legislative Council).
37 Quotations from Hocking, WAPD, 16 December 1875, p. 49.
38 Electoral Act 1856 (19 Vict., No. 12). See s. 5(2) of the Ballot Act 1877.
39 Section 9 of the Ballot Act 1877.
40 WAPD, 27 July 1877, pp. 68–69.
Australian colonies—although there were reports from NSW that as a result of the lack of traceability, personation was a serious ‘evil’.

To safeguard ‘the principle of secrecy’, however, the Government had provided in the Bill that only the Chief Justice was authorised to scrutinise ballot papers and counterfoils and that, even during legal proceedings, an elector could not be required to disclose for whom he had voted. The Members, however, insisted on additional measures to safeguard the privacy of the vote which did not appear in the Victorian or English Acts. These included separate packaging and sealing of counterfoils before the locked and sealed ballot boxes were opened, with candidates and scrutineers also being permitted to apply seals to the packaged counterfoils. The Members insisted on similar measures with absent votes.

Other secrecy provisions were initiated or strengthened by the Members. Lee Steere successfully moved, for example, that instead of voting at ‘a table apart’, electors should be provided with a ‘compartment screened from observation’ as in the English and sister colonies’ legislation. And, again following the UK Act, he successfully proposed a new clause requiring all officials and agents involved with polling to be bound by secrecy and subject to imprisonment for attempting to elicit information as to how any elector voted, or for disclosing ‘at any time to any person any information’ regarding how an elector voted or his number on the ballot paper or register. Various Members also expressed concern for ensuring the secrecy of voters who were illiterate, blind or ‘who had no arms’. Notwithstanding the UK Act authorising the presiding officer, ‘in the presence of the agents of the candidates’, to assist blind, illiterate and Jewish electors (if the election were held on Saturday), and all the Australian Electoral Acts (with the exception of South Australia’s) providing for illiterate voters, the Government was unsympathetic. Hocking argued that ‘among a small population like this, where the number of blind people might be counted on the fingers of one’s hand, he did not think it was necessary to specially provide for their

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41 Sections 15 and 22 of the Ballot Act 1877; quotation from ‘Papers Relative to the Operation of the System of the Ballot in the Colonies’, BPP, 1871–73, Colonies Australia, vol. 26, p. 11. Bede Nairn has also commented of colonial NSW that: ‘Personation … was rife … Double and even triple voting were allegedly common in suburban electorates’—quoted in David Clune and Gareth Griffith, Decision and Deliberation: The Parliament of New South Wales 1856–2003, Federation Press, Sydney, NSW, 2006, p. 34.
42 Quotation from WAPD, 17 July 1877, p. 37; see ss. 16 and 17 of the Ballot Act 1877.
43 See ss. 13 and 14 of the Ballot Act 1877.
44 Under s. 10 an absent elector’s folded ballot paper and counterfoil had to be sealed in separate envelopes before being returned (usually by post, but also by hand if convenient) to the returning officer, who had to keep them unopened until the poll commenced, after which—‘in presence of the scrutineers’—he was to open the counterfoil envelope and mark the absent voter’s name off the roll before opening the ballot paper envelope (and scrutineers were entitled to check that the seals were still intact before he did this) and depositing the still folded ballot paper in the ballot box.
45 WAPD, 27 July 1877, p. 70, and s. 9 of the Ballot Act 1877.
46 WAPD, 1 August 1877, pp. 96–97, and s. 24 of the Ballot Act 1877.
47 See WAPD, 27 July 1877, pp. 69–70 (quotation from p. 70), and also 3 August 1877, pp. 100–101.
48 Section 26 of the Ballot Act 1872.
exercising the franchise’. As for illiterate electors, Hocking had previously outlined that provision had been made for them in that the ballot paper would list candidates alphabetically. The motion was narrowly defeated with both the official and unofficial nominees voting against it—with the result that returning officers at future elections would be strongly criticised for complying with the Act.

The Members also tightened up the nomination process, requiring would-be candidates to have their nomination form countersigned by at least six electors in the district (the UK Ballot Act required the signatures of ten registered electors which, given Britain’s more populous electorates, was a less onerous requirement), and, as a further guarantee that candidates were nominating in ‘real earnest, and … not doing so just for the fun of the thing’, they would be required to provide a £25 deposit (£50–£100 in some of the other Australian colonies, and nothing in England at this stage where candidates’ earnestness was guaranteed by the requirement that they pay an equal share of election costs) which would be forfeited if they did not poll a stipulated proportion of votes.

Again copying the UK Act, Lee Steere successfully moved that a sub-clause be inserted whereby ‘EVERY person’ who ‘Forges or fraudulently defaces, or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper knowing the same to be forged’ would be guilty of a misdemeanour punishable by up to six months’ imprisonment or a fine of up to £50. Although a stringent penalty, it was light compared to that incurred by electoral officials convicted of the same offence. Indeed, an electoral official was liable for quadruple the statutory prison term or fine for any fraudulent offences in relation to ballot papers and ballot boxes.

49 WAPD, 3 August 1877, p. 101.
50 WAPD, 17 July 1877, p. 36.
51 See the report from the 1889 election at Toodyay: ‘Much dissatisfaction has been expressed at the action of the returning-officer in refusing to assist voters who were unable to read, by explaining the position of the names of the candidates. Several votes were lost to both candidates through this stupidity, and several would not enter the polling room for the same reason. Later on in the day the returning-officer assisted later applicants, thus adding to the error. A formal complaint was lodged by Messrs. Throssell, Gregory and Morrell at the close of the contest’—see the West Australian, 2 February 1889. It is interesting to note, however, that the provision to assist illiterate electors had been denounced in the Imperial Parliament by a number of ballot advocates who believed that electors could be pressured into pretending to be illiterate so that candidates’ agents would be able to see how their vote was dictated to the presiding officer—and, as a consequence, that ‘the Bill had been so greatly impaired … that many friends of the Ballot were scarcely anxious that it should receive the Royal Assent’—see Kinzer, The Ballot Question, p. 212.
52 Lee Steere, WAPD, 27 July 1877, p. 67. See ss. 4 and 25 of the Ballot Act 1877. The UK Representation of the People Act 1918 introduced a £150 deposit for candidates in the UK in place of the requirement that they defray official election expenses.
53 See s. 20(1) of the Ballot Act 1877.
54 Moreover, electoral officials convicted of ‘wilful’ misconduct, would be made to ‘forfeit to any person aggrieved by such misfeasance, act, or omission, a penal sum not exceeding One hundred pounds’—‘in addition to any other penalty or liability’—see s. 21 of the Ballot Act 1877.
The Ballot Bill passed on 13 August 1877 and received Robinson’s assent three days later.\footnote{The long title was \textit{An Act to Amend the Law Relating to Procedure at the Election of Members to Serve in the Legislative Council} (41 Vict., No. 15). The short title was the \textit{Ballot Act 1877}.} Upon the Speaker advising Members of this, Lee Steere rose to protest, stating that as the Bill affected the manner of electing members to the Legislative Council, it was a constitutional amendment which had to be reserved for the signification of Her Majesty’s pleasure.\footnote{WAPD, 16 August 1877, pp. 159–160. Section XXXII of 13 & 14 Vict., c. 59 directed the reservation of Bills altering provisions ‘concerning the Election’ of Members.} Accordingly, the next day the Ballot Act, 1877, Suspension Bill was passed and the two Acts were despatched to England for the Colonial Office to sort out—with their departure soon followed by Robinson.\footnote{\textit{Ballot Act 1877 Suspension Act} (41 Vict., No. 19).}

Ten months later, the new Governor, Sir Henry Ord, who had assumed office on 12 November 1877, had not received any Imperial response, let alone assent, to the Ballot Acts. After insistent questioning about this by Stephen Parker, who had entered the Legislative Council at the Perth by-election on 22 May 1878, Ord bluntly informed the latest Secretary of State, Sir Michael Hicks Beach, that as ‘the delay will be made use of adversely to the interests of Government’, he would be obliged if Her Majesty’s instructions could be telegraphed forthwith.\footnote{Sir Henry Ord to Sir Michael Hicks Beach, No. 63, 14 June 1878, SROWA, 390/1166/14. Given Ord had previously advised the Colonial Office that since being in WA he had perceived marked dissatisfaction with the existing political regime—largely because of Imperial ‘delays’ in dealing with Western Australian legislation and loan requests—his bluntness is understandable. See Sir Henry Ord to Lord Carnarvon, 26 December 1877, SROWA, 390/1174/47.}

Within weeks Ord was warning Hicks Beach of another threat—that Parker, who had pledged himself at the by-election to introduce a Bill for self-government, had given notice that he would move the relevant resolutions and seek leave to introduce a Constitution Bill (basically a facsimile of Weld’s liberal 1874 Bill) to effect this.\footnote{Sir Henry Ord to Sir Michael Hicks Beach, 10 July 1878, SROWA, 390/1174/47, and Minutes of the Proceedings, Notices of Motion, 8 July 1878, \textit{Votes and Proceedings of the Legislative Council}, 1878, pp. 113–114.}

Regrettably for the self-government movement, the inexperienced Parker mismanaged tactics in the legislature. On Friday 12 July he successfully moved that consideration of his resolutions be held over to the following Monday, when amendments based upon the resolutions would be moved by Maitland Brown (the leader of the elected Members while Lee Steere was temporarily absent from WA). Parker then attempted to introduce his Constitution Bill. This reversal of order was immediately opposed by Sir Thomas Cockburn-Campbell, who contended it should first be established whether support for self-government still existed within the Council. William Marmion concurred, arguing that as some Members may have changed their views on the question, and new Members had
entered the Chamber, it was appropriate to reaffirm the principle. After heated debate, the Members voted thirteen to five against granting Parker leave to introduce his Constitution Bill before the resolutions. As the session was almost at an end, the deferral was viewed as tantamount to shelving the Bill.

Marmion was correct about the principle needing reaffirmation. While three of the four Members who had entered the Legislative Council through by-elections in 1878 supported self-government (viz. Parker, Thomas Carey and Edmund Brockman) a number of the old Members—most notoriously Lee Steere—had changed their opinion on the desirability of self-government since voting for it in 1874 and 1875. The nominee contingent had also been pressured into dropping their support by Robinson (or replaced when opportunity arose by those opposed to self-government), while some of the elected cohort were not prepared to take on constitutional change without men of the calibre of Weld and Barlee to lead it. Most of the Members had also been taken aside by Ord who had spelt out the ‘serious objections’ to WA adopting self-government. Apart from the significant ‘pecuniary burden the step would entail’, Ord underlined that under self-government WA would soon—

have to grant, as all the others on the continent had done, manhood suffrage without any property qualification for members and eventually the restoration of the civil rights to the Criminal Class, which form something like one half the population.

As a recent petition signed by more than 600 Western Australians, including many ticket-of-leave holders and expirees, had requested restoration of civil rights to ex-convicts, Ord’s caution would have resonated.

The prospect of ex-convicts empanelled on juries, wielding overwhelming voting strength and entering Parliament was anathema to the Members. Brown, Cockburn-Campbell and others even suggested to Ord they would prefer to revert to the pre-1870 constitutional model than see the institution of self-government bring restoration of civil rights to ex-convicts—a proposition Ord referred to Hicks Beach, but which was curtly dismissed.

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60 Sir Henry Ord to Sir Michael Hicks Beach, 10 July 1878, SROWA, 390/1174/47.
61 Sir Henry Ord to Sir Michael Hicks Beach, 10 July 1878, SROWA, 390/1174/47.
62 Gill, ‘Petitions, Memorials and Politics in Western Australia’, p. 49.
63 The relevant despatches are: Sir Henry Ord to Sir Michael Hicks Beach, 7 August 1878 and 21 October 1879, SROWA, 390/1174/47; Sir Henry Ord to Sir Michael Hicks Beach, No. 16, 27 January 1879 and No. 33, 25 February 1879, SROWA, 390/1166/14; Sir Michael Hicks Beach to Sir Henry Ord, No. 74, 3 July 1879, SROWA, 4753/1182/14.
In fairness to the Members, however, it should be noted that although transportation had ceased a decade earlier, the so-called criminal class remained a dominant and confronting presence in sparsely populated WA, which had not been the case in the populous sister colonies when they assumed self-government in the 1850s.\textsuperscript{64} The English novelist Anthony Trollope, for example, after a short stay in WA only six years previously, had made much of the ‘Bill Sykes physiognomy of a large proportion of the population’ and the fact that ‘the convict element pervades the colony … the convict flavour is over everything’.\textsuperscript{65} More recently, Stannage has pointed out that WA’s crime rate in 1878 was seven times higher than that in South Australia which had never had transportation.\textsuperscript{66} Underscoring the convict presence, curfew bells, which warned ticket-of-leavers to return home, would toll nightly in WA until the mid-1880s.\textsuperscript{67} Unquestionably, as Hartwell has commented, the presence of convicts was perceived as a ‘threat to social stability’.\textsuperscript{68}

On Monday 15 July 1878 Parker moved his resolutions calling for the immediate introduction of self-government. He informed Members that when refused leave the previous week to introduce his Constitution Bill he had intended to abandon the resolutions but, in deference to Brown, who had framed amendments to them, he had agreed to proceed. As Brown was known as an arch-opponent of self-government, it might seem curious that Parker would accommodate him, yet in his address to the Council, Brown outlined that during Robinson’s tenure he had been ‘exceedingly dissatisfied’ that WA’s progress had been ‘vexatiously retarded’ by Robinson’s conservatism and the Imperial Government’s overly cautious interventions in WA’s affairs.\textsuperscript{69} Indeed, Brown admitted that on a couple of occasions he had been on the brink of joining the self-government movement, but he still had concerns that WA could not afford to forgo the substantial Imperial grants currently available for the colony’s magistrates, police and convict department if it assumed self-government. He also doubted whether WA would be able to elect enough men of means and leisure to run a self-governing administration—a concern many shared.

\textsuperscript{64} McNaughtan has written that by 1850 the number of convicts and emancipists in NSW comprised less than 15% of a population of approximately 400,000—see ‘Colonial Liberalism’, p. 98. By contrast, Stannage has outlined that convicts, or former convicts, comprised the ‘bulk of the labour market’ in WA through to the mid-1880s, ‘Electoral Politics in Western Australia’, pp. 3–4.


\textsuperscript{66} Stannage, \textit{The People of Perth}, p. 99.

\textsuperscript{67} For reports on convict curfew bells, which rang just before 10 p.m., see the \textit{West Australian}, 12 February 1884 and 3 October 1928.

\textsuperscript{68} Hartwell, ‘The Pastoral Ascendancy’, p. 56.

\textsuperscript{69} Brown’s speech appears at \textit{WAPD}, 15 July 1878, pp. 224–232; quotations from pp. 231 and 228.
Brown’s ambivalence was reflected in his amendments. The first stated that self-government might be still further deferred with advantage to WA, but the subsequent ones warned that such deferral depended on the Imperial Government allowing the Governor greater discretion to carry into effect measures the Legislative Council deemed conducive to WA’s welfare, because the current Imperial meddling ‘practically nullified’ the advantages of representative government.  

Cockburn-Campbell then rose to propose amendments on the amendments. Basically, he endorsed Brown’s proposals, being, if anything, even more opposed to granting self-government to the ‘especially dangerous elements a Western Australian mob contains’, but he felt that the amendments needed to convey in more forceful wording the colonists’ objections to the Imperial Government’s meddling and the view that such meddling largely augmented the responsible government movement. He also thought the amendments would be strengthened by warning the Imperial Government that unless things improved, ‘this Council will be irresistibly compelled … to follow in the wake of public opinion’ and seek self-government.

Marmion then moved another tranche of amendments. These were largely a pastiche of Brown’s and Cockburn-Campbell’s but, as Marmion favoured self-government, although if it could be attained without forfeiting Imperial funds, he was eager to call on Hicks Beach to ‘reconsider … and recommend the removal of the penalties’ if WA assumed self-government.

Lengthy debate ensued. The usual arguments were traversed, but Hocking’s grim Arnoldian warnings that ‘the “residuum” of the population—the dregs that remain after the electoral body has been strained off’ would agitate for manhood suffrage and soon be electing the ‘convict class’ to take over the Government, are worth noting because they made public what Ord had discretely been telling the Members for weeks. Finally, the various amendments were put: Marmion’s were lost on the voices while Cockburn-Campbell’s passed thirteen votes to five, with the result that Parker’s original resolutions were lost. It is doubtful that Parker expected that they would succeed, but he believed that ‘to allow another Session to pass without re-affirming the desirability of a change in the Constitution was to treat the whole question as one of no consequence, and of no public interest or

70 WAPD, 15 July 1878, p. 232.
72 WAPD, 15 July 1878, pp. 235.
73 WAPD, 15 July 1878, p. 236.
74 WAPD, 15 July 1878, pp. 244–245. Ord did, in fact, publicly outline these ‘serious and hazardous changes’ in his Prorogation Speech at the end of the session—see WAPD, 24 July 1878, pp. 308–309.
importance’. Over the next decade Parker would doggedly reaffirm the desirability of constitutional and electoral change.

As, indeed, would others. On 24 July 1878, ‘some of the friends of constitutional reform’ met and unanimously resolved ‘That this meeting is of opinion that the majority of the inhabitants of this colony are dissatisfied with the present constitution, and earnestly desires the adoption of a constitution of Ministerial responsibility’ and that:

>a Reform League should be organised for the purpose of taking such steps as may be best calculated to secure for this colony what is enjoyed by all the other Australian colonies, namely, the right of self-government.76

Office-bearers to what McKenzie has described as the first attempt at organising a political party in WA were appointed, and a follow-up meeting approved a circular encouraging formation of country branches—an invitation swiftly taken up in York and Bunbury.77 The popularity of the Reform League spurred conservative MLCs Charles Harper and Cockburn-Campbell to purchase the *Western Australian Times* the following year. Under a new masthead, *The West Australian*, and with Cockburn-Campbell as editor, they used it to disseminate countervailing anti-responsible government propaganda—or ‘the promulgation of correct information respecting public affairs & to the correction of the mendacious and fallacious statements of the other papers on the subject’, as Ord phrased it to Hicks Beach.78 Henceforth, the opposing factions would be loosely referred to as the Liberal and Conservative parties.79

**An Effluxion of Time Election**

On 15 January 1879 Parker gave notice that in the Council’s next session he would again seek leave to introduce a Constitution Bill.80 Ord immediately informed Hicks Beach, and recommended that as:

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75 *WAPD*, 15 July 1878, p. 222. While on the hustings during the 1884 general election, Parker admitted that in ‘a small House like ours’ Members could ‘ascertain beforehand’ whether their motions would be successful or not, but that he had kept raising the issue ‘to have it discussed not only in the Legislature but also in the columns of the press’—reported in the *West Australian*, 14 October 1884.

76 First quotation from the *Herald*, 27 July 1878; subsequent quotations from Reilly, *Reminiscences of Fifty Years’ Residence*, p. 105. (Reilly was the Reform League’s Secretary.) A report of the meeting can be found in the *Western Australian Times*, 26 July 1878.


78 Sir Henry Ord to Sir Michael Hicks Beach, 21 February 1880, SROWA, 390/1174/47. The first issue of the *West Australian* was published on 18 November 1879. (Further information regarding the takeover of the newspaper appears in the *Australian Dictionary of Biography* entries for both men.)


80 Parker tabled his notice of motion at a special one-day session of the Council held to amend the 1878 Loan Act—Minutes of the Proceedings, Notices of Motion, 15 January 1879, *Votes and Proceedings of the Legislative Council*, 1879, p. 4.
One of the strongest arguments [against self-government] is to be found in the greater cost of Government through the withdrawal of Imperial grants … I shall be obliged if you will cause me to be furnished with a statement of them, which I will lay before the Legislature.81

The Colonial Office furnished the costings and, lo!, at the session’s commencement, Brown obligingly requested the probable direct and indirect costs which the adoption of self-government would entail.82 Ord was then able to advise Hicks Beach that Brown’s question:

> gave me the opportunity of laying before members and the Public a paper I had prepared respecting the cost of Responsible Government and the resources which it is necessary a Colony should possess to enable it to work out such a measure with success. This information was quite new to most people and I understand it did some good. The impression it made no doubt led the leader of the R.G. party to abstain from bringing the question forward during the session.83

For good measure, Ord closed the 1879 session by reading two despatches from Hicks Beach ‘reiterating the grave reasons, which he is satisfied exist, against the adoption of the proposed change’.84

Ord prorogued the Council to 23 October 1879, at which time the Council expired due to the effluxion of time. The colonists had expected the general election to occur by late 1879, but the writs were not issued until 10 January 1880—eight months after requisitioning of candidates had commenced.85 This ‘unprecedented and unconstitutional delay’, which left WA without a Parliament for months, was condemned by Lee Steere who scoffed at the Government’s excuse—that under the provisions of the Ballot Act more time was needed for electoral preparations, including having to send to Adelaide for a ballot box to provide a model for local carpenters!86 The more likely reason for the delay can be conjectured from Ord’s comments in a confidential despatch to Hicks Beach that delaying the election—

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81 Sir Henry Ord to Sir Michael Hicks Beach, No. 16, 27 January 1879, SROWA, 390/1166/14.
82 See Minutes of the Proceedings, 31 July 1879, Votes and Proceedings of the Legislative Council, 1879, p. 11. The costings were sent as an attachment to a despatch from Sir Michael Hicks Beach to Sir Henry Ord, No. 74, 3 July 1879, SROWA, 4753/1182/14.
83 Sir Henry Ord to Sir Michael Hicks Beach, 21 October 1879, SROWA, 390/1174/47. The ‘Minute by His Excellency the Governor in Reply to a Question Respecting the Probable Cost, etc., of the Adoption of Responsible Government by the Colony’ is reprinted in Votes and Proceedings of the Legislative Council, 1879, Paper No. 30, np.
84 WAPD, 8 October 1879, p. 282.
85 Electors from the North District, for example, requisitioned McKenzie Grant to stand as early as 8 May 1879—see the Inquirer, 7 January 1880. Many of the candidates at the 1874 election believed that the ensuing parliamentary term would be a short one. Lee Steere, for example, addressed his Bunbury constituents thus: ‘and, gentlemen, recollect that if you do return me it will only be for a short time, as the Constitution Bill will be the only measure to be brought forward of any moment, as it is the sole question we shall have to decide’, Western Australian Times, 21 August 1874.
86 From Lee Steere’s speech to his Bunbury constituents, reported in the West Australian, 6 February 1880. Rumours also circulated that E.A. Stone, who was the President of the Reform League and who had contested Wellington at the 1874 election, was assured that the election would be delayed while he held the position of Acting Attorney General (from 24 November 1879 to 22 March 1880). Stone categorically refuted this allegation—see the West Australian, 10 February 1880.
would give the Public, now carried away by the reckless appeals of the Press, time to recover itself, and ... a change of feeling respecting ... [self-government] might be brought about even in the course of a year.87

Indisputably, the question of self-government was prominent within the community—and unremittingly stoked by the Fremantle Herald which was run by ex-convicts with a vested interest in the adoption of self-government and the resultant ‘restoration of the civil rights to the Criminal Class’, as Ord had put it. Similarly, the Reform League was promoting the movement and canvassing ‘the constituencies so as to ensure the election to any vacancy of candidates pledged to Responsible Government’.88 As a result, the 1880 general election, which took place between 9 and 14 February, was vigorously contested in the six populous electorates where polls took place, and, as Ord informed Hicks Beach: ‘The only question which seemed to excite any interest was, whether the candidate was or was not opposed to a change in the form of Government’.89 Although, as an interesting aside, at one political meeting, a candidate, when asked if he supported the enfranchisement of women, was greeted by applause when he replied that the subject required consideration.90

When the election results were in, excluding North District’s which were always late, Ord advised Hicks Beach that the expected return of a majority of Members favouring self-government had not occurred. Indeed, if the Member for North District supported the change, then the state of the parties would be exactly the same as the previous year, with nine elected Members opposing and five supporting the change.91 As it turned out, the Member returned for North District, McKenzie Grant, was in favour of self-government, so the 1880 election left the state of the Legislative Council unaltered.92

The election was significant, nonetheless, as it was the first conducted under the Ballot Act 1877 and, as such, it was the first Western Australian election which substantially had the look and feel of a modern-day one.93 Articles appeared in the press commending the new-look elections, and Ord was able to report to Hicks Beach that the elections ‘were

87 Sir Henry Ord to Sir Michael Hicks Beach, 21 October 1879, SROWA, 390/1174/47. In a previous confidential despatch to the Secretary of State, Ord also confirmed the virtue of giving the colonists time to ‘see that the Home Government has their interests really at heart’—Sir Henry Ord to Sir Michael Hicks Beach, 10 July 1878, SROWA, 390/1174/47.
88 Sir Henry Ord to Sir Michael Hicks Beach, 7 August 1878, SROWA, 390/1174/47.
89 Sir Henry Ord to Sir Michael Hicks Beach, No. 16, 20 February 1880, SROWA, 390/1166/14. The election took place on 12 March in the North District.
90 Inquirer, 11 February 1880.
91 Sir Henry Ord to Sir Michael Hicks Beach, No. 16, 20 February 1880, SROWA, 390/1166/14.
92 While agreeing that the numbers for and against self-government amongst the elected cohort remained unchanged, the local newspapers put the ratio at a slightly more optimistic six for and eight against—see the West Australian, 20 February 1880, and the Herald, 21 February 1880.
93 The Ballot Act had been proclaimed in WA on 7 April 1879 and the Proclamation was published in the Government Gazette on the following day.
unaccompanied by any disorder or disturbance’—a view corroborated by the *West Australian* which described polling in the Perth Town Hall as ‘very tame and monotonous’.  

Ord’s verdict on the election to Hicks Beach was that with no change in the numbers for self-government:

> it might be supposed that for the next five years at all events, the Colony would be safe from any renewal of the agitation for a change in the form of Government which have hitherto so largely, and with such injurious results, occupied the public mind – But it would be very unwise to take for granted that the conviction, perhaps impression would be the better word, of the few elected members who constitute the majority now opposed to any change, will remain the same during the next 5 years.

Ord’s caveat was astute: self-government was raised two years later, by which time there had been significant change amongst the officials. Sir William Robinson—dubbed the Colonial Office’s ‘Conservative instrument’ by the *Inquirer*—had reassumed command of WA on 10 April 1880, around the same time that the Liberal, Lord Kimberley, had been reappointed Secretary of State.  

By the end of 1880 there was also a new Colonial Secretary in WA, Baron Gifford.

Before self-government was raised in the Council, however, a Bill to provide two more elected Members for the north and one nominee was introduced.  

The Bill was briefly considered in committee and passed on 6 September 1882. Royal Assent was proclaimed on 24 February 1883, and the elections for the new Members were held in April and May.  

Of note, during debate on the Bill, was support for the view that increasing the ‘influence of the representatives of the people’ in the legislature would help ‘tutor and prepare the public of the Colony for the advent of those freer institutions which, in common with all Englishmen, were their heritage’.

*The Campaign for Self-Government Resumes*

On 30 August 1882, Parker fulfilled his 1880 election pledge and moved that His Excellency be requested to introduce a Bill to confer on WA a system of responsible self-government. He then set about establishing that the Council supported this proposal and that

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94 Sir Henry Ord to Sir Michael Hicks Beach, No. 16, 20 February 1880, SROWA, 390/1166/14; the *West Australian*, 10 February 1880.
95 Sir Henry Ord to Sir Michael Hicks Beach, 21 February 1880, SROWA, 390/1174/47.
96 *Inquirer*, 18 February 1880.
97 *WAPD*, 24 August 1882, p. 189.
99 Harry Venn, *WAPD*, 14 August 1882, p.130.
the time was opportune. Parker’s opening gambit was that everyone—including the Colonial Office—had acknowledged from the very beginning that WA’s constitutional set-up was a ‘mere stepping-stone’ to eventual self-government, and all that needed to be established now was whether WA had reached the stage when it should ‘throw off its constitutional trammels’. Parker revisited, serially, Lee Steere’s 1875 resolutions in favour of self-government—resolutions which, he relentlessly reminded the House, had passed by overwhelming majorities. With each resolution, Parker contended that the case for constitutional change was demonstrably stronger in 1882 than it had been in 1875. Further, Parker adduced additional arguments: that the Australian colonies had recently begun to consider a future union, but WA’s inability to join as an equal and autonomous member, because it was still answerable to Downing Street, was retarding the process, and:

the fact that the Liberals are in power at home, and there is very little doubt our efforts to secure the privileges of self-government would be more likely to prove successful, and that we should be treated with more liberality than if a Conservative Government were in power.

Parker then controverted the arguments against self-government. First, he challenged the exorbitant costs and losses allegedly involved in inaugurating the change, claiming WA would only be £5,000 per annum down, but would gain control of Crown lands as compensation. He then mocked his opponent’s ‘trump card’—the lack of men of leisure and means to form Government—declaring such an argument a ‘libel upon the colonists’, and that he would be prepared to lead the new administration. Finally, he assuaged the ‘dread’ of the Members that self-government would usher in manhood suffrage:

this Colony appears to me to be analogous to that of quiet, steady-going Tasmania rather than of democratic and restless Victoria, whose goldfields, I suppose, attracted to its borders some of the greatest ruffians in the world. The franchise in Tasmania, I find, is a £7 household suffrage. There is no manhood suffrage there, although it entered upon Responsible Government twenty-six years ago, when Victoria did.

All that was required, Parker continued, was for WA to ‘exercise the same prudence and display the same caution in the management of our political affairs as Tasmania and New Zealand have done’ and manhood suffrage could be avoided. These reassurances made, Parker observed that concerns regarding manhood suffrage were possibly overstated, and he quoted the opinion of an elderly ‘gentleman’, one of Swan River’s founding settlers, that:

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100 Parker’s full speech can be found at WAPD, 30 August 1882, pp. 227–241.
101 WAPD, 30 August 1882, pp. 228–229.
102 WAPD, 30 August 1882, p. 231.
103 WAPD, 30 August 1882, pp. 239–240.
104 WAPD, 30 August 1882, p. 240.
105 WAPD, 30 August 1882, p. 240.
the reason why this Colony had not made more progress than it has done in the past is in a great measure
due to the little interest which the lower classes take in public affairs, and that in order to induce them to
do so, we ought to reduce the franchise. 106

Lee Steere opposed the motion. He declared that the resolutions which he had championed
eight years previously were no longer applicable, that WA was progressing well, and this
could be jeopardised if self-government was assumed prematurely and WA obtained the
same brand of responsible government as the sister colonies. 107 Lee Steere had a point.
Since the advent of self-government, the eastern colonies had experienced numerous
financial scandals; corruption and patronage were rife; and the NSW Parliament was
referred to as the ‘Macquarie-street bear-garden’ for the riotous, drunken and occasionally
violent conduct of its Members—unlike the ‘almost unvarying calm propriety of the
Legislative Council of Western Australia’, as the West Australian put it. 108 Indeed, only a
few months after Lee Steere’s speech, a Member of the NSW Legislative Assembly
despondently declared: ‘The very term “honourable members” is a stigma, and a satire, and
a reproach’—an assessment endorsed by Hirst who has commented of the NSW Parliament
of this time that, ‘Nothing seemed to disqualify a person in the electorate’s eyes from a seat
in the house—neither near illiteracy, nor a prison record, nor a reputation for drunkenness … the degradation of parliament [was] complete’. 109

Lee Steere did not have to spell out that, with its disproportionately large population of
ex-convicts, the risk of degradation was even more likely in WA. He also underlined an
additional risk if the Council proceeded with Parker’s motion: that the British Government
could restrict self-government to the southern portion of WA and hive off the north and
institute a new Crown colony there. (Kimberley had given Robinson approval to ‘hint’ to
this effect, accepting Robinson’s suggestion that separation would be a ‘powerful argument’
against self-government. 110) Lee Steere concluded by urging the Members to defeat the
motion decisively, so that there would be no doubt as to the opinions of the majority of
Members on the subject. 111 The resulting vote was decisive: five in favour and twelve
against—an almost exact reversal of the numbers when the resolutions for self-government
passed in 1875.

106 WAPD, 30 August 1882, p. 240.
107 Lee Steere’s speech can be found at WAPD, 30 August 1882, pp. 242–246.
Australian Government, University of Queensland Press, St Lucia, Qld, 1968, p. 157; West Australian, 5 April 1884.
109 First quotation from A.G. Taylor cited in Hirst, The Strange Birth of Colonial Democracy, p. 173; Hirst’s
comments appear on p. 177. Also see Macintyre’s observations about the low moral tone of colonial politics at this
time in A Concise History, pp. 92–93.
110 See Sir William Robinson to Lord Kimberley, 28 March 1881, SROWA, 390/1174/47, and Lord Kimberley to
Sir William Robinson, 17 June 1881, SROWA, 391/1223/259. Both quotations are from Robinson’s despatch.
111 WAPD, 30 August 1882, p. 246.
Robinson advised Kimberley of the vote, and cautiously concluded that:

although I believe that the country generally is still satisfied with the present state of public affairs it is impossible to say in the rapidly changing circumstances of the Colony that the demand for Representative institutions will be much longer delayed.\textsuperscript{112}

Nor was it. Parker again raised the issue in Parliament on 18 April 1883, midway between Robinson’s departure from WA and the new Governor’s arrival. His motion requested:

… His Excellency the Administrator [Sir Henry Wrensfordslcy] … to ascertain at the earliest possible opportunity from Her Majesty’s Secretary of State for the Colonies, for the information of this House, the terms and conditions upon which Responsible Government will be granted to Western Australia.\textsuperscript{113}

While Parker did want the colonists to be apprised in ‘precise terms’ which grants they would lose, what pensions and Civil List sums they would be expected to fund, and whether a bicameral legislature was mandatory, the condition he \textit{really} wanted to confirm was whether WA, upon receiving self-government, would be partitioned, because ‘He was not prepared to accept … [self-government] at the loss of a large extent of territory now forming part of this Colony’.\textsuperscript{114}

The Members praised Parker for his prudence in seeking a definitive statement from the Imperial Government, with even the most committed opponents of self-government conceding that ‘before long the change was inevitable’.\textsuperscript{115} There was also strong endorsement for Parker’s non-partition stance.\textsuperscript{116} The motion passed unanimously. The Council was prorogued the following day and the resolution forwarded to the latest Secretary of State, Lord Derby.

WA’s new Governor, Frederick Broome, was sworn in on 2 June 1883. Unfortunately, Broome did not receive Derby’s response until 30 August 1883, six weeks after he had opened his first session of the Legislative Council and received a confronting Address-in-Reply which referred to ‘that “good time coming,” and which now certainly loomed very near, when the Colony shall govern itself’.\textsuperscript{117} Indeed, the week previously, McKenzie Grant had pointedly asked the Colonial Secretary whether Broome had received a reply to Parker’s request for terms and conditions, and, the answer being ‘no’, the next day Parker

\textsuperscript{112} Sir William Robinson to Lord Kimberley, 27 September 1882, SROWA, 390/1174/47.
\textsuperscript{113} \textit{WAPD}, 18 April 1883, p. 33.
\textsuperscript{114} \textit{WAPD}, 18 April 1883, pp. 33–34.
\textsuperscript{115} Cockburn-Campbell, \textit{WAPD}, 18 April 1883, p. 34.
\textsuperscript{116} Burt provided what would prove to be the movement’s battle cry: ‘When we go in for Responsible Government, we must have the Colony, the whole Colony, and nothing but the Colony’, \textit{WAPD}, 18 April 1883, p. 36.
\textsuperscript{117} Thomas Carey, \textit{WAPD}, 18 July 1883, p. 46.
moved that ‘in the opinion of this House the time has arrived when it is highly desirable that the Colony of Western Australia should adopt a system of “Responsible Government”’.\footnote{WAPD, 21 August 1883, p. 272, and 22 August 1883, p. 282.}

It seems curious that Parker would not await the terms and conditions he had requested only four months earlier. No-one gave credence to his claims that ample time had passed for a reply from Derby, or that ‘the Home Government had determined not to reply … until they had before them the fact that this House had actually affirmed that a change in the constitution was desirable’.\footnote{WAPD, 22 August 1883, p. 306.} More plausible reasons given by Parker were that he was encouraged by the recent uniform acknowledgement in the Council that self-government was inevitable, and that the Federation question had been gaining prominence of late and he feared that:

So long as we remained a Crown dependency, so long would we remain the despised Cinderella of the family; and … we could never expect to be admitted on terms of equality with our more fortunate sisters.\footnote{WAPD, 22 August 1883, p. 285. Sir Henry Parkes, one of the leaders of the Federation movement, had been advocating this view for some time. See his quotation from the Inquirer, 3 September 1884: ‘Federation will ever remain an impracticable idea, until Western Australia enjoys political freedom by being released from the rule and control of a Downing-street official’.

Brown, in seconding Parker’s motion, made this strategy explicit: ‘The present Council would shortly expire; it had only about twelve months more to live; there would be only one more general session before its term expired. And he thought it was well that the people of the colony should know, on the eve of the coming elections, how many of their representative members had made up their minds for the change, and how many of them had not, and who they were.’ See WAPD, 22 August 1883, p. 293.}

Additionally, there had been some recent significant changes in the Council. Within the past four months Brown had decided to support the immediate introduction of self-government and had successfully contested the new Gascoyne seat on that platform. His former seat, Geraldton, had been won by another supporter of self-government (Edward Wittenoom), as had the additional seat for North District (Alexander McRae). Furthermore, the extra official Member of Council, James Thomas, the Director of Public Works, supported constitutional change. An election had to be called within eighteen months and Parker and Brown clearly believed it was critical to force the issue to a vote so constituents would know where their future Members stood.\footnote{WAPD, 22 August 1883, p. 293.} Brown hoped, further, that ‘such a formidable minority’ would support the motion as would justify the Governor in immediately referring the question to the country via election.\footnote{WAPD, 22 August 1883, p. 293.}

The impending election featured prominently in the debate. While some Members saw merit in putting on record their views regarding self-government, others argued against an election being precipitated while WA was still ‘in the dark’ as to the British Government’s...
intentions. Lee Steere summarised the majority position when he referred to Parker’s ‘singular inconsistency’ in calling for terms and conditions from the Imperial Government and then acting before they had been received, and concluded by proposing that the Council ‘deems it inadvisable, pending the receipt of such information, to express any definite opinion with regard to a change in its Constitution’. Parker’s resolution was defeated eleven votes to eight (surely a formidable minority), and Lee Steere’s delaying amendment was then put and carried.

Derby’s despatch requested Broome to furnish the Colonial Office with more information before it, in turn, could provide the information requested by the Councillors. In particular, Derby required a ‘full and exhaustive’ report which ‘should be accompanied by a return as far as it can be corrected to the latest date, of the population, land sold and leased, and receipts and expenditure, in the several districts of the Colony’. Even without this information, however, Derby confirmed the separation scenario, claiming that ‘it appears to me, as at present advised, that it would be necessary’ to partition WA:

It is not easy to perceive how the growing requirements of places at a very great distance from Perth can be adequately provided for by a Responsible Government, with the seat of administration and legislation in that city ...

This was not the only electoral aspect of self-government troubling the Colonial Office. In a second confidential despatch, Derby requested a supplementary report on ‘the numbers and character of the expiree class, and their influence upon the general population of the colony’, as well as Broome’s opinion as to whether full citizenship could safely be accorded to this class.

Broome forwarded Derby’s first despatch to the Council, prorogued the House a week later, and advised Derby:

No action was taken by the Council upon your Lordship’s Despatch, nor have the organs of Responsible Government in the Press urged further agitation at present. But of course the subject cannot be regarded as in any way disposed of, and it will probably come forward again next session.

On 9 April 1884 Broome sent Derby his report on WA’s finances and his opinion as to its readiness for self-government:

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123 Marmion, WAPD, 22 August 1883, p. 300.
124 WAPD, 22 August 1883, pp. 294 and 296.
125 Lord Derby to F. Napier Broome, No. 109, 23 July 1883, SROWA, 4753/1182/18.
126 Lord Derby to F. Napier Broome, 23 July 1883, SROWA, 391/1223/261.
Though I see no valid reason for withholding free institutions from this Colony, after its inhabitants shall have expressed a general and decided wish to take upon themselves the burden and the responsibility of that form of government, I am strongly of opinion that until such a wish shall have been expressed, which certainly it has not been as yet, it would be a mistake to make this great and irretrievable change … Western Australia would do well to delay its majority for a time, until its wealth and population shall have still further increased …

Given the paucity of European settlers in the north he also proposed that it be partitioned upon self-government and erected into a Crown colony to be administered by a Lieutenant-Governor, subordinate to the Governor at Perth.

Holding these views, Broome recommended that Derby ‘intimate that Responsible Government would not be refused if a very decided and general wish for it should find utterance at the elections which will take place next year’. Regarding elections, Broome outlined that the colonists currently returned ‘the most leading, most intelligent, and most public-spirited men of the Colony’ (which, according to the electoral authority Edward Cox, was not the situation in Britain where prohibitive electioneering costs meant ‘the vast majority of candidates are men who have no other pretensions than wealth’) and he felt confident similar candidates would be returned under self-government. Broome doubted, however, whether there were enough men of means and leisure in WA to administer an enlarged self-governing administration, although he conceded that ‘the deficiency is not, however, so serious as to be absolutely prohibitive’. Broome also referred to the electoral impact of the expiree class, and noted that while—

The presence of a convict, or ex-convict, element in this population cannot, of course, fail to be harmful for years to come … it has not, I think, engendered a political defect so injurious as to greatly alter the conditions under which Responsible Government can be granted.

Indeed, Broome pointed out that expirees already voted and ‘the Council could not be better constituted than at present’ before conceding that an expiree elector ‘may be, and often is, as good an elector and member of society as a man with a better record’. This was a shrewdly conciliatory position to take given his report would be tabled in the Council and commented upon by the ex-convict owned Herald.

128 F. Napier Broome to Lord Derby, 9 April 1884, BPP, 1889, Colonies Australia, vol. 31, pp. 349–351. Broome’s ensuing quotations come from this despatch.
129 Cox wrote in 1868: ‘There are few boroughs which do not require a very considerable outlay; a metropolitan borough, for instance, involves an expenditure of $5000 at the least. Money and mind do not always co-exist, and, the former being the most essential qualification, the vast majority of candidates are men who have no other pretensions than wealth’, ‘Hints to Solicitors for the Conduct on an Election’, p. cli.
In a *confidential* despatch to Derby, however, Broome was less effusive about WA’s expirees, declaring that while he was content for them to vote, the prohibition on their entering Parliament should be retained as a ‘vital safeguard’:

So long as no expiree can enter the Legislature the convict class can only take a direct part in politics through the newspapers, where they do some harm. But their exclusion from the Legislative Council prevents them from acquiring any real power in the State, and such power should not, for many years to come, be allowed to get into their hands in this community … I think my view of this matter would be fully shared by the Legislative Council, and by the portion of the community whose status is not affected.\(^\text{130}\)

Broome repeated this warning in his confidential report to Derby on the ‘Numbers, Characters, and Influence, of the Expiree Class in Western Australia’.\(^\text{131}\) The report confirmed the number of expirees in WA was 2,600 out of a non-Aboriginal adult male population of only 10,300—and that expirees comprised more than one-sixth of the 3,967 voters on WA’s electoral rolls (and almost one-third in the Toodyay electorate). Broome’s recommendation that they be prevented from voting in one of themselves was understandable, and one with which Derby ‘fully’ concurred.\(^\text{132}\)

Derby did not concur, however, with Broome’s recommendation that Western Australians should be granted self-government even if strong support was expressed for it at the upcoming general election, underlining that there were important political and financial matters that would first need to be resolved.\(^\text{133}\) He did agree, however, that ‘*if*’:

> the electors should declare themselves very generally and decisively in favour of a change in the constitution … Her Majesty’s Government would not refuse to examine the details of the arrangements which it would be necessary to make if Responsible Government should be introduced …

Broome laid this despatch before the Members on 29 August 1884 and astounded everyone by dissolving the Council and issuing writs for the elections just over a fortnight later.

**The ‘hurry-scurry’ 1884 Election**

Not only was the 1884 general election called prematurely, but the election dates spanned 20 October to 12 November, which meant candidates in some districts had barely five weeks to convince electors to vote very generally and decisively for what Battye has aptly

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\(^\text{130}\) F. Napier Broome to Lord Derby, 18 April 1884, SROWA, 390/1174/47.
\(^\text{131}\) Sir F. Napier Broome to Lord Derby, 8 August 1884, SROWA, 390/1174/47.
\(^\text{132}\) Lord Derby to Sir F. Napier Broome, 14 July 1884, SROWA, 391/1223/261.
\(^\text{133}\) Lord Derby to Sir F. Napier Broome, 14 July 1884, *BPP*, 1889, Colonies Australia, vol. 31, p. 353. Derby’s ensuing quotations come from this despatch.
termed the ‘test question’ of self-government. Conspiracy theories immediately spread that Broome and others opposed to self-government had, by calling ‘hurry-scurry’ elections, ‘stolen a march’ on supporters of self-government and, by this ‘piece of political trickery’, intended, ‘as far as possible, to “gag” any decisive expression of public opinion upon this one political question of the day’. In fact, while Broome did hope an early election would ‘terminate a period of political unrest and uncertainty’, the principal reason it was called early was because he had been granted six months’ leave and wanted polling concluded before his departure for England.

Unquestionably, the election period was short and, as the West Australian commented, because everyone had thought there was ample time before campaigning would commence, ‘no preliminary steps even had been taken either by the constituencies or by intending candidates’. The West, being viscerally opposed to self-government, was delighted at this outcome, considering it would be a handicap for those advocating change, particularly preventing the ‘fiery “reforming” spirits’ in the metropolis from undertaking ‘aggressive operations’ in the country.

There were a number of casualties of the tight timing. Harry Venn lost Wellington by two votes, according to the Inquirer, principally because he did not personally canvass electors, while Lee Steere, in a letter to the West Australian, cited the lack of time to canvass as a reason for not re-nominating after seventeen years in the Council. (Broome, however, appointed Lee Steere an unofficial nominee Legislative Councillor on 11 July 1885.) Similarly, Parker, one of Perth’s leading barristers, apologised on the hustings for not having had the time to undertake a personal canvass of the district. Instead, with his running-mate, Dr Edward Scott, Parker resorted to sending a lacklustre postcard to Perth electors urging them to ‘come to the poll and vote for your humble servants’. While Parker was returned, he did not triumphantly head the poll as he had in the 1880 election.

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134 Battye, Western Australia, p. 378.
135 First quotation from the Victorian Express, 24 September 1884; second quotation from the Inquirer, 1 October 1884; remainder from the Inquirer, 17 September 1884.
136 F. Napier Broome to Lord Derby, 2 June 1884, SROWA, 390/1174/47. (Broome was away from 12 November 1884 to 16 June 1885. He departed from WA on the day the last elections took place in the north.)
137 West Australian, 18 September 1884.
138 West Australian, 25 September 1884.
139 Inquirer, 19 November 1884; Lee Steere’s letter appeared in the West Australian on 14 October 1884.
140 West Australian, 27 September 1884.
141 West Australian, 25 September 1884. See O’Gorman’s comments on the use of election postcards in the nineteenth century: ‘Canvassing cards, sometimes of an impressively ornate and elaborate character, were a common substitute for letters. But such stratagems were no substitute for the personal encounter. As one agent remarked, “a personal canvass everywhere will decide a very large portion of … [electors]”’, Voters, Patrons, and Parties, p. 99. Parker’s victorious opponent, Sir Luke Leake, also benefited from the West Australian urging Perth electors to plump for him and explaining how to do this because of the ‘somewhat hazy notions upon the subject’—see the West Australian, 18 October 1884. The plumping advice was largely heeded and almost all Leake’s votes were plumps.
Considering how much hinged on the election, campaigning was intense, although in this period of unpaid Members, and, now, substantial nomination deposits, seven of the thirteen seats were uncontested. It is misleading, however, to equate uncontested seats with elector apathy. In numerically small electorates, which usually held decided opinions on the question of self-government, the colonists would grill potential candidates regarding their views, and requisition those deemed suitable.\textsuperscript{142} Challenging candidates supported by most of the local community would be futile.

Indeed, notwithstanding Stannage’s reference to the ‘tranquility of the conduct of politics of 1884’, the 1884 election was anything but tranquil.\textsuperscript{143} Letters filled the press and town criers called citizens to meetings throughout WA. A ‘monster meeting’ in support of self-government was held in the ‘premier constituency’ of Perth where hundreds marched through the city with torches and banners proclaiming ‘Self Rule’ and ‘Britons’ Birthright’ before assembling at the Town Hall.\textsuperscript{144} Mid-campaign, a huge fillip to the self-government movement were comments from former Governor Robinson deriding WA’s hybrid form of government as ‘about the most troublesome to work of any with which I am acquainted … it is neither the one thing nor the other’.\textsuperscript{145}

The major arguments against self-government—the ‘probable loss’ of the revenue-raising north and the likelihood of manhood suffrage being introduced and ‘throwing a deal of power into the hands of men who have no stake or interest in the colony’—were relentlessly highlighted by candidates.\textsuperscript{146} The separation bogey was largely neutralised by self-government candidates who, like Parker, countered that self-government, which would give the north strong representation in an enlarged and autonomous local legislature, would appeal more to northern separatists than Crown colony control by Imperial masters twelve thousand miles away.\textsuperscript{147}

But the threat supposedly posed by the lower orders and bond class, particularly the likelihood of their enfranchisement under self-government, was less easy to allay. Indeed, fear of the ‘immense majority’ of working men within the colony was stoked by the \textit{West Australian} which, as a speaker pointed out at the declaration of the poll, meant that although Leake topped the poll, ‘he was not the choice of the majority of the constituency’—see the \textit{Inquirer}, 22 October 1884. \textsuperscript{148} An excellent report of such candidate vetting appears in the \textit{West Australian} on 2 October 1884 with respect to the Newcastle electorate where George Shenton was endorsed and returned unopposed, but only after pledging himself to oppose self-government.\textsuperscript{149} Stannage, ‘Electoral Politics in Western Australia’, p. 8.\textsuperscript{150} Quotations from the \textit{Inquirer}, 15 and 22 October 1884. A report of the meeting is published in the \textit{Inquirer}, 22 October 1884. The \textit{Inquirer} estimated that 1,600 were in attendance, including ‘sixty or seventy ladies’, which was an impressive turnout in such a small community—\textit{Inquirer}, 22 October 1884.\textsuperscript{151} Robinson quotation from the \textit{Inquirer}, 22 October 1884.\textsuperscript{152} \textit{West Australian}, 23 October 1884 and 14 October 1884.\textsuperscript{153} See Parker’s Address to the electors of Perth in the \textit{West Australian}, 27 September 1884.
Australian which made much of (false) reports that a railway contractor candidate, Edward Keane, had invited railway employees—‘three or four hundred roughmen, excited perhaps with drink’—to York on election day to support him, and that these ‘gangs of excited roughs … these non-voter navvies’ would intimidate the ‘respectable voters’ and perhaps even have ‘the place and the election at their mercy’. 148

Throughout the election campaign the West also kept up a dour commentary on the progress of the Third Reform Bill in Britain—which sought to extend the existing borough household and lodger franchise to county workers—informing readers that:

They have proposed suddenly to add to the present 3,000,000 voters another 2,000,000 taken wholly from one class of the population, and from that class which is the least educated and has the least stake in the country. They have proposed, in short, completely to swamp, and as far as possible render nugatory, the votes of the educated and propertied classes, by this enormous addition to the voting power of that other class which they have found most easily manipulated by their wire-pulling and most easily influenced by their platform oratory. They have sought to establish, that is to say, an absolute tyranny of the numerical majority …149

When the results were in, the 1884 election saw the numbers in the Council on the issue of self-government remain, as Broome informed Derby, exactly where they were, i.e. about half the elected Members in support and half opposed.150 This was not the decisive result required to bring about constitutional and electoral change and Broome advised Derby that the general view was that ‘the present constitution has a new lease of life, and that Responsible Government has receded for a while’. Or, as the West Australian crowed, ‘relieved from the incubus of a useless agitation’, the colony’s MLCs could now ‘devote their energies solely’ to the more mundane administration of the colony.151

Before moving on from the 1884 election, it is worth noting that in the Newcastle electorate the resident magistrate, and hence returning officer, was Octavius Burt. In 1891 Burt would be appointed Under-Secretary of the Office of the Colonial Secretary—the civil service department with responsibility for conducting parliamentary elections—before eventually being designated ‘Officer in charge of Electoral matters generally’ in 1897, and then

148 First quotation is from the West Australian, 16 October 1884. Transcripts of telegrams relating to the York ‘incident’ appeared in the West Australian, 25 October 1884. Remaining quotations are from the West Australian, 28 October 1884.
149 West Australian, 28 October 1884. The editor’s figures were almost spot on: the post-1884 UK electorate following the enactment of the Representation of the People Act 1884 (48 & 49 Vict., c. 3) increased from ‘approximately 3.3 million to 5.7 million’—Evans, Parliamentary Reform in Britain, p. 134.
150 Sir F. Napier Broome to Lord Derby, 6 November 1884, SROWA, 390/1174/47. Broome’s subsequent quotation is from this despatch.
151 West Australian, 23 October 1884.
Chief Electoral Officer of the newly created WA Electoral Department in 1901. While Burt did not conduct a poll in his time at Toodyay, because the district’s popular Member, Shenton, was repeatedly returned unopposed, he nonetheless received hands-on experience in voter registration and the revision court process. This practical insight into election management would manifestly be an advantage to Burt in his subsequent management of agencies overseeing elections. With few exceptions, WA’s Chief Electoral Officers for the next hundred or so years would be recruited from civil servants who had had similar practical exposure to the electoral process.

The New Lease of Life

Broome convened the 1885 session of Council on 22 July. In an effort to improve the working of the Constitution while it lasted, he proposed in the Governor’s Speech to increase the Executive Council by two additional unofficial Members—to be chosen from and by the Members of the Legislative Council. This was an increase which Governors since Weld’s time had been authorised to make by their Royal Instructions; which had been used in the previous session when Lee Steere had been appointed to the Executive Council on 5 August; and was a measure Broome believed would lead, short of a fully elected legislature, to ‘an increase of the influence and participation of the people of the Colony in its government’—by which he hoped to render the current regime ‘as tolerable and acceptable to the people as possible’. Making the present set-up tolerable and acceptable, however, was the last thing Parker and his supporters wanted: they wanted the existing constitutional arrangement killed off entirely.

