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Archives

**A Tasmanian Democrat:
The Life and Legacy of Andrew Inglis Clark**

September 28 -29 1991

**University of Tasmania at Hobart
Arts Lecture Theatre**



**Marcus Haward and James Warden
Conveners
Department of Political Science
University of Tasmania**

Conference Organising Committee

Marcus Haward
James Warden
Frank Neasey
John Williamson

The conference has been generously supported by

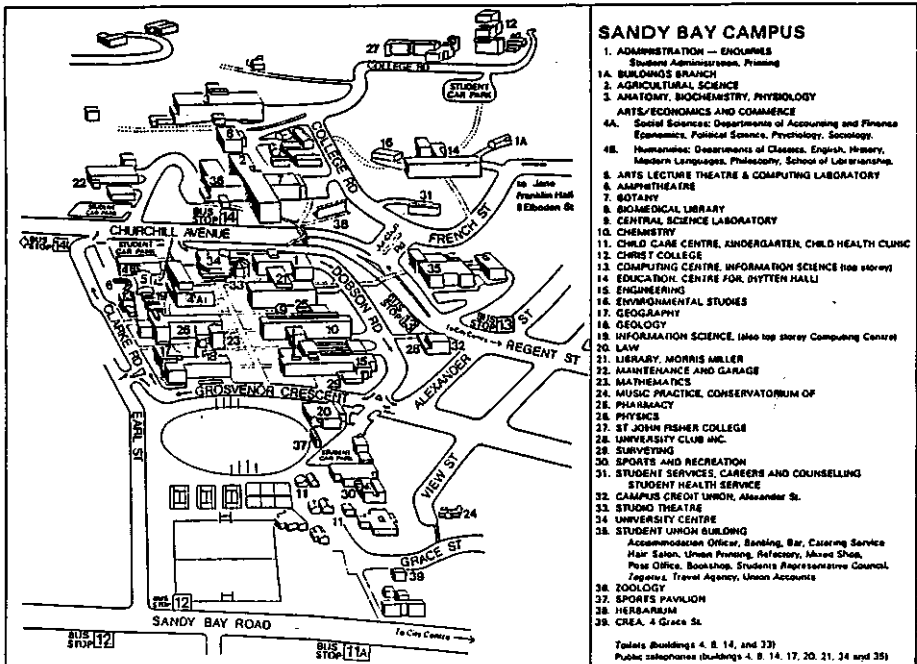
The Law Society of Tasmania
Kay Ruddle and Lillas
Department of Political Science, University of Tasmania
Faculty of Law, University of Tasmania

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Conference Programme

Saturday 28th September

8.30 Registration: Foyer, Humanities Building

9.30 Welcome and Opening Address, Arts Lecture Theatre:
Professor A.D. Gilbert, Vice Chancellor, University of Tasmania.

9.40 - 10.30 Session One: Andrew Inglis Clark - An Overview

Professor Alex Castles, Mr Frank Neasey and Dr James Warden

10.30 - 11.00 Morning Tea

11.00 - 12.30 Session Two: Clark and the Making of the Australian Constitution

Session Chair : Mr James Thomson

Professor Alex Castles, "The Small States and the Drafting of the Australian Constitution: C.C. Kingston, Andrew Inglis Clark "

Mr Frank Neasey, "Andrew Inglis Clark and Australian Federation after 1891"

Mr Marcus Haward, "Inglis Clark and Australian Federalism"

12.30 -2.00 Lunch "Lazenby's" University Union Building

2.00 - 3.30 Session Three: Clark and Judicial Review

Session Chair: Mr Frank Neasey

Mr James Thomson, "Inglis Clark and Australian Constitutional Law"

Mr Michael Stokes, "Federalism and Judicial Review"

3.30 - 4.00 Afternoon Tea

4.00 - 5.30 Session Four: Clark and Australian Liberalism

Session Chair: Dr James Warden

Professor Michael Roe, "The Federation Divide Amongst Australia's Liberal Idealists: A Context for Clark"

