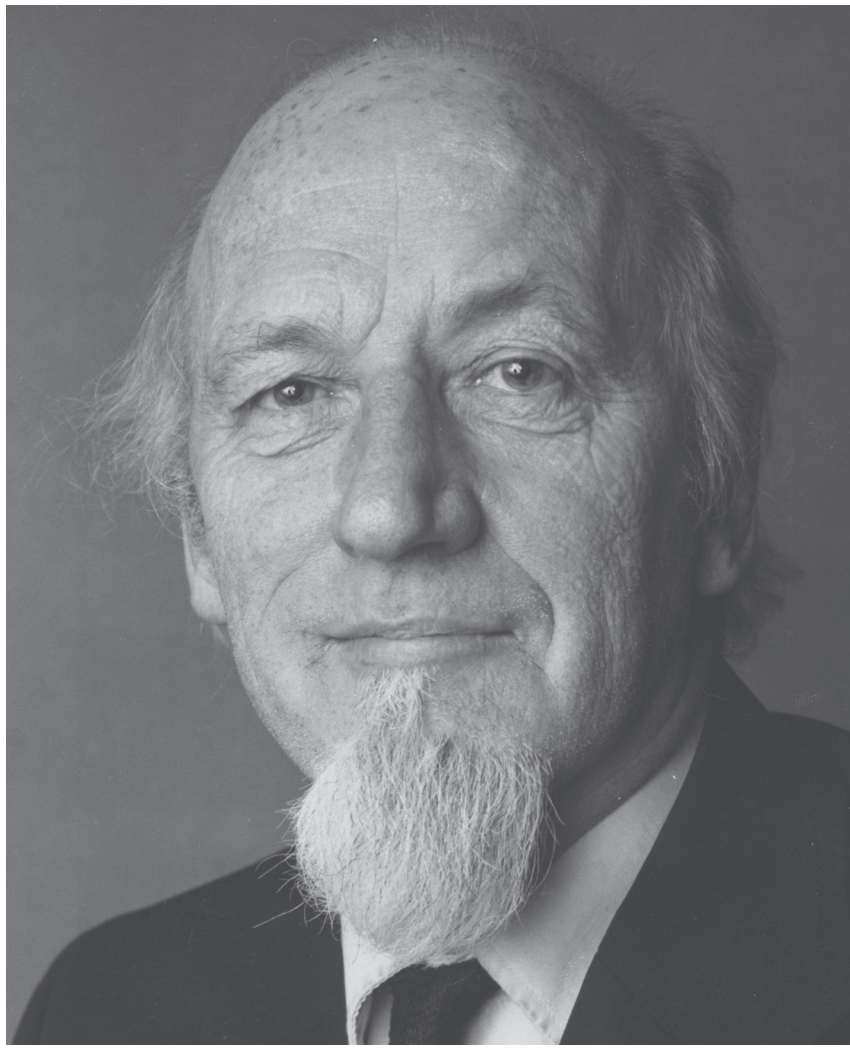

JOHN GRIFFITH

John Aneurin Grey Griffith
1918–2010

Life

John Aneurin Grey Griffith was born in Cardiff on 14 October 1918, shortly before the end of the First World War, to a Baptist minister, the Revd Benjamin Grey Griffith, and his wife Bertha. His first years were spent in Wales but the family later moved to London and he became a boarder at Taunton School in Somerset, where he played rugby for the school. From 1937 to 1940 he was a student at the London School of Economics (LSE), spending his final year in Cambridge, where the School spent its wartime, refugee days. Here he met his wife Barbara Williams, a student of economic history, whom he married in 1941. The marriage was both rich and long-lasting; it lasted seventy years. John died on 8 May 2010 and Barbara died a year later in May 2011. The three children of the marriage, Adam, Ben and his daughter Sarah, five grandchildren and three great-grandchildren, of whom he was inordinately fond and proud, all survive.

After the Second World War, John took a teaching job at the University College of Wales, Aberystwyth, where he spent two years, returning to the LSE in 1948 as lecturer. Despite some differences with Sir David Hughes-Parry, a long-standing Head of the Law Department, who frequently advised John to look elsewhere for a chair, John became Professor of English Law in 1959 and acceded to the Chair of Public Law in 1970. Aside from visiting professorships at the University of California at Berkeley in 1966 and York University, Toronto in 1985, John never left the LSE; on retirement in 1984, he had spent around forty years there. As he

Biographical Memoirs of Fellows of the British Academy, XI, 331–350.

himself said, 'When one has been in an institution this length of time, really one ought not to continue to be there unless one has a very considerable feeling of respect for the institution and also affection for the institution. I certainly have had that very strongly.'[1]

After his retirement, John was elected—much to his own surprise—as Chancellor of Manchester University. The post was contested and John had stood at the request of students and lecturers against the 'official' candidate, the Marchioness of Anglesey, believing his chances to be minimal. He took up his post with enthusiasm in 1986 and held it for seven years. John took his duties seriously, breaking with convention by attending council meetings, where he demonstrated his usual independence of mind in frequent challenges to the university establishment, becoming a 'thorn in the flesh of university managers'.[2]

There are some clues to all this in his background. John was Welsh and had a 'chapel background' and, although he lived for most of his life in England, these Welsh roots were very obvious. He was not and never wished to be a member of the English establishment. John's radical socialism was associated with the long tradition of dissent in this country; he was a natural dissenter and, despite his many successes, including election as a Fellow of the British Academy in 1977, he proudly remained and saw himself as an outsider. He enjoyed controversy, knew his own mind and was never afraid to stand alone and out from the crowd. He was proud of being Welsh, even though he left Cardiff with his parents in 1927. He was a strong supporter of the Welsh rugby team, always kept an eye on how Cardiff City FC was doing and enjoyed watching cricket. Norman Dorsen, a long-time friend and president of the American Civil Liberties Union, recalls of his time at LSE that John and he spent 'many an afternoon at Lord's drinking beer and deciding the fate of the world', an experience shared by law department colleagues and students and, no doubt, many others. Up until retirement, John spent a day annually at Lords with younger colleagues, preferably watching Test cricket.

