Chapter Fourteen

Andrew Inglis Clark and the Making of the Australian Constitution

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In the Mitchell Library in Sydney there is a letter from the Registrar of the Supreme Court of Tasmania to A.P. Canaway, an author of a number of commentaries on the Constitution.[1] The letter, written in 1921, was in response to a request by Canaway for the Registrar's assistance in identifying the authorship of a document held in the Library. The document was entitled, "Draft of a Bill for the Federation of the Australian Colonies".[2]

From Canaway's description of the document the registrar was able to inform him that it had been prepared by Inglis Clark, then Attorney-General of Tasmania, early in 1891. The registrar wrote that a copy had been sent to each member (that is, Tasmanian member) who was to attend the first Constitution Convention, to be held in Sydney in March of that year. That the Mitchell Library had custody of Clark's draft bill but was not sure of its authorship is perhaps indicative of Clark's role in the federation process, having been quickly forgotten since the event.

Members of The Samuel Griffith Society are no doubt aware that Clark had prepared a draft constitution for the assistance of delegates to the first Convention. That document was the genesis of our Constitution. It was Clark's draft that Sir Samuel Griffith, for whom your Society is named, used as the template for his own great drafting efforts during the course of that Convention. It is a reasonable proposition to make, that Clark was Sir Samuel's collaborator, albeit in a subordinate role, in the drafting of the Constitution.

For that reason, and also because The Samuel Griffith Society is meeting in Tasmania for the first time, it is fitting that Clark is the subject of a paper at this conference.

Background

Before I discuss in more detail some aspects of his role as a maker of the Constitution, I should say something of Clark himself. He was born Andrew Inglis in Hobart in 1848. His parents had migrated from Scotland 16 years before. His father, Alexander Clark, was an engineer and established a business as such soon after arriving in what was then Van Diemen's Land. Prior to Inglis's birth the Clarks and their children lived for several years at Port Arthur, where Alexander supervised the construction of the building which later became the infamous penitentiary.

As a youth, Clark was apparently studious rather than sporting; in size he was short and he suffered poor health. The exact nature of the chronic condition which plagued him is not known but illness was to have significance at key points in his life. Contemporary descriptions of his personality indicate he was of an active but nervous disposition, possibly impulsive, perhaps what might today be called "a live wire". Clark was certainly an inspiration to his fellows, even a father figure to some, who called him Padre. While the substance of his speeches was often uplifting it may not, however, have been matched by their delivery, as by all accounts he was not a great speaker.

A passion for noble causes first arose in Clark in his early teen years during the time of the American Civil War. He and his family were supporters of the Northern cause and celebrated reports of that side's advances when the news of such reached Hobart. It may be recalled that the established press in both Britain and Australia, including Hobart, tended to support the Confederate cause and recognition by Britain of the Southern side had been a near thing.

Clark's ambition from school days had been to become a lawyer and enter politics but his matriculation studies had apparently been interrupted by illness, necessitating removal from school and leading him to work in his father's workshop for the next several years. He became apprenticed as a mechanical engineer in the family foundry and qualified in that trade.[3]

While Clark's father was nominally Presbyterian, his mother, Ann, was a strict Baptist. She raised her children according to that faith. In his mid-twenties, Clark changed both his profession and his religion. He resumed the course he had set himself as a youth to study law, becoming articled to the Solicitor-General. He was admitted as a barrister and solicitor in 1877, at the age of 29. Despite having been baptised at 22 years, he developed an interest in, and then adopted, the religion of Unitarianism. His adoption of that creed was probably influenced by his fervent admiration of anti-slavery campaigners such as William Channing, Theodore Parker and others who were Unitarians.