Dr Richard Ely, "The Tyranny and Amenity of Distance: Andrew Inglis Clark's Religious Liberalism"

7.00 pm Conference Dinner "Lazenby's" University Union Building
Musical accompaniment from Opus Four

Sunday 29th September

9.00 - 10.30 Session Five: Clark and Tasmania: The Ferment of Ideas
Session Chair, Professor George Winterton

Mr Michael Denholm, "The Quadrilateral Circle"

Mr John Williamson, "Inglis Clark and Australian Nationalism"

10.30 -11.00 Morning Tea

11.00 - 12.30 Session Six: Clark and Electoral Processes
Session Chair: Mr Marcus Haward

Dr James Warden, "An American Democrat in Tasmania"

Mr Scott Bennett, "'These New Fangled Ideas': Hare-Clark 1896-1901"

12.30 - 1.30 Lunch "Lazenby's" University Union Building

1.30 - 3.00 Session Seven: Tasmanian Politics and the Hare-Clark System
Session Chair Dr Ralph Chapman

Mr Malcolm Mackerras, "The Operation and Significance of the Hare-Clark System"

Dr Richard Herr, "The Hare-Clark System: A Critical Assessment"

3.00 - Conference Closure: Chief Justice of Tasmania, Sir Guy Green

Followed by Afternoon Tea

The Small States and the Drafting of the Australian Constitution:
Charles Cameron Kingston and Andrew Inglis Clark

There were marked differences in personal character between Andrew Inglis Clark and Charles Cameron Kingston. But they shared liberal attitudes in the nineteenth century mould, were strongly nationalistic in their outlook, sought the curtailment of British hegemony over Australia, not least with respect to ending appeals to the Privy Council. Their respective drafts made before the 1891 Convention were the first meaningful efforts to begin to transform political rhetoric into practical reality in the fulfilment of federation; their roles with Griffith producing the draft Bill produced by the 1891 Convention were major contributions to one of the more significant events in Australian constitutional history. Constructive involvement in the federal movement was a high water mark in the influences of those from the smaller populated colonies in the actual fashioning of Australian government; something which has not generally been possible to the same extent in the ordering of national affairs in the twentieth century. Unlike Clark, Kingston remained deeply involved in the processes leading to federation through to his presence in London as an Australian delegate as the Imperial legislature proceeded towards the enactment of the Constitution Bill. The South Australian never lacked enthusiasm for the constitutional and other causes he espoused. But the absence of the steadying knowledgeable presence of Clark, offsetting and complimenting the ebullience of his South Australian contemporary, made it more difficult for the common purposes they often shared to be achieved as successfully as the final stages of the production of the Constitution compared to 1891.

Professor Alex C Castles
Law
University of Adelaide

Andrew Inglis Clark and Australian Federation after 1891

A I Clark's national standing as a founding federationist has probably suffered because of two factors - his failure to attend the Second Australasian federal Convention in 1897 and 1898, and the belief that he opposed federation at the time of the Tasmanian poll in June 1898, on the question whether it should be approved.

There has been some uncertainty both as to the facts concerning those two matters, Clark's motivations for acting as he did, and his attitude to federation after 1891.

This paper attempts to examine the available evidence concerning these questions, and to suggest some conclusions about them, and about the place Clark deserves as an Australian federationist.

Mr Frank Neasey
Law
University of Tasmania

Andrew Inglis Clark and Australian Federalism

Andrew Inglis Clark's role in the 1890 federal Conference and his more important work in the first National Australasian Convention of 1891 was recognized by his peers yet he has rarely been afforded a place as one of Australia's founders. In the centenary of the first national Convention, as a time when federalism is being re-evaluated, it is appropriate to consider Clark's contribution to Australian federalism. Inglis Clark's conception of federalism is found in the draft constitution presented to delegates of the 1891 meeting; others, notably Charles Cameron Kingston, drew upon his draft to form their own ideas. Clark's draft constitution, his role in the drafting committee, his contributions to the 1891 debates, and his views on the second convention of 1897-8 provides the opportunity to consider key aspects of Inglis Clark's view of federalism and its application to Australia.

