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PIONEERS IN CRIMINOLOGY

XII. Alexander Maconochie (1787-1860)

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The Honourable Mr. Justice J. V. Barry is a judge of the Supreme Court of Victoria, and is Chairman of the Department of Criminology of the University of Melbourne, Victoria, Australia. In 1955, as recipient of a grant from the Carnegie Corporation of New York, he spent five-and-a-half months in the U. S. A. and Canada, and three months in Great Britain and Europe, during which he investigated developments in Criminology and Penology, and attended the U. N. Congress at Geneva on the Prevention of Crime and the Treatment of Offenders, and the Third International Congress on Criminology at London. He is the author of an extended biography of Alexander Maconochie which should be available in 1957.

The accompanying photograph, for which the author makes his acknowledgment to Professor Negley K. Teeters, is of a bust of Maconochie by Charles Essex which was shown at the Royal Exhibition of 1849. It was destroyed in the bombing of London in World War II. The only other likeness known to exist is a portrait in oils by E. V. Ripplingille, done in 1836, now in possession of Maconochie's great-grandson, Kenneth J. Maconochie, Esq., of London. The above information is from the author of this article.

—EDITOR.



CAPTAIN ALEXANDER MACONOCHIE, R.N., K.H.

I

It is a commonplace that mankind remembers admiringly its oppressors rather than its benefactors, but the promptness with which pioneers in humanitarian movements are forgotten or undervalued by their successors in the field in which they have laboured is sometimes rather startling. The fate of Captain Alexander Maconochie R.N., K.H.¹ supplies an instance. Although he was a pioneer in the field of penal reform, indefatigable in his labours in that cause, and foremost among the formulators

¹ K. H. is the abbreviation for Knight of the Royal Hanoverian Guelphic Order, an

of the principles on which modern penal administration in British and American communities rests, he has not been the subject of a biography, nor is there any readily accessible account of his theories or his work. It is usual to find acknowledgment in sound modern works on criminology² of the importance of his conceptions and his practices, but copies of his pamphlets, and of publications about the time of his death which described his greatness of character and tenacity of purpose, are not easy to come by³. Yet it is beyond question that the principles which he formulated in 1837, when he was living in Hobart in Van Diemen's Land, as Tasmania was then called, and which he applied at Norfolk Island between 1840 and 1844, were the foundation of Sir Walter Crofton's Irish Prison System. Crofton's methods influenced the thinking of Enoch Wines and Theodore Dwight, of the New York Prison Association, very greatly. Zebulon Brockway recognised in his later years that there were forerunners in the field he had made his own, but he seems to have been unaware that the origin and development of his ideas owed a good deal to others. It is plain, though, that he must have known of the investigations of Warden Hubbell, and of Wines and Dwight, into the Irish system, which led to the recommendation for its adoption made by Wines and Dwight to the New York Legislature in 1867⁴. Thus Maconochie's principles had their influence upon the founding of Elmira, and upon the Cincinnati Declaration of 1870, and they now flourish vigorously in the Borstal system in England, and in the California Institution for Men at Chino and the Federal Institution at Seagoville, Texas, and in all penal institutions which apply the concepts of modern penology.

Essentially, Maconochie's principles rested upon insights which are obvious now, but which in 1837 were revolutionary in their impact upon the English Convict System. The labours of John Howard had shown the urgent need for penal reform, and had pointed eloquently to the direction it must take. William Eden, later Lord Auckland, had stressed the social unacceptability of vindictive justice, and had pro-

honour which did not carry the designation "Sir". Maconochie was awarded the distinction in 1836. It has not been awarded since the death of William IV in 1839.

² See ALBERT MORRIS, *CRIMINOLOGY*, (1934); BARNES AND TEETERS, *NEW HORIZONS IN CRIMINOLOGY*, (1951) pp. 519-20; M. GRÜNHUT, *PENAL REFORM* (1948) pp. 76-80; L. FOX, *ENGLISH PRISON AND BORSTAL SYSTEMS* (1952) pp. 41-2, 46, 149; NORVAL MORRIS, *THE HABITUAL CRIMINAL* (1951) p. 21; E. H. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* (4th ed. 1947) pp. 418, 450-1, 514; WALTER RECKLESS, *THE CRIME PROBLEM*, (1955) p. 473; SHELDON AND ELEANOR GLUECK, *500 CRIMINAL CAREERS* (1930) p. 14ff; EDWARD LINDSAY, *HISTORICAL SKETCH OF INDETERMINATE SENTENCE*, (1925-6) 16 *AMER. CRIM. LAW AND CRIMINOLOGY* Jo. p. 9, whose information about Maconochie is taken from WINES, *PUNISHMENT AND REFORMATION* Ch. X; U. N. publication, *THE INDETERMINATE SENTENCE* p. 12; W. Y. TSAO, *RATIONAL APPROACH TO CRIME AND PUNISHMENT* (Taipei, 1955) pp. 87-8.

