



**THE LAW SOCIETY
OF NEW SOUTH WALES**

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Speech for

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CHARLES MELVILLE MACNAGHTEN: A CHARACTER STUDY

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I acknowledge the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their elders, both past and present. I also acknowledge the many men and women of Aboriginal descent who have served and are serving in the Australian Defence Force.

Reflecting on the course of a person's life, their personal characteristics and the sensibilities of their time and society, gives us a greater understanding of social history, than may be absorbed from the study of even the most detailed history books.

It is fitting, then, that Judge Slattery and I have been invited to paint a picture of a critical period in Australia's national life by focusing on two important legal personalities of that time.

The First World War had an integral role to play in shaping the modern legal profession, giving it a distinctly Australian character.

The prism through which we will view the First World War, and our fraternity's place within it, is the life of solicitor and officer Charles Melville Macnaghten, CMG.

Historian Tony Cunneen, who I am indebted to, for assisting in the preparation of this address, wrote of Macnaghten:

If Charles Melville Macnaghten had not existed then he would have ... been invented by a writer such as Rudyard Kipling or Rider Haggard. He combined all the elements of heroism, human frailty and tragic decline which is the stuff of grand narratives of Empire.

Macnaghten was indeed a compelling figure.

He was a gallant and at times foolhardy officer who has been somewhat undervalued in the light of history. Although the odds of survival were bad – a 2-in-5 chance of not being killed or critically wounded in the first world war – this was a man who did survive – at least on a physical level.

Not afforded a warrior's death in the mould of some Homeric trope, Macnaghten nevertheless paid a heavy price because of his exposure to the battlefield.

Tonight, I will trace Macnaghten's journey, from his time as a glowing upper-class solicitor well-known in Sydney for his ability to transform Australian youth in inner-city militias, to the broken life of a middling accountancy clerk in Canada after the War.

I will put tonight that Macnaghten is significant to us, in this room this evening, because his story evokes the experience of so many. His relationship to the legal profession is so indicative of this fraternity's approach to the Great War.

Macnaghten's life traced, with pathos, the trajectory members of the Australian legal community often took from the era of Federation.

There is no doubt the Great War – in its magnitude and devastation, the cold and indiscriminate wave of suffering it released on those abroad and at home – drove a stake into the heart of our fledgling Australian nation.

But in meting out this terrible cost, it also revealed the remarkable courage of our men through times of adversity.

We went to war with narratives of colonial devotion to England still strong, for King, Empire and, yes, for those at home in Australia.

But in sacrificing life and limb for those at home, the Australian forces gained for their countrymen, in the words of Former Prime Minister Paul Keating in 1993:

... a legend: a story of bravery and sacrifice and, with it, a deeper faith in ourselves and our democracy, and a deeper understanding of what it means to be Australian.

When those who survived returned, it was to a different nation, one informed by a 'legend' all our own.

Reflecting on the context of federation and the Great War, Australian War Memorial director Brendan Nelson refers to J.S. Mill's two essential pre-conditions for a nation to exist and be sustained.

J.S. Mill believed that for these conditions to be met, a nation must have first: a common government and second: a common feeling rooted in shared language, literature and history.

The Great War, at harrowing cost, imbued our nation with one pivotal chapter in our shared history.

Charles Melville Macnaghten is not an artefact of history; he was a living man. A human being like us. A *lawyer* like us.

Macnaghten was born in Rhutenpore, India, in 1879, during the days of empire.

His father, Sir Melville Macnaghten, managed family estates in this region, but later became Assistant Chief Constable at Scotland Yard, where he helped to demystify the case of Jack the Ripper.

Meanwhile, young Charles started at Eton in 1893 and in 1898 entered Trinity College, Cambridge, from which he graduated with a Bachelor of Arts in 1901.

Life in the newly federated Australia beckoned.

Charles arrived in Sydney in 1903, perhaps with the objective of finding a wife and forging his career in the law.

He married Yorkshire-born Nettie Hopcroft in 1904, not far from here, at what was then the Unitarian Church in Pitt Street.

The Sydney Morning Herald described his early years in Sydney thus:

“Aided in his private life by a loyal and devoted wife, he passed his law examinations in a remarkably short time, and was duly admitted as a solicitor. There is little doubt that the close and concentrated study of those years adversely affected a highly strung, sensitive temperament.”

