

John Forrest: Founding Father from the Far West

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John Forrest was an interesting, multi-talented and significant figure in Australia's and Western Australia's history. He was closely involved in the attainment of responsible government for Western Australia. He was elected Western Australia's first Premier and Colonial Treasurer. He led the Western Australian delegation to the Australasian Federal Conventions in the 1890s. He became Australia's first Post-Master General and, later, Minister for Defence and Federal Treasurer. He served as acting Prime Minister and was the first Australian appointed to the peerage. This article¹ describes John Forrest's place in Australia's constitutional history by reference to Western Australia's colonial constitutional development, in which he was instrumental, his life and achievements and his role in the Constitutional Conventions leading to the making of the Australian Constitution.

JOHNN FORREST was born in 1847 near the small coastal settlement of Bunbury into what one chronicler of Western Australia in the 19th century called 'generous southern sunshine amid primeval solitudes'.² His parents were Scottish emigrants. His father was a successful tradesman who built his own flour and saw mill and prospered in the new Colony.³ His upbringing and education were said by his prolific biographer, FK Crowley, to have compounded in him 'social snobbery, laissez-faire capitalism, sentimental royalism, patriotic Anglicanism,

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1. This article was first delivered as the National Archives of Australia Constitution Day lecture (8 Jul 2010). It draws on a number of sources but particularly the works of Forrest's biographer, FK Crowley: *Forrest: 1847-1891*, 'Apprenticeship to Premiership' (Brisbane: UQ Press, 1971) vol 1; *Big John Forrest: 1847-1918*, 'A Founding Father of the Commonwealth of Australia' (Perth: UWA Press, 2000); *Sir John Forrest: The John Murtagh Macrossan Lecture* (Brisbane: UQ Press, 1967).
2. WB Kimberly (ed), *History of West Australia: A Narrative of her Past, Together with Biographies of Her Leading Men* (Melbourne: FW Niven, 1897) 1.
3. A & D Muir, *Family History of William and Margaret Forrest: From Their Arrival in Australind, Western Australia 1842* (Manjimup: JR Muir & Son, 1982) 5.

benevolent imperialism and [British] racial superiority'.⁴ By the time of his 28th birthday he had become one of Australia's greatest explorers.⁵ By his early 30s he was Surveyor-General and Commissioner for Crown Lands and a member of the Executive Council and the Legislative Council of the Colony.

He was a man of healthy ego. In 1883, he suggested to the Governor of Western Australia, Sir Napier Broome, another man of healthy ego, that His Excellency should depart from his mild despotism and act only upon the advice of the Executive Council of which Forrest was then a member. The suggestion was not well received and friction was ongoing. In 1884, according to a complaint from the then Attorney-General to the Secretary of State for the Colonies, the Governor had Forrest removed from his presence calling him a '[damned] scoundrel' and a 'dirty cur' and threatened both him and the Attorney-General with suspension from office.⁶ But vice-regal displeasure was no impediment to Forrest's inexorable rise. He became Western Australia's first premier after responsible government was achieved in 1890. His premiership coincided with a significant improvement in Western Australia's fortunes following the discovery of gold in the Coolgardie and Kalgoorlie region. Geoffrey Blainey described Forrest as presiding over 'miraculous change':

[T]he building of long inland railways, the opening of a wheat belt, and the shipment of more jarrah from long jetties to London to pave the streets with blocks of wood. He took pride in financing what was perhaps the longest water pipeline in the world and the erection of a succession of steam engine houses to pump the fresh water from a new coastal reservoir to far-off Kalgoorlie, lying on the inland plateau.⁷

He also introduced compulsory schooling. Fremantle harbour was created out of the mouth of the Swan River and began operating in 1897. It became one of the busiest gold ports in the world.⁸ Forrest lobbied the British Government to establish the Perth Mint in 1899 as the third branch of Britain's Royal Mint.⁹ The others were the Sydney and Melbourne Mints. They have since closed, but the Perth Mint continues to operate. He also granted women the vote in 1899, albeit apparently against his natural inclinations and for practical political reasons to offset a concentration of adverse male voting power in the Goldfields.¹⁰

Forrest led Western Australia into the federation although he cultivated what may have been, in part, a forensic ambivalence about the whole idea at the Convention Debates, which drafted the Constitution for the Commonwealth. He

4. Ibid.

5. See, eg, G Blainey, *A Shorter History of Australia* (Sydney: Vintage, 2009) 122–3.

6. E Russell, *A History of the Law in Western Australia and its Development from 1829 to 1979* (Perth: UWA Press, 1980) 214.

7. Blainey, above n 5, 124.

8. Ibid 123.

9. Crowley, *Big John Forrest*, above n 1, 123.

10. FK Crowley, *Australia's Western Third. A History of Western Australia from the First Settlements to Modern Times* (London: MacMillan, 1960) 113–14.

was vigorous in the debates if overshadowed in constitutional and legal expertise by such distinguished lawyers as Griffith, Barton and Deakin. The latter two were occasionally impatient with him. Deakin, at the Adelaide session in 1897, compared him to 'Buffalo Bill in his Wild West Show' saying, 'he is the hero of this arena, he is engaging in desperate deeds of daring but the risks are all on our side, whilst there are none on his'.¹¹

Edmund Barton, the leader of the Convention, although expressing irritation with Forrest during the debates, paid him this tribute:

[W]hen he fights, strongly as he does it, he fights fairly, and there is no loss of good temper in a fight which is conducted by a man who never hits below the belt, and one who is so genial and kindly.¹²

It may be that he felt magnanimous as, when he made those remarks, Forrest and the Western Australians were leaving the Adelaide session early in order to return to Perth.

