

In Search of Samuel Griffith: pragmatist or idealist?

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We know much about what Samuel Griffith did as law reformer, Premier, supporter of federation, constitutional drafter, Chief Justice of Queensland and Australia's first Chief Justice. We are less certain about *why* he did those things. What motivated him? Was he driven simply by personal ambition? In what did he believe? Did he abandon the progressive, liberal causes he advocated as a young man?

A complex personality

To most Australians who know anything about him, Griffith is the grey, conservative figure of his later years, as photographed in the robes of high judicial office. His judgments do not have the flourishes of a Louis Brandeis. They are said to have been “stated with a precision that belongs rather to mathematics than to law and he had, indeed, a remarkable directness and lucidity.”² Griffith's precise, mathematical style is understandable: he was awarded first class honours in maths from Sydney University. Sir Owen Dixon, who as a barrister appeared before Griffith, described him as having a “legal mind of the Austinian age”.³

Many pen portraits of Griffith depict him as a cold character. Deakin, who encountered Griffith at the Intercontinental Conference in 1883, described him as “lean, ascetic, cold, clear, collected and acidulated [with] a sceptical and almost cynical manner”.⁴ That description stuck. Griffith's biographer, Roger Joyce, refers to the busy, young barrister as “aloof and self-centred”.⁵

His aloofness warrants some exploration. A Clerk of the Queensland Parliament, Bernays, wrote that Griffith achieved leadership in politics “because of his innate strength of character, his indomitable industry, and his transparent mental superiority

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² Chief Justice Thomas McCawley, 23.6.1922 cited in J C Vockler *Sir Samuel Griffith*, Honours Thesis, University of Queensland, 1953, 6.

³ Retirement of the Chief Justice, (1964) 110 CLR v at xi.

⁴ A Deakin, *‘And be One people’ Alfred Deakin’s Federal Story*, Melbourne University Press, 1995, 12.

⁵ R Joyce, *Samuel Walker Griffith*, University of Queensland Press, 1984, 26.

over those with whom he associated”.⁶ Bernays reports that in the 21 years Griffith served in the Parliament there never appeared anyone approaching his type. A strange trait in his character is said to be that “he never entirely pleased himself”.⁷ Bernays reports watching Griffith recast an amendment five or six times, and “he then left the impression he could do it twice as well in the privacy of his own study”. He continues:⁸

“One could not honestly say that Griffith was a popular politician. He could have been had he been less sincere, but his convictions were so unshakeable that he declined to trim his sails (if we except one remarkable instance) with the object of acquiring an ephemeral popularity. He seemed to depend on the sternness of his resolve to compel respect and admiration, rather than to descend to the little things of life for the purpose of gaining a reputation of a genial, hail-fellow-well-met politician. ... He seemed to regulate his whole life by the belief that anything was possible to an industrious man.”

Griffith’s first term as Premier between 1883 and 1888 was as a reforming liberal. He legislated to bring the trade in Melanesian workers to an end by 1890. As Opposition leader he read Marx and other utopian radicals, and in 1890 introduced a Bill which declared that the net product of labour belonged to the persons concerned in its production. Some see this as a cynical tactic to engage the support of the labour movement.

Griffith’s second term as Premier was between 1890 and 1893, when he formed an unlikely coalition with his conservative and long-term opponent McIlwraith. Griffith’s political record is heavily coloured by his compromises during that period: in particular, delaying the abolition of trafficking in Melanesian workers by ten years because of the poor state of the economy and the fact that the sugar industry lacked a labour force to replace those workers in the tropics. Griffith also is remembered as having authorised the use of troops to quell lawlessness during the shearers strike in 1891.

In 2020, Chief Justice Catherine Holmes damned Griffith the Politician with faint praise as being “agile”.⁹ Others are harsher and treat him as abandoning the causes he had earlier championed. Manning Clark refers to the turbulence of the strikes in the bush as

⁶ C A Bernays, *Queensland Politics During Sixty Years 1859-1910*, Government Printer, 1919, 73.

⁷ Ibid.

⁸ Ibid.

⁹ The Hon Catherine Holmes AC, ‘Griffith the Politician’ in *Celebrating Samuel Griffith*, Australian Academy of Law, webinar, 11.8.20 <https://www.sclqld.org.au/collections/explore-the-law/past-lectures/2020-selden-society-australia-lecture-program> (“AAL”)

having “pushed him back into the camp of the defenders of bourgeois society”.¹⁰ As constitutional framer and first Chief Justice, Griffith is seen as a defender of States rights, whose conception of the federal balance was progressively displaced. In recent decades, Griffith’s name has been appropriated as the pin-up boy for a certain brand of legal conservatism.

One might easily see Griffith’s politics as a progression from radical liberal to crusty conservative. Yet, in his final year, after he retired as Chief Justice, Griffith restated and supplemented the principles that he had stated as a radical politician in 1890 in *The Boomerang*. He urged that rules based on power be abandoned, and replaced with those based on fraternity. He stated 22 governing principles that he had tried to state in legislation thirty years earlier.¹¹

Those principles have a distinctly Romantic, idealistic, almost utopian flavour. By 1919 they were increasingly outdated in an era of party politics with an emerging Labor Party based on the working class and the labour movement, and conservative parties representing the interests of business and capital.

Griffith’s politics are hard to pin down. I suggest that they belong to what Professor David Kemp labels as the “new liberalism”. This should not be confused with what we know today as “neo-liberalism”. The new form of 19th century liberalism to which Griffith became wedded in his youth and promoted as a politician differed from classical liberalism which was based on freedom of choice, freedom of contract and unregulated markets. The new liberalism believed that government should legislate to prevent exploitation and to assist those in need. It promoted regulation of labour and conditions in factories, mines and homes that were used as “sweated” places of employment.¹² It was driven by a humanitarian impulse. To quote Professor Kemp, it believed that harmful conditions could be alleviated by detailed regulation and “relieved by positive actions by the state to provide such services as education..., water and sewerage supplies,

¹⁰ C M H Clark, *A History of Australia Vol 5 The People Make Laws 1888-1915*, Melbourne University Press, 1981, 71 (“Clark”).

¹¹ “The Social Problem – A Fundamental Error – The Solution”, *The Advertiser*, 1.11.1919, 10, Joyce, 357-358.

¹² David Kemp, *A Free Country: Australia’s Search for Utopia 1861-1901*, The Miegunyah Press, 2019, 120 (“Kemp”).

and ultimately the direct and short-term alleviation of poverty by means of redistribution of relatively small amounts from the middle class and the wealthy to the poor”.¹³

Therefore, Griffith is an interesting choice for any conservative cause, let alone a neo-liberal, neo-conservative one. His politics were hardly conservative.