In his obituary, Martin Loughlin called John 'a singular, often eloquent voice' and 'the last link with the radical socialist tradition that shaped the LSE in its founding years and exerted such influence over post-war politics'.[3] Less formally, John called himself 'A Labour Party person and all that.' There can be no doubt about John's devotion to the socialist

[1] In an interview with Richard Rawlings, recorded for an oral history of the School compiled in the context of the centenary in 1995.
[2] *Times Online Obituary*, 19 May 2010.
[3] M. Loughlin, 'John Griffith obituary', *The Guardian*, 25 May 2010.

cause, evidenced not only in his academic writings but also in a steady stream of contributions to the *New Statesman*, *Marxism Today* and the quality press. Michael Zander, an LSE colleague for many years, described him 'not just as a towering figure in the law department but as the quintessential LSE person: feisty, eloquent, controversial, scholarly, engaged. His was an independent and free spirit. And, with it, though deeply serious, he always seemed to have a twinkle about him.'[4] How well this captures John's highly individual and disputatious personality!

The Celts, as Nora Chadwick reminds us,[5] were the professional orators and demagogues of classical Rome, and John possessed the 'hwyl' to an extraordinary degree. The wit and eloquence of his lectures carried generations of students with him and permeates his writing. His literary and eclectic style was epitomised in 'The political constitution',[6] the Chorley Lecture delivered towards the end of his long LSE career in June 1978 and in some ways an *apologia* for his career and beliefs. The lecture is notable for the wide range of the reading on which it is based and contains in particular copious quotations from Paul Fussell's literary study of the 1914–18 war,[7] which he was then reading with enthusiasm and lending to colleagues.

The pity of war

The shadow of the First World War never left John, a fact recorded in 'The political constitution':

> For my generation, born during or immediately after [the First World War], the significance of that war cannot be overstated. We were brought up in the period of delayed shock which followed. And no doubt also in the penumbra of the images which began to merge as reflections of terrible events. These are not the same as myths, except in the Jungian sense. They are kind of impressions, of recollections, caught by those who wrote the later memoirs of the time … [The] war of 1914–18 seriously damaged the concept of legitimate authority. Orders were being given which resulted in the death of tens of thousands to no purpose … Faith in authority which, I suggest, is essential to the working of that form of government known as liberal democracy, was never recovered. And authority, not for the first time in history, was replaced by authoritarianism.[8]

[4] Speech at the LSE *In memoriam* for John Griffith, hereafter *In memoriam*.
[5] Nora Chadwick, *The Celts* (Harmondsworth, 1970).
[6] J. A. G. Griffith, 'The political constitution' (1979) 42 *Modern Law Review* 1.
[7] P. Fussell, *The Great War and Modern Memory* (Oxford, 1975)
[8] 'The political constitution', p. 4.

Significantly, at the start of the Second World War, John registered as a conscientious objector and served as a field ambulance-man in the Middle East; later, however, he applied for deregistration and went on to serve in the Indian army, an experience that left him with a deep affection for India and things Indian and a correspondingly deep disaffection for British colonialism. The Foreign Office files that came to light in 2011 implicating Britain in torture and inhumane treatment in colonial Kenya would not have surprised John, though he would certainly have been shocked by the combination of arrogance, secrecy and authoritarianism, all qualities he attributed to government.

Fussell's book had a double appeal for John, first because of Fussell's awareness of literature. What distinguished Fussell's book from other critical accounts of the world wars was, as a journalist later put it, its literary emphasis and clear nostalgia for a more literate age.[9] These were preoccupations John shared. He remarked somewhat ruefully that the First World War was the last time that everyone, officers and private soldiers, had in common the language of the King James Bible and Shakespeare. He certainly loved the rhythms of both, quoting by heart into old age reams of Shakespeare, Macaulay's *Lays of Ancient Rome* and other epic poems that he had learned in his youth, together with more modern poets, such as Peter Porter and his great love, W. H. Auden. Undergraduates were often badly thrown when tutorials took an unexpected turn from the intricacies of public law into these 'realms of gold'. In *Who's Who* John listed amongst his hobbies the writing of 'bad verse', a hobby he carried with typical irreverence into a review of a book in an academic journal written in vivid doggerel.[10] Whatever John wrote reads well and he took great care that it should. He was a wordsmith who used words with precision. For years he agonised whether to call the judges in the *Politics of the Judiciary* 'Conservative' as he thought them, or simply the more restrained 'conservative'. On other occasions, like many fine orators, he was carried away by the passion of his own rhetoric, a trait that unfortunately allowed his opponents to downplay his ideas.