Forrest did not win many victories at the Conventions. He seems to have exerted his greatest influence in relation to the distribution of Federal revenue. He obtained for Western Australia the important concession, reflected in section 95 of the Constitution, allowing the State to retain the ability to impose its own duties on goods coming into the State and not originally imported from outside the Commonwealth. And in relation to the important conciliation and arbitration power, it seems his support and that of his colleagues from the West may have been decisive.¹³

Forrest was appointed the first Postmaster-General in the new National Government in 1901 and then Minister for Defence and Minister for Home Affairs. He was five times sworn in as Federal Treasurer. He was Acting Prime Minister and Acting Minister for External Affairs. He came close to being elected as Prime Minister on four occasions, one of which he lost by only one vote when Cook was elected by the Liberal caucus in 1913. In February 1918, he was made a Baron and was the first Australian to receive that honour. His peerage was apparently conferred on the recommendation of Prime Minister William Hughes. Hughes may have used this as a device to push Forrest upstairs and out of the Cabinet. It did not have the desired effect. Crowley wrote:

Hughes's annoyance can be imagined when Forrest accepted the peerage as a well-merited reward, somewhat overdue, but declined to resign from the cabinet! He turned up at the Treasury for business as usual.¹⁴

11. *Official Record of the Debates of the Australasian Federal Convention* (Adelaide, 1897) 515.

12. *Ibid* 603.

13. Crowley, *Big John Forrest*, above n 1, 215.

14. Crowley, *Sir John Forrest*, above n 1, 21.

Not long afterwards, however, in March 1918, Forrest resigned from the Ministry because of illness. On 3 September 1918, he died on his way to England on the troop ship *Marathon* while it was anchored at Sierra Leone.¹⁵

This interesting and multi-talented man is a significant figure in Australia's history for many reasons. He was not a lawyer, but he was good at arithmetic. Arithmetic led to trigonometry and underpinned his high level of skill as a trigonometrical surveyor and explorer providing precise and useable knowledge about the harsh interior of the Colony. These skills, coupled with his strengths in administration, management of other people and leadership, took him to the apex of political power in Western Australia and senior ministerial office at the national level. His trigonometrical skills may also have been a source of political naivety, both a strength and a weakness. Crowley observed:

After spending 20 years in the field with compass and theodolite, he also tended to think that political solutions were easily discovered if the correct levels had been taken and the right angles had been measured.¹⁶

John Forrest's place in our constitutional history should be understood by reference to the colonial constitutional development, of which he was an important part, his own life and achievements and the part he played in the making of the Federation.

WESTERN AUSTRALIA - CONSTITUTIONAL HISTORY

Forrest's personal history can be framed by reference to the constitutional history of the Colony of Western Australia. That history also helps in an understanding of Western Australian attitudes to federation at the time of the National Australasian Conventions in the 1890s. At the time of the Conventions, the Western Australian colonists had only just persuaded Britain to grant the Colony self-government, some 35 years after the other Australian colonies. Forrest reflected popular sentiment when he¹⁷ said that he did not want to 'exchange London for Sydney-Melbourne'.

Colonial constitutional history in Australia began with the creation of the Colony of New South Wales in 1788. New South Wales at its establishment consisted of the greater part of continental Australia and Tasmania. It did not extend to what is now Western Australia. Its first lawmaking body was appointed in 1823. Tasmania was established as a separate Colony in 1825. In 1842, the British Parliament passed the Australian Constitutions Act 1842 (Imp) which created a partly elective

15. Ibid 21–2.

16. FK Crowley, 'Sir John Forrest: The Statesman' in L Hunt (ed), *Westralian Portraits* (Perth: UWA Press, 1979) 78, 84.

17. Crowley, *Big John Forrest*, above n 1, 98.

legislature for New South Wales and authorised the establishment of representative legislative councils for New South Wales and Tasmania.¹⁸

Upon the enactment by the British Parliament of the Australian Constitutions Act 1850 (Imp)¹⁹ the Colony of Victoria was carved out of New South Wales. The Act was proclaimed in January 1851. The 1850 Act also authorised the establishment of representative legislatures with powers to enact colonial constitutions.

Tasmania enacted a Constitution Act and set up its own bicameral legislature in 1854.²⁰ New South Wales and Victoria passed Constitution Acts in 1855.²¹ Those Acts required express authorisation by the British Parliament because they conferred powers on the colonial legislatures not authorised by the Australian Constitutions Act 1850.

In 1859, Queensland was severed from New South Wales by Letters Patent and established as a colony in its own right. Its severance was effected under the authority of the Australian Constitutions Acts of 1842 and 1850. By an Order in Council in the same year Queensland was given a constitution in the same terms as those of New South Wales and Victoria.

South Australia, which had been created as a province in 1834 by an Act of the British Parliament,²² set up a legislature in 1842 which in 1855 adopted a Constitution Act for the Colony.²³ By 1855, all the Australian colonies save for Western Australia had achieved responsible and representative government.

Western Australia's constitutional history began with imperial sunset legislation called 'the Swan River Act 1829',²⁴ which was intended to operate only until 31 December 1834. The Act was extended by successive Orders in Council until overtaken by the 1842 and 1850 Imperial Acts. A Legislative Council and an Executive Council were established in November 1830. They consisted of the Governor and four official nominees. The Legislative Council was later expanded with the addition of four non-official nominees.

Although Western Australia began its life as a free colony, economic realities led to the colonists requesting and accepting convict labour from the United Kingdom. The first group, said to comprise 'prisoners of exemplary conduct',²⁵ arrived in Western Australia in the same year that the Australian Constitutions Act 1850 was

18. 5 & 6 Vic c 76 (1842).

19. 13 & 14 Vic c 59 (1850).

20. Constitution Act 1854 (Tas).

21. Constitution Act 1855 (NSW); Constitution Act 1855 (Vic).

22. 4 & 5 Will IV c 95 (1834).

23. Constitution Act 1855 (SA).

24. 10 Geo IV c 22.

25. JS Battye, *Western Australia: A History from Its Discovery to the Inauguration of the Commonwealth* (Perth: UWA Press, 1978) 207.

passed. According to the Western Australian historian JS Battye, during the period of transportation which lasted until 1868:

Public works were erected, lines of communication opened, and shipping facilities provided which the colonists themselves could not possibly have procured, having neither the labour nor the money.²⁶

There were those who saw the introduction of convict labour as weakening the moral fibre of the Colony. Battye wrote dismissively of those concerns:

[S]tatistics prove that the convict was little more addicted to drink than the free man; that serious crime has never been an outstanding feature of Western Australia.²⁷

Western Australia had not been covered by the general provisions of the Australian Constitutions Act 1850 which authorised representative legislative bodies in the other colonies. However, the Act provided that on the petition of not less than one-third of the householders of Western Australia seeking the establishment of a legislative council it would be lawful for the appointed legislature to pass laws *to establish such a body. One-third of its members would be Crown appointments and the balance would be elected by the inhabitants of the colony.* In 1865, a petition of householders was rejected by the Legislative Council which instead made provision for the election of six additional members. The franchise extended to adult males. In 1870, after the cessation of transportation, a Legislative Council of 26 members, 17 of whom were elected, was created.