As for his character, Griffith’s cold exterior and clinical style in politics and the law concealed a romanticism and a “complex and contradictory personality”.¹⁴ Professor Roger Joyce, whose 780,000 word first draft biography was culled to 200,000, admits in his work to not fully understanding “the ‘strange’ man with whom I have been living so long”.¹⁵ What hope can the rest of us have? Joyce refers to a multi-faceted person, and a Renaissance man, with a “passionate inner life far removed from the cold existence imposed by his master, the law”.¹⁶

In recent years, Professor Kay Saunders, who was a young researcher on that biography, has written about Griffith. She says that he “was driven by rapacious demons that so often pursue the clever and rapidly upwardly mobile”.¹⁷ She writes of Griffith as the outsider who transformed himself from Welsh, nonconformist origins into an aristocratic upper class Australian. Incidentally, Griffith was induced by a flatterer to undertake an expensive, but futile, project to try to prove that he was descended from the ancient royalty of Wales.¹⁸ As against that vanity, is the curiosity that he named his beautiful mansion *Merthyr*, the name of the industrial hellhole where he was born.

Professor Geoffrey Bolton’s 1991 essay *The Great Provincial*¹⁹ also paints Griffith as an outsider.

“In so many aspects of his life he began as an outsider, a marginal man distanced from the centres of prestige and authority. It is not just that he was a Queenslander in a continent where wealth and population were concentrated in Victoria and New South Wales. He was Welsh, not English; Congregationalist,

¹³ Ibid

¹⁴ K Saunders ‘Sir Samuel Griffith and the Writing of the Constitution’, *Griffith, the Law, and the Australian Constitution*, Royal Historical Society of Queensland, 1998, 22 (“Saunders 1998”).

¹⁵ Joyce, x.

¹⁶ Joyce, xi.

¹⁷ Saunders 1998, 22.

¹⁸ K Saunders ‘Sir Samuel Griffith (1845-1920): a journey from the dark satanic mills to the High Court in six episodes’ Vol 24 *Queensland History Journal*, The Royal Historical Society of Queensland, 2021, 878-888. (“Saunders 2021”), Joyce 139-140.

¹⁹ G Bolton ‘Samuel Griffith: The great provincial’ in *One People, One Destiny*, Department of the Senate, 1991 (“Bolton”).

not Anglican or Catholic; a colonial, not a metropolitan Briton, and even in the colonial context he was the product of Maitland and Brisbane, not the cities of Melbourne and Sydney. He could not have been anything else but a provincial. The impressive thing about Griffith is that he grew into a great provincial, ready and able to tackle the challenge of knitting together the colonial provincialisms of his time into the making of an Australian nation.”

Griffith’s early life

Griffith was born in 1845 in Merthyr Tydfil in Wales. It was an ugly centre of the industrial revolution. Thomas Carlyle, who visited Merthyr around this time, described it as “the sootiest, squalidest and ugliest place on earth” and wrote that its ironworks were “like a vision of Hell” that would never leave him.²⁰ Infant mortality from disease was so rife that average life expectancy was 17 and-a-half-years. Griffith’s father, a Congregational Minister, and his family came to Australia in 1854 with the support of John Fairfax and David Jones from the Colonial Missionary Society. Young Sam Griffith read every book in the house, including the copy of the New Testament in Greek that his father gave him for his fourth birthday.

Like Chief Justice Gageler, Griffith was educated in the Hunter Valley. In 1859, Samuel Griffith, aged only 15, duxed his school at Maitland and entered Sydney University. He earned first class honours in classics and mathematics and was assessed to be one of the brightest students of his generation. He also took an extra university course in jurisprudence.

Sam’s ambitious and precocious nature was shown when, aged only 18, he applied on the strength of his degree to be headmaster at Ipswich Grammar School. He could not understand his rejection and had to content himself with being an articled clerk. His articles were interrupted by the Mort Travelling Scholarship from Sydney University. It allowed him to go on a Grand Tour of Europe and develop a lifelong love of all things Italian. On that tour, Griffith had a dalliance with a married woman, and as Manning Clark wrote, “he was an early addict to the pleasures of life and the wine cup”.²¹

²⁰ Carlyle wrote that the town was filled with such "unguided, hard-worked, fierce, and miserable-looking sons of Adam I never saw before. ... It is like a vision of Hell, and will never leave me, that of these poor creatures broiling, all in sweat and dirt, amid their furnaces, pits, and rolling mills." James Anthony Froude, *Thomas Carlyle: A History of his Life in London 1834-1881*, Longmans, Vol 2, 1855, 52.

²¹ Clark, 70.

Griffith had a remarkable capacity to drink without apparently affecting the quality or quantity of his work. After dinner in his home, he would drink a bottle of whisky while drafting complex legislation and legal opinions.²² He could drink anyone under the table. As Premier, he was hated by the North Queensland squatters and plantation owners. On one occasion they conspired to get this thin man drunk at a civic reception in Burketown. At daybreak, only Griffith and a single squatter remained standing. Griffith escorted the squatter outside and watched him ride away on a camel that was not his own in a direction which was not the direction of his property.²³

Returning to his youth, Griffith was a brilliant and busy young lawyer. He started at the Bar in Brisbane in 1867, at which he continued to practise during his decades in politics.²⁴ He entered Parliament in 1872 on the side of the progressive Liberal movement headed by Lilley, Hemmant and Atkin. Griffith filled a vacancy created by the retirement of Robert Atkin, who was terminally ill. Atkin, a young, campaigning journalist and newspaper editor, only resigned as an MP after being assured that Griffith would stand for election to replace him. Atkin's young sons, including the future Lord Atkin, were raised in Wales by their widowed mother. Thus, we have the intersection between two great jurists: a Welsh-born Australian jurist and an Australian-born Welsh jurist.

The Liberals fought the vested interests of the “squattocracy”²⁵ and Queensland's corrupt, malapportioned electoral system. Griffith advocated more expenditure on public works. As an Opposition member he initiated a raft of law reforms.²⁶

²² J McKenna *The Griffith Opinion Books*, 3 citing A B Piddington, *Worshipful Masters*, Angus & Robertson, 1929, 234.

<https://law.uq.edu.au/files/23473/CLI-22Aug2013-Griffith-Opinion-Books.pdf>

²³ A Douglas Graham, *The Life of the Right Honourable Sir Samuel Griffith, GCMG, PC*, Powells & Pughs, 1939, 97-98 (“Graham”).

