Introduction

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Once upon a time, prior to about the 1970's, there was a general view that Western Australia's State constitution was of little interest to lawyers and of no significance to anyone else. Unlike the *Commonwealth Constitution*, it largely dealt with subjects which were thought to be non-justiciable. It contained few restraints on legislative power, and they were largely spent. The State Parliament could change most provisions at will, if they proved inconvenient. In the background, there was the reassuring presence of the 'Imperial' Parliament, able to fix up any serious messes by paramount legislation, as it had been doing for over a century.

These papers demonstrate how much has changed, and how many questions of fundamental importance to the functioning of the State, thrown up by the 'new' state constitutional law, remain unresolved. The reasons for that greater significance and greater uncertainty include the following developments.

For better or worse the State constitution is now a purely local problem. There is no Mother Parliament able to rescue us, with the stroke of a pen, from an excess of constitutional enthusiasm.

Inspired by what looks in retrospect a little like paranoia, Parliament in 1978 doubly entrenched large slabs of the constitution. The words used to effect this entrenchment are clearly intended to be broadly understood, but their precise scope is far from clear. As a number of these papers demonstrate, entrenchment often brings with it unintended consequences.

A number of aspects of the State's constitution derive from implications drawn from the *Commonwealth Constitution*. Those implications may however work out differently in their practical application to State institutions. It is not clear, for example, how the limitations on executive power discussed in *Williams v Commonwealth*[1] may affect the executive power of a State. While it is unlikely that it would be thought consistent with the separation of powers for a judge of the High Court to accept a dormant commission as Governor-General, it is less clear whether the appointment of a Chief Justice as a state Lieutenant-Governor breaches that principle; the answer may depend upon the view one takes concerning the constitutional role of the Governor.

1 (2012) 86 ALJR 713.

Importantly, Australia has now had the benefit of over a century in which judicial review of legislation, and judicial declarations that legislation is beyond power, have become routine. The merits of some decisions may be controversial, but the principle that both the courts and parliament are subject to the 'supreme law of the constitution' (*Nationwide News v Wills*[2]) is not. That principle gives rise to an approach to questions of constitutional interpretation which is broad and purposive, and elevates a constitution from the 'Dog Act' status of the old colonial constitutions,[3] to something of much greater significance, likely to dictate to a much greater degree the way in which the institutions of the State interact.

All these questions and more are discussed in the fascinating papers which emerged from this roundtable, convened in Perth in October 2012.

2 (1992) 177 CLR 1,44 (Brennan J).
3 Cf *McCawley v R* (1920) 28 CLR 106.