

**Sir Samuel Griffith Lecture
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"Legacies of Sir Samuel Griffith"

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This University bears the name of a man who gave much to Australia and to Queensland – Sir Samuel Griffith who died one hundred years ago, on 9 August 1920. Much of his life was given to public service – as a politician and a judge. Many of his judgments written as the first Chief Justice of the High Court of Australia remain relevant today. Perhaps his greatest contribution to the new Commonwealth of Australia was in the framing of its Constitution and to Queensland, the drafting of its Criminal Code. Considerable foresight and energy were necessary for the creation of these works. They evidence his keen intellect, orderliness of thought, clarity and conciseness of expression and a mind open to ideas from afar.

Early Days

Samuel Walker Griffith was born in Merthyr Tydfil in South Wales on 21 June 1845. He was to take the name Merthyr for the house he later built on Llewellyn Street in Brisbane, and there remains a Merthyr Road near where the house stood. His father was a minister of the Congregational Church. In 1853 his ministry took him and his family to Ipswich via Brisbane, which was then in the northern part of the colony of New South Wales. The creation of the separate colony of Queensland, in 1859, then lay in prospect. He went to school first in Sydney and then in Maitland in New South Wales

when his family moved there for a time, before returning to Brisbane. He won a scholarship to study at the University of Sydney. His keen intelligence was evident from a very young age and it was therefore unsurprising that he excelled at his studies, winning prizes in various disciplines². It was that University which awarded him a travelling scholarship which allowed him to spend more than a year in England and on the Continent. He devoted some of that time to the study of the Italian language³, which was to prove useful much later in drafting the Criminal Code. In the same vein, his time in Europe may also have created an interest in the way other societies dealt with socio-legal issues.

Politician and barrister

Upon his return from Europe in 1867 he completed his articles of clerkship with a solicitor, which he had commenced before his travels, completed the Bar exams and was admitted to practice as a barrister in Queensland⁴. As a young barrister he undertook a wide range of work, as was usual in those days. His practice is said to have included "company law, small debts, impounding cattle, property, embezzlement, contracts and probate"⁵. He also practised in criminal law.

He was elected to the Queensland Legislative Assembly in 1872, which was then the lower house of a bicameral parliament. He would remain in politics for the next 21 years, serving as Attorney-General and twice as the Premier of Queensland. Throughout his lengthy parliamentary career he maintained a busy practice at the Bar. To lawyers of today it may seem surprising that whilst he was Attorney-General he continued to do criminal defence work⁶. One explanation might be that in these colonial times there were only a few people able to undertake these roles. Another might be that he could not resist involvement at every level.

Politically, Samuel Griffith was regarded as something of a radical. One of his biographers noted that he "entered politics on the side of small farmers and Brisbane traders against the squatters"⁷. This reputation may however have been tarnished by his action as Premier in sending in the police and troops to break the shearers' strike of 1891⁸. Nevertheless, Sir Harry Gibbs⁹, himself a Queenslander and former Chief Justice of the High Court, has described Griffith as humanitarian, idealist, and innovative and gave as examples of the kind of legislation which he championed that which gave legal recognition to trade unions; legislation which made education free, secular and compulsory; and legislation which allowed first offenders to be released on probation.

Drafting the Commonwealth Constitution

Sir Samuel was an early proponent of federating the colonies into one Commonwealth of Australia. As Premier of Queensland he participated in a conference held in Sydney in November and December of 1883 which led to the formation of the Federal Council of Australasia¹⁰. It has been suggested by historians that key drivers for the conference were concerns about the growing interest of some European countries in the Pacific region and Britain's indifference to this incursion and the linking of New South Wales to Victoria by rail, which highlighted the shrinking of geographical barriers between the colonies¹¹.