²⁴ John McKenna KC has written about ‘Griffith the Lawyer’ at AAL and in *The Griffith Opinion Books* <https://law.uq.edu.au/files/23473/CLI-22Aug2013-Griffith-Opinion-Books.pdf>

²⁵ As Justice Patrick Keane observed in his work about Griffith's political ally, Dr Kevin O'Doherty, “the squattocracy who dominated Queensland's politics were speculators who has strong associations with shady moneyed interests in Sydney from whom the taint of the Rum Corps had not entirely lifted” and the squatters “laid claim to some enormous areas which they did not attempt to cultivate”: P A Keane *Lord Atkin: Irish Roots and the Queensland Connection*, Selden Society Lecture, 30.8.2018, 6. <https://www.sclqld.org.au/catalogue/records/88698>

²⁶ Justice D J S Jackson ‘The audacity of Griffith as law reformer’ Selden Society Lecture 25.3.21, <https://archive.sclqld.org.au/judgepub/2021/jackson20210325.pdf>, M Finnane, ‘Penalty and Policy: Griffith and the Limits of Law Reform in Colonial Queensland’, *Australian Cultural History*, No 8, 1989, 84.

Griffith had a visceral hatred of the trade in Melanesian labour, which he and others described as a legalised form of kidnapping. Griffith's opposition to that trade was not rooted in any strong religious beliefs. He had a secular understanding of the world which created a rift with his father.²⁷ Samuel's political activism against the squattocracy and the plantation owners was the product of his education at Sydney University where he studied classics under Professor Woolley, who also lectured on J S Mill's *On Liberty*. Griffith's mathematics teacher was the American-born Morris Birkbeck Pell whose family had a long involvement in the cause of the abolition of slavery. Professor Kay Saunders writes:²⁸

“Samuel, as an impressionable and eager undergraduate, was exposed to the teachings of a Radical thinker steeped in secular utopianism, anti-slavery advocacy and fundamental reforms rather than the moral bedrocks of his family's Non-Conformist ideology”.

Law reformer and Liberal Premier

Griffith was ambitious and when he was passed over for appointment as Attorney-General in the Macalister ministry, he made the new Attorney General's “life not worth living”.²⁹ He became Attorney-General and Secretary for Public Instruction in 1876. He had a lifelong commitment to public education, and in 1875 was responsible for the passage of a law for compulsory, free and secular education.

Griffith was a ferocious Opposition leader between 1879 and 1883 and accused Premier McIlwraith of corruption. He was undeterred when official inquiries found no evidence to support Griffith's claims. But he succeeded in raising clean government as an issue and became Premier between 1883 and 1888.

Griffith came to power in 1883 by promising changes to the *laissez faire*, classical liberal policies pursued by McIlwraith. Mining companies were to be compelled to give greater benefits to their employees.³⁰ In 1886, Griffith had laws passed to legalise trade unions and to extend the liability of employers for injuries to workers.³¹

²⁷ Saunders 1998, 26.

²⁸ K Saunders ‘Sir Samuel Griffith (1845-1920): a journey from the dark satanic mills to the High Court in six episodes’ Vol 24 *Queensland History Journal*, The Royal Historical Society of Queensland, 2021, 888. (“Saunders 2021”)

²⁹ R Joyce ‘Sir Samuel Walker Griffith (1845-1920), *Australian Dictionary of Biography*, Vol 9, 1983, <https://adb.anu.edu.au/biography/griffith-sir-samuel-walker-445> (“Joyce ADB”)

³⁰ Joyce, 93.

³¹ Joyce, 123-124.

In 1884, 1885 and 1886 he enacted land laws to reverse the power of large pastoral interests. Alienated land was resumed and smaller parcels of it were opened up for selection by occupiers under long-term pastoral leases that were held by occupiers rather than absentee landlords. His ideas were influenced by Henry George's *Progress and Poverty* that the best use of capital was to make it available for labour on the land, rather than land accumulation. Griffith aimed to prevent what was described as "the monopoly of the land by a few".³²

Sugar was the main agricultural crop in Queensland. Griffith gave state assistance for central mills as a way of breaking the monopoly of large planters and companies. Government money would be available to small growers to establish co-operative mills. Established interests opposed this and sought compensation.³³ His regulation of the sugar industry to favour small growers was part of a broader vision for Queensland to be a place for small holdings by farmers and pastoralists. He favoured State intervention to curb the power of large corporations.³⁴

Griffith opposed the use of what was described as "coloured labour". He ended McIlwraith's plans to introduce Indian labourers.³⁵ His administration investigated and prosecuted abuses on voyages to recruit indentured Melanesian workers. In the *Hopeful* case, two crew members were sentenced to death for murder and others, including the captain and a government agent, received life sentences. Thousands protested at the harshness of the sentences, since the victims were widely regarded as inferior to whites. Griffith stood firm against any commutation.³⁶

In 1885 Griffith took the major step of enacting a law to terminate the introduction of Islander labour after 1890. Griffith's policies towards Melanesian and Asian migration and against cheap labour prompted succession movements in North Queensland.³⁷

³² Joyce, 93-94.

³³ Joyce, 95.

³⁴ Griffith's social vision and politics opposed what Louis Brandeis described as "the curse of bigness" see J Rosen, *Louis D Brandeis – American Prophet*, Yale University Press, 2016, Chapter 1.

³⁵ Joyce, 95.

³⁶ A C Stumer and K Saunders, *Kidnapping and Slavery in Queensland: the 'Jason' and the 'Hopeful'*, Selden Society Lecture, 18.8.22. <https://www.sclqld.org.au/catalogue/records/202060>

³⁷ Joyce, 105.

Griffith strenuously opposed McIlwraith's policy of land grants to private railway syndicates.³⁸

Griffith was not a fiscal conservative. He was a debt and deficit politician. He relied heavily on overseas loans to fund his interventionist policies and spending on public infrastructure. He founded the Royal Bank of Queensland to compete with private banks. He proposed a land tax, prompting his Treasurer to resign. Between 1884 and 1886 he negotiated a £10 million loan.³⁹ In 1888 he promised more of the same economic policies, despite the colony having become "drowned in debt".⁴⁰ He lost the 1888 election.

Radical Opposition Leader

As Opposition Leader he continued to campaign for a more equitable distribution of wealth. He expanded on these ideas in an article "Wealth and Want" in William Lane's radical newspaper *The Boomerang*. Lane was delighted by the prospect of Griffith becoming the leader of an Australian radical movement. He wrote: "What Pericles was to Athens and to Greece such a leader could be to Australia". Meanwhile, the former Chief Justice of New South Wales, Sir Alfred Stephen, accused Griffith's ideas of "having a smack of communism".⁴¹ Griffith was, however, far from a revolutionary communist. He reiterated in correspondence to friends his belief that action by the State was "the only hope of averting a terrible social upheaval and revolution".⁴²

From Opposition, Griffith introduced legislation for an eight-hour working day, and in 1890 introduced two bills that he called "the elementary property law of Queensland". The first purported to state principles of natural law, including that "it is the duty of the state to make provision by positive law for securing the proper distribution of the products of labour in accordance with the principles hereby declared".

³⁸ D Beanland, "Griffith's rise to power, 1872 to 1873", Vol 24 *Queensland History Journal*, The Royal Historical Society of Queensland, 2021, 915, Joyce, 98-99.