Perhaps his greatest American hero was another abolitionist, United States Senator Charles Sumner. Sumner had close Unitarian connections though not one himself. Other men Clark deeply admired included Italian patriot, Giuseppe Mazzini, and French political historian and author, Armand Carrel. Clark's youngest son Carrel, named after the Frenchman, in an unpublished biography of his father, described portraits of Sumner, Mazzini and Carrel hanging on the walls of the library in the family home, Rosebank, in Battery Point, each draped with the flag of his nation.[4] Clark's admiration of these men reflected his own moral and political position, perhaps best summed up by F. M. Neasey in relation to Mazzini; "The Italian's ardent, lifelong pursuit of republican ideals and his belief in the essential goodness and perfectibility of humanity were exactly the qualities Clark most admired".[5]

Inglis Clark believed the doctrine, which he described as "essentially republican",[6] that men are possessed of natural or inherent rights. He approved of the expressions of those rights in the American and French Declarations**,** which embody the right to life, security and the pursuit of happiness. Clark himself, in an article published in an American journal, categorized natural rights as rights which permit "every man to live the most truly human life which his nature and capacities make possible for him in the social environment in which he is found".[7]

Following his admission to the Bar, Clark worked exclusively in the profession only briefly before standing successfully, in 1878, for a seat in the Tasmanian House of Assembly. At this time Tasmania had been known by that name and had been self-governing for some 20 years. Upon taking up his seat, despite being in opposition, Clark immediately set about introducing several reforming bills. His proposals enjoyed a measure of success as the government in due course took up some of the bills as its own. Clark served two terms with the opposition before losing his seat in 1883. He was returned in 1887, for the first time with the government and was appointed Attorney-General in the Fysh administration. Clark immediately embarked upon an ambitious program of legislative reform in diverse fields including criminal law, local government, taxation and electoral law. His role as a reformer continued when he was again Attorney-General in the 1890s under Edward Braddon. History has best remembered him for one of his electoral reforms, the introduction of the Hare system of proportional representation, first used in Tasmania in 1897 and now known in this State as the "Hare-Clark system".

From the early 1870s Clark and some friends of like-mind had met regularly to discuss politics, religion and other topics of intellectual interest. They called their small group The Minerva Club. In later years the group continued to meet in the library at Rosebank. Incidentally, Rosebank, in particular the library, would have been familiar to Griffith, Deakin and others[8] who frequently visited Hobart for meetings of the Federal Council and, most likely, also to Barton, whom Clark entertained when Barton visited the State as prime minister.[9]

Associated with The Minerva Club was the publication of several issues of a magazine entitled *The Quadrilateral*. While it had a relatively short life, Clark contributed several essays including one in which he discussed at length the desirability of a confederation of the Australian colonies and the form that that might take, including a discussion of the relative merits of the United States and Swiss

systems.[10] That article was published in 1874, showing that at the relatively young age of 26 he had already thought deeply about the prospect of federation.

Clark had an abiding interest in things American. Each Fourth of July some of those associated with The Minerva Club, including Clark, would gather for dinner to celebrate American Independence. Passionate speeches were made extolling the virtues of the principles upon which the Republic was founded. Clark made many American friends, with whom he kept up a lifelong correspondence. Perhaps his first meeting with Americans that was to result in lasting friendships occurred when the USS *Swatara* came to Hobart in 1874 on a scientific expedition to observe the Transit of Venus. Clark and his fraternity made welcome members of the ship's company, entertaining many of them in their homes.[11] Another friend and correspondent of Clark was American abolitionist and author Moncure Conway, whom he met in Hobart in 1883, when Conway was on a speaking tour.

As well as being a fervent admirer of its great men, Clark made a close study of American political institutions and of its Supreme Court, particularly the Court's decisions on constitutional matters. Clark's depth of knowledge of such matters was later to stand him, and arguably the coming nation, in good stead and was noted by his contemporaries. Deakin later wrote of Clark's "large fund of legal and constitutional knowledge which he brought to the conferences" (of 1890 and 1891).[12] Respected federationist and author, Bernhard Wise, an observer at the first Constitution Convention, wrote: "No one in Australia, not even excepting Sir Samuel Griffith, had Mr. Clark's knowledge of the constitutional history of the United States".[13]

Clark made three trips to the United States during his life. On the first of these, through Moncure Conway's good graces, Clark was able to meet the eminent jurist, Oliver Wendell Holmes, author of the classic work, *The Common Law*, which Clark admired. Holmes was later appointed to the Supreme Court where he served for more than 30 years.[14] Clark and Holmes commenced a correspondence which continued for the remainder of Clark's life. It is also worth noting that during that first trip abroad, the main purpose of which was to represent the government before the Privy Council in London, Clark stopped off in Italy where he took the opportunity to visit the grave of his hero, Mazzini.[15]