The Council was subsequently established by Imperial statute¹² which, with but a few variations, followed the text of a Bill drafted by Griffith¹³. The creation of the Council was an important step towards federation and it enabled the Premiers and other leading figures in public life of the colonies to maintain co-operative relations and communicate with each other on matters relevant to federation¹⁴. (We have recently witnessed something similar in the National Cabinet created to meet the exigencies of the Coronavirus crisis).

The next key step towards Federation, five years later, was the Australasian Federal Conference, held in Melbourne in February 1890. Its purpose was not to frame a constitution, matters had not proceeded that far, but rather to debate the question whether it was worthwhile attempting a draft¹⁵. Griffith was one of 13 men in attendance at that Conference and he was to play an important part in it.

His knowledge of the Canadian and American Constitutions enabled Griffith to advise the Conference about the powers assigned to the central government by the British North American Act¹⁶. He expressed his views on a number of subjects, such as the powers to be given to a national government respecting immigration and defence. But his major contribution was to be made the following year in Sydney.

In early March 1891, 46 delegates assembled there for the first constitutional convention proper. The historian JA La Nauze noted that Griffith introduced a certain note of pomp to the proceedings, having brought the Queensland Government's steam yacht, the *Lucinda*, to Sydney Harbour¹⁷. Henry Parkes was made President of the Convention and Griffith was the Deputy, but it was Griffith who effectively steered the business of debate and as Chairman of the Constitutional Committee he had considerable authority¹⁸.

Griffith led the preparation of a Draft Constitution, producing an initial draft before Easter with other lawyers – Andrew Inglis Clark and Charles Kingston. After a meeting to discuss the draft, the Constitutional Committee adjourned for the weekend, while the drafting committee retired to the *Lucinda* to continue its work over Easter. Inglis Clark, having come down with influenza, was replaced by a New South Wales lawyer, Edmund Barton. Griffith ensured that the group could work in comfort and not lack the necessary refreshments¹⁹. When the Convention reconvened after Easter it was presented with a further draft which was much more distinctively

American than the Commonwealth Constitution would ultimately be, but it was already an original product²⁰.

La Nauze described Griffith as an unusual politician in that he compelled respect even when he was criticized for his activities in politics. He was regarded not merely to have legal qualifications but as an able and learned lawyer, "calm, cautious and clear in exposition", a type of lawyer-politician who might be appointed to a Chair of Law or as Chief Justice "without a whisper of professional criticism"²¹. By the time that the second Constitutional Convention took place in Adelaide, Sydney and Melbourne between 1897 and 1898, Griffith had indeed been appointed Chief Justice of Queensland.

Because of his new position Griffith did not attend this Convention, although he may be regarded as "present" through his correspondence with delegates and a paper which he published in which he criticised aspects of the draft which emerged from the Adelaide sittings²². His comments were taken seriously. La Nauze observed that in its final form the Constitution contains not only much of Griffith's text of 1891, but also his corrections of the words of the "later and lesser draftsmen of 1897"²³.

His contribution did not end there. By October 1899 the people and parliaments of New South Wales, Queensland, South Australia, Tasmania and Victoria had agreed to the draft Constitution which was now before the Colonial Office. A principal and seemingly intractable disagreement arose between it and the Australian delegates about appeals to the Privy Council. When a compromise finally seemed possible, it was Griffith who chose the form of words which proved acceptable to all sides. In the words of Alfred Deakin, Griffith "provided the golden bridge over which the delegates passed to union"²⁴.

Chief Justice of Queensland

Griffith was appointed Chief Justice of Queensland in 1893. It is often the case that the salary of a judge is substantially less than that of a successful barrister. And so it was for Griffith. He had also suffered a serious financial setback as a result of an investment in a mine in Central Queensland. The government, of which he was Premier, raised the salary of Chief Justice by the then not inconsiderable sum of £1,000 before he took office²⁵. We might think this a rather unusual exercise of executive power. The Governor of the day is said to have reported the action to London with the comment that it was a little strange²⁶.

Sir Harry Gibbs²⁷ considered Griffith's term as Chief Justice of Queensland to have been one of distinction. The Court's reputation had suffered in preceding years and Griffith restored its prestige. His leadership set a standard in Australia. He became known for his learning, and sound judgment.