The second appeal of Fussell's book lay in the fact that he set out to record the 'everyday texture of life at the front' and the appalling circumstances of the ordinary soldiers in their own language. Concern for the ordinary people who make up the building blocks of society infused all John's work and underpinned his view of the constitution. Squarely inside

[9] S. Rustin, 'Hello to all that', *The Guardian*, 31 July, 2004.
[10] J. Griffith, 'Review of *Poetic Justice*' (1948) 11 *Modern Law Review* 374.

the LSE tradition in which he worked, John believed with William Robson that

> [T]he great departments of state … are not only essential to the well being of the great mass of the people, but also the most significant expressions of democracy in our time. Considerations of this kind, however, could scarcely be expected to weigh with the predominantly upper middle class conservative legal mind.[11]

From this belief in the need for government strong enough to undertake much-needed political reform and redistribution of wealth sprang John's faith in the 'political constitution', which vested power in democratically elected governments rather than non-elected judges. To translate this into the language of political science—which John usually avoided—in a 'model of government' the checks on power come from within the political process, rather than, as in the 'model of law', from an autonomous and unelected judiciary, which both checks and balances the elected government.[12]

Realist empiricism

From his early days at the LSE, John had been trained in a realist or functionalist style of public law, working with Ivor Jennings and William Robson, later Professor of Public Administration at LSE. Jennings taught John as a first-year student and his elegant rebuttal of Dicey, *The Law and the Constitution*,[13] was later selected by John as the work that had most greatly influenced his student days. A further significant influence was a series of ten lectures on theories of law delivered at LSE in 1932 in which Jennings propounded the 'institutionalist' theory of law,[14] according to which the focus of administrative law should be the work of government departments, statutory authorities, public utilities, etc., rather than judicial decisions or individual rights. This was a formula to which much of John's work conformed. *Central Departments and Local Authorities*,[15] a book that attained classic status, was one of a handful of empirical studies by public lawyers. Basing himself on his study of housing policy and provision, John concluded that localism would come into conflict with the

[11] W. Robson, *Justice and Administrative Law*, 3rd edn. (London, 1951), p. 421.
[12] See M. J. C. Vile, *Constitutionalism and Separation of Powers* (Oxford, 1967).
[13] W. I. Jennings, *The Law and the Constitution* (London, 1933, rev. 1938, now 5th edn. 1959). And see J. Griffith, 'A pilgrim's progress' (1995) 22 *Journal of Law and Society* 410.
[14] W. I. Jennings (ed.), *Modern Theories of Law* (Oxford, 1933).
[15] J. A. G. Griffith, *Central Departments and Local Authorities* (London, 1966).

need for effective provision of housing, thus presaging modern debates over community, localism and central government as regulator.

Robson, for many years a colleague, was referred to by John as 'the master' and one of his two 'guiding spirits', the other being Jeremy Bentham. As John explained, the group's functionalist aim was to strip away the 'stage paraphernalia' used by the holders of political and economic power to screen their true motivation and expose the *reality* of political and economic power:

> We were not surprised to discover that the trappings of democracy concealed rather than adorned the body politic. But who was pulling the levers, where the levers were being pulled, who were the puppets and who the puppet-masters, these were questions to which we sought answers. We are still seeking them.[16]

The LSE motto, 'to find out the causes of things', exactly epitomises John's scholarly creed.

John's twin commitments to sceptical realism and to law as a social science permeated his teaching. He taught and worked closely with Professor George Jones in the LSE department of government, like John an authority on local government. In his own public law course, John simply invited his many friends, politicians, practising lawyers and academics to tell students 'what actually happens' by describing the jobs that they did. The result was random but fascinating, though it would in these days of evaluation and bite-sized learning—which John would certainly deplore—be thought very idiosyncratic. But John was content to trust students: 'the fact is that the students who come to LSE are on the whole very, very, good students; they are very competent people. They wouldn't have got to LSE unless they were pretty intelligent characters.' He was in fact a fine teacher, who devoted a great deal of his time to helping, talking to and drawing the best out of students to whom he was devoted and saw as an 'inspiration'. But he was modest about his contribution: 'you have them for three years as undergraduates and the great joy, I think, of being a university teacher, is that you can see how they can develop over those three years. You mustn't claim much credit for it because they are going to develop between the ages of 18 and 21 anyway. But at least you can see the way in which they do develop.'[17]

[16] 'The political constitution', p. 5.
[17] Interview with Richard Rawlings, see above, n. 1.

Functionalist administrative law

The realist method also marks the student textbook designed as 'a compact introduction to administrative law', co-authored with Harry Street. The Preface introduced a further element of John's academic credo. Law and politics are holistic and should never be treated as discrete subjects of study; law is, in other words, a component part of the social sciences:

> We have tried to emphasise throughout how limited a view of law or politics or public administration is obtained if any one of these social sciences is surveyed to the exclusion of the others. It is not so much that the study of one is incomplete without reference to the others, but rather that the landscape is single and entire. There are not different views to be seen, but only different viewers with variously adjusted blinkers.[18]

John's views on judicial review, which became a central theme in his later work, were shaped by his view of himself as a 'new positivist'. John did not advocate the abolition of judicial review, insisting that:

> … those who rule must be subject to the rule of law. It is this last principle that is crucial to the preservation of any measure of liberty and to the control of Governments. This is not to denigrate political checks on power, but such checks are greatly strengthened by the insistence that all governmental activity which encroaches on the rights of the individual must have a firm basis in rules of law.[19]

John believed that judicial discretion was too wide and wanted to see it confined to cases where public authorities acted outside their statutory powers (*ultra vires* in the classical sense of the term) or had violated rules of procedure laid down by or under statute in accordance with natural justice. His sympathies lay with the formalist tradition of judges like Lord Greene MR, in his celebrated '*Wednesbury* unreasonableness' test of the ambit of ministerial discretion;[20] or Lord Morris of Borth-y-Gest, dissenting in *Padfield's* case on the ground that the statutory language was clear and unambiguous and did not lend itself to judicial interpretation.[21] To put this differently, John hoped to see judicial review limited to Lord Wilberforce's category of 'narrow ultra vires' as distinct from 'principles of administrative law',[22] which he saw essentially as 'invented' by the judiciary.