³ M. D. HILL, *OUR EXEMPLARS* (1861) which contains an autobiographical fragment, finished by another hand, possibly FLORENCE DAVENPORT HILL; Obituary, *FRIEND OF THE PEOPLE*, Nov. 17, 1860; ROSAMOND AND FLORENCE DAVENPORT HILL, *MEMOIR OF MATTHEW DAVENPORT HILL* (1878), p. 184 ff.; *MELIORA* No. 13 (1862); MARY-CARPENTER, *OUR CONVICTS* (1864), Vol. 1, p. 95 ff; BISHOP ULLATHORNE, *ON THE MANAGEMENT OF CRIMINALS* (1866); W. L. CLAY, *THE PRISON CHAPLAIN*, (1861), p. 246 ff.

⁴ See Z. R. BROCKWAY, *FIFTY YEARS OF PRISON SERVICE*, pp. 126-135; F. H. WINES, *PUNISHMENT AND REFORMATION*, p. 196 n., 199 n.

claimed that "public utility is the measure of human punishment"⁵. Wagnitz had argued that whilst the security of the State may be the principal object of criminal law, that very security would also be promoted by reforming the criminal⁶. Paley and Whately had adumbrated the central idea of task instead of time sentences which Maconochie believed he had discovered for himself. But it was Maconochie who investigated the debasing brutalities of the convict transportation system and presented a coherent and revolutionary plan of penal reform, which embodied not only a philosophical justification for reform, but also the practical measures by which it could be achieved. The insights which came to him in Van Diemen's Land were that cruel and brutal punishments debase not only the victim, but also the society which employs them; and that from the standpoint of mere utility, to say nothing of religious and ethical considerations, the object of secondary punishment (as imprisonment was called by the controversialists in those days, death being the primary punishment) should be to reform the offender so that he should leave prison capable of useful citizenship, and a better man than when he entered the prison gates. These are the fundamentals of modern penal philosophy, and they still are the touchstone by which the social worth of a penal system is to be determined. His great merit is that, once these ideas took hold of him, he gave the rest of his life, his fortune, and his very considerable talents to gaining their acceptance, and to devising the penal machinery that would carry them into effect.

But the injustice to Maconochie goes further than a denial of an adequate presentation of his philosophy and his labours. The historiographers⁷ who have written of him have not only failed to understand the worth of the man and his immense importance in reducing the sum of avoidable human misery; in disregard of the irrefutable evidence, they have presented him as a crank and a failure. Calumnies and derisive legends are the price exacted from all sincere reformers by conservative contemporaries, but it is, or should be, the business of the historian to dispel them and to put the record straight.

II

Alexander Maconochie⁸ was born on 11 July, 1787, at Edinburgh, of good Scots family. His father was by profession a writer, as attorneys were called in Scotland, and was cashier and agent for the first Duke of Douglas. He acted as one of the lawyers for the successful claimant in the lengthy litigation (it lasted eight years) known to history as the Douglas Cause, and later succeeded Adam Smith, the economist, as a Commissioner of the Board of Customs for Scotland. He died when Alexander was eight or nine years old, and the upbringing of the boy was undertaken

⁵ *PRINCIPLES OF PENAL LAW* (1771).

⁶ Quoted, M. GRÜNHUT, *PENAL REFORM*, p. 39.

⁷ Cf. JOHN WEST, *HISTORY OF TASMANIA*, (1852), Vol. 2, pp. 263-304; H. D. TRAILL, *LIFE OF SIR JOHN FRANKLIN* (1896) Chs. XIII, XIV, XV; K. FITZPATRICK, *SIR JOHN FRANKLIN IN TASMANIA, 1837-1843* (1949), *passim*; FRANK CLUNE, MARTIN CASH, *THE LAST OF THE TASMANIAN BUSHRANGERS*, (1955) pp. 279-80. This list could be lengthened by other references.

⁸ The spelling of his surname varies; when in the Navy, it was spelt M'Konochie, but in 1832, when secretary of the Royal Geographical Society, he adopted the present spelling and used it thereafter.

by his kinsman, Allan Maconochie, Lord Meadowbank, who was one of the most brilliantly universal intellects of his time.