Chief Justice of Australia

Given his evident abilities as a lawyer and a leader and his role in writing the Commonwealth Constitution which created a Federal Supreme Court, to be called the High Court of Australia, it is unsurprising that Griffith was appointed its first Chief Justice, following Federation, in 1903. He remained on the Court until his resignation in 1919, after having suffered a stroke in 1917²⁸.

A contemporary of Griffith's, Albert Piddington, whom some lawyers will recall as having been appointed to the High Court but resigned his position before he sat, and who often appeared before the Court, said that Griffith was responsible for raising the standard of legal argument in Australia²⁹. Griffith was ahead of his time in putting to an end the taking of

mere technical points. This was not because he had not mastered the rules of court (which he had written) but rather because he wanted to get to the heart of the controversy and effect finality³⁰.

Sir Harry Gibbs observed³¹ that in matters not affected by his theories as to the effect of federalism, Griffith's constitutional judgments remain authoritative. They include *Baxter v Ah Way*, *Robtelmes v Brennan* (which was referred to by the members of the Court as recently as February this year³²) and *Huddart, Parker & Co Pty Ltd v Moorehead*³³, where he gave what might be regarded as a classic definition of "judicial power" in Chapter III of the Constitution, namely³⁴:

"the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property".

Griffith's energy and productivity was well known. Piddington described it as extraordinary. It was to stand him in good stead when he came to write the Queensland Criminal Code.

Drafting the Criminal Code

It was not long after his appointment as Chief Justice of Queensland that Griffith was asked to compile and codify the criminal law of Queensland, which is to say to arrange the laws and rules concerning it into some kind of system. The request came from his successor as Premier and former political rival, Sir Thomas McIlwraith³⁵. At that time the criminal law of Queensland was to be found in many and various statutes, texts and decisions of English courts.

It is not clear whose idea it was to codify the criminal law of Queensland. It is known that the Premier had not long returned from India³⁶ where Thomas Macaulay's Indian Penal Code had been in force for some time. Then again Griffith himself seems to have had an interest in

codification, having already drafted the *Defamation Act 1889* of Queensland which was organised as a code. He was aware of attempts at codification of the criminal law in England. It is possible that the idea originated from a combination of these factors in conversations between the Chief Justice and the Premier.

Griffith was skilled at drafting legislation. He did so on many occasions as Attorney-General. Whilst a Member of Parliament he drafted the *Offenders Probation Act 1886* (Qld), which introduced the first scheme for probation in Australia and possibly the common law world³⁷, the Rules of the Supreme Court, the *Defamation Act* earlier mentioned and the *Justices Act 1886* (Qld), which regulated the procedures of the Magistrates Court in Queensland³⁸. But even for someone of his ability and experience compiling and codifying the whole of the law relating to crime was a large and complex undertaking.

Griffith himself observed, when he later submitted the draft Code³⁹, that the written criminal law of Queensland was scattered through nearly 250 statutes apart from Imperial statutes of general application. The considerable non-statutory portion of the criminal law could only be found in texts relating to the criminal law of England or in decisions of courts exercising criminal jurisdiction. It was in large part the extent to which the criminal law was dispersed which suggested to him that a "collected and explicit statement of the criminal law" was more than justified⁴⁰.

The perceived need for the reform of the criminal law of Queensland at this time might also be understood in wider socio-political context. It has been said⁴¹ that the administration of criminal justice was central to the way state power was imagined in the increasingly independent democratic colonies. The debates about the colonies joining together as the Commonwealth of Australia understandably caused lawyers, politicians and the public more generally to reflect on the nature of government and society

in Australia. Much discussion took place about the institutions which would be necessary to the new Commonwealth. The parliamentary debates on the statute which amended the criminal law in New South Wales in 1883⁴² and the Griffith Code of 1899 disclose a deep recognition of the importance of criminal justice and a felt commitment to the idea that the law should be administered in a way that would serve the community well⁴³.

