

LAWYERS IN ACTION DURING WORLD WAR I

MAJOR GENERAL GREG MELICK, AO, SC

On the 100th anniversary of the conclusion of World War I, it is appropriate we reflect upon the contributions made by lawyers during that conflict.

Lawyers have always been prepared to enlist and have made up a substantial number of the leaders in all wars. About 300 barristers from New South Wales served in World War II, and at least 117 of them went on to become judges, including Sir Laurence Whistler Street, Sir John Kerr, and Sir Victor Windeyer, who was awarded the Distinguished Service Order (and Bar) and three mentions in despatches in his very distinguished service.

Another former Chief Justice, Kenneth Whistler Street, fought in World War I and Sir Edmund Herring had a very distinguished war service having been awarded a Military Cross during World War I before being made a Commander of the British Empire and receiving a Distinguished Service Order during World War II. Sir Ninian Stephen also served in World War II.

A significant number of legal practitioners combined their professional lives with active involvement in the armed forces around the time of World War I. Because of their skills and education, lawyers often became leaders which meant that they suffered disproportionate casualties as the Germans concentrated on officers who were distinguished by their uniforms, pistols and leadership activities. Soldiers for millennia have always been trained to shoot the leaders of the opposing

force, and the casualty rate of lawyers has been about twice the average casualty rate amongst other professions.

In this paper, I propose to outline the service of just a few lawyers who became significant wartime leaders in World War I or who otherwise made significant contributions.

I HENRY NORMAND MACLAURIN

Brigadier General Henry Normand MacLaurin was a highly regarded and energetic commander of the 1st Infantry Brigade who led his brigade ashore in Gallipoli. His active service only lasted two days, being shot by a sniper on the bridge just beyond the beach. His grieving men named a hill of Gallipoli in his honour, which is still there. He had practiced as a barrister in New South Wales.

II GEOFFREY MCLAUGHLIN

Amongst the first four men to enlist in New South Wales was Geoffrey McLaughlin. He was a captain of Australian Field Artillery with five years of service prior to the start of World War I. His record is typical of so many of his peers. He embarked for the First Field Artillery Brigade in Sydney on 18 October 1914 aboard the HMAT Argyllshire destined for Egypt. During service in Gallipoli he suffered jaundice and was evacuated to Malta in November 1915, before re-joining his unit in Egypt following withdrawal from Gallipoli.

Captain McLaughlin was awarded the Military Cross in January 1916 for distinguished service in the field and was also mentioned in despatches. He was promoted to Major on 12 March 1916, when his Brigade relocated to the western front during March and April 1916. He was wounded in action near

Flers in November 1916 and then was evacuated to Rouen and then to England for treatment and recuperation.

He could not be kept down. In early April 1917, he re-joined his unit near Amiens where he took command of the Artillery Brigade with a temporary rank of Lieutenant Colonel for three months.

He was again wounded in action during an attack by phosphine gas on 2 November 1917, and he died of those wounds two days later, just 30 years of age. He is buried in a military cemetery in Belgium.

III SAMUEL EDWARD TOWNSHEND

Captain Samuel Edward Townsend was a 29-year-old barrister from New South Wales. Appointed Company Commander on 8 May 1915, he moved up to a high point on the front very close to the Turkish trenches known as Quinn's Post. Two days later, the Turks attacked the position and secured a foothold in the Australian trenches. Ordered to re-take the position, Townsend, with about 40 men of the 16th Battalion, led the counter attack in the dark. As he went over the parapet he shouted: 'Fix bayonets. When I call "Australia forever" charge'. Some were killed immediately. Townsend was wounded and then killed as he was carried out of the fight.

In the same campaign on 19 May 1915, the son of Justice Philip Whistler Street, a young Laurence Whistler Street, was killed once again bravely leading his men and in the same campaign the sons of Justice Simpson and Justice Rich were also killed. As noted by Chief Justice Kiefel in her Sir Harry Gibbs Oration, other High Court judges were not immune to having their sons joining the casualty list.