The Council, the Conference and the Convention

Clark's journey to Europe and the United States took place between his attendances at the Federal Conference held in Melbourne in 1890 and the Convention in Sydney which began in March the following year. But his first appearance on the inter-colonial stage speaking in favour of federation was at meetings of the aforementioned rather impotent Federal Council, which met during the 1880s and 90s, each time in Hobart. Clark, one of two Tasmanian representatives, frustrated by the caution and timidity with which the Council acted, which had resulted in very little legislation being passed, took an opportunity at the Council meeting of January 1889 to express his federation hopes. He said he "saw no half way house between the Council and a complete federal parliament, with a federal executive" and that "federation was not as far off as some believed".[16] New South Wales had declined to be a member of the Federal Council, which largely explains its ineffectiveness. But it was Sir Henry Parkes who, with renewed federation fervour, later that year took the initiative to bring all the colonies together for a conference with a view, Sir Henry hoped, to the drafting of a federation bill.[17]

The Federal Conference was held in Melbourne in 1890. Clark again was one of two Tasmanian representatives. Most delegates to the Conference discussed to some extent the respective seminally British models for federation found in Canada and the United States. While the immediate view might have been that it was Canada with which the Australian colonies had more in common, there was general consensus in favour of the United States model. The most distinguishing feature between the two models was that, under the United States Constitution, the States retained all powers other than defined powers specifically given to the central government. The reverse was

the case in Canada under the provisions of the *British North American Act* which was, in effect, the Canadian Constitution.

The United States Constitution was certainly the model Clark preferred. He raised the subject in his address to the Melbourne Conference, saying that each of them there should "state more or less precisely what kind of confederation" each representative and his colony would be satisfied with. For his part, Clark said, he would prefer the lines of the American to those of the Canadian. What the Australian colonies want, he said, "is a federation in the true sense of the word" and he said he regarded Canada as more of an amalgamation, or a unification, than a federation. Referring to a popularly held view that the American division of powers was a cause of the Civil War, Clark said that as there was no such question here he "did not think we need fear to go upon the lines of the United States in defining and enumerating the powers of the central legislature and leaving all other powers to the local legislatures."

Clark clearly regarded the American system as that which would best establish the kind of national life he saw for a federated Australia while at the same time preserve the local identities of the respective provinces, as he termed them. He remarked upon the "merits of the American system in preserving the local public life of the various states" which he did not think could have "flourished under any other system." He drew parallels with Australia with its "large territory and variety of industrial and social life (saying) that we also ought to have a system which will preserve local, public and national life in the same manner." Later in his speech Clark touched upon Italy, again drawing parallels between the Australian colonies and the Italian states, telling delegates they had, in their time, "witnessed the birth of the Italian nation where, long before unification, there was one Italian people, one language, one literature and a common aspiration to live a national life and to obtain political independence and unity".[18]

Wise later wrote that Clark's speech at the Conference contained "the germ of the ideas" that would dominate the Convention the following year.[19]

The Federal Conference of 1890 had been an essential step along the road to federation. It was the first opportunity representatives of all the colonies had to meet and discuss "exclusively" (to use Clark's word)[20] the prospect of federation. It was understood that a convention must follow, with authority to be given by each colonial parliament to its delegates to consider the detail of a constitution; the Conference passed a resolution to that effect.

In concluding his address, Clark expressed the hope that such a convention would "within a very short period produce a Constitution"[21] and so, following the Conference of 1890, he would have expected the prospective convention would produce the draft of a constitution for an Australian federation. He therefore decided to prepare his own draft, and sent it to the Tasmanian delegates who were to attend. F. M. Neasey opined that,

> The fact that he took the trouble to draft a constitution at all suggests he meant it for a wider audience. Indeed he might have thought that his draft could serve, as in fact it did, as a starting point for the kind of federal constitution that he knew was likely to emerge from the Convention.[22]

According to esteemed historian J. A. La Nauze, Clark did provide a number of other delegates to the Convention with copies, including Parkes, Barton and Kingston, and possibly still others.[23]