Griffith undertook his task in two steps. First, between 1893 and 1896 he compiled a digest of criminal laws then in force in Queensland. He was then to turn to the process of its codification. He regarded the first step, of consolidation, as "comparatively easy though laborious work" since it consisted of "the collection and orderly arrangement of existing statutory provisions"⁴⁴.

The two-step approach taken by Sir Samuel – digest, then code – mirrors the approach taken by Sir James Fitzjames Stephen in drafting his Code of English criminal law in 1878⁴⁵ which in turn was later revised by a Royal Commission in 1880. In addition to these English sources, Griffith looked further afield. He also drew upon David Dudley's Field's Penal Code for the State of New York and in an important respect, Zanardelli's Italian Penal Code.

Matters Italian

Griffith's proficiency with the Italian language was of obvious assistance in the use of this code. But his proficiency did not equate with an ability to apply the language in a literary or poetic way, it would seem. One of the many extracurricular activities which he undertook was his own translation of Dante's *Divine Comedy* and a collection of prose and verse by the same author. Literary quality aside, this was no mean feat. But apparently he struggled to find a publisher for the *Divine Comedy* and when he did his translation was not well received⁴⁶. One critic is reported to have

commented that he succeeded in "rendering the poetry of Dante into the language of a Parliamentary enactment"⁴⁷. Obviously his ear was more attuned to the cadences of a well-drafted statute than poetry.

Another anecdote concerns a conversation which is said to have taken place between the then Commonwealth Attorney-General, later Prime Minister, Billy Hughes, and the barrister Sir Julian Salomons. Whilst visiting Salomons' home Hughes noticed Salomons had a copy of the Griffith translation. Salomons drew Hughes' attention to the inscription in it, from the author to him. He said he had been very careful to have had it put in the book because he did not wish people to think that he had purchased it⁴⁸. This is a rare tale which tells against Griffith's abilities. His work in codifying the criminal law attracted no such criticism.

Influences

Different views have been expressed about the extent of the influence of non-common law sources in Sir Samuel Griffith's drafting of the Code. Some have noted, quantitatively, that he refers to Stephen's Code 100 times and to the common law 75 times. He referred to the Italian Code and that of New York 15 and 9 times respectively⁴⁹. But as has been observed⁵⁰, it is important to note that he freely departed from any source where he thought appropriate, usually giving a reason for doing so.

Griffith was clearly open to ideas from other legal systems including the Continent. The Zanardelli Code, named for the Attorney-General who was responsible for its passage through the Italian Parliament, represented the considerable labours of judges, lawyers and academics together with those who had made a special study of the sociology and other aspects of crime⁵¹. Sir Samuel wrote that the Italian Penal Code was "considered to be, in many respects, the most complete and perfect Penal Code in existence"⁵².

Sir Samuel used both the New York and the Italian Codes. The Italian Code was particularly influential with respect to an important aspect of his Code, namely the principles of criminal responsibility in chapter V⁵³. But at heart it remains a code drafted by a common law judge for a colony that had received the common law from England, who was also a judge of modern ideas including about the clarity which a codification of existing statute and common law might provide.

Previous attempts at codifying the criminal law of England had not been successful, largely because of the concerns of common law judges about using legal techniques alien to the common law. This is a view which in some areas persists even today with respect to foreign influences.

In truth, codification had long been a theme in English legal discourse⁵⁴. To pick things up in 1833, the Lord Chancellor, Lord Brougham, appointed a Royal Commission on the Criminal Law to digest into one statute all the written and unwritten law on the subject. Between 1833 and 1845 the Commissioners produced eight substantial reports. However the desire for codification waned and the more ambitious aspects of their endeavours were never implemented in legislation⁵⁵.