Furthemore, Lee Steere’s appointment to the Executive Council had compromised his independence as an elected representative, and not been well received. As de Garis has stated, Lee Steere was a ‘trusted confidant and ally’ of Broome, and his appointment to Executive Council had been ‘not so much to democratise that body as to bolster the Governor’s position vis-à-vis his recalcitrant officials’ within it—a claim confirmed by Broome’s admission to Derby that: ‘The presence of Mr. Lee Steere in the Executive

152 See the 1897 and 1901 Blue Books for notification of these appointments.
153 Burt was also briefly appointed Resident Magistrate of York in 1887 although, again, he did not get to conduct a poll. He was also married to the daughter of the Resident Magistrate of Albany, G.E.C. Hare, who quite likely shared stories of ‘Plantagenet’ elections—see the Burt Family Biographical Clippings File, Battye Library, Perth for biographical details.
154 WAPD, 22 July 1885, p. 2.
155 Message from the Governor—No. 1, 27 July 1885, p. 30.
156 Lee Steere’s decision not to run in the 1884 elections, although blamed on lack of time to canvass, was also motivated by an expected voter backlash against him for joining the nominees he himself had once so insistently denounced (‘my only wonder is that any gentlemen can be induced to accept such a position’, as he had sneered in his open letter ‘To the Electors of the Wellington District’ published in the Herald, 19 April 1873).
Council during the late Session was a source of strength and a great advantage to me in many ways’.  

Accordingly, meetings to protest Broome’s proposal were called in Perth, Guildford, Bunbury and York. The Perth meeting (held the night before the Council would debate the measure) attracted an estimated nine hundred colonists and was addressed by Parker. In a speech punctuated by cheering, he lashed the proposal as unconstitutional because it upset the statutory 2:1 ratio of the Council and the Government would thereby be strengthened to the detriment of the elective element; because an Executive Councillor was sworn to secrecy about Executive Council deliberations and, hence, if also a Legislative Councillor, could not be answerable to constituents for any advice he gave; and because such a ‘radical political alteration’ should first be ratified by the electorate.  

A petition embodying Parker’s sentiments was circulated and adopted at the meeting.

The petition was tabled in the Council the following day. The ensuing debate on Broome’s ‘very gracious and liberal concession’ (Lee Steere’s description) was acrimonious with Parker swiftly moving an amendment that the Council regretted that it felt bound to refrain from nominating any members to His Excellency because the measure appeared to be completely unacceptable to public opinion, and because it would be unconstitutional to adopt the change without giving the people a voice in the matter. Clearly another election on constitutional change would be the last thing the Government would want. After protracted debate, the vote was called and Parker’s amendment was defeated eight votes to ten (at Broome’s request, the official Members abstained from voting). Considering the opposition to the measure within the Council and the community, however, and that agitation for a referendum-style election would be intense, Broome advised the new Secretary of State, Frederick Stanley, that he had decided against pursuing his ‘popular concession’.

It is also important to record that while Parker did not want to improve the existing system of government, he was keen to improve WA’s electoral system. On 9 September 1885, Parker introduced an Election Petitions Amendment Bill in an attempt to ameliorate the draconian penalties imposed in WA for electoral bribery. The motivation for Parker’s Bill

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157 See de Garis, ‘Constitutional and Political Development’, p. 52; Sir F. Napier Broome to Lord Derby, 30 October 1884—SROWA, 390/1174/47.

158 Crowley, Big John Forrest, p. 53.

159 Parker’s arguments and quotation come from the report of the meeting in the Inquirer, 5 August 1885.

160 The text of the petition appears in the Inquirer’s meeting report.

161 Lee Steere, WAPD, 31 July 1885, p. 48; Parker’s observations are from WAPD, 31 July 1885, pp. 48–49.

162 Sir F. Napier Broome to Colonel F. Stanley, No. 152, 13 August 1885, SROWA, 390/1166/15.
was the Supreme Court’s recent voiding of the 1884 election result in the Wellington electorate (which had seen David Hay defeat Venn by two votes) on the grounds that Hay had driven two electors to the poll—an action proscribed by s. 38 of the Legislative Council Ordinance (and similarly proscribed under the sister colonies’ constitutions). While Hay was convicted of bribery and lost his seat to Venn (and was disqualified from being Mayor of Busselton), the court accepted his claims that he had committed the offence in ignorance of the Act. Accordingly, Parker contended that seven years’ worth of substantial civil disabilities, on top of forfeiting his seat, was too onerous a punishment for ‘such a venial offence and when the candidate acted in mere ignorance’. Parker argued that some appeal mechanism should be built into the statute so that while candidates and agents who were ‘wilfully guilty of bribery, or even negligently guilty’ would be punished, the Supreme Court justices would have scope to waive penalties for those who had simply erred through ignorance.

There was sympathy expressed in the Council at this argument, especially since some of the sister colonies only enforced civil disabilities for those convicted of bribery until the next general election. But, unfortunately, Parker had drafted his Bill to be retrospective so as to exonerate Hay. This retrospective aspect of the Bill was unacceptable to the Attorney General and troubled other Members with the result that the second reading was denied eighteen to one.

The 1886 session, which opened on 21 June, featured significant change in the Council’s composition. Septimus Burt, an anti-responsible government Member, had been appointed Acting Attorney General in March 1886 and, as an official nominee, had resigned his seat. It was won in the 12 May by-election by self-government advocate and ‘reformer of slightly advanced views’, Captain Theodore Fawcett. In the same month, a staunch opponent of self-government, the Speaker, Sir Luke Leake, died and was replaced at the Perth by-election on 15 June by a long-standing proponent of self-government, Edward Scott. Finally, Robert Sholl replaced the retiring Brown in the Gascoyne by-election on 20 May, although, as Sholl supported self-government, there was not a gain to the self-government movement.

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163 See de Garis, ‘Constitutional and Political Development’, p. 45, for the reference to Venn also losing his position as Mayor.
164 WAPD, 14 September 1885, p. 273.
165 WAPD, 14 September 1885, p. 273.
166 Both Hay and Venn supported self-government, so Parker’s intervention was disinterested.
In the wake of these changes, Lee Steere was elected Speaker. Parker became leader of the elected Members, a majority of whom were now pledged, as Scott highlighted in proposing the presentation of the Address-in-Reply, to ‘do their best to put that movement into active motion’.168 This may explain the affability and conciliation with which the Acting Colonial Secretary, Matthew Smith, moved the second reading of the Legislative Council Act Amendment Bill (Increase of Members) on 2 July. He assured Members that the Government not only supported the Kimberley obtaining a Member (when the year before the Colonial Secretary had argued that there was ‘no necessity’ for the increase) but would also look favourably on other requests to increase representation in WA, thereby helping additional ‘public men’ gain parliamentary experience before ‘the time came when it might be found expedient to adopt an alteration of the constitution’.169

With improbably bad timing, however, a ‘split’, as Parker described it, occurred in what was by then interchangeably termed the Liberal, Responsible Government or Reform Party.170 On the session’s second day, Venn, without any consultation with, or intimation to, the other members of the party, and when Parker was ill and absent from the Council, put on notice that he would seek leave to introduce a motion in favour of the adoption of self-government.171 To complicate matters, Venn’s motion was scheduled to be introduced after the second reading of the Increase of Members Bill—and, as Parker later pointed out, if Venn’s motion was successful, there would be no need for the Bill.172 Parker accordingly sought to have the Bill’s second reading delayed until after the question of self-government had been resolved.173 The other Councillors, however, were keen to secure the additional Member for the Kimberley while it was on offer, especially since that Member could subsequently have ‘a voice in settling the question of Responsible Government’, and voted down Parker’s motion.174

168 WAPD, 21 June 1886, p. 6.
169 Quotation from Malcolm Fraser, WAPD, 18 September 1885, p. 339; quotations from Matthew Smith, WAPD, 2 July 1886, p. 67.
170 Quotation from Stephen Parker reported in the Inquirer, 8 December 1886. De Garis has written that the self-government group ‘constituted itself as the Reform Party, with Parker as leader and H.W. Venn as whip, the first formal party organization within the Council’ in June 1887. ‘Self-Government and the Evolution of Party Politics’, p. 336. In the 1886 session, however, this group clearly already identified itself as forming what Stephen Parker called ‘a consolidated party’—see WAPD, 13 August 1886, p. 393—and they alternatively called themselves the ‘Responsible Government party’ or ‘reform party’. Indeed, McKenzie on p. 144 of his ‘Survey of West Australian Politics’ referred to the existence in 1880 of the ‘Reform Party’, ‘Responsible Government’ party or ‘Liberal’ party and opposing ‘Conservative party’, while Governor Ord in a despatch to Sir Michael Hicks Beach on 21 October 1879, referred to the ‘R.G. party’—see SROWA, 390/1174/47.
171 For reference to the lack of consultation see Parker, WAPD, 13 August 1886, p. 395. For reference to the motion being tabled while Parker was absent from the Council see the Inquirer, 8 December 1886.
172 WAPD, 29 June 1886, p. 39.
173 WAPD, 29 June 1886, p. 39.
174 McKenzie Grant, WAPD, 29 June 1886, p. 41. The Members did, however, vote for an amendment which postponed the debate for three days—not the fortnight requested by Parker—which meant it still came on before Venn’s motion.
The Councillors then addressed the Increase of Members Bill. The debate is intriguing because, for undocumented reasons, the Councillors went 180 degrees on the issue. On the first day there was ‘unanimous feeling’ that the Colonial Secretary’s offer to enlarge the scope of the Bill should be taken up—with several key Members recommending an increase of up to twelve Members. (Burt, however, derided such an increase because it would give one Member to every 150 electors in WA and would see some districts with only twenty or thirty names on their electoral rolls.)

When debate resumed six days later, however, Marmion explained that a completely different ‘feeling appeared to have come over the majority of hon. members’, who now thought it would be unwise to seek more than a single Member for the Kimberley (and the matching Government nominee). But, Marmion continued, the Councillors would like the new Member to be elected before the next session of Council, which could not occur under the registration and revision court dates currently laid out in the Legislative Council Ordinance. Accordingly, a clause was inserted into the Bill bringing the statutory electoral deadlines forward by six months for Kimberley’s first electoral roll. Thus amended, the Bill was passed and assented to on 28 July 1886.

The following day Venn’s motion in favour of self-government came up for consideration, only to be postponed for a fortnight so the Councillors could focus on critical land regulations. As this postponement would see the issue of self-government raised in the session’s final weeks, this would not leave time for it to be dealt with properly, especially since Venn was not recycling Weld’s 1874 Constitution Bill, but intended that a new one be drafted from scratch. Parker urged the question be held over to the following session at which he pledged to introduce it himself if he had the party’s backing. Venn refused, dramatically asserting: ‘I am still determined—whether I stand alone or not—that the question shall come before this House during the present session’. While Venn’s timing was poor, his speech on 13 August in support of self-government was not. Indeed, his plea for the colonists to be given a ‘transcript’ of the British form of Government which ‘from usage and adoption, has become the birthright of every British subject’, and under which, he reminded the Members, the sister colonies had advanced so impressively, was eloquent

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175 A possible explanation for the turnaround is that the Members, realising that self-government was imminent, decided that it would be pointless to undertake the complicated and possibly divisive task of distributing extra elected seats. Thomas Burges, for example, on the first day of debate stated that with self-government around the corner he believed a distribution would be a ‘waste of time’—see WAPD, 2 July 1886, p. 69.
176 Matthew Smith, WAPD, 2 July 1886, p. 71.
177 WAPD, 8 July 1886, p. 100.
178 The Bill became the Legislative Council Act Amendment Act 1886 (50 Vict., No 10).
179 WAPD, 29 July 1886, p. 270.
and compelling.\textsuperscript{180} Equally so was his denunciation of the ‘bastard form’ of Government with its ‘shadows of despotism’ which WA currently had to ‘struggle under’\textsuperscript{181} Accompanied by cheers from the Strangers’ Gallery, Venn concluded by urging the advocates of self-government to honour the commitments they had made to their electors and vote for constitutional change.

Venn had the members of the Reform Party over a barrel. Many were pledged to vote in favour of self-government and did so, even though most regarded Venn as operating ‘outside the party’ and would manifestly have preferred Parker to lead the process (which, if successful, included the likelihood of his becoming WA’s first Premier).\textsuperscript{182} Ironically, however, another supporter of self-government, Edward Wittenoom, the Member for Geraldton, was pledged to support \textit{any} measure which would further the likelihood of separation from the south and, as Venn had claimed self-government would help \textit{prevent} separation, Wittenoom felt obliged to vote against it.\textsuperscript{183} Similar reasons probably prompted the North District’s McKenzie Grant, also regarded as a strong supporter of self-government, to vote against the motion.\textsuperscript{184} The remaining elected Members, however, were simply opposed to the motion on principle, particularly at the end of a session when, as Crowther put it, they were ‘anxious to return to their homes, sick and tired of the session with all its harassing work’.\textsuperscript{185} Accordingly, Venn’s motion was defeated eleven votes to eight, with nominees voting and official Members abstaining. As a concession to the electors of the colony, the Members immediately passed an amendment which had been proposed earlier in the evening—to postpone consideration of the question until the next session of Council.\textsuperscript{186}

Given a majority of the elected Members supported self-government; that the Council had given its \textit{imprimatur} for the matter to be revisited; and that there was a need to rein in loose cannons like Venn, it is unsurprising that a new Reform Association (‘resuscitated’ from the old Reform League, in McKenzie’s words) was formed in December to agitate for the immediate introduction of self-government.\textsuperscript{187} Parker was unanimously elected president. Its committee included, amongst leading local reformists, John Winthrop Hackett who, as business manager and soon-to-be editor of the (hitherto) stridently anti-responsible

\textsuperscript{180} Quotations from Venn’s speech come from \textit{WAPD}, 13 August 1886, pp. 379–380.
\textsuperscript{181} \textit{WAPD}, 13 August 1886, pp. 379–380.
\textsuperscript{182} Parker, \textit{WAPD}, 13 August 1886, p. 395.
\textsuperscript{183} \textit{WAPD}, 13 August 1886, pp. 392–393.
\textsuperscript{184} Grant had voted in favour of responsible government in 1883 because he believed it would see the ‘hastening’ of separation, \textit{WAPD}, 22 August 1883, p. 305.
\textsuperscript{185} \textit{WAPD}, 13 August 1886, p. 389.
\textsuperscript{186} Harper’s amendment, \textit{WAPD}, 13 August 1886, p. 390.
\textsuperscript{187} McKenzie, ‘Survey of West Australian Politics’, p. 193.
government the *West Australian*, was a useful recruit.\textsuperscript{188} Within a fortnight of its founding, the rebadged Association had signed up 400 members and set about establishing branches throughout WA, holding meetings in support of self-government, conducting enrolment registration drives (more than 500 new electors were added to the Perth roll in the following year), and getting articles and letters supporting self-government into the press with the aim, as Parker put it, echoing Lowe, of ‘educating the people up to their responsibilities and duties’.\textsuperscript{189} Unsurprisingly, the *West Australian* reported in a very positive editorial that the new reform group ‘revealed a more statesmanlike understanding of the duties incumbent upon those who seek to bring about constitutional change than any of their number has hitherto displayed’.

As Russell has observed of this time in WA’s history, ‘reform and change were in the air’.\textsuperscript{191} The following chapter will provide an account of Western Australians concluding their protracted quest for fully elected self-government. Unlike colonists from the sister colonies in the mid-1850s, however, who dealt with Whig administrations at Westminster, WA’s legislators would be compelled to ‘attune’ their ‘chord to conservatism’ to get their new Constitution sanctioned by Lord Salisbury’s Conservative Government.\textsuperscript{192}


\textsuperscript{189} Quotation from the *West Australian*, 6 December 1886. For a summary of the Association’s activities see Parker as reported in the *West Australian*, 16 June 1887, and also McKenzie, ‘Survey of West Australian Politics’, pp. 194–195.

\textsuperscript{190} *West Australian*, 6 December 1886.

\textsuperscript{191} Russell, *A History of the Law in Western Australia*, p. 10.

Constitution Making

1887–1889

The 1887 session of the Legislative Council commenced only days before Queen Victoria’s Golden Jubilee would be marked by Empire-wide festivities.1 It may seem ironic, therefore, that it was in this year that the Council voted to sever ties with ‘our gracious and beloved Sovereign’ and adopt self-government.2 But, as Broome observed to the latest Secretary of State, Sir Henry Holland, soon after the vote, the result was a ‘foregone conclusion’ given the pro-responsible government additions to the Council since the previous year’s session (which, he failed to mention, included his own recently appointed pro-responsible government nominee, Daniel Congdon).3

Indeed, during the past twelve months Western Australians—boosted over the past few years by an influx of immigrants from the sister colonies who were accustomed to self-government—had made it unmistakeably clear that they were in favour of the change, and they had, when possible, voted for it. By-elections in Geraldton and Greenough saw ardent champions of self-government, Edward Keane and Alfred Hensman (WA’s recently resigned Attorney General), replace Members who had voted against Venn’s 1886 self-government motion. The inaugural Kimberley election, held on 1 February 1887, returned Reform Association member Alexander Forrest. Equally significant, constituents in some electorates had called meetings and released their Members from election pledges to oppose self-government.4

The Responsible Government Party should also have had the vote of Alexander Richardson, elected in the North District by-election two days before the Legislative Council opened. Richardson, however, could not take his seat until Broome received the election writ, endorsed with his name by the district’s returning officer, as prescribed by s. 29 of the Legislative Council Ordinance, and this was expected to take at least two months because of the infrequent steamship service from the north. This difficulty prompted the Council to

1 The session commenced on 16 June 1887; the Jubilee celebration was 20 June 1887.
2 Governor Broome, WAPD, 16 June 1887, p. 1.
3 Sir F. Napier Broome to Sir H.T. Holland, 12 July 1887, BPP, 1889, Colonies Australia, vol. 31, p. 356. Congdon was a founding member of the original 1878 Reform League—see the Western Australian Times, 26 July 1878.
4 See Shenton’s comments, WAPD, 6 July 1887, p. 117. The Swan electorate also held a meeting at which their Member, previously returned because he was opposed to responsible government, was informed that the district was now in favour of the measure—see the West Australian, 16 June 1887.
embrace technology—the first of the Australian colonies to do so according to the Colonial Secretary, the recently knighted Sir Malcolm Fraser—and pass An Act further to amend and extend “The Telegraphic Messages Act, 1874” so that, at future elections, election writs and returns to writs could be transmitted by telegraph.5

Even without Richardson’s vote, the elected Members had the numbers to carry a motion for self-government which, on 6 July 1887, Parker moved for the first time as the leader of and ‘on behalf of, a united party, who were determined … to stand unitedly until they saw the privilege of elected self-government bestowed upon the colony’.6 The motion was two-pronged, with the second part designed to avert Imperial threats to hive off WA’s north:

That in the opinion of this Council the time has arrived when the Executive should be made responsible to the Legislature of the colony. 2. And that it is further the opinion of the Council that Western Australia should remain one and undivided under the new Constitution.7

The ensuing debate was lengthy but, as nominee Member William Loton observed, discussion was ‘futile altogether’ given WA’s electors had returned a large majority of Members pledged to support self-government.8

Consequently, Members previously opposed to self-government accepted Cockburn-Campbell’s advice that the ‘wisest course’ was to ‘join hands with the moderate men on the other side, and endeavor to secure the best, safest, and most safe-guarded Constitution which, based upon the experience of the other colonies, we would devise’.9 This, of course, was a prudent approach for the conservatives to take given the presence in the House, and popularity within the community, of ‘fanatical zealot for reform’ (Heseltine’s epithet) and ‘leader of the radicals’, Hensman.10 And particularly so considering Hensman had refused an invitation to join, and thereby be contained by, the Reform Association, and was promoting a more radical constitutional, and particularly electoral, package than Parker’s.

5 WAPD, 24 June 1887, p. 9. The Telegraphic Messages Amendment Act 1887 (51 Vict., No. 26) was proclaimed on 29 February 1888.
6 WAPD, 6 July 1887, p. 84. See McKenzie, ‘Survey of West Australian Politics’, p. 197, for discussion of the Reform Party or Liberal members in the Legislative Council electing Parker leader and Venn Whip in an effort to avoid disunity in the group.
7 Parker, WAPD, 6 July 1887, p. 88. Broome had referred to comments from the Secretary of State, Sir Henry Holland, in his Governor’s Speech: ‘to the effect that it would not be practicable to surrender to a Parliament representing a small population, principally resident in the Southern Districts, the control of all the vast territory now included in Western Australia’. The despatch Broome was referring to was Sir H.T. Holland to Sir F. Napier Broome, 4 February 1887, BPP, 1889, Colonies Australia, vol. 31, pp. 355–356.
8 WAPD, 6 July 1887, p. 90. A crowded meeting at Perth Town Hall two days earlier, which had seen resolutions supporting the immediate introduction of self-government carried unanimously, had underlined to Parker that the ‘mass of the people’ supported constitutional change—see the West Australian, 16 June 1887.
9 First quotation, Heseltine, ‘The Movements for Self-Government’, p. 73; second quotation, Boyce, ‘The Role of the Governor’, p. 273. Possibly anticipating such allegiances, at the Town Hall meeting Hensman had derided the ‘considerable number of rather late conversions’ to the self-government cause as the ‘very worst examples of death bed repentance he had ever heard of’—the West Australian, 16 June 1887.
Both parts of Parker’s motion passed. Finally, after seventeen years of stepping-stone government, the legislature had voted to move on. Broome advised Holland of the vote in a despatch which conveyed his own ‘fullest support to both of the Resolutions’ and his conviction that:

… Responsible Government ought now to be granted to Western Australia, for the reason that the Colony has progressed to the stage at which such institutions may be adopted, and has passed the stage at which the Government can be satisfactorily carried on under the existing constitution …

Broome then counselled Holland as to the sort of constitutional-cum-electoral framework he thought would work and be acceptable to the colonists. First, he recommended a bicameral legislature: ‘It would not, I imagine, be seriously proposed to have a single chamber, and I need not discuss this point’. Broome then recommended, again without feeling the need to justify his view, that the Legislative Council should be elected rather than nominated.

To differentiate this House from the Legislative Assembly, however, Broome urged a ‘sufficient’, i.e. a high franchise, as opposed to a ‘reasonably substantial’ one for the Lower House—which would appease the more conservative elements within the community who wanted a bulwark of property.

Broome further recommended that WA should be divided into five or six electorates each returning three Members. ‘This distribution of representation … by areas, rather than by numbers’, he argued, ‘would help to give fair play to the interests of the northern and the out-lying districts, which might otherwise be overridden by the towns and more peopled centres’. It was also a rural malapportionment—or ‘adjustment of the representation on principles which forbade the pillage of the educated and industrious by the misguided votes of the idle’, to cite Rusden’s definition—which was ‘deeply embedded in British precedent’, as Curthoys and Mitchell have commented. (Certainly, flagrant malapportionment had characterised all the sister colonies’ electoral boundaries, with the exception of South Australia, when they instituted self-government in the 1850s.)

Broome, however, conceded it might make sense for the Upper House to be nominated by the Governor for a short period initially, as the ‘population in some of the proposed districts would be at present so small that a double electoral distribution and machinery, for the two Houses, would be perhaps premature’.

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11 First quotation from Message (No. 14), WAPD, 15 July 1887, p. 150. The despatch to the Secretary of State is: Sir F. Napier Broome to Sir H.T. Holland, 12 July 1887, BPP, 1889, Colonies Australia, vol. 31, pp. 356–360. Broome’s ensuing quotations come from this despatch.


13 The South Australian Legislative Council voted as a single electorate until 1881—see Kingston, Glad, Confident Morning, p. 238.
In these conservative proposals for the Upper House Broome was following the practice of the sister colonies, which, as R.S. Parker has commented, had all designed their ‘second chambers … as a curb on unbridled democracy’. Indeed, as Alan Ward has observed, the Australian Upper Houses were not democratic until the second half of the twentieth century. The parliamentary committee which framed the provisions of the Victorian Legislative Council, for example, sought to erect a restraint against ‘the levelling flood of ignorance and prejudice to which every nation is subjected’, instituted a property qualification for Members equivalent, as Macintyre has computed, to twenty-first century millionaire status, and protected them with ten-year terms from a constituency representing only the pastoral and mercantile elite. Unsurprisingly, the Victorian Legislative Council, described by the Age as ‘the passive immobile force of vested interests’, requited its brief by becoming a notorious rejecter or mutilator of electoral reform passed in the Lower House. Similarly, Lloyd Robson has commented of the ‘reactionary’ and ‘all-powerful elitist Legislative Council’ of Tasmania, that it ‘was composed of men whose ancestors would have opposed the invention of the wheel’. Indeed, in proposing an elected Upper House, Broome’s constitutional vision for WA was demonstrably more liberal than that of NSW which, unwilling to ‘sow the seeds of a future democracy’, had refused to ‘hazard the experiment of an upper house based on a general elective franchise’. Instead, NSW opted for nomination—with nominees having life tenure—believing this would deliver ‘a safe, revising, deliberative, and conservative element’ in the new Constitution.

Recalling the frequent conflict between deadlocked Chambers in the sister colonies, which stemmed from what Bagehot termed the ‘evil of two co-equal Houses’, Broome also strongly recommended that WA’s Legislative Council should have the power to reject money Bills which had other measures tacked to them, but that the Legislative Assembly:

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17 The Age quotation is from Macintyre, *A Colonial Liberalism*, p. 44. See Kingston, *Glad, Confident Morning*, p. 261, for a summary of electoral reform defeated by the Victorian Legislative Council. Also see Wright’s discussion of the Victorian Legislative Council’s rejection and mutilation of Bills in *A People’s Counsel*, pp. 74 and 109.
20 In NSW, nominees were originally appointed for five-year terms and thereafter for the ‘Term of their natural Lives’—s. 3, *New South Wales Constitution Act 1855* (18 & 19 Vict., c. 54).
should have power … but only by a two-thirds majority, and after an interval of at least eight months, to pass and send to the Governor, without consent of the Legislative Council, a separate bill containing the measure objected to.\textsuperscript{21}

The colonial constitutional authority Arthur Berriedale Keith later hailed this proposal as ‘dictated by common sense’ and ‘a drastic anticipation of the Imperial Parliament Act, 1911’.\textsuperscript{22} If implemented, it would have been the first deadlock-breaking provision in a Constitution in the world.\textsuperscript{23} Not only would this measure have immunised WA’s Parliament from irresolvable deadlocks, more significantly it would have denied the conservative Upper House the ‘effective right of veto over the statute book’—particularly over liberal electoral reform—which occurred in the sister colonies.\textsuperscript{24}

Broome concluded by urging Holland’s prompt response because the colony’s financial situation would be uncertain until it was confirmed whether WA would remain undivided and able to frame a Loan Bill on the strength of the whole colony’s resources. He also requested telegraphic permission to introduce a Constitution Bill into the Council as soon as possible, as it was his intention that the Bill would go through the Council twice. The first time, he explained, the Bill would receive a careful and thorough preliminary consideration. Upon reaching the third reading stage, it would be submitted to WA’s electors ‘with whose then chosen representatives would rest the final adoption of the measure’.

A week later Broome advised the Council that, until Holland responded, discussion of a Loan Bill and the 1888 Estimates would have to be deferred.\textsuperscript{25} A copy of this Message was forwarded to Holland with another blunt reminder that it was absolutely essential the Council received the British Government’s decision regarding separation by the time the Council reconvened in December.\textsuperscript{26} Almost equally necessary was Holland’s authority to introduce the Constitution Bill, which Broome and the Attorney General were currently drafting. If this authority was not received in time, Broome warned that:

> the elected side of the Legislative Council will almost certainly table a complete set of resolutions, the consideration of which would be equivalent to the consideration of a Bill, and would prejudice, and possibly prejudice seriously in some important details, the actual measure to be afterwards introduced by the Government with the concurrence and by the authority of the Secretary of State.

\textsuperscript{21} Bagehot, \textit{The English Constitution}, p. 78.
\textsuperscript{24} Macinlay, \textit{A Colonial Liberalism}, p. 29.
\textsuperscript{25} Message (No. 16), \textit{WAPD}, 20 July 1887, p. 177.
\textsuperscript{26} Sir F. Napier Broome to Sir H.T. Holland, 28 July 1887, \textit{BPP}, 1889, Colonies Australia, vol. 31, p. 364.
The Council was prorogued on 20 August. A fortnight later Broome received a telegram from Holland: ‘prepared to accept both resolutions in principle with reservation details … wait for despatch’. 27 Holland’s next telegram, however, curtly advised that introduction of a Constitution Bill in the upcoming session was premature and expressed the expectation that the Legislative Council would await the views of Her Majesty’s Government before it passed any resolutions regarding details. 28

Holland’s promised despatch had not arrived when the Legislative Council reconvened on 15 December. Accordingly, Members were informed that the Constitution Bill would not be introduced and that Holland had effectively embargoed further consideration of the question. Moreover, as long as the constitutional issue remained ‘hung up’ they were barred from raising a loan. 29 The Members, with few exceptions, ‘almost boiled over with indignation’ and adopted an Address-in-Reply which ‘placed on the records of the House’ their ‘surprise’ and ‘disappointment’ that Her Majesty’s Government thought a Constitution Bill premature, because ‘in our opinion it is of the utmost importance to the Colony that the change should be no longer delayed’. 30 Broome informed Holland by cable of developments and urged a reply by telegraph; Holland complied, but merely advised that full particulars were in a despatch sent a fortnight earlier. 31 Given the shipping time for despatches was up to six weeks, the Members voted a week later to adjourn for two months—but not before refusing to vote full supplies for 1888.

When the Council reconvened on 12 March 1888, two despatches from Holland had been published in the Government Gazette. According to the first, the British Government did not feel it their duty to object to self-government for WA, but it did have serious objections to handing over one million square miles to 40,000 settlers ‘congregated’ in the south. 32 Holland referred to ‘Representations’ having been received by Her Majesty’s Government on this point. These representations were, in fact, the stumbling block and the cause of the delay. When the sister colonies had agitated for self-government decades earlier it was in

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29 Venn, WAPD, 21 December 1887, p. 58.
30 First quotation, George Layman, WAPD, 6 January 1888, p. 152; second quotation, Charles Harper, WAPD, 21 December 1887, p. 65; subsequent quotations from wording of the amendment moved by Parker, WAPD, 19 December 1887, p. 37. While this wording may seem fairly tepid, the decision to politicise the Address-in-Reply—which was traditionally a bland paragraph-by-paragraph reflex of the Governor’s Speech—was regarded as ‘unprecedented’—see the discussion in WAPD, 21 December 1887, pp. 60–69.
31 Broome cabled Holland a resolution passed by the Councillors on 21 December which read as follows: ‘This House regrets that his Excellency the Governor has not yet been informed of the views of the Imperial Authorities on the subject of responsible government, and, before providing for the financial requirements of the year 1888, requests to be informed of the date on which those views may definitely be expected’—Sir F. Napier Broome to Sir H.T. Holland, 22 December 1887, BPP, Colonies Australia, vol. 31, pp. 368–369; Sir H.T. Holland to Sir F. Napier Broome, 22 December 1887, BPP, Colonies Australia, vol. 31, p. 369.
the wake of the Canadian rebellions when exponents of colonial self-government such as Lord Durham and Sir William Molesworth had the sympathetic ear of mainly Whig administrations—as well as the backing of influential anti-imperialists who urged the dismantling of the Empire as a cost-cutting exercise. Accordingly, the eastern colonies were not only authorised to assume self-government in the 1850s, they were, as J.M. Ward has emphasised, effectively ‘ordered to prepare for it’. In a despatch written in 1852, the Secretary of State, Sir John Pakington, urged the NSW Governor, Sir Charles FitzRoy, that it had become ‘more urgently necessary than heretofore to place full powers of self-government in the hands of a people thus advanced’. Pakington concluded that it was his ‘sincere wish that this great change may be speedily and satisfactorily effected’. Similar letters were soon sent to other Australian Governors by the succeeding Secretary of State, the Duke of Newcastle.

While the rise of anti-imperial sentiment of the 1850s and 1860s is now widely contested by historians, there was, nonetheless, a perception at the time, as the editor of the Inquirer put it in 1865, that ‘the feeling of the Mother Country with regard to its colonies, has very much changed of late years: there is no longer the same desire to retain them—our own, perhaps, especially’. To whatever extent the sentiment had existed, the mother country’s cavalier attitude towards the Empire started to change in the 1870s when other newly industrialised nations attempted to secure their own colonies. Great Britain, her supremacy under threat, rapidly developed a heightened appreciation of the value of Greater Britain, which expanded by 4,750,000 square miles between 1874 and 1902. The value of Empire was also unremittingly reinforced by the press; by leading social commentators, such as the art critic John Ruskin who declared at the 1870 Slade Art Lecture that Britain ‘must found colonies as fast and as far as she is able, formed of her most energetic and worthiest men’; by eminent and best-selling historians, including Sir John Seeley (The Expansion of

33 1850 saw the formation of the Colonial Reform Society whose prospectus read: ‘The general object of the Society is to aid in obtaining for every dependency, which is a true colony of England, the real and sole management of all local affairs by the colony itself … It will be a main object of the Society’s endeavours, to relieve the Mother-country from the whole expense of the local government of Colonies’—quoted in Knorr, British Colonial Theories, p. 354.


35 Sir John Pakington to Sir Charles FitzRoy, 15 December 1852, quoted in Crowley, A Documentary History of Australia, vol. 2, pp. 241–244. The attitude of the Imperial Government to the colonies in the mid-century was nicely parodied by Thomas Carlyle: ‘the discontented Colonies are all to be cured of their miseries by Constitutions … One thing strikes a remote spectator in these Colonial questions: the singular placidity with which the British Statesman at this time … is prepared to surrender whatsoever interest Britain, as foundress of those establishments, might pretend to have in the decision.’ See Thomas Carlyle, ‘The New Downing Street’, Latter-Day Pamphlets, Chapman and Hall, London, 1850, p. 126.


England, 1883) and James Froude (Oceana, 1886); by influential public associations such as the Imperial Federation League; and by the forty-nine different immigration agencies in existence in the late 1880s. Furthermore, as Bédarida has observed, Britain experienced a major economic downturn between 1885 and 1887 which led to significant unemployment and public agitation: ‘Bursting out of the poor quarters of London, howling mobs in rags, such as had not been seen since 1848, spread general alarm and added fuel to socialist propaganda’. The same howling mobs also underlined to the British ruling class the benefit of having somewhere else to ship them. As a consequence, when WA no longer sought to be retained by the mother country, numerous ‘Representations’ flooded the British press, and were made in the Parliament at Westminster, to the effect that this one-million-square-mile patrimony of the mother country, which could support millions of Britain’s surplus population, should not be surrendered to a comparatively minuscule number of settlers.

In his first despatch, Holland advanced a ‘scheme’ for reconciling the interests of both sides. Basically, he proposed that newly self-governing WA would remain ‘one and undivided’, but that the British Government would retain control of legislation relating to Crown waste land above the 26th parallel. Revenue from the sale of such land would be preserved for any northern colony(ies) that might subsequently be established. This was de facto separation, and at a lower latitude than expected.

Holland’s second despatch contained equally unpalatable proposals regarding the sort of Constitution the Colonial Office was prepared to approve for WA. First, Holland argued that given WA’s sparse population, the colony should make do with a single elective Chamber—as Heseltine has noted, a ‘startling’ proposal from a conservative statesman—until the ‘white population’ had reached approximately 80,000 inhabitants. This way, the ‘best men’—Holland obviously did not imagine there would be a surfeit—could be concentrated in one House. (Queensland, by contrast, had been permitted a bicameral

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41 Demarcation at the 26th parallel put considerably more land in the northern division than the southern. Of the land in the southern division, Rusden’s observation is worth reporting: ‘Pearls on the coast and the fine pastures of the Fitzroy would thus be torn from the colonists, who would be left to their barren territory infested with the poison plant’, History of Australia, vol III, p. 488.
43 Also see Bagehot’s observations on the preparedness of the British Government to forgo the revered Upper House in the colonies because of fears that drafting the ‘best men’ (he used the same term) into the Upper Houses left the Lower with the dregs and therefore rendered it ‘mischievous’—The English Constitution, pp. 83–84.
legislature with approximately 25,000 non-Indigenous inhabitants. Moreover, once this second Chamber had been called into being by an Order-in-Council, Holland strongly recommended that it be nominated, at least when it commenced, and that it not be fettered by Broome’s proposed deadlock mechanism. By contrast, it should be recalled that when the Duke of Newcastle similarly canvassed constitutional provisions with the sister colonies in the early 1850s he required that their new legislatures should be bicameral and indicated his strong preference that their Upper Houses be elected.

Holland requested Broome to submit his proposals to the Legislative Council and return any resolutions that might be made upon them, ‘as this Despatch will require an answer before the Constitution Act can be introduced’. Not surprisingly, the Council Notice Paper was soon awash with resolutions. The first set, brought forward on 21 March 1888, were Hensman’s thirteen ‘Provisions to be introduced into the Constitution Bill’. As this was an indirect way of discussing the Constitution in contravention of Holland’s direction that his proposals be answered first, Hensman countered that he was tired of the time-wasting to-ing and fro-ing with the Colonial Office and that it was imperative a detailed debate on the proposed Constitution occurred so that WA’s electors would have something concrete before them at the upcoming election. Furthermore, as his were a decidedly radical set of electoral proposals—unicameral legislature, household and lodger suffrage, triennial parliaments, abolition of property qualifications for Members, and payment of expenses to MPs—that were unlikely to be endorsed by the House, but might prove popular with electors, he was eager to get them into the public domain.

Curiously, however, Hensman did not speak to the provisions in his lengthy introduction, and readily agreed that debate on them be postponed until after Parker’s resolutions were discussed. Possibly this was because he astutely surmised that Parker’s resolutions, although diplomatically framed as ‘Resolutions traversing [the] Secretary of State’s Despatches’, would immediately initiate a debate on the ‘Provisions to be introduced into the Constitutional Bill’ anyway. He could pursue his ‘ultra-radical’ agenda then.

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44 See Governor Broome’s testimony to the House of Commons Select Committee Report on the Western Australian Constitution Bill, BPP, 1890, Colonies Australia, vol. 32, p. 74.
47 WAPD, 23 March 1888, p. 220.
48 Quotation from Sir F. Napier Broome to Lord Knutsford, 28 May 1888, BPP, 1889, Colonies Australia, vol. 31, p. 380. Hensman did not hide his advanced liberal views, admitting in the Legislative Council that he was in favour of manhood suffrage and that he had been a member of the Reform League in England in 1867—see WAPD, 2 November 1888, p. 198. It is also notable that he had early supported women’s rights. According to Wendy Birman, ‘since his student days [Hensman] supported the move for the emancipation of women: in convocation of the University of London in 1874 he had urged that they be admitted to degree courses’—see ‘Hensman, Alfred Peach’, in Bede Nairn, Geoffrey Serle and Russel Ward (eds), Australian Dictionary of Biography, vol. 4: 1851–1890, Melbourne University Press, Carlton, Vic., vol. 4: 1851–1890, pp. 380–381.
Parker’s resolutions came up for debate two days later. The first three tackled separation, affirming that indicating a possible future boundary was premature and the proposed line most undesirable; that it was unnecessary for the British Government to reserve legislative control of northern waste lands because it already had a right to veto such legislation; and that the separate land sales revenue fund was an unnecessary complication because little northern land was sold (almost all was leased). The fourth resolution insisted that the Constitution should provide for a bicameral legislature from the start; the fifth called for the second Chamber to be elected; and the sixth urged that the two Chambers should have co-ordinate powers and equal authority with respect to legislation and that a deadlock provision was highly desirable.

While Parker’s resolutions were debated by the House over four sittings, there was consensus on most points. The three separation resolutions were galloped through because all Members concurred that keeping the north and its resources and revenue bound up with the south made economic sense for both regions. The fourth resolution, in favour of a bicameral legislature, although passed without opposition in the end, was debated extensively. Three Members, led by Hensman, argued that it was undemocratic, if not despotic, to set a smaller and less representative body above the people’s elected representatives in the Lower House—and that if a more conservative set of Members as a brake was insisted upon, then they should still sit in the same Chamber as the people’s representatives, as had been the case in WA since 1870. Those in favour of an Upper Chamber pointed out that the people’s representatives often got it wrong, and that a reviewing Upper House provided the ‘opportunity of reflection by checking hasty legislation on the part of the representatives of the people’. In supporting this line, Cockburn-Campbell demonstrated that he was conversant with electoral practice elsewhere by citing Switzerland which, although it had a unicameral legislature, provided a review mechanism via citizen-initiated plebiscites where ‘almost every year measures passed by the representatives of the people … were sent to the Referendum, and generally reversed’.

The Members, however, were in no mood for electoral exotica. Most indigantly spurned the proposition that WA should be the only Australian colony not to have a bicameral legislature ‘on the lines of the English constitution’, particularly when it was crucial to ‘dovetail in, as much as possible, with the rest of the Australian colonies, in view of

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49 Parker’s resolutions appear in WAPD, 23 March 1888, p. 220.
50 Parker, WAPD, 28 March 1888, p. 240.
51 WAPD, 28 March 1888, p. 238.
Parker somewhat testily summed up the Members’ views: ‘they always had in their minds the adoption of a Constitution similar to those prevailing in the neighboring Australian colonies … They did not wish to go in for an experiment that might turn out badly’.  

(The desire of Western Australians to harmonise with the sister colonies in the period preceding Federation should not be underestimated. In the following year, for example, the Legislative Council passed the Chinese Immigration Restriction Act 1889 after a ‘Meeting of Representatives of Australasian Governments … resolved that it was desirable that uniform Australasian Legislation should be adopted for the Restriction of Chinese Immigration’.) A final argument raised in support of an Upper House was that it was essential to protect the rights and interests of minorities, ‘which they would not have if there was only one Chamber representing the numerical majority’.  

Holland’s ‘single chamber experiment’ killed off, the Members next addressed the question of whether the second House should be nominated or elected. In urging election, Parker claimed they needed a strong House capable of dealing effectively, when necessary, with the Lower House, and that only one with the ‘status’ of being elected and having a hold upon popular sentiment would have the required ‘backbone’. Randell, a nominee Member, disagreed. He argued there was evidence from the other Australian colonies (NSW and Queensland had nominated Upper Houses) that nominated Chambers were superior, and that nomination, not restricted by the high property qualification applying to elected Members, meant the ‘choice of members would extend over a higher range of intellect and general capacity’ than by election.  

Randell had a point: many professional men in WA failed to meet the property qualification. Furthermore, Randell suggested that nomination would bring into the legislature men who would not come ‘forward voluntarily to submit themselves to the turmoil and, as had been said, the mire of a contested election’. Scott countered, however, that a Legislative Council election, which even Randell had conceded would be likely to have a ‘more restricted franchise and a somewhat high property qualification’ would not be ‘such an excitable affair as a contest for a seat in the Lower House’. The ‘complex arrangement’ of conducting Upper and Lower House elections according to different

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54 Quotation comes from the Preamble of the Act—53 Vict., No. 3.  
57 *WAPD*, 28 March 1888, p. 255.  
59 *WAPD*, 28 March 1888, p. 258.  
statutory qualifications, rules and electoral boundaries, and the confusion this might cause, were put forward as further reasons by Venn for nominating Legislative Councillors for at least the first five years until the public had received the required amount of electoral education.\textsuperscript{61} Towards the end of the debate Alexander Forrest raised a final argument supporting election: that nomination would undoubtedly see the appointment of Members almost exclusively from within a radius of a few miles from Perth, whereas election would guarantee the representation of the whole colony.\textsuperscript{62} The vote was taken soon after and, as expected, election had the ‘ayes’.

Having thus far rejected every proposal advanced by Holland, the Members, in considering resolution six, agreed with him in rejecting a deadlock provision. Part of the reason the resolution failed was because Parker’s vague wording—‘it is highly desirable that definite provision should be made for peaceable and final settlement of disputes’—did not commit to any particular deadlock measure.\textsuperscript{63} But even when Parker, \textit{faute de mieux}, recommended Broome’s earlier proposed model and Venn suggested a joint-sitting model, the Members clearly considered it injudicious, having just voted for a strong elected Upper House, to undermine its role and prestige, and turn its Members into ‘political eunuchs’, by allowing it to be overridden any time it came into conflict with the Lower House.\textsuperscript{64} And again, the Members expressed reservations about WA being the only Australian colony to adopt such a ‘radical’ ‘innovation’, agreeing with Shenton’s assessment that: ‘None of the other colonies had attempted to solve this difficulty, and it was not for this colony to enter upon political experiments’.\textsuperscript{65}

No sooner were Parker’s resolutions affirmed than Hensman announced he would abandon his deferred provisions in deference to a number of similar resolutions to be introduced by Venn. Venn, however, also abandoned his resolutions and simply moved one: ‘That the question of a Constitution Bill for Western Australia be referred to a select committee, and that the Resolutions passed by this House be considered as instructions to that committee in drafting a Constitution Bill’.\textsuperscript{66} The Speaker immediately announced that only the Government could introduce such a Bill because a Civil List involved a money measure. Undaunted, Marmion proposed as an amendment that the Governor be requested to bring in the Bill, again using Parker’s resolutions as a guideline. The motion, as amended, passed.

\textsuperscript{61} \textit{WAPD}, 28 March 1888, p. 259.
\textsuperscript{62} \textit{WAPD}, 28 March 1888, p. 260.
\textsuperscript{63} \textit{WAPD}, 29 March 1888, p. 260.
\textsuperscript{64} Hensman, \textit{WAPD}, 29 March 1888, p. 264.
\textsuperscript{65} First two quotations from Venn, \textit{WAPD}, 29 March 1888, p. 262; Shenton, \textit{WAPD}, 29 March 1888, p. 265.
\textsuperscript{66} \textit{WAPD}, 6 April 1888, p. 274.
Broome responded that he would transmit the resolutions to the Secretary of State and would attempt to bring about the earliest possible settlement of the constitutional question. He then sent a despatch to Lord Knutsford (Holland’s new designation, having recently been created a peer) which endorsed the resolutions against separation and in favour of a fully elected bicameral legislature. If anything, Broome was even more robust than the Members had been in criticising the proposed unicameral legislature. This ‘ultra-development of democratic institutions, even in this democratic continent’, Broome gamely informed Knutsford, was ‘inadvisable’, without precedent ‘within the limits of the British Empire’, ‘inexpedient’ and likely to cause ‘irremediable harm’. Furthermore, it would immediately put WA’s Constitution ‘out of harmony’ with the sister colonies and would ‘strike a blow at the position, already attacked by some, of the Upper Houses which are the safeguards of the other Australian States’. Somewhat ironically, Broome, the appointee of a prior Liberal Government, cautioned Knutsford, a Conservative Minister, in general terms against making WA’s new Constitution too democratic: ‘the danger of carrying democratic precept to its highest pitch at one bound in a young and politically untried community, with the special past circumstances of this Colony [i.e. convictism], would surely be very great’.

It should, however, be borne in mind that Broome wrote these words of caution on the same day that radical democrat and ‘working-class champion’, John Horgan, trounced blue-chip conservative candidate, Septimus Burt, in the Perth by-election on a platform of manhood suffrage, abolition of property qualifications for MPs and unicameralism. Broome signed off with the observation that, as ‘Politics and public affairs here have been almost brought to a standstill by the impending change of Constitution’, the earliest settlement of the issue was paramount. Enclosed was a draft Constitution framed by Broome and WA’s new Attorney General, Charles Warton (a former Tory Party Member of the House of Commons) which incorporated many of the ‘usual provisions of a Colonial Constitution Act’ and Parker’s resolutions.

Broome’s and Warton’s draft Bill also incorporated a number of conservative provisions to ‘guard the new constitution very carefully against mob rule’—safeguards which, Broome informed Knutsford, were ‘the desire also of every one belonging to the Responsible

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67 Message (No. 16), WAPD, 9 April 1888, p. 358.
71 Sir F. Napier Broome to Lord Knutsford, 28 May 1888, BPP, 1889, Colonies Australia, vol. 31, p. 382. Parker’s seventh, and final, resolution, which repudiated the suggestion that Aboriginal interests should be overseen by a ‘body independent of the local ministry’ was not endorsed as this suggestion had, in fact, been proposed by Broome.
Government party who is qualified to form an opinion of value on the matter’.\textsuperscript{72} Indeed, only six weeks before Broome sent off the Constitution Bill he had forwarded a petition, organised by what he referred to as the colony’s strong conservative minority, which argued that self-government ought not to be introduced into a colony where the total electorate of ‘not more than 4,500 by the last official information’ was largely composed of ex-convicts, but should be deferred until ‘the convict element should have ceased to exist in the electoral body’.\textsuperscript{73} While Broome commented that this petition, ‘signed by a body of most respectable and sterling settlers’, should not override the colonists’ quest for self-government, he was clearly pleased to cite it as ‘evidence of the wisdom of not casting the new Constitution in too radical a mould’.\textsuperscript{74} Not surprisingly, Broome’s despatches of this period were angrily condemned in the Council as ‘breathing with Conservatism’.\textsuperscript{75}

\textit{The Broome–Warton Draft}

It is important to examine the principal legislative and electoral features of Broome’s and Warton’s ‘decent, respectable, conservative’ draft Bill (Warton’s description) because, after being subjected to an inordinate amount of discussion with the Colonial Office, most of them did, in fact, survive in recognisable form in WA’s 1889 Constitution Act—or come into force not long after.\textsuperscript{76} And, perhaps, almost equally important, it is revealing to uncover the reasons why certain provisions of the Broome–Warton draft were \textit{not} incorporated in the Western Australian Constitution, but were, instead, excised by the Imperial authorities or voted down by the local legislature.

First, the new Parliament proposed by Broome and Warton was to consist of a \textit{fully elected} bicameral legislature comprising a fifteen-member Legislative Council and a thirty-member Legislative Assembly (cll. 2, 8, and 9). Both Houses could legislate for the ‘peace, welfare, and good government’ of WA, but only the Legislative Assembly could originate Bills for appropriating revenue or ‘imposing, altering, or repealing any rate, tax, duty, or impost’ (cl. 2). The quorum for the Council would be five, exclusive of the President, and ten for the Assembly, exclusive of the Speaker (cll. 25 and 26). Decisions, including making changes to the appointment of returning officers or making new provisions regarding the issue and

\textsuperscript{72}Sir F. Napier Broome to Lord Knutsford, 14 April 1888, \textit{BPP}, 1889, Colonies Australia, vol. 31, p. 375.

\textsuperscript{73}See Broome’s 14 April 1888 despatch and enclosed petition, \textit{BPP}, 1889, Colonies Australia, vol. 31, pp. 375–377. In the following year, Broome refuted claims that the electoral rolls were ‘largely composed of ex-convicts’ giving a current figure of about 500 expirees out of an electorate of ‘over 6,000’—see House of Commons Select Committee Report on the Western Australia Constitution Bill, \textit{BPP}, 1890, Colonies Australia, vol. 32, p. 73.

\textsuperscript{74}Sir F. Napier Broome to Lord Knutsford, 14 April 1888, \textit{BPP}, 1889, Colonies Australia, vol. 31, p. 375.

\textsuperscript{75}Horgan, \textit{WAPD}, 5 November 1888, p. 220.

\textsuperscript{76}\textit{WAPD}, 5 November 1888, p. 224. The version of Broome’s draft Constitution used for this thesis is that enclosed in Broome’s despatch to Lord Knutsford dated 6 June 1888 and printed in \textit{BPP}, 1889, Colonies Australia, vol. 31, pp. 384–396. This version of the Bill incorporated some minor changes to the original draft which Broome had enclosed in a despatch to Lord Knutsford dated 28 May 1888.
return of writs and the timing and location of elections, would have to be decided by a majority of votes of the Members present, excluding the President and Speaker, respectively, who only held casting votes (cll. 25, 26 and 56). Amendments to the ‘number or apportionment of representatives’ in the legislature, however, were to be decided by an absolute majority of the whole number of the Members in both Houses at second and third reading stages and be followed by a joint address to the Governor stating that the Bill had been so passed (cl. 56). Other changes to the constitution of either Chamber, or to ‘alter the provisions of this Act’, had to pass through similar hurdles as well as being reserved for the signification of Her Majesty’s pleasure thereon (cl. 57). A copy of such Bills had to be laid before both Houses of the Imperial Parliament for at least thirty days before Her Majesty’s pleasure thereon could be signified (cl. 57).

The new Legislative Assembly would, as with the existing Legislative Council, be elected for five-year terms, and a session of Parliament would have to be held at least once a year and not more than twelve months apart (cl. 4). The Governor would continue to convene and prorogue sessions, dissolve the Legislative Assembly, and issue writs for Legislative Assembly general elections (cll. 3 and 6).

Elections for the Lower House would be on the existing Legislative Council franchise—i.e. the franchise set out almost forty years earlier in the 1850 Australian Colonies Government Act and subsequently liberalised throughout Australia (cl. 36).77 The qualifying residency/possession periods for the franchise in the 1850 Act would, however, be doubled to twelve months (cl. 36). This change to the 1850 Act was the handiwork of Warton. He later admitted to the Council that he believed a ‘decent length of residence to qualify for a voter’ (he personally favoured two years) was the ‘most conservative’ safeguard in the Bill and one which would protect WA’s electoral rolls from being swamped by ‘every bird of passage, here to-day and gone to-morrow’.78

Members would be chosen from fifteen electoral districts, thirteen of which were currently in existence and which would retain the same names and boundaries as set out in the 1870 Legislative Council Ordinance and the three subsequent Constitution Act Amendment Acts (cl. 31). The existing Kimberley District, however, was to be split into two new electorates: East Kimberley and West Kimberley (cl. 31). The more populous Perth and Fremantle

77 Broome actually proposed a minor extension of the franchise in his draft Bill to those holding licences to mine or cut timber on land (as opposed to the original depasturing on the land) for twelve months before registration, but Knutsford subsequently omitted the latter after observing that under the existing land regulations, timber licences were only granted for twelve months—Lord Knutsford to Sir F. Napier Broome, 31 August 1888, BPP, 1889, Colonies Australia, vol. 31, p. 401.