Mr Marcus Haward
Political Science
University of Tasmania

Andrew Inglis Clark and Australian Constitutional Law

What motivated Clark's advocacy of Australian federation under a written constitution? At least five factors emerge. Love for America imbibed as a boy during the Civil War and fostered by the American Club, wide reading of United States law, history and politics, American friendships and three visits to the United States. Second, intercolonial tariff wars which Clark initially experienced through involvement with his family's engineering works where at 21 years of age he was managing partner. His avaricious reading and principally Edward E. Freeman *History of Federal Government*, was a third contributing factor. The fourth was the influence of George Higginbottom who Clark publicly extolled and quoted. Finally, social inequalities and the political system, epitomized by the farcical operation of responsible government in England and Australia, caused Clark to look to other systems of government and espouse their merits and adoption in an Australian context. Despite the strengths of those factors, the structure and details of Clark's vision - an Australian federation under a written constitution - were not immutable. From the beginning, his willingness to compromise and recognition that future generations would and, in the inevitable changing circumstances, perhaps, should amend any constitution are prominent.

Intellectual sustenance and pragmatic politics, therefore, intermingle in Clark's contribution to and relationship with Australian federation and its consequential constitutionalism. Discerning and evaluating those elements ought to assist in proffering answers to some important questions - was Clark's repertoire of American constitutional law excellent or poor? Was that of other founding fathers better? Is Clark's contribution to Australian federation and constitutional law wrongly neglected or over-rated?

Mr James Thomson
Crown Law Office
Western Australia

Federalism and Judicial Review

Inglis Clark was a follower of Marshall, CJ of the Supreme Court of the United States of America in his defence of judicial review. Marshall's justification has always been difficult to reconcile with federalism, because it sees the Constitution as a Social Contract in which the powers of government originate in a grant from the people and are limited with respect to the people. The theory is not a federal one in that it makes no reference to the states. However, the courts have not been able to develop a theory of judicial review which gives a proper weight to federalism. The early High Court toyed with the idea that the Constitution is a treaty between the states. However, the treaty idea was inadequate because it suggests that the Commonwealth is a creature of the states. Neither the social contract nor treaty theory works because both are based on an inadequate theory of institutional personality; both see institutions as artificial persons existing for the limited purposes of their founders and as having only that capacity which their founders confer on them. Personality is a moral notion. Therefore, it is proper to confer real personality on institutions and things if it advances our moral and political thinking to do so. Once we abandon the grant of power theory it is possible to see the Constitution as not only the document, but also as including all the decided cases, political practices and political developments which have grown up around the written document. In trying to make sense of this material, we must adopt the best interpretation of it which we can work out. Once we apply this approach to judicial review we can see that the grant of power model, in both forms, gives indefensible answers to many of the issues raised by judicial review.

Mr Michael Stokes
Law
University of Tasmania

The Federation Divide Among Australia's Liberal Idealists:
A Context for Clark

Virtually all of Australia's liberal idealists with an interest in socio-political matters supported the general idea of federation; however some of them opposed the particular proposals advanced from time to time. Andrew Inglis Clark had a key role in developing federation through the 1890s yet abstained from voting 'yes' in the 1898 plebiscite on the draft Constitution. Thus he belonged on either flank of the divide. Exploration of the former context requires notice of Clark's nationalism and how his support for Federation accorded with that of like-minded people; the second part of the story centres on Clark's federal-constitutionalism.