The expected Convention began in Sydney in March 1891. Following the first general sessions of debate a drafting committee was appointed. There is no official record of the committee's creation or proceedings. According to the *Argus*, Sir Samuel was asked to head it[24] and he took Clark as his "lieutenant".[25] Charles Kingston of South Australia was also appointed. After a couple of days' work on dry land the committee adjourned to the Queensland Government vessel *Lucinda* and the solitude of the Hawkesbury River, where preparation of a draft federation bill for later discussion by

the Convention continued. (It will be remembered that Clark missed the first three, of possibly five, days of the committee's meetings on *Lucinda*, suffering from the flu. Barton was appointed to the committee during Clark's absence).

Sir Samuel himself, as leader of the committee, assumed the role of chief draftsman and he used Clark's draft as his starting point. La Nauze has given a step-by-step account of Griffith's work on the Drafting Committee, as has F.M. Neasey more recently,[26] relating how Griffith skilfully moulded Clark's draft into the constitution bill that emerged from the Convention.

Aspects of Clark's draft constitution

I do not intend in this paper to examine each clause of Clark's draft and show to what extent it survived the conventions of 1891 and 1897-98 to become part of the Constitution. Suffice to say that of 96 clauses in Clark's draft, 86 find a recognizable equivalent in the ultimate document,[27] many with only relatively few changes in terminology.

What I would like to do at this stage is refer to some of the significant features of Clark's draft that appear in our Constitution, albeit not necessarily as he drafted them.

As the Court Registrar had explained to A. P. Canaway in 1921, Clark had sent a memorandum with his draft to the Tasmanian delegates to the Convention of 1891, explaining his reasoning behind some of the provisions.[28] He said in that document that he had adopted the "distinctive feature" of the United States Constitution where specific powers are given to the central government and that powers not so granted are reserved for the States. He said this feature was "antithetic" to the Canadian Constitution and would be much more agreeable to Australasians. In so stating, and as he acknowledged, he was following the majority view of delegates expressed at the Federal Conference. He went on to explain that as the Australasian Colonies would be continuing as dependencies of the British Empire, it was inevitable that he should follow the framework and language of the *British North American Act* "in providing for matters such as the location, nature and exercise of the Executive power under the Federal Constitution". In all other matters, he said, he had followed closely the Constitution of the United States.

Clark, therefore, in his draft enumerated the powers of the federal government and provided that the "Provinces" retained all other powers. He listed thirty powers which he had taken from both the *British North America Act* and Article 1, s.8 of the United States Constitution. All but one yet remain in our Constitution.[29]

With respect to the provisions adopted from the *British North America Act* regarding Executive Power, he said in his memorandum that he was presuming that, while he did not personally favour the system of responsible government, a system of Cabinet Government would be established with the Federal Parliament. He said he was not prepared to adopt the American practice where members of the Cabinet are selected from outside the legislature and excluded from Congress, because such a system would be "too radical a departure from the practice the people of the colonies were accustomed to".

He suggested, however, that the desirability of continuing the system of responsible government should be "exhaustively considered" at the Convention and, as F. M. Neasey noted, he framed his constitution in such a way as to leave room for a different system to be adopted in the future.[30] In essence, Clark made no requirement for ministers to sit in parliament or retain its confidence. The matter was discussed extensively both in 1891 and 1897. At the first Convention Sir Samuel himself expressed a view similar to Clark's that, while he said he favoured the system of responsible government, he did not think it should be specifically required, warning that it might not work where there were two Houses of equal authority but with ministers having to have the confidence of only one.[31] In 1891 Griffith and Clark's view held sway, but it was not to last.[32]

It is well known that neither Clark nor Griffith attended the Convention of 1897, but Clark sought, by way of suggestions, formally made to that Convention by the Tasmanian House of

Assembly,[33] that a minister might simply have a right to address either House, but not to vote unless he were a member. Barton read Clark's reasons to the Convention, the substance of which was that to attain responsible government it was not necessary that ministers should sit in parliament, and that the system of responsible government should not be adopted for all time.[34] Griffith had also communicated his views to the second Convention and they were heard again, asking "why should the use of a recent invention never tried in a federal state be prescribed for all time?" and that "the history of most countries where responsible government has been tried is against it". The end result, however, was that the practice of responsible government was effectively assured by the requirement that ministers become members of either House.[35]