This reference to Macnaghten’s temperament would be a sign of things to come.

Initially, Macnaghten commenced articles with T.J. Hughes, an ancestor of barrister Tom Hughes QC, before completing his articles with Arthur Hyman.

Back at the turn of the century, as Australia readied herself for war, the Government embarked on a scheme of compulsory cadet-based military training for young men.

It was in this context that Macnaghten's life in Sydney took on a distinctly military flavour. Despite being admitted to practice in November 1908, hampered for some years by recurring illness, it was as an officer that he really found his niche.

He began as a second lieutenant in the 1st Battalion of the NSW Scottish Rifle Regiment in May 1909. He was then appointed as lieutenant and temporary area officer for the Woolloomooloo district in November 1910. It was here that he would conduct this universal military training. Macnaghten was promoted Major in December 1913.

Reports on the matter are unanimous. Macnaghten had a remarkable ability for shaping young men.

He helped sow the seeds that would later sprout to become the virtues of pluck and leadership on the battlefields of war.

He well and truly assisted in the task of raising up an Australian military force.

In his obituary in the Sydney Morning Herald in 1931, it was written:

“Formerly an officer in the Scottish Rifles, he was appointed area officer in Woolloomooloo, and was responsible for the training and discipline of the boys of that area who were liable for service as senior cadets. To help in training these lads the great need was for officers, and Macnaghten lost no time in obtaining the assistance of many young University graduates, who for the most part belonged to the University Club. Scarcely any of these embryo officers had any knowledge of military training; but, inspired by Macnaghten’s example, they voluntarily used to meet on the flat roof of the

old University Club, in Castlereagh-street, and were there taught by him the rudiments of drill.”

In this context, Macnaghten was attributed with a “genius for organisation”, a “magnetic personality” and “driving force”.

The discipline and efficiency he instilled in the lads of his 25th Battalion of Senior Cadets became known – first throughout Sydney and years later, on the battlefield.

Charles Bean, the official war historian for the First World War, reported:

“Macnaghten proved that, with good leading, the Australian youngster, even of the awkward age between 16 and 18 – when he is least controllable – could be so led that the enforcement of discipline might be left to the boys themselves.”

On Macnaghten's death, a member of the 25th Battalion remembered:

“Macnaghten in his Glengarry, tight-fitting short tunic, plaid breeches, and dark blue puttees, with his masterful face, heavy shoulders, and slim legs, striding onto parade ... his heels still instinctively click together, and his shoulders straighten when he hears, in imagination, across the years, Macnaghten's vibrant, compelling voice ringing out the command: Par-r-rade, 'shun!'”

This training took place in the context of the time. An obedient colony getting ready to support the Mother Country in her hour of need. There were no divisions of 'us' and 'them' – any threat to England was by default a threat to Australia.

Former Prime Minister Paul Keating said in 1993, at his famous Tomb of the Unknown Soldier address, of the soldier he honoured that day:

This Australia and the Australia he knew are like foreign countries. The tide of events since he died has been so dramatic, so vast and all-consuming, a world has been created beyond the reach of his imagination.

He may have been one of those who believed that the Great War would be an adventure too grand to miss. He may have felt that he would never live down the shame of not going. But the chances are he went for no other reason than that he believed it was his duty - the duty he owed his country and his King.

Such motivations ran through the spirit of Charles Melville Macnaghten. For him, taking part in the war was a matter of course. All around him, prominent figures, club members, and fellow solicitors were enlisting.

As soon as the War broke out, he booked his passage back to England; returning to the Mother Country an automatic impulse in the face of War.

However, when he learned that Australia would indeed raise a fighting force, he did not embark on the vessel, instead joining the First Contingent of the first Australian Imperial Force, enlisting at Victoria Barracks. The AIF was a citizens' army, constituted by men of all professions. Macnaghten was one of its first officers.

On the 15th of August 1914, Macnaghten was appointed second-in-command of the 4th Battalion.

It is with some pride that I note, that the 4th AIF Battalion is the lineal ancestor of the 4th Battalion of the Royal NSW Regiment in which I served for a time. I like to think I marched to the beat of Macnaghten's drum.

Macnaghten and his friend, the barrister Colonel Henry MacLaurin, were what historian Charles Bean called “fellow enthusiasts” in the work of disciplining youngsters and selecting officers. MacLaurin was later shot dead by Turkish fire at Gallipoli two days after coming ashore.