After 1870 the Governor was no longer a member of the Legislative Council, but wielded substantial power over the Colony through the Executive Council. This arrangement was the subject of comment by Anthony Trollope who visited Perth in March and April 1872. Like Forrest, he rose from the profession of surveyor to greater things, in his case, recognition as one of the great English novelists. He described the constitutional arrangements in Western Australia in 1872 as ‘a confused condition of governing and legislating’.²⁸ He wrote, ‘[a]s things stand at present, the governor can effect nothing without the House, nor can the House effect anything without the governor’.²⁹

For all its deficiencies he preferred representative and responsible government:

[A]ny amount of ignorance in a legislator ... any amount of what I may, perhaps, call rowdyism in a chamber, is better than practically irresponsible power in the hands of a would-be mighty colonial officer, removed from home by half the world’s circumference.³⁰

26. Ibid 256.

27. Ibid.

28. A Trollope, in PD Edwards & RB Joyce (eds), *Australia* (Brisbane: UQ Press, 1968) 594.

29. Ibid.

30. Ibid 594–5.

Sir William Robinson was Governor of Western Australia from 1875 to 1877, 1880 to 1883, and 1890 to 1893. He was a great supporter of Forrest and popular within the Colony. However, Sir Napier Broome, who served as Governor from 1883 to 1889, was unpopular with many and said to be 'irascible and insulting to John Forrest the Surveyor-General, and AP Hensman the Attorney-General'.³¹ Broome's unpopularity may have given some impetus to the movement towards responsible government. Nevertheless, he showed himself statesman-like in his ultimate support of it.

Broome's initial view was that it would be a mistake to confer representative and responsible government upon the Colony until the colonists had 'expressed a general and decided wish to take upon themselves the burden and responsibility of that form of government'.³² In 1887, SH Parker, a prominent lawyer and determined proponent of responsible government, succeeded in persuading the Legislative Council, on a petition from the citizens of Perth, to resolve that:

[T]he time has arrived when the Executive should be made responsible to the Legislature of the colony; and that ... Western Australia should remain one and undivided under the new constitution.³³

The Governor then lent his support to the conferring of responsible government and withdrew a previous suggestion he had advanced for the division of Western Australia into two parts.

The general election for the Legislative Council was held in 1889. SH Parker rejoiced that 'not one candidate had advocated the retention of the existing method of government'.³⁴ The new Council resolved in favour of the introduction of responsible government. A draft constitution was prepared. It accepted the possibility that Her Majesty might divide the Colony into two or more parts. £5,000 per year was to be set aside for the benefit of Aboriginal people within the Colony.

The imperial authorities, in accordance with the suggestion made by Governor Broome, required that members of the Upper House should initially be nominated instead of elected. He had warned the Secretary of State for the Colonies about 'the danger of carrying a democratic precept to its highest pitch at one bound in a young and politically untried community'.³⁵

31. Russell, above n 6, 194.

32. J Quick & R Garran, *The Annotated Constitution of the Australian Commonwealth* (1901) 69.

33. Batty, above n 25, 381.

34. *Ibid* 391.

35. WA Legislative Council, Votes and Proceedings No 139, *Dispatches between His Excellency the Governor and The Rt Hon The Secretary of State for the Colonies – Responsible Government*, (Perth: Government Printer, 1888) No 14.

That suggestion was accepted by the colonists on the basis that, after the expiration of six years, or when the population of the Colony exceeded 60,000, the Upper House could become elective. The revised Bill was passed by the House of Lords and ultimately by the House of Commons, although the objection was raised that 978,000 square miles was too much to hand over to a population of less than 40,000.³⁶ Responsible government came to Western Australia with the proclamation on 21 October 1890 of the Constitution Act 1889 (WA) which was given legal effect by the Western Australia Constitution Act 1890 (Imp).³⁷

Initially, the Upper House consisted of 15 persons appointed by the Governor. The elective threshold of 60,000 was reached in 1893. The Constitution Act Amendment Act 1893 (WA) made provision accordingly for the Legislative Council to be elective.³⁸

With the enactment of the Western Australian Constitution Act 1890, it was necessary to appoint a Ministry. The principal rivals for the Office of Premier were John Forrest and SH Parker who had doggedly agitated for the new constitution. Sir William Robinson, who had returned to Western Australia and replaced Broome as Governor, deferred making appointments until the Parliament had been elected. Both the contenders advocated a strong program of public works. Following the election, Forrest had greater support in the Parliament than Parker and on 22 December 1890 was commissioned to form the first Ministry under responsible government in Western Australia.³⁹ Forrest was Premier and Colonial Treasurer. As appears from this chronology, when the first National Australasian Constitutional Convention was held in 1891, Western Australia had had representative and responsible government and John Forrest had been its Premier for less than a year.

In 1899, the Western Australian Parliament enacted the Constitution Acts Amendment Act 1899. It consolidated earlier constitution amendment acts. It increased the size of both Houses of Parliament and extended the franchise for both Houses to women. Against that background, it is appropriate now to step back to 1847 and the beginning of John Forrest's life.

JOHN FORREST: SCHOOL BOY, SURVEYOR AND EXPLORER

Forrest was born on 22 August 1847 at Preston Point near Bunbury. He was one of 10 children of William and Margaret Forrest who had migrated to Western Australia in 1842 from Scotland to be servants to a medical practitioner, Dr John Ferguson, who settled at Australind about 150 kilometres south of Perth.

36. Quick & Garran, above n 32, 70–1.

37. 53 & 54 Vic c 26 (Imp) s 4(1) (1890).

38. Quick & Garran, above n 32, 71.

39. Battye, above n 25, 396.

According to a census taken in 1848, the colonist population of Western Australia was 4,622, comprising 2,818 males and 1,804 females.⁴⁰ About 300 colonists lived in the Wellington district near Bunbury, Picton and Australind. The only forms of colonial transport were bush track and sailing ship.