Clark's influence on the ultimate form of the Constitution was probably most significant with respect to the provisions for the establishment and powers of the High Court. In his explanatory memorandum Clark said that he had followed the American model for his federal "Supreme Court", but with the addition of what he termed an "innovation".[36] His innovation was to give the court an appellate jurisdiction over the Supreme Courts of the "provinces". This was a significant jurisdiction that the United States Supreme Court does not have and, as F. M. Neasey noted:

> The fact that the High Court of Australia is such a court has had an immensely beneficial effect in developing and unifying Australian law and setting standards for the whole country in relation to civil liberties, safeguards in criminal procedures and similar matters. In many ways this general power of the Court fills the gap left by the absence of Bill of Rights clauses, such as those in the US Constitution.[37]

Clark also provided in his draft that the new court's decisions should be final and that appeals to the Privy Council from State supreme courts should be abolished. At the 1891 Convention, in arguing for the new Court to be the final court of appeal in all matters not involving Imperial interests, he referred to the reputation in England of the decisions of the United States Supreme Court and said, "there is no reason why our supreme court may not produce the same beneficent results and enrich the stock of common law of the Empire by being an independent centre of interpretation".[38]

His proposal met considerable opposition in 1891 and, while it appears to have come through the first days of general debate unscathed, it was excluded at the committee stage. It was re-introduced in Adelaide in 1897, as Clark had drafted it, but was again deleted in the final session in Melbourne in 1898, thus maintaining the *status quo*. Appeals to the Privy Council from the High Court were finally abolished in 1975 and from State supreme courts in 1986.

Three aspects of Clark's draft provisions relating to the Judicature are of particular interest because they were either significantly altered or discarded during the course of the Conventions, but were later restored. The first and most significant is that Clark had made the new Court a constitutional requirement, his clause 59 providing that judicial power "shall be vested in one Supreme Court". In the draft bill that resulted from the 1891 Convention, it was provided that the Court was to be a creature of the legislature, providing "the Parliament shall have power to establish a Court".

During the course of the second Convention in 1897, Clark was pleased to note, the constitutional requirement had been restored. He told the Tasmanian House of Assembly that year that the Drafting Committee had "tinkered" with the clause on *Lucinda*, while he had been ill with influenza and, in his opinion, "messed it".[39] In retrospect, his flippant comments underscore the possible consequences had the provision not been restored. Despite the establishment of the High Court being a constitutional requirement, Attorney-General Deakin apparently struggled in 1903 to persuade Parliament to appoint the first justices to the court.[40] F. M. Neasey opined that Parliament might have been inclined to leave the creation of the court to some indefinite future time had it been in its hands to do so, especially given its power to invest State courts with federal jurisdiction.[41]

The second aspect of interest is the provision in his draft giving the Court original jurisdiction in cases where a writ of mandamus or prohibition is sought against an officer of the Federal Government. While that power remained in the 1891 Draft Bill it was omitted during the final session of the second Convention in 1898. Delegates there (remembering of course that Clark did not attend the second Convention) decided it was not necessary, persuaded by arguments that, while it was not in the American Constitution it was assumed that the Supreme Court of that country would have the power in such matters. Clark became aware of this change and telegraphed Barton, drawing his attention to a US Supreme Court decision of 1803, *Marbury v. Madison*, to the effect that the United States Court did not in fact have the power. It was the very reason Clark had included it in his draft. The power was subsequently restored at the Convention, through the efforts of Barton.

The third aspect, which was discarded but later included, is that in his draft Clark had provided that the Court should have original jurisdiction to hear disputes between residents of different States. That power did not survive into the 1891 Draft Bill and there appears to be no reference in the Records of the Debates explaining why it was omitted. It might be inferred that that change also occurred on *Lucinda*, during Clark's absence. He does not appear to have noticed its omission until 1897 when he mentioned in a memorandum to Barton that he had become aware of it.[42] Clark told Barton that the provision was in the United States Constitution and that he thought it desirable that it should be included here, and gave his reasons. The power was subsequently restored at the Convention.