Later, Stephen compiled a Digest of Criminal Law and in 1878 completed a draft Code. It was introduced to Parliament with a view to referring it to a Royal Commission. The Commission revised his work twice. In February 1880, the second revision was introduced as a Bill in the House of Commons but was never passed⁵⁶. It was this Code which was one of Griffith's primary reference points.

Some scholars have suggested that whilst Stephen adopted a "cautious narrow conception" of codification which preserved much of the common law, Griffith's conception was "essentially Benthamite"⁵⁷. It has

been said that in seeking to modernise and simplify the common law Griffith followed in the tradition of Bentham⁵⁸.

It is well known that Jeremy Bentham was critical of English law and the common law in particular. Professor HLA Hart said⁵⁹ that Bentham was "horrified" by the prolixity and obscurity of English statutes, the complexity and expense of its court procedures and the artificiality and irrationality of its modes of proof. In place of the uncertainty and obscurity of the common law, Bentham advocated codification of the law. Indeed he is often credited with having coined the term "codification"⁶⁰. This was part of his broader commitment to developing a "science of legislation", a revolution in the form of the law⁶¹, by which it could be rendered simple and intelligible⁶².

It is one thing to suggest that Bentham might have approved of features of the Queensland Criminal Code; it is another to suggest that Griffith was directly influenced by Bentham's works. From Griffith's perspective, Bentham may have spoken from an earlier time. Sir Samuel was following the course charted by the early Royal Commission's attempts at codification and more particularly the work of the later Royal Commission's revision of Stephen's Code.

Others have pointed to a change in temperament in efforts towards codification over the course of the 19th century and of course Griffith was writing at a point much later in that century. In an article which surveys codification efforts which influenced the Model Penal Code in the United States, it is argued that by the time of Stephen's draft code the "Benthamite codification spirit" had matured, in the sense not only of growing old but also in the sense of growing up⁶³. The author notes that later disciples of Bentham, such as John Austin, had come to hold a more modest view of codification than Bentham had. Austin thought Benthamite arguments against judge-made law were exaggerated⁶⁴.

Certainly in Griffith's work there is none of the "codiphobia" associated with the English judiciary⁶⁵. As Chief Justice of Queensland he was leading the way in a different direction. He appears to have been imbued with the late 19th century notion of systematic codes as modern and scientific. This was a view shared by German law professors and reformers who were then engaged in the lengthy process of reducing all German civil law to a Code.

In a letter sent to the Attorney-General in 1897 enclosing his draft Code, he said that "[a]ll the civilised nations of the world ... except some of the English-speaking peoples, have reduced their criminal law to the form of a Code". The exceptions he noted, were the United Kingdom and the Australian colonies, but not New Zealand⁶⁶ – though elsewhere he deprecated the decision of the New Zealand Parliament to adopt the Stephen draft of 1880, a Bill "open to serious criticism"⁶⁷. In an address to the Australasian Association for the Advancement of Science in January 1898, he said that no doubt there were reasons for the apparent reluctance to attempt to formulate English and Australian laws "in a scientific form", but whatever those reasons were, they did not appear to operate on the minds of people "of other civilised states"⁶⁸.

It may by this point be appreciated that Griffith liked to be involved at every stage of a work in progress. So much is evident from his participation in the drafting of the Constitution. In relation to the Code, he presided over the Royal Commission which examined his draft and which recommended that, with minor revisions, it be enacted⁶⁹. That was not all. After it was passed by the Queensland Parliament in 1899, Griffith happened to be serving as Acting Governor and it was he who gave it Royal Assent.

It might have been expected that the other States would adopt Griffith's Code, but only Tasmania and Western Australia looked to it. The Western Australian Code most closely follows it. It was later to influence the Codes of the Territories. His code had more influence overseas – in the

Codes of four Pacific nations, parts of Africa and, curiously, Cyprus and Palestine⁷⁰. It seems fitting that a man who was himself open to foreign ideas should be the source of influence for other legal systems.

