

## Samuel Griffith: The Great Provincial

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In dealing with the contribution of Sir Samuel Griffith to the framing of the Federal Constitution at the 1891 National Australasian Convention whose centenary we are now celebrating I can make no claim to originality. Griffith has already been the subject of Roger Joyce's magisterial biography,<sup>1</sup> as well as in two postgraduate theses which have stood the test of time, one by Bishop John Vockler and one by Dr Ross Johnston.<sup>2</sup> Nevertheless, Griffith was a complex and many-sided character, subtle and guarded in his lifetime, elusive for his subsequent biographers. We may be too readily misled by the portraits of his mature years, in which the face is framed in the trappings of high judicial office and the mouth shrouded by a generous white beard. He may have seemed cold and even dull; but he wasn't.

Of course the impression of sobriety is borne out by the major achievements of his public career. He was above all a man of words, whose strength lay in the drafting and interpretation of legalism, so that on his one excursion into the creative arts - his translation of Dante, often mentioned, seldom read - the poetry was somewhat blighted by the restrained hand of the legal draftsman. He can be seen as a man of compromise, who stopped the traffic in Pacific Islanders only to reinstate it under the pressure of economic necessity, and who wrote in praise of the infant labour movement only to strike it down at the first major outbreak of industrial militancy. But there were passions in the man. There was the fascination with Welsh romanticism which led him to christen his eldest son 'Llewellyn' after the 13th century patriot Llewellyn ap Gruffyd with whom Sir Samuel yearned to establish kinship. There was the reluctant sympathy with the outlaw which broke through his stern insistence on justice, so that when he sentenced the Kenniff brothers to death his voice broke, and a court official noted that 'he shook so that the rug covering his knees failed to hide the tremor'.<sup>3</sup> And there was surprisingly often a robust conviviality. I regret that Roger Joyce's biography does not include the story of Griffith's visit to Burketown at a period when he was none too popular in North Queensland. When the usual complimentary dinner was given the locals conspired to drink their distinguished visitor under the table. At daybreak the following morning only two figures remained upright. One was Griffith. The other was a squatter whom Griffith escorted to the street outside, and then thoughtfully watched him as he rode away on a camel which was not his own in a direction which was not the direction of his property. It is as well to remember this side of Griffith as well as the man whom the Sydney *Daily Telegraph* described in 1891 as 'a slave to public duty'<sup>4</sup> and whom John La Nauze, in his fine study *The Making of the Australian Constitution* characterises as 'behaving like many a good teacher' at the 1891 convention.<sup>5</sup>

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<sup>1</sup> R.B. Joyce, *Samuel Walker Griffith*, University of Queensland Press, St Lucia 1984.

<sup>2</sup> J.C. Vockler, 'Sir Samuel Walker Griffith' (BA Hons., University of Queensland, 1953); R. Johnston, 'The role of the legal profession in Queensland in the federation movement, 1890-1900' (MA Qual., University of Queensland, 1963).

<sup>3</sup> *Brisbane Courier*, 8 Aug. 1931, quoted Joyce, *op. cit.*, p 398.

<sup>4</sup> *Daily Telegraph*, 8 April 1891.

<sup>5</sup> J.A. La Nauze, *The Making of the Australian Constitution*, Melbourne University Press, 1972, p 39.