IV FOUR FRIENDS FROM BENDIGO

Bendigo was a typical town that made a typical sacrifice. There were four friends who joined up in Bendigo and they were all members of the legal profession. Their stories are sadly too common of many young leaders in World War I.

I now quote from a speech given at a rededication of the plaque ceremony by Supreme Court Justice Major General Greg Garde in Bendigo on 15 November 2017:

War is a carnage, always terrible, often futile, and always wasteful as the loss of these fine men demonstrates. Clive, Eric, Alan and Murdoch (as I shall describe these outstanding young officers) had immense talent and capacity. At any other time, they would have lived a productive, professional career and wonderful family life. They had the world in front of them, and would have been judges, barristers, partners of legal firms and community leaders in Victoria. The tragedy and distress of their loss to their families and the community of Bendigo cannot be under-estimated. By accident of history, they belonged to a lost generation of young Australians who served in the Great War. It is hard for us to understand the impact on a nation of only 5 million to lose 60,000 dead and several times that number of maimed, wounded, or injured.

Captain Clive Connelly lost his life during the critically important attack on Hill 60. Having returned from injury only four days earlier, he led a renewed attack on Hill 60 on 28 August 1915. Hill 60 was a ground of great tactical importance because it linked the Anzac beachhead with the landings by British forces. In leading the third attack, Clive knew this. He also knew that two previous attacks on Hill 60 had

failed, that the Turks were fully alerted and reinforced, and that almost certainly his troops would be subject to great loss of life. Three-quarters of Clive's attacking force were quickly casualties. He himself was shot three times leading the attack.

His younger brother, Major Eric Connelly, also was wounded in Gallipoli. Subsequently, Eric was twice mentioned in despatches and was awarded the Distinguished Service Order. Despite his repeated bravery in action he almost survived the war but was sadly then killed by a bomb dropped on the headquarters of the 3rd Division near Perron and the valley of the Somme only two months before the Armistice.

Lieutenant Alan Hyatt lost his life from artillery shell splinters when riding a bicycle between his unit's institutional headquarters and the junction known as Hyde Park Corner. He also had been wounded several times before then and kept returning to his unit.

During the battle of Pozières, Major Murdoch Mackay was rallying Australian soldiers for an attack on the German trenches when he was shot by machine gun fire. He was mentioned in despatches for his courage and actions.

There were over 23,000 Australian casualties and 7,000 killed in the battle of Pozières. Australian War Historian Charles Bean described Pozières as 'more densely sown with Australian sacrifice than any other place on Earth'.

V ARTHUR BLACKBURN

Arthur Blackburn, along with another soldier, who as a private was recorded as being the man who reached the furthest inland at Gallipoli on 25 April 1915. He was a 21-year-old lawyer who was amongst the first to enlist in the Fighting 10th, and as a battalion scout he was among the first to land in Anzac Cove.

Charles Bean noted that Blackburn and Lance Corporal Robin probably made it further inland than any other Australian soldier. He was commissioned as Second Lieutenant in Gallipoli in August 1915 and served there the entire campaign. In July 1916, at Pozières, Blackburn led an attack for which he was awarded the Victoria Cross.

Blackburn was directed with fifty men to drive the enemy from a strong point and by great determination he captured 250 yards of trench after personally leading four separate parties of bombers, many of whom became casualties. Then, after crawling forward with a Sergeant to reconnoitre, he returned, attacked and seized another 120 yards of trench, establishing communication with the battalion on his left.

He returned to legal practice between the wars, but in World War II, he was promoted to Lieutenant Colonel and took command of a motorized cavalry regiment: the 18th Light Horse Machine Gun Regiment. He was then appointed to command the 2/3rd Machine Gun Battalion. They fought under his command in Syria against the Vichy French. Thereafter he landed with an Australian force in Java, was promoted to Brigadier, and was appointed to command Blackforce before becoming a prisoner of war.