[18] J. A. G. Griffith and H. Street, *Principles of Administrative Law* (London, 1963).
[19] T. C. Hartley and J. A. G. Griffith, *Government and Law*, 2nd edn. (London, 1981), p. 8.
[20] *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223. For Griffith's assessment of Lord Greene, see J. Griffith, *Judicial Politics since 1920: a Chronicle* (Oxford, 1993), pp. 51–7.
[21] *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997.
[22] *Bromley London Borough Council v Greater London Council* [1983] 1 AC 126.

Parliament should intervene to structure judicial discretion by providing 'more positive, black-letter provision by statute which will define where the balance of public interest lies'. Express provision as to justiciability should be made in new legislation and clearer directions as to where power was in the last resort to lie. But John was not particularly sanguine about the outcome, being generally 'pessimistic about the possibilities of progressive legal change':[23]

> In our system for two principal reasons, the judiciary have a wide scope for the making of political decisions. First, statute law does not seek with any precision to indicate where, between Ministers and judges, final decision making should lie. Secondly, judges themselves, in the common law tradition of judicial creativity, frequently invent or re-discover rules of law which enable them to intervene and to exercise political judgment in areas that hitherto had been understood to be outside their province. In the event, for these two reasons, legislators and Ministers and public authorities are continuously being surprised to discover that, in the view of the judges, they do not have the powers they thought they had.[24]

Judges and politics

The double disagreement over the function of the state in modern society and the balance of power in modern governance occupied John greatly and in his later years brought him into dispute with influential and articulate members of the judiciary. It is for *The Politics of the Judiciary*, mischievously called by John his 'little book', that he is best known outside academic circles. He both hoped and foresaw that it would prove controversial. Written in a series part-edited by political scientist Professor Bernard Crick, a long-standing colleague and friend, the book's preface acknowledges the help of (amongst others) Crick, Ralph Miliband and Lord Wedderburn—a clear indication of the stable from which his ideas came and of those with whom he shared them. *The Politics of the Judiciary* exposes in entirely accessible style and language the relationship between the judiciary and politics, examining in some detail the way that judges had dealt with political cases that came before them. John defined 'political' loosely to cover 'cases which arise out of controversial legislation or controversial action initiated by public authorities, or which touch impor-

[23] M. Loughlin, *Public Law and Political Theory* (Oxford, 1992), p. 197.
[24] J. A. G. Griffith, 'Constitutional and administrative law', in P. Archer and A. Martin (eds.), *More Law Reform Now* (Chichester, 1983), p. 55.

tant moral or social issues'. The core argument was that members of the judiciary formed a class 'broadly homogeneous in character' which, faced with 'political' cases, would act in broadly similar ways. This added up to 'a unifying attitude of mind, a political position, which is primarily concerned to protect and conserve certain values and institutions'. His case was *not*—though it was widely supposed to be—that judges belonged to a particular political party or invariably supported the government; it was that judges were 'protectors and conservators of what has been, of the relationships and interests on which, in their view, our society is founded. They do not regard their role as radical or even reformist, only (on occasion) corrective.'[25]

Had the argument stopped there, it might have been seen as largely non-contentious, but of course it did not. The book tackled several controversial issues, including the background and social position of the judiciary, the antiquated appointments system, the judges' extrajudicial activities in chairing commissions and inquiries, and their legislative role. The chosen case-studies of industrial relations, social security, student affairs and race relations were contentious. They were suggestive of an anti-left-wing bias on the part of the judges and the implication was that a left-wing attempt to curtail individual freedoms would meet with more immediate judicial opposition than a right-wing attempt.[26] A further three chapters strongly critical of the way judges dealt with civil liberties undercut their claim to be the rock on which freedoms were founded; judges did not by and large stand out as protectors of liberty, of the rights of man or of the underprivileged. Judicial views of the public interest were not the views of the extreme right but they could be seen as 'reactionary conservatism'. This conservatism did not necessarily follow the day-to-day political policies of the party currently associated with that name but it did nonetheless add up to a political philosophy.[27]

Twenty years later, after a decade in which the judges had regularly annulled decisions of right-wing Conservative politicians, these conclusions were rewritten in the fifth edition to blunt charges of political prejudice. Judges were still said to be the product of a particular limited class with the characteristics of that class, which would naturally incline them always to uphold the status quo but the judiciary was expressly absolved of 'a conscious and deliberate intention to pursue their own interests and

[25] J. A. G. Griffith, *The Politics of the Judiciary* (London, 1977), pp. 7–8.
[26] Ibid., p. 208.
[27] Ibid., pp. 212–13.

the interests of their class'. It remained the case that only occasionally had 'the power of the supreme judiciary been exercised in the positive assertion of fundamental values' and part of their 'present robustness' was clearly attributable to an effort 'to maintain their position as part of established authority' and 'to regain what status they have lost'.[28] It was, however:

> idle to criticize institutions for performing the task they were created to perform and have performed for centuries. The principal function of the judiciary is to support the institutions of government as established by law. To expect a judge to advocate radical change is absurd.[29]

This conclusion, which presumably represents John's final position, moves the argument to a more constitutional level, where the judges would be further engaged.