78 WAPD, 5 November 1888, pp. 223–224.
districts would return three Members apiece; the sparsely populated West Kimberley and Murray and Williams would return one Member each; all the others would return two (cl. 31). Unlike previous arrangements for multi-member electorates where the whole district returned both Members, Broome’s draft Constitution proposed that all Lower House multi-member electorates would contain electoral sub-districts to be defined and designated by the Governor-in-Council in the first instance (cl. 31). In a despatch to Knutsford, Broome advocated this change because it would ‘prevent a merely local majority in one portion of a district from returning all the members for the district, and so crushing the power of the remainder of the constituency’—which, preventing any town element in a district from swamping the presumably more conservative outlying element, would have ‘obvious advantages of a moderating tendency’.79

The fifteen Legislative Council Members would be elected from five Divisions returning three Members each—although the Governor-in-Council would be empowered to nominate Members if there were unfilled vacancies (cll. 32 and 8). The compilation of separate electoral lists for Legislative Council electors was prescribed by cl. 34. The franchise qualifications for the Legislative Council were for all categories of entitlement, except licence-holders, double those for the Legislative Assembly, thereby ensuring the Council would be the stronghold of property desired by the Members (cl. 35). In addition, MLCs would not face dissolution en masse, like those in the Legislative Assembly, but would, like the elected Upper Houses of the sister colonies, be subject to fixed and staggered re-election with one Member from each division facing election every two years (cl. 8). Such a ‘gradual reconstitution’ of the Upper Chamber, Broome advised Knutsford, would ‘secure it against entire re-election upon any sudden wave of political opinion, which might possibly be evanescent and mistaken, and which would in any case have full play at a general election of the Lower House’.80

The same age and property qualifications would apply to election to either House i.e. being at least twenty-one years of age and possessing a freehold estate worth £500 (half the existing rate) or £50 annual value (the existing rate) (cll. 10 and 12). In future, however, such property would have to have been owned for twelve months before any election rather than simply at the time of the election (cl. 12). Election of a Member who did not possess the property qualification would be voided automatically, and a new writ issued; any Member who sat and voted in the legislature before submitting a sworn declaration regarding his property qualification, or after losing or disposing of said property, would be

80 F. Napier Broome to Lord Knutsford, 6 June 1888, BPP, 1889, Colonies Australia, vol. 31, p. 397.
liable for punitive £200 per day fines (cll. 11 and 14). The list of those disqualified for nomination or election included Members of the other Chamber, Supreme Court justices, the sheriff, clergymen, Government contractors, undischarged bankrupts, aliens and those previously convicted of treason or felony (cl. 15). Nomination or election of anyone from this list would also be voided automatically, and if such a disqualified Member sat and voted in the legislature, the penalty was a swingeing £500 fine plus legal costs (cll. 16 and 19). Reasons for a seat being declared vacant were similar to the existing list: insanity, swearing allegiance to any foreign prince or power, failure to attend two consecutive sessions of the Parliament without permission etc (cl. 18). Anyone caught by these provisions (with the exception of the insane) who sat and voted would also incur £500 fines (cl. 19). Apart from these specified provisions, existing laws governing ‘the mode of election, and all other matters concerning elections, shall remain and be in force, both in respect of elections to the Legislative Council and the Legislative Assembly’ (cl. 33).

The Parliament, under Broome’s draft, would be responsible for all WA’s waste lands, with the exception of designated native reserves, and revenue arising from them, but the Imperial Parliament would retain the right to divide, and further sub-divide, WA if this were deemed desirable (cll. 44 and 45). Broome hoped these provisions would appease both Knutsford and local opinion. The new legislature would not, however, be in charge of Aboriginal affairs, as Broome held firm to the view that the recently established Aborigines Protection Board, under the control of the Governor, should retain this responsibility, with increased and guaranteed funding and authority to establish reserves (cl. 52). (This suggestion was imperative in the wake of Reverend J.B. Gribble’s 1885–1886 exposé of the widespread ill-treatment of Aboriginal people in the Gascoyne.81)

Knutsford received Broome’s draft Constitution on 27 June 1888.82 By the end of the following month he responded, laying down the ‘points of principle connected with Responsible Government upon which I felt it my duty to insist, although I therein differed from the views of the Legislative Council and of yourself”—basically, that WA’s self-governing Parliament could not have control over the sale of northern waste lands nor of Aboriginal affairs.83 Knutsford was prepared, however, to compromise on the form of the new Parliament, agreeing that it could be bicameral, but he made it clear that the Upper

81 J.B. Gribble, *Dark Deeds in a Sunny Land: Or Blacks and Whites in North-West Australia*, University of Western Australia Press with Institute of Applied Aboriginal Studies, Western Australian College of Advanced Education, Nedlands, WA, 1987 (1886). Gribble also wrote letters to the press and lectured upon the subject.
82 Knutsford received Broome’s revised draft on 12 July 1888.
83 Quotation comes from a follow-up despatch, Lord Knutsford to F. Napier Broome, 31 August 1888, BPP, 1889, Colonies Australia, vol. 31, p. 400. Actual despatch referred to is Lord Knutsford to F. Napier Broome, 30 July 1888, BPP, 1889, Colonies Australia, vol. 31, pp. 398–399.
House should be nominated ‘at all events in the first instance, and until the population of the Colony has considerably increased’, with nominees holding six-year appointments. The editor of the *West Australian* shrewdly attributed this provision to a Colonial Office desire to build in a ‘Conservative safeguard against the recklessness of a colonial democracy’.

Just over a month later Knutsford mailed off a ‘re-cast’ version of Broome’s Constitution Bill. It incorporated these three points of principle—which in the case of control of WA’s waste lands resulted in all references to land, north *and* south, being excised from the Bill to be dealt with via regulations—and a range of less contentious amendments (including, as shall be seen, sensible improvements to some of Broome’s electoral provisions).

Broome received Knutsford’s draft Constitution on 9 October 1888—the day before the Legislative Council was to reconvene. While the new draft Bill was not formally presented to the Council until a week later, as Broome wanted to make a few minor amendments to it first, the covering despatch, in which Knutsford made it clear that he would only submit the Constitution Bill to the Imperial Parliament for approval if the three ‘points of principle’ were ‘maintained’, was read to the Members on opening day. Predictably, most Members were incensed at Knutsford’s stance, especially since he had again recently refused WA permission to raise a loan for public works while the constitutional issue remained unresolved. This refusal led to another long and rebellious Address-in-Reply debate in which the despairing Members bitterly inveighed against the Secretary of State.

Mercifully, only five days later the Constitution Bill and a companion Aborigines Bill (to ensure their continuing guardianship by the Aborigines Protection Board under the Governor) arrived in the Chamber. In the Message which accompanied the Bills, Broome outlined that the draft Constitution was only to be debated to the second reading stage, at which point an election would be called. The ‘principle and details’ of the Bill would then be finalised by the newly returned Legislative Councillors.

The Colonial Secretary formally moved the second reading of the Constitution Bill on 2 November in a speech which was, not surprisingly, light on principle and details. In fact,

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85 *West Australian*, 19 January 1889.  
87 Broome advised the Secretary of State of his intention to make slight amendments in Sir F. Napier Broome to Lord Knutsford, 6 November 1888, *BPP*, 1889, Colonies Australia, vol. 31, p. 416; Knutsford’s quotations are from, Lord Knutsford to F. Napier Broome, 31 August 1888, *BPP*, 1889, Colonies Australia, vol. 31, pp. 400 and 402.  
88 When enacted, the Bills became the *Constitution Act 1889* (52 Vict., No. 23) and the *Aborigines Act 1889* (52 Vict., No. 24).  
89 Message (No. 1), *WAPD*, 17 October 1888, p. 44.
Fraser did little more than summarise the main half a dozen points of the recast draft: that Knutsford proposed a nominated Legislative Council of not fewer than 15 persons and an elected Legislative Assembly of thirty Members from thirty single-member electorates (a change which reflected the single-member constituencies which had been established in the UK following the Redistribution of Seats Act 1885, but which would deliver a similar result to Broome’s ‘moderating’ sub-electorates); that WA could be divided, and re-united, in the future (the original draft had not covered this contingency); that the new Parliament, as flagged in the Colonial Office despatches, would not have control of northern waste lands nor of Aboriginal affairs; and that the new Constitution could be amended much more easily than under the Broome–Warton version. Accordingly, the only Bill which would require reservation for the signification of Her Majesty’s pleasure would be a Bill to render the Legislative Council elected. Furthermore, only such a Bill or Bills altering the constitution of the Assembly or Council would require absolute majorities at the second and third reading stages of the whole number of Members of both Houses. That is, Knutsford had swept away the joint address and sojourn in the Imperial Parliament provisos—which meant that electoral laws and other provisions in the Constitution Act itself could be altered by simple majorities.

Fittingly, Parker was the first to speak to the Bill. Like most of the Members, Parker was determined not to alienate Knutsford and jeopardise the Bill by repudiating all the points of principle, especially since he believed northern separation was inevitable and extra-parliamentary control of Aboriginal affairs was already ‘virtually in operation’. He was, however, loath to capitulate on an elected Upper House. He underlined that the Australian Colonies Government Act gave WA a statutory ‘right of choice in this matter’, that the British Government had not interfered with the choices made by the sister colonies, and that the Legislative Council had resolved unanimously that election was the appropriate choice:

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90 Fraser’s speech appears at WAPD, 2 November 1888, pp. 177–181. The 1885 UK Act is 48 & 49 Vict., c. 23. NSW would introduce single-member constituencies in 1893—see s. 17(II) of the Parliamentary Electorates and Elections Act 1893.

91 Knutsford’s excision of most of the clogs on legislative amendment was reminiscent of Lord Russell’s drastic liberalisation thirty years earlier of similar clogs in the reserved NSW Constitution Act. Russell deftly sabotaged the Act by inserting a clause in the Imperial Enabling Act authorising all amendments to the NSW Constitution to be passed by a simple majority—which enabled the new Parliament under self-government to repeal, by a simple majority, the two-third majority provisions in the Act. See s. IV of 18 & 19 Vict., c. 54. For background to Russell’s actions with the NSW Constitution Bill see McNaughtan, ‘Colonial Liberalism’, pp. 104–105. For a highly critical account of Russell’s supposed treachery in obviating the two-third majority provision see Rusden, History of Australia, vol. III, pp. 106–107 and 114.

92 Parker had been obliged to resign from the Legislative Council in April after being involved in a failed business enterprise and filing for bankruptcy (in compliance with s. XVI of the New South Wales Constitution Act 1842 which had been brought into operation by the enactment of the Western Australian Legislative Council Ordinance). He had, however, sorted out his finances and was returned to the Council after being elected unopposed in the 12 September 1888 Vasse by-election.

93 WAPD, 2 November 1888, p. 183.
The spirit of the age, we may say, is now in favor of election, in political matters. We know that in every part of the civilised world almost public opinion largely preponderates in favor of giving the people themselves a voice in all matters concerning the public welfare, and a direct voice in the election of those who are to be entrusted with the work of legislation and administration. If we are to accept the principle of nomination, as regards one of the two branches of the Legislature, how can it be said that the people have a voice in the matter.94

The only ‘compromise’ Parker would contemplate was that the Upper House could be nominated for a start-up period of six or so years, but that, at the conclusion of this period, the nominees had to resign and thereafter be elected—and that this changeover should be provided for in the Bill as Parker was sceptical an Upper House would otherwise ‘consent to such an act of self-effacement as to pass a bill providing for the extinction of their own House’.95 While he was dealing with elections, Parker also recommended abolition of property qualifications for Lower House Members, and that qualifications for the franchise should be lowered and broadened:

I think it would be better for us, in starting with our new Constitution, to lay the foundations of it on as broad a basis as we safely can, and reduce the electoral franchise and liberalise it as far as we can, rather than to have a clamour raised, immediately after we entered upon Responsible Government, for a reduction of the franchise—as we certainly should if we adopted this bill as it now stands.96

If this sounds reminiscent of Macaulay’s ‘Reform, that you may preserve’, it was because Parker had pragmatically assessed the risk of not extending the franchise to a populace which was daily being swelled by easterners accustomed to manhood suffrage, and unlikely to put up for long with ‘living in slavery, as they called it, under the present constitution’.97

In concluding, Parker proposed an amendment: ‘That this House, while otherwise agreeing to the main provisions of the bill, objects to pass any measure which provides for a nominated Upper Chamber’.98 The remainder of the debate then turned on this provision of the Bill. As was to be expected, the arguments for and against election and uncapped nomination to the Upper House had been ventilated before—basically reprising the arguments first raised in 1874 when Weld’s draft Constitution also provided for a nominee and swampable Upper House. The major difference in the current debate, however, was that while a number of Members denounced nomination as ‘an exploded idea’ and urged ‘a sort of revolution’ rather than relinquish the principle of election, other pro-election Members were prepared to sacrifice principle and ‘accept a Constitution Bill even with some blots

94 WAPD, 2 November 1888, pp. 182 and 184.
95 WAPD, 2 November 1888, pp. 184–185.
96 WAPD, 2 November 1888, p. 186.
97 Parker’s quotation comes from the House of Commons Select Committee Report on the Western Australia Constitution Bill, BPP, 1890, Colonies Australia, vol. 32, p. 151.
98 WAPD, 2 November 1888, p. 186.
upon it’ because they feared that WA’s economy could not withstand further delays caused through battling it out with Knutsford.\footnote{First quotation, Hensman, \textit{WAPD}, 2 November 1888, p. 198; second quotation, Fawcett, \textit{WAPD}, 2 November 1888, p. 203; third quotation, Marmion, \textit{WAPD}, 5 November 1888, p. 210.}

The Members reached an impasse on the issue which was not broken even when Marmion moved that Parker’s ‘bold uncompromising’ amendment include his before-mentioned ‘compromise’ of initial nomination and subsequent election.\footnote{\textit{WAPD}, 5 November 1888, p. 210. The new amendment follows on pp. 211–212.} While this addition would make the amendment a more conciliatory one to telegraph to Knutsford, the Speaker confirmed that passing it would mean that the Bill could not then be read a second time.\footnote{\textit{WAPD}, 5 November 1888, p. 216.} Shelving the Bill, even if only temporarily while Broome had a telegraph rally with Knutsford, plainly troubled the Members. Looking for an escape, a number argued that ‘this is not the time to decide whether we shall have a nominated Upper House or an elected one; it is for the electors of the colony to decide these questions at the hustings, when they return their representatives to deal with this bill finally’.\footnote{Shenton, \textit{WAPD}, 5 November 1888, p. 219.} This line of reasoning prevailed and, when put to the vote, the amended amendment was lost thirteen to nine and the Bill was second read.\footnote{Of the vote on Parker’s amendment, the minority consisted exclusively of elected Members, while only five of the majority were elected. While the official Members had abstained from participating in recent debates and divisions on the question of responsible government, believing it to be, as the Attorney General put it, ‘one which ought to be settled by the elected and nominated members of the House’, the embargo had been lifted in this session because the adoption of self-government was now a given and because it was felt by Broome that the officials could give their ‘assistance to pass … [the Bill] in such a form as the Government may agree it is desirable’—Sir Malcolm Fraser, \textit{WAPD}, 12 October 1888, pp. 32–33.}

Broome immediately advised Knutsford that the Colonial Office’s draft Constitution had passed the second reading, even though it contained provisions that were ‘not very agreeable to the Colonists’.\footnote{Sir F. Napier Broome to Lord Knutsford, 6 November 1888, \textit{BPP}, 1889, Colonies Australia, vol. 31, p. 416. Broome’s ensuing quotations are from this despatch.} With considerable pluck, Broome then made a final pitch for an elected Upper House, arguing that the majority of the elected Members were ‘hostile’ to the idea of a nominated Chamber and they were supported by a preponderance of public opinion in WA, including the ‘balance of even conservative opinion’. This widespread opposition, Broome continued, would undoubtedly lead to an even greater number of pro-election representatives being returned at the upcoming election, with consequent delay and difficulty in passing the Bill. To avoid this, Broome strongly recommended Knutsford accept a modification to the provision (basically Parker’s compromise): ‘that, while the new constitution should begin with a nominated Upper Chamber, the Act should provide for an elected Upper Chamber, either in six years’ time, or when the population of the Colony shall have increased to 60,000 souls’. Broome signed off, urging Knutsford to reply
promptly so the decision on this important question could be publicised before the election took place.

The Electorate’s Turn

Broome dissolved the Council a month later and issued the writs on 21 December 1888 with the election dates spanning 21 January to 4 February 1889. With only a month to the first election, the campaign period was comparatively short. Broome, however, was keen to keep up the pace and had informed Knutsford that he hoped the Constitution Bill could be passed by the new Legislative Council immediately after the elections—and ‘Perhaps this would allow of the Imperial Bill being passed during the session of 1889 [at Westminster], and of Responsible Government being introduced here about September or October next’.105 Knutsford, however, was in no such hurry and certainly not in favour of WA’s electors being ‘asked to pronounce upon’ the Constitution Bill before it was finalised and approved by Her Majesty.106 He replied to Broome requesting the poll’s postponement, but as this despatch reached Broome after the writs had been issued, the electorate was not denied its opportunity to influence the Constitution by the choice of Members they returned.

Agonising over representatives, however, was not an issue in most constituencies because all candidates advocated or, at the least, acquiesced in the inevitability of, self-government. Furthermore, there was a high degree of consensus amongst candidates as to the best sort of Constitution to deliver the new political order, with almost all supporting election for the Upper House; broadening the franchise; abolishing, or reducing, property qualifications for Members; and triennial or quadrennial parliamentary terms. Indeed, the observation of the West Australian regarding the contest in Perth could apply to the elections as a whole:

The coming Perth election is unique of its kind. It will involve a contest, and a keen one, when apparently none is necessary. No less than four candidates are in the field … Three of these candidates are of one mind as to the precise form which the new Constitution should take, while the views of the fourth candidate, if they diverge at all, do so by little more than a hairbreadth.107

The almost uniformly liberal sentiments voiced by candidates, newspaper editors and correspondents in the 1889 general election campaign is one of the most noteworthy features of the election. It contrasts markedly with the more conservative line taken in previous elections when the convict presence had been more pronounced and there had been

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107 West Australian, 7 January 1889. Also see the observation of the Northam correspondent to the West Australian, 21 January 1889, who noted of the two candidates contesting the seat of Toodyay that, ‘the views of both candidates are exactly in accord upon the Constitution Act’.
fewer t’othersiders agitating for reform. Even the previously arch-Establishment *West Australian*, dubbed the ‘The Official Doormat’ by a rival paper, came out with the following solid endorsement of liberalism just prior to the issue of the writs:

> Upon the advancement also, of liberal principles generally, we are all agreed. By whatever names modern political parties call themselves or are called, every man of intelligence nowadays takes his stand upon Liberalism to the best of his understanding, upon doing right and justice to all classes, upon promoting the good and happiness of the people and upon supporting all measures having progress as their aim and end.\(^{108}\)

However, while the *West Australian* zealously supported election of the Upper House, and favoured abolishing property qualifications for Members, extending the franchise to lodgers, and shortening parliamentary terms, it still cautioned against manhood suffrage which, it claimed, produced parliaments which were ‘less capable, less intelligent and moderate, more selfish, intriguing and unruly than those based upon a moderate qualification of electors’.\(^{109}\) The *West*’s qualified embrace of liberalism within a community whose ‘instincts are liberal … beyond the conception of its Imperial rulers’, *but* which was also sparsely populated and ballasted by ex-convicts, probably articulated that of many Western Australians.\(^{110}\)

There were others in the community, however, particularly newcomers from the sister colonies, whose support for liberalism was not hedged about with caveats. In the weeks preceding the issue of the writs three different Liberal or Progressive associations—again resuscitated out of the old Reform Association, or Reform Party, which had broken into camps over the Upper House issue—formed in Perth and Fremantle to promote the advancement of liberal principles.\(^{111}\) At a practical level, these associations encouraged registration of electors, sought to ‘educate the voters by public discussion of matters of current interest’, and worked to ‘secure the return’ of candidates who endorsed the most liberal manifestos (ascertained after circulars were issued to candidates ‘catechising them as to their political views’).\(^{112}\) They also instructed electors at political meetings how to cast a formal vote, particularly how to *plump*, for Liberal Association candidates, and by handing out the first how-to-vote cards in WA.\(^{113}\)


\(^{109}\) *West Australian*, 9 November 1888.

\(^{110}\) *West Australian*, 26 December 1888.

\(^{111}\) See the *West Australian*, 30 November 1888 and 21 January 1889.

\(^{112}\) Quotations from the *West Australian*, 30 November 1888 and 29 December 1888.

\(^{113}\) For references to the Liberal Association candidates or committee instructing electors how to vote and plump see the *West Australian*, 12, 22 and 25 January 1889.
Notwithstanding the short campaign period, which clearly would hinder canvassing of rural constituencies, campaigning was slow to commence, with the first to address electors doing so on 31 December. The belated start was fortunate, however, because by the time the next candidate fronted a meeting in Fremantle on 4 January, Knutsford’s telegraphed approval of the compromise of initial nomination and eventual election for the Upper House had been gazetted, and thereby defused the only major area of contention in the campaign. That there was now almost nothing for candidates to disagree about helps to explain the exceptionally high number of uncontested seats in the election (only five electorates were contested), with most constituencies seeming to share the sentiments of a Northam correspondent that it ‘would be only a right and just act’ to return the old Members to complete the work they had begun.

While the lack of contests and general consensus made the 1889 general election, according to the *West Australian*, ‘more important than interesting’, there was some excitement in contested seats. In Fremantle, where the Liberal Association fielded Adam Jameson, ‘an out and out Radical’ and ‘an outsider’ (i.e. from Perth), against Marmion, a long-standing and highly regarded local identity, there were a number of tumultuous public meetings which verged on riot. Election day in Fremantle was commensurately riotous, notwithstanding that mounted troopers and additional police officers from Perth were on standby to augment the local constabulary. As with previous elections, Fremantle was plastered with placards, bills and flags (the Liberal Association reportedly left no wall untouched); candidates and supporters wore colours; mounted bands wound through the streets; and many workers enjoyed the day as a half-holiday. Unlike previous elections, however, the ‘greatest uproar prevailed’ for the whole day and the formal declaration of results was greeted with ‘uproarious behaviour’ by the losing candidate’s supporters, after which the ‘crowd dispersed amid scenes of the greatest disorder, yelling and hooting being heard in every direction’. The wild finish to the Fremantle poll is understandable. Jameson lost to Pearse and Marmion, by eight and six votes respectively, although Jameson had actually polled more votes than either candidate because most of the twenty-nine informal votes cast in the Fremantle election were manifestly intended as plumps for him.

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114 *West Australian*, 3 January 1889.
115 Broome received the telegram from Lord Knutsford on Friday 4 January 1889 and a special *Government Gazette* containing the news was published that evening.
116 See ‘Northam Jottings’ from the *West Australian*, 1 February 1889.
117 *West Australian*, 28 January 1889.
118 *West Australian*, 11 January 1889. The *West Australian*, 25 January 1889, provides an hilarious report of one of the Fremantle meetings.
119 Quotations regarding the Fremantle election come from the election report in the *West Australian*, 25 January 1889.
120 The informal votes were reported in the *West Australian*, 25 January 1889. Returning officers at the 1889 election had to reject votes which did not comply exactly with s. 9 of the Ballot Act—which required electors to indicate a
In contrast to Fremantle, polling day in other contested seats was a serene affair. The Toodyay election was ‘marked ... by extreme quiet all round, in spite of the fact that party spirit ran rather high’, while the Perth election was described thus by one reporter:

Very few indications of the contest appeared on the surface, yesterday. Indeed, it is doubtful whether, even in the days when the return of certain candidates in Perth was regarded as a foregone conclusion, there ever was a tamer election in the city.121

Not everyone thought that abandoning the fervour and centuries-old pageantry of elections was a loss. Certainly, it could be argued that a less than breathless attitude towards elections, such as that evinced by the West’s Northam correspondent that ‘we are far too busy and prosaic a people to be moved from the even tenor of our way by such a common place event as an election’, was a sign of a maturing polity where electors took participation in the political system as a right and in their stride.122 Low-key elections were also viewed by some as more progressive and cheaper to conduct. The Liberal Association candidate for Perth, John Horgan, for example, had announced to his supporters that ‘he would have no colours as he considered the wearing of such a relic of the past, a custom of bye gone elections’.123

Moreover, WA was not alone in registering a tapering off of election rituals and ceremonies at this time. O’Gorman has stated that ‘During the middle third of the nineteenth century the traditional culture of the English election campaign went into decline’, a decline he attributed to consolidation of party organisations and the electorate’s increasing ‘respectability’.124 Evans has also noted the increasingly ‘sanitised’ nature of English elections but, while he agreed with O’Gorman that the ‘vulgar street theatre elements of electioneering were not to Victorian middle-class taste’, he principally attributed the transformation of elections into ‘a sober, serious, respectable business’ to changes in how elections were conducted—particularly the increase in the number of polling places and the 1872 Ballot Act’s abolition of public nominations and open voting.125 As an aside, one positive result of taming elections was that it removed a barrier to women’s participation in

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121 Reference to the Toodyay election comes from a letter to the West Australian, 5 February 1889; quotation regarding the Perth election comes from the election report in the West Australian, 23 January 1889.
122 ‘Northam Jottings’ from the West Australian, 1 February 1889.
123 Taken from Horgan’s Address at the Mechanics Institute as reported in the West Australian, 22 January 1889.
125 Evans, Parliamentary Reform, pp. 3, 63 and 109.
the electoral process—a point understood by British Prime Minister William Gladstone, who had railroaded the Ballot Act through the Imperial Parliament:

It was one thing to ask that women should have imposed on them the duty of going up to the open poll and recording their votes in public, and quite another to ask that they should be allowed to enter a quiet compartment of the polling-place and record an independent vote under the saving shelter of the ballot.126

Decorous elections, are not, however, always immaculately pure. As will be discussed in the next chapter, the supposedly sedate Perth poll during the 1889 general election prompted an election petition. It alleged incompetence and partiality on the part of the returning officer, impersonation of electors (including deceased ones), and illegal conduct by an electoral agent.127 These charges, although rejected by the Supreme Court, motivated the Parliament to pass WA’s first standalone Electoral Act. Once equipped with this Act and its new Constitution, WA’s democratic laboratory credentials would be assured.

127 A report on the petition appears in the West Australian, 9 February 1889.
The 1889 election confirmed that WA’s electors decisively supported the immediate introduction of self-government on broadly liberal lines. But, as the *West Australian* observed, an immense majority had similarly ‘declared against’ a single Chamber and manhood suffrage.¹ Heseltine concluded that the election results indicated that the Western Australian electorate ‘was unshaken in its belief in a moderate constitution equipped with adequate safeguards’.² Before the last election writ was returned, however, this unanimity dissipated and WA’s political stakeholders, liberal and conservative, mobilised: the electoral details of the Constitution Bill had yet to be finalised and in these details, regarding the franchise, property qualifications for Members, registration periods and so forth, there was enormous scope to influence the political lineaments of the colony.

In a post-election editorial, the *West Australian*, whose ‘ultra-conservative’ former editor, Cockburn-Campbell, was one of the few former MLCs defeated at the election, warned WA’s Establishment to arm itself against the ‘new forces springing up in their midst’:

> old standing, social influence, established reputation—all the forces, the sentiments, the ‘old colonist’ institutions which have hitherto held undisputed sway, will in the future count for little or nothing … power will rest with the active spirits who are eager to exhibit their lights and fight for place in the foreground …³

Amongst the strategies the *West Australian* counselled the Establishment to pursue were ‘registration, organisation, and general political activity’—strategies which a demoralised Liberal Association, at a meeting in the same week, also urged its members to take. Indeed, the Liberal Association took a ‘wide survey of their position … [and] future policy’ and contemplated tactics that would extend the Association’s reach and influence.⁴ Several speakers emphasised that the cardinal issue *vis-à-vis* the upcoming Constitution Bill was the ‘franchise question’. So as not to jeopardise public support for a broader franchise, the

¹ *West Australian*, 8 February 1889.
³ First quotation, Cockburn-Campbell, *WAPD*, 18 March 1889, p. 37; subsequent quotations from the *West Australian*, 8 February 1889. In the following week the *West Australian* resumed the theme, urging property owners to register for ‘any and every constituency’ in which they were qualified, and explaining how to do it—13 February 1889.
⁴ All quotations from the Liberal Association meeting come from the report in the *West Australian*, 8 February 1889.
Association resolved to shelve its more radical demands for manhood suffrage and the abolition of plural voting.5

In fact, there was concern throughout WA that the more liberal franchise clearly endorsed by the electorate was not provided for in the draft Constitution.6 Even if it were, under existing registration provisions, those to be enfranchised would miss the registration and revision deadlines and be prevented from voting (at this stage, it was hoped that the next election would be held towards the end of the year). Unless the issue was resolved, the West Australian cautioned, WA would face an election to fill the new Parliament and, soon after, another if the franchise were liberalised.7 To avert back-to-back elections, the West advised Members to amend the franchise provisions in the Constitution Bill and provide for immediate compilation of new electoral rolls to include the newly enfranchised. The West also urged the incoming Council to frame a ‘full-blown and carefully considered Electoral Bill’ because:

Measures of that kind in a growing colony are always subject to tinkering and amendment. And since it is highly undesirable that the Constitution Act should be exposed to frequent attack, for this reason alone everything connected with the franchise and the machinery of elections should be eliminated from it …8

The putatively final Legislative Council under representative government met on 13 March 1889. Broome’s Governor’s Speech was brief, and he advised the Members that their treatment of the Constitution Bill should be the same if they wanted the Bill signed off and the requisite Enabling Act passed by the Imperial Parliament during its current session.9 Broome did, however, underline that in ‘regard to any amendment likely to involve further correspondence and reference’, the new Constitution would be capable of amendment at any time after its enactment.10 The Constitution Bill was re-introduced within minutes of Broome’s departure.

The following week, Colonial Secretary Fraser moved the second reading. Fraser did not spend long reviewing the Bill’s provisions. He did, however, dwell on the franchise, urging Members to accept the electoral provisions as they stood, thereby ensuring that only citizens ‘with some stake in the colony’ could vote, as he ‘could not, himself, agree that the vagrant

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5 For a discussion—albeit highly jaundiced—of the Liberal Association’s position on manhood suffrage and plural voting (aka ‘one man one vote’) see the West Australian, 9 February 1889.
6 See the report of the Liberal Association meeting in the West Australian, 8 February 1889, and the editorial in the West Australian, 12 February 1889.
7 West Australian, 12 February 1889.
8 West Australian, 12 February 1889.
9 The parliamentary session at Westminster was expected to last until August.
10 WAPD, 13 March 1889, p. 2.
who wandered from colony to colony, who stopped perhaps for only six months in one place, should be regarded in the same light as the thrifty, respectable, sturdy settler.¹¹ In concluding, Fraser counselled postponing amendments likely to cause delay.

Parker, too, exhorted Members to withhold ‘those liberal amendments we all have in mind until a time when we may safely pass them, without fear of jeopardising this measure’.¹² While almost all Members who followed concurred that they should not ‘improve’ the Bill ‘out of existence’, a number nevertheless argued that some changes could be made without imperilling the Bill and should be made because:

> stability should be the main point we should look at in laying the foundations of our future Constitution.
> If we gloze over all imperfections now, and leave the bill to be altered by-and-bye we shall not have that stability we wish.¹³

This argument was repeatedly pressed by two of the more conservative Members of the Council, Marmion and Cockburn-Campbell (now installed as a nominee), with Cockburn-Campbell declaring: ‘I am not the kind of conservative who wishes to secure himself in a house of cards, which I know will be blown down by the first breath of public opinion’.¹⁴

The changes to the Bill ‘in the direction of making it acceptable to the people,—so far acceptable as they safely can’ were the liberal amendments Parker had counselled the Members to postpone—viz. widening the franchise, shortening the proposed five-year parliamentary terms, and abolishing property qualifications for Members.¹⁵ A few Members also protested against the swampable Upper House, and the fact that the current Bill did not require newly appointed Ministers to resign and recontest their seats as was constitutional practice in England and all but one of the sister colonies. Finally, after two nights of detailed discussion, the motion for the second reading passed. Over the ensuing fortnight the Members progressed through the Bill expeditiously, but, on the liberal amendments, debate was fervid and led to substantial amendments to Knutsford’s draft.

The Members’ first win was with cl. 6 which empowered the Governor-in-Council (i.e. the Ministry) to swamp the Legislative Council with nominees—a provision which, mirroring the House of Lords, existed in all nominated Upper Houses in the Empire. The provision

¹¹ WAPD, 18 March 1889, p. 25.
¹² WAPD, 18 March 1889, p. 28.
¹³ First two quotations, de Hamel, WAPD, 18 March 1889, p. 42; third quotation, Cockburn-Campbell, WAPD, 18 March 1889, p. 33. Also see the liberal Edward Scott’s strong endorsement of Cockburn-Campbell’s plea for stability—WAPD, 18 March 1889, p. 43.
¹⁵ Quotation from Cockburn-Campbell, WAPD, 18 March 1889, p. 40.
had been invoked recently and controversially in NSW where Governor Carrington, according to Lee Steere, ‘contrary to his own personal opinion on the subject, acted upon the advice of his Ministers’ and packed the Upper House with nominees ‘for party purposes only’.\(^{16}\) While this deadlock-breaking provision would only have been in operation in WA for six years at the utmost, because, by then, the Legislative Council would be elected, it triggered spirited debate, possibly because the Members, having fought so hard to secure a revising Upper Chamber, did not want it capable of easy circumvention. Accordingly, they voted for a constitutional ‘innovation’, and capped membership of the Upper House at fifteen.\(^{17}\)

While dealing with the proposed membership of the Legislative Council, the Members also tweaked cl. 6 so that no Member could hold an office of profit under the Crown other than being a Minister or an officer of Her Majesty’s naval and military forces. They also raised the quorum in cl. 10 from five to seven. This latter amendment was slammed by Warton, who reminded them that the House of Lords, with 520 peers, only had a quorum of three and that WA’s:

> ... Upper House would probably consist of quiet, easy-going, and perhaps infirm old gentlemen, chosen principally for their wealth, their long experience, and their age; and it might be a difficult thing sometimes to get together seven of these old gentlemen when there was only some formal business to be done.\(^{18}\)

Furthermore, as Fraser outlined, when vacancies occurred or election writs were outstanding, it might be impossible to obtain a quorum and parliamentary business could be brought to a standstill.\(^{19}\) The Members, however, were undaunted and subsequently, when considering cl. 29, they reduced the Upper House Members’ disqualifying period of absence, without permission, from the Chamber (a session) to match that of Lower House Members (two consecutive months) because, as Richardson put it, ‘we ought to guard against these old fogies … neglecting their duties too much’.\(^{20}\)

The next tussle was over the duration of the new Parliament. Most Members had pledged at the 1889 election to secure a shorter term than the quinquennial one proposed in the Bill, with a number advocating the triennial terms current in NSW, Victoria and South Australia.

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\(^{16}\) *WAPD*, 21 March 1889, p. 80. Clune and Griffith provide a good summary of swamping and gubernatorial discretion, including that exercised by Carrington, in *Decision & Deliberation*, pp. 109–115.

\(^{17}\) Venn, *WAPD*, 21 March 1889, p. 78.

\(^{18}\) *WAPD*, 21 March 1889, p. 84.

\(^{19}\) *WAPD*, 21 March 1889, p. 85.

\(^{20}\) *WAPD*, 25 March 1889, p. 124. This insistence on the Legislative Councillors actually showing up for parliamentary duties would have been endorsed by Bagehot who grimly predicted that, ‘Some time or other the slack attendance in the House will destroy the House of Lords’—*The English Constitution*, p. 95.
(Queensland would adopt triennial terms the following year.) Two amendments appeared on the Notice Paper—one each for quadrennial and triennial terms. Parker moved the former on two grounds: that, while he expected WA would eventually copy the sister colonies’ triennial terms, he thought it was safer not to do so ‘at one step’, and also because WA’s Upper House would eventually face staggered biennial re-election and this would ‘synchronise very conveniently’ with quadrennial Lower House terms.21 Debate was cut and dried. The subject had been comprehensively canvassed in previous sessions and again only three days earlier when Cockburn-Campbell in a ‘short Parliaments are bad’ speech had lugubriously outlined that shorter parliaments meant more elections and:

We know what a political election entails. We know what unpleasantness and expense, and worry, and anxiety, and humiliation it involves, and how intensely disagreeable it is to men of any sensitiveness of temperament to have to go through the ordeal.22

The other Members, however, were clearly made of sterner stuff than Cockburn-Campbell. Some, such as Marmion, stressed that if the Council did not make a concession to the ‘strong feeling’ in the community for shorter terms, they would face continuing agitation to amend the Bill once passed.23 When put to the vote, Parker’s four-year compromise amendment passed comfortably, prompting Scott to abandon his for triennial terms.

The next liberal amendment was the property qualification for Members of either House in cl. 18—possession of a freehold estate worth £500 or £50 yearly value (already an exceedingly liberal 90% reduction on the amount imposed on Victorian MLCs in their start-up Constitution Act 1855).24 The Members, without debate, agreed to scrap the proposed property qualification for nominees to the Upper House because it was ‘considered undesirable to limit the choice of the Crown in the appointment of its nominees’.25 Parker’s argument that, equally, there was ‘no reason for limiting the choice of the electors’ with respect to the elected Members of the legislature was not, however, successful and his amendment to strike out the property qualification was voted down.26 This result was surprising as most elected Members supported its abolition and claimed they had overwhelming public support on their side. Even conservatives such as Marmion and Cockburn-Campbell insisted that the Council would face ‘mischievous agitation hereafter’ if it did not drop the qualification, because ‘the people themselves will not stand it’.27

21 *WAPD*, 21 March 1889, pp. 88 and 86.
22 *WAPD*, 18 March 1889, p. 38.
23 *WAPD*, 21 March 1889, p. 87.
26 *WAPD*, 22 March 1889, p. 98.
Certainly, the arguments in favour of abolishing this ‘monstrous doctrine’ were compelling: it blocked many worthy candidates from public office (WA’s modestly paid professional class which had long been excluded, had recently been joined by settlers from northern pastoral electorates who had difficulty obtaining enough freehold land to qualify); it had been successfully dispensed with in Britain and the sister colonies (with the exception of Tasmania); and it was redundant because, as several Members underlined, WA’s very high franchise qualification for electors had sieved out the ‘dregs’ of the populace and, therefore, the colony could ‘safely entrust’ such a ‘decent respectable’ electorate to return suitable Members. The Government, however, was committed to passing the Bill in as unaltered a state as possible. Accordingly, the Executive and official nominees lined up against the change and, in unison with the seven elected Members who still believed ownership of land provided a ‘rough and ready test’ of fitness for office, as well as a ‘Conservative safeguard’, they defeated the amendment. Not surprisingly, the consequential amendment to this clause, to scrap the requirement for the qualifying estate to be possessed for twelve months prior to nomination or election, was also lost.

The House then addressed provisions which disqualified otherwise qualified citizens from election to, or sitting in, Parliament. Clause 23 contained the standard blacklist (judges, clergymen, undischarged bankrupts, etc) but, unlike the Imperial and sister parliaments, banned convicted felons. WA’s sizeable ex-convict class was thus barred from the legislature. Pearse moved an amendment to have this ‘cruel’ ban lifted so that a man ‘who, perhaps, in his early days, had committed some youthful indiscretion, and repented of it all his life, and become a good and respectable citizen’ would not be forever debarred from the Parliament. As there had not been public demand for this change, however, the amendment was rejected without debate. The Members similarly refused to lift the stringent ban in cl. 24 on Government contractors (including those merely going guarantor or surety for a contract) being elected. 31

28 First Quotation, Cornthwaite Rason, WAPD, 22 March 1889, p. 100; subsequent quotations from Harper, WAPD, 22 March 1889, p. 104. Also see Cockburn-Campbell’s discussion of this ‘perfectly stupid qualification’ at the motion for second reading stage, WAPD, 18 March 1889, pp. 36–37.
29 Quotations from Alexander Richardson, WAPD, 22 March 1889, p. 103.
30 WAPD, 22 March 1889, p. 106.
31 Interestingly, Weld, perhaps following recent South Australian legislation to this effect, had proposed barring Government contractors from the Legislative Council in 1871 (in response to a select committee recommendation that Government officers should be barred) but the Members successfully opposed the ban at that time—see Message from the Governor (No. 16), WAPD, 16 January 1871, pp. 116–117. Weld also tried to disqualify ‘public contractors’ from being Members of the Legislature in his abortive 1874 Constitution Bill—see WAPD, 3 August 1874, p. 75. Presumably, with the significant amounts involved in Government-sponsored public works projects in the 1880s, this conflict of interest clause was now seen to be imperative for openness and accountability. Certainly Knutsford’s draft had considerably beefed up the Government contractor provisions in the Broome–Warton version.
The next significant election-related debate arose with cl. 29 and the circumstances in which Members would have to vacate their seats: insanity, swearing allegiance to a foreign prince or power, excessive and/or unauthorised absence from the legislature, and accepting an office of profit under the Crown. The Bill, however, exempted ministerial offices of profit under the Crown, although Britain and all self-governing British colonies (except South Australia) required a Member, upon appointment to the Ministry, to submit himself to his constituents for re-election. This provision had been in force in England since 1707 and was designed, as Burt, back in the Council as an elected member, explained, to secure full and stable terms of Government:

that members knew they would have to seek re-election would operate very forcibly indeed against mere factious opposition for the sake of office, and afford a safeguard against a too ready assumption of the reins and responsibility of Government, by men who had no reasonable prospect of having a following in the House or in the country.  

As proof of the provision’s utility, Burt outlined that South Australia had experienced more changes of Ministry than any of the sister colonies. (During the first forty-three years of self-government in South Australia there were forty-two different Ministries.) Burt also argued the provision was not as onerous as it appeared because ‘it was very seldom indeed that ministers were opposed when they went back for re-election; constituencies, as a rule, were rather proud than otherwise of being represented by a cabinet minister’—an observation corroborated by Kinzer who has noted it was customary and a matter of courtesy for Opposition parties in Britain not to contest such by-elections. In moving to incorporate the provision, Burt was seconded by Randell who claimed the ‘safeguard’ was particularly crucial for sparsely populated WA where there was a substantial risk that self-government might ‘degenerate into government by clique’ beset by ‘intrigue and factious opposition’. Given the legendary degree of intermarriage amongst WA’s gentry, Randell’s concern would have resonated.

Warton, however, who had deliberately omitted this requirement—as had Weld in his 1874 draft Constitution—was astonished the Members would want to introduce it when ‘the feeling in the mother country was increasingly against the practice, as a most inconvenient

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33 Combe, Responsible Government in South Australia, p. ix. Even without the ministerial re-election provision, however, colonial governments were renowned for their ‘instability’, as McMinn has pointed out: ‘In the United Kingdom between 1856 and 1900 there were twelve real changes of government; in the Australian colonies the average was about thirty’—A Constitutional History of Australia, p. 60.
36 Among some of the more noted examples are John Forrest’s marriage into the prestigious and well-heeled Hamersley family—who were intermarried with the equally illustrious Brockmans; Alexander Forrest’s marriage into the Barrett-Lennard family; the Roe family’s intermarriage with the Stones; and that of the Leakes with the Burts, the Bussells with the Sutherlands, and the Molloys with the Hales and the Brockmans.
one, and presenting no commensurate advantage’. Warton outlined there would be ‘a positive waste of two or three weeks of valuable time’ every time the Ministry changed, and that the exercise was futile because ‘not one man in fifty who went to the country upon the acceptance of office in England lost his seat’. Indeed, according to Warton, British MPs from all parties viewed the provision with disfavour and evaded it upon technicalities whenever possible. As McMinn has observed, the provision was also redundant in the Australian colonies where short parliaments provided electors with frequent opportunities to express their opinion on ministries.

Fraser also underlined the ‘vexatious delay and the trouble and inconvenience’ the provision would cause to Members, particularly those representing remote electorates. At this observation, Burt conceded that ‘A Ministry wouldn’t offer a member office, if he represented a very remote constituency’—which prompted northern Members Alexander Forrest and Richardson to oppose the motion. The vote was called soon after and resulted in a tie, which was broken when Cockburn-Campbell, the Chairman of Committees, used his casting vote in favour of ministerial re-election. Marmion was aghast at this decision and, as a ‘further test’, used a procedural technicality to have the vote re-taken. The Members again voted for the measure. This deliberate embrace of ministerial re-election was significant in that the southern Members had for years propitiated their northern colleagues on most issues. That they were prepared to support a measure which was demonstrably prejudicial to northern Members, and an expensive inconvenience to all Members, confirms the extent to which most, after having witnessed the revolving-door administrations of the sister colonies, ‘agreed that their main object in framing this Constitution Act was to ensure stability’.

The Members then turned to the Bill’s proposed electorates. The thirty single-member Legislative Assembly electoral districts and five multi-member Legislative Council electoral divisions had been drawn up under the direction of the Surveyor General and Commissioner of Crown Lands, John Forrest (the first Western Australian to be appointed

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37 WAPD, 25 March 1889, p. 126. An unsuccessful attempt had been made to abolish ministerial re-election in Britain in 1854; subsequent legislative change in 1867 enabled Ministers merely swapping portfolios to escape the provision. Ministerial re-election was finally abolished in Britain with the passing of the Re-election of Ministers Act (1919) Amendment Act in 1926 (16 & 17 Geo. 5, c. 19).
38 WAPD, 25 March 1889, p. 126.
40 McMinn, A Constitutional History of Australia, p. 65.
41 WAPD, 25 March 1889, p. 127.
42 WAPD, 25 March 1889, p. 127.
43 WAPD, 25 March 1889, p. 128.
44 The measure passed fourteen votes to eleven (Parker, who did not vote in the previous division, also voted to support it).
45 Loton, WAPD, 3 April 1889, p. 226. The provision was abolished with the passing of the Constitution Acts Amendment (Re-election of Ministers) Act 1947 (11 Geo. VI, No. 4).
The electorates had subsequently been considered by a parliamentary committee, which had endorsed Forrest’s distribution, even though it had unequivocally privileged areas of settlement or interests, even if scantily populated, over the more populous metropolitan centres. Accordingly, although the combined population of Perth (8,000) and Fremantle (5,400) was approaching one-third of the colony’s 44,000 (non-Aboriginal) total, they would only hold six of the Assembly’s thirty seats; by contrast, the East and West Kimberley electorates, with a combined total of 600–700, would return two representatives. Similarly, the remaining northern electorates of Roebourne, De Grey, Ashburton, Gascoyne and Murchison, with a combined population of 3,400, would return five Members, and the northern electorates of Geraldton, Greenough and Irwin, with a combined population of 3,500, would return three.

The sole dissentient on the committee had been Scott, one of the Members for Perth, who insisted that a rider be appended to the report requesting an extra seat for Perth at the expense of one of the new southern districts. When the matter was debated, however, Scott received no support. Even the other Member for Perth, Keane, claimed he was satisfied with Perth’s allocation. The boundaries, notwithstanding their gross rural malapportionment, were ratified, with Scott possibly consoling himself that while Perth, with its 8,000 denizens, might only return three Members, he was better placed than Sir Henry Parkes who had complained around this time that:

I live in a Sydney suburb ... This suburb [Balmain] contains more than two thirds of the number of people in Western Australia. Its 30,000 people send only four members to our Parliament, whereas 44,000 persons in Western Australia have a Parliament of their own.

The electorates determined, the Members turned to who would be doing the electing and under which electoral laws. Clause 38 proposed to leave ‘the existing laws relating to the qualification of electors, the mode of election, and all other matters concerning election’ in force unless ‘otherwise provided’ in the Constitution. In the course of his speech, Warton confirmed that the Government was considering introducing the colony’s first standalone Electoral Act. Until this occurred, however, the existing electoral laws would continue, so Parker moved to lower the franchise provisions in the draft Constitution. Parker’s motion

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47 The electorate breakdown figures come from the House of Commons Select Committee Report on the Western Australian Constitution Bill, BPP, 1890, Colonies Australia, vol. 32, pp. 84–85. Perth and Fremantle had originally returned one-third of the representatives (four out of twelve) when representative government was inaugurated in 1870.
48 WAPD, 26 March 1889, p. 136. (Scott, however, continued that ‘as these country members had a majority in the House, it was not much use for his hon. friend and himself to try and get anything for Perth’—same reference.)
49 Parkes quoted in Kingston, Glad, Confident Morning, p. 244.
was that the proposed property qualifications for Assembly electors—the *existing* Legislative Council property qualifications, which had been imported unaltered into the Constitution Bill—should be reduced by exactly one half. This would place WA mid-way between its ‘present somewhat conservative franchise’ (which was higher than franchise qualifications in Britain) and the manhood suffrage of the sister colonies.\(^50\) Parker admitted outright that he personally did not support manhood suffrage and that his principal object in introducing his amendment was as a concession to agitation in favour of a more liberal franchise.\(^51\) Fraser countered that with such ‘half-hearted’ championing he did not favour the motion’s chances and, indeed, the amendment was defeated, notwithstanding Burt’s derisive outburst that:

> to attempt to set up any bulwarks or safeguards was all rubbish. They would all have to come down … They knew it was so in England, where the rival parties were outbidding each other for the sake of popularity. They were coming to women’s vote now.\(^52\)

Which, for the record, was the *only* time women and the franchise were mentioned during the entire debate on the Constitution Bill. It was also one mention more than the enfranchisement of Aboriginal people received. Indeed, in cl. 42, Aboriginal people, unlike women, were explicitly excluded from the 60,000 ‘souls’ population threshold at which the elected Upper House would come into being—although this was possibly because gauging the number of Aboriginal people in WA was, in Broome’s words, ‘absolute guess-work. It is quite impossible to fix a figure’.\(^53\) (Some estimates, however, went as high as 25,000.\(^54\)) Nonetheless, Aboriginal men could enrol to vote if they met the franchise qualifications—a point clarified by Parker in 1890—although given they had been systematically dispossessed of their land, and usually received only subsistence wages or their keep when employed, it was unlikely many would qualify.\(^55\)

A motion to strike out the new conservative provision in cl. 39 of the Constitution Bill requiring Assembly electors to have held their property qualifications for at least twelve months before registration, instead of the existing six months, was also rejected following Warton’s robust defence of the provision:

\(^50\) *WAPD*, 26 March 1889, p. 138. Technically, Parker’s motion only related to reducing the *freehold* qualification by one half, but he outlined that he had follow-up amendments on the Notice Paper to similarly reduce the other qualifications if the freehold amendment was successful.

\(^51\) *WAPD*, 26 March 1889, p. 139.

\(^52\) *WAPD*, 26 March 1889, pp. 139 and 140.

\(^53\) Broome’s quotation is from the House of Commons Select Committee Report on the Western Australian Constitution Bill, *BPP*, 1890, Colonies Australia, vol. 32, p. 47. Similarly, in *Glad, Confident Morning*, p. 237, Kingston refers to there being ‘an unknown number of Aborigines’ in WA in 1890.

\(^54\) Statistic cited by Grimshaw and Ellinghaus, ‘White Women, Aboriginal Women and the Vote in Western Australia’, p. 4.

If they wanted to keep West Australia for West Australians, and not have the constituencies invaded by a rabble coming, no one knew whence, who arrived here just in time, perhaps, to take part in an election and who, next day, might be out of the colony, they ought to insist upon at least a year’s residence.\footnote{WAPD, 26 March 1889, p. 142.} Indeed, the provision was especially critical in WA, Warton continued, because so many electorates were numerically small and ‘the scale might be turned by some thirty or forty worthless vagrants who had no interest in the country’.\footnote{WAPD, 26 March 1889, p. 142.}

On the question of liberalising the franchise by \textit{broadening} it, which new Member Cornthwaite Rason reminded the Council was ‘one of the burning questions of the day’ at the 1889 election, the Members were prepared to honour their pledges and extend Assembly voting rights in cl. 39 to lodgers who had occupied a room(s) in an electoral district for at least twelve months prior to registration, at a weekly rental of not less than four shillings (which equalled the £10 annual rent which qualified their \textit{married} peers for the householder suffrage).\footnote{WAPD, 26 March 1889, p. 141.} This extension of the franchise, which would ‘include all respectable mechanics and working men’, was regarded by a majority of the Members as appropriate on logical and equitable grounds, because ‘it would be regarded as a liberal concession outside, and to a very great extent do away with further agitation in the direction of liberalising or widening the franchise, for some time to come’.\footnote{Quotations from William Marmion, \textit{WAPD}, 26 March 1889, pp. 142–143.} They had a point, as it was later estimated that with the inclusion of lodgers, close to 90\% of WA’s adult male population would be eligible to vote.\footnote{Voting statistics from the House of Commons Select Committee Report on the Western Australia Constitution Bill, \textit{BPP}, 1890, Colonies Australia, vol. 32, pp. 150–153.}

The next proposed amendment to cl. 39 was a similar extension of the franchise to those holders of a miner’s right under the \textit{Goldfields Act 1886} who had held the right \textit{and} resided on a declared goldfield for twelve months preceding registration \textit{and} were still in residence on a declared goldfield at the time of the election \textit{and} had resided there twelve months previously.\footnote{\textit{Goldfields Act 1886} (50 Vict., No. 18).} Notwithstanding the multiple residency safeguards built into the amendment, John Forrest underlined that this motion would see ‘hundreds of miners, who had simply paid £1 for their miner’s right, exercising the same privilege as the £10 householders, and, possibly, swamping the voice of the country electors’ who could, in turn, become effectively ‘unrepresented’.\footnote{WAPD, 26 March 1889, pp. 146–147.} To illustrate his point, Forrest cited the Toodyay electorate, with its 300 registered voters, which, because it included the Yilgarn goldfields, would have...
its electoral roll swelled by 200 miners ‘at one stroke’ if the amendment passed—and which could see the mining proportion of the electorate double or treble by the time the next roll was compiled. While Forrest was not opposed to registered miners voting for their own separate goldfields representative, Fraser promptly quashed this prospect with the observation that ‘he did not think anyone would venture to say that our goldfields had yet attained that importance that they ought to have the right of returning their own member’. The final speaker, Richardson, dismissed the amendment as ‘simply manhood suffrage under another name, and manhood suffrage in a very objectionable and one-sided form,—manhood suffrage extended to those districts only in which there happened to be a goldfield’ rather than to those districts where workers wielded the same picks and shovels down a well. The amendment was lost on the voices.

By this stage few election-related provisions remained. The question of election lists was raised briefly in reference to cl. 41, which directed that lists were to be compiled in accordance with the laws currently in force. This was no longer a tenable provision considering the recent scandal regarding the Perth electoral roll (to be discussed) and the fact that a new Electoral Act was in the offing, so Parker had no difficulty securing an amendment that the lists be compiled in accordance with the law ‘in operation at the time’.

