



# Curtin University

JOHN CURTIN PRIME MINISTERIAL LIBRARY  
CURTIN UNIVERSITY LIBRARY

## INFORMATION UPDATE

OCTOBER 2013

### If they could see us now - what would the founders say?

Marking the 68th anniversary of John Curtin's death, this year's John Curtin Prime Ministerial Library Anniversary Lecture was held Thursday 18 July 2013 at Curtin University. The lecture was presented by the Honourable Chief Justice Robert French AC who discussed the topic "If they could see us now - what would the founders say?"

The event was well attended by Curtin University staff, members of the legal profession and the community. Chief Justice French's speech can be read on the JCPML website: <http://john.curtin.edu.au/events/speeches/french.html>.

JCPML Historical Consultant Professor David Black's article on the lecture follows.

Above: John Curtin working on a Sunday morning, lodge study, Canberra, 1942. Records of the Curtin Family. JCPML00376/6.

Below: Chief Justice French presenting the 14th JCPML Anniversary Lecture, July 2013. Image: Alana Blowfield.



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# CHIEF JUSTICE FRENCH PRESENTS THE 2013 ANNIVERSARY LECTURE



Left to right: Vice Chancellor Jeanette Hackett presents Chief Justice French with a gift. Professor David Black delivering his speech. Members of the Curtin family (Lauren, Josephine and John) with Chief Justice French. The audience listens to David Black's response and vote of thanks to the lecture. Photos: Alana Blowfield.

**It is beyond dispute that Western Australia's place in the Australian federation has always been a major source of contention. Barely ten years after the colony had secured self-government, its own bicameral Parliament and constitution, the inhabitants of the colony were asked to vote to join the Commonwealth of Australia, and in the process surrender a significant range of powers to the newly formed national government.**

**Over the ensuing hundred plus years as the effective powers of the newly formed Commonwealth government expanded far beyond what was envisaged in 1901, West Australians have been in the forefront of those opposing the accretion of power and authority at the national level. Indeed on one occasion (in 1933) the electors of the state voted by a two to one majority to leave the Commonwealth, a consequence which proved to be both legally and politically impossible.**

Much of the political rhetoric in 2013 now focuses, not as was originally the case on how Western Australia was suffering as an economic underdog, but rather where Western Australia as the lifeblood of the Australian economy is portrayed as being sucked dry by many of its relatively impoverished neighbours east of the 120° parallel.

On 18 July 2013 Robert French, Chief Justice of the High Court of Australia and himself a West Australian, delivered the annual John Curtin Prime Ministerial Anniversary Lecture commemorating Australia's war time Prime Minister - the only Australian Prime Minister to represent a Western

Australian seat in the House of Representatives.

Typically the subject of the address was 'If they could see us now—what would the founders say?' and in this context Chief Justice French provided his audience with an extraordinarily comprehensive and thoughtful overview of 112 years of constitutional development preceded by the twenty years of negotiation and contention which came before the 1901 decision.

In dealing with the ways in which the constitution has developed in practice, an underlying theme of Chief Justice French's lecture was that *"Despite the preoccupations of some commentators with the effect of High Court decisions on relations between the Commonwealth and the States, it is the elected representatives of the people in Commonwealth and State Parliaments, whose actions as legislators and as members of the executive government are the drivers of change in the way the federation works"*.

*"John Curtin, Australia's great wartime Prime Minister, whose memory we honour today, played a significant part in that development"*.

The evolution of income tax collection was the classic case in point and in particular the Uniform Tax Scheme in 1942 *"which, in a political sense, placed effective control of income tax in the hands of the Commonwealth"*.

It was clearly the demands of war which led to this decision and it was related to the growing national responsibility of the Commonwealth Government as Australia moved from being a dependent colony linked to the United Kingdom to a

fully fledged member of the international community.

Crucial to the Uniform Tax decision was Section 96 of the Constitution which gave the Commonwealth power to 'grant financial assistance to any State on such terms and conditions as the Parliament thinks fit'. It was this, the High Court ruled, that enabled the Commonwealth to impose its own income tax to the exclusion of the States and then provide financial assistance grants to the States provided they themselves did not impose income tax. At the time the Commonwealth did go further and try to provide that it would be an offence for a taxpayer to pay state income tax until Commonwealth tax had been paid, but this provision was subsequently ruled unconstitutional.

In providing an overview of the intentions of the founders, Chief Justice French indicated that the men who drafted the constitution 'were not creating a revolution against Imperial rule' and unlike their American counterparts were not concerned with defining human rights and freedoms. Rather, they were constructing a constitution for a self-governing colony.

Chief Justice French also devoted attention to a number of other issues, including the extent to which the Constitution continues to be derived from the legislative power of the Imperial Parliament in contrast with the view that by the latter part of the twentieth century the constitution was increasingly seen as derived from popular sovereignty.