When John Forrest was born his father, who was then 28 years old, and his mother, who was 26, had ended their engagement to Dr Ferguson two years earlier.⁴¹ William Forrest had constructed a house on the east side of the Leschenault Estuary and a windmill to grind wheat into flour. He grew vegetables and ran a few cattle. John Forrest was born at the Leschenault windmill home.

In 1849, Forrest Snr purchased a 100-acre block of land, built a new house on it, and constructed a water-race and watermill which began operating in March 1851. The mill was also used for sawing timber. The new business did well. William added to his initial 100-acre land holding, extending it to about 400 acres. He expanded his operations to public works in the district, building and repairing jetties and bridges.⁴²

John Forrest as a boy and youth participated in all the necessary household tasks of a settler family. He became, in the words of Crowley, a 'splendid' horseman.⁴³ He was enrolled in the government school in Bunbury which was about four miles away from the family home. According to his biographer, his parents promoted the classic values of honesty, hard work and thrift. They would read to their children in the evening from the Bible or *The Pilgrim's Progress*. There is no evidence that they held any particular political opinions. In later life, Forrest looking back to the Colony when he was young said of it:

In those days the settlers of the colony looked to the Government for everything. The Government was paternal; it was also despotic. There was no political life, or very little, in this colony for many years after its foundation, and during all those years the people looked to the Government for everything they wanted.⁴⁴

In January 1860, Forrest was enrolled in Bishop Hale's School in St Georges Terrace, Perth. The school had opened in June 1858. It was the only one in the Colony of its kind and offered a curriculum focussed on the classics and Anglican theology.⁴⁵ Forrest excelled at arithmetic. He won a number of prizes during his progress through the school. The world view to which he was exposed by this education was described by Crowley thus:

40. Crowley, *Forrest*, above n 1, 6.

41. *Ibid* 5–6.

42. *Ibid* 11.

43. *Ibid* 10.

44. Western Australia, *Parliamentary Debates* (Hansard), 24 Oct 1888, 115, cited in *ibid* 14.

45. L Fletcher, 'Education of the People' in CT Stannage (ed), *A New History of Western Australia* (Perth: UWA Press, 1981) 567.

The social attitudes which it valued were those which were least compatible with the antipodean version of democracy. It denied a career open to talent alone. It stressed the inequality of humanity. It hallowed privilege acquired by heredity, and it preached that to rebel against the social order was to disobey the commandment of God.⁴⁶

Aboriginal people were regarded as ‘a long way down the ladder of God’s creation’.⁴⁷

Most of the leaders of the colonial elite in Western Australia in the late 19th century had attended Bishop Hale’s School in the 1860s.⁴⁸

In November 1863, at age 16, Forrest was apprenticed to Thomas Carey, a government land surveyor at Bunbury. He learnt the principles of surveying and developed the many practical skills necessary for the work which involved him spending long periods in the bush in rough conditions.⁴⁹ His apprenticeship ended in November 1865 and he was appointed as a temporary government surveyor. In December 1866 he began work as assistant surveyor at Northam. He worked in the Avon Valley for the next two years aligning roads, reporting on bridge sites, marking reserves and new town sites and ‘settling the never-ending arguments amongst settlers about the boundaries of their farms’.⁵⁰ His work involved the supervision of his survey group and of probation convicts assigned to him.

In 1869, at 22 years of age, Forrest was appointed by the Surveyor-General, Captain Roe, to lead an expedition from Perth to try and find out what had happened to the Leichhardt expedition which had tried to cross Australia from east to west in 1848 and had vanished. Interest in the fate of the expedition had been renewed by an account given by an Aboriginal man to the West Australian pastoralist, JH Monger, of a group of white men in the eastern part of Western Australia who had been killed by Aborigines many years before.⁵¹ The search for Leichhardt was to be Forrest’s first major work of exploration in Western Australia. The expedition started in April 1869 and took 113 days. Forrest and his group went as far east as what is now Laverton. By 2 July 1869 supplies were running out and it was necessary to return. No trace of Leichhardt was discovered. Forrest concluded that the country he had covered was not useful for either agriculture or pastoral purposes, but suggested, with some prescience, that it might be ‘worthwhile sending geologists to examine it thoroughly’.⁵² The expedition established his reputation as an explorer. At the Governor’s suggestion the Surveyor-General

46. Crowley, *Forrest*, above n 1, 19.

47. *Ibid.*

48. M Aveling, ‘Western Australian Society: The Religious Aspects (1829–1895)’ in Stannage, above n 45, 595.

49. Crowley, *Forrest*, above n 1, 22.

50. *Ibid.* 25.

51. *Ibid.* 29.

52. *Ibid.* 35

gave him a gratuity of £50 for his work on the expedition. The two Aboriginal guides, one of whom, Tommy Windich, was to accompany him on his other major expeditions, each received an inscribed single-barrel gun.⁵³

Forrest undertook a greater expedition in 1870 to survey the route between South Australia and Western Australia which had been traversed 30 years earlier by EJ Eyre. A mounted and properly equipped party was to make accurate observations of the terrain with a view to 'extending the area of pastoral enterprise' and to determine whether the two colonies could be linked by land.⁵⁴

The party of six men consisted of Forrest, his younger brother Alexander, two Aboriginal trackers, a police constable, and a farrier and shoemaker. They left Perth on 30 March 1870 and travelled overland to Esperance where they were victualled by ship as part of a well-planned and progressive resupply process. They reached Adelaide on 27 August 1870. The direct physical experience of traversing, on horseback and on foot, the immense Nullarbor Plain between Perth and Adelaide may well have informed the view, expressed by Forrest much later, that federation would be quite useless unless the colonies were connected by a railway and that the construction of such a railway must be encouraged 'by every means in our power'.⁵⁵

In 1871, Forrest was appointed as Government-Surveyor for the northern district of Western Australia. In 1874, he led a third major exploratory expedition into the Murchison region and eastwards. He and his party travelled from Champion Bay east until they reached the Adelaide to Darwin telegraph line. They then travelled south to Adelaide where they arrived on 3 November 1874 and were received as 'the heroes from the West'.⁵⁶ They had covered about 4,120 kilometres from Perth. Each member of the party had walked about 1,600 kilometres of the expedition. There were two occasions upon which they had hostile encounters with Aboriginal people. In the first of them rifle shots were fired and spears thrown. Two Aboriginal people were wounded. Crowley wrote of the first incident:

Later accounts of this affair show that Forrest was very sensitive about his role in it. He was keen to give the impression that he had not fired in haste, but only in self defence.⁵⁷

The cause of the exchange was never explained but Crowley speculated that the party had unwittingly camped on an Aboriginal sacred site.⁵⁸

53. Ibid 36.

54. Ibid 39.

55. Western Australia, *Parliamentary Debates* (Hansard), 23 Feb 1891, 373, cited in Crowley, *Big John Forrest*, above n 1, 96.