I should not leave discussion of his Judicature provisions without mentioning the Federal Court. Clark might rightly be regarded as the father of the Federal Court. He had provided in his draft for the creation of "Inferior Courts" by the Federal Parliament at the appropriate time. In speaking to an early resolution, moved by Sir Henry Parkes, to establish only a federal supreme court and to that court having only an appellate jurisdiction, Clark told the 1891 Convention that he "wanted much more than that"; he "wanted a whole system of federal judiciary". He said he hoped to see a complete system of federal courts "independently of and in addition to, state courts".[43] Probably owing to his being leader of the Judiciary Committee at the 1891 Convention, the provision for additional courts included in the 1891 draft bill, and ultimately in the Constitution, was in accord with Clark's vision. The fruits of this provision were the eventual establishment of the Federal Court and, later, the Federal Magistrates Court.

Other provisions of the Constitution which were significantly influenced by Clark, although not to the extent that he had desired, are the so-called "Rights" clauses. The process of his basing his draft on the American model would have necessitated Clark considering which, if any, of the rights provisions in the United States Constitution he should include. In his draft he included only those pertaining to "trial by jury" and "freedom of religion." His trial by jury was not as encompassing as the US example and was limited, in effect, to federal crimes. He had two freedom of religion clauses, one for Federal effect and one for State. They were a curious mixture of prohibitions and probably reflected Clark's strong personal position on separation of Church and state, and according to F. M. Neasey were "poorly thought out".[44] Clauses protecting both "rights" are in the Constitution (sections 80 and 116 respectively). The religion clause relates to the Commonwealth only, but otherwise take parts from both Clark's clauses. The jury clause remained virtually as he had drafted it, save for it now referring to "indictable offences" rather than "crimes".

Clark had also vainly endeavoured to have included in the Constitution a general rights clause, the equivalent of the 14th Amendment to the United States Constitution. Clark had not included a similar clause in his draft but such a clause was introduced by the drafting committee in March 1891, most likely at his instigation, and remained in the final Draft Bill that was produced by that Convention. The 1891 clause was similar to the United States clause but of narrower scope; for instance, there was no reference to the prohibition against deprivation of "life, liberty and property without due process of law".

The clause was the subject of much discussion and debate at the second Convention. By then Clark had proposed, again by way of formal suggestions to the Convention from the Tasmanian House of Assembly, to have the 1891 clause deleted and replaced by a much wider provision, which would in effect have provided the same protections as provided for in the United States Constitution by the 14th Amendment. Clark's proposed new clause included the provision that a State "shall not deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of its laws."

Probably again to assist the Tasmanian delegates to the Convention, Clark had prepared another memorandum[45] in support of this and the other amendments suggested by the Tasmanian Parliament. But none of the Tasmanians spoke during debate either on the extant rights clause or on Clark's proposed amendment.[46] Bernhard Wise was Clark's advocate for the amendment. Wise had, however, mislaid his brief and spoke from memory, albeit ably. In the event, while a number of notable delegates, including Isaac Isaacs, agreed it was an improvement on the original draft clause and the best of the amendment clauses proposed by various colonial legislatures, Clark's new clause was not adopted. Led by Isaacs, the majority considered much of it unnecessary. Instead, in place of the 1891 draft clause, an amended rights clause was inserted (now section 117), which prohibits, more succinctly than did the clause it replaced, discriminatory legislation against residents of different States, but does not have the "equal protection" or "due process" provisions.

Conclusion

On reviewing what I have said to this point, I fear that I may have spoken as much on Clark's ideas that did not reach the final document as those that did. But if I have done so, it is not intended to detract from what he achieved. Clark's draft was the first and largely successful meld of the British approach allowing for responsible government, with a government for a federation, exemplified by the United States, balancing the interests of the small and large States.[47] His draft provided for the new nation's continued ties with the Crown while for all practical purposes, it was to govern itself, free of Imperial interference. The scheme of government set out in his draft, and much of the detail, became the Constitution at Federation.