All authorities agree that Griffith was the pivotal figure at the National Australasian Convention of 1891, though in recent years historians have come to differ about the lasting value of his achievement. Alfred Deakin, the chronicler of the federal movement as well as a leading participant, ungrudgingly gave Griffith credit for devising the forms of words which enabled the powerful colonies of Victoria and New South Wales to agree with the outer colonies of Queensland, South Australia, Tasmania and Western Australia on the role of the Senate as against the House of Representatives. Without that compromise, Deakin argued, the federal movement might have fallen at the first hurdle.<sup>6</sup> Later historians, including La Nauze, have tended to echo him. But the veteran political scientist L.F. Crisp, writing in the late 1970s in the aftermath of the dismissal of the Whitlam government, took a much more critical look at what he called 'the narrowly conservative and provincialist federalism of the Griffith-Barton-Turner-Clark-Baker-Forrest school, which urged their constitutional confection on the Australian people on a "now-or-never", "take-it-or-leave it" note at the end of the 1890s'.<sup>7</sup> Crisp suggests that this 'narrowly, conservative and provincialist federalism' triumphed because Deakin and the Victorians were prepared to pay any price for federation as the way out of the financial morass into which the Victorian economy fell in the early 1890s. They rushed into federation where cooler heads of a more genuinely democratic temper, such as George Reid and H.B. Higgins, would have prolonged the negotiations until a more equitable system - i.e. one which gave greatest weight to the greatest centres of population, such as Melbourne and Sydney - could be achieved. Undoubtedly Crisp was influenced by the role which Griffith and the others played in giving the states' House, the Senate, that power to reject or to delay the passage of finance bills which proved so troublesome to the Whitlam government and at length provoked the controversial intervention of Sir John Kerr. Does this justify his epithets: narrow, conservative, provincialist?

Narrow and conservative are not adjectives easily applied to Griffith; certainly not the Griffith of 1891, however much his sympathies may have hardened in later years. Provincialist he undoubtedly was. In so many aspects of his life he began as an outsider, a marginal man distanced from the centres of prestige and authority. It was 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, not Anglican or Catholic; a colonial, not a metropolitan Briton; and even in the colonial context, he was a 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 makings of an Australian nation.

We should look a little more closely at Griffith's provincial origins. The significance of his Welsh ancestry lies not so much in his upbringing as in what Wales came to symbolise for him by his middle years when he was engaged in the federal movement. Roger Joyce has pointed out that in his earlier years Griffith was not entirely at home in his Welsh background, and did not even visit Wales during his visit to Britain in 1881. But I think we must make something of the choice of the name 'Merthyr' for the fine new house which he built for his family in 1880. Merthyr Tydfil was, of course, his birthplace, but it was decidedly short on glamour. The ninth edition of the *Encyclopaedia Britannica* published in the 1880s describes Merthyr Tydfil as 'situated in a bleak and hilly region on the river Taff' and adds: 'The town

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6 Alfred Deakin, *The Federal Story*, Melbourne University Press, 1963, p 52.

7 L.F. Crisp, (ed. John Hart), *Federation Fathers*, Melbourne University Press, 1990, p 121.

which consists principally of the homes of workers, is for the most part meanly and irregularly built, and at one time, on account of its defective sanitary arrangements, was frequently subject to epidemics of great severity'.<sup>8</sup> For a rising young lawyer to name his home 'Merthyr' was like calling it 'Wigan' or 'Shoreditch', a gesture of defiance to the conventional. Perhaps Griffith calculated that few Queenslanders had ever visited Merthyr Tydfil. But it is not surprising that by 1887 he was enough of a professional Welshman to be serenaded with 'Men of Harlech' on his departure from Australia, nor that he enjoyed the civic banquets proffered him at Merthyr Tydfil and Cardiff during that visit.<sup>9</sup>

One could not lay claim to Welsh connections without identifying with the successful struggle of the Welsh to maintain their culture, if not their political independence, against the encroaching English; Griffith's loyalties lay with the small battalions against the big. Joyce also argues that Griffith's father was conscious of social hierarchies and critical of the establishment in Britain. He was certainly aware of the importance of social recognition for Congregationalism in Queensland, and this must have had its effect on Samuel. The Congregationalists were one of the smaller Protestant faiths in Queensland - even in 1891 there were only 8,571 of them, barely 2 per cent of the entire population - and it must have been a continuing problem to ensure that their voice was adequately heard. Like many a successful professional man before and since, Griffith eventually drifted into Anglican churchgoing, but his early upbringing would have left him with a knowledge of what it was to belong to a minority. However his successful professional and political career also taught him that it was possible for an outsider to enter the citadels of power, to overcome rebuffs and opposition, and through sheer force of intellect and diligence to exercise effective leadership. He was a confident provincial who would not be intimidated by others who seemed gifted with a more favourable start.