The 2/3rd Machine Gun Battalion was a combined South Australian and Tasmanian unit and three of its officers were awarded the Military Cross in World War II, including Cecil Brettingham-Moore, who later became a long-serving master and later judge of the Supreme Court of Tasmania.

VI HENRY SEYMOUR BAKER

Sir Henry Seymour Baker enlisted at 24 in the Australian Imperial Force before joining the 13th Battalion. Being a

journalist, he described in his very articulate and well-written diaries what he went through at the Claremont Camp in Tasmania:

[F]illed with newcomers like myself ... the roughest lot of chaps I had been so near to in my life before – mostly miners from the West Coast. One or two were fairly decent but nearly all swore terribly and without ceasing. They never opened their mouths without using the most abominable language.

He also described how he hated camp life in general:

It was the absolute loss of individuality which grated on me at first. I was bellowed at and ordered about by every Tom Dick and Harry with a stripe or two on his arm ... A man seemed no longer his own, no longer capable of individual initiative and action.

In 1918, he was awarded the Distinguished Service Order for the following act of bravery:

During the advance on the 18th of September 1918 near Le Verguier, north of St Quenton, he acted as a right guide to his battalion, and despite the great difficulties caused by fog and uncut wire and heavy machine-gun and artillery fire, carried out his duties in a most gallant and skilful manner. On reaching the first objective he was sent ahead to reconnoitre, and located a large party of the enemy. He threw bombs at them and twenty surrendered. These he brought back with him, and then got together a party of men and again attacked the enemy taking further prisoners. At the first objective he had received a painful wound in the leg, but he carried on right to the final objective. He behaved splendidly.

After the war, he was admitted to the Tasmanian Bar and in 1920, he became a pupil in the Melbourne chambers of Owen

Dixon. In 1928, he was elected to the House of Assembly for Franklin as a member of the conservative Nationalist Party, holding the position of Attorney General and Minister for Education. From 1936 to 1945, he was leader of the opposition before retiring in 1946. Two years later, Baker entered the Legislative Council and was president of that house from 1959 until 1968.

VII ANDREW INGLIS CLARKE, JNR

Another Tasmanian who joined up was Andrew Inglis Clarke, Jnr, the son of founding father Andrew Inglis Clarke. He refused to take a commission because he distrusted officers. He was promoted temporary sergeant in January 1919 and mentioned in despatches. Despite his educational qualification and age he made no apparent effort to obtain a commission and developed an extremely critical attitude towards officers, particularly (apparently) English officers.

He later became a practitioner and an extremely good judge in Tasmania and was highly regarded Australia-wide. He should have been Tasmania's first (and we still haven't had one) appointment to the High Court of Australia. According to many, the reason he wasn't appointed to the High Court was the belief that there must have been something wrong with him because he had not been commissioned in World War I.

His distrust of officers was to be seen in context. Part of the problem was that officers commanding Australians, whether they be Australian or English, were unfortunate in Gallipoli to have fought part of the campaign in the southern area under Aylmer Hunter-Weston, who believed in full frontal attacks in broad daylight and if the first attack failed, he would try again

the next day but an hour later, just to make sure the enemy had an even better chance to be ready.

Hunter-Weston was so incompetent that when the British and Australian troops landed on the southern part of the Gallipoli Peninsula in an effort to take Krithia, a British detachment had actually landed ashore Y Beach behind the Turkish lines. Hunter-Weston saw them through his binoculars or telescope, thought it was outrageous that they had disobeyed orders and gone ashore and ordered them back!