³⁹ Joyce 111-112.

⁴⁰ D Beanland, 'Griffith's hunger for power, 1888-1893', Vol 24 *Queensland History Journal*, The Royal Historical Society of Queensland, 2021 940. The £10 million loan took until 1924 to repay.

⁴¹ Joyce, 150.

⁴² Ibid

Professor Kemp suggests that Griffith's development of "a broad democratic and humanitarian liberal philosophy" can be traced "particularly to his studies in jurisprudence and the law, which provided him with knowledge of the powerful commitment to the principles of individual rights and justice that infused the common law".⁴³ Griffith departed from the Spencerians in his belief about the need for government interference. His classical, literary and artistic background are said to account "for the romanticism that permeated his aspirations for economic reform".⁴⁴ Professor Kemp writes that Griffith "shared the belief of Austin (and Mill) in the capacity of positive law to correct the imbalances in the distribution of wealth and income and in the functioning of economic enterprises".⁴⁵

Griffith spent only 26 months in opposition. By 1890 newspapers were promoting the idea of a coalition between Griffith and McIlwraith to form a government that would restore the colony's financial position and address the growing militancy of the labour movement. The two arch rivals were brought together. McIlwraith's poor health meant that he would not accept the premiership.

Premier in Coalition

Griffith became Premier in August 1890 in what became known as The Griffilwraith Ministry, with McIlwraith as Treasurer. Their government faced strikes and industrial action, including arson and damage to property by strikers and intimidation of non-union workers. Griffith issued a proclamation outlawing assembly under arms for the purpose of intimidation. He called out defence forces to maintain law and order.

He later described himself as feeling that he was having to handle a "revolution". His actions ended any residual support he had in the labour movement. Historians regard him as exerting a moderating influence in upholding the rule of law and being critical of both extremes. He defended the right of strikers to assemble. He rejected calls by pastoralists and others to disperse the unionist camps, insisting that the government should act only in the case of actual offences and to prevent non-union labourers from being intimidated.⁴⁶

⁴³ Kemp, 167- 168.

⁴⁴ Ibid, 168

⁴⁵ Ibid

⁴⁶ Ibid, 270. For an account of the 1891 Bush Strikes see Peter Woodley 'Entangled experience of class: The 1891 bush workers' strike' *Australian Dictionary of Biography* <https://adb.anu.edu.au/essay/31>

Pastoralists resolved in March 1891 that they would only meet with unionists if they abandoned their claim that only unionists be hired and accepted the principle of freedom of contract. Griffith, who was in Sydney at the Australian Constitutional Convention, condemned the resolution as absurd.⁴⁷

Griffith brought to the attention of police and magistrates an 1826 English statute, since repealed in England, but in force in Queensland, relating to conspiracy and intimidation. On Griffith's initiative, strike leaders were arrested on warrants by officers led by civil magistrates rather than by troops. A new union leadership, buoyed by the support of unionists in Brisbane, committed to change through constitutional means. Professor Kemp writes:⁴⁸

“Griffith's enforcement of the law...had successfully given the message to the unionists that if they wished to reconstruct society, they would have to do so through the processes of democratic politics”.

At the same time as Griffith was dealing with battles between pastoralists and strikers, he was in Sydney as Deputy President of the Constitutional Convention, formulating and drafting our nation's constitution. He also found time, before returning to Queensland, to appear before a royal commission on strikes and to answer 230 questions about labour relations.

He called for a fundamental change in the relations between employer and employee, with workers being paid a “natural minimum wage” sufficient to maintain the worker and his family in a state of health and reasonable comfort. His ideas included a scheme for workers to share in long term profits and suggested how shares of capital might be calculated.⁴⁹

Griffith told the Royal Commission that “he did not agree with the idea that labour was a commodity which could be bought and sold” and that until that idea was got rid of, the present difficulties would remain.⁵⁰ According to Kemp, Griffith's adoption of Marxist-type terminology “introduced a rhetoric into political debate that was to point to policies

⁴⁷ Kemp, 270.

⁴⁸ Ibid, 271.

⁴⁹ Joyce, 167.

⁵⁰ Kemp, 339 citing *Brisbane Courier* 14.4.1891, 7.

attempting to transform – if not eliminate – the competitive labour market contrary to the analysis and recommendations of economists, such as Alfred Marshall, and to take Australia down a unique path”.⁵¹ Griffith explained to the Commission that he advocated an economic system based on “cooperation”. His idealistic notion was that employer and employee would come to see that they had one common interest. This ideal rejected the Marxist notion that there was an inherent conflict between capital and labour. He argued that the “idea of buying and selling labour should disappear from our social system; the idea was wrong from the conception, and it would be a good thing, of course, if the people could be educated to look upon it as such”.⁵²

At the end of his life in 1919, Griffith explained that the elementary rules that he advocated would be adopted unconsciously as the basis of behaviour and that law would be the basis of a culture of cooperation.⁵³

“My idea was that if these doctrines were so assimilated by the people that they acknowledged their truth and unconsciously believed them, they would form an unconscious basis of legislation, just as rules of right and wrong, rules of honour, rules of family relationship, are unconsciously accepted as part of the order of nature by many, though unfortunately not all, of the existing so-called civilised community.”

Back in April 1891, the perceptive author of an article in the *Sydney Morning Herald* contrasted Griffith’s role as constitutional drafter “ruthlessly rejecting everything that does not stand the test of hard practical logic” and “the dreamer of dreams; shrinking from the result of his own visionary conceptions... As a study in psychology the picture is an interesting one, exhibiting the Premier ...in a dual light”.⁵⁴

For decades, Griffith had been the enemy of the sugar plantation owners. In those years, they mockingly toasted “Damn Sam Griffith”. He and others had described the trafficking in Melanesian labour as “a slave trade”. As Professor Saunders points out, the image of a slave trade was enhanced by the family fortunes of some of the large plantation owners, who had owned large plantations and slaves in Jamaica before the abolition of slavery in British territories in 1834. Some of the compensation they were given found its way into new tropical plantations in Queensland.⁵⁵ Griffith regarded the

⁵¹ Kemp, 340.

⁵² Kemp, 341 citing *Brisbane Courier* 14.4.1891, 7.

⁵³ Kemp, 339 citing *The Advertiser* 1.11.1919, 10.

⁵⁴ Joyce, 166-167, *Sydney Morning Herald*, 10.4.1891.