This confidence was immediately apparent at his first encounter with the federal movement in 1883. It was his rival McIlwraith whose annexation of eastern New Guinea in April 1883 stimulated the Victorian premier, James Service, to urge an intercolonial conference to consider federation, and Griffith's early public reactions were cool; but, having won the Queensland elections and become premier early in November, Griffith went almost immediately to the Convention in Sydney, and there assumed a leading role.<sup>10</sup> Neither he nor the other colonial premiers shared Service's enthusiasm for an immediate federation, but it was Griffith's confident draftsmanship which produced the interim proposal for a federal council. Its powers were modest; they included marine defence, Australasian relations with the Pacific islands, the exclusion of criminals (mostly escapees from the French penal colony of New Caledonia) and the regulation of quarantine. As New South Wales and New Zealand stayed out of the Federal Council, its impact was limited, and it eventually faded into oblivion in 1899 with the imminent approach of Federation proper. Yet it was an important step in Griffith's career, since it established the new and largely unknown premier of Queensland as an uncommonly skilful wordsmith whose skills could produce a workable consensus acceptable to political colleagues of greater seniority and experience. Without this successful debut in 1883 it would have been much harder for Griffith to gain acceptance in the wider Australian arena a few years later when the impulse towards federation began to quicken.

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8 *Encyclopaedia Britannica* (9th edition) vol XVI, p 41.

9 Joyce, *op. cit.*, p 139.

10 Joyce, pp 89-90; G. Serle, 'The Victorian Government's Campaign for Federation, 1883-89' in A.W. Martin, (ed.), *Essays in Australian Federation*, Melbourne University Press, 1969, pp 1-11.

Instead, he was seen as indispensable. This emerged towards the end of 1889 when Sir Henry Parkes, capitalising on the defence report of Major-General Bevan Edwards, uttered his Tenterfield speech and called for a national convention on federation. Griffith at that time was in opposition, but Parkes nevertheless wrote to him early in December soliciting his agreement that it was 'time to start moving'<sup>11</sup> on the question of a greater union. By the beginning of 1890 it had been agreed that delegates from each of the colonies represented in the Federal Council would meet Parkes in Melbourne in February 1890. Queensland's two nominees were Griffith himself and his old sparring partner John Murtagh Macrossan, now colonial secretary. It was typical of those easy-going times that no specific instructions were given to either delegate. When the conference met in Melbourne it was inevitably Parkes who opened the proceedings by moving for the 'union of the colonies, under one legislative and executive Government, on principles just to the several Colonies'.<sup>12</sup> But it was by no means inevitable that the following speech should be given by Griffith, who was no more than Leader of the Opposition from one of the smaller colonies, and it would be interesting to know how this was decided. All commentators agree that Griffith performed the essential task of bringing Parkes's splendid but cloudy generalisations down to earth and identifying the main issues which would confront a federal convention. He argued that, although the colonies had evolved through self-government almost into sovereign states, it would be necessary for them to surrender certain rights and powers in the interests of them all: defence, external relations, trade and commerce, immigration, copyright and patents but not necessarily fiscal policy. Where most delegates and most subsequent historians have seen the need for an Australian common market as a major impetus towards federation, Griffith was relatively unworried on this score. A federation without agreement on tariff policy would survive until the absurdity of tariff barriers became overwhelmingly evident. Of greater importance was the preservation of state rights: 'It is not intended to transfer to the Executive Government anything which could be as well done by the separate governments of the colonies'. Griffith thus adroitly ranged himself in the middle ground between stronger advocates of states' rights such as Playford of South Australia and Inglis Clark of Tasmania and enthusiastic federationists such as Parkes and Macrossan.<sup>13</sup>

In July 1890 the Queensland Legislative Assembly voted to send five of its members as delegates to the National Australasian Convention scheduled for Sydney in March 1891; Macrossan and John Donaldson from the ministry, Griffith and Arthur Rutledge from the Opposition, and Sir Thomas McIlwraith, who had quit the ministry in dudgeon several months previously but had not yet decided to change sides. The Legislative Council nominated Andrew Thynne and Thomas Macdonald-Paterson. A month later Griffith joined with McIlwraith to overthrow the Morehead ministry and become premier for the second time at the head of what became known as the Griffs/Wraith coalition. Almost immediately he was confronted with Macrossan's motion in favour of the separation of North Queensland. So it was that, at the moment when the rest of Australia was turning to federation as a device for unifying a fragmented continent, Griffith in Queensland was compelled to seize on federation as a possible means of preventing his community from splitting apart entirely.