The next tranche of clauses, from 42 to 53, related to the Upper House once it became elected. Most were not debated, but agreed to sub silentio. Presumably the Members thought these provisions would be revisited and ‘dealt afresh with’ immediately before they were due to come into operation, which is, indeed, what happened. In summary, these clauses provided that six years after the first summoning of the new Parliament under self-government, or when the population reached 60,000 (non-Aboriginal) ‘souls’, the Legislative Council would become elective. Fifteen Members would be returned from five electoral divisions; these Members would elect a President who would issue writs for Council by-elections; and Members would retire in rotation at two-yearly intervals. Surprisingly, even debate on the qualifications for the Legislative Council franchise was over in minutes. The slight discussion which did occur was not over the fact that the property qualifications for the Upper House in this part of the Bill had been raised by the Colonial Office (Broome’s draft had simply doubled existing Legislative Council

63 WAPD, 26 March 1889, p. 146.
64 WAPD, 26 March 1889, p. 147.
65 WAPD, 26 March 1889, p. 147.
66 WAPD, 27 March 1889, p. 156.
67 Quotation from Yougarla v WA, 207 CLR 344, 353 (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ).
qualifications, whereas the current Bill doubled the freehold qualification, trebled the rest, and, of course, did not include a lodger franchise) but whether the non-payment of municipal rates should disqualify electors.

By 28 March the Members reached ‘Part VII—Miscellaneous’—the concluding clauses of the Bill, and it was here that the whole process nearly derailed. In dealing with cl. 73, the amending clause, Fraser, without notice, moved that any Bills dealing with the Civil List, ministerial salaries, retiring pensions, the grant to the Aborigines Protection Board, and any other charges upon the consolidated revenue fund, would have to be reserved by the Governor for the signification of Her Majesty’s pleasure thereon.68 This was a contentious amendment considering that under the Bill such areas were within the competence of the legislature to deal with without time-consuming references back to England. Understandably, the Members regarded this as an affront to WA and a clog on the new Parliament’s independence. Even with Fraser insisting that he was ‘under instructions’ from Knutsford to implement the amendment, and cautioning them that it would be impolitic to resist it, the motion went to a division and, while it passed fourteen votes to nine, it was rejected by such key figures as Parker, Marmion and Scott.69

Fraser was defeated, however, in the last stoush over the Bill—Burt’s eleventh-hour amendment to cl. 76 to defer the coming into operation of the new Constitution until the entire control and management of the southern waste lands of the colony were vested in the Western Australian Parliament. While a number of the Members concurred with Burt’s view that it seemed ‘futile to go in for this new Constitution and have no land with it’, most had been prepared to trust Knutsford to honour his undertaking to delegate to WA’s legislature his own delegated powers to make land regulations.70 However, when Parker explained that, in law, a delegate cannot delegate powers (delegatus non potest delegare), he turned the debate at a stroke: a swingeing eighteen to six Members decided to ‘make a stand, and take the risk of the bill being delayed’ and supported the amendment.71

Within minutes of this dramatic vote, the House finished with the Bill. Drama continued, however, with the Schedules, when the elected Members, impervious to the alternating

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68 WAPD, 28 March 1889, p. 167.
69 WAPD, 28 March 1889, p. 168.
70 WAPD, 28 March 1889, p. 173.
71 Lee Steere, WAPD, 29 March 1889, p. 191.
protests and cajolings of the Government Bench, voted en bloc for reductions in the Civil List salaries and trimmed the proposed pensions—particularly Warton’s. 72

Broome immediately advised Knutsford that the Bill had made it through the committee stage, and catalogued the principal amendments—in particular, the new proviso relating to the vesting of Crown lands. 73 He concluded: ‘It could scarcely have been expected that the Bill would have sustained fewer amendments’ and warned that it might, in fact, be further amended when recommitted. After the Bill was recommitted five days later, however, Broome was able to relay to Knutsford that no amendments of any significance were passed. 74 Indeed, the only substantive electoral amendments were fixing rather than capping the Upper House nominees at fifteen and abolishing the ‘practically inoperative’ requirement that electors had to have paid their municipal rates before being allowed to vote. 75 But, while not carried, strenuous attempts were made to get the Members to reverse their recent decisions vis-à-vis ministerial re-election and the retention of a high property qualification for Members. On 5 April 1889 the Constitution Bill and companion Aborigines Bill were finally passed.

When the Council reconvened on 10 April, the Members were read a Message from Broome which contained the text of his latest telegram rally with Knutsford. 76 Broome’s telegram advised Knutsford that the Members in ‘most fair and loyal manner’ had passed the Constitution Bill without material alteration, listed those amendments which had been made, and recommended the Bill’s acceptance: ‘without further negotiations or correspondence. Would urge that Act of Parliament be at once drafted for introduction immediately on arrival of Bill in England. Time all important to Colony’. 77

Knutsford’s response signified that while quadrennial terms and lodger franchise would be acceptable to the Colonial Office, the land vesting proviso and reductions to the Civil List salaries and Warton’s pension would not. 78 The Members were then read a further Message

72 The members almost halved Warton’s pension on the grounds that he had been in WA and, in fact, the civil service for less than three years. Slashing Warton’s entitlement was not unexpected, however, given his arrival in WA had been preceded by a rash of articles—including extensive reprints from high-profile English newspapers—ridiculing the appointment of the ‘uncouth’ and unqualified ‘Bill Blocker’ as a shameless example of Tory ‘wire-pulling’ which made ‘people despair of decent relations between England and her Colonies ever being established’—quotations from the Inquirer, 8 December 1886; also see the Inquirer, 15 December 1886. The ‘serious dereliction of duty on the part of the Government’ in appointing Warton was also raised in the House of Commons—see Hansard, 27 February 1890, col. 1389.

73 Sir F. Napier Broome to Lord Knutsford, 1 April 1889, BPP, 1889, Colonies Australia, vol. 31, p. 425.


75 Randell, WAPD, 3 April 1889, p. 223.

76 Message (No. 12), WAPD, 10 April 1889, p. 253.

77 Sir F. Napier Broome to Lord Knutsford, 4 April 1889, WAPD, 10 April 1889, p. 253.

78 Lord Knutsford to Sir F. Napier Broome, 6 April 1889, WAPD, 10 April 1889, p. 253.
from Broome which returned the Constitution Bill with a tranche of amendments, including the land proviso and Schedule amendments Knutsford was insisting on.79

With the exception of an amendment to return the Upper House quorum to five, Broome’s proposed changes were minor and passed within minutes. Knutsford’s amendments were, however, debated extensively. Predictably, the land proviso amendment generated the most angst, but the elected Members firmly endorsed Parker’s assessment that, without a statutory guarantee that land would be vested in the legislature, ‘we shall find ourselves with self-government and the very mainspring of self-government gone, the motive power, the sinews of war, the public estate, taken from us’.80 When the vote was called, the original majority in favour of the proviso remained unchanged. Realising that in rejecting Knutsford’s ‘sham Constitution’ they had probably done their dash anyway, the elected Members adhered to their position regarding the Schedules.81

Broome telegraphed Knutsford and advised that the Members insisted on their previous decisions, and that he intended to prorogue the Council within days ‘unless business from you’.82 Knutsford immediately replied that he, also, insisted on his amendments, and concluded with an ultimatum: ‘to enable introduction Imperial Parliament this Session, better not prorogue till points at issue have been settled as required’.83 The telegrams were tabled in the Council, the Bill and Knutsford’s amendments were resubmitted, and Broome’s advice in the accompanying Message was that the game was up and the amendments should be accepted.84

The elected Members’ commitment to full and unfettered control of the land had, however, hardened. This was a consequence of Broome, having telegraphed Knutsford five days earlier with the query, ‘Responsible Government—Will Legislature completely control lands South latitude twenty-six?’ and receiving the concerning reply, tabled in the Council two days previously, that while this was Knutsford’s ‘intention’, he could not ‘undertake Imperial Parliament will not make some modifications’.85 After this admission, Parker argued there could be no justification for surrendering on the land issue. Nonetheless, the Members did not want to antagonise Knutsford. Many supported Parker’s proposed

79 Message (No. 13), WAPD, 10 April 1889, pp. 253–254.
80 WAPD, 12 April 1889, p. 270.
81 Scott, WAPD, 12 April 1889, p. 275.
82 Sir F. Napier Broome to Lord Knutsford, 15 April 1889, reprinted in Governor Broome’s Message (No. 19) to the Council, WAPD, 17 April 1889, p. 337.
83 Lord Knutsford to Sir F. Napier Broome, 16 April 1889, reprinted in Governor Broome’s Message (No. 19) to the Council, WAPD, 17 April 1889, p. 337.
84 Message (No. 19), WAPD, 17 April 1889, pp. 337–338.
85 Sir F. Napier Broome to Lord Knutsford, 12 April 1889, and Lord Knutsford to Sir F. Napier Broome, 13 April 1889, both reprinted in Governor’s Message (No. 17) to the Council, WAPD, 15 April 1889, p. 299.
compromise that they hold firm to the land proviso and capitulate on the Schedules and thereby reduce the matters in dispute to one.86

On 25 April there was encouraging news. In response to Broome’s further telegram: ‘If you agree add to Act of Parliament clause ensuring validity of regulations … it may facilitate matters’, Knutsford had cabled that he would insert the clause.87 This ‘distinct promise’ to guarantee parliamentary sanction for the transfer of land control to the Western Australian legislature by means of a clause in the Enabling Act won over most of the elected Members.88 But not all. After listening to six successive Members support Knutsford’s ‘almost entirely satisfactory’ pledge, Parker pointed out that Knutsford had not given an assurance that his promised land clause would be agreed to, so if they excised their own land proviso they could still receive self-government sans control of the land.89 To protect themselves from this contingency, Parker urged the Members to support a measure originally proposed by Broome and subsequently placed on the Notice Paper by nominee Member James Morrison, viz. to provide in the draft Bill that the Constitution would come into force ‘only when the Legislative Council shall have requested the Governor, by Address, to proclaim it’.90 Thus, if the new Constitution came without control of the land, they could simply not enact it. When the vote was taken, however, a substantial majority voted to strike out the land proviso in cl. 76 without inserting the new proviso. The amendments to the Schedules were passed without demur or division.91

The Constitution went in the outward mail—along with a despatch in which Broome counselled Knutsford that should difficulties arise at Westminster with regard to the ‘promised transfer’ of land, it should be explained that:

86 WAPD, 17 April 1889, p. 340.
87 Sir F. Napier Broome to Lord Knutsford, 18 April 1889, and Lord Knutsford to Sir F. Napier Broome, 23 April 1889, both reprinted in Governor’s Message (No. 20) to the Council, WAPD, 25 April 1889, p. 371.
88 Rason, WAPD, 26 April 1889, p. 371.
89 Randell, WAPD, 26 April 1889, p. 378; Parker, WAPD, 26 April 1889, p. 382.
90 Quotation from Broome’s Prorogation Speech, WAPD, 7 December 1888, p. 487. Broome’s motives for this caveat were financial: he feared WA might not be able to afford ‘at this present moment’ the estimated £10,000 per annum ‘additional outlay’ entailed in taking on self-government—same reference.
91 The votes had been taken late on a Friday night and the members, as Richardson observed, were ‘tired of fighting the matter’—see WAPD, 26 April 1889, p. 386. Over the weekend it appears they had second thoughts about having excised the land proviso safeguard, and took the ‘opportunity of perusing’ a spectacularly ungracious Memorial to the Secretary of State drafted by Cockburn-Campbell which spelt out how ‘under protest’ and ‘greatly against their own inclinations and those of the country—Your Memorialists have deferred to your wishes’, and how they only did so on the strength of Knutsford’s pledge to guarantee the vesting of the land—quotations from Cockburn-Campbell, WAPD, 29 April 1889, p. 402. The Memorial appears in WAPD, 29 April 1889, pp. 403–404. When the Members met on the following Monday the Memorial was presented to the House and, notwithstanding warnings that it was ‘suicidal’ and ‘calculated to get the back of the Secretary of State up’, it was passed—first quotation, Fraser, WAPD, 29 April 1889, p. 406; second quotation, Randell, WAPD, 29 April 1889, p. 409.
this transfer is absolutely necessary if Responsible Government is to be established on the usual and recognised basis in Western Australia, and if the Colonists are not to be kept in a perpetual state of discontent and irritation."92

Broome prorogued the Council the next day after congratulating Members that ‘Our labours are ended’ and that he had little doubt that self-government would be instituted before the year’s end.93 Indeed, Broome was so confident that a new election would soon be held, that he advised Members he would probably have to recall them for another short session in a couple of months to consider WA’s new Electoral Bill (the previous one, as shall be discussed, having been withdrawn two days after its introduction).

Stannage has written that, ‘on the whole’, the 1889 Constitution Act ‘was a triumph for the men of conservative persuasion’.94 Certainly, like the constitutions of the sister colonies in the mid-1850s, it bristled with conservative safeguards—including those which the Conservative Home Government had chosen to ‘rivet’ on to the Bill and which the Members only acceded to because, as Parker later claimed: ‘We had virtually no choice in the matter’.95 However, where the Members believed that they had scope to liberalise the Bill, and considered that it was safe to do so, they had introduced liberal reforms. De Garis has provided a more balanced and contextualised verdict: ‘The new constitution embodied compromises between the liberal and conservative groups within the colony and between the colonial and imperial points of view’.96

Even with the constraints and compromises, WA’s Constitution was, as Heseltine concluded ‘a considerable advance on those of the Eastern Colonies of 1855, embodying as it did, many developments which had been made in those colonies’.97 Furthermore, as Battye underlined of the Act’s provisions:

> though in many ways they would not be accounted liberal to-day, they were a distinct step forward at the time, and they placed the power of liberalizing them, when such a step was deemed necessary, in the hands of the colonists themselves.98

**A ‘decent, respectable, conservative’ Electoral Act**

The Council, ‘specially called together … to consider a new Electoral Bill’, met on 23 July 1889.99 While the Electoral Law Amendment Bill was first read, the ‘somewhat

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92 Sir F. Napier Broome to Lord Knutsford, 29 April 1889, BPP, 1889, Colonies Australia, vol. 31, p. 479.
93 WAPD, 30 April 1889, p. 420.
95 West Australian, 26 Dec 1888; WAPD, 17 Dec 1891, p. 124.
98 Battye, Western Australia, p. 395.
uninteresting and unimportant’ topic of electoral legislation was instantly sidelined by the latest developments regarding the Constitution Bill.\textsuperscript{100} In his Governor’s Speech Broome advised that while the Enabling Bill had passed the House of Lords, there were concerns it would face opposition in the House of Commons and might not be passed during the present session.\textsuperscript{101} The following day this advice was confirmed by a telegram from Knutsford:

In view of opposition to Western Australian Responsible Government Bill on both sides of House … much regret that impossible to pass Bill before prorogation, but still hope that second reading can be got later, so as to affirm principle of constitutional change.\textsuperscript{102}

Given the Members had repeatedly compromised and capitulated on the Constitution Bill ‘to suit the wishes, soothe the prejudices, and correct the mistakes of the Home Government’, to find that even this ‘modified and mutilated’ measure was encountering opposition was beyond galling.\textsuperscript{103} The Members turned to what action they could take to pressure the House of Commons into passing the Enabling Act during the current session and, after protracted debate, settled for the following confronting resolution to be cabled to Knutsford:

That this House desires to express its strong and unalterable opinion that the colony has now reached a stage of development when the present Constitution is no longer adapted to its circumstances, and that the anticipated delay in the passing of the Enabling Bill will most seriously affect its material prospects, will give rise to universal irritation, and deal a fatal blow at that trustful confidence in the fair dealing and justice of the House of Commons which has hitherto been reposed in a body credited throughout the civilised world with a reputation for sympathy with and active support of the principles of self-government, which is enjoyed by every other colony of Australia, and which is now demanded by Western Australia …\textsuperscript{104}

The Members then unanimously resolved to request the Speaker to telegraph the sister colonies’ governments and legislatures with an appeal for help—specifically, to instruct their Agents-General in London to make representations to the British Cabinet regarding the necessity, in the interest both of WA and of the Australasian group generally, for the Enabling Bill to be passed immediately.\textsuperscript{105} This done, the Members turned to the Electoral Bill—‘the finishing touch to the preparations for another form of Government’.\textsuperscript{106}

\textsuperscript{99} Quotation from the Governor’s Speech, \textit{WAPD}, 23 July 1889, p. 1.
\textsuperscript{100} Randell, \textit{WAPD}, 23 July 1889, p. 3.
\textsuperscript{101} \textit{WAPD}, 23 July 1889, p. 1. The Enabling Bill was passed in the House of Lords on 16 July 1889.
\textsuperscript{102} Lord Knutsford to Sir F. Napier Broome, 23 July 1889, reprinted in Governor Broome’s Message (No. 1) to the Council, \textit{WAPD}, 24 July 1889, p. 8.
\textsuperscript{103} Venn, \textit{WAPD}, 24 July 1889, p. 20.
\textsuperscript{104} Burt’s resolution appears in \textit{WAPD}, 26 July 1889, p. 18.
\textsuperscript{105} The resolution (moved by Parker) appears in \textit{WAPD}, 26 July 1889, p. 42.
\textsuperscript{106} Venn, \textit{WAPD}, 23 July 1889, p. 2.
The genesis of the Bill was the election petition of defeated former Member, Horgan, to unseat both successful candidates—Scott and Keane—in the 1889 Perth election. Horgan, a solicitor, cited a number of grounds in his petition. These included that the returning officer, Sheriff James Broun Roe, showed bias and conducted the count in such a grossly unprofessional manner that a recount would establish that Horgan and not Keane (who won by a five-vote margin) should have been returned; that impersonation of electors—both dead and alive, occurred—including by one of Scott’s election agents; and that some double votes were taken.107

Justices Onslow and Stone, after constituting an election petition court for six days, held that no corrupt practices had been proved, although the Chief Justice contentiously remarked that the ‘case was full of suspicion’ and ‘wrongful’ acts.108 They dismissed Horgan’s petition. It was manifest, however, from evidence tendered, that the Perth electoral roll was in an egregious state, with minors and deceased electors appearing on the list, and third-parties enrolling people without their knowledge. The most jaw-dropping moment in the trial occurred when Horgan conceded that he had enrolled two of his sons, both minors, using property he owned as the franchise qualification—and airily claimed in his defence that ‘numbers of people did the same thing’.109

It was also obvious from tendered evidence that the returning officer had not complied with statutory requirements. His manifold derelictions included refusing in ‘most indecent’ fashion to prevent canvassing within the polling place; failing to bundle and seal the ballot papers and counterfoils before examining the voting lists; lodging unsealed election material with the Clerk of the Legislative Council; destroying unused ballot papers; and omitting to report, and name, multiple voters on his return certificate to the Governor, because ‘I know that the list is full of mistakes’.110 Although the justices decided that Roe’s non-compliance did not warrant the election being invalidated under s. 18 of the Ballot Act, he was subjected to the public mortification of being admonished by the Chief Justice for having neglected his duty, and being ordered to pay his own legal costs.111 The Colonial Secretary’s Office, which oversaw elections, was also embroiled after Horgan accused the Government of an attempted cover-up in delaying publication of Roe’s return certificate,

107 A copy of the petition appeared in the West Australian, 9 February 1889.
108 West Australian, 9 March 1889. The Chief Justice also repeated these observations during his summing up—see the West Australian, 12 March 1889.
109 West Australian, 6 March 1889.
110 First quotation from the Chief Justice, the West Australian, 12 March 1889; second quotation from Roe, the West Australian, 8 March 1889.
111 West Australian, 12 March 1889.
which, Horgan claimed, could have assisted him determine whether he had grounds for his petition.\textsuperscript{112}

The justices’ report on the petition, with its adverse finding that the Perth electoral roll contained the names of numerous people not entitled to vote at the election, was presented to the Legislative Council on 15 March 1889.\textsuperscript{113} Parker and Scott immediately called for measures to remedy the ‘evil’ of defective electoral lists so as to ensure the ‘purity’ of elections.\textsuperscript{114} A week after it was tabled, the Members allocated time to consider the report, and, after minimal debate, resolved that in view of the probable unsatisfactory compilation of electoral rolls \textit{throughout} WA, electoral registration provisions should be tightened and new, revised rolls prepared before the next election.\textsuperscript{115}

The original resolution proposed by Parker, and seconded by Scott, recommended that the new registration clauses should be inserted into the Constitution Bill. Shenton countered, however, that it would be wiser to effect the amendments through a separate Electoral Act, pointing out that as the Members were all resigned to there being another session of Council before the Constitution Bill was enacted, the Government could introduce a new Electoral Bill when the House reconvened.\textsuperscript{116} Shenton’s amendment was passed and the amended resolution forwarded to Broome.

Although the resolution did not refer to Roe’s official negligence, it had been noted in the justices’ report. During the petition debate it was also commented upon by Parker, who defended Roe, claiming that he had ‘tried to do his duty strictly and honorably’ but, like the rest of WA’s returning officers—who, Parker reminded them, were not \textit{paid} for their additional time-consuming duties unlike their counterparts in the sister colonies—was not a lawyer and had not been given special directions regarding his duties by WA’s Crown Law officers.\textsuperscript{117} As such, Parker continued, ‘we can hardly wonder that these laymen do not carry out to the letter the duties required of them by the Act, which in many instances is somewhat difficult to construe’.\textsuperscript{118}

\begin{footnotesize}
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  \item[112] \textit{West Australian}, 8 March 1889. Considering Roe’s certificate sat in the Colonial Secretary’s office for almost a month before gazettal—which occurred two days after Horgan subpoenaed the Governor demanding its publication—the delay was noted with disapproval by the justices. See the justices’ report in \textit{WAPD}, 15 March 1889, p. 7.
  \item[113] The report is printed in full in \textit{WAPD}, 15 March 1889, p. 7.
  \item[114] Parker’s comments appear at \textit{WAPD}, 15 March 1889, pp. 7–8, and Scott’s at \textit{WAPD}, 18 March 1889, p. 44.
  \item[115] A copy of the resolution appears as an enclosure to Sir F. Napier Broome to Lord Knutsford, 2 July 1889, \textit{BPP}, 1890, Colonies Australia, vol. 32, p. 416.
  \item[116] \textit{WAPD}, 22 March 1889, p. 96.
  \item[117] \textit{WAPD}, 22 March 1889, p. 92. In Britain, prior to 1918, returning officers’ expenses were paid equally by all the candidates who contested the election in a constituency, rather than by the Government—see Colin Rallings and Michael Thrasher (eds), \textit{British Electoral Facts 1832–1999}, 6th edn, Ashgate, Aldershot, 2000, p. 136.
  \item[118] \textit{WAPD}, 22 March 1889, p. 92.
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Parker recommended that, in future, the Government issue special instructions regarding election procedures to assist returning officers (which occurred in some of the sister colonies).\(^\text{119}\) While he did not recommend the establishment of a dedicated agency or official to co-ordinate elections within WA, he did, in fact, highlight the need for this. Tellingly, by the next election, electoral officials would be issued with gazetted instructions; by 1897 there would be an ‘Officer in charge of Electoral matters generally’; and by 1901 an Electoral Department presided over by a Chief Electoral Officer would be established within the Department of the Colonial Secretary.\(^\text{120}\)

Eleven days after the resolution passed, Warton moved the first reading of a Bill ‘to provide for the Registration of certain Electors, and for other purposes’.\(^\text{121}\) This was a lightning fast response to the Members’ request, but when the second reading was moved the following day it was evident that the Electoral Bill was poorly drafted. Warton apologetically described it as ‘only a skeleton’—the Bill contained eight clauses, while the Victorian equivalent had approximately 150—that would benefit from a good select committee.\(^\text{122}\) The Bill’s biggest defect was that it did not intend to ‘attack the present system of registration at all—in case the present Constitution might continue for some time longer—but simply to provide for the registration of any fresh claims’.\(^\text{123}\) Although the Members allowed the second reading, they were manifestly unimpressed and, believing there was not enough time left in the session to rehabilitate the Bill, they blocked Warton’s bid to send it to a select committee. In view of this, the next day Warton advised that the Government had abandoned the Bill.

But only temporarily. Broome was keen to see WA’s electoral law straightened out, and confided to Knutsford that a ‘decidedly conservative’ Electoral Act could exert ‘an influence most desirable and valuable at the outset of responsible government’.\(^\text{124}\) Accordingly, Broome appointed a Commission comprising Warton, Burt, Parker, the recently knighted Speaker, Sir James Lee Steere, and Robert Fairbairn, the Resident Magistrate of Fremantle, who had fifteen years’ experience as a rural and metropolitan returning officer. Over the parliamentary recess the Commissioners drafted a new Electoral Bill. Unlike its predecessor, it set out to consolidate WA’s electoral law—currently scattered through a handful of statutes—as well as to amend it. As Broome explained to

\(^{119}\) WAPD, 22 March 1889, p. 92.  
\(^{120}\) See the 1897 and 1901 Blue Books.  
\(^{121}\) Minutes of Proceedings, 2 April 1889, Votes and Proceedings of the Legislative Council, First Session, 1889, p. 61.  
\(^{122}\) WAPD, 3 April 1889, p. 235.  
\(^{123}\) WAPD, 3 April 1889, p. 234.  
\(^{124}\) Sir F. Napier Broome to Lord Knutsford, 2 July 1889, BPP, 1890, Colonies Australia, vol. 32, p. 416.
Knutsford, the Bill would not touch the franchise, Members’ qualifications or boundaries as these matters had been dealt with and settled by the Constitution Bill.¹²⁵ Rather, the Bill’s objectives would be to:

regulate procedure, to ensure complete and correct rolls, and to guard against fraud and malpractice, which are known to be possible and to exist under the present law, and which it is desired to get rid of before the first general election under the new constitution.

Warton moved the second reading of the new Electoral Bill in the Council on 29 July 1889. In overviewing its provisions, Warton advised that the Commissioners had unanimously agreed that the crux of the Bill, in keeping with the ‘spirit of the Constitution Bill’, was to ensure:

that the electorate of Western Australia should consist of West Australians. I mean by that, that pains should be taken that the Government of this colony should not fall into the hands of persons who come here from any part of the world, stay here a very few months, and then somehow or other get on the electoral lists.¹²⁶

As a result, entirely new electoral registers would be compiled, and rigorous new registration procedures would guarantee that lists would be ‘composed only of persons who are entitled to get there and to remain there’.¹²⁷

The Commissioners’ Bill mandated that in future all would-be electors would have to apply for registration personally and in writing using one of nine customised claim forms covering ‘every possible kind of claim’ (in contrast to the one-size-fits-all claim form in the Legislative Council Ordinance, which, in fact, was only used after a would-be elector had been refused registration).¹²⁸ On these forms claimants would have to describe in detail the property which gave them their entitlement and also declare that they were not minors, or subject to any disqualifying legal incapacity. These application forms would then have to be signed, witnessed and countersigned—and any deliberately false statements would incur a prohibitive fine.

Policing registration would be a new officer called the electoral registrar (in most cases the magistrate’s clerk who had done the job previously) who was to assess each application and

¹²⁵ Sir F. Napier Broome to Lord Knutsford, 2 July 1889, BPP, 1890, Colonies Australia, vol. 32, p. 416.
¹²⁶ WAPD, 29 July 1889, p. 45.
¹²⁷ WAPD, 29 July 1889, p. 45.
¹²⁸ WAPD, 29 July 1889, p. 46.
reject doubtful or deficient ones. To keep the electoral registrars focused on the task, the Bill included a penalty of up to £50 for any wilful or grossly negligent act of commission or omission. As previously, rejected or challenged claims could be taken to a revision court, which retained all its previous powers to perfect rolls, although its job was made easier by the provision that the Registrar General of Births, Deaths and Marriages had to send the electoral registrar an annual list of all adult males who had died within the electorate to assist in weeding deceased electors from the roll. Finally, to ensure that all stages of the registration, objection and revision process received maximum public scrutiny, the Commissioners extended all the deadlines laid out in the Legislative Council Ordinance. Accordingly, the process of producing an electoral register under the Electoral Bill would take five months (10 April to 8 September) in contrast to eleven weeks (10 April to 24 June) under the Ordinance.

The Commissioners made few substantive changes to WA’s other electoral laws, which in most cases had been simply transferred en bloc from previous Acts. The limited amendments included: removing the requirement for candidates to provide written notice of their intention to nominate ten days before the election because the Bill provided for a separate nomination day; abolishing the requirement that nomination forms be endorsed by six electors; instructing returning officers to declare sole candidates elected on nomination day, rather than waiting for election day; authorising all election-related paperwork to be transmitted by telegraph; lessening the existing draconian punishment for candidates convicted of bribery and corruption (the disqualification from sitting in Parliament would be until the next general election instead of the existing seven years); and prohibiting use of hotels and restaurants for political committee rooms. After long-standing criticism that hotels were ‘the centres of illicit corruption and illicit management’, Britain had proscribed their use as committee rooms with the passing of the Corrupt and Illegal Practices Prevention Act 1883. The slow take-up of this electoral reform in WA is explained by some small towns not possessing alternative buildings to serve the purpose.

129 See s. 5 of the Electoral Act 1889. The first gazetted electoral registrars were in almost all cases listed in the Blue Book as clerks to the various resident or government magistrates or, in the case of Perth, the police magistrate. However, in the Ashburton and Beverley electorates, the local stationmasters were used. 130 Section 66 of the Electoral Act 1889. 131 Section 16 of the Electoral Act 1889. 132 Sections 44, 40, 45, 38–40, 75 and 74 of the Electoral Act 1889. 133 Quotation from Bagehot, The English Constitution, p. 110. Also see Cox in his ‘Hints to Solicitors’, p. clxiii, where he cautioned: ‘The committee room should be at a private house and not at a public house. There is the utmost danger in the latter of your being unconsciously involved in the meshes of the law against corrupt practices’. South Australia not only banned the use of licensed premises as polling booths, but forbade the use of booths within 100 yards of licensed premises in s. 25 of its Electoral Act 1855-6 (19 Vict., No. 10).
Parker informed the Members of some recommendations which had not been incorporated into the draft Bill—viz. to ban personal canvassing by candidates after nomination day and to make enrollees pay a one shilling registration fee as in Victoria. He strongly urged that the Bill be referred to an enlarged select committee, representing ‘all shades of opinion’, where these measures could be canvassed.\(^{134}\) Considering the Commissioners had apparently disagreed on a range of electoral issues, and that there was ample time to devote to the Bill in this uncrowded session, the Members referred the Bill to a select committee comprising one-third of the House.\(^ {135}\)

Marmion presented the select committee’s report and a reprinted copy of the Bill, incorporating the committee’s amendments, on 7 August.\(^ {136}\) Notwithstanding reprinting, the select committee’s Bill was not radically dissimilar from the Commissioners’ (although Schedule A now featured seventeen individual registration claim forms covering the existing Constitution, the reserved Constitution, and qualifications for the Legislative Council once elective). The select committee’s only significant amendment to the core registration provisions was to prohibit lawyers from assisting in the hearing of claims and objections in the revision court. As Marmion put it, ‘the object was that common sense should prevail, and that no legal quibbles or technicalities should be introduced to obfuscate the brains of the gentlemen composing these courts’.\(^ {137}\) Given the Members would have been aware of the much-criticised dominance of lawyers in the English electoral scene, where solicitors had been dubbed ‘the real Parliament makers’ because of their near monopoly in organising electoral registration and managing election campaigns for candidates, this amendment passed without difficulty.\(^ {138}\)

Similarly the committee easily persuaded Members to change the manner of marking ballot papers from the existing mark in the square system to the strike-through method (used by all the sister colonies except South Australia), in which electors drew a line through the names of all the candidates for whom they did not wish to vote.\(^ {139}\) (South Australia had also used the strike-through method, but changed to a cross in the square system in 1858 in part to save ink.\(^ {140}\)) This change to marking the ballot paper had been recommended to the

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\(^{134}\) WAPD, 29 July 1889, p. 48.

\(^{135}\) The members were Lee Steere, Warton, Cockburn-Campbell, Randell, Venn, Harper, Keane and Marmion.


\(^{137}\) WAPD, 9 August 1889, p. 90; s. 25 of the Electoral Act 1889.

\(^{138}\) Cox quoted by Hanham in his Introduction to Dod, Electoral Facts from 1832 to 1853, p. xlv. Cox, as stated earlier, produced one of the most popular election manuals of the period and the 1868 (i.e. post-Second Reform Act) edition included a chapter entitled ‘Hints to Solicitors for the Conduct of an Election’ in which one repeated ‘hint’ was to employ solicitors for as many roles in the election process as possible.

\(^{139}\) Section 51 of the Electoral Act 1889.

committee by Cockburn-Campbell, who had earlier championed it in the *West Australian* following the high number of informal votes cast at the 1889 general election.\(^{141}\)

The committee’s final significant amendment, to prohibit candidates from personally canvassing electors or addressing meetings from the day of nominations, met with opposition and was forced to a division.\(^{142}\) Largely, Members were relieved they would no longer have to tout for votes, but some argued that a total ban on addressing election meetings for the last ten or so days of the campaign was excessive, especially if a candidate had been ‘libelled right and left’ after nominations closed.\(^{143}\) South Australia, from which this measure, often referred to as the ‘gagging clause’, was copied, actually imposed the ban from the issue of the writs.\(^{144}\) After heated debate this ‘too utterly un-English’ amendment passed fifteen votes to seven, with Stannage commenting that the division list confirmed the vote was a win for the ‘country conservative bloc’ who viewed personal solicitation as a ‘city thing’ and felt ‘repugnancy for the increasing necessity of town hall oratory in electoral politics’.\(^{145}\)

The remainder of the changes made to the Commissioners’ Bill by the select committee were minor, as were the changes made to the select committee’s Bill by the House, and the Electoral Bill passed on the last day of the session.\(^{146}\) In his Prorogation Speech Broome referred to the reserved Bill as a measure which he believed would prove to be one of the strongest and best safeguards of the new Constitution.\(^ {147}\)

The Members, however, possibly wondered if WA would ever get the Constitution that would need such safeguarding. Not only had they been informed that the British Government had withdrawn the Enabling Bill, but a recent unofficial telegram stated that the Bill would be referred to a select committee at Westminster in the following year with respect to the vesting of lands and also, somewhat concerningly, to consider the ‘extent over which we should exercise the rights of self-government’.\(^{148}\) Such was the Councillors’ disquietude, they voted to send Western Australian delegates to England to ‘give such information and explanations as will remove the misapprehensions which appear to exist, so

\(^{141}\) While a desire to bring WA’s electoral practice into harmony with the sister colonies would also have been behind this amendment, the discarded cross in the box method would be the form adopted for Commonwealth elections by the *Commonwealth Electoral Act 1902* and reverted to by WA in 1904—see s. 118 of the *Electoral Act 1904*.

\(^{142}\) See s. 72 of the *Electoral Act 1889*.

\(^{143}\) Marmion, *WAPD*, 9 August 1889, p. 87.


\(^{146}\) Electoral Act 1889 (*An Act to Consolidate and Amend the Law Relating to Elections to the Legislature*).

\(^{147}\) *WAPD*, 13 August 1889, p. 129.

\(^{148}\) Cockburn-Campbell had only received the telegram ‘within the last half-hour’, *WAPD*, 13 August 1889, p. 125.
as to ensure that the Constitution Bill will become law without further delay’—with the favoured delegate being the Governor.¹⁴⁹

**Taking on the Mother Country**

The last session of the Legislative Council under representative government met on 25 October 1889. The session was dominated by the ‘critical position’ of the Enabling Bill which, within months, was to be resubmitted to a largely hostile House of Commons.¹⁵⁰ In his Governor’s Speech Broome enjoined the Members to ‘study every possible and reasonable means of conciliating the strong opposition’ to the Enabling Bill to ensure it was passed in a form likely to be acceptable.¹⁵¹

Broome’s forceful injunction was not lost on the Members. They were aware of a recent proposal being floated in England, and championed by *The Times*, that the boundary line for the vesting of land in WA should be drawn at the 121st meridian of longitude, instead of the 26th parallel of latitude (the division currently in the Enabling Bill), with the supposedly temperate land to the south-east of this being available for mass British immigration.¹⁵² Further, the British Government had provided in cl. 8 of the Enabling Bill that any Western Australian legislation restricting the immigration of British subjects would have to be reserved for the signification of Her Majesty’s pleasure.

The Members’ first fight-back measure was to pass a resolution calling on former Governor Sir William Robinson (who, having been appointed Broome’s replacement, had advised that he now fully supported WA’s quest for self-government) to use his influence and experience to support the Act during his upcoming visit to England.¹⁵³ The Members’ second measure was to carry out Knutsford’s telegraphed suggestion that they choose an unofficial Council Member to accompany Broome on his delegation to England by voting to fund both Parker and Cockburn-Campbell.¹⁵⁴

The Legislative Council was prorogued on 4 December. Soon after, Broome, Parker and Cockburn-Campbell departed for England. The decision to send them was vindicated when the House of Commons, after permitting the second reading of the Enabling Bill on

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¹⁴⁹ A copy of the motion appears in *WAPD*, 12 August 1889, p. 107.
¹⁵² For discussion of *The Times*’s position on the land division see *WAPD*, 22 November 1889, p. 203.
¹⁵³ The resolution appears in *WAPD*, 4 November 1889, pp. 51–52. In 1884 Robinson described WA’s part-elected and irresponsible political system as ‘neither fish, fowl, nor good red herring’—see the *West Australian*, 30 October 1884.
27 February 1890 (after threats by the Bill’s opponents to block the second reading were not carried through), ordered its referral to a nineteen-member select committee including the Bill’s principal opponent, Sir George Campbell.\textsuperscript{155}

The committee commenced its inquiry on 13 March. It sat for twelve sessions and subjected its nine witnesses to 3,336 questions (totalling more than 200 pages of transcript in \textit{British Parliamentary Papers}) before concluding on 6 May.\textsuperscript{156} The catechism was not as much of an ordeal as the witnesses may have feared, however. A succession of Dorothy-Dixers such as, ‘If this Bill does not give … full control of the land, would not it be received with a certain amount of dissatisfaction and disappointment?’, made it clear that a number of the committee members, including the chairman, Under-Secretary of State for the Colonies, Baron Henry De Worms, shared the Western Australian view that the colony was being treated ‘very scurvily’ by the mother country.\textsuperscript{157} (De Worms had also warmly endorsed the Bill at the second reading stage.\textsuperscript{158})

Even without sympathetic leading questions, the Western Australian delegation performed impressively. They underlined that the British Government’s proposal to reserve regulative control over the ‘large but very ineligible strip of land’ north of the 26th latitude, or over the ‘perfect desert’ east of the 121st meridian, would be futile because neither area was fit for European settlement.\textsuperscript{159} And, even if they were, the Secretary of State would simply follow land regulation advice tendered to him by the Western Australian Governor, who would in turn be advised by the local Executive—so the land would, in all but name, be controlled by WA anyway. Further, if the ‘perfectly absurd’ Imperial reservation of land did occur, witness after witness testified that it would be completely incompatible with Federation which would ‘kill’ the provision.\textsuperscript{160}

The delegates then saw off the Bill’s immigration clause. Firstly, by reassuring the committee that under-populated WA wanted migrants; then by querying whether the British Government, with its non-discriminatory policy towards Chinese-born British subjects, wanted to be involved in Australian immigration considering the country had enacted coast-to-coast legislation restricting Chinese immigration. It was no great surprise, therefore, when the select committee resolved at its final sitting that WA should have unfettered

\begin{footnotesize}
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\item[155] See \textit{Hansard}, 27 February 1890, col. 1396, and 11 March 1890, col. 616.
\item[156] The report appears in \textit{BPP}, 1890, Colonies Australia, vol. 32.
\item[157] \textit{BPP}, 1890, Colonies Australia, vol. 32, pp. 33 and 118.
\item[158] Baron Henry De Worms’s second reading speech appears in \textit{Hansard}, 27 February 1890, cols 1353–1359.
\item[159] \textit{BPP}, 1890, Colonies Australia, vol. 32, pp. 70 and 112.
\item[160] \textit{BPP}, 1890, Colonies Australia, vol. 32, pp. 113 and 96.
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control of all land and full responsibility for immigration legislation. The Enabling Bill was amended accordingly.

What was surprising, however, was that throughout the hearings the Western Australian delegates were subjected to adverse questions and observations about the ‘very limited franchise and the tolerably high property qualification for members’ in the Constitution Bill, with one committee member inquiring whether there would be any objection to the Bill being amended, because, in the select committee’s opinion, all Western Australians should ‘have a voice in the Government’.161 (An interesting stance given approximately 40% of adult males in Britain were unenfranchised at this time, and one which prompted some Western Australians to denounce ‘pseudo’ British liberals.162) This line of interrogation was also highly exasperating considering that during the Constitution debates WA’s Legislative Councillors had not felt themselves free to liberalise the draft returned from Knutsford, convinced that as it had the *imprimatur* of ‘a Conservative Minister of a Conservative Cabinet’, and would subsequently have to ‘receive the approval of a Conservative Government’, it ought to retain—at least until it was passed—its conservative lineaments.163

The response of the Western Australian delegates to this unexpected challenge was firm and united. They stressed to the committee that under the terms of the Australian Colonies Government Act, WA had ‘a statutory right to arrange our franchise and our constitution exactly as we like’; that the Imperial Parliament ‘has got no business to interfere with us in the least’ in the matter; and that any interference would be resented in the ‘strongest degree’.164 But, in case the British had thoughts of interfering anyway, which would entail reopening both the Constitution and Electoral Bills, the delegates vigorously defended the former’s existing provisions. Cockburn-Campbell stoutly denied that the Constitution Bill was illiberal, claiming it delivered ‘practically manhood suffrage’—which given £10 in WA

161 *BPP*, 1890, Colonies Australia, vol. 32, pp. 62 and 153. The committee also made a couple of passing queries about the enfranchisement of Aboriginal people, with one questioner stating: ‘The aborigines, of course, are of rather a low race; they would not think it any grievance not to have a vote, would they?’ Parker confirmed that Aboriginal men with the necessary qualifications were entitled to register and vote under the Constitution and that, ‘We have not the slightest idea of making any distinction in classes or in colour’. Robinson, however, answered that: ‘I do not think we can ever look forward to a time when the aboriginal native of Australia will exercise the franchise’—*BPP*, 1890, Colonies Australia, vol. 32, pp. 108, 162 and 189.


163 Richardson, *WAPD*, 22 March 1889, p. 103. Burt alluded to the possibility of amendment to the draft Constitution in the *final session* of the Council: ‘It is well known that about the only question at present that we fear any decision about is the question of the control of the land; at the same time it must not be forgotten that this bill has not yet been considered by the House of Commons, and there may be possibly numerous alterations, innumerable alterations, suggested on other points in the bill, such as the constitution of the Upper and Lower Houses, the qualification of members, the duration of Parliaments, the franchise’—*WAPD*, 22 November 1889, p. 182.

at the time was the equivalent of £5 in Britain, was close to the mark.165 (Parker estimated that up to 90% of WA’s adult males would be eligible to vote under the Constitution, with only servants lodging in their master’s house likely to be excluded.166 By contrast, only 42% of adult males in Tasmania and just over 50% in NSW were eligible to vote upon those colonies accession to self-government.167)

Broome took a different approach. He conceded that the Bill had some conservative restrictions, but maintained that ‘the Legislature have done wisely to elect to begin their new career’ with safeguards because in a ‘small community there is some danger, if you do not begin with a little conservatism, of too great a financial rush at first, and this might lead to financial difficulty and even absolute disaster’.168 It was well known that the sister colonies had also drafted many elements of their Constitutions for responsible self-government in the 1850s with a ‘decidedly conservative tinge’ to act as ‘checks on too hasty democracy’.169 Broome alluded to this when he remarked that none had commenced self-government with manhood suffrage (in fact, South Australia did for its House of Assembly) and that the majority of Western Australians were still not in favour of it. Broome’s previous references to the substantial number of expirees on WA’s electoral rolls provided the subtext for the colonists’ reservations.

Like Stephen Parker who followed him in addressing the committee, Broome reassured the committee members that the remaining conservative restrictions would ‘all vanish in time, and I have no doubt that in a few years the colony will come to the same radical institutions as the other colonies’.170 Indeed, Broome emphasised that, in view of Federation, it was absolutely essential that WA’s constitution was ‘levelled up to the same constitutional system as that which prevails in other parts of the continent’.171 Fortunately, the repeated assurances of imminent electoral reform, particularly from Parker—whose attempts to remove the property qualification for Members from the Constitution Bill and liberalise the franchise were on record—and who, as one of the committee members observed, was ‘likely, when this enabling Bill is passed, to be the first Prime Minister of Western Australia’, satisfied the committee and they did not press the matter.172

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165 *BPP*, 1890, Colonies Australia, vol. 32, p. 118.
169 First quotation, Clune and Griffith, *Decision and Deliberation*, p. 18; second, Crawford, *Australia*, p. 103.
171 *BPP*, 1890, Colonies Australia, vol. 32, p. 60.
The Enabling Bill’s opponents in the House of Commons, however, were not so easily assuaged. They claimed that the Constitution Bill, with its nominated Upper House, property qualification for Members, and restricted franchise, was the handiwork of a British Conservative Government and equally conservative local legislature—and that ‘the whole measure was so Conservative in character that it could not possibly be acceptable to the people generally in the colony’.\(^{173}\) To render the Bill more acceptable, they urged that the property qualification for Lower House Members should be scrapped and manhood suffrage introduced. The Western Australian delegates and the Governor-elect meanwhile kept up their indefatigable lobbying, and a deputation of Australian Agents-General met W.H. Smith, leader of the Government in the House of Commons, who—upon hearing ‘representations of a character which swept away final obstacles’—‘promised that Parliament should not be prorogued until the Bill was passed’.\(^ {174}\)

Smith kept his word. Both Houses of the Imperial Parliament deferred to the Committee’s recommendations and passed the Bill as amended. In the context of what must have been significant behind-the-scenes string-pulling, Heseltine has observed that:

> Recalling, perhaps, the broken ties of 1773, the British Government tightened its ranks to withstand the forces of those who opposed self-government for Western Australia with full control of her lands. The opposition was overwhelmed by those who saw more clearly the future lines of development of the British Commonwealth of Nations.\(^ {175}\)

The amended Enabling Bill received the Royal Assent on 25 July 1890. Somewhat confusingly it was titled the *Western Australia Constitution Act 1890*.\(^ {176}\) This paved the way for Queen Victoria to assent to WA’s *Constitution Act 1889*, which comprised the First Schedule to the Enabling Act, and she did so on 15 August 1890 by Order-in-Council.\(^ {177}\) The ‘long-delayed and priceless boon of self-government’ had finally been achieved, and an unexpectedly one and undivided WA could turn to the elections which would fill one Chamber of the new bicameral legislature.\(^ {178}\) As shall be discussed, notwithstanding the animadversions of the select committee, WA’s inaugural elections under self-government with their single-member constituencies, secret ballot and worker-friendly polling hours would be more liberal than those which characterised the advent of self-government in most of the sister colonies.

\(^{173}\) Quotation from Battye, *Western Australia*, p. 393. Also see Kimberly, *History of West Australia*, p. 297.

\(^{174}\) First quotation, Fraser cited in Kirwan, *A Hundred Years of the Legislative Council*, p. 20; second quotation, Cockburn-Campbell, WAPD, 22 January 1891, p. 45.


\(^{176}\) *Western Australia Constitution Act 1890* (53 & 54 Vict., c. 26).


\(^{178}\) Colebatch, *A Story of a Hundred Years*, p. 63.
Self-Government

1890–1893

Sir William Robinson arrived in WA on 18 October 1890 and was sworn in two days later. While during this third term as WA’s Governor, Robinson would assume the less taxing role of ceremonial Viceroy—‘practically a cypher’, as his brother, former NSW Governor Sir Hercules Robinson, characterised the role—his work was still cut out until he had overseen the inauguration of the new Constitution.\(^1\) Further, once self-government was instituted, the former ‘Conservative instrument’ would soon be providing Royal Assent to a succession of liberal electoral reforms, as had Governors in the sister colonies during the 1850s.

Robinson’s first duty, however, was to defuse a constitutional storm because most of the press, and at least one member of the Executive Council, were urging him to commission a Ministry immediately after the proclamation of the Constitution Act, instead of deferring its appointment until after the elections, as planned by Robinson.\(^2\) The imbroglio arose because the Legislative Council would expire when the new Constitution was proclaimed, but the Constitution did not provide for the administration of WA during the interval between proclamation and the installation of the first Ministry. Robinson’s view, however, was that commissioning the Ministry after elections was the correct constitutional course and ‘inferentially contemplated by the Act’.\(^3\) Robinson provided a further justification of his view in a Minute to the Colonial Secretary:

> What right have I to assume that Mr. A, Mr. B, or Mr. C will be elected a Member of Parliament? What right have I to assume that this candidate or that will, if elected, be supported by a working majority? And how, therefore, can I possibly select any Ministry until the country has done its part, and furnished me with a Parliament from which to make my selection?\(^4\)

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4. Minute to Malcolm Fraser, dated 22 October 1890, which, at Robinson’s direction, was published in an ‘Extraordinary’ edition of the *Government Gazette* on 25 October 1890.
On 21 October 1890 the Acting Chief Justice, Sir Henry Wrensfordsley, read the Proclamation by which WA’s new Constitution was declared to take effect. The following day Robinson issued the writs for the general election. Even without the ‘somewhat embarrassing position’ of a political interregnum, s. 5 of the new Constitution prescribed that the inaugural Parliament had to be convened for the first time not later than six months after the Act’s commencement.

To ensure this timetable could be met, WA’s new Electoral Act 1889 had received the Royal Assent on 1 May 1890 (prior to the Constitution Act being assented to) and been proclaimed on 26 June. Section 31 of the Electoral Act provided that electoral registers could be prepared ‘as though the Reserved Bill intituled “The Constitution Act, 1889,” were in force’. Section 41 of the Constitution Act authorised the Governor-in-Council to ‘make such arrangements, appoint such persons, and fix such dates and periods’ as required for the ‘convenient holding of the first general election under this Act’. As a consequence, the then Administrator, Sir Malcolm Fraser, even before receiving telegraphed instructions from Governor-elect Robinson in England to have everything ready for the immediate holding of elections following proclamation of the Constitution, had, on 15 July 1890, gazetted returning officers and electoral registrars and set a punishing timetable for registration and compilation of new electoral rolls. As a consequence, by the time the first contest in the 1890 general election occurred, WA’s ‘revised and purified’ electoral register, containing just under 6,000 electors, was ready.

The dates for the first elections under self-government spanned 27 November to 16 December for nominations and 5 to 29 December for polling. Notwithstanding the honour of being elected to the first Parliament under self-government, and the exhortations of the West Australian that ‘colonists of education and position’ not abandon the ‘political life’ to ‘the mere stump orator and the carpet bagger’—the West’s epithets for Liberal

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5 The Proclamation was printed in the Government Gazette, 23 October 1890.
7 Electoral Act 1889 (53 Vict., No. 23).
8 Sir William Robinson had requested the Colonial Office to telegraph Fraser ‘instructing’ him to get election preparations underway on 21 July 1890, and the Colonial Office sent the requested telegram, and an explanatory despatch, on 31 July—see the Government Gazette, 11 September 1890, for the relevant despatches. The Western Australian Executive Council, however, had already made the decision to get new electoral rolls prepared as early as 23 June 1890 when Fraser tabled the Order-in-Council giving the Royal Assent to the Electoral Act—see Executive Council Minutes, SROWA, 1058/1620/10. (Close of registration occurred on 10 September and the deadline for despatch of completed rolls to the returning officers was 26 November.)
9 Warton, WAPD, 29 July 1889, p. 46. Figures for the 1890 electoral register come from Black, Election Statistics: Legislative Assembly of Western Australia 1890–1996. All thirty Legislative Assembly electorates, except Ashburton, have enrolment figures provided. These add up to 5,860. If a figure of 52 is added in for Ashburton (the number on the Ashburton roll for the 1894 general election) then the total number on the Colony’s register would be 5,912.
Association candidates—only eleven of the thirty Assembly seats were contested.\(^\text{10}\) Moreover, with the exception of the East Perth and Sussex electorates, which saw three contenders, all elections were two-way contests. De Garis has aptly attributed the high proportion of uncontested seats to the fact that ‘the pool of men eligible and willing to stand was still small and some of the old hands preferred to hold back in the hope of being nominated to the Legislative Council’.\(^\text{11}\)

In contested seats, however, electioneering was intense with well-attended and widely reported political meetings. Although many candidates asserted it was difficult to campaign because ‘no Ministry yet being appointed no policy is, therefore, before the country to criticise’, most enunciated a similar vision for WA with an emphasis on public works, development of mineral resources, and land settlement schemes.\(^\text{12}\) Significantly, almost all candidates supported electoral reform. The abolition of property qualifications for Members was uniformly endorsed, and most candidates advocated liberalising the franchise—ranging from a £5 householder entitlement for cautious reformers to full-blown manhood suffrage for the liberal and radical candidates (although Marmion, a conservative, championed manhood suffrage, presumably on the basis that it would stem ongoing agitation). In addition, candidates George Randell and William Paterson advocated enfranchising ‘ladies who had property in their own right’, which was unquestionably progressive considering New Zealand, the first country in the world to enfranchise women, was still three years away from doing so.\(^\text{13}\)

This level of support for liberalising electoral provisions was considerably more pronounced than that shown at the previous election but, as the *West Australian* observed, most of the leading public men since that time ‘seem to see their error’—a conversion which could be ascribed, in part, to the strictures WA’s Constitution had received at Westminster.\(^\text{14}\) More significantly, electoral reform had strong popular support in WA, particularly in urban electorates where, as Hartwell has noted, city dwellers tended to be more liberal or even radical in their political affiliations.\(^\text{15}\) To stiffen the resolve of candidates, however, much of the press advocated a pro-reform message, Liberal Association members interrogated candidates regarding their reform credentials at political meetings.

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\(^{12}\) Quotation from candidate Richard Haynes’ election notice in the *West Australian*, 21 October 1890.

\(^{13}\) Quotation from Randell, the *West Australian*, 2 December 1890; also see Paterson as reported in the *West Australian*, 29 November 1890.

\(^{14}\) *West Australian*, 1 November 1890.