In the latter part of the lecture Chief Justice French focussed on some of the limits on the powers of the Commonwealth. Even in the Engineers Case in the early 1920s which cleared

the way for some of the more important extensions of Commonwealth powers, the judges stressed that they were to be granted but only so as not to 'impair or affect the Constitution of a State' or as later expressed, to destroy or weaken 'the capacity or functions of the State'.

Similarly, the High Court has refused to allow the Commonwealth to single out States, their offices or authorities as, for example, when attempting to impose surcharges on the pensions of State judges. Section 96 has been limited in its impact to the extent that the Court will not allow the Commonwealth to directly fund activities within a State (as contrasted with making grants to a State) unless the Commonwealth has a specific constitutional power in the area affected.

What then would the founders say today? Chief Justice French's conclusion is that they would be *"more struck by the social and political changes which have occurred nationally and internationally, by the emergence of the phenomenon known as globalisation and by the advances in technology and by attitudes to race and to the Aboriginal and Torres Strait Islander peoples than they would be about the shape of the Federation. Like John Curtin they were men of vision, allowing for the possibilities of an unimagined future"*.

**Professor David Black**  
JCPML Historical Consultant

*The full version of David Black's paper can be found here:*  
<http://www.john.curtin.edu.au/events/speeches/french.html>



# THE BATTLE FOR AUSTRALIA

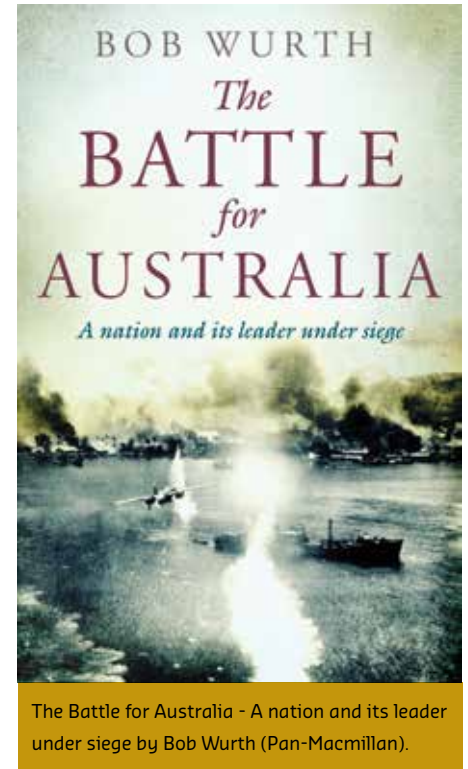
*The Battle for Australia, a nation and its leader under siege* documents Curtin's depression and anxiety throughout the war, including his sudden decision to abandon defence headquarters in Melbourne on 21 January 1942 as an invasion fleet approached the Australian territory of Rabaul in the New Guinea islands.

Bob Wurth, 2009 John Curtin Prime Ministerial Library Visiting Scholar, writes that Curtin took a slow train home across the Nullarbor, which became stranded by floodwaters. Curtin subsequently missed twelve critical meetings of the War Cabinet and the Advisory War Council and initially had only limited Morse code contact with defence headquarters.

The book produces evidence to show that while disparaging a possible invasion of Australia, Prime Minister Winston Churchill told a closed session of the House of Commons that Japan would "establish lodgements and bases on the northern part of Australia in order to procure the greatest locking up of Allied forces in that continent".

In the foreword, the Governor General of Australia, Quentin Bryce, describes the book as "a significant addition to the annals of Australian history".

*The Battle for Australia*, researched in Australia, Britain and Japan is a compelling and revealing narrative history of those dangerous days. The book is published by Pan-Macmillan.



John Curtin with Elsie M & John F Curtin, Cottesloe, n.d. Records of the Curtin Family. JCPML00382/19.

## National Trust invites you to learn about Curtin Family Home

Take a guided walk around the Cottesloe town precinct or the beach side strip while hearing stories about John Curtin, his wife Elsie and their family who called the coastal suburb home for 20 years. Tours cost \$20 (\$15 for National Trust Members) and are scheduled daily from Saturday 12 October to Sunday 20 October 2013. They take around two and a half hours to complete and include afternoon tea.

- 10am to 12.30pm - Salt Air and Sunshine (focuses on the Cottesloe Beach area), meet outside Eric Street entrance of Ocean Beach Hotel.
- 1.30pm to 4pm - A Home of One's Own (explores Cottesloe town precinct), meet outside The Grove Library.

Bookings are essential, contact the National Trust on 9321 6088 or email [rsvp@ntwa.com.au](mailto:rsvp@ntwa.com.au).

Michelle Grattan AO, one of Australia's most respected and awarded journalists, will present a lecture at The Grove Library entitled *Modern Labour: What would John Curtin think?* The lecture will be held on Monday 25 November 2013 at 6pm (arrive at 5.45pm). It will explore the future of the Labor Party in comparison to the party led by John Curtin with emphasis on the impacts of the media.

To book your place at the lecture phone 9286 8686 or email [library@thegrovelibrary.com](mailto:library@thegrovelibrary.com). Bookings are essential.

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