A commonality between the men informed their choices in selecting officers within the 1st Brigade. This meant many officers were city gentlemen and lawyers like themselves.

Among lawyers who stayed behind and could not serve, whether for reasons of age or professional obligation, formed in many cases strong, supportive friendships with those in active service.

This was true of the community of solicitors, barristers and judges in Sydney during World War One. We can see this bond in the flow of correspondence between soldiers and solicitors or judges at home.

Many of the wave men who enlisted in mid-1915, following the landing at Gallipoli, were lawyers. A large number joined the New South Wales-based 20th Battalion, which was a battalion close to the heart of Justice David Gilbert Ferguson. Justice Ferguson's son, Arthur Ferguson, a 23-year-old law student, was a member.

The judge famously kept a life-like model of Gallipoli in his chambers and would show visitors the terrain on which his son was fighting. This model was acknowledged by Charles Bean in the second volume of the Official History of Australia in the War and is a tangible token of the devoted interest the Australian judiciary and legal fraternity had in those fighting overseas.

Lawyers were natural community leaders who were often appointed to command positions within units. They were members of a profession that was tied to empire. They just *believed* it.

No matter their public profiles, or their age – with some managing to enlist even into their fifties -- they threw themselves into the conflict; whether by way of enlisting or philanthropy.

Indeed, the aforementioned Justice Ferguson was Chairman of the significant Amelioration Committee and the Returned Soldiers and Sailors' Employment Board.

Judge Ferguson, in particular, assumed a fatherly sense of duty to assist and support those who served with his son, Arthur who would ultimately die in France in 1916.

Another son, Keith, also served and was wounded, but later became a Judge of the Supreme Court.

Macnaghten was one such recipient of Ferguson's generosity, and the two exchanged many letters.

Macnaghten was one of the first men ashore at Gallipoli.

The next day, a messenger burst into the headquarters of the 4th Battalion, on the spur known as Bolton's Ridge, and exclaimed that, "*the line is to make a general advance.*"

Without question or hesitation, Macnaghten famously said to Colonel Onslow Thompson, his commanding officer: "I'll take the right, Colonel, if you'll take the left".

So off they went towards the foe.

Charles Bean put it thus:

“Led by two of the bravest and most highly trained officers in the force, without the vaguest instruction or any idea as to an objective, they went blindly on to Lone Pine.”

In a foreshadowing of the great offensive that was to come at Lone Pine, Macnaghten took the brunt of the inevitable defeat.

He was shot in the chest but continued on, before being shot in the throat.

Incapacitated, he staggered into an aid post to collapse.

However, hearing his men struggle in the face of enemy fire was too much. He forced himself to stand, drew his revolver, and set off again into the fray, only stopping when he became totally unconscious.

It was not for nothing that Charles Bean said of Macnaghten that he was “*distinguished by a vigorous impetuosity*”!

Macnaghten was sent to Alexandria and then on to England to recover. He resented being away from his men.

He returned to the Dardanelles in time for the Battle of Lone Pine.

The offensive on Lone Pine, a heavily fortified Turkish position, in August 1915 was one of the Gallipoli campaign’s most brutal battles.

Recovered from his initial wounds, Macnaghten returned to the battlefield and again proved himself an unstinting officer.

He was shot again, this time in the knee, but his name pops up all over the place in accounts of the battle.

One commendation reports that he:

“exhibited great dash and gallantry and distributed his men after the first assault through the intricate trenches to the best advantage while reorganising for further attack.”

According to Tony Cunneen, the reports of the Battle have Macnaghten, newly promoted to Lieutenant Colonel:

“calling for reinforcements, replacing officers hurt or killed in action, clearing the trenches of wounded and organising the defence against Turkish assaults.”

Captain Duke remembers “going up to Macnaghten’s headquarters and imploring him to send us more bombs. He was sitting on a box with his leg on another box. He had been shot through the knee, but was carrying on serenely, refusing to be evacuated.”

In his own words, Macnaghten recounts the Battle in a letter to a friend, Mrs Langtree:

Lone Pine cost us very heavy. I think I wrote you I took in 24 officers and 741 men on the Friday and brought out on the Monday three officers and 167 men. It was rather a horror. That infernal charge across the open in that hellish fire, getting plugged on the knee going across, the piles of dead and hideous wounds, continually being bombed and shelled – heat, smells, flies, maggots, dysentery, and no sleep, and crawling about with a gammy knee over dead bodies – shook me up a good deal. But we never gave up a foot of the trench.