56. Crowley, *Forrest*, above n 1, 73.

57. Ibid 68.

58. Ibid.

A celebratory poem of dubious merit and accuracy was written after their arrival in Adelaide. It inflated the exchange with the Aboriginal people and gave it a touch of 'Boys Own' adventures with reference to 'swarming hordes of ruthless blacks ... fiendish yells and whistling spears' and ended with a verse:

Lost Leichhardt, Stuart, Burke and Wills
McKinlay – heroes of the past!
Then grey-headed Warburton, and last
A space thy name, brave Forrest, fills.⁵⁹

None of the verses appeared to scan.

In 1875, Forrest took leave for six months and travelled to England. There he was presented to Queen Victoria. He gave a lecture to the Anthropological Institute on the 'Natives of Central and Western Australia' and to the Royal Geographical Society. He met administrators at the Colonial Office and politicians who had a part to play in the development of the Australian colonies.⁶⁰ He made a good impression. He was offered a grant of 5,000 acres of crown land upon his return. The Colonial Secretary, Lord Carnarvon, recommended to the Governor that Forrest's salary be increased and that he be made Deputy Surveyor-General. The journal of his explorations was published with maps and illustrations, although described by one reviewer as 'dry, tedious and hard to follow'.⁶¹ Forrest was appointed Deputy Surveyor-General in 1876.⁶² He was 28 years old.

On 29 February 1876, Forrest married Margaret Hamersley, a daughter of one of Perth's leading families. He also became a substantial landholder acquiring, with his brother Alexander, over one and a quarter million acres of pastoral leasehold in the north west of Western Australia. The scale of his landholdings while he was a senior officer responsible for the administration of crown lands in the Colony became a matter of some controversy and was debated in the Legislative Council, although his probity was not able to be impugned.⁶³

In 1878, Forrest was appointed Acting Surveyor-General and Acting Commissioner of Crown Lands. He was sworn in to the Executive Council by reason of holding those acting offices. Crowley wrote:

This was the first occasion on which a colonial-born Western Australian had been admitted to the highest council in the government of the colony, and, being a mere 30 years of age, John Forrest must have been exceedingly pleased with himself.⁶⁴

59. Crowley, *Big John Forrest*, above n 1, 73.

60. Crowley, *Forrest*, above n 1, 80.

61. *Ibid* 81.

62. *Ibid* 85.

63. *Ibid* 105.

64. *Ibid* 103.

For a time, from 1880 to late 1881, he served as Acting Superintendent of Imperial Convicts. He wrote in a report at the end of his service in that post that he had been as kind to the prisoners as possible and had tried to make them believe that he had no desire to punish them if it could possibly be avoided. He said:

To treat men as men, if in ever so fallen and depraved a condition has I believe an elevating effect, and I believe these Prisoners are as contented as it is possible for men in their position to be.⁶⁵

Forrest began to acquire a variety of honours. He had been made a Chevalier of the Order of the Crown in Italy in 1876 and received the Founder's Gold Medal of the Royal Geographical Society of London. In 1881, he was elected as a member of the Linnean Society of London for his work in collecting Australian flora. He was also made an Honorary Fellow of the Vienna and St Petersburg Geographical Societies.⁶⁶ In 1882, he was made a Companion of the Order of St Michael and St George.⁶⁷

On 22 January 1883, Forrest was appointed by his great supporter, Governor William Robinson, as Surveyor-General and Commissioner of Crown Lands for Western Australia. He was also given a substantive appointment to the Executive Council.⁶⁸ He was then 35 years of age. He was made an official member of the Legislative Council.⁶⁹ The *Inquirer* newspaper observed that 'the time cannot be far distant when we shall be allowed to enjoy the privilege of ruling ourselves, as are the other Australian colonies'.⁷⁰

In February 1883, Governor Robinson departed to be replaced later in the year by Governor Broome who would ultimately preside over the Colony's transition to responsible government. Relations between Forrest and Broome were difficult. In rejecting Forrest's proposal in 1884 that he act only on the advice of the Executive Council, Broome wrote to him with a degree of irritation and condescension:

For nine years, in three colonies, two of them much richer and more thronged & varied communities than this, I have sat in or presided over Executive Councils ... I have never known a single instance of a member of an Executive Council attempting to interfere with the conduct of the Government and to embarrass the position and action of the Governor in the manner you are doing.⁷¹

65. Ibid 115, citing J Forrest & Governor Robinson, *Governor's Correspondence 1880-83, The Report of the Directors of Convict Prisons for the Year 1881-82*, House of Commons Papers (2 Aug 1881) c 3374.

66. Kimberly, above n 2, 6.

67. Crowley, *Forrest*, above n 1, 117.

68. Ibid 122.

69. Ibid 131.

70. Ibid 127.

71. Ibid 140.

Battye wrote of Broome that his administration was ‘marred by repeated disagreements with prominent officials and others who occupied important positions in the community’⁷² and said:

With the Surveyor-General, John Forrest, he was continually in conflict, and that the official generally got his way was probably due to the fact that he possessed the same qualities as the Governor in an even more marked degree.⁷³

Public life in Western Australia was nothing if not robust. At about this time Governor Broome suspended Chief Justice Onslow and the Attorney-General, Hensman. In writing to Lord Derby, the Secretary of State for the Colonies, in 1884 concerning Forrest, Broome acknowledged his achievements as an explorer and his success as Surveyor-General and Commissioner of Crown Lands, but added:

Outside his department, he is somewhat different. Here, we come upon his theories of this Constitution, upon a want of training and experience, upon quite a vain glorious opinion of his own political importance, and last, but not least ... upon his active and morbid jealousy of the Colonial Secretary. Mr Forrest has not much sense of official subordination, and but little deference ... to the governor.⁷⁴

There is quite a detailed history recounted by Battye and Crowley, and Enid Russell in her *History of the Law in Western Australia*,⁷⁵ of the internecine disputation going on at this time between the Governor of Western Australia and Forrest and others. But Crowley concluded:

[D]espite the violence of their language, the social snubbings, the heated petty conspiracies, and the constant comings and goings between the various government offices, Government House and the Weld Club, the work of the executive, the civil service, the judiciary and the legislature functioned with reasonable efficiency.⁷⁶

In 1887, Forrest, with Septimus Burt, who was later to be his Attorney-General for Western Australia, represented the Colony at the Colonial Conference in London. This event was important to his political development.