⁵⁵ Saunders 2021, 928.

introduction of indentured “Kanakas” as being “as bad as the African slave trade at its worst” because every man was “procured by force or fraud” and that ‘if the sugar industry could not be supported without recourse to such means, it was better that it should go’.⁵⁶ Griffith opposed the sentiment that stigmatised manual work on plantations as unsuitable for white workers.⁵⁷ He regarded the recruitment scandals involving Pacific Islanders as a blight on the British Empire, and opposed the introduction of Chinese and Indian labourers to work on plantations. He believed that such a system would create a society based on caste and in which racial conflict was inevitable.⁵⁸ Sugar planters and their political allies who wished to retain a Melanesian labour force and opposed Griffith urged succession of northern parts of Queensland.

Griffith came to see the maintenance of a single state of Queensland as essential to avoid a “slave state” akin to one of the Southern States in the United States based on cheap labour. In 1886 he said that “the great ardent supporters of black labour were the principal ones who clamoured for separation” of North Queensland.⁵⁹ In endeavouring to avoid the succession from Queensland of central and northern areas, Griffith developed a draft constitution for a federated Queensland which gave those areas a degree of autonomy. It was a blueprint for our federal constitution.⁶⁰

A major compromise for Griffith occurred in February 1892 when he announced the extension of the use of Melanesian labourers for another decade. This was justified by the sugar industry’s worsening crisis. It was overcapitalised and faced competition from subsidised European beet sugar.

Rather than rely on labourers from the Pacific Islands, Papua New Guinea and the Solomon Islands to work sugar plantations, Griffith envisaged European workers cultivating their own farms. Yet policies that were designed to encourage European migrants to work on plantations were unsuccessful. White workers, supported by the union movement, refused to work for the wages that were on offer. Griffith’s 1892 decision to extend the use of Melanesian workers confronted these economic and social

⁵⁶ Kemp, 188 citing the Rockhampton *Morning Bulletin* 17.4.1885.

⁵⁷ Saunders 2021, 920.

⁵⁸ Saunders 2021, 920 citing Griffith’s 1893 article “The Coloured Labour Question in Queensland”.

⁵⁹ Kemp, 190 citing *Brisbane Courier* 21.8.1886, 3.

⁶⁰ G Taylor, ‘The Three Queenslands – Sir Samuel Griffith’s “Ghost” Draft for a Queensland Federation’, (2020) 39 *University of Queensland Law Journal* 33 (“Taylor”).

realities. He also blamed the “labour party” for undermining the employment of white labour on plantations by demanding wages that could not be provided in the prevailing economic circumstances. He promised even more stringent controls on the trade and “constant watchfulness” against any abuses.⁶¹

Griffith’s decision to delay abolition of the trade in Melanesian labour was greeted with champagne toasts by growers but condemned by abolitionists. The deferral of the abolition may be seen as a cruel compromise of one of Griffith’s guiding beliefs, or even as a betrayal of the abolitionists. A more forgiving view is that it was an exercise in pragmatic politics during difficult economic times. Griffith observed that “the business of government is not a matter of theory, but of hard practical duty”.⁶² He also said:⁶³

“The essence of politics is compromise. Sometimes even a statesman must do that which is possible, even if it is not the best”

Another compromise during his second period as Premier was to adopt McIlwraith’s policy on land grant railways. Queensland was engulfed in a railway debt crisis and could no longer afford to construct railways on borrowed money.⁶⁴ By 1890 Queensland had gained the reputation for having the highest per capita debt in the British Empire.⁶⁵

Indigenous issues

Joyce writes that Griffith was “more humanitarian than most Queenslanders” and was condemned by the press of his time as a “black sympathiser”.⁶⁶ A leading historian in the field of violence on the Queensland frontier, Dr Raymond Evans, concludes that Griffith did more on the side of reform than others before him had attempted.⁶⁷

Seemingly based on Griffith having held roles as Colonial Secretary and Attorney-General in successive governments in the 1870’s and 1880’s, Professor Henry Reynolds

⁶¹ Joyce ADB.

⁶² T Bray, *Griffith Lives On*, Third Clem Lack Memorial Oration, Royal Queensland Historical Society, 20.3.1975, 54.

⁶³ Ibid.

⁶⁴ D Beanland, ‘Griffith’s hunger for power, 1888-1893’, Vol 24 *Queensland History Journal*, The Royal Historical Society of Queensland, 2021, 950.

⁶⁵ Ibid more than £70 per head compared to the Canadian debt of £12 per head. By 1890, loans totalled £24,000,000.

⁶⁶ Joyce ADB.

⁶⁷ R Evans, *Samuel Griffith and Queensland’s War of Extermination* 27. https://www.griffith.edu.au/_data/assets/pdf_file/0028/1890325/Samuel-Griffith-Essay-Dec2024.pdf (“Evans”).

provocatively asserted in 2021 that Griffith's "neatly manicured lawyers' (sic) hands were deeply stained with the blood of murdered men, women and children".⁶⁸ This assertion prompted the curiosity of Dr Evans, who, like Reynolds, spent decades researching genocide on the frontiers, and whose co-authored 1975 book *Race Relations in Queensland: A history of exclusion, exploitation and extermination*⁶⁹ broke new ground in Australian historical studies. In his decades of research, Evans had not seen Griffith as at the forefront of frontier violence by the Native Police or of having condoned it. Independently, other historians questioned whether Griffith was a suitable candidate for posthumous indictment for the crime of genocide.⁷⁰

His curiosity aroused, Raymond Evans spent months in the archives, searching for the evidence and analysing it. The result is his remarkable 2023 essay *Samuel Griffith and Queensland's War of Extermination*⁷¹ and the 2024 Selden Society Lecture *The rigours of truth telling: Sir Samuel Griffith and Queensland's violent frontier*.⁷²

Dr Evans carefully explains the social and political environment in which Griffith, the politician, was constrained from doing more than he did to limit frontier violence. Griffith was working within a political and social environment that supported extermination of Aboriginal people who resisted the taking of their country by squatters and other interests. Griffith favoured the abolition of the Native Police because of its excesses, but abolition was politically impossible. Instead, during his relatively brief time as Colonial Secretary, Griffith made progressive changes that included (in Evans' words):

- A radical attrition of Native Police services;
- Implementation of normalised policing;
- The introduction of Aboriginal court testimony;
- An attempted initiative to rein in the frontier 'black-birding' of Aboriginal workers;
- Prosecution of white frontier crimes inflicted on First Nation peoples; and

⁶⁸ H Reynolds, *Truth-Telling, History, Sovereignty and the Uluru Statement*, New South Books, H Reynolds 'On the Queensland Frontier: Tragedy in the tropics' 76 *Griffith Review - Acts of Reckoning*, 2022.

⁶⁹ R Evans, K Saunders and K Cronin *Race Relations in Queensland: A history of exclusion, exploitation and extermination* 3rd ed University of Queensland Press, 1993

⁷⁰ M Finnane and J Richards, '*S. W. Griffith: A Suitable Case for Indictment?*' (2023) 54(3) *Australian Historical Studies* 387.