Rights talk

John had previously sparred with Lord Hailsham on the subject of rights, increasingly invoked by members of the judiciary—and notably Lord Scarman in his Hamlyn lecture series[30]—as a platform for an extended role. Shortly before his appointment as Margaret Thatcher's Lord Chancellor, Lord Hailsham—later described by John as a 'highly political holder of the office'[31]—had published *The Dilemma of Democracy*,[32] a book that advocated a comprehensive package of constitutional reforms. Lord Hailsham saw modern Britain as an 'elective dictatorship' in which the executive dominated Parliament and deprived it of all effective power of scrutiny. His projected reforms were designed to introduce 'limited government'; he would end parliamentary sovereignty, introduce a second chamber elected by proportional representation, and a written Bill of Rights. In 'The political constitution', John riposted with an attack on the whole rights movement. In courts of law, arguments over rights were couched in legalistic jargon designed to disguise their political nature, the effect being to exclude the general public from the debate and 'fob off' attempts at necessary reform. Law was not and should never be a substitute for politics and political decisions should be taken by politicians, which 'in our society

[28] J. A. G. Griffith, *The Politics of the Judiciary*, 5th edn. (London, 1997), pp. 338–42.
[29] Ibid., p. 343.
[30] Sir Leslie Scarman, *English Law—the New Dimension* (London, 1974).
[31] *The Politics of the Judiciary*, p. xiv.
[32] Lord Hailsham, *The Dilemma of Democracy: Diagnosis and Prescription* (London, 1978).

means by people who are removable'.[33] Famously—but to many infamously—John redefined rights as 'political claims', ending his lecture with his usual flair for controversy:

> As an individual I may say that I have certain rights—the right to life being the most fundamental. But those who manage the society in which I live will reply 'Put up your claim and we will look at it. Don't ring us, we'll ring you.'
>
> In this political, social sense there are no over-riding human rights. No right to freedom, to trial before conviction, to representation before taxation. No right not to be tortured, not to be summarily executed. Instead there are political claims by individuals and groups.[34]

This passage was designed to shock and shock it did. It was one thing to assert that arguments from rights allowed questions of politics or economics to be 'presented as questions of law'. The question of overlap between socio-economic rights and public policy is and remains a highly debatable question and one which has survived the passage of the Human Rights Act in 1998. But to call the right to life a 'claim' that could be defeated by 'those who manage society' went too far and seemed to position John with 'those in authority' whom he had most stubbornly opposed. This was not his intention. He wished only to stress that adopting the language of rights not only meant changing the nature of the debate but was also a way of disguising a change that would have the practical effect of shifting controversial decisions over policy from the political to a judicial forum. John who, as an active socialist, had participated in a post-war political revolution, which had engineered a substantial transfer of resources to the poor and underprivileged, regarded the judiciary as a protector of property and the status quo. He was never open to the counter-argument put forward by human rights lawyers that the establishment of a 'right' in a court of law could act as a springboard for, rather than a barrier against, reform. Not unnaturally, he did not foresee the halfway-house solution of the Human Rights Act which, with the innovative 'declaration of incompatibility', leaves parliamentary sovereignty intact.

John's encounter with Sir John Laws, who had argued in a series of articles that the judges were custodians of moral values, defenders of rights and of the constitution,[35] dragged him onto metaphysical terrain where he least liked to be. John espoused Bentham's view of rights as

[33] 'The political constitution', p. 16.

[34] Ibid., p. 17.

[35] Sir John Laws, 'Law and democracy' [1995] *Public Law* 72; 'The constitution: morals and rights' [1996] *Public Law* 622; 'Is the High Court the guardian of fundamental constitutional rights?' [1993] *Public Law* 59.

'nonsense on stilts',[36] and thought the very idea of a 'community morality', on which judges often relied to legitimate their discretionary decision-making,[37] 'nonsense at the top of a very high ladder'.[38] Society, he insisted, was inherently disputatious and there could be no fixed consensus over morality. The term 'community morality' simply covered the collective, or sometimes individual, ethos of judges, which he had tried to expose in *The Politics of the Judiciary*.

Was it perhaps paradoxical that John, who believed so strongly in the fusion of law and politics, believed with equal fervour that law and morality must be severed? Like Bentham, he derided the idea of natural law, presenting himself as a pragmatic 'new positivist', whose views derived from the sociological school of Comte, Durkheim and the French constitutional lawyer, Léon Duguit. Duguit, whose works John had read 'avidly' in his youth, presented 'the nearest thing to a solid, positivist, unmetaphysical, non-natural foundation for analytical jurisprudence' that he knew of.[39] It followed that he would find Sir John's thesis of a 'higher-order law', which could not be abrogated by government legislation and of which the judges were trustees, extremely unpalatable; it set the judiciary above Parliament and did so on the basis of 'mythology'. Sweeping aside Sir William Wade as a 'pantomime horse', John declared that the judges, when claiming a power of judicial review, which was 'of their own making and owe[d] nothing to statute', would be wise to accord a similar autonomy to Parliament.[40] The judges could not single-handed set aside the constitutional settlement that rested on history and 'political realities'; their claims amounted to a 'take-over bid' which might, if it failed, devalue the reputation and trustworthiness of the judiciary.[41] The forthright argument and robust language, typical of John, did little to endear him to his opponents.