Forrest travelled to England on a mail steamer which he joined at Albany. On the same vessel were Alfred Deakin, then a Minister in the Victorian Government, Samuel Griffith, the Premier of Queensland and John Downer, the Premier of South Australia.⁷⁷ The focus of the conference, which began in April and concluded on 9 May 1887, was upon defence and communications within the Empire. In that

72. Battye, above n 25, 344.

73. Ibid 345.

74. Crowley, *Forrest*, above n 1, 152–3.

75. Russell, above n 6.

76. Crowley, *Forrest*, above n 1, 159.

77. Ibid 175.

connection, the Australian colonial delegates had obvious common interests. This was a setting in which Forrest, imbued with a sense of Australian nationalism and admiration of British imperialism, was quite comfortable. The whole experience had a significant impact upon him. Crowley wrote:

The Forrest who returned home in January 1888 was in several ways a different person from the Forrest who had left Perth almost a year earlier. His world had been widened and his character had matured as a result of daily contact with many different types of people in many different countries.⁷⁸

On his way back to Perth, Forrest spoke with journalists in Melbourne and Adelaide about the future of Western Australia. He spoke optimistically of its mining and pastoral industries and of the possibility of irrigated sugar plantations in the north. He wanted to see a railway line built from Adelaide to Perth via Eucla.⁷⁹ He was most impressed by the Canadian Pacific railroad and referred to it as an illustration of what could be achieved.

As Surveyor-General and Commissioner of Crown Lands in the next three years or so, and as a member of the Legislative and Executive Councils, Forrest was closely involved in the development of Western Australia prior to responsible government. He was vocal about many things, but particularly about a railway link between Perth and Adelaide. He found naysayers and sceptics within the West Australian community who believed, as he put it, that ‘no good can come out of Nazareth’.⁸⁰ He thought that the worst enemies Western Australia had were its own people and that ‘if most of us live the allotted span of threescore years and 10 – and long before that – we shall see this line an accomplished fact’.⁸¹

In January 1891, Western Australia’s new Parliament was officially opened with Forrest commissioned as Premier and Treasurer. He presided over a Colony undergoing an economic growth spurt generated by the goldmining industry and the substantial influx of population to the Kalgoorlie/Coolgardie and Boulder region. Some of the features of his term as Premier have already been mentioned. It was a period of explosive development in the Colony and he seems to have been the right person for the time.

It is necessary now, however, to pass over that aspect of his history in order to see the part that Forrest played in the Conventions which led to the making of the Australian Constitution.

78. Ibid 186.

79. Ibid 184.

80. Ibid 194, citing Western Australia, *Parliamentary Debates* (Hansard), 16 Nov 1888, 294.

81. Ibid.

FORREST AND THE CONSTITUTIONAL CONVENTIONS

The West Australian delegates to the 1891 National Australasian Convention were appointed by the Parliament. They attended as independent members. Neither the Parliament nor the delegates as a group adopted any common positions with respect to whether, or upon what basis, Western Australia might join an Australian federation.

The West Australians were delayed in leaving for Sydney by parliamentary business at home and did not arrive for the Convention until 9 March 1891, three days after it had commenced. They were welcomed by the President of the Convention on behalf of the 'older colonies'. In his response to the welcome, Forrest acknowledged that Western Australia was still 'in its infancy as regards the development of its resources, and the extent of its political institutions'.⁸² Later, in his first substantive speech to the Convention, he expressed his hope that there would be established in Australia a 'federal dominion'⁸³ but said he had a duty to examine the matter closely as it affected states having small populations and large areas, and particularly Western Australia.⁸⁴ He accepted that it would be impossible to have a federal government unless that government was strong. Its principal advantages lay in defence, national laws and free trade. However, he anticipated sceptics in Western Australia who would look to Britain for defence, thought their own laws were good and who were either unenthusiastic about free trade or thought it would be possible even without a federation. He marked out a classic bargaining position when he said:

[I]t is the desire of all Western Australians to join in this great federation; and, as far as I am able, I will endeavour to urge on the matter. At the same time, I see practical difficulties in the way. People sometimes look at things in a narrow point of view; and, unless we can show them that it is to their material advantage to join with the other colonies – in fact, that if they will not gain anything, they will not, at any rate, lose anything – I see very great difficulties in the way.⁸⁵

Forrest repeatedly emphasised the distance of Western Australian from the other colonies separated 'by 1,000 miles of unoccupied territory'.⁸⁶ He also made the point early in the Debates that the States should be able to maintain control of their own Constitutions and that they should not be dependent upon the central government.⁸⁷ An indication of his concern to preserve the identities of the States was his opposition to the term 'The Commonwealth of Australia'. He did not think that name would indicate that a number of states had joined together in a federal union. He preferred 'the Federated States of Australia' or 'Federal Australia'. He

82. *Official Record of the Debates of the Australasian Federal Convention* (Sydney, 1891) 127.

83. *Ibid* 218.

84. *Ibid* 219.

85. *Ibid* 223.

86. *Ibid* 437.