\(^{15}\) Hartwell, ‘The Pastoral Ascendancy’, p. 95.
meetings, and even the Catholic Church hosted a meeting at which unanimous resolutions urging the immediate abolition of property qualifications for Members and introduction of manhood suffrage were passed.¹⁶

As returning officers under s. 45 of the Electoral Act were to declare sole candidates elected on the day of nomination, returns came in from 27 November. Just over a week later polling day coverage appeared in the press. With the exception of some brawling in York, however, it appears that election day was a sedate affair at which electors ‘refused to enthuse’, and the tradition of shouldering the successful candidate was only reported in a couple of electorates.¹⁷ Nonetheless, of those registered to vote, there was an impressive turnout (ranging from 62% in Swan to 84% in Perth and North Fremantle).¹⁸ And one elector commented to the press that this figure could have been even higher if there had been more polling places, claiming that in his electorate of East Perth many would not vote as ‘a working man will have to walk perhaps two or three miles, and lose a quarter of a day to record his vote’.¹⁹

Many also observed that there would have been more electors on the rolls in the first place if not for the complicated application forms drafted by Warton, which even enrollees from the ‘educated classes, hardly knew how to fill in’.²⁰ Adding to the confusion over enrolment, inconsistencies between two of the application forms and the Constitution Act, ‘owing to the clumsy and unhappy manner in which the … Attorney General expressed himself in this Electoral Act’, were spotted and a notice regarding them was gazetted before registration commenced.²¹ Even after these mistakes were corrected, an enormous number of lodgers were unable to register because Warton had framed the lodger claim form very conservatively, insisting that the same lodgings had to be occupied for the past twelve months. This provision disqualified lodgers who had simply changed lodgings within the district. Additionally, there was the inconvenience of personally applying for enrolment, with reports of colonists from outlying districts failing to register.²² Indeed, that the 1890 electoral roll contained fewer entries than the previous year’s roll (which excluded lodgers

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¹⁶ A meeting report appears in the *West Australian*, 27 November 1890.
¹⁷ *West Australian*, 11 December 1890.
¹⁸ Voting participation figures calculated from statistics given in Black, *Election Statistics: Legislative Assembly of Western Australia 1890–1996*.
¹⁹ Quotation from the *West Australian*, 15 November 1890.
²⁰ Henry Saunders quotation from the *West Australian*, 25 November 1890.
²¹ William Traylen, *WAPD*, 9 December 1891, p. 46. Also see the *Government Gazette*, 31 July 1890, for the public notice regarding the inconsistencies.
²² See the *West Australian*, 31 October 1890.
and the last twelve months’ worth of population increase) signalled that major amendments to the Electoral Act would be required.\(^{23}\)

The last seat in the election was declared on 16 December. The Members returned were: William Baker, Septimus Burt, Marinus Canning, Bernard Clarkson, Joseph Cookworthy, Everard Darlot, Lancel de Hamel, John Forrest, Alexander Forrest, Charles Harper, Albert Hassell, Edward Keane, George Leake, William Loton, William Marmion, Stephen Parker, William Paterson, William Pearse, Samuel Phillips, Frederick Piesse, Timothy Quinlan, George Randell, Alexander Richardson, Edward Scott, Robert Sholl, James Lee Steere, David Symon, George Throssell, William Traylen and Harry Venn. This cohort was subsequently described as ‘possibly the most conservative body of men ever collected in a Legislative Assembly in Australia’.\(^{24}\)

On 15 December a Proclamation was gazetted notifying the returned MLAs and yet-to-be-nominated MLCs that the new Parliament would be called together on 30 December 1890. The following day the Executive Council met to select the members of the Legislative Council. The Upper House nominees needed to be determined promptly because a Premier could not be commissioned to form a Ministry until the Legislative Council was in place, as s. 6 of the Constitution mandated that at least one ministerial position had to be allocated to the Upper House. Accordingly, Robinson, with the advice of his Executive Councillors, finalised nominations, and fourteen nominees were invited to accept offers while the press speculated, with suspicious accuracy, on their identity.\(^{25}\)

By 22 December Robinson had thirteen acceptances and one refusal. In Executive Council it was decided to leave the last two nominations to be filled on the advice of the incoming Ministry, in case the positions were required to form Government.\(^{26}\) Robinson then ended speculation and called on John Forrest to form a Ministry. The choice of Forrest may seem unexpected as Parker, newly appointed a Queen’s Counsel, had long been regarded as the ‘logical first Premier’ because of his decade-long championing of self-government.\(^{27}\) More recently, however, Forrest’s claims to the position had been strenuously advanced by Forrest and his supporters, and during the election campaign Parker conceded Forrest’s right to ‘the first call to the Premiership’, largely due to Forrest’s experience as an

\(^{23}\) The figures for the 1890 electoral roll were 5,912, while the figures for the 1889 electoral roll given during the House of Commons select committee hearings into the Western Australian Constitution Bill were 5,943—see BPP, 1890, Colonies Australia, vol. 32, p. 29.

\(^{24}\) Henry Lefroy, WAPD, 24 November 1897, p. 578.

\(^{25}\) See the West Australian’s near-perfect list on 18 December 1890.

\(^{26}\) Sir William Robinson to Lord Knutsford, 23 December 1890, Government Gazette, 25 December 1890.

\(^{27}\) De Garis, ‘Self-Government and the Emergence of Political Parties’, p. 64.
Executive Councillor. The decisive factor for Robinson, however, was that more of Forrest’s supporters than Parker’s had been elected and, therefore, the appointment was made ‘in obedience to public opinion’. 

While Forrest worked on his Ministry, the thirteen Upper House nominees were officially appointed on 24 December. They were: Josceline Amherst, Edmund Brockman, Thomas Burges, Robert Bush, Thomas Cockburn-Cambpell, McKenzie Grant, Edward Hamersley, George Leake (father of the George Leake returned for Roebourne), John Monger, William Moore, James Morrison, George Shenton and John Wright. Although the nominees included some of WA’s most esteemed pioneering names, as well as prominent Members from the old Council, the appointments still caused a minor constitutional frisson, as some colonists argued that the new Executive Council should have made the nominations instead of the old, irresponsible, conservative, caretaker one, notwithstanding Robinson’s arguments to the contrary. More to the point, there was considerable disquiet expressed that most of the nominees represented ‘one class, the landowners of the community, and but one type of opinion, that which may be called the high Conservative’, with prophesies that such a Council could ‘strangle at their birth the newborn forces of activity and progress’. However, as Alan Ward has noted, all the Australian colonies at the commencement of self-government featured Legislative Councils which ‘represented wealth, property and the upper levels of colonial society, and their role was to constrain democracy as represented in the Assembly’. Furthermore, as Kimberly argued in defence of the nominations, in WA’s small community there was an extremely restricted field from which to choose.

Forrest’s proposed Ministry—John Forrest, Colonial Treasurer; George Shenton, Colonial Secretary; Septimus Burt, Attorney General; William Marmion, Commissioner of Crown Lands; and Harry Venn, Commissioner of Railways and Director of Public Works—represented, as Crowley has observed, a cross-section of WA’s regions, economic activities, religious denominations and political views, with Venn’s inclusion also providing something of a high Liberal antidote. The Ministry was appointed and gazetted on 29 December. On the same day, Robinson appointed John Hackett as the fourteenth

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28 Parker’s comments, from an election meeting at York, were reported in the *West Australian*, 1 December 1890.
30 See Marinus Canning’s comments in *WAPD*, 21 January 1891, pp. 39–41.
32 Kimberly, *History of West Australia*, p. 300.
33 Crowley, *Big John Forrest*, p. 91.
Legislative Council nominee. The final nominee, Richard Hardey, was appointed the following day.\textsuperscript{35}

The appointments made, the Parliament met on 30 December: the Legislative Assembly convening in the old Legislative Council Chamber next to the Perth Town Hall and the Legislative Council in the former General Post Office building on St George’s Terrace. While this was the first sitting of the first session of the first Parliament under self-government, the gathering was a low-key housekeeping affair in which the most important event was the swearing-in of Members and election of a Speaker because, under s. 31 of the Constitution, only he could issue writs for Assembly vacancies, and the ministerial re-elections needed to proceed promptly. After a no-frills opening by Commissioners, the Upper and Lower House Members swore the Oath of Allegiance. The Legislative Assembly then (re)elected Lee Steere as Speaker because ‘so long as he occupies the position we shall hear of no disorder or unruly scenes in this Assembly’—a potent reference considering the local press had made much of the recent expulsion of a Member—‘kicking, struggling and threatening vengeance’—from the NSW Legislative Assembly.\textsuperscript{36} In addition, the Legislative Councillors were informed that Robinson had appointed Cockburn-Campbell as their President, and the seats of the four Lower House Ministers and George Leake (who had resigned his seat that day after deciding he needed to remain Crown Solicitor after missing out on a ministerial post) were declared vacant. Business concluded, the Houses adjourned until the gala opening of the Parliament.

\textit{Public Works, Public Works, Public Works …}

The ministerial by-elections were set down from 16 to 24 January, but between 8 and 17 January all Ministers were declared elected unopposed at nominations. At the opening of Parliament on 20 January 1891 Robinson observed that: ‘The inauguration of Parliamentary and Responsible Government in Western Australia is this day complete’.\textsuperscript{37} He then advised that because the Ministers had only been recently appointed:

\begin{quote}
They have been unwilling to commit the Colony to anything more than was absolutely necessary until they had been brought into personal communication with Parliament, and I anticipate that you will
\end{quote}

\textsuperscript{35} The \textit{Government Gazette} (1 January 1891) and 1890 \textit{Blue Book} both say 31 December, but Executive Council Minutes gives the date as 30 December.

\textsuperscript{36} First quotation from Scott, \textit{WAPD}, 30 December 1890, p. 3; second quotation from the \textit{West Australian}, 14 November 1890. For an idea of the lack of decorum in the NSW Parliament see the long list of expressions which were ruled ‘unparliamentary language’ by the Speaker in Legislative Assembly debates during the 1885–1886 session—reprinted in Dickey, \textit{Politics in New South Wales 1856–1900}, p. 78.

\textsuperscript{37} \textit{WAPD}, 20 January 1891, p. 5.
therefore consider it desirable that the present session should not be unduly prolonged, and that … new Legislation may, as far as possible, be deferred until next session.38

Nonetheless, Robinson outlined that the Government had framed one major piece of legislation: a Loan Bill to authorise the raising of £1,336,000 to fund a range of public works.39 In concluding, Robinson furnished an additional reason for abridging the first session: WA had been invited to send representatives to the first National Australasian Federation Convention, at which a Federal Constitution would be drafted, and they were required in Sydney by 2 March.40

As there was only one main item in the Governor’s Speech, the Address-in-Reply debate in both Houses turned on the Loan Bill. But while Members cavilled about detail, almost all, including the unofficial Leader of the Opposition (such as there was), Parker, endorsed the Government’s public works policy.41 After all, as one Member drily noted, ‘No Ministry would have ventured, in the face of public opinion, to have come before this House, without proposing a loan for public works’—an appraisal supported by G.R. Quaife who has stressed the ‘paramountcy’ of public works and ‘local interest’ for colonial voters.42

A number of Members nevertheless also referred to the other topic favoured by the electorate—electoral reform—although it had not featured in the Governor’s Speech. Parker was the first to address the issue in the Assembly, expressing regret that Robinson’s speech had made no mention of abolishing property qualifications for Members or broadening the franchise, and while he conceded it might be impractical to pursue electoral reform in the Parliament’s first session, he contended that the Government should have signalled its commitment to electoral reform in the future—whereas they had given no indication of the Government’s intentions.43 This stance was unacceptable, Parker argued, because the colonists had clearly expressed their wish for electoral reform, and because the representations made at Westminster that such reform would be pursued immediately once WA received self-government had facilitated the passage of the Constitution Bill. Believing it would be a breach of faith towards the Imperial Parliament not to honour these assurances, Parker indicated that, before the session closed, it would be his duty, if no other Member had done so, to raise the matter in the House.

38 WAPD, 20 January 1891, p. 6.
40 WAPD, 20 January 1891, p. 7.
41 As de Garis has noted, ‘At no time during the First Parliament did the oppositionists elect a leader, although attempts were made to foist this title on S H Parker’, ‘Self-Government and the Emergence of Political Parties’, p. 75.
43 Parker’s comments on electoral reform are at WAPD, 21 January 1891, pp. 33–34.
A number of Members agreed with Parker—in particular, the somewhat radical Member for East Perth, Canning, who stated that the Government could hardly be unaware of popular sentiment favouring the immediate introduction of electoral reform considering that every Member in the House who had been returned after a contested poll was pledged to secure the abolition of the property qualification for Members and the liberalisation of the franchise.\(^{44}\)

A fortnight later Canning moved for leave to introduce his Constitution Act, 1889, Amendment Bill, which sought to introduce these two electoral reforms. Canning’s motion received a seconder in Quinlan, but also a barrage of criticism from the House. First was Attorney General Burt who, although he personally favoured both reforms, pointed out that it was unheard of for a private Member to initiate a reform Bill, and that the proper course for Canning would be to move that the House affirm the desirability of constitutional amendment. Burt’s principal criticism, however, was that if Canning’s Bill became law it would involve the immediate dissolution of the Assembly, and WA, which had effectively been at a standstill for the past few years, would be subjected to ‘the turmoil of another general election, with the possibility of another Ministry and another policy, and everything to be gone over again’.\(^{45}\) In view of such wholesale disruption, Burt explained that the Government could not countenance Canning’s Bill, but assured Members that when electoral reform could be progressed without this level of disruption to the colony’s affairs, the Government would be prepared to do so.

Notwithstanding his earlier commitment to bring electoral reform before the House, Parker almost replicated Burt’s arguments for not proceeding with Canning’s Bill. Possibly realising this looked inconsistent, he explained that he had ‘never dreamt’ of doing more than moving a resolution affirming the desirability of electoral reform.\(^{46}\) As he still believed that this was the correct constitutional course, he urged Canning to withdraw his motion so that such a resolution could be introduced later in the session if there was time once the Loan Bill and Estimates were concluded. A succession of the pledged then followed, and their opposition to Canning’s Bill is best summarised by de Hamel’s rebuke: ‘He was, as he had said, pledged to this change in the Constitution Act, but he was not pledged to harass the Government or attempt to interfere with them just as they were first starting the colony on a career of (as he hoped and trusted) progress and prosperity’.\(^{47}\) After six successive speeches depreciating any disruption to the Government—including one by Symon whose

\(^{44}\) *WAPD*, 21 January 1891, p. 38.

\(^{45}\) *WAPD*, 4 February 1891, pp. 125–126.

\(^{46}\) *WAPD*, 4 February 1891, p. 126.

\(^{47}\) *WAPD*, 4 February 1891, p. 128.
candidacy in the 1890 election had been supported by the Liberal Association and the militant Fremantle Lumpers’ Union—Canning attempted to persuade Members that his Bill need not involve a dissolution. The Members, however, clearly shared the view expressed earlier by Lee Steere that it would be unconstitutional to alter qualifications of Members and electors without holding fresh elections under the amended franchise, and the motion was defeated twenty-one votes to three.

Although only three weeks were left in the session, another piece of amending electoral legislation was introduced into the Parliament. The measure proposed that any Member who assumed the ‘Office of Profit’ of Acting Governor would not have to vacate his seat (as currently required under s. 29 of the Constitution), and that any Minister, after re-election, would not have to face his electorate again if he accepted an additional portfolio or a different one in immediate succession to the preceding one. (The Victorian Parliament took twenty-seven years to enact this reform.) As these amendments were self-evidently sensible and uncontentious, the Bill passed both Houses with minimal discussion, becoming the Officials in Parliament Act 1891, on 26 February, the final day of the session.

Administrator Onslow opened the second session on 7 December 1891. While the loan and public works again dominated the Opening Address, the Government ensured that this time electoral reform was acknowledged. Onslow outlined that, before the next general election, the Government was of the view that the property qualification for Members should be abolished and the franchise placed on a more satisfactory footing. However, in view of the numerous pressing issues currently requiring attention, the Government was not prepared to introduce the necessary legislation and precipitate an election. The legislation would, instead, be introduced as soon as the state of public business permitted, with Ministers concurring it would be most imprudent to do so during the present session.

It is difficult to believe the Government expected such a vague pledge of electoral reform would propitiate Canning who, rather than Parker, was increasingly being referred to as the Opposition leader in the Chamber. Nor did it, with Canning expressing ‘profound disappointment, not to say dismay’, at the Government’s position during the Address-in-

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49 Lee Steere’s view was reported in the West Australian, 6 December 1890.
50 See the Preamble and s. 2 of the Act.
51 Wright, A People’s Counsel, p. 34.
52 Officials in Parliament Act 1891 (54 Vict., No. 6).
53 WAPD, 7 December 1891, p.2.
Reply debate.54 But, whilst a number of his fellow MLAs reaffirmed their support for liberalising electoral provisions, most still expressed reluctance to precipitate an election and disrupt Government business. Realising that dissolving Parliament was the sticking-point, and that reform involving the franchise would require such a dissolution, Canning decided to jettison the franchise in the short term and try to secure the abolition of property qualifications for Members instead. This was a constitutional amendment which he maintained did not necessitate a dissolution because the Victorian Parliament had passed legislation abolishing property qualifications in 1857 and did not go to the polls until two years later.55 Accordingly, on 17 December 1891, Canning moved that the property qualification be abolished immediately, and reminded the House of the Victorian precedent.56 In the rest of his speech Canning also reminded the House that the Imperial Parliament and the sister colonies had discarded the ‘obnoxious provision’ years before, and that the Western Australian delegates to the House of Commons select committee had given assurances that WA would follow suit as soon as possible.57 Canning also quoted the criticism of the renowned British parliamentary authority Sir Thomas Erskine May that the property qualification was ‘invidious and unjust; and from its beginning to its end it had been systematically evaded’, before calling upon the Members ‘in the name of consistency, of expediency, and of legislative morality’ to support his motion.58

Parker had been invited to second the motion, but exceeded his brief and announced that if the Government introduced a Bill to abolish property qualifications, he would feel it his duty to his constituents, as well as an act of good faith towards Westminster, to also move to liberalise the franchise.59 Parker then outlined his view that the franchise should be revised immediately to enable potential electors to meet the statutory electoral registration deadline of 10 April in the following year, which, in turn, would entitle them to vote at any election called after 1 October 1892.

With this intention flagged, it was no surprise that the next speaker, de Hamel, moved to amend Canning’s resolution and call upon the Government to introduce, in the next session, a Bill which would deal with both questions.60 This amendment was seconded, and after receiving the endorsement of Premier (now Sir) John Forrest, who disclosed that the Government’s intention was to introduce the necessary legislation during the next session

54 WAPD, 9 December 1891, p. 28.
55 For Canning’s discussion of the Victorian precedent see WAPD, 9 December 1891, p. 28, and WAPD, 17 December 1891, pp. 121–122.
56 WAPD, 17 December 1891, p. 121.
57 WAPD, 17 December 1891, p. 122.
58 WAPD, 17 December 1891, pp. 122 and 124.
59 WAPD, 17 December 1891, p. 125.
60 WAPD, 17 December 1891, p. 125.
anyway (and who also spelt out that it would be the Government’s duty to oppose the original resolution because, contrary to Canning’s protestations, the Government believed abolishing the property qualification would necessitate an immediate dissolution), it was passed by the House.\textsuperscript{61}

The next session of Parliament met on 3 November 1892. While the Governor’s Speech commenced with the latest instalment in the public loan saga, Robinson soon turned to electoral reform. He confirmed that the Government would be introducing a Bill to abolish property qualifications and extend the franchise, as requested, and which also proposed to add two Members to the Council and three to the Assembly to provide representation for WA’s major gold mining districts—a Bill summarised by Battye as giving a ‘good indication of the progressive spirit of Sir John Forrest and his colleagues’.\textsuperscript{62} In addition, a Bill to amend the Electoral Act would be submitted to the Parliament to incorporate flow-on changes to the electoral system and, presumably, also to correct Warton’s ‘miraculous blunders in drafting’ for which the Act, along with its complexity, was now infamous.\textsuperscript{63}

Full details of the Constitution Act Amendment Bill were laid before the Assembly a couple of weeks later when Premier Forrest moved the second reading and guided the Members \textit{seriatim} through all twenty-three clauses of the ‘excellently drawn and most concise Bill’\textsuperscript{64}. Only the three changes cited in Robinson’s Address, however, were of major significance and it was on these that Forrest concentrated.

The first significant change was the addition of three electoral districts—Yilgarn, Pilbarra and Nannine—to the Assembly and the addition of two Members to the Council (once it became elective). Adding seats would, of course, require redrawn electoral boundaries, and Forrest explained that the Bill also proposed to amend the existing constitutional formula of five Upper House electoral divisions returning three Members apiece so as to allow the two largest divisions—‘Metropolitan’ containing Perth and Fremantle and ‘South-Western’ containing the Murray, Wellington, Bunbury, Nelson, Sussex, Williams, Plantagenet and Albany districts—to be split into four electoral divisions returning two Members each. While this proposal would give the populous urban and south-west areas increased representation, Forrest deftly skipped over this incendiary fact, referring instead to a community of interest argument (‘sea-coast’ versus ‘raspberry jam and sandalwood

\textsuperscript{61} \textit{WAPD}, 17 December 1891, pp. 127–128.
\textsuperscript{62} \textit{WAPD}, 3 November 1892, p. 2; Battye, \textit{Western Australia}, p. 399.
\textsuperscript{63} Hackett, \textit{WAPD}, 3 November 1892, p. 5.
\textsuperscript{64} \textit{WAPD}, 21 November 1892, p. 105.
country’) for the southern split. He also outlined that the boundaries would be submitted to an Assembly select committee, as was standard practice, and that all Members would have an opportunity to express their views.

The next major amendment was abolition of property qualifications for Members of both Houses (again, in the Council’s case, once elected). With such abolition, Forrest quaintly declared, the sole qualification for membership of the legislature would be that the person was a male British subject, at least twenty-one years of age, not subject to any legal incapacity, and who had resided in WA for twelve months. The new provision, Forrest proudly continued, was ‘more liberal than prevails in most countries. It is certainly more liberal than exists in the most liberal Constitution of Australia—that of South Australia’. Forrest was correct: in the sister colonies, prospective MLCs faced additional restrictions such as three-year residency qualifying periods or being at least thirty years old.

The most important provisions of the Bill, however, were those proposing to liberalise the franchise for both Houses: an issue of particular significance considering the (non-Aboriginal) population of WA had increased from 48,000 in 1890 to almost 60,000—the threshold at which the Legislative Council would become elective. Forrest dealt first with the proposed new franchise for the Council. This would lower the existing property qualifications of the usual adult, male British subject without legal incapacities who had resided in WA and possessed or occupied his qualifying property for at least twelve months before registration, by up to one-half in the case of the freehold qualification, by two-thirds in the case of Crown leases and licences, and, somewhat anomalously, by only one-sixth in the case of leasehold estates and the householder qualification. In addition, the Bill proposed that from its enactment, anyone on the electoral roll of a Municipality or Road Board District holding rateable property of not less that £25 per annum would be automatically enrolled on the relevant Legislative Council electoral roll. This provision, copied from the Victorian Act, would, Forrest pointed out, simplify compilation of electoral rolls. (And ensure property owners would get on the parliamentary roll without having to lift a finger.)

For the Assembly, the Bill retained all existing conditions and qualifications, except the ineffectual lodger provision, although in future, all but the leasehold provisions would only

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65 *WAPD*, 21 November 1892, p. 106.
66 *WAPD*, 21 November 1892, p. 108.
need to have been owned or occupied for six months before registration.\footnote{Both the Upper and Lower House ‘leasehold estate’ clauses had been tweaked so that the lease either had at least eighteen months to run at registration or had been possessed for eighteen months before registration.} Additionally, the Bill halved the freehold qualification to £50 and that of Crown leases and licences to £5 per annum and extended the scope of the householder qualification to include ‘any house, warehouse, counting-house, office, shop, or other building’.\footnote{\textit{WAPD}, 13 December 1892, p. 376.} As with the Council, the Bill proposed to transfer the names of electors on Municipality or Road Board District electoral lists onto the corresponding Assembly electoral roll although, unlike the Council, this would occur no matter how modest the rates paid. As previously, property owners could continue to vote in every Assembly seat where they met franchise requirements.

The big change to the Assembly franchise, however, was a new clause entitling the aforementioned male British subject of at least twenty-one years of age without legal disabilities to enrol after \textit{simply residing} in WA for twelve months—of which the last six had to be in the electorate for which he was claiming enrolment. This was effectively the Chartist dream of manhood suffrage, although the Forrest Government had chosen to follow the lead of Victoria, ‘the premier colony’, in insisting on a twelve-month qualifying period of residence (rather than South Australia, NSW and Queensland which required only six months).\footnote{\textit{WAPD}, 21 November 1892, p. 110.} The Government did not choose to follow the premier colony in requiring only a three-month residence in the particular electoral district. This, however, was not the only time the Premier showed a selective approach when emulating other jurisdictions—a point underlined by Sholl: ‘When it suited the hon. gentleman he quoted Victoria, but, when it didn’t suit him, he left Victoria severely alone’.\footnote{\textit{WAPD}, 1 December 1892, p. 256.}

In outlining the new franchise provisions, Forrest did not mention the proviso that ‘No aboriginal native of Australia, Asia, or Africa shall be entitled to be registered, except in respect of a freehold qualification’.\footnote{See sections 12(a) and 21(a) of the \textit{Constitution Act Amendment Act 1893}.} It may seem curious that having specifically excluded Aborigines from manhood suffrage and the lesser (and more easily obtained) property qualifications, the Bill permitted them to claim the franchise on the basis of freehold qualification. This, however, was possibly a concession to the Imperial Parliament and Exeter Hall, especially since Forrest was trying at the time to persuade the Secretary of State to agree to the abolition of the Aborigines Protection Board with its mandated funding.
Once he had run through the Bill’s provisions, Forrest summarised the measure as a moderate one which, although ‘framed upon a liberal basis’, did not ‘go in for radical or revolutionary measures’—and one which would requite the clearly expressed wishes of the electorate for electoral reform. From the Government’s ‘desire … to be moderate in all things’ standpoint, he urged those in the House who would have preferred alternatively a more liberal or a more conservative Bill—and as de Garis has underlined, the oppositionists in the Parliament comprised ‘acutely divided’ conservatives and liberals—to show a conciliatory attitude and accept the Government’s compromise without amendment or division. He pragmatically advised that the Legislative Council would be warier of rejecting the Bill if it were passed unanimously by the elected House of the legislature.

Forrest’s blunt speech provides an insight into his purportedly conservative Government’s ‘common-sense’ approach to liberal reform ‘in the circumstances and the conditions under which we live’:

I am convinced that this Bill will become the law of this colony, even if it is not passed at the present moment, and therefore I would advise those who think we are going too fast to give freely now what they will have to give in the end, and which will not redound much to their credit if they give it grudgingly … and to those who think we have not been liberal enough, I say if you get a Constitution more liberal than the people of the mother country, from which we or our fathers came—a more liberal Constitution than that of the great colony of Victoria—I say accept it in the same spirit in which it is offered.

Before concluding, Forrest highlighted another compelling reason why the Bill should be accepted unamended:

we want to bring our institutions into harmony with those of our neighbors. I do not think it a good thing for the colonies in this continent of Australia to have opposing lines in regard to their constitutions. When this Bill passes, we may say that the whole of the continent is under the same law; for, whatever minor differences may exist in regard to the Constitutions, they will be all framed on the one principle, and the franchise will be as liberal in one colony as in another.

Predictably, Forrest’s plea for compromise and unanimity went unheeded. A procession of liberal-leaning Members itemised the amendments needed to render the Bill ‘as nearly as possible a perfect measure’ (notwithstanding a number acknowledged the Bill was considerably more liberal than they had expected the Government to frame). All but one demanded that the qualifying residency period for the franchise be halved, and others

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72 WAPD, 21 November 1892, pp. 106 and 109.
74 First two quotations from Forrest referring to the same Bill at WAPD, 5 December 1892, p. 294; third from WAPD, 21 November 1892, p. 110.
75 WAPD, 21 November 1892, pp. 111–112.
76 Canning, WAPD, 29 November 1892, p. 217.
pitched for triennial parliaments, abolition of plural voting, payment of Members and removal of property qualifications for the Legislative Council franchise. Conversely, a small minority of conservative-minded Members, appalled by this ‘almost revolutionary measure’, suggested reinstating the property qualification for membership of the Council, giving property-owners dual votes, and increasing the age requirement for membership of the Legislative Council to thirty. Sholl, in fact, was so opposed to the Bill that he attempted to defeat it by a procedural motion. His motion only received six votes, however, so the second reading occurred—but almost every Member who had spoken to the Bill referred to the need for changes during the committee stage.

Surprisingly, however, few changes were made. The more conservative Members prevailed with their move to increase the age requirement for membership of the Council to thirty. But their attempts to reinstate the property qualification for MLCs at double the existing rate or at the existing rate were defeated. Regarding these failed amendments, the militantly conservative Sholl was unperturbed, taunting the liberals that the more radical the Bill, the less likely the Legislative Council was to pass it. Likewise, the liberals failed to secure their principal amendment of reducing the residency period for the Legislative Assembly franchise to six months. The Assembly signed off the new electoral seats and boundaries, after making only the minor amendments recommended by the select committee, notwithstanding vigorous debate in which the usual competing claims of representation of population versus resources/industries were aired. On 9 December the Bill was passed and forwarded to the Council.

The Bill could have had no better advocate in the Council than new MLC, Stephen Parker, who had been appointed Colonial Secretary on 11 October to replace Shenton (who, in turn, had replaced the recently deceased Cockburn-Campbell as President of the Legislative Council). While Forrest may have neutralised one of his principal liberal opponents by this appointment—a tactic which, according to Hughes, facilitated Forrest’s continuous Ministries—he still had no shortage of the ultra-conservative variety in the Council, with whom Parker, as Government spokesman, would have to contend. In moving the Bill’s second reading, Parker ardently endorsed its provisions, and reminded the House that the conservative restrictions in the existing Constitution Act were anathema to Western Australians and Westminster, and that it was time WA honoured the assurances made to the latter that it would introduce electoral reform. The majority of the Members disagreed,

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77 Sholl, WAPD, 29 November 1892, p. 218.
79 WAPD, 13 December 1892, pp. 373–374.
however, and either denounced the granting of manhood suffrage outright or dissembled that the change was premature or should first be submitted to the electorate. While Parker countered that the Bill could be amended in committee, and importuned the Members to allow the second reading, Edward Hooley’s amendment to shelve the Bill passed nine votes to five after one of the shortest constitutional debates in WA’s parliamentary history.80

That the House of Review refused to allow the Bill a second reading ‘brought upon it not a little abuse from all sections of the community’, as Kimberly has noted, and ‘accentuated’, as Battye properly observed, the ‘general feeling that a nominee Chamber was a bar to progress’.81 Nevertheless, Robinson’s observation in his Prorogation Speech on 13 January 1893 that ‘my Ministers hope and believe that, on further consideration [the Bill] will meet with the approval and support of both Houses of the Legislature’ would have propitiated disappointed liberals that, despite the setback, liberal electoral reform was not off the table.82 Furthermore, a handful of positive references to female suffrage made throughout the session would have provided an enormous fillip to suffragists within WA, as would the passing of a motion to fund improvements to the Ladies’ Gallery in the Assembly.83

The ‘liberal-conservative measure’

Robinson opened the fourth session of Parliament on 5 July 1893. In his Governor’s Speech he referred to WA’s sound financial situation, driven by successive gold strikes, including, in the last year, those at Coolgardie and Kalgoorlie—particularly good news considering the financial crises and bank suspensions which, he sombrely reminded Members, had recently devastated the sister colonies.84 Because the parliamentary recess had been abridged and the Government had still been unable to float the final tranche of the public works loan in London, however, Robinson did not unveil a ‘startling or exciting’ programme.85 The only measures he listed were modest public works, further restrictions to the admission of Chinese citizens, a Homesteads Bill and, as foreshadowed in his Prorogation Speech, re-introduction of the Constitution Act Amendment Bill. Restriction of Chinese under the Imported Labour Registry Act dominated the Address-in-Reply debate, with most of the discussion along the lines of, ‘I do not object to the introduction of Chinese as servants, but they must be brought here just as you would import a shipment of horses … They should

80 Hooley, who became a nominated MLC on 12 December 1891, moved that the Bill be read a second time this day six months—a parliamentary fiction to prevent a Bill being dealt with.
81 Kimberly, History of West Australia, p. 330; Battye, Western Australia, p. 401.
82 WAPD, 13 January 1893, p. 718.
83 WAPD, 30 November 1892, p. 232.
84 WAPD, 5 July 1893, p. 1.
85 Parker, WAPD, 6 July 1893, p. 21. The recess was abridged and the Parliament opened about five months earlier than usual because the Forrest Government had recently opted to bring forward the end of the financial year from 31 December to 30 June.
have no rights of citizenship’. Most Members, however, also referred with interest to the Constitution Act Amendment Bill—with a couple of its opponents in the Council provocatively musing aloud as to whether the Government had modified it in any way so that there might actually be a chance of its becoming law.

The short answer was ‘no’, as Forrest advised when he moved the Bill’s second reading on 17 July. Apart from proposing to boost the membership of the Council to twenty-one rather than seventeen, with the Members to be returned equally from the seven electoral divisions proposed in the previous session, the Bill was identical to that which had been passed by the Assembly only seven months earlier. Not only was the Bill almost identical, but so was Forrest’s speech in support of it. The only new element was a vigorous defence by the Premier of the innate ‘honour and uprightness’ and commonsense of the ‘whole mass of the people’ about to be enfranchised by the Bill.

As the Assembly’s Members were, with one exception, the same as those who had voted to support the Bill the year before, the second reading occurred after a short debate and without token motions to defeat it. Given this, a short committee stage would also have been predicted. But, as it turned out, debate on the Bill dragged on for three weeks with a blizzard of new and recycled amendments and entirely new clauses being proposed, although, after protracted and fervid argument, most were withdrawn or defeated. Indeed, when the Bill was third read in the Assembly, the only significant change was the Attorney General’s new clause that the ban on Aborigines, Asians and Africans being able to qualify for the franchise, except as freeholders, be extended to ‘include persons of the half-blood’ which, perversely, was agreed to without a syllable of opposition.

While it may seem curious that the Bill was raked over so thoroughly the second time, the explanation lies in the fact that WA’s non-Aboriginal population having recently surpassed 60,000, the Legislative Council would soon become elective and, it was expected, more liberal in its composition—particularly, if the Bill, with its reduced Council franchise provisions, was passed. More to the point, the 12,000 migrants currently entering WA annually—mainly ‘othersiders with progressive political views—would also be enfranchised under the manhood provisions of the Bill and ‘very shortly be in the position

88 Forrest’s second reading speech can be found at *WAPD*, 17 July, pp. 89–94.
89 *WAPD*, 17 July 1893, pp. 93 and 92.
90 *WAPD*, 7 August 1893, p. 254.
91 The Registrar General’s certification that the population of the Colony had reached 60,000 appeared in an ‘Extraordinary’ edition of the *Government Gazette*, on 18 July 1893.
to outvote’ the 6,000 Western Australians on the electoral rolls.92 Possibly recalling Wakefield’s observation that ‘it is an essential natural property of gold-finding … in a new country to Jacobinize society’, the conservative Members made the most of this last-ditch opportunity to preserve conservative elements in the Constitution.93 Although, it should be noted, the more radical Members countered with their own aspirational amendments, including a bid to abolish plural voting which was defeated nineteen votes to three.

Amongst the suite of unsuccessful amendments proposed in the Assembly to preserve the conservative tenor of the Legislative Council, one requires discussion: the proposal, moved without notice by Joseph Cookworthy, that the propertied electors of the Council include the ‘spinster, widow, or feme sole’ (technically a ‘single woman’, but including those who were separated or divorced).94 As Cookworthy was an avowed opponent of manhood suffrage, and female suffrage was usually championed by the more radical or liberal side of politics, he would seem an unlikely exponent of the cause but, in a short and businesslike speech, he cogently argued the case for propertied women obtaining the vote.95 As with most suffragists, he started with the moral high ground and contended that it was not ‘right and just’ that:

women who maintained themselves and their families, women engaged in business and other occupations; women who perhaps employed the very men who, under this law, would have a right to vote … themselves would be debarred from exercising the same privilege.96

Next he argued that as propertied women in WA had been voting at municipal and schoolboard elections for more than twenty years without objection, granting them the parliamentary franchise was ‘only an extension of a principle already recognised’.97 In concluding, he reported that the New Zealand Parliament was considering enfranchising women, and that leading conservative statesmen in Britain such as Lord Salisbury and Mr Balfour (past and future British Prime Ministers) supported women’s enfranchisement, as did one of Australia’s leading public figures, Sir Henry Parkes.98 What Cookworthy did

92 Morrison, WAPD, 22 August 1893, p. 438.
93 Wakefield, letter to the editor, *The New Zealand Spectator and Cook’s Strait Guardian*, 13 October 1852.
94 WAPD, 24 July 1893, p. 148.
95 See the observations of leading suffragist Millicent Garrett Fawcett, on the support base for women’s enfranchisement in *Women’s Suffrage*, pp. 23–24.
96 WAPD, 24 July 1893, p. 148.
97 WAPD, 24 July 1893, p. 148. Interestingly, this argument did not have much traction in England where, as G.R. Searle commented: ‘The parliamentary vote [for women] was not to be attained until 1918, but long before then women had achieved a significant breakthrough in local politics. Ever since 1869 women ratepayers were eligible to be placed on all local government electoral registers, and in the 1880s they formed some 17% of this electorate overall. Women could also serve on some local authorities …’—see A New England? Peace and War, 1886–1918, Clarendon Press, Oxford, 2004, p. 63. Kingston has also noted within the Australian context that, ‘If women ratepayers’ votes were acceptable at some municipal elections, it seems strange that more was not made of this, both by those in favour of and those against women’s suffrage’, *Glad, Confident Morning*, p. 241.
98 WAPD, 24 July 1893, p. 148.
not say, but everyone knew was underpinning his motion, was that he considered property-
owning women would provide a conservative counterweight to the unpropertied young men
about to be enfranchised by the Bill’s residency clause.99

Self-confessed ‘Conservative to the backbone’ Sholl, however, had no qualms about outing
Cookworthy’s amendment as the conservative strategy that it was, underlining that
propertied women:

were more likely to exercise the franchise wisely than some of the pets of the Premier, who might be
found hanging about the corner of the Town Hall, waiting for somebody to give them sixpence, to take to
the nearest publichouse …100

This view was endorsed almost verbatim by fellow conservative, Bernard Clarkson.101
However, while the conservatives may have been opposed to manhood suffrage, not all
were persuaded that enfranchising women was the remedy. Alexander Forrest, for example,
was clearly troubled by the motion and, invoking the separate spheres ideology prevalent in
the Victorian period, argued that ‘he did not believe in ladies mixing up in politics. He
thought the proper place of a woman, whether she were a widow or a spinster, was to look
after her home, and not to be running about all over the place, at elections’—misgivings
subsequently echoed by Frederick Monger and Frederick Piesse.102

The ambivalence shown towards the motion in the conservative ranks was mirrored
amongst the liberals, with Members having to decide how to deal with a measure which the
majority supported, but which they realised had been proposed for an illiberal purpose.
Most decided to sacrifice political self-interest and support the ‘graceful tribute’ to ‘the
ladies’—a fact generally winnowed out of historical accounts.103 (The historiographical
treatment of the enfranchisement of Western Australian women will be discussed in
chapter 10.) De Hamel, a former member of the British Conservative Party, but by this
stage often viewed as ‘a liberal exponent of the most liberal ideas’, seconded the moti-
on with the ‘greatest pleasure’, and was followed by (intermittently) radical George Simpson
who enthused that ‘he should never give a heartier vote so long as he had the honour of a

99 Cookworthy subsequently admitted that counteracting the votes of young men was his motive in introducing the
amendment—see WAPD, 26 July 1893, p. 169.
100 First quotation from Sholl appears at WAPD, 27 July 1893, p. 206; second quotation from Sholl appears at WAPD,
24 July 1893, p. 149.
101 See Clarkson’s comments at WAPD, 24 July 1893, p. 152.
102 WAPD, 24 July 1893, p. 149. See Monger’s comments at WAPD, 26 July 1893, p. 169, and Piesse’s at WAPD,
26 July 1893, p. 171. Frederick Monger had entered the Legislative Assembly via the October 1892 York by-election
a few months after the death of his MLC father, John Monger.
103 Throssell, WAPD, 24 July 1893, p. 149.
Simpson’s approval was particularly significant because he acknowledged what the conservatives were trying to do and the rough justice of it:

the Upper House was supposed to protect the rights of property, and as women, he believed, were the most conservative class in the world as regards politics, he thought it was only right and proper that they should have a voice in the election of members who were supposed to represent and protect property. Simpson’s principal reason for supporting the measure, however, was because ‘the inclusion of women among the electors would purify our elections; it would make our political meetings respectable, and it would improve the political tone of the whole colony’. (The Angel in the House sanctifying the body politic!) Throssell and Thomas Molloy, meanwhile, supported the Bill mainly in acknowledgment of the support women voters had given them at municipal elections, and derided Alexander Forrest for not doing so, considering Forrest had secured the mayoralty of Perth with the help of women’s canvassing and votes. Forrest, however, was not the only separate sphere conservative prepared to sanction women’s involvement in canvassing and fund-raising for the benefit of male candidates viz. the British Primrose League.

Conversely, a few key metropolitan liberals who represented the most populous, and reputedly radical, of the constituencies withheld their support. The first was Quinlan, Member for the largest metropolitan electorate, West Perth, and a passionate advocate of manhood suffrage. In repudiating the amendment, Quinlan expressed his quite legitimate concern at its ‘ulterior object’; regrettably, the reason he proffered for his opposition was:

his experience of ladies at municipal and other elections had been that they were somewhat weak in mind. [SEVERAL HON. MEMBERS: No, no.] He said so with all respect for the ladies. They were liable to be led away by political agitators, at election times, and persuaded to vote for this or that candidate without due consideration … His own opinion was that ladies, like cats, were best at home.

Elias Solomon, the Member for South Fremantle, although equally opposed to the ‘Conservative amendment’ because he feared it would ‘make the boon [of manhood suffrage] almost useless’, at least put on the record that he ‘did not say that women were

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104 First quotation, Marmion, WAPD, 1 December 1892, p. 251; second quotation, de Hamel, WAPD, 24 July 1893, p. 148; third quotation, Simpson, WAPD, 24 July 1893, p. 150. Simpson had replaced Edward Keane at the December 1891 Geraldton by-election. 105 WAPD, 24 July 1893, p. 150. 106 WAPD, 24 July 1893, p. 150. 107 Thomas Molloy was elected the Member for Perth on 12 January 1892. 108 See Fawcett, Women’s Suffrage, pp. 30–32, for some acerbic observations on this point. 109 WAPD, 25 July 1893, p. 154.
mentally inferior to men'. North Fremantle Member, Pearse, drew upon years of parliamentary experience and diplomatically conceded that women would use the franchise ‘wisely and well’, before repudiating it on the grounds that the measure was premature. Canning, the ultra-liberal Member for East Perth, was unable to vote on the measure because he was the Chairman of Committees—but his attitude towards it can be gauged by his unsuccessful attempt to have the amendment ruled out of order. All of which seems to illustrate that the indifference, and even antipathy, towards women’s rights which first-wave and second-wave British feminists encountered on occasion in the left-wing brotherhood, determined to secure its own rights first, was not an unknown phenomenon in nineteenth-century WA.

Also withholding support from the amendment was the Forrest Ministry which was taken aback to have ‘such a stupendous alteration of the law as this amendment contemplated’ sprung upon them without warning on the Notice Paper. Aptly, the first Government Member to oppose the amendment was the Attorney General, Burt, who had drafted the Bill. Burt’s impromptu arguments, however, were singularly flimsy, and undercut by his admission that he favoured women’s suffrage and did not disagree with anything that had been said by those supporting the amendment.

When debate on the amendment resumed two days later, however, a highly prepared Premier was the first to speak, with a three-pronged defence against the motion. First, Forrest maintained that if the amendment passed it would prove the thin edge of the wedge and women would soon demand the right to vote on the same basis as men, i.e. residency only, as well as the right to be elected to the Parliament—a prospect apparently so outlandish he did not feel the need to elaborate. Forrest then proceeded to his principal argument, that:

the persons to whom this amendment would give the franchise had not been consulted, for the women of the colony had never expressed, as far as he knew, any strong opinion, nor any opinion at all, as to desiring a vote for Parliament; and although it might be very gallant and very generous on the part of hon.

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110 WAPD, 26 July 1893, p. 171. Solomon replaced David Symon as Member for South Fremantle on 12 October 1892.
111 WAPD, 26 July 1893, p. 170.
112 See, for example, Christabel Pankhurst’s observations from 1903: ‘As a rule, Socialists are silent on the question of women. If not actually antagonistic to the movement for women’s rights, they hold aloof from it. One gathers that, some day, when the Socialists are in power, and have nothing better to do, they will give women votes as a finishing touch to their arrangements, but for the present they profess no interest in the subject … Why are women expected to have such confidence in the men of the Labour Party? Working-men are as unjust to women as are those of other classes’. Pankhurst quoted in Evans, Parliamentary Reform, p. 114.
113 Burt, WAPD, 24 July 1893, p. 151.
members to give to an important section of the community what they had never asked for, and what, as far as he knew, they did not desire, still hon. members did not usually act in that manner.\footnote{WAPD, 26 July 1893, p. 167.}

Forrest had a point. When the British Home Secretary Herbert Gladstone advised British suffragists in 1908 that ‘a demonstration of force majeure’ was required to convince the Government that women were committed to securing the franchise, this was after Britain had already witnessed decades of suffragist lobbying and seen more than two dozen private Members’ Bills for women’s suffrage defeated at Westminster.\footnote{Gladstone quotation from Myra Scott, \textit{How Australia Led the Way: Dora Meeson Coates and British Suffrage}, Commonwealth Office of the Status of Women, Canberra, 2003, p. 16.} Indeed, the first petition calling for female suffrage had been submitted to the House of Commons on behalf of women as early as 1832 by Orator Hunt, and after the second petition was tabled by John Stuart Mill in 1866, the ‘Cause’ had been pursued unremittingly by hundreds of feminist suffrage organisations. In 1908 the \textit{Annual Report} of the Women’s Social and Political Union, one of the largest and most militant of the suffrage organisations in Britain, recorded that: ‘5000 meetings had been held, thirteen by-elections contested, 130 women imprisoned, and 100,000 publications sold’.\footnote{Scott, \textit{How Australia Led the Way}, p. 17.} In WA, by contrast, the solitary organisation championing women’s enfranchisement, the local branch of the Woman’s Christian Temperance Union (WCTU), had only been established in July 1892 and was yet to hold its first meeting on the topic of the female franchise.\footnote{According to Joyce R. Henderson, a number of WCTU branches were established in rural WA and in Perth in 1892 by WCTU ‘missionary’ Jessie Ackermann, the first in York on 14 July—\textit{The Strength of White Ribbon: A Year-By-Year Record of the Centennial History of the Woman’s Christian Temperance Union of Western Australia (Inc)}, The WCTU, West Perth, 1992, p. 1.} Such a meeting, following a WCTU resolution calling for this right as soon as possible, did, however, take place in October 1893, in conjunction with the first Annual Convention of the WA branch of the WCTU.\footnote{At the Convention the following resolution was passed: ‘believing women to be equally entitled to the suffrage with men, we hereby call upon all our members in W.A. to use all proper means for the education of public opinion on this question and to unite with us in an endeavour to secure this right as soon as possible’—see Williamina M. Ross, ‘Votes for Women in Western Australia’, \textit{Early Days}, vol. 4, pt. 4, 1952, p. 46. Also see Biskup, ‘The Westralian Feminist Movement’, p. 77, and Lees, \textit{Votes for Women}, pp. 34–35.}

Forrest’s final argument was that women’s enfranchisement had not been adopted anywhere in the British Empire: ‘which fact alone should be sufficient to make hon. members pause before adopting it here without careful consideration’.\footnote{WAPD, 26 July 1893, p. 167.} He was, however, dissembling somewhat as a Bill to give unpropertied European and Maori women the right to vote in parliamentary elections had already been passed by a huge majority in the New Zealand House of Representatives and would be signed into law less than two months later.\footnote{The New Zealand \textit{Electoral Act} 1893 (57 Vict., No. 18) was signed into law on 19 September.}
concluding, Forrest insisted the appropriate course would be for Cookworthy to move, in the next session, that a Bill to enfranchise women be introduced.\textsuperscript{121}

Marmion’s contribution was a muddled outpouring in which he expressed his indignation at the amendment’s ‘invidious distinction thus made in favour of property’ (notwithstanding that the Constitution Act Amendment Bill was riddled with invidious distinctions regarding men’s franchise entitlements and property) only seconds after he had sketched the horrors of the unpropertied domestic servant or grown-up daughter wielding the vote ‘equally with her master’ or father.\textsuperscript{122} He also insisted that ‘women themselves did not want to be canvassed and worried into voting at elections’, ignoring that registration and voting were voluntary, and urged the Members to retain the \textit{status quo} in which women already exercised influence vicariously ‘through their husbands, fathers, brothers, or friends’.\textsuperscript{123}

Profoundly conflicted, Burt concluded the Government case by stressing that as it seemed inequitable to exclude married women property owners from the franchise, and improper to include divorced ones, and very few single women would qualify under the amendment anyway, the enfranchisement of women, ‘although the principle was good’, should be delayed until the Government could further consider it.\textsuperscript{124}

The proponents of female suffrage had no difficulty picking apart the Government’s case. A number derided the invidious distinction line of argument, pointing out that they had ‘gone cautiously to work in extending the franchise to the men, and why should they not adopt the same course with the women?’\textsuperscript{125} As for the principle of female suffrage being new, Simpson scoffed that it was ‘as old as the hills’ and that he had personally stood for the measure as a candidate, while Lee Steere underlined that some of England’s most eminent statesmen had been supporters of the principle for many years.\textsuperscript{126} With respect to Forrest’s key argument that women had not demonstrated any interest in female suffrage, the best rejoinder came from Clarkson: ‘as to agitation, he maintained there had been none among the men of the country in the direction of manhood suffrage, or, at any rate, there had been quite as much agitation in favour of the one as of the other’.\textsuperscript{127} This observation, disregarding one public meeting in support of manhood suffrage at the Perth Town Hall

\begin{footnotesize}
\textsuperscript{121} WAPD, 26 July 1893, p. 167.  
\textsuperscript{122} WAPD, 26 July 1893, pp. 169 and 168.  
\textsuperscript{123} WAPD, 26 July 1893, pp. 169–170.  
\textsuperscript{124} WAPD, 26 July 1893, p. 173.  
\textsuperscript{125} Richardson, \textit{WAPD}, 26 July 1893, p. 100.  
\textsuperscript{127} WAPD, 26 July 1893, p. 171. However, see Bernard Clarkson’s comments: ‘… I would like to ask, “Has there been any demonstration on the part of the people, calling for this change in the Constitution?”’ I say, No. I have never heard a single opinion expressed on this subject, outside of this House … The great cry for this alteration in the franchise comes from a very few’—\textit{WAPD}, 17 July 1893, p. 100.
\end{footnotesize}
in the previous year and the extraction of election pledges from candidates, was close to the mark.

Even Forrest had acknowledged ‘what has been termed the indifference, on the part of the people on this question [i.e. manhood suffrage]’ when reintroducing the Bill at the beginning of the session, confirming that the Government had brought the measure forward again ‘without any pressure whatever being brought on us by any person or section of the community’.128 Interestingly, the ease with which Western Australian men received manhood suffrage is not a fact universally acknowledged by male historians.129 Crowley, for example, has referred to Western Australian women being ‘passive recipients’ of the vote, but has not been so casually dismissive of Western Australian men who were also enfranchised without a succession of Peterloo massacres or forcible feeding at Holloway Gaol.130

When the division was called, the amendment was defeated thirteen votes to twelve. With such a close result, and one in which a number of the ‘noes’ expressed support for women’s enfranchise in principle, it was no great surprise that the next day, when the franchise provisions for the Assembly came up for debate, Sholl moved (again without notice) that all franchise entitlements—with the exception of the residency clause—apply to the ‘widow, spinster, and feme sole’, because ‘if a case was worth taking up at all, it was worth fighting for to the bitter end’.131 Sholl, however, spared Members a lengthy recapitulation of the arguments supporting female suffrage, simply urging that ‘Some hon. members said they looked upon it as a conservative measure, others said they thought it was a liberal measure; but he looked upon it as simply a just measure, this giving of a vote to those who were fairly entitled to it’.132 Cookworthy extended the bipartisan theme, informing the Members that in the current House of Commons there was a majority pledged to support women’s enfranchise of whom ‘179 are on the Liberal side and 176 on the Conservative’.133 Simpson, meanwhile, read out a report from the Governor of Wyoming (one of the handful of American States which had adopted female suffrage) regarding the ‘beneficent effect of pure womanhood upon the elections’.134 There was a little more rehashing of points on both

128 *WAPD*, 17 July 1893, pp. 89 and 93.
129 A recent notable exception is Hirst who has written that ‘so much of the extension of the franchise [in Australia] happened without any effort by the colonists. The British Chartists organised and got nowhere; with virtually no organisation the Australian democrats reached the Chartist goals’, *Australia’s Democracy*, p. 58. McQueen has also conceded that in colonial Australia: ‘The broad mass of people were enfranchised free of charge’, *A New Britannia*, p. 181.
131 *WAPD*, 27 July 1893, p. 196.
133 *WAPD*, 27 July 1893, p. 198.
sides before Forrest expostulated that the debate on the Bill was ignoring the ‘main principles’ and had ‘dwindled down’ to women’s rights!\textsuperscript{135} Calls of ‘Divide, divide!’ followed and the amendment was defeated thirteen to ten (one former ‘aye’ was out of the Chamber, and another, Paterson, swapped sides).\textsuperscript{136} But still the cause was not abandoned.