The tragedy of Gallipoli is a story that resonates. From the first landing, casualties were extreme.

The sheer bravery and courage of officers, including those at Lone Pine, is an example to us all of how to deal with extreme adversity.

Owing to the wound to his knee, Macnaghten was evacuated to England, but returned by December. In February, he was moved to Tel-el-Kebir, Egypt, where he wrote on the 4th of February:

“It was with very mixed feelings that I left Anzac. [There was] relief at the prospect of a rest after the strain of the last few days when our line was so thin, but oh! the gallant men we left behind. But they made the great sacrifice, and one can say no more.”

Although he was no longer bodily present at Lone Pine, his mind lingered there.

His letters from the months that follow are riddled with evocative descriptions of the great loss and harrowing discomfort the men there faced. Macnaghten writes that:

“I know I have never been in such a funk as when I had to go across the open, it was then that shell caught me.”

Macnaghten was honoured following his efforts during the Dardanelles Campaign as a Companion of the Order of St Michael and St George “for services rendered in connection with military operations in the Field to be dated from 1.1.16”. He would later travel to London to receive the award from the King personally.

However, Macnaghten was embittered by the experience of fighting at Lone Pine and losing so many of his men.

He felt as though the acts of bravery of his men went unrecognised when lesser acts were glorified. His perspective on his own honour remained coloured by his frustration with what he perceived as a lack of recognition for his troops. He writes:

I got an awfully nice cable from General Birdwood last week, which was the first intimation I had of getting the C.M.G. When I saw the Honours list, I was furious at so many gallant men being passed over.

I went to the General and refused the decoration, but he would not allow it – insult to the King and all that sort of business.

Again, both Canada and Australia have something over 90,000 and under 100,000 fighting. Our casualties have been more than twice as heavy as the Canadians, and we have had much fiercer and more savage fighting. Yet look at our honours compared to theirs. I was and am very sick about the whole question.

Macnaghten was classically Australian in that he batted away recognition of his own gallantry; sincerely believed it was all 'his men'.

The Scottish Australasian wrote on this subject:

“Colonel Macnaghten denies that he personally did more than the men who, loving him, followed him wherever he was prepared to lead, in fact, he resents personal credit ... On his [return to Australia] in July, a large number of returned 4th Battalion men met him on the wharf and gave him “an exceedingly warm welcome” and played the Battalion march.

Within a month of the battle in September 1915, Macnaghten’s health had deteriorated. He began to exhibit symptoms of sleeplessness, irritability and memory loss.

On a medical certificate, he was described as having undergone a ‘complete nervous breakdown’ – and diagnosed with what was then known as neurasthenia.

The *Smithsonian* magazine discusses this condition thus:

By 1916, military and medical authorities were convinced that many soldiers exhibiting the characteristic symptoms—trembling “rather like a jelly shaking”; headache; tinnitus, or ringing in the ear; dizziness; poor concentration; confusion; loss of memory; and disorders of sleep—had been nowhere near exploding shells. Rather, their condition was one of “neurasthenia,” or weakness of the nerves—in laymen’s terms, a nervous breakdown precipitated by the dreadful stress of war.

Nowadays, we would describe Macnaghten as having suffered post-traumatic stress disorder.

However during the time of the First World War, the effects of war were encapsulated by physical symptoms; passed off as a ‘condition of the nerves’.

In Macnaghten's case, medical boards considered his condition to have been the result of the strain of active service.

Although the Medical Board's findings as to his health were frustrating to Macnaghten, he seemed to have had some sense of his mental state. In one letter, he writes flippantly:

You must not believe all the wonderful yarns about myself, and anyhow you do not write me of all the nasty things people say. You know I was bitten by a mad dog once, and I am said never to have got over it. One does do mad things sometimes. C'est la guerre.

Yet his cognizance of the horrors of war is always mediated through what his men, rather than he, endured. He further implores his confidante:

So, please, if you hear unpleasant things, do not believe them in toto. Remember what these grand fellows have been through.

