

**Tim Fischer**

[Start of recorded material – 00:43:15]

Interviewer: Tim Fischer, former Deputy Prime Minister, welcome and thank you for your time to have this interview.

Respondent: Greetings, James.

Interviewer: I wanted to ask you some questions about the very controversial case of Lieutenants Morant, Handcock and Witton [00:43:30] who were tried during the World War for shooting prisoners, and Handcock and Morant were of course, as you know, executed. Why do you think this case remains controversial in Australian military history after 111 years?

Respondent: Because two great wrongs were done to both Breaker Morant and Peter Handcock – absolute wrongs – and also a wrong towards George Witton. And this goes to the moral values and fabric of a nation. [00:44:00] We know these wrongs were done, do we do nothing about it, or do we in fact seek to at least... we can't reinstate life, correct the formal record by one method or another here or in Great Britain.

Interviewer: What are your views about what an Australian government should do in the present about this case to bring it to finalisation and resolution?

Respondent: There's a number of complexities, perhaps it could be at least [00:44:30] an opening salvo by way of a further inquiry and then resolutions of both houses of the federal parliament which then might be presented to the British parliament and the British government to affect the legislation which would strike out the court martial hearing at Petersburg all those years ago, as in fact George Witton's sentence was ultimately commuted, [00:45:00] but it might as well strike out the original ruling in respect of that third prisoner as well.

Interviewer: As you know, George Witton was represented by Isaac Isaacs who became Governor General and Chief Justice of the High Court. Is that a significant aspect of this case?

Respondent: I recently gave a lecture on the life and times of Sir Isaac Isaacs at Beechworth [unintelligible 00:45:22] lecture, and I had the chance to go back and examine Isaac Isaacs' seminal work with regard to George [00:45:30] Witton. And I think in a sense more than ever in the issue of condonation why I stand fair and square with essentially wherever Nick [unintelligible 00:45:40p] stands and many others that they were found wrongly guilty, and they were certainly wrongly executed, is in part because at the end of the day, years after, not that many years after the Boer War, in the light of cold day a second [00:46:00] set of determinations were made which effectively exonerated George Witton, released him from Dartmoor, a jail in Great Britain, and sent him back to Australia a free man.

Now if the system reached that conclusion with regard to the third of the jointly and severely tried three prisoners at that court martial, then if it was rerun you could venture that [00:46:30] it would have reached that conclusion with regard to the first two as well.

Interviewer: In March 2010 the House of Representatives Petitions Committee conducted a public hearing at which I presented a lot of evidence about the case, and at the conclusion the committee concluded that there was strongly compelling reasons to review the convictions and sentences of these men. How significant is that in terms of parliament being involved in this case?

Respondent: Well it is the parliament of the land, it is the [00:47:00] democratically elected parliament of the land, and committees are subset of the will of that parliament, and therefore in a sense the will of the people. So the answer to that question, James, is very significant. Very significant, of consequence, and meaningful.

Interviewer: Recently international jurist and Australian, eminent lawyer Geoffrey Robertson, was interviewed about this case, and you've read the transcript, and he [00:47:30] amongst other things recommended that an independent and judicial enquiry be held into the case. You've read the transcript, have you got any views about what Geoffrey Robertson had to say?

Respondent: Let me focus on this issue of condonation. I think Geoffrey arrived at a perfectly reasonable outcome with regard to condonation where in the middle of the court martial, Breaker Morant, Peter Handcock and George Witton were ordered to take up arms, [00:48:00] get up on the roof and help defend the fort where the court martial was taking place at Petersburg to the northeast of Pretoria, and fought valiantly against a very sharp, nasty raid by the Boer elements that particular night.

They came back down after the end of the raid, they weren't wounded, they returned the guns to the armoury and they were locked back up in solitary confinement for God's sake. And at 9am the next morning the [00:48:30] Tenterfield lawyer, Thompson, stepped up... or Thomas, I should say... stepped up and argued that on that basis in sense under the military law precedence of condonation the court martials could have ended at one minute past nine the morning after that raid.