⁷¹ https://www.griffith.edu.au/__data/assets/pdf_file/0028/1890325/Samuel-Griffith-Essay-Dec2024.pdf

⁷² <https://www.sclqld.org.au/collections/explore-the-law/past-lectures/2024-selden-society-australia-lecture-program>, <https://theconversation.com/friday-essay-neither-a-monster-nor-a-saint-sir-samuel-griffith-queenslands-violent-frontier-and-the-rigours-of-truth-telling-222262>

- The burgeoning of missionary enterprise across the North.

In response to Henry Reynolds' assertion about Griffith's supposed primary responsibility for the frontier violence that occurred when he was a Minister, Evans observes that it is "ironic that the lone public figure who apparently attempted, however inadequately, to challenge the mayhem [of a land-taking venture that was steeped in bloodshed] should now be freighted with the principal blame for it."

Similarly, Professor David Kemp writes that Griffith's actions "showed that he made it his mission to impose the rule of law on the frontier" but realised that the impartial administration of justice and effective law enforcement were not solutions, by themselves, to the abuses of Aborigines on the frontier. He encouraged the establishment of Christian missions to provide food, shelter and other support to Aborigines who had been dispossessed.⁷³ He also had the government distribute blankets and food to Aborigines who were no longer living on their lands.

Constitutional framer

Griffith has been described as being, de facto, "the senior Australian representative at the 1887 Colonial Conference in London, a role that confirmed him as a prominent advocate for a federated Australia".⁷⁴ He thought deeply about federal systems and drafted a Constitution for a federated Queensland as a means of heading off moves for succession.⁷⁵

His work at the 1891 Constitutional Convention in Sydney is nothing short of astounding. It should be recalled that at the same time he was trying to resolve a major and violent dispute arising from the shearers strike.

Griffith was a natural choice as Deputy President to Parkes. The details of his work have been described by others.⁷⁶ Barton stated that it is "very largely to him that we owe the

⁷³ Kemp, 186, and see Joyce, 115 and Evans 17-18.

⁷⁴ J D Heydon, 'Sir Samuel Griffith and the Making of the Australian Constitution' [2012] *SGSocUphAUCon* 5 <https://classic.austlii.edu.au/au/journals/SGSocUphAUCon/2012/5.html> ("Heydon")

⁷⁵ G Taylor, 'The Three Queenslands – Sir Samuel Griffith's "Ghost" Draft for a Queensland Federation', (2020) 39 *University of Queensland Law Journal* 33

⁷⁶ J Williams, *The Australian Constitution: A Documentary History*, Melbourne University Press, 2005, Heydon.

fact that the foundations of a true Commonwealth bill were laid at this time”.⁷⁷ Garran wrote in 1897 that the 1891 Convention:⁷⁸

“caught and crystallised into definite shape the vague floating ideas which had long been in the air ... In a word, it changed federation from an idea into a formula, from a dream into a policy.”

Drafts were in circulation at the 1891 Convention, but on 23 March, Griffith began to draft a Constitution by himself. Having burnt the midnight oil, he was able to present a confidential draft a few days later. Work continued over the Easter weekend on the Queensland government steam yacht *The Lucinda* as it cruised up the coast to Broken Bay and the Hawkesbury River. This was not a pleasure cruise. Bad weather produced sea sickness, but Griffith toiled on with others, particularly Kingston. Credit also should be given to Inglis Clark, who literally missed the boat due to a bout of influenza.

Deakin observed that:⁷⁹

“as [a] whole and in every clause the measure bore the stamp of Sir Samuel Griffith’s patient and untiring handiwork, his terse, clear style and force of expression. ... Few even in the mother country or the United States could have accomplished... such a piece of draftsmanship with the same finish in the same time”.

Griffith’s achievement in 1891 was more than an exercise in legal drafting. He was engaged in negotiation, compromise, and formulating ideas into a form of words that would prove acceptable to an unwieldy group with different interests. Deakin described Griffith’s demeanour when the draft Bill was in Committee before the whole Convention as being “almost unimpeachable in temper, courtesy and consideration”.⁸⁰

Griffith left politics in 1893, having been appointed Chief Justice of Queensland. However, he continued to be consulted on the final form of the Constitution, and advocated federation. Quick was sure that Griffith’s advocacy was crucial in Queensland voting for federation, and telegraphed that this result crowned Griffith’s “long sustained and patriotic labours in the cause of Australian unity”.⁸¹

⁷⁷ Saunders 1998, 28.

⁷⁸ Saunders 1998, 28 citing R R Garran *The Coming Commonwealth* Angus & Robertson 1897.

⁷⁹ A Deakin, ‘*And be One people*’ *Alfred Deakin’s Federal Story*, Melbourne University Press, 1995, 49-50.

⁸⁰ *Ibid* 48.

⁸¹ Joyce ADB.

Griffith played a crucial role in 1891 in “delicately adjusting the balance between the centre and the periphery”.⁸² Professor Bolton says that because of “the intense intellectual creativity which [Griffith] showed at this important moment in Australian history Griffith can be regarded not as a narrow conservative...but as a great provincial capable of subordinating his local loyalties in the service of a wider vision.”⁸³

Griffith brought his towering intellect to bear in an exercise in nation building. As the Chancellor of Griffith University, the Hon Andrew Fraser, remarked:⁸⁴

“If the actions of Griffith (and others) had failed, we could easily be a continent of more than one nation. Nations do not get many chances like the one our colonial forebears converted into our Commonwealth”.

Imperialist and nationalist

Griffith saw Queensland and Australia as part of a “broader imperial project” and promoted united action among the Australian colonies to forestall Dutch, German and French expansion in the region.⁸⁵ In his Presidential address to the Queensland Branch of the Royal Geographical Society of Australasia he declared, “In spirit I am as much an Australian as any man”.⁸⁶

Dr Beanland contends that Griffith’s career in Queensland politics was in aid of his key ambition to become Chief Justice of Queensland. However, I would suggest that his political career was in the cause of the liberal and democratic values to which he committed himself as a young man. As for any ambition for high judicial office, Griffith wrote to a friend, “I never wanted to be Chief Justice of Queensland but I wanted to be Chief Justice of Australia”.⁸⁷

Chief Justice of Queensland

Griffith brought the same work ethic to judicial life as he brought to his public and professional duties. As a Minister, he was renowned for his close supervision of his

⁸² Bolton.

⁸³ Ibid.

⁸⁴ A Fraser, *Samuel Griffith with 2020 Hindsight*, *Hindsight*, <https://samuelgriffithwith2020hindsight.com/2020/08/08/a-great-australian/>

⁸⁵ Kemp, 171.

⁸⁶ Joyce ADB.

⁸⁷ Graham, 58.

departments, often working over 80 hours per week. This was in addition to his work at the Bar, the income from which he needed to sustain his lifestyle.