[36] 'Anarchical fallacies', in J. Bowring (ed.), *The Works of Jeremy Bentham* (Edinburgh, 1838–43, vol. 2, 1843).
[37] See the celebrated Hart/Devlin debate: H. L. A. Hart, *Law, Liberty and Morality* (Oxford, 1963); Sir Patrick Devlin, *The Enforcement of Morals* (Oxford, 1965).
[38] 'The political constitution', p. 11.
[39] Ibid., p. 6.
[40] J. A. G. Griffith, 'Judges and the constitution', in R. Rawlings (ed.), *Law, Society and Economy* (Oxford, 1997); 'The brave new world of Sir John Laws' (2000) 63 *Modern Law Review* 159; 'The common law and the constitution' (2001) 117 *Law Quarterly Review* 42.
[41] 'Judges and the constitution', p. 306.

Constitutionalism, responsibility and accountability

John engaged Sir Stephen Sedley on the high ground of the constitution over the issue of sovereignty. Sedley's argument, that 'the rule of law recognises two sovereignties, not one and not three',[42] distressed John by its implication that 'the institution of Government is declared to be not sovereign, but subordinate to the courts and to Parliament'.[43] This thesis, in John's view both ahistorical and at variance with the actual constitution, was, he thought, yet another argument to justify and promote further expansion of judicial power. Ministerial government in the sense that government could largely control proceedings in Parliament was the 'heart of the style of our present system of parliamentary democracy'. Government was neither theoretically nor otherwise 'subordinate' to Parliament; the two institutions were interlocked in 'a complexity of powers and relationships which together make the machinery of the state':

> [T]o deny the sovereignty of one or other of the three major institutions is to deny that complexity of the constitution which is its peculiar strength. If the definition of sovereignty is that it lies with that institution which has 'the last word' then Government is sovereign not only in its own role (the part it plays in the working Constitution) but also in relation to other institutions.

It was not that John put great trust in governments. In 'The political constitution' he firmly asserted that 'my distrust of governments and of the claims made by those in authority is as profound as any man's and more profound than most.'[44] It cannot be too often reiterated that John saw government—and indeed, society generally—as inherently authoritarian. But there was a dichotomy in his beliefs. On the one hand he was convinced of the need for imaginative and effective government, the 'great departments of state' theme; on the other, he was deeply sceptical of authority and its capacity for lapsing into authoritarianism. Moreover, as he attempted to show in *The Politics of the Judiciary*, he saw the judiciary as part of the establishment, inclined by temperament to side with those in authority and not particularly amenable to 'claims' from underprivileged sections of society. Positively, he believed firmly in the responsibility and accountability not only of ministers but of all public figures—including judges. Thus, along with the colleagues with whom he worked and

[42] Sir Stephen Sedley, 'The sound of silence: constitutional law without a constitution' (1994) 110 *Law Quarterly Review* 270.
[43] 'The common law and the constitution', pp. 45 and 50.
[44] 'The political constitution', p. 16.

fraternised at the LSE, he looked for controls inside, and not separate from, the democratic process.

Throughout his writing, John emphasised the need for a free and powerful press, for access to information and open government. The dangers lay not in an 'elective dictatorship',

> not in the powers of minority governments, not in the sovereignty of Parliament as the legislative institution, but in the prosecution of investigative journalism … Excessive legislation does not seem to me to be where the dangers lie. The dangers are in excessive administration designed to limit criticism and to protect governments.[45]

We cannot know whether he would have agreed with political scientist Geoffrey Marshall (a longstanding friend and member of the editorial board of *Public Law*, which John edited for twenty-five years) that 'the most obvious and undisputed convention of the British constitutional system is that Parliament does not use its unlimited sovereign power in an oppressive or tyrannical way'.[46] His position on constitutional convention was equivocal and hard to understand. Speaking of the convention that a government defeated in an election must resign and cede power to the victors, he starts out confidently but begins to sound uncertain, even a little puzzled:

> That new government is recognized by everyone as having legal authority to govern. This is because such a transfer of power is, as we say, constitutional and, in that sense, legal. In our constitution there is no document which lays down the principle that power may be properly so transferred from one group to another. But an unwritten constitution is still a constitution. Such transference of power is part of 'the set-up'. It is one of the basic rules which all political parties accept. It is how the game is played. And we speak of the law of the constitution as including these basic rules. So we say that the transference is 'lawful' because it follows the recognized practice. Yet this is a misleading identification of 'law' and 'practice', for we shall see that there are many constitutional practices which are denied this legal status; that the distinction between law and practice is regarded by many writers as fundamental; and that the courts themselves recognize this distinction. 'Law' in this context is therefore a word used in two different ways. First, there are some, very few, practices which are so fundamental to the working of the constitution that they are recognized as providing the absolutely basic framework … But the fundamental practices derive their authority from nowhere; or, if you prefer, from the constitution itself, from the set-up.[47]

[45] 'The political constitution', p. 18. See also 'Official secrets and open government', in J. A. G. Griffith, *Public Rights and Private Interests* (Trivandrum, 1981); 'The Official Secrets Act 1989' (1989) *Journal of Law and Society* 273.
[46] G. Marshall, *Constitutional Conventions* (Oxford, 1984), p. 8.
[47] Hartley and Griffith, see above, n. 19, pp. 5–6.