VIII HAROLD 'POMPEY' ELLIOTT

One Australian lawyer and soldier who had significant problems with the British officers was Harold 'Pompey' Elliot. In describing Elliott, I can do no better than quote, with permission, from my friend Les Carylton, who in the first chapter of his work *The Great War*, entitled 'Verdun's bitter fruits', has this to say:

An Australian brigade commander, burly and ruddy cheeked, took a British staff officer out into no-man's land give before the attack at Fromelles. He wanted to show him the Sugarloaf salient and the ground the Australians would have to cross. Four hundred yards of it: rank grass, that ditch they called a river, shell holes filling with stinking water, barbed wire twitched to iron stakes, then the German bunkers, squat and inscrutable.

The Australian was Harold 'Pompey' Elliott; the staff officer was Major H.C.L. Howard from General Haig's headquarters. The three brigades of the 5th Australian Division were to attack to the left of the Sugarloaf and the 61st British Division to the right and at the salient itself. Howard had come up to report on preparations for the attack

Pausing there, you have to be reminded that Fromelles was the first time that the Australians were engaged on the western front, it was designed to take pressure off an attack somewhere else, and it was prepared in full view of the Germans, who were aware of everything that had been done in preparation. Elliott was commanding the 15th Brigade and he wasn't impressed.

Returning to Caryl on Elliott:

As the pair walked back from the frontline Elliott produced a circular that had been sent out by Haig's headquarters. This tried to distil some of the lessons of two years of trench warfare. It recommended that no assault should be made where the breadth of no-man's land exceeded 200 yards. Elliott's 15th Brigade was being asked to cover twice that distance. Elliott conceded to Howard that he didn't know much about tactics on the western front. He had been there only ten days and it was nothing like the crazy escarpment at Gallipoli, where neither side had much heavy artillery and the trench lines were often only a few yards apart. Then he told Howard what he thought. Elliott liked to tell people what he thought.

The attack would fail, he said. What did Howard think? Howard knew much more about artillery than Elliott. He said he thought it would be 'a bloody holocaust'. Elliott asked him to tell Haig this. Howard agreed to do so.

Elliott and Howard were alone. Howard never spoke publicly of the conversation. We have only Elliott's account and this is a pity: it would have been interesting to know what Howard made of the Australian. Elliott wasn't like other generals, English or Australian. Loud and dishevelled and cocksure, he was one of the true eccentrics of the Australian Army. Pompey (the nickname came from the big-hearted

Carlton footballer Fred ‘Pompey’ Elliott) was admired and feared down the line, by the enlisted men he roared at like ‘a bull thirsting for gore’, by the men he arrested or threatened to shoot (Elliott was forever on the edge of drawing a revolver, often for such heinous offences as smoking whilst on a route march), and by the junior officers he taunted by telling them they weren’t ‘a wart on a soldier’s arse’, and who cared if corporals and privates could hear what he was saying. He bullied and blustered, but there was said to be a fatherly quality to it. As several contemporaries observed, other commanders tried to be disciplinarians and end up being hated. Elliott did the same the same thing and mostly found respect, and sometimes affection. His men had their own fun with him. They paid newsboys in Egypt to stand outside his tent in the early morning and shout: ‘Egyptian times – very good news – death of Pompey the bastard.’ ...

Elliott had been an outstanding student at Melbourne University, where he took degrees in law and arts and shared the Supreme Court Prize for the top student in final-year law. He liked poetry, particularly Kipling. But he had also known poverty in the red dust of the family farm at Charlton, in Victoria’s north-west, where he attended a one-teacher school and lived in a two-room hut of iron and bark. He won the Distinguished Conduct Medal for bravery as a corporal in the Boer War after he ran off enemy horses. On Gallipoli, where he commanded the 7th Battalion, he was the old-fashioned leader, straight out of military romance, at the front with his men, leading by example. He was shot in the ankle in the morning of the landing at Anzac Cove and lay for hours on the shingle of the beach, his foot throbbing.

He fought at Lone Pine in August. The man next to him was shot and his head exploded. Elliott led his men covered head to foot in blood and brains.