The final attempt at enfranchising women occurred on the Bill’s recommittal when Simpson re-proposed Cookworthy’s original amendment, expressing the hope that now ‘the first alarm’ had subsided, it might stand a better chance.\textsuperscript{137} Another bout of intense debate followed, but, with the exception of Traylen arguing for women’s enfranchisement on the basis that they could push for consideration of legislation affecting the protection of their own sex—and he referred to ‘certain houses in Murray Street’ notorious for their ‘infamies’ being one such case—little in the way of new argument emerged.\textsuperscript{138} Forrest again expressed displeasure at the debate being hijacked, although he was slightly more conciliatory, announcing that he did not oppose the measure upon any principle; rather, he simply appealed for the issue to be postponed until the colonists articulated a desire for legislation on the matter. The amendment was narrowly defeated a third time, but the high level of support shown towards the graceful tribute suggested the issue would not go away. Indeed, three months later, after meeting a deputation from the WCTU, Forrest encouragingly conceded that if women’s enfranchisement proved successful in New Zealand, ‘he had no hesitation in saying that in a very short time it would be adopted in Western Australia’.\textsuperscript{139}

The Constitution Bill was passed in the Assembly on 14 August. It was re-introduced into the Legislative Council by Parker who, when moving its second reading, deftly pitched the Bill to both sides of the House by praising its liberal reforms, whilst reassuring conservatives that as the multiple voting rights of the propertied had been preserved: ‘I am not sure that this is not rather a Conservative than a Radical measure’.\textsuperscript{140} A short and pointless debate ensued in which Members largely argued whether the ‘liberal-conservative measure’ was more conservative or liberal but, notwithstanding their disagreement, they unanimously allowed the second reading.\textsuperscript{141} But that was the end of the unanimity. Within minutes of the committee stage commencing Hooley—who had moved the motion which

\textsuperscript{135} \textit{WAPD}, 27 July 1893, p. 203.
\textsuperscript{136} \textit{WAPD}, 27 July 1893, p. 204.
\textsuperscript{137} \textit{WAPD}, 9 August 1893, p. 299.
\textsuperscript{138} \textit{WAPD}, 9 August 1893, p. 301.
\textsuperscript{139} Forrest’s quotation is from a press report cited in Crowley, \textit{Big John Forrest}, p. 124. Also see Henderson, \textit{The Strength of White Ribbon}, pp. 3–4.
\textsuperscript{140} \textit{WAPD}, 22 August 1893, p. 436.
\textsuperscript{141} Randell, \textit{WAPD}, 22 August 1893, p. 442.
blocked the Bill’s second reading in the Council the previous year—proposed two amendments which Parker prophesised would similarly ‘damn the bill’.142

The first was to cap the increase of MLCs at eighteen instead of the proposed twenty-one; the second was to reduce the number of electoral divisions in the Bill from seven to six. The first amendment may seem anomalous given the proposed increase of six Members would boost the membership and might of the property-holders’ fortress by 40% (the Assembly’s would only increase by 10% under the Bill, as some MLAs had protested), so that the reconfigured Council would become two-thirds the size of the Legislative Assembly instead of exactly half (the proportion which generally existed in the sister colonies). Hooley’s opposition, however, arose because the Bill also proposed to give Perth and Fremantle an electoral division each (currently they were lumped together under the Metropolitan Division in the Constitution), thereby increasing the proportion of metropolitan Members in the Legislative Council to six out of twenty-one, instead of the three Members out of fifteen currently set out in the Constitution. This boost to metropolitan representation would actually only bring it up to parity with the significantly less populous northern and southern regions which would also return six Members under the Bill, but as WA’s towns, like those in the sister colonies, were regarded as ‘hot-beds of radicalism’ by conservatives, and rural areas jealously guarded their existing Constitution Act over-representation in the Legislative Council, Hooley was implacably opposed to the metropolitan increase.143 Consequently, he was prepared to reduce the Council’s overall membership as long as the reduction was solely borne by the metropolitan area, and he believed this could be achieved by amalgamating Fremantle with the Perth electorate in the Bill. Despite Hackett’s protests that Hooley’s proposal ‘practically wipes Fremantle out of existence’ (Perth contained considerably more electors than Fremantle) and would ‘lead to endless friction’ between towns already notorious for rivalry, and Parker’s warning that it could sink the Bill, a majority voted in favour of both amendments.144

To ensure they really did damn the Bill, however, the conservative majority in the House continued with their amendments. First, they voted to increase the residency requirement for MLCs to two years, after contemplating three years, and then considered an amendment to reinstate the property qualification for MLCs—which was only defeated after Parker

142 WAPD, 29 August 1893, p. 527.
143 Hackett, WAPD, 29 August 1893, p. 526. See the comments of Molloy, the Member for Perth: ‘It was too much the practice of some hon. members in that House to refer to mob rule, and political agitators, and carpet-bag adventurers, whenever reference was made to Perth. He repudiated the insinuation’, WAPD, 1 December 1892, p. 257. Also see Hartwell for a discussion of the ‘liberal or even radical’ cast of the Australian colonial cities, ‘The Pastoral Ascendancy’ p. 95.
144 Hackett’s quotations from WAPD, 30 August 1893, p. 552, and WAPD, 29 August 1893, p. 527.
explained that it would eliminate almost all northerners who ‘possess sheep and cattle, but no freehold’. Then it was proposed that the tenure of MLCs be extended to nine years elected on triennial rotation (instead of the six years and biennial rotation as currently proposed). This led an exasperated Hackett to remonstrate that: ‘Really I think we are going stark, staring mad. We have been spending the best part of our time in trying to prevent people from coming into the House, and now we are trying to keep them here until they become of unsound mind’. This amendment was also the final straw for an almost apoplectic Parker who flailed it as ‘the most preposterous that has ever been made to any legislature during the present century … It is tantamount to saying that members shall not be amenable to outside influence, which is nothing short of a parody on representation’. The conservative Members, however, supported it—particularly Morrison (although personally favouring life terms) who had previously argued against six-year tenure because of ‘the enormous number of elections it will involve’. After mentioning that eight of the original fifteen Legislative Council nominees had died or resigned, Morrison maintained that ‘Time will work all the elections that are necessary’. The motion passed eight votes to six.

Morrison next proposed to replace ‘man’ with ‘person’ in the Legislative Council franchise clause, which would enfranchise women, married or not—sensibly disposing of objections that gay divorcees were being enfranchised at the expense of respectable matrons. In supporting the amendment he repeated many of the arguments aired in the Legislative Assembly. In opposing it, Parker—who prior to his promotion to the Ministry had supported female enfranchisement and been WA’s most committed advocate of married women’s property rights—dutifully pressed the Government line of deferring the measure until agitation had been shown in its favour. Unfortunately, two other long-standing advocates of female suffrage also abandoned women. George Randell, now in the Council, who had publicly expressed support for women obtaining the franchise as early as 1876, and as late as the motion for the Bill’s second reading six days previously, inexplicably bowed to the Government’s time is not yet ripe line and simply urged women to express their opinions. Hackett, who called himself a suffragist in ‘theory’, also sighed that the measure was premature. The amendment was lost on the voices.

145 WAPD, 30 August 1893, p. 557.
146 WAPD, 30 August 1893, p. 559.
147 WAPD, 30 August 1893, p. 558.
148 WAPD, 30 August 1893, p. 560.
149 WAPD, 30 August 1893, p. 560.
150 WAPD, 30 August 1893, p. 562. See WAPD, 21 August 1876, p. 83, for Randell’s support for the ‘fair sex’ exercising the franchise.
151 WAPD, 30 August 1893, p. 562.
Also defeated was the most controversial amendment proposed during the whole debate: a motion to strike out the residency qualification for the Legislative Assembly franchise. As it was widely known that manhood suffrage was virulently opposed by most Members in the Council—and was a non-negotiable principle for the Assembly—it had been feared all along that this clause would be the one to sink the Bill. Indeed, the clause only scraped through by one vote after Parker and Hackett pointed out that without manhood suffrage there would be no electors in the three new mining electorates and, further, that all lodgers would be disenfranchised because the manhood suffrage clause had replaced the lodger provision.

The Assembly was advised by Message on 11 September that the Bill had been passed by the Council subject to twelve scheduled amendments, of which the Assembly, in committee a fortnight later, accepted four. The first two were simply verbal amendments; the third was the requirement that Council candidates be resident in WA for two years before being eligible to stand for election; and the fourth dealt with amending money Bills (important, but not in the context of this discussion).153 The remainder, which related to the nine-year terms and the reduction of Council membership by the ‘effacement of Fremantle’, were rejected because, as Forrest expressed it, long terms would make Members indifferent to the wishes of their constituents, while merging Fremantle into Perth would be inequitable on the grounds of population and would also transform Perth and Fremantle’s ‘present healthy emulation into animosity’.154

Statutory tag continued two days later when the Council met and considered how to deal with the rejected amendments. The ‘effacement of Fremantle’ amendments were dealt with first with Parker urging that, as the Council should be representing ‘people and intelligence’ and not ‘sheep or sand’, they should give way.155 Two Members who had formerly supported the amendment agreed, arguing: ‘It is better to have the Conservative Bill this is, than throw it out simply on the question of whether Fremantle is to have three members or not, and ultimately have to assent to a far more Radical one’.156 Notwithstanding these defections, when the vote was taken, it was tied. Following parliamentary practice, the President, Sir George Shenton (the latest knight in the Parliament), cast his vote with the ‘noes’. Parker’s subsequent motion, that the nine-year term group of amendments not be

153 The second verbal amendment was the Council’s wish that ‘Electoral Divisions’ be renamed ‘Electoral Provinces’ which had been moved by Hackett because ‘it will add importance and dignity to the constituencies of this Chamber, and reflect importance, and dignity, and weight on the gentlemen who represent them’ (which prompted Parker to suggest ‘dukedom’). Hackett and Parker’s quotations come from WAPD, 4 September 1893, pp. 620–621.
154 First quotation from Traylen, WAPD, 26 September 1893, p. 931; second quotation from Forrest, WAPD, 26 September 1893, p. 930.
155 WAPD, 28 September 1893, p. 957.
156 Wright and Amherst, WAPD, 28 September 1893, p. 957.
insisted on, was, by contrast, acquiesced in by a majority without debate. Given this compromise, Hackett promptly moved that the House not insist on any of its amendments and stressed to the Members:

the only matter between the two Houses now is whether Fremantle shall be disfranchised or not. The Lower House was unanimous that it should not be, and we were equally divided. That being so, I ask hon. members is it worthwhile perpetuating this conflict, especially when, after the next election, we shall be bound to give way? But wiping out Fremantle’s representation was not the only issue, as the Bill’s most vehement opponent, Morrison, made clear—

I will not say there are not good arguments against disfranchising Fremantle, but what we wish is to do our utmost to stop the Bill, which is a bad one, from passing. We object to the principle of the Bill as a whole, and especially that part of it which relates to six months residence being sufficient to entitle a man to vote.

The vote was again tied and lost on Shenton’s casting vote.

Forrest’s counter-attack was masterly. He moved that a conference be held between the Houses to broker a resolution. In the event of the Council adhering to its position, however, Forrest advised that the Government intended to accept every amendment, notwithstanding they would ‘really spoil the Bill’, because he believed the most critical thing was to get manhood suffrage on the statute books. Fremantle’s stolen representation, he outlined, would undoubtedly be rectified in the following session. The five MLCs appointed to the conference insisted on the amendments, but when they returned to the Council and tabled their report advising Members to hold firm, Parker moved, without discussion, and when one of the Bill’s opponents was absent from the Chamber, that the amendments not be insisted on. A majority of one voted to give way.

Forrest, notwithstanding being described by Welsh as a ‘determined reactionary’, had, with the help of some ‘sharp practice’ from Parker, secured manhood suffrage and, in Crowley’s words, ‘successfully reformed Parliament’. The remaining liberal electoral reform dominos would, as they had in the sister colonies, soon fall, cementing, in Crowley’s

157 WAPD, 28 September 1893, p. 961.
158 WAPD, 28 September 1893, p. 964.
159 WAPD, 28 September 1893, p. 964.
160 WAPD, 3 October 1893, p. 1009.
161 West Australian, 5 October 1893.
162 Welsh, Great Southern Land, p. 252; Kimberly, History of West Australia, p. 330; Crowley, Big John Forrest, p. 125.
estimation, Forrest’s deserved reputation as a ‘liberal legislator’. It was also Forrest’s estimation: in the following session he would taunt his opponents in the Parliament thus: ‘I say we are the Liberals in policy ... the Government and their supporters in this House are the Liberal Party. We have always been in advance’.  

163 Crowley, *Big John Forrest*, p. 58. Forrest made a point of his liberal credentials at the Adelaide Constitutional Convention in 1897: ‘I myself, in my own country [i.e. WA], am considered a liberal, but when I come over here somehow people look at me as if I were a conservative’—quoted by Robert French, ‘John Forrest: Founding Father from the Far West’, *UWA Law Review*, vol. 35, 2011, p. 224.

164 *WAPD*, 3 September 1894, p. 454.
Constitutional Tinkering

1893–1896

Given the changes to the franchise in the Constitution Act Amendment Bill, elections for the Legislative Assembly, in compliance with constitutional practice, would need to be held. Fortuitously, this would be at approximately the same time as the inaugural Legislative Council elections. Before elections could be called, however, the existing Electoral Act required amendment to effect the changes introduced in the Constitution Bill and to rectify Warton’s defective registration provisions. In presenting the Electoral Bill 1893 to the Assembly, Premier Forrest explained that the Bill—which would repeal and replace all registration and roll compilation sections in the existing Act and introduce new offence and penalty provisions—was a close ‘counterpart’ of Queensland’s Elections Act 1892 which had been drafted by the Queensland Chief Justice, Sir Samuel Griffith, an esteemed liberal and ‘one of the ablest Parliamentary draftsmen in Australia’. However, while Forrest enthused about WA’s good fortune in being able to use for ‘guidance’ the most recent Australian legislation, it soon became obvious that he and Parker (the Acting Attorney General while Burt was out of the colony) had selected those provisions from the Queensland Act which were compatible with the Government’s cautious and staged approach for introducing liberal electoral reform.

Accordingly, Forrest advised that the Bill, like Queensland’s Act, did not enable the transfer of electors from one district to another, even if this did cause ‘a little hardship sometimes’ (particularly for itinerant workers who qualified under the residency qualification), but unlike Queensland’s Act, the Bill only provided for annual rather than quarterly registration. Similarly, the Bill prevented illiterates from registering for the vote (a ‘certain exclusion’ which even John Stuart Mill championed) unless they could sign the enrolment claim form, whereas Queensland permitted illiterates to make their mark, and it did not adopt the principal innovation of the Queensland Act: the contingent vote, a form of optional preferential voting. Finally, the Bill provided the machinery for Municipality and

1 WAPD, 4 October 1893, p. 1034. The Queensland Act is 56 Vict., No. 7. The WA Electoral Bill, when enacted, became the Electoral Act 1893 (57 Vict., No. 15).
2 WAPD, 4 October 1893, p. 1034.
3 WAPD, 4 October 1893, p. 1035.
4 According to Forrest, most illiterates still ‘generally managed to sign their names’, WAPD, 5 October 1893, p. 1071; Mill, Representative Government, pp. 277–278.
Roads Board annual electoral lists to be forwarded to electoral registrars—a provision which only existed in Victoria.\(^5\)

Most of the Bill’s provisions, however, were copied from the Queensland Act, and it is undeniable that they made it more difficult for unpropertied and peripatetic newcomers to register and vote, thereby helping perpetuate, according to Stannage, the dominance of the landed interest in the Parliament.\(^6\) But, as Charles Pearson has noted, stringent registration provisions that ‘surrounded the act of voting with difficulties which practically keep out many hundreds at every election’ were common to the sister colonies’ constitutions and Electoral Acts and stemmed, similarly, from fears of ‘an “ugly rush” from … democracy’.\(^7\)

It should also be noted that stringent registration and voting provisions promoted purity of elections—a hallmark of liberal electoral reform—and this was clearly also an objective of the Bill. Indeed, an examination of the Bill exemplifies how the Forrest Government determinedly configured existing legislation to deliver both liberal reform and stability for WA.

First, the Bill proposed to adopt Queensland’s single, general-purpose enrolment claim form which required considerably more information about the enrollee and his franchise entitlement than Warton’s seventeen customised claim forms.\(^8\) Additionally, the claim form had to be declared before and attested by ‘a Justice of the Peace, or an Electoral Registrar, or the Head Male Teacher of a Government School, or an Inspector, Sub-Inspector, or Sergeant of Police … or a Postmaster’, instead of being simply filled in and ‘countersigned by a witness to his signature’ as prescribed by s. 6 of the current Act.\(^9\) (Forrest pointed out that his Government had added police officers and postmasters to the list of attesting witnesses from the Queensland Act to assist those in sprawling WA locate witnesses.\(^10\)) The penalty for false answers on the claim form, or for making a false declaration, were those of ‘wilful and corrupt perjury’.\(^11\) The Bill further provided that the attesting witness must ‘if he is not personally acquainted with the facts, satisfy himself by inquiry from the claimant

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5 Sections 10–13 of the Electoral Act 1893.
7 C.H. Pearson, ‘On the Working of Australian Institutions’, in Essays on Reform, Macmillan and Co, London, 1867, p. 197. Simms has noted that the NSW Parliamentary Electorates and Elections Act 1893 was criticised by The Worker for placing ‘as many obstacles as possible in the way of a man getting a vote, and quite as many obstacles to his using it when he has got it’, From the Hustings to Harbour Views, p. 48. Also see Wright’s discussion of Victorian complaints that manhood suffrage was ‘a complete fraud’ and swamped by ‘ten pages of legal incapacity’, A People’s Counsel, p. 38.
8 The ‘Form of claim’ is in s. 14 of the Electoral Act 1893.
9 Section 17 of the Electoral Act 1893.
10 WAPD, 5 October 1893, p. 1069.
11 Section 65 of the Electoral Act 1893.
or otherwise that the answers to the questions are true’, and ‘certify’ that he had done so.\textsuperscript{12} To ensure witnesses did not attest claims without this ‘personal knowledge or full inquiry’, the penalty was a fine of up to £50 as well as a ban on being registered or voting at a parliamentary election (and from being a JP) for two years from conviction.\textsuperscript{13}

All registration claims and objections were to be processed and revised much as they were under the existing Electoral Act (with the revision court to be known as the registration court and the electoral register renamed the electoral roll) although electoral registrars, once in receipt of ratepayer electoral lists, were to add missing ratepayers to the parliamentary electoral lists (and, conversely, note ‘objections’ to those on parliamentary electoral lists who had dropped off the latest ratepayer lists).\textsuperscript{14} Similarly, elections were to be conducted as prescribed in the 1889 Act, with the exception that the Bill would give officers in charge of polling places more scope to interrogate electors. As well as being able to ask the existing questions regarding identity and multiple voting, electors in the future could be asked if they were disqualified from voting, while those who qualified under the residency qualification could also be asked if they had been within the last nine months a \textit{bona fide} resident for a period of one month within the electoral district and they could be asked for their address.\textsuperscript{15} In addition, all electors could be asked to swear a solemn declaration against bribery.\textsuperscript{16}

To ‘secure the purity of elections, as far as possible’, the Bill added new electoral offences including ballot box stuffing, intruding into the polling place, obstructing or disturbing elections, removing a ballot paper from a polling place, and wilfully misleading the electoral registrar.\textsuperscript{17} Penalties for some existing electoral offences were also significantly increased, particularly for wilfully neglectful returning officers, whose penalty doubled to £200.\textsuperscript{18} As compensation, however, formal provision had at last been made for remunerating returning officers, electoral registrars and other polling officials for their time-consuming electoral duties.\textsuperscript{19} Finally, the registration and roll compilation deadlines were brought forward to enable rolls to take effect annually from 1 June.

\textsuperscript{12} Section 18 of the \textit{Electoral Act 1893}.
\textsuperscript{13} Section 19 of the \textit{Electoral Act 1893}.
\textsuperscript{14} Sections 12–13 and 21 of the \textit{Electoral Act 1893}.
\textsuperscript{15} Section 49 of the \textit{Electoral Act 1893}.
\textsuperscript{16} Section 51 of the \textit{Electoral Act 1893}.
\textsuperscript{17} Sir John Forrest, \textit{WAPD}, 4 October 1893, p. 1038. The offences section is at ss. 58–66 of the \textit{Electoral Act 1893}. Previously only the \textit{fraudulent} removal of a ballot paper from the polling place was a misdemeanour.
\textsuperscript{18} Section 62(1) of the \textit{Electoral Act 1893}.
\textsuperscript{19} Sections 68–69 of the \textit{Electoral Act 1893}.
Possibly because the Bill was viewed as largely meeting the wishes of both sides of the legislature, the Electoral Bill was not subjected to the same ordeal as the Constitution Bill. In both Houses the Bill was quickly ushered through the committee stage with most clauses assented to en bloc. The Assembly, in fact, only passed one amendment: adding the officer in charge of any police station to the list of attesting witnesses; and even in the Council, where Parker took advantage of this final opportunity to tweak the Bill, he only suggested three amendments. These passed with minimal debate. The first was to require enrollees to sign their claim forms in the presence of the attesting witness (as they did in the existing Act); the second was to strike out a clause enabling candidates who withdrew within two days of nominating, to recover their nomination deposit; and the third was a new clause denying absent/’proxy’ voting entitlements to those who qualified under the residency qualification.\footnote{The new clause became s. 48 of the \textit{Electoral Act 1893}.} In arguing for the last amendment, Parker sketched a common scenario:

> In Fremantle the Government employ about 150 men on the harbour works at the present time, and on 15th February next they will be entitled to be put on the roll for North Fremantle. If the Government were to cease the work these men would probably be scattered abroad, and if an election took place, would it be right that these men should be allowed to vote for a representative for North Fremantle by proxy when they had no longer any interest whatever in the place?\footnote{\textit{WAPD}, 10 October 1893, p. 1103.}

When the Bill returned to the Assembly, Forrest was more than happy, \textit{this} time, to accept the Council’s amendments, and even quoted Griffith in support of stripping absent voting entitlements from itinerant workers: ‘our system of government is adapted for a settled people, who have residences, and not for a nomadic population. When men are wandering about, they are not entitled to so large a share in making the laws of the country, as people who are settled’.\footnote{\textit{WAPD}, 11 October 1893, p. 1160.} (Griffith, incidentally, was on the roll for six different Queensland electorates in 1892.\footnote{See Kingston, \textit{Glad, Confident Morning}, p. 241.}) After some tepid opposition, the amendments were ratified and the Electoral Bill, along with the Constitution Act Amendment Bill, was assented to on 13 October 1893—the last day of the session.\footnote{\textit{Constitution Act Amendment Act 1893} (57 Vict., No. 14) and \textit{Electoral Act 1893} (57 Vict., No. 15).}

Regrettably, in the haste, no-one had spotted that the new electorates and amended franchise provisions in the \textit{Constitution Act Amendment Act 1893} could not come into force, according to s. 14 of that Act, until the existing Legislative Assembly was dissolved. As work on the rolls would need to commence in January (the month designated in the \textit{Electoral Act 1893} for the compilation of ratepayer electoral lists and the furnishing of lists...
of deceased adult males by the relevant Registrar of Births, Deaths and Marriages) and could not be completed before 1 June, a dissolution would leave WA without a Parliament for more than six months. Such an interregnum was clearly untenable, so Parliament was reconvened on 20 December 1893 to rush through a Bill to authorise the immediate preparation of the new electoral rolls, to be compiled in accordance with the Constitution Act Amendment Act, 1893—but without the need for a dissolution.

The Members were manifestly displeased at being recalled to sort out a legislative bungle, particularly when the amending Bill was introduced and they realised they would be debating more than the authorisation of the new electoral rolls because the Government had discovered additional legislative slip-ups which needed rectifying. Further, the Government had decided to take advantage of the Bill to amend the Telegraphic Messages Act 1874 so as to allow election material to be telegraphed without being sent and received in the presence, and under the inspection, of a JP or public notary. This would facilitate the conduct of elections in remote constituencies where often the only available JP was the returning officer. Notwithstanding a Protest in the Council and a torrid Address-in-Reply debate in the Assembly, the Bill passed unamended and as the Electoral Rolls Act 1893 was signed into law on 22 December.

The new electoral rolls comprising 13,384 electors were ready by 1 June 1894 and the following day writs for the Assembly and Council were issued and gazetted for June–July polls. Electioneering, however, had been underway from the beginning of the year: candidates perhaps spurred on by the activities of the newly formed Progressive Political League (PPL)—the political arm of the Trades and Labour Council (TLC) and replacement for the now-defunct Liberal Association—and the candidature of the first independent Labour candidate in the colony, the TLC secretary, George Chitty Baker. Indeed, unlike the 1890 general election when candidates stood as Independents because there was not a Ministry to oppose, nor an Opposition party even if there were, the 1894 campaign saw the commencement of a party system in WA—or what Battye has referred to as ‘a nucleus of an opposition’. (The new Parliament would also see the formal election of a leader of the

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25 Basically, the Electoral Act 1893 had repealed, but not re-enacted, two important provisions from the 1889 Electoral Act: the first was the requirement for joint owner/occupiers of property to specify the value of their share of the property and the names and addresses of the other owner/occupiers on their enrolment claim form, and the second was the section dealing with mortgagee and trustee franchise entitlements.
26 Section 5 of the Electoral Rolls Act 1893. The 1874 Act is 38 Vict., No. 6.
27 Electoral Rolls Act 1893 (57 Vict., No. 34).
28 Statistics from WAPD, 1 July 1895, p. 92.
30 Battye, Western Australia, p. 402. Hughes and Graham, however, have written of the 1894 election that ‘no clear parties were in the field’, A Handbook of Australian Government and Politics, p. 567.
Opposition: initially George Randell, who had returned to the Assembly after a short stint in the Council, and, from 1895, George Leake, who had relinquished the Crown Solicitorship and entered the Assembly as the Member for Albany.) Accordingly, many candidates indicated they were Ministerialist, i.e. pro-Forrest and his Ministers (the Weld Club Party, as one radical newspaper dubbed the Establishment grouping); Oppositionist i.e. opposed to the ‘present Tory Government’; or Independent (but often with the caveat that they would support the Forrest Government on major issues).\(^{31}\)

Notwithstanding this, there was striking uniformity of views amongst the candidates. A great many advocated support for the liberal electoral reforms being endorsed by the PPL: women’s enfranchisement, following lobbying by WCTU members; triennial parliaments; payment of MPs; reduced qualifying residency periods; district transfer of votes; and all Legislative Assembly elections to be held on the same day (as occurred in Victoria, NSW and Tasmania) instead of being staggered—a liberal proposition to minimise plural voting.\(^{32}\)

Only fifteen of the thirty-three Legislative Assembly seats were contested and, of these, only three saw more than a two-way contest. Twenty-six of the thirty former MLAs were returned. The four defeated MLAs (Canning, de Hamel, Molloy and Quinlan) had all been liberalish, but were replaced by candidates who were equally or even more progressive, with Canning being defeated by the PPL and TLC-sponsored Walter James, described as ‘a thorough liberal and a believer in social reforms’.\(^{33}\) Similarly, the three new goldfield Members—Frederick Illingworth, Frederick Keep and Charles Moran—were politically advanced, consonant with their constituent base.

Unlike the Assembly, the Legislative Council saw all electoral provinces contested. This was not surprising considering three candidates were to be returned for each province at this inaugural election, with the candidate with the most votes securing a six-year term, the next most successful a four-year term, and the least successful a two-year term. (Subsequent Council elections would see the staggered, or rotational, mode of election stipulated for Upper House seats in operation, with a single Member being elected biennially for each province for a six-year term.) The Council elections all took place on the same day and,

\(^{31}\) ‘Weld Club Party’ quotation from People, cited in Stannage, ‘Electoral Politics in Western Australia’, p. 120; ‘Tory’ quotation from de Hamel, the West Australian, 14 February 1894.

\(^{32}\) Re same-day elections, see the discussion in WAPD, 19 September 1900, pp. 502–505, when a motion in support of the principle was passed in the Legislative Assembly.

\(^{33}\) The only significant point of difference between James and Canning was that Canning, like fellow defeated liberals Quinlan and Molloy, supported the dual education system, whereas James opposed it—see Stannage, ‘Electoral Politics in Western Australia: 1884–1897’, pp. 128 and 144–145. Quotation from Charles Moran, WAPD, 12 August 1896, p. 355.
unlike the Assembly, there was considerable change in the membership. In fact, only five former MLCs were returned: Congdon, Hackett, Hardey, Parker and Shenton. They were of a decidedly more liberal cast than arch-conservatives Anstey, Hooley, Hamersley and Morrison, who all came last at the polls. Indeed, as Crowley has noted, all MLCs who had opposed the constitutional reforms of the previous session were defeated. Battye, however, was correct in his assessment of the new Council, that while ‘composed of men more in touch with the life of the community than were those of the nominated body … it was still a cautious rather than a progressive Chamber’—which, he further noted, was perhaps advantageous considering ‘gold discoveries were not altogether conducive to a sane and safe outlook’.36

Given a majority of the returned Members were prepared to support the previous administration, Forrest and his former Ministers continued in Government. While the Government may not have changed, it was evident, however, that the new Parliament would be more liberal-minded and receptive to electoral reform—especially considering WA’s population in the preceding year had increased by almost 15,000 potential electors ‘most … [of whom] have lived under liberal and free institutions, and under progressive Governments’. When the first session of the first fully elected Parliament met on 25 July 1894, however, Robinson’s Governor’s Speech did not foreshadow any electoral reform measures. On the contrary, Robinson underlined that the Government’s overriding focus was, as hitherto, to promote the development of WA’s mineral resources and public works.

Still, as the new Member for West Perth, Barrington Wood, conceded when moving the Address-in-Reply, the Government’s ‘policy of public works only’ would be the only one acceptable to the Parliament, and was ‘only echoing the beating of the great heart of this country, inasmuch as 95 per cent. of the whole population are desirous that these works should be commenced at once’. More to the point, no-one in or out of the Ministry was going to propose electoral change if it resulted in the newly elected Assembly having to return to the polls. Nonetheless, that electoral reform would eventually feature on the Notice Paper was indicated when goldfields Member, Illingworth, who had advocated a

34 Hooley returned to the Parliament, although to the Legislative Assembly, via the Murchison by-election held on 15 October 1894.
35 Crowley, Big John Forrest, p. 135.
36 Battye, Western Australia, p. 402.
suite of electoral reforms during the election, asked Forrest whether it was the Government’s intention to amend the Electoral Act during the current session, and received the encouraging reply that it was the Government’s ‘hope to be able to deal with the question next session’.41

While there were no big-ticket electoral reform measures proposed during the 1894 session, it is worth noting that a Constitution Act 1889 Amendment Bill (which would not precipitate elections) was passed.42 The Act would lessen the draconian penalties imposed on parliamentarians who contravened, no matter how trivially or unwittingly, the contractor provisions of the Constitution Act. In future, while disqualification from Parliament would still apply to any infringement of the provisions, the financial penalty would be reduced from £500 to £200, and action against a Member would have to be brought within three months of the Member sitting or voting in Parliament following the breach so that potential suits would not hang indefinitely over MPs.43 In addition, the plaintiff, who, if successful in his suit, pocketed the penalty as a reward for theoretically ‘preserving the purity of Parliament’, would, in future, have to pay £100 into the court as security for costs before legal action could commence, in an attempt to deter suits which were speculative or ‘prompted by pique or spite, or some personal feeling’.44 Somewhat controversially, the Act included a retrospective section which provided that no action or other legal proceedings could be maintained or continued, if already commenced, against Members for breaches alleged to have been committed before the passing of the Act—which bailed out Traylen, who had been charged with violating contractor provisions by printing The Journal of the Bureau of Agriculture (after legal counsel advised it was lawful to do so).45

Some ‘pungent’ Resolutions

The 1895 session of Parliament was opened by Commissioners on 4 June, at least a month earlier than expected, only to be adjourned on the same day until 25 June—at which date, the Government assured Members, the Parliament would be ceremonially opened with a Governor’s Speech. This was the second time in eighteen months that Members had been summoned early to resolve a glitch.

41 WAPD, 25 September 1894, p. 729.
42 Constitution Act, 1889, Amendment Act, 1894 (58 Vict., No. 15).
43 Sections 2–3 of the Constitution Act Amendment Act 1894.
44 First quotation, Moran, WAPD, 10 October 1894, p. 1021; second quotation, Burt, WAPD, 15 October 1894, p. 1085. Also see s. 4 of the Constitution Act Amendment Act 1894.
45 Section 5 of the Constitution Act, 1889, Amendment Act, 1894.
The fault this time lay with anomalous, but previously unnoticed, provisions in the Constitution Act. Section 29 mandated that the seat of a Member who accepted ministerial office ‘shall thereupon become vacant’—but that such a Member was eligible for re-election. Alexander Richardson had accepted, six days after the last prorogation of Parliament, the appointment of Commissioner of Crown Lands (replacing Marmion who, along with Parker, had recently resigned) and therefore needed to face his constituents. Unfortunately, Richardson had accepted the ministerial appointment before resigning his seat, and as s. 29 automatically led to his seat being deemed vacant, it was no longer possible for him to go ahead and resign it. Normally, this would not be significant, but under s. 20 (1) of the Constitution Act Amendment Act 1893 the Speaker could only issue a writ, when the Parliament was not in session, if a vacancy was due to death or resignation. Hence, for almost the whole parliamentary recess, De Grey had been without a Member, and Richardson, although acting in his portfolio, had been unable to seek re-election. Edward Wittenoom, who had replaced Parker in the Ministry at the same time, had ‘evaded’ this farce by resigning before accepting the appointment. Now, the Government could have waited until the Parliament resumed in July to declare the De Grey vacancy, but as this would have denied them Richardson’s vote until his re-election, they preferred to subject the Members to the inconvenience of a one-day sitting (lasting twenty-three minutes in the Council) so that they could reconvene with a full complement of supporters in what was an increasingly hostile Chamber.

Richardson was re-elected on 17 June, and the second session resumed on 25 June with the Acting Governor, Onslow, presenting the by now déjà vu ‘Public Works and Loans’ Opening Address. At the conclusion of Onslow’s lengthy catalogue of prospective or completed public works, however, there was, as Leake sneered, a ‘feeble reference to new legislation’ that the Members would be asked to consider. One such Bill was for ‘Amendment of the Parliamentary Electoral Law’, so it appeared that Forrest had kept his 1894 undertaking to Illingworth to amend the Electoral Act. Illingworth, however, correctly assumed that the proposed electoral amendments would not include increasing the representation of goldfields electorates where, he reminded Members during debate, approximately 20,000 of WA’s 38,000 adult males lived—although such electorates only returned three Members. Notwithstanding another goldfields Member, Moran, also excoriating the under-representation of miners as inequitable and unreasonable, Forrest did

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46 Burt, *WAPD*, 4 June 1895, p. 9. Some doubts were expressed about the propriety of this evasion—see *WAPD*, 4 June 1895, pp. 8–11.
47 *WAPD*, 26 June 1895, p. 61.
49 *WAPD*, 1 July 1895, p. 92.
not refer to an increase in goldfields representation when he touched upon the Electoral Act in his Address-in-Reply speech. But if he hoped the issue would die down, he was mistaken.

Six days later Illingworth queried on notice whether it was the Government’s intention to introduce legislation to re-distribute seats to provide more representation for the goldfields and other centres of population. Forst’s response that the Government had no such intention ‘at present’ prompted Illingworth to move, a month later, that:

the decision of the Government in reference to the question of redistribution of seats is not satisfactory to this House; and is not in harmony with the expressed desire of the mining districts, nor is it in accord with the opinion of the majority of the people of this colony.

Illingworth breezily acknowledged that this motion was framed as a want of confidence motion in the Government. It was certainly regarded as such by the Government, with Attorney General Burt unequivocally advising that the Government would stand or fall on the question that the present time was not opportune for a redistribution. Given this, there was no way the motion would pass, because no-one was prepared to oust the Forrest Government and face the electorate—including Illingworth himself, who had admitted during the Address-in-Reply debate five weeks earlier that, ‘I am not anxious myself to see them defeated’.

The motion was clearly about tactics. Illingworth knew the motion was doomed—he jokingly admitted to the Members that ‘I could not believe that the Forrest Ministry could be shifted even with dynamite’—and even claimed during debate that he had framed the resolution as a no-confidence motion precisely because he did not want it to succeed in the present session. (He refused to disclose why he did not want the resolution passed immediately, but the likeliest explanation is that it would be more advantageous to deal with increased representation in the session immediately preceding the next election when the goldfields would contain thousands more miners and electors.) What Illingworth did want, however, was a full-scale parliamentary debate on the subject of electoral malapportionment in which the Government would be compelled by the House to confront the problem.

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50 WAPD, 9 July 1895, p. 211.  
51 Forrest’s quotation is from WAPD, 9 July 1895, p. 211; Illingworth’s motion is from WAPD, 7 August 1895, p. 503.  
52 WAPD, 7 August 1895, p. 523.  
53 WAPD, 1 July 1895, p. 95.  
54 WAPD, 7 August 1895, p. 528.  
55 WAPD, 7 August 1895, p. 526.
In moving the motion, Illingworth presented an array of statistics sourced from the Registrar General’s return and WA’s electoral rolls to establish how inequitable the current distortions in Assembly electorates were. He outlined that while eleven rural Members in the House (i.e. one-third of the total) cumulatively represented 887 electors, and seven northern Members represented only 365 electors, the Member for West Perth on his own represented 1,859.\textsuperscript{56} He further pointed out that where the southern districts returned nine Members to represent 2,944 electors, the 3,002 voters in Perth and 2,237 electors in Fremantle had only three Members apiece. It was, however, the extreme under-representation of the goldfield electorates which most troubled Illingworth. He underlined that if the goldfields were conservatively estimated to hold only 13,000 adult males and if these males were represented at the ratio which applied in the northern electorates, then the goldfields would be entitled to return 135 Members. The statistics were shaming and so was Illingworth’s impassioned conclusion:

\begin{quote}
Is it fair or just, or within the range of what is called British fairplay, that such a state of things should exist as they do at present? They are worse than those which existed in Great Britain before the passing of the Reform Bill … I sincerely ask hon. members to face this question and give justice to all people, whether they are on the goldfields or anywhere else.\textsuperscript{57}
\end{quote}

The other advantage of framing the resolution as a no-confidence motion was that it effectively compelled the Members to express an opinion, setting the Government up to hear almost all Members state that while they would vote against the motion because they did not wish to defeat the Government, they wholeheartedly supported the principle of more equitable representation in WA, and particularly for the goldfields. This widespread support for the goldfields is easy to understand: the goldfields were bringing enormous prosperity to WA and, with the increasing focus on deep mining from the mid-1890s, they were, as de Garis has noted, also attracting \textit{settled} populations.\textsuperscript{58} By the debate’s conclusion, the Government’s refusal to consider the question \textit{at present} appeared decidedly out of step with public opinion, and Burt, after a furious defence of the Government’s treatment of its ‘pick and shovel population’, conceded that it was probable that, before the next general election, the House would be asked to consider the matter.\textsuperscript{59} This admission was immediately upgraded to a ‘promise’ by Illingworth, who exulted: ‘The position now is that we have a declaration from all sides of the House that the principle I have behind this resolution is to be brought into effect some time’.\textsuperscript{60}

\textsuperscript{56} \textit{WAPD}, 7 August 1895, pp. 504–505. All subsequent statistics quoted by Illingworth come from these pages.
\textsuperscript{57} \textit{WAPD}, 7 August 1895, p. 506.
\textsuperscript{58} De Garis, ‘Self-Government and the Emergence of Political Parties’, p. 68.
\textsuperscript{59} \textit{WAPD}, 7 August 1895, p. 524.
\textsuperscript{60} \textit{WAPD}, 7 August 1895, p. 527.
The goldfields Members had more to congratulate themselves about when the Government’s Electoral Bill ‘to consolidate and amend the laws relating to parliamentary elections’ came up for debate in the Assembly on 24 September.61 Burt outlined that while the Bill made very little alteration to existing electoral law, the two principal changes it did make would materially facilitate goldfields residents getting on the roll. The first amendment, the Bill’s ‘main object’, was to reduce the time it took to get on electoral rolls by establishing quarterly registration.62 Henceforth, claims for enrolment, whether approved, or objected to, by the electoral registrar, would be submitted directly to a quarterly registration court to be held in January, April, July and October.63 The court would adjudicate on claims and objections, and would also rule on registration claims made orally by claimants on the day.64 Approved claims would be entered into a register and subsequently transcribed by the electoral registrar into a quarterly electoral list.65 This list would then be available for public viewing, and objections to entries on it could be made to the electoral registrar, as previously, with the quarterly electoral list being revised at the next quarterly registration court.66 Following this second revision, the list would become known as the quarterly electoral roll and deemed an addition to the annual electoral roll, and entitle those on it to vote during the then current year.67 Accordingly, a qualified claimant could be registered as an elector within months of applying—a huge advance on the old annual registration system.

The second main amendment of the Bill was to increase the number of officials, particularly those associated with mining, who were authorised to attest registration claim forms. Henceforth, any warden or registrar of a goldfield, mining registrar, licensed surveyor, public notary, or clerk of Petty Sessions could act as a witness.68 This would obviously be an improvement for remote mining areas where, as Illingworth remarked, ‘perhaps within an area of 80 or 100 miles there has been only one man who was competent, under the law, to receive the claims for registration’.69

As Burt had indicated, very few other changes had been made to the existing electoral law. The compilation and revision of the annual electoral roll would take place much as they did under the existing Acts, although the various deadlines were altered slightly, and the annual

61 WAPD, 24 September 1895, p. 1108.
62 Burt, WAPD, 24 September 1895, p. 1108.
63 Section 20(1) of the Electoral Act 1895.
64 Section 21 of the Electoral Act 1895.
65 Section 25(1) of the Electoral Act 1895.
66 Sections 25–28 of the Electoral Act 1895.
67 Section 47(2) of the Electoral Act 1895.
68 Section 14 of the Electoral Act 1895.
69 WAPD, 24 September 1895, p. 1111.
registration court would be held on the same day throughout WA, so that ‘the date will become impressed on the mind of everyone’.\textsuperscript{70}

The new registration and witnessing provisions in the Bill were so clearly a ‘distinct advance in our electoral law’ and an ‘immense gain to those who advocate popular rights’, that the second reading was approved without opposition.\textsuperscript{71} The only reservation expressed about the Bill was that it had not altered the franchise, with one Member advocating enfranchising women and another the holders of miners’ rights. Burt explained, however, that as franchise qualifications were laid out in the Constitution, such changes could only be effected through a Constitution Act Amendment Act. Given the only amendments the Members were interested in were beyond the scope of the Bill, the committee stage was short and amicable.\textsuperscript{72}

The Bill was received by the Council six days before prorogation, read a second time without debate, passed through committee without amendment, and signed into law on 12 October by Onslow.\textsuperscript{73} As the \textit{Electoral Act 1895} it repealed and replaced the 1889 and 1893 Electoral Acts and the \textit{Electoral Rolls Act 1893}. This consolidation was a welcome move, as the difficulty of construing a jumble of Acts—the ‘vice of scatter’ common at the time because of the Western Australian and Westminster practice of indirect amendment of statutes by the enactment of separate Act Amendment Acts—had recently been highlighted by Leake, the former Crown Solicitor:

\begin{quote}
Every Justice of the Peace knows how difficult it is to put his finger on the law in our present Statute book; for constantly repealed, constantly amended, the principal Act becomes a hideous thing altogether, and not every lawyer can trace out any particular principle in these Statutes.\textsuperscript{74}
\end{quote}

The hard-pressed electoral registrars and returning officers in WA were undoubtedly pleased that now they only had one ‘intricate’ Electoral Act to fathom instead of three.\textsuperscript{75}

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\textsuperscript{70} Burt, \textit{WAPD}, 24 September 1895, p. 1110.
\textsuperscript{71} First quotation, Randell, \textit{WAPD}, 24 September 1895, p. 1111; second quotation, Moran, same page.
\textsuperscript{72} In fact, only one significant change was made during the committee stage and this, too, was another win for the goldfields and other remote constituencies. Moran moved that the clause banning candidates from personally soliciting electors from twelve hours before nominations should be struck out as it was a handicap in remote constituencies where Members had to canvass large electorates and where nominations often closed twelve days before polling (as opposed to two or three days in the metropolis). While there was some opposition in the Chamber to getting rid of the provision altogether, the Attorney General, with Forrest’s agreement, successfully moved a compromise amendment which shifted the ban to twenty-four hours before the commencement of polling.
\textsuperscript{73} \textit{Electoral Act 1895} (59 Vict., No. 31).
\textsuperscript{74} Discussion and quotation regarding legal amendment from Narelle Miragliotta, ‘Western Australia: A Tale of Two Constitutional Acts’, \textit{The University of Western Australia Law Review}, vol. 31, 2003, pp. 155–156. Leake’s quotation is from \textit{WAPD}, 26 June 1895, p. 61.
\textsuperscript{75} Burt, \textit{WAPD}, 24 September 1895, p.1109.
\end{flushleft}
Sir Gerard Smith Takes Over

Before the session was prorogued, Parliament received notice of Robinson’s resignation. Accordingly, it was a new Governor, Lieutenant-Colonel Sir Gerard Smith, who opened the following session of Parliament on 7 July 1896. Smith’s Governor’s Speech had, of course, been written by the Forrest Government, but it had a different emphasis to those delivered by Robinson and Onslow. Although still featuring the usual paean to colony-wide public works, it was dominated by an almost reverent recognition of the importance of the goldfields and the need to nurture them in view of the ‘unexampled prosperity’ they were bestowing on WA. This recognition was appropriate. Colonial revenue in the past year alone had increased from £1,125,940 to £1,858,695, and the population over the same period had increased almost 50% to 123,000. Forrest being Forrest, public works would be a critical part of any nurturing, and C.Y. O’Connor’s £2,500,000 scheme to supply water to the goldfields was a centrepiece of the Address. But it is significant that the Government also acknowledged that electoral rights were a crucial factor. Smith outlined that the semi-pledge of increased representation for the goldfields extracted from the Government in the 1895 session would be honoured in the present session because the ‘rapid development of the goldfields, and the large population residing upon them, have made it imperative to increase their representation in both Houses of Parliament’. Smith did not indicate how much extra representation there might be, but the seemingly benign reference to the goldfields’ large population being the motive for the increase promptly saw Members denounce any distribution of electoral representation on such a basis. The mover of the Address-in-Reply in the Council affirmed that, as hitherto, there should be ‘representation of interests, not of heads’. Government Minister Edward Wittenoom quickly scotched the revolt in the Council, assuring Members that while the need for increased representation had been ‘forced upon everyone’, the changes were not proposed on the basis of population, but by taking into consideration the various interests of the colony. Rejecting this argument in the Assembly, Illingworth again laid out the most recent statistics regarding goldfields under-representation, and urged that ‘there must be complete representation of the people, and not of vacant land’ because this was the ‘only one equitable principle upon which representation can be based’. Illingworth, however, conceded that some concessions would need to be made for the north because of its

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76 *WAPD*, 7 July 1896, p. 3.
77 Revenue figures from Smith, *WAPD*, 7 July 1896, p. 3; population figures from Sir John Forrest, *WAPD*, 29 July 1896, p. 182.
78 *WAPD*, 7 July 1896, p. 1.
80 *WAPD*, 14 July 1896, p. 33.
81 *WAPD*, 14 July 1896, p. 51.
isolation and sparse population.\textsuperscript{82} Indeed, the ‘law of remoteness’, i.e. that ‘far-flung electorates deserved greater, not lesser, representation’, was widely acknowledged in colonial Australia even if it did run counter to the liberals’ quest for equal representation and, as Simms has noted, had an illustrious champion in Sir Henry Parkes.\textsuperscript{83}

When introduced, the Constitution Act Amendment Bill was found to be significantly more generous than expected: the Government proposed giving eight additional Assembly seats to the goldfields as well as creating a dedicated goldfields electoral province for the Legislative Council.\textsuperscript{84} While such a distribution of seats was not based exclusively on population (the goldfields were estimated to contain half WA’s male population) it would deliver the goldfields more than a quarter of the Assembly’s Members. Furthermore, although the Bill’s principal object may have been to increase goldfields’ representation, Forrest somewhat daringly admitted that ‘it is impossible to overlook the question of population’ in the metropolitan area and, hence, the Government believed it was also time to give two more Assembly seats to the metropolis by excising parts from, mainly, Perth electorates and forming them into separate constituencies.\textsuperscript{85}

Considering the Government’s disinclination to tinker repeatedly with the Constitution, especially as amendments often necessitated elections, they had opted to resolve a handful of other electoral issues while there was an amending Bill in the legislature. Accordingly, the Bill also proposed to better regulate Legislative Council elections by stipulating that:

members going out by effluxion of time will retire on a certain fixed date [21 May], and in each case the new member will be able to be elected before that date, and take his seat just after the retiring member vacates the seat. That will provide for members of the Upper House being continuous ...

Additionally, the Bill proposed curing the ministerial resignation-vacancy problem by providing that the power to issue electoral writs during a parliamentary recess would apply to a vacancy caused by acceptance of ministerial office.\textsuperscript{87}

As the Assembly Members had overwhelmingly endorsed the principle of increased goldfields representation in the previous year, those sections of the Bill were unanimously supported. In fact, agreement was such a given that the first four speakers, led by Solomon, the Member for South Fremantle, barely mentioned the goldfields, but immediately pitched

\textsuperscript{82} WAPD, 14 July 1896, p. 51.
\textsuperscript{83} Simms, From the Hustings to Harbour Views, p. 27; the ‘law of remoteness’ was Parkes’s expression.
\textsuperscript{84} When enacted the Bill became Constitution Act Amendment Act 1896 (60 Vict., No. 18).
\textsuperscript{85} WAPD, 29 July 1896, pp. 180–181.
\textsuperscript{86} Sir John Forrest, WAPD, 29 July 1896, p. 183.
\textsuperscript{87} See s. 12 (1) of the Constitution Act Amendment Act 1896.
for an additional seat for Fremantle while redistribution was on the table. Fittingly, the goldfields Members, now assured they would soon constitute ‘a very great power’ in the Parliament, supported Fremantle’s bid: partly because they were committed to the principle of population-based representation and partly in recognition of the Fremantle Members’ support for goldfield interests in recent years.\textsuperscript{88} As almost every other Member who spoke also endorsed Fremantle’s claim, Burt, when concluding the second reading speeches, indicated the Government would not oppose adding another seat during the committee stage, but would not be supportive of other measures suggested during debate—in particular, women’s suffrage and payment of MPs.

The committee stage was poorly attended, partly because Leake, the leader of the Opposition, was in England. The truant Members, however, missed little. Apart from some minor amendments and a perfunctory discussion of boundaries, the only noteworthy discussion occurred when Fremantle was voted its extra seat and Illingworth failed to convince Members that registered miners’ rights should be sent to electoral registrars twelve months after being issued to enable automatic enrolment of miners. Indeed, attendance was so thin that Walter James, who had indicated in both the 1895 and the present session that he intended moving a motion in favour of women’s suffrage, informed the House when it had disposed of the final section of the Bill, that he had decided against moving his new clause as there were only fourteen Members present.\textsuperscript{89} But while the Bill completed its first pass through the House without the motion being introduced, women’s enfranchisement had not been dropped. Rather, Cookworthy, who had moved the original motion for women’s votes in 1893, and been censured for doing so without notice, this time placed a motion for women’s enfranchisement on the Notice Paper. This galvanised twenty-seven Members to front up for the debate on 12 August 1896.

After moving ‘That, in the opinion of this House, it is desirable, in the best interests of the country, that the principle of female suffrage should be recognised in the Constitution’, Cookworthy delivered a suffragist statement of claim.\textsuperscript{90} Women should have the vote on the grounds of: ‘right and justice’; because they were taxpayers (the argument successfully prosecuted by the goldfields’ Members); because they should have a voice in framing laws they had to obey; because they already voted in municipal elections; because they had as much intelligence as men and, generally, impulses that were ‘far purer and higher’; because

\textsuperscript{88} Moran, \textit{WAPD}, 29 July 1896, p. 190.
\textsuperscript{89} \textit{WAPD}, 30 July 1896, p. 221. James actually attempted to move a motion for female suffrage during the 1895 session, but it was disallowed because such an amendment could only be effected in a Constitution Act Amendment Bill and he had proposed it in an Electoral Bill.
\textsuperscript{90} \textit{WAPD}, 12 August 1896, p. 335.
both sides of the political divide supported the principle; and, finally, because women had, since the 1893 motions for female enfranchisement, successfully voted in parliamentary elections in New Zealand and South Australia, so Members need not fear that they were taking a ‘leap in the dark’.  

Cookworthy was followed by Premier Forrest who sought to shut down debate by requesting the motion’s withdrawal. In justifying his opposition to women’s suffrage ‘not in the abstract’, Forrest simply recycled his 1893 arguments: namely, Western Australian women had not demonstrated by a ‘single representation … to the Government or to Parliament’ that they wanted the franchise (which was not the case as there had been considerable WCTU-sponsored activity including a mile-long pro-suffrage petition in 1894, the establishment of a Women’s Franchise Department within the WCTU in 1895, and behind-the-scenes representations to Members and despatching of pro-suffrage correspondence to the press from women involved with the WCTU and the recently established Karrakatta Club); that there was as yet insufficient precedent for this ‘speculative legislation’ in the British Empire; and that female franchise would be followed by demands for women to enter Parliament—something to which Forrest was opposed in the abstract.  