Professor Michael Roe
History
University of Tasmania

The Tyranny and Amenity of Distance:
Andrew Inglis Clark's Religious Liberalism

By the end of the nineteenth century Tasmania was often called (by locals as well as mainlanders) "The land o' lots o' sleep" and "sleepy hollow". A theme of Tasmanian history has long been its character as (to use the words of Samuel Johnson applied to Scotland) "as good place to live out of". At least this manifestly seemed so for many young Tasmanians with lots of go, who went. But another view of Tasmania and its amenities is possible: against a backdrop of small-mindedness, largeness of intellectual spirit, when large enough, can most concisely *demonstrate* its quality; against a backdrop of visible and famous inertia energy, when strenuous enough, can most convincingly *prove* its potency. The world could be assumed to be watching. That was the stage on which Inglis Clark and some of his clever friends, such as R M Johnston, Samuel Lovell and A J Taylor sought, with not insignificant success, to define their roles in the play which semi-collectively, they were both acting in and writing. The suggestion is not that small-mindedness and inertia of themselves generate their opposites (that seems facile), but that in certain circumstances, they are likely to do so. The argument of the paper is that those circumstances existed in Tasmania during the second half of the nineteenth century, making Tasmania a congenial setting for Clark to develop and foster his heterodox religious views (and indeed his radical views generally).

Dr Richard Ely
History
University of Tasmania

Andrew Inglis Clark and *Quadrilateral*

Andrew Inglis Clark is best known for his role in introducing the Hare electoral system into Tasmania, as a politician and a delegate to the early Constitutional Conventions. He was also the editor of the journal *Quadrilateral* which ran for ten issues, from January to October 1874. The journal was a logical extension of Clark's progressive views. Clark believed in democracy rolling on to "make the world its own". To keep informed he spent the equivalent of a month's salary per year on books. *Quadrilateral* was typical of many nineteenth century Australian journals, both in its short life, and being edited, in Clark's spare time, by a lawyer. *Quadrilateral's* subtitle was moral, social, scientific and artistic. It was influenced by middle class radicalism and the views of such thinkers as John Stuart Mill. Federation was advocated, as was reform of the Legislative Council, while the press was also seen as leading and moulding the people's future. Science was seen as ever progressive, never retrograde, with the fabric of truth always rising, until the mind of man has searched out every law. Government founded upon privilege was inequitable, with all classes needing to have the rights of citizenship, while legislation regarding the traffic of liquor was advocated to improve the moral character of the colony. *Quadrilateral* believed in "industry, self-denial, taste for pleasures not sensual, a postponement of present gratification in hopes of future good, a laudable desire of honourable distinction, and a still more laudable desire to obtain the approbation of friends and relations." *Quadrilateral* only had a short life, but it is an interesting, lively journal. It covered not only social issues but also literature, publishing articles on Walt Whitman, Emerson and Kendall. There were also articles on such nineteenth century matters as phrenology.

Mr Michael Denholm
Curator of Literature
Australian Defence Force Academy
University of New South Wales

Inglis Clark and Australian Nationalism

It will be argued that Andrew Inglis Clark, as a leading liberal and promoter of the Federaton movement within Tasmania, extended Tasmania's political and social horizons and aided the colony's transition from insular conservatism to more enlightened statehood. Clark's concern for the rule of law, his love of liberty, his concern for fellow citizens and his interest in national unity make him one of the most remarkable Tasmanians of the late nineteenth century.

Mr John Williamson
The Fahan School, Hobart

An American Democrat in Tasmania

This paper is concerned with nineteenth century models of democracy and the differences between the English and American traditions. Clark was a bearer of American democratic and federal ideas. The significance of the American influence on Australia at the *fin de siecle* has not been fully explored by historians and constitutional scholars. The Constitution, in its written form, owes most to the Constitution of the United States. The unwritten parts of the Australian Constitution are predominantly derived from the British tradition. In looking to these progenitors of the Australian Constitution, scholars were initially looking for the Westminster Model or the operations of the American federal system in the Australian practices. While the existence of the "Australian model" has now been accepted, the influence of the American constitutional and intellectual traditions needs to be elaborated. The American influence is personified in Andrew Inglis Clark who in the early stages of the debates was the best informed delegate on American federal thought, followed by Sir Samuel Griffith. The failure to recognize the significance of American notions of federation and democracy in Australia is perhaps exemplified in the lack of recognition accorded to Clark and his legacy.