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11 Joyce, *op. cit.*, p 154.

12 Australasian Federation Conference, *Official Record of the Proceedings and Debates*, Melbourne, 1890, reprint Legal Books, Sydney, 1990, pp 33.

13 *Ibid.*, pp 29-41.

Macrossan's motion was defeated, but by a margin too close for comfort - 32 votes to 26.<sup>14</sup> It was known that George Silas Curtis and others at Rockhampton were agitating for the territorial separation of Central Queensland, and the Griffith ministry could not be entirely sure of withstanding the combined pressure of North and Central Queensland. On the other hand Queensland's credit on the London money market would be seriously impaired by the loss of territory and resources which would follow any separation. Griffith's solution was to put forward in November 1890 an ingenious scheme for dividing Queensland into three provincial legislatures which would consist of two houses of parliament exercising a defined list of powers. There would also be a General Assembly for the whole of Queensland comprising a House of Representatives elected on a population basis and a Senate equally representing each of the three provinces. The central government would have power to raise money by any system of taxation other than customs duties and to possess overriding power about the immigration of non-Europeans - which of course was the very issue which had stimulated the sugar industry into demanding separation. As Ross Johnston has commented: 'Griffith therefore sought to provide in embryo a type of federal government intended to work until the federation of the whole of Australia was achieved, whereupon the separate provincial Legislatures would take their place in the Australian federation as full colonial members... This task prepared Griffith for the greater strain of drafting the 1891 Constitution'.<sup>15</sup> The experience must also have reinforced his opposition to over-centralisation. National unity was essential, but it must not be achieved at the expense of regional diversity.

The National Australasian Convention assembled in Sydney on 2 March 1891.<sup>16</sup> Parkes, of course, had to be elected president, but it was no empty compliment that Griffith was chosen vice-president. It was Parkes, however, to whom the honour would fall of moving the opening resolutions defining the principles required 'to establish and secure an enduring foundation for the structure of a Federal Government'. These principles on the whole encapsulated the discussions of the Melbourne conference. There would be a federal parliament comprising a Senate representing each state equally and a House of Representatives; a federal Supreme Court; and an executive comprising the Governor-General and ministers. The Federal Government's powers would include trade and commerce, defence, and the imposition of customs duties. Parkes also wanted to include land policy, but was talked out of it by the other premiers before the resolutions became public. At the same time there was discussion on the wording of the resolution about trade between the federated colonies. According to La Nauze it was Griffith who cut the Gordian knot by saying quite simply that trade and intercourse between the colonies would be 'absolutely free'.<sup>17</sup> At the time it seemed an elegant solution, but herein lay the origins of the endless controversy over Section 92 of the Constitution.

After Parkes had introduced his amended resolutions Griffith, as at Melbourne the previous year, followed immediately to bring the debate down to earth. For him, the lion in the path of federation was not the tariff issue which loomed so large for the Victorians. It was the reconciliation of the rights of the smaller colonies with the superior wealth and population of Victoria and New South Wales. It followed for Griffith that the Senate and the House of Representatives must be completely equal in authority. Of course it was necessary to define their spheres of responsibility so as to

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14 *Queensland Parliamentary Debates*, vol LXII, pp 984-98, 1059-92.