By May 1916, Macnaghten had been sent back to Australia to the Royal Military College at Duntroon. He wrote in a letter to Judge Ferguson:

You will, I know, be sorry to hear that I have after all to come back to Australia. I have been in hospital for nearly 10 weeks now, and though I have done my best to beat them, the Medical Board are adamant, and have ordered me to go to Australia for a couple of months' trip. I suppose it is a good thing, though very disappointing ... I hate the idea of coming back with all my men in the Fire Trenches, and I know what a terribly difficult thing it is to get away again once one gets to Australia.

They seem to put one on to some ridiculous job of Camp Commandant. But if they try this on with me, I shall simply disappear and enlist in another State. I can do more good that way.

He meant it. Denied permission by the Medical Board when he sought to rejoin the ongoing war effort, Macnaghten hatched a plan.

Crossing state lines to Queensland, losing touch with his wife and family, and adopting an alias – Ciam McMilville – Macnaghten rejoined the AIF as a Private under this false name in October 1916.

One of his battalion said of Macnaghten at the time: “He is riddled like a colander; it’s only his fighting spirit that keeps him alive.”

Although he fought on for months, eventually, he was too well-known to remain unrecognised and was found out in May 1917. Luckily, the only action which was taken abroad was the altering of his name on his official papers. Although, Macnaghten was put on notice about his medical condition.

Unable to hide from his illness, Charles resigned from the AIF in England on 10th October 1917 as a consequence of being ruled permanently unfit for all services.

Macnaghten was never the same after his commission was terminated.

He had gone from being an Imperial warrior – a man good enough to survive these terrible battles – to falling into a sloth of despair.

Robbed of his purpose and in search of a new life, he emigrated to Canada in 1924.

There he changed tack and worked for the Canadian Pacific Railway in Montreal as an accounts assistant.

He had some involvement in organisations which had been set up for veterans traumatised by war, but at this time, this would have been considered an act of shame, to say you were getting help.

His employment with the railway wound up by the end of 1930. Only barely surviving his own mother, Charles died in his rooms of pneumonia on the 4 February 1931, aged 51. He had no children.

As Brendan Nelson has noted, 62,000 Australians lost their lives in the First World War, but another 60,000 died within a decade of returning.

Truly, while we were at war, our losses were only just beginning. The mortality rate among returned servicemen was staggering in its equality to the loss we sustained on the battlefield.

Known to history as “The Galloping Major” and “Fighting Mac”, the real Macnaghten story is the tale of so many who came back from the war either physically or mentally shattered. Whilst we lost huge numbers killed in action or died of wounds, the fact is the mortality rates amongst those who did return were horrific, and their scars were both physical and mental.

My own maternal grandfather died in 1939 at the age of 43 from his wounds sustained in the First World War.

The First World War was a ruinous thing. It did not just ruin lives; did not just ruin families; it ruined minds. It put fear and uncertainty into the hearts and minds of society.

There are two great epitaphs:

“KNOWN UNTO GOD” and “THEIR NAME LIVETH FOR EVERMORE”, both selected by the great Rudyard Kipling, reveal the anxieties at the time as to the perpetuity of those who had fallen.

Would they be remembered?

Were they known unto a higher power, if over the passage of time they were not remembered, or could not be found?

Would they be forgotten?

There are reports that following the devastation at Fromelles, the Sergeant Simon Fraser spent three harrowing days bringing in the wounded from No Man's Land.

So it is reported, he heard a lone voice pleading to him through the fog, saying: “Don’t forget me cobber”.

The solicitor arm of the profession, the Bar, and the Judiciary bore witness to these anxieties.

They answered them with their own support and honourable service.

In answer to this question, “Will they be forgotten?”, let me repeat the words of Charles Bean inscribed on the Wall of Honour which hangs in the premises of 170 Phillip Street, a tribute to those solicitors, articled clerks and law clerks who served in the Great War:

What these men did, nothing can alter now. The good and the bad, the greatness and the smallness of their story.... it rises, it always rises ... above the mists of ages, a monument to great hearted men and for their nation – a possession forever.

But in remembering them, let us also recommit to ensuring those contemporary veterans who return from the horrors of war with wounds unseen do not suffer alone.

Let us make sure they have the best medical, or other, help we as a country can offer.

In so doing, we will be honouring them in such a way that Macnaghten would approve; in honour of the memory of a remarkable solicitor and citizen-soldier.