87. *Ibid* 493.

also pointed out that the word ‘commonwealth’ was associated with a period of English history which, as he put it, ‘was not very glorious’.⁸⁸

It was perhaps a reflection of Western Australia’s ambivalence about federation that Forrest proposed that the Constitution make provision for new states to be admitted into the federation ‘so that any state which is not willing or able to enter into the federation at the present time might at some future time be enabled to do so’.⁸⁹

In Kimberly’s *History of West Australia* published in 1897, the author observed:

Upon the return of the Premier ..., the Cabinet decided not to take any action in seeking the views of the legislature on the matter. They were of opinion that Western Australia could not enter the Federation without hurting her industries, then in a rudimentary state, and until she was brought into close connection with her Eastern neighbours by means of a transcontinental railway.⁹⁰

According to Battye, it was recognised that any scheme of amalgamation would need very careful consideration before the opinions of the electors could be sought. In particular, the Colony could not afford to sacrifice its existing tariff. Nothing much was done within Western Australia in the four years or so following the Convention, although Battye observed that ‘the question of a Federated Australia occupied a more or less prominent position in the minds of the people, who were gradually becoming educated in this most important matter’.⁹¹

The outcome of the Convention was agreement upon a draft Bill for the Constitution of the Commonwealth. However, none of the colonies accepted the draft at that time. Forrest wrote to Sir Henry Parkes after the Convention saying that ‘the Federation Bill does not attract a great deal of attention here’.⁹²

In 1896, Western Australia accepted the draft of an Enabling Bill prepared at a Premiers Conference by the Premiers of Victoria and South Australia and providing for a new Convention of 10 representatives from each of the colonies with a view to framing a Federal constitution. The Western Australian Act was the Australian Federation Enabling Act 1896 (WA). Unlike the other colonies, Western Australia’s representatives were selected by the two Houses of Parliament sitting together and were not directly chosen by the people.⁹³ Work commenced on the draft constitution in Adelaide in 1897. Forrest was then still expressing scepticism about the benefits for Western Australia:

88. Ibid 555.

89. Ibid 223.

90. Kimberly, above n 2, 301.

91. Battye, above n 25, 441.

92. Crowley, *Big John Forrest*, above n 1, 100.

93. Battye, above n 25, 442.

While I am prepared to assist in passing this Bill, and while I believe in a Central Government, I am at a loss ... to satisfy myself where the gain comes in for the colony I have the honour to represent.⁹⁴

Nevertheless, he accepted that Australians were one people who belonged to the same nation and did not want to live under different laws separated by hostile tariffs and by imaginary lines on a map.⁹⁵

Despite Forrest's disclaimers, Barton viewed the Western Australians as 'more or less apathetic about Federation' and complained that their delegates' vote had 'adversely influenced the destiny of those who strongly wish for Federation'.⁹⁶ Forrest's uncompromising advocacy of Western Australia's interests led Deakin to describe him as:

[A] Minister without an opposition, a Minister to whom a general election is a passing incident, who showers benefits on a country which gratefully and freely acknowledges them ... I think compromise is not a word which frequently finds favor in his eyes.⁹⁷

Forrest's most significant input to the Convention appears to have occurred in Melbourne in 1898. He was a member of the Convention's Finance Committee. Although he was unsuccessful in arguing for an arrangement that would guarantee that no State suffered loss during the early years of federal financing, he did persuade the delegates that Western Australia needed at least one concession to enter federation. That need was due to the sudden influx of gold-seeking adult males.⁹⁸ He tabled figures to show that Western Australia raised a higher proportion of income per capita from customs duties because a higher proportion of its total population were consumers. Ultimately it was decided that Western Australia would be allowed to impose duties on goods passing into the State and not originally imported from outside Australia for five years after the imposition of a uniform national tariff, with the amount it could impose diminishing by one-fifth every year.⁹⁹

Like the other representatives of colonies with small populations, Forrest argued in favour of a powerful senate in which the States had equal representation.¹⁰⁰ He also thought the senate should be elected by the State legislatures. If the Upper House were elected by the people, there would be two Houses 'too much alike'.¹⁰¹ His lobbying on this issue at the 1897 Sydney Convention was to no avail,

94. *Official Record of the Debates of the Australasian Federal Convention* (Adelaide, 1897) 252.

95. *Ibid* 253.

96. *Ibid* 561.

97. *Ibid* 514.

98. Crowley, *Big John Forrest*, above n 1, 211.

99. *Ibid* 211–12. See *Official Record of the Debates of the Australasian Federal Convention* (Melbourne, 1898) 1243.

100. *Official Record of the Debates of the Australasian Federal Convention* (Sydney, 1891) 221–2.

101. *Ibid* 222.

although equal State representation was reaffirmed against a proposal by Victoria for proportional representation. Also affirmed was the principle that senators were to be elected by the people in single State-size electorates. Forrest objected to this on the basis that with each state voting as one electorate, ‘the large centres of population [would] have a preponderating influence in the return of members of the Senate’.¹⁰² As to the powers of the Senate, he believed that it should have the power to amend all Bills sent to it by the House of Representatives. This proposition was not accepted in its entirety, the Convention agreeing that the Senate should have the power to amend all Bills except money bills.

Consistently with his view that there should be a strong Senate, Forrest was opposed to double dissolutions to reduce deadlocks. He thought the proposal ‘emasculated the Senate’s powers in all matters’. He characterised this as a deal-breaking point:

Speaking for the colony that I represent, I say that amongst the electors there is no great feeling in favour of federation ... unless we are prepared to show that we have framed a really good constitution ... [They] will also want to know ... whether they are in danger of being overridden by the peoples of the larger states ... [I]f there is a fear on the part of the representatives or the people of the two larger states that they are to be coerced or overridden by the smaller states ... they had better federate themselves and leave us alone.¹⁰³

He renewed his position at the 1898 Melbourne Convention. Reid lost patience with him and called Forrest a ‘sort of political almighty’.¹⁰⁴

Forrest and his colleagues put their views to the Convention in relation to various of the powers proposed for the Commonwealth Parliament. He supported the proposal that ‘specific powers shall be given to the central government, and that all the other powers shall remain in the states or provinces’.¹⁰⁵ He accepted that defence and customs were matters for the Commonwealth and, somewhat reluctantly, that the general power of taxation was in the same category.¹⁰⁶

Forrest supported the proposed power of the Commonwealth Parliament under section 51(x) to make laws with respect to ‘fisheries in Australian waters beyond territorial limits’. Barton wanted to delete the reference to ‘territorial limits’ because he was concerned about the interaction between domestic and international law and the rights of foreign vessels. Forrest’s position to the amendment was not particularly legalistic. He supported what he called the ‘broader and more Imperialistic view of this question’ and said, ‘this continent of ours belongs to

102. *Official Record of the Debates of the Australasian Federal Convention* (Melbourne, 1898) 1927.

103. *Official Record of the Debates of the Australasian Federal Convention* (Sydney, 1897) 609–10.