15 Johnston, *op. cit.*, pp 7-8.

16 La Nauze, *op. cit.*, chs 3-5.

17 *Ibid*, p 37; J.A. La Nauze, 'A Little Bit of Lawyers' Language: The History of "Absolutely Free", 1890-1900' in A.W. Martin, *op. cit.* pp 57-93.

minimise the possibility of constitutional clashes, but this could be done by providing that the House of Representatives possessed the sole power of originating taxation and appropriating revenue, but the Senate might exercise a veto. In that way, he thought, friction between the two houses could be accommodated without an entire breakdown of the parliamentary system. Griffith was soon pressed on this point by delegates from Victoria and South Australia who remembered crises when their Legislative Councils had shown a disposition to reject financial measures passed by the lower house. Queensland, of course, had experienced no such disputes. Although the Queensland Legislative Council was completely nominee, consisting mainly of elderly gentlemen of strongly conservative opinions, it had never challenged a budget - perhaps precisely because it was aware of the limitations on its authority as an unelected body. In consequence it was easy for Griffith to under-estimate the passions which had been released in Victoria and South Australia by conflicts between the two houses of parliament.

In insisting on the co-equal powers of the Senate Griffith was not necessarily behaving as a conservative. It was true that the Victorian Legislative Council was a somewhat reactionary body who intervened on financial bills only in order to embarrass governments of mildly radical proclivities; but the Legislative Council was elected on a restricted franchise, whereas the federal Senate would be broadly representative of the entire electorate. Nor was it necessarily the case that the smaller states would be more conservative than Victoria and New South Wales. South Australia in particular had a notable tradition of reformism; and Griffith himself was still young enough to identify with the forces of progress, although in those very weeks while he was away from Queensland at the Convention the militancy of the striking shearers and the provocative intransigence of the pastoral lobby was to force him towards the conservative camp. But Griffith had placed his finger on the cardinal issue which had to be resolved before the federal movement could go forward. Should the will of the House of Representatives prevail on money bills, regardless of the financial consequences for the States? Or should the Senate be given not only the power to reject money bills in extreme cases - to which nearly all present were prepared to consent - but also the power to veto details of the budget? Having presented the question, Griffith himself was not to be drawn far into defining his own position, but others were less reticent. By 16 March the question had become what Deakin described as 'the apple of discord'. James Munro, the millionaire premier of Victoria, was understood to say that if there was no compromise the Convention might as well come to an end. Most of his fellow-Victorians thought likewise; so did Sir Henry Parkes and Thomas Playford of South Australia. On the other hand most of the representatives from the smaller colonies were keen to uphold the Senate's powers, and they had the numbers.

Only one man stood aloof to this controversy. John Murtagh Macrossan was a dying man, and during the Convention he had spoken little, husbanding his strength for one or two decisive interventions. On 13 March he had spoken in opposition to Parkes's view that the existing powers, legislative frameworks, and territorial boundaries of the member-colonies of the Australian Federation should remain unchanged. Understandably Macrossan was concerned that North Queensland might still be free to achieve autonomy in a federated Australia. But on 17 March he achieved a more farsighted and prophetic vein, almost like the dying John of Gaunt. While he believed that the Senate should have power to amend money bills, this was not really an issue of great importance. As Harrison Bryan has written: 'Clearheaded to the end, he brought the Conference back to life after it had bogged down in inter-colonial jealousies, by hammering home again the basic idea which was so clear to him but which still eluded other delegates; that this was a completely new legislation they were erecting and that they must take care not to think of it merely as a

collection of large and small states'.<sup>18</sup> Party politics would dominate: 'The influence of party will remain much the same as it is now, and instead of members of the senate voting, as has been suggested, as states, they will vote as members of parties to which they belong. I think, therefore, that the idea of the larger states being overpowered by the voting of the smaller states might very well be abandoned'.<sup>19</sup> These were the words of a man who believed that the new nation would be 'first Australians, and then Queenslanders and South Australians and Victorians'. It was his last contribution; within a fortnight he was dead in his hotel room. Through his intervention, backed by Griffith and others, the Convention decided that a period of cooling off was required for this contentious issue. Following the time-honoured practice of dead locked meetings, they referred the matter to a committee.