Dr James Warden
Political Science
University of Tasmania

"These new-fangled ideas": Hare-Clark 1896-1901

It is often supposed that the Hare-Clark electoral system was first used in 1909. This overlooks the Tasmania elections of 1897 and 1900, when Hare-Clark was used in House of Assembly elections in the cities of Hobart and Launceston. This paper looks at various aspects of this early story. Inglis Clark seems to have been influenced by an Australia-wide debate on electoral reform that had continued spasmodically since the 1860s. Some Australian attention had been given the system of proportional representation devised by Thomas Hare, and when Clark set out to reform the electoral arrangements for Hobart and Launceston, he claimed to see Hare's system as the ideal means of eradicating many of the weaknesses long observed in Tasmanian elections. What became known as the Hare-Clark system was introduced in the *Electoral Act 1896*, and remained in the Act until 1901, being used for the elections of 1897 and 1900. The first use of Hare-Clark produced confusion in many voters' and politicians' minds, but it also suggested that the latter, at least, would be able to cope with such a system given familiarity with it. At the same time, there was evidence of its having improved the representative nature of the electoral system. The retention of Hare-Clark was a matter of controversy between the Government and the Legislative Council, especially with the unexpected intrusion of the first Commonwealth election. The eventual demise of Hare-Clark in 1901 seems to have been due largely to politicians' frustration with indecisive governments, rather than outright opposition to the new system of election.

Mr Scott Bennett
Political Science
Australian National University

The Operation and Significance of the Hare-Clark Electoral System

The Hare-Clark electoral system is thoroughly entrenched in Tasmania having operated to elect its House of Assembly over 26 general elections from 1909 to 1989. It is also a very democratic system and is well regarded by reformers and commentators. This paper describes some of the very democratic features of the system which provides, in effect, for a primary election and a general election in the one poll. The paper also describes the essential history of Hare-Clark, beginning with Thomas Hare in 1857 through to Neil Robson in 1979. In addition there is a consideration of the proportional representation characteristics of the system and a brief comparison with other Australian systems of proportional representation. (These other Australian PR systems are not as well regarded as Hare-Clark). Finally the paper asks why Hare-Clark remains uniquely Tasmanian. Indeed, it is unique to Tasmania. If so, why has such a well regarded system not spread to the rest of Australia? Is there any possibility that it may spread in the future? Of so, why? If not, why not? Widely admired by reformers and commentators, loved by Tasmanian voters, but rejected by pragmatic politicians, Hare-Clark seems destined to remain uniquely entrenched in an Island State - the ultimate in splendid isolation.

Mr Malcolm Mackerras
Politics
University College, ADFA
University of New South Wales

Andrew Inglis Clark and the Hare-Clark System:
A Critical Assessment

Andrew Inglis Clark is remembered not only in the federation of Australia but also as an effective and innovative politician within the state of Tasmania. Indeed his name lives on in the electoral system still in use in Tasmania - the Hare-Clark system. Clark intended his system of proportional representation to broaden the diversity of opinion within the parliament and therefore he opted for the single transferable vote mechanism proposed earlier by Thomas Hare. The Hare-Clark system remains a much beloved feature of Tasmanian democracy but it is arguable that the electoral arrangement has failed to achieve Clark's ambitions for it. Over the years parties have adapted so well to the Hare-Clark system that this arrangement has produced perhaps the longest running and most stable of two party contests anywhere in Australia.

Dr R A Herr
Political Science
University of Tasmania

Notes on Andrew Inglis Clark

Born: Hobart 24 February 1848 to Alexander Russell Clark and Ann Inglis.
Died Hobart at *Rosebank* 14 November 1907 after some years of ill health

Educated:

*Hobart High School, served a full apprenticeship as a mechanical engineer with his father, who had been a contractor on Port Arthur. AIC became a mechanic and saw mill engineer.

*At 24 he began study of law. Admitted to the bar in 1877.

Family:

*1878 married to Grace Paterson daughter of Battery Point ship-builder John Ross.

*Children 5 sons 2 daughters, Andrew Inglis Clark (Supreme Court Justice), Carrell Clark (Clerk of Legislative Council), Alexander (Engineer) Wendall (Doctor) Conway (Architect). No record of the daughters' accomplishments alas.

Accomplishments & Connections

*Member of Minerva Club, the American Club and debating societies.