Conclusion

Sir Samuel Griffith is buried in Toowong Cemetery in Brisbane. His portrait hangs in Courtroom 1 of the High Court building in Canberra, where the High Court continues to read, interpret and apply the Constitution of which he, more than any other, was responsible. Obviously some State legislatures do not consider that the structure and essential ideas of his Code have yet been improved upon. After all these years it continues to be applied by the courts of Queensland and Western Australia largely unchanged.

To speak of the special legacies of Sir Samuel Griffith is not to deny his substantial contributions as a judge of the High Court. Only last week a patent decision of the Court⁷¹ in 1908, in which he wrote the leading judgment by reference to US patent jurisprudence, was followed by a majority of the present High Court⁷² in preference to a contrary decision of the Privy Council. And so you will see that his influence continues to be felt today.

Samuel Griffith is admired by lawyers throughout Australia but nowhere more than in his home State. He is one of a few historical figures who helped shape our nation and our laws, doing so with an admirable awareness of legal and political developments from around the world. He should be known to all Australians.

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- 1 I wish to acknowledge the considerable research undertaken by James Monaghan, Legal Research Officer at the High Court of Australia, for this Lecture.
- 2 Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 9-10; R K Forward, *Samuel Griffith* (OUP, 1964) 4.
- 3 Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 14-6.
- 4 R K Forward, *Samuel Griffith* (OUP, 1964) 5; Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 23-4.
- 5 Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 26.
- 6 Geraldine Mackenzie, 'An Enduring Influence: Sir Samuel Griffith And His Contribution To Criminal Justice In Queensland' (2002) 2(1) *Queensland University of Technology Law and Justice Journal* 53, 56.
- 7 R K Forward, *Samuel Griffith* (OUP, 1964) 17.
- 8 Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 160-8; R B Joyce, 'Griffith, Sir Samuel Walker (1845–1920)', in Bede Nairn et al (eds), *Australian Dictionary of Biography – Vol 9: 1891-1939* (MUP, 1983), accessed online at: <<http://adb.anu.edu.au/biography/griffith-sir-samuel-walker-445>>.
- 9 The Rt Hon Sir Harry Gibbs, GMG, KBE, Chief Justice of Australia, 'Sir Samuel Walker Griffith Memorial Lecture', 30 April 1984, 6-7.
- 10 Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 89-90; the Hon Justice R Else-Mitchell CMG, 'The Establishment in 1885 of the Federal Council of Australasia' (1985) 59 *Australian Law Journal* 666, 666.
- 11 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 2; Stuart B Kaye, 'Forgotten Source: the Legislative Legacy of the Federal Council of Australasia' (1996) 1(2) *Newcastle Law Review* 57, 58-9.
- 12 *Federal Council of Australasia Act 1885* (Imp).
- 13 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 2; see also the Hon Justice R Else-Mitchell CMG, 'The Establishment in 1885 of the Federal Council of Australasia' (1985) 59 *Australian Law Journal* 666, 666.
- 14 The Hon Justice R Else-Mitchell CMG, 'The Establishment in 1885 of the Federal Council of Australasia' (1985) 59 *Australian Law Journal* 666, 667.
- 15 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 15.
- 16 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 17.
- 17 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 29.
- 18 Kay Saunders, 'Sir Samuel Griffith and the Writing of the Constitution', in John Macrossan (ed), *Griffith, the Law, and the Australian Constitution* (Royal Historical Society of Queensland, 1998) 21, 29.
- 19 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 64-6.
- 20 Helen Irving, *To Constitute a Nation: A Cultural History of Australia's Constitution* (CUP, 1999, updated ed) 51.
- 21 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 13.
- 22 Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 204-5; J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 168-170.
- 23 J A La Nauze, *The Making of the Australian Constitution* (MUP, 1972) 191.
- 24 The Rt Hon Sir Harry Gibbs, GMG, KBE, Chief Justice of Australia, 'Sir Samuel Walker Griffith Memorial Lecture', 30 April 1984, 5-6.

