

## “Murder or Justice?”

Just before dawn on February 27<sup>th</sup> 1902 Morant and Handcock were led out across the veldt from Pretoria gaol and shot by a detachment of Cameron Highlanders, as the sun rose in the eastern sky. Even the British admitted that they “died game”, but it was not just Morant’s defiant final cry of “Shoot Straight You Bastards, don’t make a mess of it” that has made him such an enduring part of our history. The debate over the rights and wrongs of their executions has raged on for a century through countless articles, papers, books, a play and a movie that turned them into cult heroes. Ironically, it is the perception that war criminals have been made into heroes, rather than an objective examination of the evidence against them, that has prevented their rehabilitation.

In his latest thriller, “Swordfish”, cyber-terrorist John Travolta muses that Hollywood should let the bad guy get away with it for once. The cop tells him it will never happen, the audience likes a happy ending and one way or the other the bad guy has got to go down. I don’t know if its just life imitating art, but whenever anything about “Breaker” Morant or Ned Kelly is published the wowsers turn out to warn us about the dangers of making larrikins into heroes. Sometimes they even try to link the two totally unrelated characters, just to make sure we get the point. Manning Clark called it the “bogey of barbarism” and they will be on high alert on this the 100<sup>th</sup> anniversary of the execution of Morant and Handcock. The harsh words already bandied about in the nation’s press and across the airwaves suggest that there is still plenty of passion left in this issue a century on. The wowsers will tell you that they were found guilty and executed and that’s that, but there’s a lot more to it than that.

Morant and Handcock were found guilty of murdering twelve Boers up in the Spelonken region of northern Transvaal during August and September 1901. They were part of an irregular unit fighting a brutal guerrilla war in which atrocities had been committed on both sides. Kitchener responded to the wearing of khaki by Boers, the abuse of the white flag and the blowing up of trains and subsequent murder of survivors by issuing orders to take no prisoners.

These orders were clearly circulating in the Bushveldt Carbineers even prior to Morant’s arrival at Fort Edward – a fact admitted by the subsequent court of inquiry. Six Boers and a Boer member of the BVC, thought to be a spy, were all shot. After his arrival Morant cheerfully ignored orders to take no prisoners given to him by his best mate and superior officer Captain Percy Hunt. He was even reprimanded for bringing them in.

All that changed, however, on the night of August 5<sup>th</sup> 1901 when Hunt led an attack on a Boer farmhouse at the ominously named Duwielskloof (Devils Claw). Witnesses testified that when they were forced to retreat Hunt was still alive. When they returned the next day they found his naked body battered and mutilated. On hearing of the outrage Morant, now the *de facto* commander of the BVC, led a detachment in hot pursuit of those responsible. Following a dawn raid they captured a Boer who was using Capt. Hunt’s trousers as a pillow. Following a “drum-head”, or field court martial, Morant ordered him shot.

Although headquarters were informed no action was taken, even after two other groups of eight and three Boers were shot on Morant’s orders in the following weeks. However, when the simultaneous death of a missionary Rev. Daniel Heese, who saw the bodies of the eight executed Boers, and the appointment of a civilian

commissioner for native affairs threatened to bring BVC policy to light, Kitchener had the BVC officers arrested.

During the next five months a court of inquiry and a courts martial singled out Lieutenants Morant, Handcock and George Witton as the guilty parties. Morant and Handcock admitted shooting prisoners, but claimed they did so on the orders of Army HQ. Despite a plucky defence by Tenterfield lawyer, Major JF Thomas, Morant, Handcock were sentenced to death with Witton's sentence being commuted to life imprisonment.

News of the executions were received in Australia with both shock and horror. With no Australian correspondents in the field they had to rely on the British Army and British dispatches for information. The feeling that they must be guilty began to evaporate as returning soldiers revealed that key witnesses with intimate knowledge of what orders were issued are shipped off to India without testifying and the officers who ordered the first seven killings had escaped punishment. Also, the court also refused to apply the custom that

These contentious points have been debated ever since. During the five years of research I did for my new book on Morant, "*Shoot Straight You Bastards!*" I discovered that Morant, as it turned out, did receive orders to take no prisoners. Kitchener was notorious for never writing anything down, hence the absence of an order, but his Chief of Police, Provost Marshall Robert Poore did. On hearing of their arrest for the killing of Boer prisoners he remarked that:

“... if they had wanted to shoot Boers they should not have taken them prisoner first”.