In fact there were three committees. One was on finance, taxation, and trade regulation - McIlwraith of course served on that committee - and another on the establishment of a federal judiciary. But the third and most important was the constitutional committee, to which the other two would report. Unlike the two junior committees, which had only one representative from each delegation, the constitutional committee had two. Griffith and Andrew Thynne represented Queensland. It is noteworthy that Thynne should have been chosen rather than Griffith's old henchman, Arthur Rutledge. Thynne was probably the better choice of the two; he was more decisive and shared Griffith's wish to preserve state rights while setting up a federal body with well defined powers. Almost inevitably Griffith was made chairman of the constitutional committee. As Alfred Deakin put it: 'The real drafting of the Bill will rest with Griffith but it is chiefly compilation work rather than original ...'.<sup>20</sup> He must have overlooked the old bureaucratic adage that it is the man who writes the minutes who determines what happens. It would fall to Griffith to pull together the diverse strands of debate and knit them into a coherent, untangled, and acceptable pattern.

By 24 March, the Tuesday before Easter, the finance and judiciary committees had submitted their reports to Griffith. He, however, was clear that drafting could not be completed until after the Easter vacation, and he had selected two of the constitutional committee to work with him on the task - both, as it happened, from the smaller colonies, and both, as it happened, politicians who before coming to Sydney are known to have tried their own hands at drafting. One was Charles Cameron Kingston, not yet premier of South Australia but already twice attorney-general; a stormy, radical product of the Adelaide establishment but a draftsman whose technical skills were second only to Griffith's own. The other was Andrew Inglis Clark of Tasmania, who had made an intensive study of the American constitution, and was inclined to refer to it as a suitable model for adaptation to Australian conditions. Clark was an able and original thinker whose contribution to federal thought has only recently been given recognition, but one somehow senses that although he and Griffith held each other in mutual respect they were never really close. Perhaps it was professional rivalry, perhaps simply the incompatibility of a tall man and a short man.

At any rate Griffith, Kingston, and Clark got to work on the detailed drafting on Monday 23rd, not without interruptions. Griffith knew how to secure the necessary privacy for the final stages of drafting. His party had travelled down from Queensland on the Queensland Government steamer *Lucinda*, and during the weekends of the conference Griffith had made good use of the *Lucinda* by judicious invitations to

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18 H. Bryan, *John Murtagh Macrossan: his Life and Career*, Brisbane 1958, p 52.

19 National Australasian Convention, *Official Record of the Proceedings and Debates*, Sydney, 1891. p 210.

20 La Nauze, *op. cit.*, p 48; quoting Deakin to C.H. Pearson, 25 March 1891.

selected fellow-delegates to come cruising on Sydney Harbour. Now he proposed that the drafting party should spend Easter on the *Lucinda*, running up north to the quiet of the Hawkesbury estuary. Kingston accepted, but Clark at this inconvenient moment had the misfortune to go down with influenza. Griffith then invited Edmund Barton to come in as a replacement, thus initiating a relationship which lasted the rest of their lives. Barton up to this point, while known to be a keen federalist, had not yet won the prominence which would eventually take him to the first prime ministership of Australia. Easy-going and convivial, he had not been a regular attendee at the Convention, although his contributions when present had been cogent and useful. But Griffith recognised his professional quality, which always came to the fore when a great occasion demanded it; and this brought Barton into the inner ring of policy-makers for a federated Australia. Apparently as an afterthought it was also decided to ask Sir Henry Wrixon as a leading Victorian lawyer, Sir John Downer of South Australia, and Queensland's Andrew Thynne. From outside the Convention, Griffith also invited Bernhard Ringrose Wise, an able young lawyer who at 33 had already been attorney-general of New South Wales. But they came along merely for the cruise and as occasional consultants. It was Griffith, Kingston, and Barton who were to have the final drafting of the constitution, joined by Clark on the Sunday morning after he had recovered from the worst of his influenza.