Like many barristers, Griffith was not afraid of debt. He also made some improvident investments in land and shares. He built the beautiful mansion *Merthyr* and in 1892 had to borrow £20,000 against it and other property to meet his obligations. He could not afford to become Chief Justice of Queensland, which attracted a salary of £2,500. In November 1892, a pastoralist and leader of the opposition introduced legislation to increase the Chief Justice's salary to £3,500. This was in the midst of a depression and at a time when Griffith introduced legislation to cut Parliamentary salaries from £300 to £150.⁸⁸

McIlwraith, who was seen as “pulling the strings in the Griffilwraith government”,⁸⁹ orchestrated the support of pastoralist members for the increase in the Chief Justice's salary.⁹⁰ As Dr Beanland observes, “Pastoralists who Griffith generally loathed now played a leading part in his becoming Chief Justice”.⁹¹

Griffith served as Chief Justice of Queensland between 1893 and 1903. His work was phenomenal, producing more than 400 reported decisions and presiding over numerous murder trials and a wide variety of civil proceedings.

As if that was not enough to occupy him, between 1896 and 1899, he single-handedly drafted the 733 sections of the Criminal Code.⁹² This included translating the Italian Penal Code on which the Griffith Code is largely modelled.⁹³

Griffith also devoted his spare time to translate the works of Dante. Critics say that his translations were too literal. One critic said that Griffith “succeeded in rendering the

⁸⁸ D Beanland, ‘Griffith's hunger for power, 1888-1893’, Vol 24 *Queensland History Journal*, The Royal Historical Society of Queensland, 2021, 953.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid, 956.

⁹² R O'Regan, *New Essays on the Australian Criminal Codes*, Law Book Co, 1988, G Mackenzie, ‘An Enduring Influence: Sir Samuel Griffith and his Contribution to Criminal Justice in Queensland’ 2 *QUTLJ* 2012

⁹³ In a letter to the Queensland Attorney-General in 1887, Griffith said that he understood the Zanardelli Code to be “in many respects the most complete and perfect Penal Code in existence”: K Shultz, ‘Griffith and Dante: Entanglement, convergence, contrapasso’, *Queensland Review* Equinox Publishing, 2023, 95 (“Schultz”)

poetry of Dante into the language of a Parliamentary enactment”⁹⁴ Griffith’s interest in Dante is said by Joyce to have reflected his “continued romanticism”.⁹⁵ Dr Karen Schultz argues that Griffith’s translations were not simply a vehicle for sharpening his Italian or pursuing fame or status, but were a lifelong creative pursuit that offered “imaginative, intellectual applications resonating with his public service values”.⁹⁶

Griffith as Chief Justice of Australia

Sir Anthony Mason and legal scholars have analysed Griffith’s role in establishing the High Court’s high reputation in the field of general law, in interpreting the Constitution, and in defining the nature of judicial power.⁹⁷ Any summary of the caselaw from Griffith’s 16 years as Chief Justice, or of his conflicts with the Privy Council and the Executive, is impossible. After all, Griffith sat on 950 reported cases on the High Court. I will confine myself to what those who appeared before him report about his manner and character.

The Victorian barrister Philip Jacobs describes Griffith’s “masterful personality” and that:⁹⁸

“No intelligent observer could fail to mark his great mental gifts and versatility. Strength of intellect and purpose, coupled with self-confidence begotten by familiarity with the science of the law, have given him an ascendancy in his court such as Lord Watson obtained over the House of Lords. Rarely does it happen that either of his colleagues dissent from Sir Samuel... Perhaps, however, the instinct of the fighting politician has to some extent outlived his Parliamentary career; for once his own view has been formed, he hugs it closely, uninfluenced by the fact that other eminent reasoners differ from him.”

⁹⁴ Sir Harry Gibbs *Sir Samuel Griffith Memorial Lecture* 30 April 1984 citing A B Piddington *Worshipful Masters* (1929) at 239, 240 that Sir Julian Salamons, who was given a copy of the translation, asked Griffith to inscribe it “From the author” because he did not like anyone to think he had stolen it, less bought it.

⁹⁵ Joyce ADB.

⁹⁶ Schultz. Dr Schultz also suggests that Griffith’s and Dante’s shared histories includes their experience in turbulent, highly charged political landscapes, resulting in Dante’s exile and vilification and Griffith’s political disappointments and compromises. She speculates that Griffith may have appreciated the *Divine Comedy’s* judgments on politics

⁹⁷ The Hon Sir Anthony Mason, ‘The High Court of Australia: a personal impression of its first 100 years’ [2003] *Melbourne University Law Review* 864, John Williams in ‘The Griffith Court’ in Rosalind Dixon and George Williams (eds) *The High Court, the Constitution and Australian Politics* Cambridge University Press 2015 at 877 observes that the Griffith Court provided “the essential forum within which the 1890’s Conventions could once again be ventilated and concluded”.

⁹⁸ P Jacobs *Judges of Yesteryear* quoted by Bray at 60.

Jacobs describes Griffith as having talent to succeed without industry and industry enough to succeed without talent, and possessing a “truly colossal” assiduity, that included scrutinising all the documents in the case and the authorities before counsel commenced their arguments. Nor did he rest when the day’s work was done, keeping abreast of decisions and statutes.

In 1952, Sir Owen Dixon had less fond memories of the Griffith Court, saying that “arguments were torn to shreds before they were fully admitted to the mind”.⁹⁹ In 1964, he referred to Griffith’s “dominant and decisive” legal mind that was of a calibre that he did not hesitate, that “he just felt that he knew; and that what he knew was right”.¹⁰⁰

Graham reports that Griffith tried to treat “the lads” (very junior barristers) as kindly as he had been treated as a beginner, but had the “disconcerting habit of gazing upon the young applicant and suddenly saying “Why?””. However, once an advocate convinced him of the justness of a request, he would grant it to the full.¹⁰¹

Griffith’s duality: black-letter jurist and political dreamer

In November 1919, Griffith restated the principles that he thought should ameliorate bad social conditions and replace a “master rule community” with a radically different one, which he described as a “fraternal or social community”. His essay *The Social Problem – A Fundamental Error – The Solution*¹⁰² shows that throughout his life Griffith harboured deep convictions about the humanitarian, cooperative and fraternal relations that should govern a social order based on individual rights under the rule of law. He saw a positive role for law in building a better society. His early education at Sydney University imbued him with a liberal philosophy. His reading of political philosophy in the 1880’s pushed him in a radical direction. He adopted radical rhetoric in his 1890 article in *The Boomerang*, but within a matter of weeks was in coalition with his conservative enemies. He was obviously ambitious to return to government, and was prevailed upon to bury his differences with McIlwraith at a time of social and economic crisis. He made compromises but maintained his deep commitment to the rule of law in

⁹⁹ Swearing In of Sir Owen Dixon as Chief Justice, (1952) 85 CLR xiv.