That remains my view, Robertson takes a slightly different view but a perfectly reasonable one, that that alone should have led to the mitigation of the sentence from [00:49:00] death to a form of prison sentence. My view is that there are other precedents in military law, British military law, where what happened in the course of that raid is such moment, and is of such moment, that the court martial should have been suspended there and then, returned to the ranks, resumed their service, and a no crime entry be [00:49:30] put against their records.

Interviewer: The call for justice in this case on one view has become extremely politicised, and one example would be, for example, former Attorney General Robert McLelland, while he was Attorney General, expressed the view that he thought there was serious deficiencies in the trial process and that he was going to make representations to the British government. He was replaced as Attorney General, and the two subsequent Attorneys General, Nicola Roxon and Mark Dreyfus, have a [00:50:00] contrary view. Do you think this debate has become politicised, or do you think that the both sides of parliament can agree that this aspect of Australian history needs to be resolved?

Respondent: Well I think both sides of the parliament, there are certainly elements on both sides, it's not a party partisan issue, it's bigger than that, it goes to the fabric of the nation to correct a wrong. And I'm of the view it was a wrong, but take other people's views including people like [00:50:30] Robert McLelland, and I admire and respect that he went right through the evidence and reached that particular view. I reach it in a different roundabout way in short because of the opinion and the writings of Isaac Isaacs in short because of the condonation and their defence, and action, and valiant action in defending the fort. I mean the three of them, had they not fired a shot that night, the fort might have been overrun, and the Colonel and everyone else conducting that court martial might have [00:51:00] been dead by dawn. So, you know, let's get real here with regard to the matter.

But on the matter, it's not a party political matter, it is something that should be dealt with at a higher level, away from election time, but corrected.

Interviewer: In September we've got an election, what are your hopes for any future government in resolving this issue? What message would you give?

Respondent: I hope the government and more particularly the parliament of the next [00:51:30] [unintelligible 00:51:32] after these next elections, the next term of the federal parliament will discuss this in a positive meaningful way, there's going to be a huge focus on the centenary of Gallipoli, well here's something, the court martial of Australian troops without the knowledge of the Australian government, the embryonic, brand new Commonwealth government of Australia which had just been formed in 1901, [00:52:00] led to an absolute determination that there would be no summary executions by way of court martial of Australian soldiers in the course of World War 1.

So you could say in one sense Breaker Morant and Peter Handcock's deaths resolved and solved and helped save the lives of hundreds facing court martial, especially towards the end of action on the western front when there [00:52:30] was a huge protest over breaking up some of the units that had fought all their way through the Somme and everything, and when end of the sight, and the government was going to break up, or the Allied command was going to break up those units. So there is a legacy, sadly, but in a roundabout sort of way a

very meaningful legacy flowing directly from that court martial at Petersburg all those years ago ahead of World War I.

Interviewer: And finally, Tim, the [00:53:00] descendants of these men have long asked for justice, and expect both the British and Australian governments to act. Do you see some important role, future role, for the descendants in this matter? What do you expect?

Respondent: Well yes they've got a right to be onward interested. I think should all these things come to pass and the original court martial ruling is formally struck out, then [00:53:00] there ought to be an additional set of statues at the Australian War Memorial in an appropriate location, and we ought to get on with the creation of the Boer War in Anzac Parade – long overdue anyhow – but there should be one other thing happen, in front of the Bathurst Courthouse, in that magnificent square, there is a memorial to the Boer War, and there is one name separately attached at the bottom, because Herbert Horatio [00:54:00] Kitchener on his visit to Bathurst, after the Boer War, before World War I, refused to engage with the locals or do anything until Handcock's name was taken off the Boer War Memorial.

There's a great story to be told, but eventually his name was loosely reattached at the bottom of that memorial. Let me say that if everything proceeds and this wrong is rectified then let us also [00:54:30] fix up that meaningful Boer War Memorial in front of the Bathurst Courthouse.

Interviewer: Thanks, Tim, and I'll keep you advised of developments as they happen, and thank you for your support.

Respondent: Thank you, James, well done.

[00:54:43 – 00:54:46 - Background conversation]

[End of recorded material – 00:54:46]