Elliott survived the war. He never forgave the superiors because he was never promoted to Major General. He became upset when people were promoted above him, but of course he upset everybody above him by telling them what fools he thought they were, and he was usually right. He committed suicide in 1931. He had earlier been seen standing in the trenches and visibly crying when the remnants of his Brigade came back from Fromelles.

IX JAMES WHITESIDE MCCAY

Unlike Elliott, the commander of the 5th Division was disliked by just about everyone for most of his adult life. When Sir James Whiteside McCay died in 1930, the *Bulletin* first acknowledged that he was ‘a born soldier and a brave man’ then ran up to the point it really wanted to make: ‘Nevertheless, he became the most detested officer in the A.I.F. at an early stage of the World War, and remained so to the end.’

Returning to the work of Carlyon, he described McCay as follows:

His career was unusual. Here he was at Fromelles, fifty-one years old, tall and with a wilting moustache, a major-general commanding a division, and having spent only five-or-so weeks of his life in action. Yet those weeks were tumultuous. They showed him to be about as brave as a soldier can be, and also as a commander with a genius for alienating his men.

He had gone ashore with the 1st Division at Gallipoli and walked into a shambles. His 2nd Brigade was supposed to go left. Lieutenant-Colonel Ewen

Sinclair-MacLagan, who had landed first with his 3rd Brigade told McCay to go to the right. McCay reluctantly agreed and walked into a bigger shambles. Battalions were mixed up, command structures had broken down and some men had gone too far forward. McCay became crankier than usual.

When Major-General William Bridges, the divisional commander, came ashore with Brudenell White around 7.30 am, he found McKay unstrung. White said that McCay was 'completely lost'. Bridges 'wanted to know what the hell he was doing'. Bridges grew angrier and White said he saw McCay's face change. 'He began to get a grip on himself and before long he was in complete control.'

We should not judge McCay for this. The shambles would have tested any commander. Two bullets passed through McCay's cap that morning and another through his sleeve. But he did not help himself. He accused rankers of cowardice and threatened them with a revolver. It was the style of the man that offended: the threats, the sarcasm, the prissiness of the schoolmaster and the pedantry of the lawyer. McCay could put the wind up men; he could not inspire.

Early in May, the 2nd Brigade was sent south to the British beachhead at Cape Helles. Major-General Aylmer Hunter-Weston, the senior British officer there, wanted to try again to capture the village Krithia. Hunter-Weston was one of the Great War's spectacular incompetents. Haig called him an 'amateur'. Others said he was a 'music-hall general'. At least twice during the war he went 'off his head'. He bubbled with cheery humour and threw troops away as lesser men tossed away socks. Hunter-

Weston sent McCay's Australians into the battle late on the third day, telling them to advance on Krithia. There was no time to organise anything, not that this would have made much difference. The attack was suicidal. Half of the Australians involved in it were killed or wounded. McCay's brigade took more than 100 casualties. Broken men lay in the darkness and cried out for water. It was heroic and futile.

The Australians blamed McCay, which was unfair. McCay had to do what he was told by Hunter-Weston. Nevertheless, he returned to Australia with a reputation as a reckless commander and abandoned his legal practice.

X CONCLUSION

I want to finish off by noting the artillery major by the name of Major William Ellis Cox, who on 8 August 1918 at the Battle of Amiens disobeyed a direct order. He was ordered not to fire over the left flank where the British was supposed to be and not to engage in counterbattery fire. On seeing heavy casualties being incurred by a German battery, he disobeyed those orders knowing the British as usual would be late anyway and he wouldn't be firing over them, and he took out the German battery. For that he was awarded the Military Cross. He later became a judge of the Supreme Court of Tasmania. His son, William John Ellis Cox, also was a distinguished soldier. In peacetime he commanded the 16th Field Regiment in Tasmania – an artillery unit, taking after his father's footsteps – before he went on to become Chief Justice of Tasmania and then Governor. In 2011, he addressed the Samuel Griffith Society at its function in Hobart.