¹⁰⁰ Retirement of the Chief Justice, (1964) 110 CLR v at xi.

¹⁰¹ Graham, 83-84.

¹⁰² *The Advertiser*, 1.11.1919, 10.

confronting serious lawlessness during the shearers' strike. He parked, but did not abandon, the utopian principles that he had drafted into a Bill in 1890.

Some might see a tension, or even a contradiction, between the dreamer of a society based on cooperation rather than power, and the analytic, black-letter jurist and drafter of dry documents. However, Griffith the political dreamer and Griffith the legal technician occupied one body and the same formidable intellect powered both the politician and the jurist. Griffith was not simply a master craftsman as a lawyer, drafter, law maker and jurist. He was an idealist who saw law as a means to establish a fairer society based on cooperation, rather than markets and power relations. The idea of a complex society in the 20th century being based on co-operation seems hopelessly romantic. Beneath his cold exterior, Griffith was, however, a romantic.

Griffith's utopian dream of a society based on cooperation was articulated by a public figure who commanded respect throughout the nation. His evidence in 1891 before a Royal Commission in Sydney rejecting the idea of labour as a commodity and advocating laws to establish a living wage place him at the forefront of a uniquely Australian political experiment. Paul Kelly labelled these nation-building policies as "the Australian settlement" which lasted until the 1970's. They are sometimes referred to as "the Deakanite settlement".

A shy tenderness for all God's children

The barrister and historian A Douglas Graham gave the 1937 Macrossan Lectures about Griffith. As his Associate during Griffith's period as Chief Justice of Queensland, Graham had the opportunity to closely observe Griffith's personality and work habits. He reports on Griffith's work ethic, his punctuality, his love of home life, his personality, his personal appearance, and the fact that, even after many drafts, Griffith was never happy with his written work as a judge. This accords with Bernays' observation of Griffith's unusual character trait that "he never entirely pleased himself". Graham writes about Griffith's combination of talent and industry, and "amazing power of concentration on detail".¹⁰³ However fine was the work he produced, Griffith was never

¹⁰³ Graham 80.

quite satisfied.¹⁰⁴ Griffith's formidable intellect and astounding productivity seemed to impress everyone except Griffith.

Graham gives the following insight into Griffith's character during his time in politics:¹⁰⁵

“He was a man who neither sought nor cared for personal popularity; he was self-contained, and, in the finest way, self-satisfied. Praise or blame of others was of no consideration to him. As he saw his duty, he did it, and, as was only to be expected, he made, I think, more personal enemies than friends, but he compelled admiration from both.”

The Sydney *Sunday Sun* reported Griffith's appointment to the High Court with the caption “Samuel Griffith, Despiser of Applause”. Graham agrees that Griffith never sought applause, and how the public at large would react to his doings did not trouble him, but that he was not so superhuman as not to be pleased by the appreciation of his efforts if it came from a competent source.

“He never sought applause, but he ever sought to deserve it – a distinction with a vast difference”¹⁰⁶

According to Graham's account of Griffith's life in politics, Griffith “met both love and hate with an equal mind – both being irrelevant to his scheme of life”. Graham describes Griffith as “A Friend of the Working Man” despite having never been brought in touch with many working people in his upbringing or in his work. Yet he was carefully courteous to all around him and on circuit talked with engine drivers, firemen and road labourers without apparent condescension.¹⁰⁷

Graham tells a story at his own expense of an episode waiting for a train on a railway platform in Toowoomba with Chief Justice Griffith and the Sheriff when they saw a boy in clothes that were too big for him. The Sheriff and the Judge's Associate laughed because the boy resembled a scarecrow. Instead, Griffith engaged the boy in conversation for the 20 minutes until the train came, shook his hand and boarded the train just in time, saying “That is a very intelligent lad”. Graham says that he had never felt so small, but he treasured the incident because of what it showed about Griffith.

¹⁰⁴ Ibid.

¹⁰⁵ Graham, 53.

¹⁰⁶ Graham, 98.

¹⁰⁷ Graham, 52.

Perhaps Griffith, Knight Grand Cross of the Most Distinguished Order of St Michael and St George, ex-Premier, and Chief Justice of Queensland could remember another bright boy from the bush on a railway platform in Maitland decades earlier.

The story of Griffith's kindness to the boy on the railway platform supports Manning Clark's view that Griffith "kept locked away in his heart a shy tenderness for all God's children, beneath the exterior of a scribe and a Pharisee".¹⁰⁸

Griffith suffered a stroke in 1917, but remained on the bench in poor health until 1919 out of a desire to pay off the mortgage on his home. He died at that home, Merthyr, on 9 August 1920.

What motivated him?

To return to the questions I posed at the start, Griffith was ambitious and sometimes ruthless. But he was not motivated simply by ambition or the trappings of high political or judicial office. Despite the compromises of his second period as Premier in a coalition government, he did not abandon the liberal principles of his youth or the romantic, utopian ideals he had pronounced as a progressive Liberal Premier and Opposition politician. He articulated them in evidence before a Royal Commission in 1891 and restated them in 1919.

In his approach to industrial, economic, education and social policies, he was a progressive who opposed vested interests, and sided with small businesses and ordinary folk. He compromised politically in 1890-93 due to pragmatic economic considerations and fractured his relationship with parts of the labour movement in 1891 because of his commitment to the rule of law.

On indigenous policy, he was among the most favourably disposed to doing what was politically possible to stop the killings on the Frontier by settlers and the Native Police and to bring perpetrators to justice.

Even his detractors like Manning Clark admired the strength with which he had fought against the supporters of a plantation society in Queensland.

¹⁰⁸ Clark, 69.

The achievement of Griffith and other Queensland Liberals in opposing a plantation society and championing democracy is no small thing. It spared us the kind of slave states that have blighted American history.

Griffith's work as a champion of federation and constitutional framer played a critical part in the formation of our nation.

Griffith's achievements in politics and the law were the product of a formidable intellect and a remarkable work ethic. At the time of his retirement as Chief Justice in 1919,¹⁰⁹ and upon his death in 1920, political leaders like the Labor Premier of Queensland, T J Ryan KC, leaders of the Bar and editorial writers referred to Griffith's "single minded purpose and burning patriotism", and that:¹¹⁰

"Probably no man living ever believed more ardently in the gospel of hard work or made it his ruling principle in life more consistently, and certainly no man laboured more strenuously or more self-sacrificingly for the good of the people, whose servant he considered himself to be."

¹⁰⁹ Retirement of the Chief Justice, (1919) 26 CLR v

¹¹⁰ 'Death of Sir Samuel Griffith – Great Scholar, Jurist and Statesman- High Tributes to his Work' *The Brisbane Courier*, 10.8.1920, 7.