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- ²⁵ The Rt Hon Sir Harry Gibbs, GCMG, KBE, Chief Justice of Australia, 'An Address to Members of the Australasian Pioneers Club', address given at the Queensland Annual Dinner, Queensland Club, 10 August 1984, 5.
- ²⁶ The Rt Hon Sir Harry Gibbs, GCMG, KBE, Chief Justice of Australia, 'An Address to Members of the Australasian Pioneers Club', address given at the Queensland Annual Dinner, Queensland Club, 10 August 1984, 5.
- ²⁷ The Rt Hon Sir Harry Gibbs, GCMG, KBE, Chief Justice of Australia, 'An Address to Members of the Australasian Pioneers Club', address given at the Queensland Annual Dinner, Queensland Club, 10 August 1984, 5-6.
- ²⁸ Harry Gibbs, 'Griffith, Samuel Walker', in Michael Coper et al (eds), *The Oxford Companion to the High Court of Australia* (OUP, 2001, online edition).
- ²⁹ Albert Bathurst Piddington, *Worshipful Masters* (Angus & Robertson Ltd, 1929) 229.
- ³⁰ Albert Bathurst Piddington, *Worshipful Masters* (Angus & Robertson Ltd, 1929) 236-7.
- ³¹ The Rt Hon Sir Harry Gibbs GCMG AC KBE, 'Sir Samuel Griffith', in Michael White QC and Aladin Rahemtula (eds), *Queensland Judges on the High Court* (Supreme Court of Queensland Library, 2003) 21, 26-7.
- ³² *Love v Commonwealth; Thoms v Commonwealth* [2020] HCA 3.
- ³³ *Baxter v Ah Way* (1909) 8 CLR 626; [1909] HCA 30, *Robtelmes v Brenan* (1906) 4 CLR 395; [1909] HCA 58; *Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330; [1906] HCA 36.
- ³⁴ *Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330; [1906] HCA 36 at 357.
- ³⁵ R S O'Regan, 'Sir Samuel Griffith's Criminal Code' (1991) 7(2) *Australian Bar Review* 141, 141.
- ³⁶ Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984) 217.
- ³⁷ R S O'Regan, 'Sir Samuel Griffith and the Origins of Probation in Australia' (1992) 66 *Australian Law Journal* 281, 281.
- ³⁸ Geraldine Mackenzie, 'An Enduring Influence: Sir Samuel Griffith And His Contribution To Criminal Justice In Queensland' (2002) 2(1) *Queensland University of Technology Law and Justice Journal* 53, 57-8.
- ³⁹ Sir Samuel Griffith, Letter to the Attorney-General accompanying Draft Code, 29 October 1897, iv.
- ⁴⁰ Sir Samuel Griffith, Letter to the Attorney-General accompanying Draft Code, 29 October 1897, iv.
- ⁴¹ Arlie Loughnan, *Self, Others and the State: Relations of Criminal Responsibility* (CUP, 2020) 95-6.
- ⁴² *Criminal Law Amendment Act 1883* (NSW).
- ⁴³ Arlie Loughnan, *Self, Others and the State: Relations of Criminal Responsibility* (CUP, 2020) 86-7, 96.
- ⁴⁴ Sir Samuel Griffith, 'Criminal Responsibility: A Chapter from a Criminal Code' in *Report of the Seventh Meeting of the Australasian Association for the Advancement of Science*, paper read 12 January 1898, 895, 896.
- ⁴⁵ Desmond H Brown, *The Genesis of the Canadian Criminal Code of 1892* (Osgoode Society, 1989) 24-9; Rupert Cross, 'The Making of English Criminal Law: (6) Sir James Fitzjames Stephen' [1978] *Criminal Law Review* 652, 655-7.
- ⁴⁶ Clifford L Pannam, 'Dante and the Chief Justice' (1959) 33 *Australian Law Journal* 290, 293.
- ⁴⁷ Quoted, unattributed, in Albert Bathurst Piddington, *Worshipful Masters* (Angus & Robertson Ltd, 1929) 239.
- ⁴⁸ Albert Bathurst Piddington, *Worshipful Masters* (Angus & Robertson Ltd, 1929) 240.