This somewhat tentative passage seems at one and the same time to confirm John's celebrated aphorism that the 'constitution is what happens'—a polemical metaphor that earned him the undeserved reputation amongst his opponents of an anti-constitutionalist who thought in terms only of political expediency—but also to undercut it by suggesting that some parts of what happens are more lawful and constitutional than others.

In actual fact, John always argued for a reformed and strengthened Parliament and put in solid work together with members of the Study of Parliament Group, a group made up of parliamentary officials and academics with a special interest in Parliament. He published two important studies of Parliament, which gained great respect. The first, a meticulous study of parliamentary scrutiny of legislation, has been described by Meg Russell, a younger reformist, as a 'classic text'.[48] John once more set out to clear the ground by establishing *facts* but he was not one to blind himself to unwelcome truths. Hostile in principle, as might be expected, to the hereditary and unelected House of Lords, he did not draw back from the conclusion that the House of Lords was the best scrutinising body for legislation.

John's second book on Parliament was co-authored with Michael Ryle, Clerk of Committees to the House of Commons.[49] It again epitomises the realist academic method. On the one hand, the authors aimed to provide an accessible alternative to Erskine May's great work on parliamentary practice and a successor to Jennings's now outdated study of Parliament;[50] on the other to show how parliamentary procedures are used by the three main participants—Government, Opposition and backbenchers—'as tools for political purposes'. Robert Blackburn records disagreements between the two authors, attributable to their different temperaments: 'Michael Ryle was a great optimist, things are going to get better with Parliament. John was fairly gloomy, nothing ever changes etc.'[51]

[48] J. A. G. Griffith, *Parliamentary Scrutiny of Public Bills* (London, 1974). The citation is from M. Russell, 'Bicameral parliamentary scrutiny of Government Bills: a case study of the Identity Cards Bill', *Political Studies*, 58 (2010), 866–85.

[49] J. A. G. Griffith and M. Ryle, *Parliament: Functions, Practices and Procedures* (London, 1989). The quotation is from the preface to the 1st edition.

[50] Erskine May's *Parliamentary Practice* (London, 2011); I. W. Jennings, *Parliament* (Cambridge, 1939).

[51] Rob Blackburn, *In memoriam.*

The scholarly record

Shortly before his death, John's contribution began to be evaluated by a younger generation of academic writers, schooled in a more conceptual and normative approach to public law than John's mainly positivist generation. From such an angle, failure to ground the model of the political constitution in theory or to explain the norms and values on which it was founded is a defect. Unsurprisingly, Adam Tomkins criticises John's work for its descriptive character and the very atheoretical emphasis on fact and reality that John saw as the major contribution of sociological positivism to public law.[52] His omission to explore diverse meanings of the term 'political' has also attracted some criticism. For Graham Gee and Grégoire Webber, however, this is not a problem:

> [I]n neither ['The Political Constitution'] nor his writings more generally did Griffith purport to grapple with the question 'what is a political constitution?', perhaps because he never conceived of it as anything distinct or separate from the British constitution itself. Rather, Griffith's contribution was to offer what was, in 1978, a novel account of Britain's constitutional arrangements and, for some, a faintly disturbing account of what he took to be the distinctively political character of the constitution. Through this, Griffith laid the foundations for the emergence of the idea of a political constitution as a fresh and provocative way of thinking and talking about the British constitution. To be clear, the novelty of his lecture lay less in making claims not found in his previous scholarship or in describing the British constitution as distinctively political; rather, the novelty was in bringing claims (and aphorisms) present in his earlier scholarship together into a reading of the British constitution that was political inasmuch as it was characterized by conflict, disagreement, messiness and chaos—a reading that was fresh, provocative, even unsettling for some.[53]

Thomas Poole calls 'The political constitution' 'one of the key texts of late twentieth-century British public law scholarship' and the 'founding text of an influential style of public law thinking'. For Poole, Griffith's contribution lies in his consistent 'positivist debunking' of constitutional mythology. And Poole puts his finger unerringly on the reason why 'The political constitution' continues to resonate: it is 'brilliantly constructed: concise, punchy, provocative and, above all, candid almost to a fault'.[54] Its capacity to aggravate has not declined but, however much one dislikes John's ideological

[52] A. Tomkins, *Our Republican Constitution* (Oxford, 2005), pp. 36–40.
[53] G. Gee and G. Webber, 'What is a political constitution?' (2010) 30 *Oxford Journal of Legal Studies* 273.
[54] T. Poole, 'Tilting at windmills? Truth and illusion in "The political constitution"' (2007) 70 *Modern Law Review* 250.

standpoint, it is hard to forget 'The political constitution' and its brilliant aphorisms.

The activist

If, as close friends testify, John had 'a streak of melancholy due perhaps to his high expectations of achieving real change, and feelings of impotence when nothing much happened',[55] this did not mean that he did not try to make things happen. He was something of a 'mover and shaker'. Throughout his career, he supported a robust and autonomous free-thinking university system. He was a founder member of the Council for Academic Freedom and Democracy (CAFD, later CAFAS) and gave generously of his time in helping academics who found themselves at odds with the university establishment. In 2005, for example, a group of Swansea academics publicised the fact that the university had awarded some fifty MA degrees without the Examination Board reading the dissertations or even troubling to meet. Colwyn Williamson, a well-respected philosophy lecturer and founder member of CAFAS, was one of the main authors of a complaint to the University Visitor. When he was dismissed on charges of 'vilification and denigration' and of hacking into the university computer system, John stepped in to defend him. Williamson recalls John's unstinting support: he 'represented us throughout and devoted a substantial chunk of three years of his life fighting to prevent Swansea sacking us'.[56]