104. Crowley, *Big John Forrest*, above n 1, 214.

105. *Official Record of the Debates of the Australasian Federal Convention* (Sydney, 1891) 493.

106. *Official Record of the Debates of the Australasian Federal Convention* (Adelaide, 1897) 252.

Great Britain, and the waters around it, at any rate, should be within the influence of the British Government'.¹⁰⁷

Not for the first time British imperialism sat comfortably with Australian nationalism in Forrest's mind.

Forrest was concerned about conferring on the Commonwealth the power to make laws for the people of any race for which it is deemed necessary to make special laws, a power now found in section 51(xxvi) of the Constitution. He wanted to retain Western Australia's right to discriminate. He said:

We have made a law that no Asiatic or African alien can get a miner's right or do any gold mining. Does the Convention wish to take away from us, or, at any rate, not to give us, the power to continue to legislate in that direction?¹⁰⁸

He voted in favour of conferring on the Federal Parliament the powers to make laws with respect to invalid and old age pensions¹⁰⁹ and to legislate with respect to conciliation and arbitration in connection with industrial disputes extending beyond the limits of any one State.¹¹⁰ Of that power, he said:

[F]or all that it may not be thought so, I have some liberal instincts ... I have a greater regard for individual rights, I think, than probably [Mr Higgins] has. But my reason for supporting this amendment is that I think the Federal Parliament will be better able to deal with the subject, and will deal with it more moderately, than the local Parliament will be likely to do.¹¹¹

Forrest thought of himself as a liberal, wrongly perceived as conservative. His sensitivity was reflected in remarks he made at the Adelaide session when he said, 'I myself, in my own country, am considered a liberal, but when I come over here somehow people look at me as if I were a conservative'.¹¹²

In relation to the federal judicature, Forrest was concerned that the retention of appeals to the Privy Council from the Supreme Courts of the States would leave the High Court with 'very little to do' and would mean that it could not occupy 'that high position in the estimation of the people of this continent which we all desire it should occupy'.¹¹³ He was also supportive of a proposed clause 80, not ultimately adopted, prohibiting any person holding judicial office from being appointed to, or holding the office of Governor-General, Lieutenant-Governor, Chief Executive Officer or Administrator of the Government or any other executive office. He said:

107. *Official Record of the Debates of the Australasian Federal Convention* (Melbourne, 1898) 1873.

108. *Ibid* 240.

109. Constitution, s 51(xxiii). See Crowley, *Big John Forrest*, above n 1, 214.

110. Constitution, s 51(xxv). See Crowley, *ibid* 215.

111. *Official Record of the Debates of the Australasian Federal Convention* (Melbourne, 1898) 209–10.

112. *Official Record of the Debates of the Australasian Federal Convention* (Adelaide, 1897) 250.

113. *Official Record of the Debates of the Australasian Federal Convention* (Melbourne, 1898) 239

It seems to me to be a mistake to mix up the judicial with the administrative in the way which is the custom at the present time [the current system] either has the effect of weakening the Supreme Court, or else you find that the Governor for the time being occupies a seat on the judicial bench.... We have heard a good deal of keeping the Judges independent and aloof.... But if this clause does not find a place in the Bill we shall have the Chief Justice or one of the Judges of the High Court acting for the time being as the head of the political organization of party government.¹¹⁴

He contributed to the debate about appropriations and was concerned about the consequences of appropriations made other than in accordance with law. Downer said the clause had been included to 'give the High Court jurisdiction over some body or other, and by that means prevent an abuse of the Constitution'.¹¹⁵ Forrest responded 'What would they do with him? Would they put him in prison?'¹¹⁶ He said, reflecting his practical perspectives:

I am not an advocate for spending money without authority, but I know it has to be done, and it is for Parliament afterwards to say whether those who spend the money shall or shall not continue in their positions. To state in this Constitution that the Treasurer or the Governor may be brought up before the High Court to answer for their doings with respect to the public expenditure is ridiculous.¹¹⁷

As to the extended debate on water rights and irrigation and navigation which was focussed on the Murray/Darling Basin, Forrest was vexed by the length of time devoted to the topic and said:

We have devoted too much time to this subject. I have come a long way to do my duty, and I have not unlimited time. Water is supposed to be refreshing, especially when diluted; but I really think we shall dispose of this subject better if we go on with some other business.¹¹⁸

This review gives some sense of the part played by Forrest in the Convention Debates. It was not decisive of any great issue but it was a necessary part of the process of bringing Western Australia, albeit late, into the Federal compact.

CONCLUSION

As appears from the preamble to the Constitution, Western Australia had not conducted a referendum on the proposed Constitution Bill at the time that the Bill was submitted to the British Parliament. There was a division of opinion. Support was particularly strong for it in the Eastern Goldfields, some of whose residents

114. *Ibid* 356.

115. *Ibid* 902.

116. *Ibid*.

117. *Ibid* 904.

118. *Ibid* 545.

saw it as an antidote to 'Forrestism' identified with high tariffs on imported food.¹¹⁹ Many of those that came to the *Eastern Goldfields* from other colonies seemed to have a greater affiliation with those colonies than with the inhabitants of coastal Western Australia. The debate in Western Australia between so-called 'billites' and 'anti-billites' reached a peak when Eastern Goldfields residents sent a petition to the Queen requesting separation from the rest of Western Australia.

Forrest was still seeking concessions for the Colony in the Constitution Bill which had gone to London, but none of the delegates representing the other colonies in London would agree. In the end, the Western Australian Parliament agreed to hold the requisite referendum. It was held after the Commonwealth Constitution Bill had been passed and had received the Royal Assent on 9 July 1900. The result of the Western Australian referendum on 31 July 1900 was nearly a two-thirds majority in favour of federation. Thus, as Crowley wrote, 'rather reluctantly, the Government of Western Australia was propelled into the Union by the decisive action of the majority of the colony's citizens'.¹²⁰

The first Federal Government was appointed in 1901 and Sir John Forrest, now knighted, entered a new national arena as a founding member of the Ministry.

Lord John Forrest, as I have earlier remarked, was an interesting man of many talents and great character. He could also be immensely irritating and opinionated. The elements were mixed in him. He was of his time and ahead of his time. He was a great Australian.

119. Crowley, above n 10, 151.

120. *Ibid* 152–3.