On the first day of the vacation, Good Friday, Griffith may have been regretting his decision to sail on the *Lucinda*. For back in Queensland the strikers' camps and squatters' homesteads of the inland were being deluged by a late summer rain-bearing depression, and the influence of that depression was felt as far south as Sydney. The weather reports for that Friday speak of fresh gusty winds and showers, and Griffith noted in his diary that there was too much swell in the water current, so he didn't work. Some of those present were seasick in the morning, but by evening they had anchored at Refuge Bay. Here, Griffith reported, there was a waterfall in the bush which made a natural showerbath, but 'I did not take it myself. He in his turn was sickening for influenza; but the weather had improved by Saturday morning, and resolutely he led his party to work. They worked from 10 a.m. till 11 p.m. on Saturday, from 11 a.m. to 6 p.m. on Sunday, and for twelve and a half hours on Monday. Writing to his wife a few days afterwards, Griffith complained that he worked too hard on the Constitution. One can appreciate his point.<sup>21</sup>

The final draft of the Constitution was presented to the Convention on Easter Tuesday, 31 March. Unlike the Canadian constitution, which allocated certain powers to the provinces and left whatever remained to the central government, the Australian practice would be the reverse: specific powers would be granted to the central government, and the states kept the remainder. As Ross Johnston has pointed out, the list of powers for the Commonwealth bore a certain similarity to the powers given to the central parliament of the United Provinces of Queensland as drafted by Griffith in 1890.<sup>22</sup> Griffith himself during the debate referred to that list of powers as 'tolerably complete', and he must have used it as a starting point for the Australian federation. One innovation, however, owed nothing to the Queensland precedent. This was the decision to name the new federation 'the Commonwealth of Australia'. Parkes, Deakin, and Winthrop Hackett of Western Australia all claimed to be godfathers who had chosen this name, but it ran into a good deal of opposition from some conservative delegates who associated the term 'commonwealth' with Oliver Cromwell and the republicanism of 17th century England, and feared that Queen Victoria might take

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21 For the *Lucinda* episode, Joyce, *op. cit.*, pp 194-6, La Nauze, *op. cit.*, pp 64-8, Crisp, *op. cit.*, pp 306-7.

22 Johnston, *op. cit.*, pp 5-8.



offence at the term. Griffith was at first dubious, but in time came round to accept 'Commonwealth' and it was approved by a narrow but sufficient majority.

But would there be a Commonwealth of Australia? Munro, the premier of Victoria, had spent the weekend in Melbourne and had given a press conference expressing great gloom about the prospects of the Convention. They would break up, he forecast, over the Senate's powers; Victoria could never let itself be dominated by the smaller members.<sup>23</sup> Some of the Victorian delegates were privately regretting that they had ever let New Zealand and Western Australia into the Convention. Without them, they might have had the numbers to outvote the smaller states. But Griffith's committee had picked up an idea from the South Australians, and its recommendation gave the Senate power to reject a finance bill but not to amend it; at the most it could communicate requests and suggestions to the House of Representatives, but lacked power to veto in detail. Griffith pressed this point of compromise as the only solution acceptable to both points of view, even though not wholly acceptable to either side. Even then the compromise passed by only 22 votes to 16. Nearly all the Victorian and New South Wales delegates were in the majority, and Griffith's arguments persuaded enough from among the more thoughtful of the small-state members - Playford and Kingston from South Australia, Hackett from Western Australia - to carry the day. At this stage it was anticipated that the members of the Senate would be chosen by the parliaments of each state, so that they would be responsive to local interests. It was not until the 1897-98 federal conventions that it was decided to elect Senators by direct popular vote, a move in the direction of democracy which probably hastened the coming of Macrossan's prophecy that the Senate would turn out to be dominated by party politics.

For the rest, the 1891 Constitution was substantially similar to the Constitution which became law in 1900 and which is still the basis of the Australian body politic today. Quick and Garran in their *Annotated Constitution* list the additional powers which were added during the debates of 1897-98: astronomical and meteorological observations, insurance, invalid and old age pensions, conciliation and arbitration, and the acquisition of property for public purposes; state banking, and power to legislate for river navigation.<sup>24</sup> The Supreme, or High Court, had been provided for, and a start made on the vexed question of appeals to the Privy Council; a method of distribution surplus revenue back to the states on a basis of population had been adopted; and Australia was to be a common market, where capital and labour might organise on a nationwide basis.