Apprised of the Government’s arguments, the formidably articulate James (a barrister) rose to present the burden of the suffragist case in an exhaustive and impeccably researched speech in which a roll-call of conservative and liberal eminences, including Gladstone, Disraeli, Mill, Herbert Spencer, Charles Kingsley, Abraham Lincoln and Lord Salisbury, were quoted in support of almost every contention he made. James’s principal argument was that female suffrage was a ‘good’ and ‘just’ cause and, for these reasons alone, it should be granted—particularly in an age when ‘we proclaim from the housetops that we believe in equality’. Opposition to the principle, James continued, was motivated by superseded notions of women’s inferiority and subservient status to men, and to bar modern women the franchise on the basis of ‘sex, and sex alone’, was an injustice to women and harmful to the body politic because it denied society the elevating influence of ‘the great moral storehouse of the community’. James then challenged Forrest’s claim that Western Australian women did not desire, and had not agitated for, enfranchisement. He pointed out  

91 WAPD, 12 August 1896, p. 336.  
93 WAPD, 12 August 1896, pp. 338–339.  
94 WAPD, 12 August 1896, pp. 339 and 342.
that women were generally averse to ‘unwomanly tactics and loud agitation’ for the very sound reason that if they engaged in public speaking, torchlight processions and ‘other expedients of political warfare’, their actions would be immediately deplored by their menfolk who would be just as likely to ‘urge these facts as reasons for refusing the demand’.95

There is a substantial body of historical writing which supports James’s contention—i.e., in Paul Readman’s words, that ‘the militant tactics of the Suffragettes did not advance the cause of female enfranchisement, but rather alienated the support of otherwise sympathetic (or at least persuadable) male politicians’.96 C.J. Bearman has perhaps overstated the case in claiming that the ‘consensus of historical opinion’ is that Suffragette militancy was counter-productive and delayed achievement of the female franchise in Britain by at least a decade, but certainly a number of historians support Bearman’s assessment that the British public and parliamentarians recoiled from the WSPU’s campaign of bombings, arson, window-smashing and letter-burning in 1913–1914, and that this violence ‘placed the question of women’s suffrage outside the pale of political discussion’ and saw it categorised as ‘a law-and-order problem rather than one requiring political reform’.97 In the Australian context, Sawer and Simms have noted similar ‘controversy over whether the relative strength and militancy of organised feminism in Victoria … was itself the reason for the great delay in granting the suffrage’ rather than just ‘blind resistance of the conservatives’.98

That women desired the vote, however, even if they did not publicly agitate for it, could be inferred, James continued, from women’s rapid take-up of voting rights once granted. He cited New Zealand where 78% of adult women enrolled to vote after the enactment of the Electoral Act 1893—of whom 85% proceeded to vote.99 As to why women showed a high level of interest in enfranchisement, James underlined that modern women increasingly participated in the public sphere and, as a result, found the law ‘presses upon them more and more’—yet while they had to pay taxes and obey the law, they had no input into either.100

95 WAPD, 12 August 1896, pp. 341 and 339.
97 C.J. Bearman, ‘An Examination of Suffragette Violence’, English Historical Review, vol. CXX, no. 486, 2005, pp. 369 and 395. See also Martin Pugh, The March of the Women: A Revisionist Analysis of the Campaign for Women’s Suffrage, 1866–1914, Oxford University Press, Oxford, 2000. On a similar note, many historians observe that it was the ‘decline in mass protest’ following the effective collapse of Chartism in 1848 that persuaded ‘politicians that respectable working men could be trusted with the vote’—see Evans, Parliamentary Reform, p. 41. For other historians making the same point, see Walton, The Second Reform Act, p. 6, and Hirst, Australia’s Democracy, p. 44.
98 Marian Sawer and Marian Simms, A Woman’s Place: Women and Politics in Australia, Allen & Unwin, St Leonards, NSW, 1993, p. 9. Victoria was the last colony/state to enfranchise women, doing so in 1908.
99 WAPD, 12 August 1896, p. 341.
100 WAPD, 12 August 1896, p. 343.
Most of what James said the Members would have heard before, but certainly no-one in the Parliament had hitherto spoken so persuasively or authoritatively on the subject. But it was to no avail. The Government was lined up against the motion and, for it to succeed, it required the full support of the Opposition. Regrettably, Illingworth, now the de facto leader of the Opposition in Leake’s absence, had, only weeks previously, declared: ‘finally, absolutely, and forever—my distinct and positive opposition to woman’s suffrage’.  

Illingworth’s main argument against the principle was the well-worn one that ‘woman has, by the wise Creator himself, been placed in a position of dependence’ and that if the ‘weaker sex’ left this divinely prescribed domestic sphere and participated in politics it would be a step in women’s degradation and undermine the peaceful haven of the home for men. (He was similarly opposed to women’s participation in the workplace as he believed this put downward pressure on men’s wages.) Illingworth, however, also had backup arguments—notwithstanding that they were mutually contradictory. The first was that women could not be entrusted with the vote because they were emotional creatures who would vote with their hearts and not their heads; the second was that the extension of voting rights to women would be futile because they would prove to be ‘dual’ votes for their menfolk, i.e. women would unreflectingly replicate the voting choice of their husbands and fathers. As for those women who did not replicate their husband’s vote, Illingworth objected to them because they imported dissension into the home. Inconsistency aside, it seems curious that Illingworth resorted to the dual vote argument given it had been used against the male working-class around the time of the Second Reform Act in England when Bagehot declared: ‘the vote of the inferior working man is simply the vote of the “wire-puller”’. But then, perhaps not. The patronising dual votes argument against female enfranchisement was invoked as late as 1980 by Crowley who remarked of South Australian women casting their first votes in 1896:

Most married women were socially conditioned to think politically as their husbands did; most unmarried women followed the political predilections of their fathers; and it is possible that the net result of their enfranchisement was merely to increase the cost of holding elections.

101 *WAPD*, 29 July 1896, p. 201.
102 *WAPD*, 12 August 1896, p. 346.
103 *WAPD*, 12 August 1896, p. 348.
105 Crowley, *A Documentary History of Australia*, vol. 3, p. 473. Crowley had made a similar observation about Western Australian women voters twenty years earlier in *Australia’s Western Third*, p. 114, where he commented of the newly enfranchised women in the state: ‘it became apparent that women’s suffrage did not radically affect the electoral prospects of any party and that wives and mothers were usually content to duplicate their husband’s electoral preferences’. Interestingly, Sawer has noted of the 1896 South Australian election, at which women first voted, that, ‘A slightly higher proportion of enrolled women than men voted’, ‘Pacemakers for the World’, p. 13.
This observation ignores the fact that, as women generally shared the same socio-economic milieu as their menfolk, it was entirely reasonable for them to arrive at and evince, as Macaulay contended, ‘identical’ political convictions.\footnote{Macaulay actually turned the formula around, commenting in 1829 regarding the enfranchisement of men and women: ‘The interest of a respectable Englishman may be said, without any impropriety, to be identical with that of his wife’—quoted in Arblaster, \textit{The Rise and Decline of Western Liberalism}, p. 265.}

Illingworth’s final point was to challenge the notion that women’s enfranchisement would give the conservatives an edge: ‘St. George’s Terrace will not vote and Murray Street will’.\footnote{\textit{WAPD}, 12 August 1896, p. 349.} As none of the speakers who followed agreed with this assessment, it seems likely that Illingworth was simply trying to remind Members that, if the motion succeeded, it could enfranchise prostitutes from the Murray Street brothels.

The remainder of the debate was lengthy, but it basically saw the foregoing arguments revisited, with a number of speakers making much of the prospect of newly enfranchised female electors demanding admission to the legislature. Indeed, goldfields Member, Moran, in a spectacularly hostile speech, went so far as to query whether the state would have to fund wet-nurses for the ‘unsexed’ women who entered Parliament.\footnote{\textit{WAPD}, 12 August 1896, p. 355.}

When the vote was taken, women’s suffrage was again defeated—fourteen votes to twelve—with one putative supporter exiting the Chamber before the division to the disgust of northerner, Sholl, who had journeyed to Perth to support the motion. Although the motion was lost, the debate was a critical one for Western Australian suffragists. It had put women’s enfranchisement in the foreground less than a year before the next election and, as suffragists only needed a handful more Members to pledge support, getting women’s suffrage highlighted as a campaign issue was crucial. Further, the debate clarified for suffragists where their support lay and whom they needed to lobby—although looking at how the votes had been cast, they must have been dismayed at the challenge ahead of them. In short, the motion had been championed by a liberal even though he had previously acknowledged female suffrage would indubitably benefit the conservatives whom he opposed.\footnote{See James in \textit{WAPD}, 24 September 1895, p. 1113.} It was rejected by many conservatives, notwithstanding the advantage it would reputedly deliver to them, although their opposition was less on principle than a classically conservative time-is-not-yet-ripe basis, and it was viscerally repudiated by some of the most radical Members in the House, particularly Illingworth and Moran, notwithstanding their usual advocacy of democratic measures (for men). Of this latter point, it is instructive to bear in mind Bagehot’s perceptive comments regarding the anti-woman suffrage stance of
many so-called nineteenth-century progressives that, like conservatives, they could not abandon the separate sphere traditions inculcated during their youth.\textsuperscript{110}

Women’s enfranchisement disposed of, the Government immediately recommitted the Constitution Act Amendment Bill to insert some necessary, but previously overlooked, provisions to guarantee that no-one currently on an electoral roll would be disenfranchised by the new electoral divisions (i.e. returning officers had to transfer affected electors’ names from existing rolls to the new ones, and residence in an old district was to be deemed equivalent to residence in the new one for the purpose of the statutory ‘bona fide resident’ question on polling day).\textsuperscript{111} The Bill then had a short transit through the Council, where most Members seemed satisfied with the Bill’s provisions and the goldfields’ increased representation, and was third read on 3 September.

Less than a fortnight later, Simpson initiated the next round of liberal electoral reforms: a motion to affirm the principle of ‘payment of members by making provision for reasonable compensation for travelling expenses and costs of attendance at the sessions of Parliament’—a principle which is sometimes called the ‘keystone of democracy’.\textsuperscript{112} In speaking to the motion Simpson outlined that payment of MPs was a just and sound principle because without some financial assistance from the state, a seat in Parliament would remain ‘the appanage, the domain, the natural heritage of the rich, and … the power to make laws for the country shall belong only to the rich’.\textsuperscript{113} Payment of MPs, he continued, was also ‘pretty well world-wide in its acceptance’, with Britain and WA being the only representative democracies in the world which had not introduced it—although, he pointed out, the House of Commons had recently affirmed the principle, and WA partially recognised it by paying Ministers, the Speaker and the Chairman of Committees.\textsuperscript{114} Whatever the merits or inevitability of paying Members, however, any such payment was an impost and could only be introduced by the Government—and Simpson was aware that the Forrest Government and most of the House were implacably opposed to the measure.

More to the point, only six weeks previously Simpson himself, although a long-standing advocate of the principle, had conceded in the House that the measure had been an ‘abject failure’ in practice in the Australian colonies, and, further, that he was so appalled by

\textsuperscript{111} The original Bill had only provided for the transfer of electors’ names to other existing electoral rolls.
\textsuperscript{113} WAPD, 16 September 1896, p. 678.
\textsuperscript{114} WAPD, 16 September 1896, p. 677. The principle was affirmed in the House of Commons in both 1893 and 1895, but did not become law until the passing of the Parliament Act 1911.
reports of recalcitrant MPs being cowed into compliance by the threat of a dissolution (which would incur election expenses and put the Member’s seat and salary at risk) that he believed payment of Members should never be in the hands of Government but instead come directly from the pockets of constituents.\(^\text{115}\) (The practicality of constituency-funded payments had been debunked in the *Contemporary Review* three years earlier, however, by the renowned proponent of payment of MPs, Sir Gavan Duffy, who declared that such payments ‘might be classified, like English verbs, into “regular, irregular, and defective,” the first class being the scantiest’.\(^\text{116}\)) Simpson’s views had clearly gone almost 180 degrees in the past month, but in framing his motion to cover only reimbursement of expenses and a moderate attendance fee, rather than a full salary, he was actually proposing an alternative payment model to the customary one: one which would facilitate the entry of less wealthy men into the Parliament and lessen the risk of their independence being undermined. Such a model, Simpson contended, would prove equitable and workable—he cited the successful working of a similar parliamentary attendance fee scheme in New Zealand—and he offered it as a ‘careful, cautious, and wise manner’ of giving effect to payment of Members, which ‘is coming in this colony, as sure as to-morrow’s sun will rise’.\(^\text{117}\)

Notwithstanding the motion being a half-measure, the Members in the House who championed the payment rallied behind it—possibly sharing Lefroy’s assessment that it was ‘the thin end of the wedge’.\(^\text{118}\) The Government and the rest of the Members, however—largely composed of representatives from WA’s well-heeled gentry families—were comfortable with parliamentary seats being ‘the appanage, the domain, the natural heritage of the rich’ and were certainly not tempted to subsidise ‘professional politicians’ from the lower orders to challenge their *noblesse oblige* hegemony.\(^\text{119}\) (Indeed, many advanced liberals, such as Higinbotham, had in the past seemed comfortable with non-payment of Members, declaring they preferred the ‘dilletanteism of the well-fed to the greediness of the decidedly hungry’.\(^\text{120}\)) But while arch- Establishment Burt lambasted the motion thus: ‘payment of members would destroy the respect that we have built up during the last 20 or 30 years … I shall oppose it as long as I live … It is bad and detestable in principle’, the

\(^{117}\) *WAPD*, 16 September 1896, pp. 678–679.
\(^{118}\) *WAPD*, 16 September 1896, p. 680.
\(^{119}\) Sir John Forrest, *WAPD*, 16 September 1896, p. 681. Interestingly, a short piece in the *West Australian* on 17 February 1894 reported that a recent Church Congress had expressed the ‘opinion’ that: ‘it was desirable that all Australian bishops should possess private means, more especially in cases where the income of the See was under £1,000 per annum’.
pragmatic (and upwardly mobile) Premier was more conciliatory.\(^{121}\) Forrest blandly informed Members that notwithstanding abuses, ‘the principle in the abstract was not so bad’ (possibly, the fact that Griffith, whom Forrest admired, had so believed in the principle he had rammed it through the Queensland Parliament via budget tack, had converted him), but he did not think WA was ready for it at the present time—especially since there had not been ‘any considerable demand for this great change’.\(^{122}\) Upon division, the motion was defeated eighteen votes to five.

In company with the colony’s suffragists, however, the advocates of payment of Members could console themselves that they highlighted the issue before the upcoming elections and exposed Members who had reneged on their 1894 election pledges. As the following chapter will illustrate, both reforms would soon be enacted. However, given WA’s fledgling self-governing polity was undergoing transformative economic and demographic growth—the population had more than trebled and annual revenue had increased sevenfold since 1890—these reforms would be introduced in the Forrest Government’s hallmarked staged and safeguarded fashion.\(^{123}\)

\(^{121}\) *WAPD*, 16 September 1896, pp. 685–686.
\(^{122}\) *WAPD*, 16 September 1896, p. 681. For background on Griffith and payment of Members see Hirst, *Australia’s Democracy*, pp. 77–78.
End Game

1897–1901

The 1897 general election was held eighteen months earlier than constitutionally required, with Premier Forrest deferring to the view that the goldfields should be given the opportunity to elect representatives for their newly created seats.\(^1\) Stannage, however, has suggested that another motive was Forrest’s desire to hold an election before even more goldfields types got themselves onto the electoral rolls—an assessment that de Garis regards as plausible.\(^2\) Federation and electoral reform were widely canvassed issues, and the Assembly saw twenty-seven Members win seats as Ministerials, two as Independent Ministerials, eight as the Opposition (led successively by Leake and Illingworth, and including the first Labor Member, Charles Oldham) and seven Independents.\(^3\) While the Forrest Government was accordingly returned, it was, as Stannage has observed, seriously weakened by the influx of ‘recent arrivals’—i.e. Members who had arrived since 1885 from the more democratically advanced eastern colonies.\(^4\) Indeed, in 1890 the Assembly contained only four recent arrivals, whereas following the 1897 general election it contained nineteen, an unsurprising result considering the locally born proportion of the population in 1897 had plummeted to 30%.\(^5\) As this chapter will discuss, the new arrivals would soon join with local reformers to champion, and secure, the remaining progressive electoral reforms which characterised the sister colonies.

The 1897 election was also the last conducted under the aegis of an Office (the Colonial Secretary’s, as hitherto) rather than a designated electoral Officer. As with the sister colonies, WA was moving towards establishing the centralised, professional and non-partisan electoral administration for which Australia, with its ‘talent for bureaucracy’, as

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1 *West Australian*, 17 March 1897.
2 Stannage, ‘Electoral Politics in Western Australia’, pp. 206–207; de Garis, ‘Self-Government and the Emergence of Political Parties’, p. 73. The writs were issued on 12 April with gazetted polling days spanning 27 April to 26 May. Contests occurred in twenty-six of the forty-four Legislative Assembly electorates.
3 For voting return statistics see Hughes and Graham, *A Handbook of Australian Government and Politics*, p. 568. (Forrest, however, claimed during a ‘defeat on policy’ constitutional motion that his support since the 1897 election had been thirty, WAPD, 26 July 1898, p. 621.)
A.F. Davies has termed it, would earn an ‘enviable reputation’. Accordingly, by July 1897 Octavius Burt, Under-Secretary in the Office of the Colonial Secretary, who had been responsible for overseeing the conduct of elections since his appointment in 1891, was given the additional title of ‘Officer in charge of Electoral matters generally’ with an extra £100 per annum attached to the position.

The new Parliament opened on 17 August 1897 and sat for ten days, with both Houses focusing on the draft Commonwealth Constitution, which was due to be re-examined by Federation Convention delegates in the following month. Notwithstanding objections that the colony’s time was being ‘unwarrantably wasted’ on the Federal Bill, the session was profoundly significant for WA’s parliamentarians because they were compelled to consider, and ratify, a constitutional Bill which contained, as Irving has underlined, ‘some of the most democratic provisions in the world at the time’—viz. triennial parliaments, no plural voting, payment of Members and female suffrage (voting rights in the draft Commonwealth Constitution extended to extant Lower House electors, which meant South Australia’s women voters would be enfranchised). The realisation that these liberal electoral measures would apply Australia-wide, allied to the widely articulated view that the Australian colonies’ constitutions should harmonise, enabled those Western Australian MPs advocating electoral reform to use Federation ‘as a tool to reform from above’.

Indeed, within weeks of the second session commencing on 13 October 1897, recent arrival Henry Gregory, Member for the new goldfields seat of North Coolgardie, moved that: ‘it is desirable, in order to secure the fullest possible representation of the people, to affirm the principle of payment of members of the Legislative Assembly’. In speaking to his motion, Gregory recapped pro-payment arguments advanced previously: the representative system was incomplete if electors were restricted in the choice of candidates; WA did not contain a wealthy and leisured class which could volunteer its time to being unpaid MPs; workers were perforce represented by the wealthy ‘whose interests are necessarily those of their own class, and antagonistic to those of the workers’; most countries with responsible government paid MPs; the House of Commons had recently affirmed the principle; and

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7 See the 1897 *Blue Book*.
8 Given WA’s ten MP-delegates needed to leave WA on 26 August to travel to Sydney, other business was barred.
10 Simms, *From the Hustings to Harbour Views*, p. 50.
11 *WAPD*, 24 November 1897, p. 551.
Ministers in WA were paid. Gregory also observed that at the recent Federation Convention in Adelaide, no Western Australian delegate, including Premier Forrest, had spoken against the proposed £400 annual salary for Federal parliamentarians.

The motion was seconded by another goldfields recent arrival, Moran, and endorsed by a third, Walter Kingsmill, the Member for Pilbarra, who underscored the difficulty and expense in representing remote electorates—outlining that travelling down to Perth could take him a month. Alexander Forrest was the first to oppose the motion, arguing that it was unnecessary to pay Members when WA had no shortage of men ‘anxious’ to serve unremunerated. Aware this was a minority view, however, and that a defeat would embarrass the Government, Forrest—the Government Whip—advised that the issue was not a party question and Government Members had a free vote.

The remainder of the debate saw a majority of Members—many upholding election pledges—support the ‘democratic, progressive, and most certainly … just and equitable principle’, with Frederick Vosper, the arch-radical Member for the new and populous North-East Coolgardie seat, deriding the well-heeled Alexander Forrest’s defence of the status quo, especially considering that Forrest’s West Kimberley electorate comprised ‘country which would support about a leg of mutton to the square mile, with no population to speak of, and where it is almost impossible to discover a voter, either dead or alive’.

Almost nothing new was said on this well-worn subject (particularly in Premier Forrest’s speech which basically rehashed his 1896 speech opposing the principle), and as it appeared probable the motion would pass, much of the debate turned on whether the motion simply affirmed the principle, as Gregory claimed, or required the Government to follow convention and treat the resolution as an instruction to introduce a Bill. Forrest signified that if the motion succeeded, he believed the Government ‘are practically directed to bring in a Bill’—but stressed that it would be inappropriate to introduce a Bill without first ‘making it a cry at a general election’. Leading Oppositionist, Illingworth, an ardent advocate of MP payment, concurred with Forrest’s scruples as did leading liberal, Walter

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12 Gregory’s discussion and quotation are from WAPD, 24 November 1897, pp. 551–554. Curiously, Gregory did not mention that Attorney General Burt had resigned a few weeks earlier to return to full-time private practice, because his ministerial salary was inadequate.
13 Forrest also argued that payment of the Members of both Houses at a modest £300 per annum would cost WA £26,400 annually—a sum which ‘would very nearly pay the interest on one million of money’, WAPD, 24 November 1897, p. 556.
14 WAPD, 24 November 1897, p. 557. Sir John Forrest confirmed this view at p. 566 of the same debate.
15 Vosper, WAPD, 24 November 1897, pp. 561 and 558.
16 Considering a Bill had not followed the 1893 Westminster affirmation in support of payment of MPs, this was a reasonable query.
17 WAPD, 24 November 1897, pp. 562 and 566. On 21 December 1897 Forrest confirmed that ‘until the question was considered by the constituencies, the Government would hesitate to take action in regard to it’, WAPD, p. 1229.
The motion passed twenty votes to eleven after being amended to affirm payment of Members of Parliament, rather than just the Legislative Assembly.

A week later another progressive electoral motion was moved in the Assembly: ‘That … the best interests of the colony require the extension of the Parliamentary franchise to women’. Like the payment of Members motion, this was cast as an affirmation of principle, with its mover, James, denying he desired ‘immediate legislative sanction’ to the resolution, because this would precipitate a dissolution and election—with the result that few Members would support the motion. Instead, James outlined that he simply wanted the principle endorsed, and reiterated his arguments from 1896: the justice of women’s enfranchisement, the improvement to the moral tone of the body politic in jurisdictions which had enacted the principle, and women’s enthusiastic take-up of the privilege.

The Opposition arguments were also a reprise of those from 1896, although stated more pungently. Illingworth, for example, concluded his plea for retaining women in the domestic sphere with the following outburst (labelled a ‘mummified argument’ by an appalled Leake):

> By all the experience in the world, she [woman] has been in subjection; and I will go further and say that the Creator who made her has placed her in subjection; and woe be to the Parliament, or to the men, who place her anywhere else.

Similarly, William George evinced an almost visceral hostility to women suffragists:

> … I notice they have got a very long sort of jaw and a very peculiar face. As a rule, they consist of disappointed spinsters, or of ladies to whom, if they are married, the fates have not been kind enough to give them families to look after.

Moran was equally sulphurous regarding those championing ‘femocracy’, and spelt out to fellow goldfields Members that he principally spurned the motion because:

> it is inexpedient and bad policy on the part of goldfields members to allow the voting power on the coast [where most women lived] to be doubled, while no additional representation is obtained for the goldfields.

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18 See *WAPD*, 24 November 1897, pp. 572 and 575 for Illingworth’s views. See James at pp. 577–578 of the same debate.
19 The amendment is at *WAPD*, 24 November 1897, p. 588.
20 James, *WAPD*, 1 December 1897, p. 738.
21 *WAPD*, 1 December 1897, p. 739.
22 *WAPD*, 1 December 1897, p. 750; see Leake at p. 750 of the same debate.
23 *WAPD*, 1 December 1897, p. 753.
24 *WAPD*, 1 December 1897, pp. 758 and 760.
Notwithstanding the advantage that women voters would purportedly render the coastal electorates, which were more likely to support the Forrest Government than goldfields constituencies, Forrest did not resile from his position that Western Australian women had not demonstrated sufficient demand for their enfranchisement. When the division was called the motion was rejected seventeen votes to eleven—a blow for the motion’s supporters who had secured much closer results previously. On 23 December, what Premier Forrest described as a ‘very trying’ session closed.25

In the Governor’s Speech for the following session, which opened on 16 June 1898, Governor Smith foreshadowed another busy legislative programme. It was, therefore, no doubt exasperating for the Government when on 10 August 1898 James doggedly moved his ‘annual fad’—another motion to affirm women’s enfranchisement—and the debate dominated three sittings.26 It is pointless to review the arguments proffered for and against the motion because, as Member after Member apologetically prefaced his speech, everything had been said before. What is interesting to note, however, is the conclusion to James’s speech: ‘We may fail, I suppose we shall, on this occasion. I feel almost inclined to give a sigh, and say that the Premier on the next occasion will be found voting for it … We are bound to succeed: we have right on our side’.27

This observation was repeated by a number of Members, including Ministers. The Commissioner of Crown Lands, George Throssell (whose wife, Ada, was a leading WCTU suffragist), stressed that ‘hon. members may rest assured that the time is not far distant when this motion will be carried by a good majority’, while the new Attorney General, Richard Pennefather, admitted, when speaking against the motion, that: ‘the time may come when I can admit I was wrong on this question to-day’.28

The realisation that women’s suffrage was probably inevitable, and might be enacted before the next election, energised debate. A number of Members engaged in excoriating personal attacks, which were infrequent in the legislature at the time; numerous highly disparaging remarks were made about women suffragists; and the arch-opponent of the measure, Illingworth, reduced some Members to sobs and others to applause by reciting a piece of doggerel which catalogued all the rights (Illingworth believed) a good stay-in-her-sphere woman needed:

25 WAPD, 23 December 1897, p. 1329.
26 George, WAPD, 17 August 1898, p. 1030.
27 WAPD, 10 August 1898, p. 916.
28 WAPD, 17 August 1898, pp. 1055 and 1057.
The rights of woman—what are they?
The right to labour and to pray;
The right to watch while others sleep;
The right o’er others’ woes to weep … 29

It is worth noting that during the session questions had been asked by goldfields Member Henry Kenny about the massive number of unenrolled adult males in WA; the registration difficulties faced by goldfields electors; and the labours of the newly appointed Inspector of Electoral Rolls, R.P. Daly, who, since his appointment in February 1897, had scoured through WA’s electoral rolls and overseen almost as many names expunged (7,084) as inserted (10,265) out of a total enrolment of 30,140 since the latest revision. 30 Considering the principal reasons for electors’ names being removed were ‘through leaving the districts … or parting with their qualifications under the Act’, it was predominantly goldfields electors who were being deleted, and the relative numerical strength, or weakness, of electors on the goldfields versus coastal districts would inform debate through the remainder of the session—particularly the female suffrage debate. 31 Indeed, in opposing the women’s suffrage motion, Illingworth made much of the fact that approximately 70,000 men in WA (the majority resident on the goldfields) were unenrolled and ‘surely in a country like this our first duty should be to obtain votes for the men’. 32

The female franchise motion was put on 24 August. It was rejected eighteen votes to eleven, after a bluff-calling amendment proposed by Vosper to hold a ‘plebiscitum of the women of the colony, with a view of ascertaining their opinions on the extension of the franchise to their sex’ (in response to anti-suffragist Moran’s claim that a referendum would prove that female franchise was not wanted) was not even seconded. 33 Yet the sanguine prophecies of James and Throssell would be fulfilled within a year and the eventual volte-face on women’s enfranchisement would come as no great surprise to the Members.

Tellingly, two days before the 1898 session was prorogued, Illingworth withdrew his notice of motion for a redistribution of seats in WA, after Forrest indicated the motion would be viewed as a vote of no confidence. 34 The Opposition was not in a position to assume Government, but neither could the claims of the under-represented goldfields be indefinitely

29 *WAPD*, 10 August 1898, p. 922.
30 Kenny’s questions appear in *WAPD*, 12 July 1898, p. 374; 30 June 1898, p. 250; and 29 June 1898, p. 201—statistics from the last entry. Also see the *Government Gazette*, 5 March 1897, for notification of Daly’s appointment.
32 *WAPD*, 10 August 1898, p. 922.
33 *WAPD*, 24 August 1898, p. 1211, and 17 August 1898, p. 1044.
34 *WAPD*, 26 October 1898, p. 2672.
postponed. As Reeves remarked of the prospect of the goldfields eventually achieving political ascendancy:

The old order was passing away, and the ruling families felt the ground moving under their feet. The politicians from the older settled districts looked anxiously round for something to break the force of the threatening flood. It occurred to them that this might be found in the enfranchisement of women. Naturally adult women were in a larger proportion in the older districts than in the raw mining settlements in the desert. By enfranchising women the voting strength of the farming and grazing districts and of the seaports would be increased and the influence of the Outlanders to some extent neutralised.35

Further, with respect to the number of women in WA, while they could provide a counterweight to the t’othersiders, there were still considerably fewer women than men (according to Reeves, approximately 20,000 women of voting age in 1899 compared with 70,000 men) so Western Australian women would not deluge the electorate with ‘so large a mass of new and inexperienced electors’ as could occur elsewhere.36 Significantly, at a public function in December 1898, the Government Whip, Alexander Forrest, announced his ‘conversion to the principle of women’s suffrage’ and intention to support the principle the next time it was raised in Parliament.37

**Succumbing**

The 1899 session opened on 21 June. Although the Address-in-Reply debate was dominated by the topic of Federation, Members also alluded to references in the Governor’s Speech to electoral legislation being submitted to the Parliament, and to the Government’s subsequently announced proposal that a redistribution Bill to redress electoral malapportionment would be considered during the session.38 A final key topic during the Address-in-Reply speeches was women’s suffrage, which Forrest had publicly announced, on 27 June, would be pursued in the session given the Constitution had to be amended in order to effect the redistribution.39

The day after his announcement regarding women’s enfranchisement, Forrest had written to James:

35 Reeves, *State Experiments in Australia and New Zealand*, p. 132. Biskup echoed Reeves’s observation: ‘The old order of things was passing away, and the politicians of the older districts looked anxiously for something which would stop the threatening flood. Since they had their families about them, and the majority of the miners were either single or had left their families behind, votes for women was the obvious solution’, ‘The Westralian Feminist Movement’, p. 78.
36 Reeves, *State Experiments in Australia and New Zealand*, p. 132.
37 *West Australian*, 2 December 1898.
38 *WAPD*, 21 June 1899, p. 5.
39 *West Australian*, 28 June 1899.
I think it would not be fair to you for the Government and myself to have all the credit of introducing women’s suffrage and as you deserve the credit of the movement and I wish you to have it—I advise that you go on with your motion. 40

Accordingly, on 12 July James moved: ‘That … early provision should be made for conferring the Parliamentary suffrage upon women’. 41 Unlike the speeches accompanying his previous ‘missionary efforts’, James said little, simply expressing gratitude at the ‘sudden conversion of a great number of members of the House’ and affirming his belief that such conversions were completely sincere and due largely to ‘the active interest the women themselves have exhibited in the question during the past few months’. 42 The motion’s seconder, John Higham, endorsed the sincerity theme, remarking that if Members had only ‘voted according to their convictions we should have had womanhood franchise in 1896’. 43 Illingworth, who spoke next, however, protested:

Four times in succession this House has rejected this motion by steadily increasing majorities. Nothing has happened, no argument has been advanced, nothing new has been presented to the people, but suddenly it has been discovered that it is desirable to give increased representation to the goldfields; and it is no secret that hon. members have declared themselves in favour of voting for this question, not because they are convinced, not because they have reversed their opinions as declared in this House and reported in Hansard, but because they think it is desirable to give some kind of balancing weight to the increased representation of the fields … 44

Other Members similarly deprecated the measure as a ‘very clever dodge’ on the Government’s part, and their suspicions were fortified by Monger’s taunt:

I hope the result will be that, instead of Western Australia being ruled by a majority of people on the goldfields, we will be able, with the support of the ladies to whom we give votes, to have at all events an equal representation. 45

Not unexpectedly, the argument that WA’s women were enfranchised because it suited a conservative government’s purposes—with some historians suggesting the Forrest Government also hoped Western Australian women would vote against Federation, which, as Oldfield has correctly noted, is not a view supported by the parliamentary debates—and that the granting was ‘a case of supply before demand’, has become enshrined in much Australian historiography. 46 This perception perhaps stems from one of the first major

40 Forrest’s quotation is from Crowley, Big John Forrest, p. 261.
41 WAPD, 12 July 1899, p. 298.
42 WAPD, 12 July 1899, p. 298.
43 WAPD, 12 July 1899, p. 299.
44 WAPD, 12 July 1899, p. 299.
45 First quotation, Vosper, WAPD, 12 July 1899, p. 302; Monger’s quotation is from the same debate, p. 315.
46 Quotation from Biskup, ‘The Westralian Feminist Movement’, p. 76—which echoes comments made in his 1959 thesis, ‘The Female Suffrage Movement in Australia’, p. 36. Also see Crowley’s assessment that Western Australian women were the ‘passive recipients’ of the vote in A Documentary History of Australia, vol. 3, p. 443, and his earlier
assessments of the reform, that of Reeves, who in 1902 pressed this line. Such assessments, and the view that ‘the battle was a men’s affair’, as Reeves put it, devalue the role of Western Australian suffragists—in part, according to Sawer and Simms, because a number of male historians have been reluctant to give appropriate recognition to the activity of the WCTU because is was seen as ‘faintly humorous and “wowserist”’. However, as Lees has argued, WA’s suffragists ‘fought as consistently and as cleverly as their contemporaries in other colonies’ to secure the franchise—a view endorsed by a number of feminist historians.48

Indeed, as noted by Lees, Western Australian suffragists under the WCTU Suffrage Superintendent Christine Clark had intensified their campaigning following their 1897 parliamentary defeat; and by the beginning of 1899 the WCTU’s ‘News and Notes’ column in the *West Australian* was almost completely dedicated to the suffrage question, and pro-suffrage letters were being routinely despatched to the press—where they were often complemented by pro-suffrage editorials. Most decisively, however, on 27 April 1899, Western Australian suffragists at a public meeting convened by the WCTU formed the Woman’s Franchise League of WA. At a follow-up meeting a fortnight later, the League’s constitution, with its object of obtaining ‘the franchise for women, on the same conditions as those which apply to men’ (i.e. not enfranchising a property-owning subset, as proposed in some earlier parliamentary motions), was adopted and office-holders, including seven Western Australian MPs, were sworn in. Soon after, a number of metropolitan and rural branches of the League were established which, as Oldfield has commented, ‘launched an aggressive campaign of public meetings’. It is perhaps also worth noting that Premier Forrest’s wife, Margaret, was active in the League.

statement that the Forrest Government ‘thrust the vote into the hands of the women who had made no strong demand for it’, in *Australia’s Western Third*, p. 113. For Oldfield’s observation see, *Woman Suffrage in Australia*, p. 55. Sawer and Simms, *A Woman’s Place*, p. 7, contend that it was believed that women ‘would oppose federation in the forthcoming referendum’, but Jessie Ackermann, has argued that women were enfranchised because Forrest believed they would support Federation—*What Women Have Done With the Vote*, William B. Feakins, New York, 1913, pp. 23–24.

Reeves, *State Experiments in Australia and New Zealand*, vol. 1, p. 103; Sawer and Simms, *A Woman’s Place*, p. 5.


*West Australian*, 28 April 1899.

Quotation from the League’s Constitution comes from a report of the 11 May meeting in the *Inquirer*, 19 May 1899. This report includes the full Constitution and list of office-holders. The seven WA MPs were: George Randell MLC, George Throssell MLA, Alfred Morgans MLA (Vice Presidents); Walter James MLA (Treasurer); Henry Briggs MLC, Timothy Quinlan MLA, and Barrington Wood MLA (Council Members). Former MP Stephen Parker was also appointed a Council Member. The report of the meeting in the *Western Mail* (5 May 1899) also records that Alexander Matheson MLC sent in an apology and indicated that he would support women’s suffrage in the Legislative Council.

Oldfield, *Woman Suffrage in Australia*, p. 54.

Crowley, *Big John Forrest*, p. 281.
In fact, the widespread support in the population, including the goldfields, which the suffragists now marshalled, was cited by Forrest—whom Crowley has emphasised was highly responsive to public opinion and de Garis has called a ‘fatherly arbiter as to which social and political reforms the colony was ready for’—as justification for changing his views: ‘If it be found that the great mass of our fellow colonists are desirous of the change, then it behoves any one who has pretension to be a public man, to carefully consider the question’.  

This explanation was regarded as feasible by Gail Reekie:

> It seems more likely that the continual agitation of the women’s organisations became too sharp a thorn in Forrest’s side, and that he finally agreed to support the motion merely as a peace-keeping gesture in order to be able to devote his energies more fully to the federation question and to rallying support for his leadership.

In addition, the pragmatic Forrest acknowledged with respect to enfranchising women ‘it is always best to be on the winning side in politics if you possibly can’, and he seemed genuinely pleased to announce that in enacting the principle, WA was more advanced ‘from a progressive point of view’ than Victoria or NSW.

Curiously, however, although WA’s early enfranchisement of women was reverently recorded by English suffragist Millicent Garret Fawcett, it is usually dealt with quite negatively in Australian historical writing. That its enactment has been dismissed by many historians solely as a conservative stratagem to harness the support of supposedly passive women has been addressed. That WA’s initial enfranchisement of women also effectively excluded Aboriginal and other non-Anglo-Celtic women has led, more recently, to a number of historians expressing the view that celebrating the achievement is a ‘rather ambiguous’, if not ‘inappropriate’ exercise. As Grimshaw and Ellinghaus have noted, Aboriginal women ‘waited another 63 appallingly oppressive years’ for their enfranchisement.

54 Crowley, *Big John Forrest*, p. 297; de Garis, ‘Self-Government and Political Parties’, p. 347; Forrest, *WAPD*, 12 July 1899, p. 311. Forrest’s observation that the goldfields supported female franchise was corroborated by WCTU suffragist organiser Janetta Foulkes who commented in 1897 that ‘the mining element is as a whole in favour of it’. Foulkes quoted in Oldfield, *Woman Suffrage in Australia*, p. 50. It should also be noted that Forrest would soon adopt the identical stance regarding payment of Members—viz. support the measure in deference to public opinion—even though MP payment would severely undermine his conservative Government.


56 Forrest’s quotations are from Crowley, *Big John Forrest*, pp. 261–262.

57 Fawcett, *Women’s Suffrage*, p. 89.


But, although beyond the scope of this thesis to consider in detail, it is worth questioning whether there has been reluctance by some historians—of whom, according to Hirst, the ‘great majority’ in Australia over the past five decades have been ‘left-leaning, progressive people’—to acknowledge that major liberal reform, even with macrocosmic exclusion clauses, had been carried by the conservative side of politics.60

Conservative historian Gertrude Himmelfarb has addressed this question, in the context of the comparably ‘unanticipated and unsought’ Second Reform Act, which enfranchised the English urban working class.61 Himmelfarb cites the ‘profound resistance’ by most British historians to credit Lord Derby’s conservatives with initiating and carrying this legislation, because the received script was that ‘the Liberal Party was naturally, inherently, the party of progress and reform’.62 Following Himmelfarb’s reasoning, it could be argued that negative assessments of the Forrest government’s enfranchisement of women may reflect some historians’ discomfort at a similar ‘usurpation’ (Himmelfarb’s expression) of the reformist role by WA’s conservatives.63

The general view of South Australia’s enfranchisement of women, by contrast, is that it is ‘explicable in terms of the radical tradition of the colony’s foundation’, according to McMinn—although, as Blainey has pointed out, a number of proponents of women’s enfranchisement in South Australia were motivated more by taming the liquor trade.64 In analogous fashion, adoption of manhood suffrage for the Legislative Assembly in Victoria in 1857 has predominantly been depicted as ‘a major step in the colony’s democratic evolution’, notwithstanding that its enactment conveniently diffused the ‘political power of miners—radical, populist, fractious, but fundamentally mobile’, who had held the vote since 1855 by means of a £1 miner’s licence and who, before manhood suffrage, were capable of outvoting resident locals in Victorian elections.65

Biskup, although he characterised WA’s enfranchisement of women exclusively as conservative opportunism, conceded that Forrest’s attitude towards women’s enfranchisement was no more opportunistic than that of most politicians in the other

61 Himmelfarb, Victorian Minds, p. 338.
63 Himmelfarb, Victorian Minds, p. 363.
64 McMinn, A Constitutional History of Australia, p. 63; Blainey, Our Side of the Country, p. 124. Also see Patricia Grimshaw et al: ‘There was a victory for suffragists in South Australia in 1894, and in Western Australia in 1899. Although in both colonies the suffrage passed the legislatures with a combination of unexpected manoeuvrings by male politicians anxious to reap the benefit of the women’s vote, the success was nevertheless heartening.’ Patricia Grimshaw et al, Creating a Nation, McPhee Gribble, Ringwood, Vic., 1994, p. 185.
65 Wright, A People’s Counsel, pp. 38–39.
colonies.\textsuperscript{66} Certainly no-one could impugn the motives of liberal MLAs James, Leake and Vosper who championed women’s suffrage notwithstanding their concerns that it would bolster the conservative Forrest Government which they opposed.\textsuperscript{67} As Evans has commented, this principled stance did not occur in Britain where:

> Women property owners, eminently respectable and well-educated, did not get the vote before 1914 largely because progressive politicians feared, with good reason, that the consequences of enfranchising female householders would be to the advantage of the Conservative party rather than of them.\textsuperscript{68}

James’s motion passed seventeen votes to six on 12 July and was forwarded to the Council. To underline to MLCs the need to support the measure, on 21 July a meeting in the Perth Town Hall, attended by John Forrest and chaired by Alexander Forrest, was held in support of the principle, while on 26 July, James tabled a petition in the Assembly calling for ‘the early introduction of legislation for extending the Parliamentary franchise to women’.\textsuperscript{69} On 8 August the female franchise motion came before the Council. The last time MLCs had debated the topic was in 1893, so most wished to record their views—which, constituted as a committee, they did over two sittings. Their arguments for and against the motion, however, were a predictable revisiting of those raised in the Assembly, and on 17 August, by a slim margin of eight votes to six, the motion passed.

Five days later, the Constitution Acts Amendment Bill, giving effect to the women’s suffrage motion, the promised redistribution of seats and a raft of other liberal electoral reforms, was introduced into the Assembly by Premier Forrest. Notably, one reform not incorporated into the omnibus Bill was payment of MPs because some Members still held that it would be inappropriate to enact the payment before ratifying the principle with electors. Accordingly, when Forrest proposed that MP payment should be the subject of WA’s first referendum—‘a popular machine that is altogether foreign to the British constitution, and foreign to our constitution as a colony’, as he could not help adding—to take place in tandem with the next general election, the motion passed unanimously.\textsuperscript{70}

\textsuperscript{67} See, for example, James at \textit{WAPD}, 24 September 1895, p. 1113, where he commented: ‘It ought to suit even the conservative Attorney-General to do justice to women, by giving them the vote to which they are entitled, and which for a very long time, at any rate, would be exercised in a conservative direction’.
\textsuperscript{68} Evans, \textit{Parliamentary Reform}, p. 95.
\textsuperscript{69} Quotation from \textit{WAPD}, 26 July 1899, p. 531. See the \textit{West Australian}, 22 July 1899, for a report of the meeting. Also see the \textit{West Australian}, 21 July 1899, for references to the meeting being called because of the ‘alarm of the ladies’ that the Legislative Council might oppose the change.
\textsuperscript{70} See \textit{WAPD}, 19 July 1899, pp. 394–400, for the debate and vote—Forrest’s quotation is from p. 397. Forrest’s motion was actually an amendment to Henry Gregory’s motion: ‘in the opinion of this House, it is desirable that its previous decision in favour of the principle of payment of members should be given effect to by legislation, prior to the dissolution of the present Parliament’, \textit{WAPD}, 19 July 1899, p. 394.
Forrest moved the second reading of the Constitution Acts Amendment Bill on 29 August. He briefly outlined that although the Bill was a *consolidating* measure (it would repeal the three previous Constitution Act Amendment Acts and allied statutes such as the *Officials in Parliament Act 1891*), it would not repeal, as originally intended, the *Constitution Act 1889* ‘because that would remove from the statute book the landmarks of the original constitution’.71 Almost equally briefly, Forrest touched on the introduction of triennial parliaments and changes to the franchise qualifications whereby eligible would-be electors, after residing in WA for six months, could apply for *immediate* electoral registration and be *automatically* entitled to vote six months after such registration.72 Forrest devoted the remainder of his speech to the Bill’s redistribution clauses, which he admitted had given him ‘an immense amount of trouble and a lot of anxiety’.73

In his summary of the redistribution provisions Forrest outlined that four existing Assembly electorates in the far north—three pastoral and one mining—would be merged with other constituencies or obliterated to accommodate four additional seats on the eastern goldfields (earning an interjection from his brother, Alexander, whose constituency was scheduled for amalgamation, that ‘You have “wiped out” the North’) and that four new seats would also be given to the metropolitan area, boosting the Assembly’s total membership from forty-four seats to forty-eight.74 (Forrest did not propose rectifying the gross malapportionment in the Legislative Council in the Bill.75) In concluding, Forrest stressed that population alone had not been the motivating principle behind the redistribution and considering that three Members who would see their seats abolished were supporters, ‘any alterations I have made have been altogether against both my personal and my public interests’.76

When the second reading debate resumed, the main advocate of redistribution, Illingworth, vehemently objected to the Bill being ‘an increased representation Bill as well as a Redistribution Bill’.77 Illingworth presented a meticulous statistical analysis of the number of electors per constituency and argued that while the goldfields and ‘city and ports’ electorates were fairly well balanced, with each interest currently holding eleven seats for approximately the same number of electors (17,711 goldfields electors; 16,569 city and

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71 *WAPD*, 29 August 1899, p. 1033. It has also been suggested by Justice Wilsmore in 1981, and by legal academics subsequently, that Forrest’s ‘bifurcation’ of the Western Australian Constitution may also have been ‘a deliberate political strategy intended to circumvent manner and form provisions [i.e. the requirement for absolute majorities of the whole number of MPs at second and third readings] located within section 73’ of the original Constitution. See Miragliotta, ‘Western Australia: A Tale of Two Constitutional Acts’, pp. 154–160—quotations from pp. 154 and 157.
72 See ss. 15, 21 and 26 of the *Constitution Acts Amendment Act 1899*.
73 *WAPD*, 29 August 1899, p. 1037.
74 *WAPD*, 29 August 1899, p. 1037.
75 The number of electors in the Metropolitan Province, for example, was 3,400 versus 163 in the North Province—see Hackett, *WAPD*, 29 November 1899, p. 2621.
76 *WAPD*, 29 August 1899, p. 1037.
77 *WAPD*, 5 September 1899, p. 1097.
ports electors) and scheduled to hold fourteen each after the redistribution, the northern pastoral and southern agricultural constituencies were and would remain vastly over-represented after the redistribution. The northern electorates post-redistribution would hold six seats for 1,280 electors and the agricultural areas fourteen seats for 7,615 electors. Illingworth continued that mining representation would be further diluted by the continuance of plural voting and the proposed introduction of female suffrage—and foreshadowed that he would introduce amendments to abolish the former and prevent the latter. His closing words were a grudging acceptance of the Bill, larded with a threat:

… I shall certainly vote for the Bill, because it is much better than anything we have … but I think the Government must see that if this Bill be passed, there will be a cry for another Bill almost directly afterwards.

Illingworth’s threat was immediately matched by Alexander Forrest, who revived the bogey of northern separation if the north’s electoral representation was pared back in favour of blow-ins on mining fields. Vosper, who followed, promptly resumed the grievances of goldfields Members at the Bill’s perpetuating, and introducing new, ‘grievous anomalies’ of representation. So it went on with each Member debating the pros and cons of the redistribution as it affected his constituents, with some arguing for the Legislative Council’s electoral malapportionment to also be addressed. A majority, however, shared Illingworth’s view that the Bill was still an improvement, and it passed its second reading with the required absolute majority.

The committee stage, however, saw clause after clause contested. The first substantive challenge was to the Interpretation clause where Illingworth attempted to have the definition of ‘Person’ as an ‘individual of either sex’ (which would ensure women would hold the franchise on the same terms as men) replaced with ‘adult male’ to block the introduction of female suffrage. Forrest was in no mood for this question to be reopened, however, and the amendment went to an immediate division where it was negatived eighteen votes to two.

Forrest, however, did not have his way with the next amendment, proposed by Moran, which was to increase the number of seats in the Legislative Council from twenty-four to thirty, thereby enabling two three-Member Upper House provinces to be created—one

78 WAPD, 5 September 1899, pp. 1098–1099. It should be noted that Illingworth classified one of the new ‘metropolitan’ seats mentioned by Forrest as belonging to the ‘agricultural’ interest.
79 WAPD, 5 September 1899, p. 1099.
80 WAPD, 5 September 1899, p. 1102.
81 WAPD, 5 September 1899, p. 1108.
82 WAPD, 7 September 1899, p. 1174, and s. 3 of the Constitution Acts Amendment Act 1899.
going to the goldfields and the other to the metropolitan area. The motion was argued extensively and approved by a majority of one, notwithstanding Forrest’s protests that it was unnecessary and would increase the number of MLCs who would soon be drawing a salary at taxpayers’ expense. Forrest, however, did not have the same scruples about funding additional MLAs when he voted with the large majority who supported Lee Steere’s copycat amendment to increase the number of Assembly seats to fifty to enable the creation of a south-west mining electorate and reinstatement of the East Kimberley electorate. Forrest also voted with the majority in defeating amendments to lower the property qualification for Legislative Council householders to £10 and to abolish plural voting in both Houses.83

In line with usual practice, the schedule of new electorate boundaries was referred to a select committee, which recommended only minor changes. The Bill’s transit through the Assembly had been comparatively painless. Unfortunately, at the Bill’s third reading, Forrest indicated that a few small changes to electorate boundaries were required and the Bill would be recommitted to consider these and any final amendments. Opposition leader Leake promptly put on the Notice Paper an amendment to abolish plural voting for the Assembly.84 (Given the Council’s raison d’etre was to ensure ‘protection for the rights of property’, Leake’s amendment did not propose abolishing property votes for the Council.85)

Previous amendments to abolish plural voting, introduced by Illingworth, had not generated much debate and had been convincingly defeated. Leake, however, argued that as these amendments had been ‘sprung on the House, when few members were present’, he was entitled to have another attempt at abolishing the ‘pernicious practice’—a practice which, he suggested, probably enabled Alexander Forrest to register to vote in all forty-four Legislative Assembly electorates.86

The Premier, who took the line that it was not unreasonable for property owners to vote in every electorate in which they held property, was at his vintage time-is-not-yet-ripe best in opposing the motion—and delivered his stock response that the Government would like to see demand for this ‘fetish of one-man-one-vote’ intensify before jettisoning a system which had long existed in most of the Australian colonies, and which still obtained in

83 See WAPD, 12 September 1899, pp. 1225–1230, and 13 September 1899, pp. 1277–1278, for the debates on lowering the franchise and abolishing plural voting.
85 Kingsmill, WAPD, 3 October 1899, p. 1528.
86 WAPD, 3 October 1899, pp. 1522–1523.
Queensland, Tasmania and the mother country. Forrest then heard a succession of Members put on record their desire for the change, and who pointed to the equally compelling examples of the United States and (impending) Australian Commonwealth constitutions as ones proscribing plural voting. But to no avail. Government supporters, at a caucus meeting earlier that day, had received their instructions—or so Leake asserted, even correctly naming those Members who would be absent from the division because they could not bring themselves to support plural voting. The amendment was defeated twenty votes to fifteen.

On 10 October the Bill was set down for third reading. Premier Forrest, requiring an absolute majority and surveying a Chamber without his full cohort of supporters, pledged that if the Opposition forced a division and voted against it, the Bill would be re-introduced. (Meanwhile, according to the Opposition, a police officer had been despatched by the Government Whip to round up absent Government supporters.) Leake immediately rose and confirmed that he was opposed to the Bill while it retained plural voting, and that he desired the Bill’s further recommittal. Leake was followed by a number of other prominent Opposition Members who similarly repudiated ‘A Bill to consolidate the Forrest Ministry, and to perpetuate their misdeeds’, with Vosper slamming it as an ‘unfair, undemocratic, unjust’ Bill dedicated to preserving pocket boroughs for a ‘few cattle kings’, and James dismissing it as a ‘miserable farce’. The debate was one of the most impassioned the House had heard, but, ironically, in recording their protests, the Opposition provided time for Forrest’s missing supporters to be ‘hunted up’, enabling the third reading to be passed with the required majority.

The Bill then needed to run the gauntlet of the Council. After being introduced by the new Colonial Secretary, George Randell (who had ‘undergone a remarkable conversion to Forrest’s political objectives’, in Crowley’s words, and swapped to the Council), the Bill was denounced by northerner Donald McKay as a measure ‘pandering and truckling to a cackle, on whose altar the interest of the North is to be sacrificed’, while goldfields representative Alexander Matheson conversely, regarded the Bill’s preservation of scantily populated northern and wheatbelt electorates as a ‘ghastly mockery’. During the second...
reading debate most speakers expressed dislike for the Bill, cavilled over the proposed increases and boundaries, and indicated they would be voting to reject the Bill or raising amendments—particularly excising female suffrage.

On 14 November the Bill progressed to the committee stage where Samuel Haynes moved that ‘either’ sex be replaced by ‘the male’ sex in the Interpretation clause to block women’s enfranchisement.\(^93\) Considering, however, that the Council had recently resolved to endorse the principle, the opponents of female franchise were unlikely to win this one. Randell, also a Vice President of the Woman’s Franchise League, reassured waverers that enfranchising women ‘would be to the interests of conservatism, which the Legislative Council were always supposed to support’.\(^94\) The amendment was negatived ten votes to seven. The next amendment—to block any increase in the size of the Council—passed on the voices after spirited discussion, while subsequent amendments proposed by Matheson to halve the freehold property qualification for Council electors and abolish plural voting for Assembly elections were negatived without support. Similarly, an attempt to reduce the size of the Assembly failed. These amendments dealt with, discussion bogged down as to how the Council provinces should be re-jigged, given the House had voted to strike out the two new provinces featured in the Bill.

The Bill was recommitted on 29 November. Hackett immediately moved to increase the number of Council seats to the thirty originally proposed by the Bill. The stoush regarding the boundaries the week before had obviously also convinced other Members that, on ‘calm reflection’, the increase was necessary, and the amendment passed twelve votes to six.\(^95\) The Bill was thrashed out over three more sittings. Finally, on 12 December, an exasperated Randell successfully suspended Standing Orders to push the Bill through that night. Facing the third reading, Frederic Whitcombe made one final plea for the Members to throw out the Bill and defeat women’s suffrage—but minutes later the Bill passed without division. Over the next two days the Assembly tweaked one of the small tranche of amendments made by the Council and rubberstamped the rest. The Council, in turn, ratified the amendment to its amendment. On 14 December the Bill finished its passage through the Parliament.\(^96\) The rejoicing of WA’s suffragists can be imagined, even if it would not be until 1901 that women would vote in a state parliamentary election.

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\(^93\) WAPD, 14 November 1899, p. 2236.
\(^94\) WAPD, 14 November 1899, p. 2237.
\(^95\) Charles Dempster, WAPD, 29 November 1899, p. 2622.
\(^96\) Constitution Acts Amendment Act 1899 (63 Vict., No. 19).
Before anyone would vote in that election, however, the Parliament had to pass the colony’s Electoral Bill 1899 ‘to consolidate and amend the law relating to Parliamentary Elections’. The Electoral Bill was introduced on 15 August 1899. Forrest outlined that originally he had simply intended to amend the existing Electoral Act 1895 which, he reminded Members, practically mirrored Queensland’s electoral law. Forrest continued, however, that given WA’s electoral law had proved a ‘fruitful source of complaint’ and the 1895 Electoral Act had been subject to ‘wholesale’ condemnation, he:

thought that even if the existing law were improved, brought up to date, and made to suit the colony’s requirements, there would be found in the country plenty of persons who had been accustomed to abuse the Act, and would continue to do so; and I therefore … determined to bring in an altogether new Bill, based upon an Act which finds so much favour with many, and is very acceptable I believe to the people to whom it applies, namely, the Act [The Electoral Code 1896] of South Australia.