Sir Samuel himself publicly acknowledged Clark's role in the course of an address to the Federal Council in 1893, saying the draft constitution of 1891 was,

> not the work of one man but the work of many men in consultation with one another, and it was ultimately prepared from a draft submitted by then Attorney-General of Tasmania, Mr. Clark, which was taken as the basis of our labours".[48]

After 1891, only detail of the draft from the Convention of that year changed. The substance and form remained. La Nauze wrote:

> After that year, the great parts which Sir Samuel Griffith and Inglis Clark played in framing the first definitive and, as it turned out, enduring version of the Australian Constitution could never be repeated afterwards, either by them or anyone else."[49]

Endnotes

1. MLQ 342.901/C.
2. *Ibid*.
3. Carrel Clark, unpublished biography of Inglis Clark ch 14, Tasmanian State Archives.
4. *Ibid*., ch 8.
5. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark,* University of Tasmania Law School,2001, 116.
6. A. Inglis Clark, *Studies in Australian Constitutional Law*, 386.
7. A. Inglis Clark, "Natural Rights", *Publications of The American Academy of Political and Social Science,* 1900, vol. 282, 49.
8. Alex C. McLaren, *Practical Visionaries*, Centre for Tasmanian Historical Studies, University of Tasmania, 2004, 112.
9. John Reynolds, *Edmund Barton,* 1948, 184.
10. "Our Australian Constitutions" Part I (1874), *The Quadrilateral* 57, 58-9; F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 31-2.
11. *Ibid*., 32.
12. Alfred Deakin, *The Federal Story*, 32.
13. B. R. Wise, *The Making of the Australian Commonwealth 1890-1890,* 1913, 75
14. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 117.
15. *Ibid*., 115.
16. *Federal Council of Australasia: Official Record of Debates 1886-1899,* 78-9.
17. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 100.
18. *Federal Council of Australasia: Official Record of Debates 1886-1899*, 105-107, 113, 114.
19. B. R. Wise, *The Making of the Australian Commonwealth 1890-1890,* 1913, 75.
20. *Official Records of the Proceedings and Debates of the Australasian Federal Conference 1890*, (1990) 113.
21. *Ibid*., 114.
22. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 126.
23. La Nauze, *The Making of the Australian Constitution,* 1972, 336.
24. *The Argus* (Melbourne), 24 March 1991.
25. *Ibid*., 1 April 1991. See also La Nauze, *The Making of the Australian Constitution*, 1972, 48.
26. La Nauze, *The Making of the Australian* Constitution, ch 4 and 5; F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 163-177.
27. F. M. Neasey, "Andrew Inglis Clark Senior and Australian Federation", *Australian Journal of Politics and History*, vol 15(2), 1969, 7,8.
28. MLQ 342.901/C.
29. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 138.
30. *Ibid*., 130.
31. *Official Record of the Debates of The Australasian Federal Convention 1891* 1 (1986) 33-38.
32. *Ibid*., 765-776.
33. National Archives of Australia, Series R216 item 307.
34. *Official Record of the Debates of The Australasian Federal Convention 1897* 2 (1986) 794.
35. *Ibid*., 796.
36. MLQ 342.901/C.
37. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 139.
38. *Official Record of the Debates of The Australasian Federal Convention 1891* 1 (1986) 254.
39. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 195.
40. J. M. Bennett, *Keystone of the Federal Arch,* 1980, 15.

41. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 171.
42. This memorandum was the memorandum tabled and ordered to be printed. *Official Record of the Debates of The Australasian Federal Convention 1891* 1 (1986) 594.
43. *Ibid*., 499 and 253; also 474.
44. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 147.
45. National Archives of Australia, Series R216 item 310.
46. Although Edward Braddon did remind delegates of it much later, *Official Record of the Debates of The Australasian Federal Convention 1898 5 (1986)* 1791.
47. For example, F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 2; Boilermakers' Case (1955-1956) 94 CLR 254 at 273; La Nauze, *The Making of the Australian Constitution,* 1972, 278.
48. F. M. Neasey and L. J. Neasey, *Andrew Inglis Clark*, 176.
49. La Nauze, *The Making of the Australian Constitution,* 1972, 278.