Some details of the 1891 settlement were not destined to survive. There was an interesting proposal that the states should be free to choose their governors by popular election rather than by royal appointment. Although this idea was endorsed by a narrow margin in 1891 it failed to survive discussions later in the decade. On the other hand Griffith was so convinced of the pivotal importance of the Governor-General that he pushed the 1891 Convention into asserting that the Governor-General must be the only channel of communication between the States and the British sovereign. Provincial rights in this case stood second to the need for clear and logical lines of authority; but this point was likewise discarded subsequently. Other initiatives of Griffith's which failed to survive were mostly those arising from his intellectual elitism, which tended to lead him to mistrust the capacity of the voters. Thus in 1891 he insisted that amendments to the constitution need not be submitted

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<sup>23</sup> *Sydney Morning Herald*, 30 March 1891.

<sup>24</sup> J. Quick and R. Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus & Robertson, Sydney, 1901, p 168.

to the electorate for approval by referendum, but should instead be passed by an absolute majority of both houses of the Commonwealth parliament and then referred to specially elected conventions in each State. This was too complicated for the 1897-98 Convention, and they eventually decided on the referendum process. Griffith might have rested easy, however, since Australian voters have shown a strong tendency to say 'No' to most proposals for the widening of federal powers.

The 1891 Convention dispersed in the expectation that follow-up action in the colonial parliaments would soon ensue. But Parkes in New South Wales was confronted by the rise of a Labor party which soon ousted him from office in favour of the anti-federationist George Dibbs. Victoria plunged into a major financial depression, replete with scandals, and for a time was too preoccupied with schemes of reconstruction to take a lead on federation. Deprived of this encouragement, the other colonies marked time. With the exception of Western Australia they were all more or less affected by economic recession, and federation seemed a lower priority. Griffith stepped out of active politics in 1893 to become Chief Justice of Queensland. By now, however, his ambition was firmly fixed on the hope of a prominent role in a federated Australia. More than once during the federation debates of the remainder of the 1890s his advice, usually sought informally, exercised some influence. Barton generously admired him; others found his counsel valuable because of his non-involvement in day-by-day politics. Griffith's presence must have given heart to the belated federal movement in Queensland, although he felt inhibited as Chief Justice and Lieutenant-Governor from involving himself too openly. Behind the scenes he was certainly active, and prided himself on finding an acceptable formula about appeals to the Privy Council in May 1900, when the Australian delegates to London reached an impasse in their negotiations with the British authorities.<sup>25</sup>

When federation came on 1 January 1901, Griffith's frustrated anxiety to participate in the action led him into uncharacteristic clumsiness. When the first Governor-General, Lord Hopetoun, made his celebrated 'blunder' of asking the New South Wales premier, Sir William Lyne, to form the first federal ministry - rather than Barton, the preferred choice of nearly all the leading federationists - Griffith allowed himself to dally with the prospect of serving as attorney-general under Lyne. Consequently, when Lyne threw in his hand, Griffith was too compromised to be considered for the federal cabinet; and there was a risk that he had damaged his chances of becoming first Australian Chief Justice, the goal which he most coveted. He returned from the federation celebrations in Sydney confiding angrily to his diary that the new Prime Minister, Barton, was a 'fathead'.<sup>26</sup>

But Barton was a generous man; and when the time came in September 1903 for the appointment of the first High Court he waived his own claims to the post of Chief Justice in favour of Griffith. To most contemporaries Griffith was the obvious nominee. He had earned the honour through his crucial role in the 1891 convention, delicately adjusting the balance between the centre and the periphery. He may at bottom have been a provincial; but because of the intense intellectual creativity which he showed at this important moment in Australian history Griffith can be regarded, not as the narrow conservative of Crisp's phrase, but as a great provincial capable of subordinating his local loyalties in the service of wider vision. It was a quality which modern provincial politicians have too often lacked.

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25 Joyce, *op. cit.*, pp 212-15; but cf. Quick and Garran, *op. cit.*, pp 242-47.

26 Joyce, *op. cit.*, p 215.

