

Andrew Inglis Clark, *Moby Dick* and the Australian Constitution

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In 1865, in my home city of Hobart, a young apprentice of 17 raced through his father's workshop, a foundry and sawmill, yelling out that Robert E. Lee had surrendered, signalling the end of the Civil War in the United States of America.

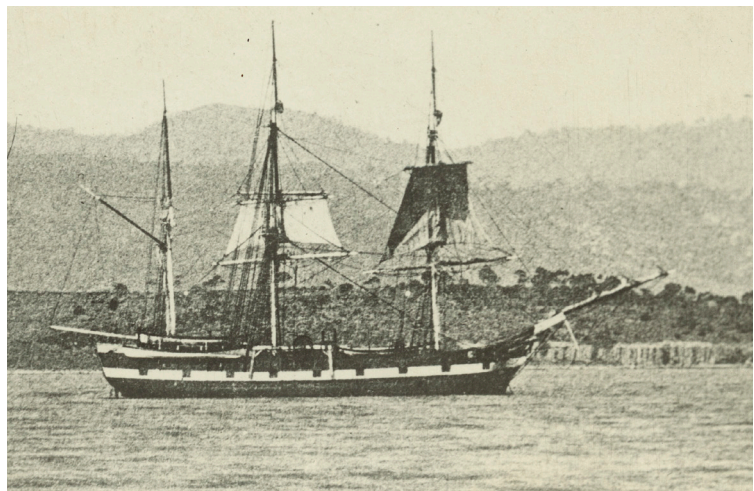
In 1891, the Attorney-General of the colony of Tasmania submitted a draft federal constitution to the Convention meeting outside Sydney.

The Attorney-General had been that 17-year-old boy. As a teenager, Andrew Inglis Clark heard tales of the Civil War from the whalers out of Nantucket, Massachusetts, who took shelter in the Derwent River from the Confederate *Shenandoah* which was preying on the fleet of Union whaleships as it followed whales in the Southern Ocean.¹

Of course, Nantucket was the port out of which Henry Melville has Captain Ahab setting out in pursuit of *Moby Dick*, the great whale which had bitten off his leg.

This is my somewhat feeble justification for the title of these opening remarks. When I saw the titles of the presentations to be delivered today (some with a hint of revisionism!), I thought I had to be just as ingenious.

The title also gives me the opportunity to show a picture of one of those whalers, later named the *Derwent Hunter*. There is a nice connection with an item in the display case in the foyer. It is a reproduction of an original water colour of Inglis Clark being rowed out to join the drafting committee on the *Lucinda* in Sydney Harbour on Easter Day 1891.



Derwent Hunter on Derwent River, c. 1880. Image courtesy of W.L. Crowther Library, Tasmanian Archive and Heritage Office, AUTAS001126070309

One might say that the Australian Constitution was both water-born (in 1865) and water-borne (in 1891).

Inglis Clark was fascinated by the United States of America. As a young lawyer, he presided at a dinner celebrating the Declaration of Independence (1876), visited his idol Oliver Wendell Holmes in Boston (and named one of his sons after him), and became totally entranced by the US Constitution.

1 I am indebted to a wonderful article by John Reynolds for this story: 'A.I. Clark's American sympathies and his influence on Australian federation', *Australian Law Journal*, vol. 32, July 1958, p. 62.

Despite the very different geneses of the US and Australian federations, the one forged in revolution and bloody warfare, the other sluggishly evolving with no great wave of popular enthusiasm, it was in the mind of this not very prepossessing Tasmanian lawyer that the US Constitution provided a working model adaptable into the colonial tradition of responsible government.

I am not going to teach grandmothers to suck eggs. This audience knows far more than I do of the exploits of Andrew Inglis Clark. But I am sure that individually each one of us will learn something new and for that possibility we are indebted to Dr Rosemary Laing, Clerk of the Senate, and Dr David Headon, History and Heritage Adviser for the Centenary of Canberra.

Rosemary and David must have a sixth sense, refined by their years in Canberra. In a moment of prophetic inspiration, they chose the Friday before the convening of the 44th Parliament to host this symposium. This 44th Parliament owes so much of its structure to the genius of Andrew Inglis Clark.

They are of such stature that an eminent group of speakers and panellists has responded to their invitation to focus on a sometimes obscured progenitor of the Constitution of the Commonwealth of Australia.

It is probably fair to say that most Australians are only vaguely aware of our Constitution, though the Australian Electoral Commission is doing its best to stimulate some interest in it!²

I felt this neglect very acutely yesterday when I visited ‘Constitution Place’ at the eastern end of the Old Parliament House. It is a rather sad little plot. Perhaps we might hope that this symposium may be a catalyst for doing something more to embellish that area with some tribute to the founders of our Constitution. There must be some happy medium between the Liberty Bell in Philadelphia and the rather pathetic little plaque at Constitution Place.

Inglis Clark was a man with a touch of the obsessive, one part focused on the US, the other on matters of religion.

He had forsaken his Baptist allegiance, I think in his early twenties, and became a Unitarian ‘freethinker’ very opposed to any favouring of any denomination of the Christian religion.

Inglis Clark’s draft Constitution reflected his Tasmanian battle against state aid to Catholic schools. It proposed to forbid the Commonwealth Parliament’s making of any law ‘for the establishment *or support of any religion ...*’ (emphasis added).

I need not go through the purely pragmatic political manoeuvring which ended up with section 116 constraining the Commonwealth Parliament, rhetorically balanced by the clause appearing in the Preamble: ‘... humbly relying on the blessing of Almighty God’.

As is well known, that clause was put in to secure the support of (male) churchgoers for the referendum needed to adopt the Constitution.

Talking of referenda, section 116 does not apply to the states. (Only Tasmania has a similar provision in its constitutional structure, but by way of an ordinary, repealable provision in an Act of Parliament.)

2 This was a reference to the Australian Electoral Commission’s loss of ballot papers marked by voters in the 2013 Senate election in Western Australia.

What could be more fitting as a tribute to Andrew Inglis Clark than to extend section 116's entrenched constraint so as to limit the capacity of the states in this regard?

In 1988, the then Attorney-General of the Commonwealth promoted a referendum to do just that.

It fell to me as Minister for Justice, sitting in the Senate, to get the bill authorising the referendum through that august chamber. It was a gruelling process but this question was eventually put to the people. Yea or nay to:

116. The Commonwealth, a State or Territory, shall not establish any religion, impose any religious observance, or prohibit the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth, a State or Territory.

Never has a referendum been so comprehensively and decisively rejected!

Only 30 per cent of voters Australia-wide favoured the amendment and there was no majority in any state.

So, as a boy from the port city of Hobart, I enjoyed much less success (let's face it, no success) compared with the influence of the subject of this conference on the shape and provisions of the Australian Constitution.

Whales have long departed the Derwent River. Was this an omen?

The success and singular contribution of Andrew Inglis Clark was made possible by his friendship with the whalers out of Nantucket. In opening this conference I give you—Andrew Inglis Clark, Moby Dick and the Australian Constitution.