Poore's diary also revealed that orders did exist to shoot Boers wearing khaki, which was denied by the prosecution when it was argued that the first Boer Morant executed was wearing khaki. Regimental papers and diaries belonging to members of Kitchener's Fighting Scouts, The Gordon Highlanders and The Canadian Scouts revealed that Morant's Bushveldt Carbineers were by no means the only unit shooting Boers. "*Two wrongs don't make a right*" concluded the Judge Advocate, but trying one person for a crime whilst turning a blind eye to similar indiscretions is hardly justice either. Barrister and human rights advocate, Geoffrey Robertson generously gave me the following legal opinion,

“...Examples abound in military courts of wrongful convictions - from Dreyfus to General Yamashita - and of wrongful acquittals (eg of Col Medina over the My Lai massacre). Breaker Morant's trial was a particularly pernicious example of using legal proceedings against lower ranks as a means of covering up the guilt of senior officers and of Kitchener himself, who gave or approved their unlawful 'shoot to kill' order. Morant may have been all too happy to obey it, of course, in which case he deserved some punishment. But it was wrong to use him as a scapegoat for an unlawful policy. I regard the convictions of Morant and Handcock as unsafe.”

Robertson's view is also shared by the ex- Chief Justice of South Australia, Dr Howard Ziller, who maintained in a 1988 letter to "*The Adelaide Advertiser*" that the case "*wouldn't last five minutes*" in an appeal court. Melbourne QC John Francis recently commented that the case was "*wrong in law*" – as Kitchener did not apply the principle of condonation which should have seen Morant and Handcock cleared of

all charges after they were pressed into service to defend their prosecutors when Pietersburg was attacked during the trial. By all accounts they both led the defence with distinction, but Thomas' pleas for the charges to be quashed fell on deaf ears. The age-old custom was established by Wellington who described his men as "*scum of the earth*", but in failing to apply it, or even mention it in his telegram to Barton, Kitchener obviously thought less of his men than Wellington.

However, despite all the evidence to the contrary the word of a British court martial, convened by the same man who lied about his orders and had everything to gain by a guilty verdict, was enough for Australia's first President, Edmund Barton, in 1902 and still seems to be enough for both Veteran Affairs Minister Dana Vale and the RSL. Both have refused requests to review the case, despite the compelling new evidence and the legal opinion of eminent

They variously argue that Morant and Handcock were not Australians because at the time of their deaths they were in the Bushveldt Carbineers, an irregular imperial unit and the Australian government does not have the power to overturn the verdicts – even if they wanted to. Apparently, only the British have the power to do this. This flies in the face of the fact that on war memorials all around Australia and on the Australian War Memorial roll of honour are the names of men who first fought in an Australian contingent and then in an irregular unit.

Our Kiwi brethren have already dealt with the issue of those executed in World War 1. Faced with a similar debate they held a formal review, found the verdict to be unsafe and then passed a bill through parliament that quashed the original verdict.

Seeing the historical battle lost the wowsers have now retreated behind the 1946 Nuremberg precedent that "*I was only following orders*" is no longer a defence against war crimes – as though it were some definitive moral standard. This ignores the inconvenient fact that in 1902 – superior orders *were* a legitimate defence and if it could have been proved that Kitchener gave the orders, he, and not Morant and Handcock would have been held ultimately responsible. Also, legally, Nuremberg is now redundant the standard proof of guilt is now being "*beyond reasonable doubt*". A sensible measure given then number of major convictions quashed in recent years, which have shown British justice to be anything but infallible.

Yet, both The Minister and the RSL claim community support for their views, but which community? Neither the public, who they are supposed to be serving, or even their own members seem to agree with them. In defiance of the official RSL line Bathurst put Handcock's name back on their memorial in 1964. In 1999 both Renmark and Tilpa, country towns with historic connections to Morant, put him on their honour roll of men who served in South Africa.

Two National party stalwarts Tim Fischer and Senator Julian McGuran of Gippsland have both made public statements saying that its time to review the case. McGuran's recent comments that the RSL are behaving like "*old style British knuckleheads*" who "... *would rather believe British propaganda than back two of their own mates*" would seem to more accurately reflect public sentiment.

Currently, the War Memorial is running an exhibition on Morant and Handcock. Patrons are asked to vote yes or no to the question – should Morant and Handcock be executed? Though it is little more than a straw poll, with 10,000 votes already cast – Morant and Handcock are ahead by 2:1.

Each ANZAC day we are reminded of the sacrifice made by past generations for democracy and freedom. It is a slight to their memory and democracy that policy on such subjects is decided behind closed doors by some old boys club. My offer to present new historical evidence to both the RSL and the Minister both remain

unanswered. Must Morant and Hancock need to wait until the present generation of wowsers die out before there can be a rational assessment of the rights and wrongs of this case? Not if Julian McGuran has his way. He's raising the issue in Federal parliament next month. Morant and Hancock might yet get a fair hearing.

Lord Kitchener, it seems, has achieved what Hollywood would never allow, but the only consolation is that neither Nuremberg nor present-day legal standards would have saved him. It is some comfort to know that if this case were being tried a century later he would either be standing next to Slobodan Milosevich.

*Nick Bleszynski is a documentary film-maker and the author of "Shoot Straight You Bastards! – The Truth Behind The Killing of "Breaker" Morant" which is published by Random House.*

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