Most clauses in the Bill ‘adapted from and chiefly based upon the existing law’ of the ‘great democratic colony of South Australia’, however, simply re-enacted bread-and-butter provisions in WA’s 1895 Electoral Act and, as Forrest pointed out, in the Electoral Acts of the sister colonies. Similarly, many clauses simply modified existing electoral provisions—such as extending hours of polling by a worker-friendly two hours so they would extend from 9 am to 7 pm, or simplifying the section on offences and penalties and readjusting (generally upwards) a number of penalties. But there were, nonetheless, some new electoral reforms.

First, reflecting the change in the Constitution Acts Amendment Act, which had halved the residency period required in WA before electoral registration could be applied for, eligible would-be electors could henceforth submit an enrolment claim in person or by post after spending six months in WA. These claims would immediately be registered on the relevant electoral roll by the electoral registrar, who would thereafter run the appropriate checks, and such claimants would automatically be entitled to vote six months later. Given this radically different system of electoral registration, the quarterly revision courts in electoral districts would be replaced by an annual revision court at which only claims that had been objected to by the returning officer, electoral registrar or other parties would be considered, i.e. the revision courts would have nothing to do with putting people on the

97 Sir John Forrest, WAPD, 22 August 1899, p. 984. The Bill when enacted became the Electoral Act 1899 (63 Vict., No. 20).
98 WAPD, 22 August 1899, p. 984.
99 WAPD, 22 August 1899, p. 984. According to Simms, the South Australian Electoral Code 1896 ‘was used as a model for the Commonwealth Elections Bill as well as having been highly influential in the development of the electoral laws of most other colonies’, From the Hustings to Harbour Views, p. 69.
100 WAPD, 22 August 1899, pp. 984–985.
101 Section 33 of the Electoral Act 1899.
102 Sections 22 and 34–36 of the Electoral Act 1899.
Further assisting newcomers to enrol, registration claim forms henceforth could be witnessed by any adult, rather than the previously designated list of often hard-to-track-down JPs, wardens and so forth. To assist electors—particularly itinerant ones—stay enrolled, electors under the Bill would also be able to transfer to a different roll after only one month’s residence in their new electorate, excluding the period from the issue of a writ to polling day in that district or province (as opposed to only a ten-days-preceding-polling-day embargo in the South Australian Act), and those seeking registration for the first time could similarly transfer to another district roll after one month’s residence during their six-month waiting period.

While expedited registration and one-month transfers were the crux of the Bill, it also introduced other substantive reforms. The controversial numbering of ballot papers was to be abolished except for absent votes; candidates would no longer be able to nominate themselves but had to be nominated by two electors from the district or province—although nominees would be obliged to signify their assent in writing to the returning officer; and blind electors could finally receive assistance in casting their ballot.

As its title indicated, the Bill was a consolidating one, and it accordingly repealed the Election Petitions Act 1875 and incorporated all provisions relating to disputed returns within the proposed new Electoral Act where, logically, they belonged. Additionally, some changes to the election petition process were made in line with the South Australian statute, including again channelling election petitions to the Supreme Court via the Parliament and dropping the mandatory security for costs from £500 to £50.

The Bill was a considerable democratic advance on the existing Act, although Forrest had omitted some progressive features from the South Australian Act—in which there was no waiting time for district transfers, no nomination deposit for candidates (and a stringent cap on candidates’ election expenditure), no prohibition on residency-only electors exercising absent votes, no weekday elections (all were held on Saturday) and no plural voting. On the positive side, however, Forrest did not follow South Australian provisions which restricted electors to voting at a stipulated polling place within their electorate; nor did he copy the South Australian (and NSW) provision whereby every presiding officer counted the ballots cast at his polling booth because, in scantily populated areas in WA, ‘the secrecy of the

103 See ss. 47–73 of the Electoral Act 1899 for the provisions relating to revision courts.
104 Section 33 of the Electoral Act 1899.
105 Sections 37–40 of the Electoral Act 1899.
106 Sections 80–81 and 104 (4) of the Electoral Act 1899.
107 Sections 142–156 of the Electoral Act 1899.
108 Sections 146–147 of the Electoral Act 1899.
ballot would be impaired’ with possible detrimental effects on employees at small mine sites or timber yards.\(^\text{109}\) Perhaps most impressively, Forrest did not imitate South Australia in allowing four MPs, in tandem with a single Supreme Court justice, to constitute the Court of Disputed Returns, astutely commenting: ‘the more members of Parliament keep out of the settlement of disputed returns, the better for all concerned’.\(^\text{110}\)

The Bill was warmly hailed by the Members, particularly those representing the goldfields who had long deprecated the hurdles in the way of peripatetic miners getting onto electoral rolls or transferring to new ones in the wake of a rush. Accordingly, when the Bill was considered in committee, large swaths were affirmed \textit{en bloc} with few changes proposed. The principal unsuccessful amendment was that plural voting be abolished. It failed because plural voting was enshrined in the Constitution Act and could not be abolished through an Electoral Act. The principal successful amendments were to retain the existing mode of marking ballot papers by striking out the names of those who were not being voted for, rather than adopting the South Australian system of putting a cross in the box opposite the name of the preferred candidate (which had been WA’s mode of voting until 1889) and to make two Supreme Court justices rather than one comprise the new Court of Disputed Returns with a new clause providing for the complained of Member to be deemed duly elected or returned if the two justices differed.

The Bill was passed on 10 October and forwarded to the Council where it was lauded as a ‘very liberal measure’.\(^\text{111}\) The Council dealt with the Bill in one short sitting at which only a couple of minor verbal amendments were passed.\(^\text{112}\) These were ratified by the Assembly on 14 December. Forrest’s recent verdict that, ‘This Legislature had gone ahead pretty quickly in the matter of advanced legislation, and we were nearly in line with the most democratic colony in Australasia’ was not amiss.\(^\text{113}\) More advanced legislation would soon follow.

\textit{Toppling ‘the appanage, the domain, the natural heritage of the rich …’}

The following session, which opened on 17 May 1900, was a special session convened to railroad through a Bill to provide WA’s electors with a last-ditch ‘opportunity … of deciding by their vote whether Western Australia should enter the Federal Union as an

\(^{109}\) Sir John Forrest, \textit{WAPD}, 22 August 1899, p. 989. Simms has noted that critics in NSW claimed the counting of ballots at small polling places made ‘a mockery of the secret ballot’, \textit{From the Hustings to Harbour Views}, p. 53.

\(^{110}\) \textit{WAPD}, 22 August 1899, p. 989.

\(^{111}\) Randell, \textit{WAPD}, 18 October 1899, p. 1738.

\(^{112}\) See \textit{WAPD}, 14 November 1899, pp. 2245–2250, for the committee stage debate.

\(^{113}\) \textit{WAPD}, 12 September 1899, p. 1227.
original State”—and the mechanism to provide for the ‘enactment’ of the Commonwealth Constitution, if the referendum was successful.\textsuperscript{114} Given the urgency of this measure—the Constitution Bill, now approved by the sister colonies, had been introduced into the House of Commons four days earlier and, therefore, the Australian Federation was on track to come into being without WA on 1 January 1901—His Excellency the Administrator, Sir Alexander Onslow, declared that other business would be held over.

Notwithstanding this embargo, the debates on the Federation referendum were punctuated by questions and urgency motions relating to failings in WA’s electoral system and electoral administration. These queries and motions ranged from illegal voting at the latest Legislative Council elections; lack of convenient access to electoral rolls (many of which were only available in manuscript at a single, remote location); destruction of completed enrolment claim forms by unscrupulous election agents; ill-worded Government advertisements (mis)informing potential electors as to where they could obtain enrolment forms; difficulties in registration due to drafting ambiguities in the brand-new Electoral Act; severe understaffing of electoral registrars’ offices; unhelpful and overly punctilious electoral officials ‘seizing every little mistake that might be in the [enrolment] paper to disqualify the applicant’; and the near impossibility of locating the ‘dingy little room’ where the Perth electoral registrar was located ‘in the most out-of-the-way corner in Perth, almost … there being no accommodation for the public, and no accommodation for the work’.\textsuperscript{115} These deficiencies underscored the critical need for the establishment of an appropriately funded and staffed electoral department to manage WA’s rapidly expanding electoral rolls.

The session closed on 14 June, the day after Royal Assent had been granted to the \textit{Australasian Federation Enabling Act (Western Australia) 1900}. Section 3 of the Act provided for the Federation referendum to take place on 31 July and Burt, the ‘Officer in charge of Electoral matters generally’, was commissioned under s. 4 (1) of the Act to be the returning officer to conduct the poll under the provisions of the Act and, with the assistance of WA’s existing returning officers appointed under the \textit{Electoral Act 1899}, he conducted the poll as directed by s. 5 of the Enabling Act—basically, in accordance with WA’s existing electoral law.\textsuperscript{116}

\textsuperscript{114} First quotation from His Excellency the Administrator, Sir Alexander Onslow, \textit{WAPD}, 17 May 1900, p. 1; second quotation from the Preamble to the \textit{Australasian Federation Enabling Act (Western Australia) 1900} (63 Vict., No. 55).


\textsuperscript{116} Section 5 directed: ‘Except as by this Act otherwise prescribed, the laws in force for the time being relating to the conduct of elections for the Assembly, the proceedings before and at and subsequent to such elections, electoral offences, and all incidental matters shall, so far as the same are applicable, apply, \textit{mutatis mutandis}, to the poll to be
The referendum conclusively endorsed Federation (69% ‘Yes’; 31% ‘No’).\(^{117}\) Possibly, the fact that the referendum succeeded and the Members realised WA now had even more reason to align her Constitution with those of the soon-to-be sister states, one of the first issues raised in the Assembly in the ensuing session related to Premier Forrest’s 1899 pledge that a referendum on payment of MPs would be held in tandem with the next election, due the following year. Forrest confirmed this was still the Government’s intention, and reiterated his view that legislation was unnecessary to provide for the referendum. Gregory, however, doubted a referendum could occur without a statutory basis, and was also troubled that if MP payment was not legislated for in the current session, Members elected the following year would be similarly squeamish about voting themselves payment and so it would go on.\(^{118}\) Accordingly, he moved that legislation be immediately introduced to provide for the payment of Members of future Parliaments.\(^{119}\)

The motion was seconded by new Opposition leader, Illingworth, who argued legislation was preferable to a referendum because a plebiscite left too many questions unasked and unanswered—including exactly how much would be paid—and because he believed parliamentarians ought to take responsibility for decisions and not hide behind referenda.\(^{120}\) Further, given the colonists at the recent Federation referendum had approved a Bill which included payment for Federal Members, Illingworth reasoned that MP payment has been ‘practically sanctioned by the people’ anyhow.\(^{121}\) Forrest, however, was unpersuaded and argued forcibly that it would be improper for the Members—most of whom, he stressed, hoped to be re-elected and were, therefore, hardly disinterested—to introduce payment for future Members without the electorate’s imprimatur.

Moran took a different line. He called for a Bill to introduce payment from the commencement of the following year, for current Members:

> Passing legislation for a future Parliament—what rot! … Payment of members means the payment of members of Parliament; and we can only look as far as our Parliament. We believe in the principle, and suppose we carry out that principle, then we should do it in a straightforward manner and pay ourselves … The labourer is worthy of his hire: draw up a scale and pass the Bill.\(^{122}\)

\(^{117}\) The ‘Yes’ vote was 69.47% versus 30.53%—see David Black (ed.), *The Western Australian Parliamentary Handbook*, 23rd edn, Parliament of Western Australia, Perth, 2014, p. 394.

\(^{118}\) The Australasian Federation Enabling Act, for example, had mandated how the poll was to be conducted and specifically provided that polling expenses were to be defrayed from consolidated revenue.

\(^{119}\) *WAPD*, 19 September 1900, p. 544.

\(^{120}\) *WAPD*, 20 September 1900, p. 576.

\(^{121}\) *WAPD*, 20 September 1900, p. 577.

\(^{122}\) *WAPD*, 20 September 1900, p. 584.
Debate adjourned on this note, but five days later, in the Council, Wesley Maley moved that MPs should be remunerated for their services and that the requisite legislation should be introduced in the existing session.\textsuperscript{123} Ironically, the Council, by design the more conservative Chamber, was more committed to MP payment than the Assembly—a situation explained by its large intake of recently elected Members pledged to support the principle.\textsuperscript{124} Also noteworthy was the uniform rejection of a \textit{referendum}, with speakers arguing a referendum was unnecessary given the widespread public support for the payment, or because recourse to plebiscites was a ‘new and vicious policy … [in] the administration of affairs’.\textsuperscript{125} After comparatively short debate, without dissenting speeches, the motion passed.\textsuperscript{126}

Notwithstanding the overwhelming dismissal by both Houses of a referendum, two days after the Council vote, Premier Forrest introduced and oversaw the first reading of a swiftly drafted Payment of Members Bill to provide for a referendum.\textsuperscript{127} If Forrest thought that a Referendum Bill would resolve the issue, however, he was radically misreading the mood of the Members. Indeed, when debate on Gregory’s motion for immediate legislation for MP payment resumed a fortnight later in the Assembly, the first speaker moved that the motion be rephrased so that payment would be secured for ‘Parliament’ in lieu of the original ‘future Parliaments’.\textsuperscript{128} This amendment was supported, amongst others, by the hitherto stridently anti-payment Alexander Forrest who affirmed that a referendum was pointless because, ‘from one end of the country to the other it is the express wish of the electors that payment should take place at as early a date as possible’.\textsuperscript{129} Illingworth delivered the \textit{coup de grace}, however, arguing that a referendum in conjunction with the next election was not only superfluous, but beset by the insurmountable difficulty of voters in uncontested seats being denied the opportunity of voting in the plebiscite.\textsuperscript{130} Finally, a vote was taken on the amendment. It passed on the voices; the amended motion in favour of

\textsuperscript{123} \textit{WAPD, 25 September 1900}, p. 587.
\textsuperscript{124} Fourteen of the thirty members of the Council—including the six additional members granted under the \textit{Constitution Acts Amendment Act 1899}—were elected in 1900, whereas almost all the Legislative Assembly members hailed from the 1897 general election when the issue had not been so prominent.
\textsuperscript{125} Richard Haynes, \textit{WAPD, 25 September 1900}, p. 590.
\textsuperscript{126} The motion was soon denounced as ‘irregular and unconstitutional’ by Premier Forrest, because it recommended an appropriation of public funds—the special preserve of the Lower House, \textit{WAPD}, 7 November 1900, p. 1523.
\textsuperscript{127} The Bill was entitled, ‘An Act to provide for the submission of the question of Payment of Members of Parliament to the electors at the next general election’ and was placed on the Notice Paper the day previously—see Notices and Orders of the Day, 26 September 1900, \textit{Votes and Proceedings of the Legislative Assembly, Sixth Session, 1900}, p. 104. As a number of Members had outlined earlier, there had been no mention of a referendum in the Administrator’s speech at the opening of the session, and only five days earlier Forrest had confirmed in the Assembly that he had not discussed with his colleagues the bringing in of a Referendum Bill—see \textit{WAPD, 20 September 1900}, p. 580.
\textsuperscript{128} Samuel Mitchell, \textit{WAPD, 10 October 1900}, p. 958.
\textsuperscript{129} \textit{WAPD, 10 October 1900}, p. 962.
\textsuperscript{130} \textit{WAPD, 17 October 1900}, p. 1103. This question of uncontested electorates had first been raised in the Council by John Drew—see \textit{WAPD, 25 September 1900}, p. 589. In the 1897 general election, eighteen out of forty-four electorates had been uncontested.
immediate payment for Members then passed nineteen votes to five. Forrest advised that he would immediately prepare a Bill.

On 6 November a Message from the Administrator was read in the Assembly. It recommended an appropriation for the purpose of the Payment of Members Bill—which was introduced forthwith by Forrest. The second reading took place on the following day and although the Bill was, as Forrest noted, very short, containing only four clauses, it was also, as Forrest conceded, a ‘compromise’ Bill representing the majority, but far from unanimous, view of Government supporters, with Forrest admitting he was still opposed to the principle in the abstract.\textsuperscript{131}

Debate was predictably intense. The first contentious issue related to the ‘honorarium’ (Forrest’s euphemism) which the Bill proposed paying Members.\textsuperscript{132} Under cl. 2, Assembly Members would receive £200 per annum (in equal monthly instalments) and Council Members half this amount.\textsuperscript{133} In justifying the differing remuneration, Forrest stated it would be more in keeping with the MLCs’ status as ‘the guardians of vested interests’ if they spurned payment, but if they \textit{must} have payment it should be less than Assembly Members because:

\begin{quote}
… the duties of a member of the Legislative Council are not so arduous and not so constant as those of members of this House. Hon. members of another place do not sit nearly so long as a rule … and all the financial affairs and all the troublesome matters connected with the government of the colony are debated here … Moreover, the expenses in connection with electioneering and the obtaining of seats are, as a rule, much greater and the work of electioneering much more troublesome to members of this House than to those of another place … they are elected by a limited section, and have a tenure of office twice as long as ours.\textsuperscript{134}
\end{quote}

Further, Forrest cited Australasian precedent in support of the disparity: NSW, Queensland and Victoria provided \textit{no} payment to Upper House Members (NSW would not do so until 1948) while New Zealand paid Members of the Lower House almost double the amount it paid to Upper House Members. Only South Australia and Tasmania gave the same amount to both Houses. In justifying the modest amount to be paid to either House, Forrest also cited Australian precedent: NSW, Queensland and Victoria paid their Lower House Members £300 per year, but Tasmania paid only £100—therefore, Forrest argued, the proposed £200 for WA’s Assembly Members represented the mean and was the same as

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\textsuperscript{131} Forrest’s discussion and quotation are from, \textit{WAPD}, 7 November 1900, pp. 1521–1522.  \\
\textsuperscript{132} \textit{WAPD}, 7 November 1900, p. 1521.  \\
\textsuperscript{133} Ministers, already in receipt of an official salary from consolidated revenue, were excluded from the payment by cl. 4.  \\
\textsuperscript{134} \textit{WAPD}, 7 November 1900, pp. 1522 and 1524.
\end{flushleft}
paid by South Australia. The final contentious aspect of the Bill was that cl. 2 directed payment was to apply from the first day of the present session of Parliament—i.e. payment would be retrospective. Somewhat anomalously, notwithstanding his continuing opposition to MP payment, Forrest was not opposed to the retrospectivity of payments. He reasoned that: ‘if this honorarium is to be paid, I say by all means let those now members of this Chamber, many of whom have grown almost grey in the service of this colony, enjoy any little advantage which may accrue’.

Few were pleased with the compromise Bill, but most were reluctant to see it scuppered. Some Members were disappointed with the low honorarium, contending that as the ‘average miner’ earned more than £200 a year, the Bill would not serve its purpose of opening the Parliament to working class candidates; others were displeased with the even lower payment for the Council, fearing this amount would bar working class candidates from contesting Upper House seats and possibly lead to the Bill’s rejection by the Council. Other Members disapproved of any payment to MLCs, a view captured by Frederick Moorehead’s rhetorical question: ‘What is the necessity for a second Chamber if you make it democratic?’ A number of Members, although glad to support the principle, still held that it was a breach of propriety to make the payment retrospective. By the day’s end, however, the Bill, as drafted, was third read and forwarded to the Council.

Where, of course, the Members were incensed at the ‘insult’ (almost everyone’s expression) at the Bill proposing a lesser payment to MLCs. The Bill was returned with a ‘suggestion’ (the Bill was technically a money Bill and therefore could not be amended by the Council) that the Legislative Council payment be raised to match that of the Assembly. The Council’s other suggestion was that the payments not be retrospective, but come into effect from the next session of Parliament.

The Assembly dealt with the suggestions the following day. Forrest and Illingworth, in rare accord, disapproved the Council’s request for amendments to ‘what might be termed a money Bill exclusively’. While Forrest was prepared, however, to accede to the Council’s request that its Members’ honorarium be increased to £200, he was adamantly

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135 WAPD, 7 November 1900, p. 1525.
136 WAPD, 7 November 1900, p. 1526.
137 Illingworth, WAPD, 7 November 1900, p. 1527.
138 WAPD, 7 November 1900, p. 1530.
139 During the committee stage an attempt by James to amend cl. 2 to make payments commence from the ‘next’, rather than ‘present’, Parliament was defeated on the voices, WAPD, 7 November 1900, p. 1544.
140 The second reading debate in the Council took place on 13 November 1900—see WAPD, pp. 1587–1612.
141 The ‘suggestions’ made during the committee stage are at pp. 1608–1612.
142 Sir John Forrest, WAPD, 14 November 1900, p. 1667.
opposed to amending the commencement date, harrumphing it was inappropriate for the Council to insist Assembly Members not receive payment until after the next election, when all Council Members would receive theirs before facing re-election. The Assembly Members concurred and only the suggestion regarding equalising payment was accepted.

The Council received the Message from the Assembly outlining its decision on the same day. In committee of the whole, Randell moved the Councillors not insist on their rejected amendment—especially given the Assembly had ‘met very readily, thoroughly, and handsomely’ the levelling-up payment proposal. All Members who spoke deplored the retrospectivity clause, but as the prevailing view was that the Bill would not be accepted by the Assembly without this clause, and that by insisting on the amendment the Council could be blamed for ‘wrecking’ the Bill, the Councillors by a margin of seventeen votes to four passed the motion ‘on compulsion’ and ‘under protest’. The Bill was third read and, as the Payment of Members Act 1900, received the Royal Assent on 5 December—the final sitting day for the year.

As usual with prorogation day, a job lot of Bills received Royal Assent. One worth noting was the Federal House of Representatives Western Australian Electorates Act 1900 which provided for the election of WA’s Members to the House of Representatives in the Commonwealth Parliament. The Act, as Forrest outlined, was extremely short because ‘the machinery for the election is the same as that which we have in force’ for the Assembly, and, ‘until the Commonwealth Parliament otherwise provides, that will be the law’. The one difference was that s. 5 of the Act stipulated that ‘no elector shall vote more than once at the election of representatives’, i.e. plural voting was proscribed. The crux of the Act was its schedule listing the five Federal electoral divisions and, as the boundaries had been drawn as closely as possible on a population basis, using the latest voting figures from the Federation referendum, the Bill was passed by both Houses after only minor amendment.

With procedures for the conduct of the first Commonwealth poll in place and the first state election only months away, 1901 was shaping up as a big election year as well as a profoundly significant year constitutionally with the inauguration of Federation. It would

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143 WAPD, 14 November 1900, p. 1659.
144 Quotations from Matthew Moss, Frederic Whitcombe and Adam Jameson, WAPD, 14 November 1900, p. 1661.
145 Payment of Members Act 1900 (64 Vict., No. 32).
146 Federal House of Representatives Western Australian Electorates Act 1900 (64 Vict., No. 6). The election of WA’s six senators was provided for by s. 7 of the Commonwealth Constitution (63 & 64 Vict., c. 12), which mandated that they were to be voted for ‘as one electorate’.
147 WAPD, 13 September 1900, p. 408. The Commonwealth Parliament once elected and constituted provided otherwise with the passing of the Commonwealth Electoral Act 1902.
also be a critical year with respect to civil service reform—including electoral administration.

**Public Service Shakeout**

WA’s public service prior to the gold rushes was very small (fewer than 750 officers in 1891). With the accession to responsible government all patronage and the power of dismissal devolved onto the Western Australian Government, and public service reform became a leading topic in political discourse—concern sharpened by tales of flagrant and often scandalous patronage exercised by Ministers in the sister colonies following self-government. That many Western Australians feared that in their underpopulated colony, unfettered patronage by Ministers would make the civil service even more of a closed shop for the largely intermarried gentry, was confirmed by the Public Service Commissioner, Martin Jull, in 1906:

> The Commissioner is told that many of the brighter boys in our State schools have not in the past been permitted to enter the Service, as many parents have been under the impression that, however clever their lads may be, without influence advancement was impossible.

Indeed, at the 1890 general election, which immediately preceded the inauguration of self-government, candidates were vigorously questioned regarding their views on civil service reform, and calls for public service reform continued to feature in the press and election campaigns.

In 1894 the Forrest Government appointed a Royal Commission (notoriously aborted two years later before it had completed its findings) to inquire into the service. With respect to the Commission’s investigation of the Colonial Secretary’s Office, which had responsibility for the conduct of elections, no scandals were found to attach to the Office—although, as Alexander Forrest drily observed in the Assembly: ‘Whoever heard of the

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149 See, for example, Hirst’s account of the abuse of patronage in NSW in his chapter ‘Disgust’, from *The Strange Birth of Colonial Democracy*, pp. 173–193. Hollier outlined in his research, that from WA’s foundation the local public service had been subjected to an almost endless stream of reviews, boards and committees of inquiry, Royal Commissions, re-classifications and re-organisations—although, he added, the recommendations of these inquiries were seldom implemented and of the reform which did take place, much was of a ‘piecemeal or transitory’ nature—Hollier, ‘Development and Reform’, pp. 70 and 95.


151 See the following question from a political meeting during the 1890 general election campaign: ‘I simply ask the candidate through the Chairman, whether you [candidate Henry Saunders] will be in favour of a Civil Service commission with a view to bringing forth an Act to seek and get out the six families. (Loud laughter)’—*West Australian*, 25 November 1890. At the hustings a number of other high-profile candidates, including Canning, Marmion, Jameson, Haynes and Symon, placed on the record their support for public service reform.

Colonial Secretary’s department being in disrepute? They only employ a small number of officers, at a small salary'. 153

Nonetheless, the administration of electoral registration and conduct of elections in WA was frequently censured, and criticism intensified as the decade proceeded. As with most other government agencies, the criticism seldom related to disrepute, but to the inability of officers to keep pace with the avalanche of work following the gold rushes—a point underscored by Battye:

> Criticism of departmental administration was not confined to the goldfields. The whole community was suffering from the ineptitude displayed, and dissatisfaction was widespread. There was not a Government department which had to do with communication, transport, or mercantile affairs generally that was not overwhelmed by the rush of business. 154

With respect to administration of parliamentary elections, improvements were effected gradually. As outlined previously, the Under Secretary of the Colonial Secretary’s Office, Octavius Burt, was officially appointed ‘Officer in charge of Electoral matters generally’ in 1897, with an additional salary of £100, although he had effectively been the Officer in charge of such matters since his appointment as Under Secretary in 1891. The separate title and salary recognised the importance and increasing workload attached to the role and were perhaps considered particularly appropriate after the appointment in February 1897 of the first Inspector of the Parliamentary Electoral Rolls, Richard Daly.

By 1900 the Blue Book referred to a standalone Electoral Office within the Department of the Colonial Secretary with three clerical staff (appointed between December 1899 and July 1900). 155 In the following year Burt and Daly featured in the Blue Book under the heading Electoral Department—still within the Colonial Secretary’s Department—with Burt designated Chief Electoral Officer. 156 In the 1902 Blue Book, the three Electoral Office clerks were officially listed with Burt and Daly under the new Electoral Department banner. 157 Status as a standalone department, with its own dedicated team, and a head who

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153 WAPD, 19 November 1894, p. 1493.
154 Battye, Western Australia, p. 426.
155 Blue Book, 1900, p. 82.
156 Blue Book, 1901, p. 58.
157 Blue Book, 1902, p. 22. However, it should be noted that while the new ‘Electoral Department’ was a ‘Department’ under the terms of ss. 8 and 10 of the Public Service Act 1900 (64 Vict., No. 21) and officially regarded as a ‘Department’ (viz. the references to the ‘Electoral Department’ in the Seventh Progress Report of the 1903 Royal Commission into the Western Australian public service), it was essentially a sub-department and would not formally assume the full status of a ‘separate department … for all purposes including the purposes of the Public Service Act, 1904–1956’ until 1 August 1959. See Western Australia, Royal Commission on the Public Service of Western Australia, Seventh Progress Report, Government Printer, Perth, 1903, p. 7. Quotation from the Government Gazette, 31 July 1959. Information relating to the State Electoral Office moving to separate departmental status can be found in SROWA, 1673/183/59.
would be statutorily provided for in the colony’s next Electoral Act (to be passed in 1904) had put electoral administration on a sounder and more recognised basis for the new century.¹⁵⁸

1901

In 1901 Burt resigned as Under Secretary in the Colonial Secretary’s Department, but retained his role as WA’s Chief Electoral Officer, and on 18 February 1901 he was also appointed Returning Officer for the state of Western Australia to conduct WA’s first Senate elections for the Commonwealth Parliament.¹⁵⁹ This latter appointment was necessary because there was not as yet a Commonwealth electoral agency in existence to oversee Commonwealth elections, so each state was required to assume responsibility for their first Federal election. In a similar fashion, WA’s House of Representatives elections were conducted by state returning officers appointed by Administrator Onslow, under the aegis, as was by now customary, of the Colonial Secretary’s Office.¹⁶⁰

Until the Commonwealth Parliament passed the Commonwealth Franchise Act 1902 which established a uniform franchise for Commonwealth elections, ss. 8 and 30 of the Commonwealth Constitution prescribed that each state was to conduct the first Federal poll according to the franchise applicable to its ‘more numerous House’, although with no plural voting, and, further, according to s. 41:

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

This provision would enable the enfranchised women of WA and South Australia to vote. In accordance with ss. 12 and 32 of the Commonwealth Constitution, the writ for the Senate election was issued in WA by His Excellency the Administrator on 18 February 1901.¹⁶¹ On the same day, the writs for the House of Representatives election were issued by the inaugural Governor-General, Lord Hopetoun. These writs specified that WA’s nominations

¹⁵⁸ See the Electoral Act 1904 (3 Edw. VII, No. 20) which provided in s. 5 ‘There shall be a Chief Electoral Officer who shall, under the Minister, be responsible for the execution of this Act’ and in s. 6 that ‘There shall be an Inspector of Parliamentary Rolls. The same person may be appointed Chief Electoral Officer and Inspector of Parliamentary Rolls’.
¹⁵⁹ See the Government Gazette, 19 February 1901, for public notification of Burt’s appointment.
¹⁶⁰ The Government Gazette, 19 February 1901, includes all the proclamations, appointments and notices regarding the House of Representatives poll. With the passing of the Commonwealth Electoral Act 1902, electoral legislation for Federal elections was enacted and provision was made for a Chief Electoral Officer for the Commonwealth as well as for a Commonwealth Electoral Officer for each state and a Divisional Returning Officer for each electoral division.
¹⁶¹ A copy of the Senate writ was printed in an ‘Extraordinary’ edition of the Government Gazette, 19 February 1901.
would close on 8 March and polling day would be 29 March.\textsuperscript{162} Compounding the electoral excitement, on 15 March, Burt gazetted the dates for WA’s first state general election, scheduling a whole-of-state nomination date of 2 April and a state-wide poll on 24 April.\textsuperscript{163} Premier Forrest did not recontest his Assembly seat. He chose instead to have a tilt at entering the Commonwealth Parliament via the Federal electorate of Swan.\textsuperscript{164} Swan was the only seat to see an uncontested election in the WA poll, and he was duly elected. As Forrest retired only four days before the issue of the Commonwealth election writs, he had been Premier, as the \textit{Western Australian Parliamentary Handbook} advises, for ten years, one month and sixteen days.\textsuperscript{165}

The tenure of WA’s premiers in the ensuing decade would not be so lengthy. George Throssell, who replaced Forrest, saw the Ministerialists lose the 1901 state poll—not an unexpected result given the democratising impact of manhood suffrage, MP payment and the Forrest Government’s long incumbency.\textsuperscript{166} Throssell resigned the premiership on 27 May and his successor, George Leake, held office from 27 May until 21 November 1901. A third Premier, Alfred Morgans, held office from this date until 23 December 1901, before being replaced by Leake who died in office six months later.\textsuperscript{167} Another six premiers were sworn in between 1902 and 1911.

Western Australians in their new state, in the new Federation, witnessing a rapid turnover of ministries running a recently instituted form of government, were undoubtedly acutely conscious of change. Whatever their views regarding Premier Forrest, he had, as he sturdily declared in one of his last parliamentary speeches, left WA in good shape to enable its ‘self-reliant and industrious people to work out their material and political advancement’.\textsuperscript{168}

With respect to political advancement, WA’s constitutional and electoral systems were by Federation sufficiently close to mirroring the democratic laboratory models of the sister

\textsuperscript{162} Because each state was conducting its own poll, the electoral timetable dates varied by more than three weeks for the issue of the writs and close of nominations, with some states issuing the writ and closing nominations on different days for their Senate and House of Representatives elections. Election day, however, was held across Australia on either Friday 29 or Saturday 30 March. See Election Dates (1901 to Present) – Senate, from the Australian Electoral Commission: \url{http://www.aec.gov.au/Elections/Australian_Electoral_History/senate_date.htm} and Election Dates (1901 to Present) – House of Representatives, from the Australian Electoral Commission: \url{http://www.aec.gov.au/Elections/Australian_Electoral_History/hor_dates.htm} (viewed 25 October 2015).

\textsuperscript{163} For notice of the dissolution of the Assembly and gazettal of electoral dates see the \textit{Government Gazette}, 15 March 1901.

\textsuperscript{164} Forrest announced his intention of retiring, or being ‘relieved for a time, at any rate, of the incessant labour connected with the duties of Premier of this great colony’ on 9 October 1900—\textit{WAPD}, 9 October 1900, p. 919.

\textsuperscript{165} Forrest resigned on 14 February 1901—see Black, \textit{The Western Australian Parliamentary Handbook}, p. 260.


\textsuperscript{167} Black, \textit{The Western Australian Parliamentary Handbook}, p. 260.

\textsuperscript{168} \textit{WAPD}, 9 October 1900, p. 920.
states to satisfy liberals such as James who had worked so diligently to bring WA ‘into line
with the democratic feeling of Australia’.169 As Forrest summed it up in 1899: ‘In reading
the Electoral Acts of all the colonies, it will be found that the law is practically the same
throughout Australasia’.170 Perhaps more significantly, as underlined by Crawford, by
Federation all the Australian colonies were not only ‘fundamentally alike in their social and
political structure’, but were also alike in ‘their attachment to the assumptions of a
democratic, egalitarian society’.171

That WA had managed to bring about such democratic laboratory reform ‘in the space of
eight or ten years which in other parts of Australia took 60 years to accomplish’, and did so
without the unstable administrations, paralysing legislative deadlocks, financial scandals
and jobbery experienced by the sister colonies suggests that WA’s pragmatic and
circumspect approach to liberal electoral reform, which eschewed ‘disorderly democracy’,
had been a successful model.172 Further, Macintyre’s purported ‘delinquent laggard’, more
so than any of the sister states, would continue the democratic laboratory firsts tradition into
the twentieth and twenty-first centuries—electing the first woman parliamentarian in
Australia and the first senator to the Commonwealth Parliament; producing Australia’s first
woman Cabinet Minister and first woman Premier; electing the first Indigenous woman
MP; and, by a significant margin, voting more frequently in support of constitutional and
electoral change in Commonwealth referenda than any other state.173 Perhaps, when reform
has been managed well, it could be seen to embed a tradition in which citizens feel
confident in taking further progressive steps.

169 James, WAPD, 24 September 1895, p. 1112.
170 WAPD, 22 August 1899, p. 984.
171 Crawford, Australia, p. 129.
173 See Australian Electoral Commission, Referendum Results and Dates, viewed 25 October 2015
Conclusion

Reform and Stability

In 1864 William Westgarth lauded the Australian colonies for representing ‘a sort of apotheosis of progress’. 1 The extent to which colonial Australia’s democratic laboratory political landscape was progressive is nicely captured in a witticism by Dilke from around the same time:

‘What is a Colonial Conservative?’ is a question that used to be daily put to a Victorian friend of mine when he was in London. His answer, he told me, was always, ‘A statesman who has got four of the “points” of the People’s Charter, and wants to conserve them’ … 2

The Australian colonies, however, went considerably further than simply implementing the Chartist programme which they had inherited from Britain. As Simms has underlined, their political histories are ‘rich with experimentation’, particularly with respect to electoral provisions. 3 The Australian colonies’ advanced polities and rich experimentation can be attributed in large part to the nineteenth-century liberal zeitgeist, described by Disraeli as ‘these revolutionary and levelling times’—an epithet particularly applicable to the frontier environment of colonial Australia. 4 But also, in part, to the British Parliament enacting the Australian Colonies Government Act which, as McNaughtan has observed, gifted the Australian colonies almost ‘unlimited scope in deciding the form of the new colonial Parliaments’ and, hence, their electoral institutions and provisions. 5

The obverse of the Australian colonies’ impressive history of implementing advanced and innovative liberal reform, is that there were, inevitably, missteps and excesses as political novices engaged with radical provisions with few models for reference. 6 The third Earl Grey, although a supporter of electoral reform, expressed dismay about the ‘utterly unbalanced democracy’ often on display in mid-nineteenth century Australia, and confided to the Governor of Tasmania, Sir William Denison, his belief that ‘how much more

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2 Dilke, Greater Britain: Charles Dilke Visits Her New Lands, p. 109. A similar joke was recounted by Sir Charles Gavan Duffy: ‘an Australian Conservative is a man who believes in only four points of the People’s Charter’, Duffy, Payment of Members, pp. 480–481.
3 Simms, From the Hustings to Harbour Views, p. 1.
6 William Stawell, a member of the parliamentary committee which drafted the Victorian Constitution for self-government, lamented that ‘The Committee were comparatively groping in the dark, they had nothing to guide them’, quoted in Wright, A Blended House, pp. 61–62.
enduring are those forms of government which are the gradual results of successive improvements dictated by circumstances and experience!7

Contrary to characterisations in some historical accounts that WA was a delinquent laggard and ‘stagnant, tame, and torpid’, Western Australians from the foundation of their colony exhibited genuine interest in acquiring the franchise and participating in the democratic advances fostered by the liberal spirit of the times. This should not be surprising. ‘No ideas have been more important to Australia’s political development … than Liberalism and liberal values’, as A.A. Staley and J.R. Nethercote have emphasised.8 Indeed, as numerous historians have noted, all sides of politics in colonial Australia endorsed liberal values, with the principal difference being the pace of implementation and the means adopted.

That Western Australians from the outset should evince an attachment to liberal ideas and values made sense. The colony’s first settlers were largely the same well-educated and rights-aware cohort enfranchised by the First Reform Act in England only three years after the colony’s foundation. (A cohort the second Earl Grey depicted as ‘activated by an intense and almost unanimous feeling in favour of the measure of reform’.9) Further, the rhetoric of the British Empire constantly reminded colonists that, as emissaries of the metropolis, they transmitted to the colonies the ‘imprescriptible rights of Englishmen’.10 The Secretary of State, Lord Goderich, re-affirmed this Imperial aspiration in 1832:

the firmest bond of union between the parent state and its Dependencies, will be found in maintaining a general harmony between the respective Institutions, and it is becoming the British name, thus to transfer to distant regions the greatest possible amount both of the spirit of civil liberty and of the forms of Social Order, to which Great Britain is chiefly indebted for the rank she holds among civilized nations.11

If WA had not seen immigration collapse, its population growth stagnate, and its economy falter so soon after settlement, and if it had not introduced transportation just as it was being discontinued on the eastern seaboard, then undoubtedly the colony would have qualified along with the sister colonies in the 1850s for British institutions—in particular, an elected and responsible legislature. Instead, Western Australians, living in a colony dismissed, in Rusden’s words, as ‘wide, waterless, and poor in this world’s goods’ had to wait another generation for their imprescriptible rights.12

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8 A.A. Staley and J.R. Nethercote, Liberalism and the Australian Federation, p. 1.
9 Grey quoted in Evans, Parliamentary Reform in Britain, p. 24.
10 Quotation from a nineteenth-century NSW petition calling for an elected legislature, quoted in McMinn, A Constitutional History of Australia, p. 23.
11 Goderich quoted in Eddy, Britain and the Australian Colonies, p. xiii.
In *Liberalism in Australia*, Cook has emphasised that ‘Liberalism was not received as a completed or static political philosophy’ by the Australian colonies and was ‘continually interpreted and reinterpreted by successive generations of liberals’. He continued:

The liberalism articulated in Australia is neither unrecognisable in relation to that articulated in other countries nor identical to it. It represents a particular form of this Western political philosophy, theory, or ideology. It is a form of liberalism that emerged in a particular colonised place among a colonising people and reflects this place and these people.

Colonial WA’s version, or reinterpretation, of liberalism indisputably reflected the place and the people, and the formidable demographic, economic and Imperial challenges with which the people had to contend to secure representative institutions. In assessing WA’s development of electoral institutions, this study has sought to take into account the colony’s circumstances, mindful, as many Western Australian settlers at the time would have been, of Edmund Burke’s precept that:

Circumstances … give in reality to every political principle its distinguishing colour, and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind.

This study has also been mindful that circumstances constrain and influence political action. Maurice Cowling has made this point well in the context of nineteenth-century reform:

what seems at first to be dishonesty, trickery or disingenuousness appears, once the context is understood, as sensitivity to the limits of political possibility or attempts by politicians to edge themselves, and everyone else, into reconciling the roles they felt obliged to play with what they took to be the necessities of situations.

An advantage of WA’s political development being impeded, and the colony attaining representative and responsible self-government three decades after the sister colonies, was that Western Australians were able to take stock of the working of Australian democracy—a ‘30 years’ trial’ as John Forrest expressed it—while also monitoring political developments elsewhere in Greater Britain. When the time came to introduce representative institutions in WA, the colony’s legislators had the benefit of a range of

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16 Maurice Cowling, *1867: Disraeli, Gladstone and Revolution*, 1967, p. 7. O’Gorman has made similar observations, noting that pre-reform electoral politics ‘have usually been dismissed as venal and corrupt. Such a dismissive attitude reveals more about the political values of the twentieth century than those of the Hanoverian era. At the very least instead of expressing our distaste for the political values of earlier centuries we ought to attempt to understand not only the context of the electoral behaviour of many thousands of people in the past, but also the political ambitions and political roles which both electors and non-electors believed themselves to possess’, ‘Campaign Rituals and Ceremonies’, fn. 5, p. 82.
17 *WAPD*, 12 October 1888, p. 34.
models for guidance, which was not the case for the sister colonies in the 1850s. As a consequence, WA’s legislators were able to customise legislation appropriate for WA’s circumstances and thereby obviate many of the mistakes and excesses which had brought ‘responsible government as administered in Australasia into discredit and contempt’, as the editor of the *West Australian* put it.18

Contrary, therefore, to Simms’s claim that the constitutional-cum-electoral framework of the Australian colonies was ‘generic’, and Hartwell’s conclusion that ‘Constitutional development was much the same in all Colonies’, this thesis has argued that the generic framework was capable of considerable calibration, as WA’s legislators demonstrated, and that WA’s cautious and staged approach to enacting liberal electoral reform was a signally different approach from that of the other Australian colonies.19

This thesis has further argued that WA’s circumspect development of electoral institutions and provisions did not put it outside the liberal mainstream, but rather cemented the colony as a successful exemplar of the democratic laboratory tradition. Not only did WA by Federation have a constitutional and electoral regime essentially ‘on all fours’, as Premier Forrest asserted, with those of the advanced sister colonies, but WA had also led them in opening parliamentary proceedings to public scrutiny, admitting Jews into the legislature, instituting postal voting, and transferring election petitions to an independent adjudicator.20 Moreover, the early and successful participation of Western Australian women in elections, along with the handful of other jurisdictions which had given the vote to women, was an encouragement to the enfranchisement of women throughout Australia and the rest of the world. In short, far from being merely a footnote to the history of liberalism in nineteenth-century Australia, WA’s colonial electoral record enriches the wider study of liberalism as it evolved in Australia and elsewhere.

Closely echoing Cook’s view that versions of liberalism reflect people and place, Simms has aptly commented that ‘Electoral and franchise laws are intrinsically interesting in the way they reflect fundamental societal values’.21 Indeed, issues regarding representation and participation in the political and law-making process go to the heart of how a society views itself and how it functions. This thesis has confirmed that colonial Western Australians were eager to gain the franchise and allied liberal rights; that they were frustrated that WA’s political tutelage was protracted; and that they resented the roadblocks put up by the

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18 *West Australian*, 5 March 1880.
20 *WAPD*, 24 September 1895, p. 1113.
21 Simms, *From the Hustings to Harbour Views*, p. 123.
Colonial Office, particularly in the wake of New Imperialism. This thesis has amply demonstrated that Western Australians, with the benefit of being able to appraise political models elsewhere, were determined to craft constitutional and electoral provisions which, although liberal, would not mitigate against stability, probity and good governance. Manifestly, colonial Western Australians achieved this goal.

Resuming the observations made at the end of the preceding chapter, a profitable line of inquiry could be to investigate whether WA’s smooth, pragmatic and unthreatening attainment of electoral reform, untainted by scandal and excess, entrenched a tradition whereby Western Australians had the confidence to take further progressive political and electoral steps. Indeed, as David Black and Harry Phillips observe in their evocatively titled, Making a Difference—A Frontier of Firsts: Women in the Western Australian Parliament 1921–2012, WA has gained a ‘reputation as a pioneer of women’s parliamentary representation’, and has logged an impressive number of electoral and political firsts with respect to women.

Western Australians, for example, in electing Edith Cowan to the WA Legislative Assembly in 1921 (following legislation passed in the previous year which enabled women to stand for Parliament) elected the first woman parliamentarian in Australia. By contrast, South Australia, by reputation the most progressive colony, would not see women elected to its Parliament until 1959, and the first woman elected to the Legislative Council in Victoria—which had rejected women’s enfranchisement on eleven occasions—was in 1979. In 1925 Western Australians elected May Holman to the Legislative Assembly—the second woman to be elected to an Australian Parliament and the first Labor Party woman MP in Australia. In 1943 Western Australians elected Dorothy Tangney as Australia’s first woman Senator, and in 1947 Florence Cardell-Oliver from WA’s Legislative Assembly became Australia’s first woman member of Cabinet. More recently, in 1990, Dr Carmen Lawrence, MLA for Subiaco, became Australia’s first woman state Premier, and in 2001 Carol Martin, MLA for the Kimberley, became the first Indigenous woman to be elected to an Australian Parliament.

Curiously, however, WA has received scant recognition for its significant electoral achievements, and substantial negative commentary for the Forrest Government’s early

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23 Women’s representation milestones are from Black and Phillips, Making a Difference, pp. 605–606.
enfranchisement of women. Thus, another profitable line of research would be to reappraise WA’s colonial history in light of Himmelfarb’s contention that some historians are discomfited when the conventional script, in which liberals or radicals are perceived as the natural champions of reform, is disrupted. The question to be investigated would be: to what extent does the political allegiance of those initiating reform colour the response of historians reporting it?

Certainly, in the limited research into WA’s colonial electoral history, there is a noticeable and long-standing tendency for the major political participants to be portrayed as hardline conservatives and for the reform they have initiated to be treated dismissively or sceptically. Much of this criticism appears to be based on a perception that reform had been proposed for partisan advantage. By contrast, the electoral self-interest and misogyny of some of the radical goldfields representatives who opposed the enfranchisement of women has received much more muted censure.25

Electoral reform is seldom pursued disinterestedly. As a recent policy submission on the subject matter-of-factly commented: ‘It is acknowledged that very few, if any, electoral reforms are introduced if they are not consistent with the electoral interests of the political party proposing them’.26 However, the pursuit of a tactical advantage in promoting reform has not usually detracted to the same degree from achievement of reform by liberals or radicals. The First Reform Act, for instance, is routinely characterised as the Great Reform Act notwithstanding it was enacted by Whigs largely motivated by a Burkean enlistment of change to ensure conservation agenda—and was only acceded to by the House of Lords after William IV threatened to swamp it with reform-minded peers.27 It was denounced at the time, however, by the London Working Man’s Association as the handiwork of ‘the hypocritical, conniving, and liberty-undermining Whigs’.28

Following on from this, another profitable line of inquiry would be to explore the extent to which an interpretation which is the first in the field can establish a narrative, or a cast to a narrative, which is difficult to dislodge. Both Kimberly and Reeves, in their early histories, made reference to Western Australians exhibiting a conservative mindset, and this appraisal has been accepted and recycled uncritically in some subsequent historical accounts. But

25 See, for example, Oldfield’s timid criticism of Illingworth, and her claim that Illingworth’s opposition to women’s suffrage was ‘unusual in a radical Liberal or a Labor politician’, Woman Suffrage in Australia, pp. 48–49.
26 See Australian Catholic University, Public Policy Institute, Submission to Queensland Department of Justice and Attorney General Discussion Paper on Electoral Reform, Canberra, 2013, p. 10.
28 London Working Man’s Association quotation from Seymour, Electoral Reform in England and Wales, p. 44.
possibly Kimberly and Reeves themselves were recycling existing negative stereotypes. Frederick Chidley Irwin in his 1835 history of WA referred to a ‘disposition, which is common amongst colonists, to praise their own settlement at the expense of other settlements’. \(^29\) Inter-colonial jealousy was pronounced, and WA was subjected to condescending putdowns due to its underdeveloped economic and political systems. Western Australian settler Alfred Hillman, in 1879, for example, lamented that WA was ‘progressing so slowly as to be a by-word and a reproach amongst all the Australian Colonies’. \(^30\)

As has been shown, there is a more positive and nuanced story to be told of WA’s political development, and perhaps it is starting to be told. It is interesting to note that, more recently, some works which have examined the putatively ultra-conservative and reactionary John Forrest have acknowledged his robust and successful carriage of political and social reform. Crowley, Forrest’s biographer, concluded that Forrest ‘closed his colonial career as a well-credentialled, conservative-minded social democrat’ and a ‘liberal legislator’. \(^31\) Hirst has described Forrest as a ‘conservative moderniser’. \(^32\) Sawer, when discussing the framing of the Commonwealth Constitution, has referred to the contributions of ‘leading Liberals such as Sir John Forrest’. \(^33\)

**Admission to the Democratic Pantheon**

In chronicling the development of WA’s electoral institutions from foundation to Federation, this study has filled in many missing pieces in WA’s colonial electoral history, and corrected a number of inaccuracies. More significantly, it has refuted representations in historical accounts that colonial Western Australians were both overly conservative and torpid in seeking elected institutions and pursuing electoral reform. Instead, this study has demonstrated that Western Australians in colonial times invoked the democratic laboratory liberal tradition and, confident that WA was ‘competent to strike out a line for itself’, contributed significantly to it. \(^34\) WA’s place in this tradition should be recognised.

\(^{29}\) Frederick Chidley Irwin, *The State and Position of Western Australia: Commonly Called the Swan-River Settlement*, Simpkin, Marshall, and Co., London, 1835, p. 21. Proving the validity of his observation, Irwin himself proceeded to observe of the eastern seaboard of Australia: ‘To those shores a moral pestilence has since been wafted. The scum and refuse of the civilized nation (men whose education in their own country has only served to render them adept in villainy)’, p. 29.


\(^{31}\) Crowley, *Big John Forrest*, pp. 297 and 58.


\(^{33}\) Sawer, ‘Enrolling the People’, p. 61.

\(^{34}\) Joseph Clarkson, *WAPD*, 26 July 1893, p. 171, in the context of debating the enfranchisement of Western Australian women. Also see Richardson in the same debate, where he argued that WA would be ‘setting Australia a very good example’ if it enfranchised women, *WAPD*, 24 July 1893, p. 152.
WA’s contribution to the wider story of nineteenth-century liberalism should also be acknowledged. WA’s domestic circumstances and prolonged subjection to Colonial Office control constrained the colony’s political development, and WA’s legislators, witnessing the instability and excesses stemming from the sister colonies’ aggressive democracy, took a determinedly cautious and discerning approach to enacting liberal reform. WA, in fact, provides a case-book study of Earl Grey’s preference for ‘successive improvements dictated by circumstances and experience!’

Notwithstanding constraints and circumspection, Western Australians desired and pursued elected representation and liberal reform, and by Federation WA had caught up with the constitutionally and electorally progressive sister colonies. WA also achieved this liberal consummation without bringing down upon the colony the financial scandals, jobbery, paralysing parliamentary deadlocks and turnstile ministries experienced by the sister colonies. Whereas the Sydney Atlas felt obliged to comment in 1845 that ‘The Law of the institutions of a new country is not stability, but progress’, WA after its accession to self-government demonstrated that it was possible to implement advanced electoral reform while still maintaining stability and probity in the political system.35

35 The Atlas quoted in McQueen, A New Britannia, p. 179.
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The historian, essentially, wants more documents than he can really use …

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1430 Franchise for Electing Knights of the Shire (10 Henry VI, c. 2)

1696 Prohibition of Treating (7 & 8 Will. III, c. 4)

1696 Limiting Poll to Forty Days/Voting in Public/County Pollbooks (7 & 8 Will. III, c. 25)

1710 Qualifications for Members of Parliament (9 Anne, c. 5)

1716 Septennial Elections (1 Geo. 1 St 2, c. 38)

1729 Bribery Prevention (2 Geo. II, c. 24)

¹ Australian and New Zealand statutes are cited by their short title. British legislation until the mid nineteenth century seldom had recognised short titles and, often, extremely unwieldy long titles. Accordingly, early British Acts are cited by an abridged title that indicates the aspect(s) of their subject matter referred to in this thesis.
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1788 Introducing County Registers (28 Geo. III, c. 36)
1823 New South Wales Act (4 Geo. IV c. 96)
1828 Limiting Poll to Eight Days (9 Geo. IV, c. 59)
1829 Western Australia Act (10 Geo. IV, c. 22)
1832 Representation of the People Act (First Reform Act) (2 Will. IV, c. 45)
1832 Representation of the People (Scotland) Act (2 & 3 Will. IV, c. 65)
1832 Representation of the People (Ireland) Act (2 & 3 Will. IV, c. 88)
1835 Limiting Poll to One Day (5 & 6 Will. IV, c. 36)
1842 Australian Constitutions Act (NSW Constitution Act) (5 & 6 Vict., c. 76)
1843 Preservation of Pollbooks (6 & 7 Vict., c. 18)
1844 Australian Constitutions Act (Amending NSW Constitution Act) (7 & 8 Vict., c. 74)
1850 Australian Colonies Government Act (13 & 14 Vict., c. 59)
1855 New South Wales Constitution Act (18 & 19 Vict., c. 54)
1867 Representation of the People Act (Second Reform Act) (30 & 31 Vict., c. 102)
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