John felt very strongly that lawyers owed a particular duty towards those who were victimised by public or private power especially when the law was obscure or arcane. This helps to explain the sometimes puzzling role that he played in the LSE 'Troubles' of 1966/7, one of the School's most controversial episodes.[57] On the appointment of Walter Adams as Director, students protested through letters and at meetings. The authorities reacted high-handedly with disciplinary proceedings, resulting in the suspension of the President of the Students' Union, who was subsequently cleared by a Board of Discipline. Further disciplinary proceedings followed, however, after the death of a porter from heart failure while controlling a

[55] Judith Chernaik, *In memoriam*.
[56] Colwyn Williamson, *In memoriam*.
[57] A concise account of 'The Troubles' is given by Lord Dahrendorf in R. Dahrendorf, *A History of the London School of Economics and Political Science 1895–1995* (Oxford, 1995), pp. 443–75.

crowd of students protesting at the intransigent banning of a meeting by the School authorities. Concerned at the 'incompetence and paternalism' of the authorities and their 'lack of comprehension' of the students' viewpoint, John tried to act as mediator and also acted as counsel for the students in the disciplinary proceedings. Where his sympathies really lay is not entirely clear; probably, like many who were involved, he had mixed feelings. At the heart of the dispute lay questions of authority and issues of governance, involving openness on the part of the School authorities and participation by the student body in the affairs of the School. These were issues of importance and principle on which John had always held strong views. But John undoubtedly loved a fight, relishing rebellion and challenges to authority. As Richard Kuper, a student who participated in the Troubles, put it:

> He loved the fact that we did things, that we challenged, that we took on the School, even if, as I said, he didn't always agree with what we were doing. Sometimes I'm sure he thought we were quite mad, but that didn't stop him from kind of valuing the fact that we were trying to make sense of the world, and trying to change the world, and trying to change it in ways that he valued and respected.[58]

In a different sort of fight, John's expertise in local government proved pivotal. In 1957, he became aware of plans to demolish Marlow's famous Grade I listed suspension bridge over the Thames completed by William Tierney Clark in 1832 and to replace it with a concrete bridge of two or four carriageways. John sprang into action. The Marlow Bridge Preservation Society was formed and in 1961, after a hard fight in which John was a fully engaged participant, the bridge was saved and remains in place today. Again in 1993, John and a small group of Marlow Society members pushed the executive committee into opposing a proposal to build a Tesco superstore in the heart of Marlow. Armed with the result of a privately organised poll of Marlow Society members, which showed that over 90 per cent opposed the plan, the group persuaded the committee to reverse its position and fight the District Council, which finally refused planning permission for the Tesco proposal. History was repeated in 2006 when Waitrose applied to build an inappropriately sized new supermarket in the heart of Marlow's conservation area. This time a 'parish poll' was organised, which showed beyond any doubt the degree of opposition to the application. Again the council was persuaded to turn down the planning

[58] Richard Kuper, *In memoriam*.

application. So John left a very permanent mark on the landscape of Marlow. His long experience of local government and deep knowledge of local government law undoubtedly stood the protestors in good stead. He had represented Marlow, where he lived for over fifty years, on Buckinghamshire County Council from 1955 to 1961. On his retirement, Councillor Venner, Chairman of the Council, said:

> We have from time to time disagreed with him, but if honesty, strength of purpose, and courage to hold a predetermined course, regardless of the opinion of others, constitute grounds for respecting the character of a public man, then I regard John Griffith as one of the most conscientious men I have met in public life.[59]

The tribute is endorsed in a different context by Lord Dahrendorf, Director of the LSE. He described John as 'the conscience of the School and guardian of its tradition in critical times' and wrote in his official *History* of the School that John's 'devotion to the LSE was great, which made his criticism of School policy all the more weighty. Those who were exasperated by him may not have realized his indispensable contribution to the sanity of LSE.'[60] It has to be said that 'the School' was not always grateful, sometimes viewing John as a maverick, accusing him of bringing the School into disrepute, or christening him the 'Professor of Law and Disorder'. John, who saw dispute as an essential element in society, would not have been unduly worried!

John hated fuss. He refused a retirement party; as Michael Zander, then Convenor of the Law Department, recalls, 'we had a boat party going down the Thames because John refused absolutely to countenance anything with speeches'. He refused the formal Festschrift that he so much merited; instead, a group of friends got together surreptitiously to publish a set of essays 'as a small gift from a few of the people who share John Griffith's interests and have enjoyed talking and working with him'.[61] He refused the request from his old friend Cyril Glasser to be allowed to organise a party at LSE to celebrate John's eightieth birthday. His family was all-important to him and his son Ben recalls total love, keen interest in his children's intellectual development, support, comfort and reassuring advice that was calming and sensible. But he was also unusual in giving his complete and absolute support to people in trouble who needed legal

[59] Quoted by Adam Griffith, *In memoriam.*
[60] Dahrendorf, *History*, see above, n. 57, p. 455.
[61] C. Harlow (ed.), *Public Law and Policy* (London, 1986), p. v.

and other support—political, personal or social. He was a warm and generous friend who could always be relied upon to give good, sympathetic advice and a devoted teacher, who dedicated much time to his students for whom it was a coveted privilege and an honour to be invited to his home at Marlow for the afternoon. This is how he would like to be remembered.

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