*Designed and built family home *Rosebank* in Hampden Rd Battery Point. (Reminiscent of AIC's hero Thomas Jefferson building Mount Vernon).

**Rosebank* became a meeting place for the Hobart intelligentsia, he entertained Edmund Barton, Sir Samuel Griffith, Charles Cameron Kingston.

*January 1887: partner in Mathew Wilkes Simmons Law firm, Hobart.

*Visited United States in 1890s befriended Oliver Wendell Holmes.

Writing and Publications:

*Clark's papers and manuscripts are held in the archive of the University.

*Unpublished writings fall into categories of philosophy, Australian and American Constitutions, legal discourses, also two volumes of poetry.

*Edited periodical *Quadrilateral* in 1874.

*Joined "American Academy of Political Science" in 1891, published "Natural Rights" in their *Annals* in 1900

*Authored: *Studies in Australian Constitutional Law* (Melbourne Charles F Maxwell 1901; 2nd edition 1905);

The Federal Financial Problem and Its Solution Hobart 1900;

Political Career:

*Elected to a northern seat of Hobart in 1878.

*Lost in 1882 and failed in 1884 & 1886.

*Re-elected in 1887 (South Hobart)

*Attorney-General in Fysh ministry initiated 150 Bills in his 1st term (One fewer than Sir Henry Parkes' whole career.)

*Resigned 1897 from Braddon ministry over Emu Bay Railway issue and joined opposition.

Political Views:

*A liberal-reformer. The Mercury attacked him as an "ultra-republican" and "a communist" in 1878.

*Supported Hobart Trades and Labour Council

*Responsible for: legalising trade unions; orderly control of public houses; care of destitute children; preventing cruelty to animals; reform of lunacy laws; supported universal suffrage and electoral reform; opposed state aid; opposed class privilege;

Convention Delegate:

*Nominated to represent Tasmania at the 1890 Melbourne Conference. He spoke early and (with Thomas Playford S.A.) was responsible for the early abandonment of the Canadian Model in preference to the American.

*Nominated as a delegate to the 1891 Convention. Provided the first draft of the Constitution which was circulated to other delegates. He was a member of the judiciary committee (which he insisted be established separately from the Legislature Committee). Clark drafted the judiciary section of the Draft Bill which was incorporated into the final draft in almost the same form (all other sections were markedly altered over the decade).

*Did not attend 2nd Convention due to a health tour of the USA.

*Nominated by LaNauze as one of the principal founders of the Constitution.

*Clark opposed the final draft in 1899 on the grounds that Tasmania was not well served by the financial clauses.

Judicial Career and Official Positions

*Appointed to Supreme Court as puisne judge June 1898, senior judge 1901.

*Tentatively offered place on High Court in 1903 but parliament cut the bench from 5 to 3.

*Vice Chancellor of the University of Tasmania, June 1901 to July 1903.

The Andrew Inglis Clark Scholarship

The Andrew Inglis Clark Scholarship was founded in recognition of distinguished service in connection with the Federation of Australia, the public life of Tasmania and the founding of the University. It honours Andrew Inglis Clark, sometime Attorney-General, Justice of the Supreme Court, and Vice-Chancellor of the University. The scholarship is awarded every three years for proficiency at level III in both the subjects English Literature and British History and not more than one of the subjects Ancient History, Economics or Geography.

Andrew Inglis Clark Scholarship winners 1970-1988

Ashton Deheny -1970 [L.L.B. (Hons) First Class 1976]

Jill Sullivan -1973 [B.Med.Sci. 1978, M.B.B.S. 1981]

David Bird -1976 [B.A. (Hons) First Class 1981, Dip.Ed. 1982]

Heather Brown -1979 [B.A. 1983, L.L.B. 1989]

Juliet Behrens -1983 [B.A. L.L.B. (Hons) First Class 1988, Ph.D. 1991]

Madeline O'Rourke -1985 [B.A. 1989 Dip. Ed. 1990]

Victoria Fenton -1988

The Scholarship is to be awarded in 1991.