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- 49 Barry Wright, 'Self-Governing Codifications of English Criminal Law and Empire: The Queensland and Canadian Examples' (2007) 26(1) *University of Queensland Law Journal* 39, 58-9.
- 50 Barry Wright, 'Self-Governing Codifications of English Criminal Law and Empire: The Queensland and Canadian Examples' (2007) 26(1) *University of Queensland Law Journal* 39, 59.
- 51 Thomas Boston Bruce, 'The New Italian Criminal Code' (1889) 5 *Law Quarterly Review* 287, 287-8. Bruce was a barrister, admitted to the Middle Temple on 22 January 1881, and called to the Bar on 17 November 1886. He had studied law in Rome. His article in the *LQR* on the Zanardelli Code would have drawn it to the attention of common lawyers around the world. According to Barry Wright, it was the means by which the Zanardelli Code 'came to the attention of the Canadian Department of Justice drafters' in drafting the Canadian Criminal Code of 1892: Barry Wright, 'Self-Governing Codifications of English Criminal Law and Empire: The Queensland and Canadian Examples' (2007) 26(1) *University of Queensland Law Journal* 39, 59.
- 52 Sir Samuel Griffith, Letter to the Attorney-General accompanying Draft Code, 29 October 1897, vii.
- 53 Arlie Loughnan, *Self, Others and the State: Relations of Criminal Responsibility* (CUP, 2020) 91.
- 54 See Desmond H Brown, "Abortive Attempts to Codify English Criminal Law" (1992) 11(1) *Parliamentary History* 1.
- 55 Lindsay Farmer, "Reconstructing the English Codification Debate: The Criminal Law Commissioners, 1833-45" (2000) 18 *Law & History Review* 397, 403-5.
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- 57 Barry Wright, 'Self-Governing Codifications of English Criminal Law and Empire: The Queensland and Canadian Examples' (2007) 26(1) *University of Queensland Law Journal* 39, 48, 57.
- 58 Arlie Loughnan, *Self, Others and the State: Relations of Criminal Responsibility* (CUP, 2020) 84-5.
- 59 HLA Hart, 'The Demystification of the Law', in HLA Hart, *Essays on Bentham: Jurisprudence and Political Theory* (OUP, 1982) 1, 26.
- 60 Barry Wright, 'Self-Governing Codifications of English Criminal Law and Empire: The Queensland and Canadian Examples' (2007) 26(1) *University of Queensland Law Journal* 39, 42.
- 61 Lindsay Farmer, 'Reconstructing the English Codification Debate: The Criminal Law Commissioners, 1833-45' (2000) 18 *Law and History Review* 397, 408; Lindsay Farmer, "'The Principle of the Codification We Recommend Has Never Yet Been Understood'" (2000) 18 *Law and History Review* 441, 443.
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- 67 Sir Samuel Griffith, 'Criminal Responsibility: A Chapter from a Criminal Code' in *Report of the Seventh Meeting of the Australasian Association for the Advancement of Science*, paper read 12 January 1898, 895, 895.
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- ⁶⁹ R S O'Regan, 'Sir Samuel Griffith's Criminal Code' (1991) 7(2) *Australian Bar Review* 141, 145.
- ⁷⁰ RS O'Regan, 'Sir Samuel Griffith's Criminal Code' (1991) 7(2) *Australian Bar Review* 141, 147-151; see also RS O'Regan, 'The Migration of the Griffith Code', in RS O'Regan, *New Essays on the Australian Criminal Codes* (LBC, 1988) 103.
- ⁷¹ *National Phonograph Co of Australia Ltd v Menck* (1908) 7 CLR 481.
- ⁷² *Calidad Pty Ltd & Ors v Seiko Epson Corporation & Anor* [2020] HCA 41.