Alexander was destined for the law, but he wanted to join the Navy, and in 1803, being then aged 16, he became a first-class volunteer, and in March, 1804, a midshipman. He was connected by family ties with a distinguished sailor, the Hon. Alexander Inglis Cochrane, a younger son of the eighth Earl of Dundonald, and he saw a great deal of active service, in the course of which he was twice wounded. Studious by nature, he was especially interested in languages, and was proficient in Latin, Greek, French and Spanish. In 1810, he was captured by the French when the vessel on which he was serving as a Lieutenant was wrecked in a violent storm, and he remained a prisoner of war until Napoleon's abdication. It is probable that this experience, which he had in common with two other contemporary penal reformers, Obermaier of Bavaria, and Montesinos of Spain, made him the readier to see the evils of the convict system when he first directed his mind to penal questions in Van Diemen's Land in 1837.

When he was repatriated in 1814, he rejoined the British Navy, and commanded vessels in the Anglo-American war, seeing service at the taking of Washington and the battle of New Orleans. He was twice mentioned in despatches. In 1815 he was paid off, being then a commander in the Royal Navy and entitled by courtesy to the title of Captain. He was on naval reserve from then until he was retired, in 1855, with the rank of Captain. There can be no question that in his naval career he achieved success and distinction.

He went to live on a farm near his native Edinburgh and occupied himself by pursuing studies in what he called "Ethical or Political Geography", a field of enquiry that is now covered by geopolitics and ecology. Two publications resulted from these studies. Both were concerned with the Pacific, which then figured little in British calculations, and both showed considerable power of thought and remarkable prescience.

On 10th April, 1822, when aged 34, he married Mary Hutton Browne, who was 27. There were seven children of the union, three daughters and four sons. One of the daughters died at birth.

About the year 1829 he moved with his family to London, where he renewed old friendships with distinguished naval men, amongst whom were Sir John Barrow, Sir John Franklin and Admiral Beaufort. With these gentlemen and others, he was instrumental in forming the London Geographical Society, which, because of the interest and patronage of William IV, immediately became known as the Royal Geographical Society. Maconochie was its first secretary, and he held that position until he resigned in 1836 to go to Van Diemen's Land. In accepting his resignation, the Council of the Society recorded their appreciation of Maconochie's "sound judgment, even temper and untiring zeal".

In 1833 Maconochie was appointed the first Professor of Geography in University College, London, a position he held until he left for Van Diemen's Land.

III

Sir John Franklin, a gallant naval officer and famous Arctic explorer, was appointed in 1836 to succeed Sir George Arthur as Lieutenant-Governor of Van Diemen's

Land, as the beautiful island of Tasmania, pendant to the Australian continent, was known officially until the middle of the 19th century. In the view of the English authorities, Van Diemen's Land was an island prison, and it was administered accordingly. Franklin asked Maconochie, then in his forty-ninth year, to accompany him as his private secretary. It is clear that in accepting this position Maconochie did so on the understanding that he would be given an appointment in the Australian Colonies more suited to his standing and acknowledged abilities. He had turned his mind to the question of colonial self-government, and had written a paper before he left England which showed a liberal understanding of the problem, but he had not taken any interest in the controversy concerning the disposition of Great Britain's criminals. When the American War of Independence ended, Britain had to find another place to which to transport her felons, and the penal settlement of New South Wales was brought into being by the landing at Sydney of Captain Arthur Phillip and his soldiers, and the felons, male and female, of the First Fleet, on January 26, 1788. Norfolk Island was settled for the same purpose in March of the same year, and Van Diemen's Land in 1803. By the 1830's the critics of transportation as a secondary punishment had the backing of informed English opinion, and it is strange that Maconochie should have stood outside the controversy, but the evidence is convincing that he did so until he arrived in Tasmania in 1837. This circumstance is important, for it has been the habit of his historiographer critics to present him, falsely, as a man who arrived in Tasmania with his mind fully made up that the convict system as it existed was bad, and that it should be supplanted by a fantastic system of his own devising.

Before he left London he was asked by the Society for the Improvement of Prison Discipline to obtain answers to a questionnaire concerning the penal system in Van Diemen's Land. He informed the governmental authorities of this request, and with their concurrence set about obtaining the desired information. His investigations soon convinced him of the iniquities of the system, and the report he submitted to Governor Franklin led to the compilation of a series of official rejoinders which furnish a vivid picture of the penal administration and the complacent attitude of officials who controlled it. Two very powerful officials in Hobart, the main settlement of Van Diemen's Land, were John Montagu, the Colonial Secretary, and Matthew Foster, the Chief Police Magistrate. They set about creating a breach between the new Lieutenant Governor and his private secretary. Franklin was a gallant officer, but he was hopelessly unequipped to detect the duplicity of the officials on whom he relied for the running of the administration. His wife was a woman of remarkable ability and unusual character, and there is more than a little reason to think that she exercised considerable influence over her husband in his official decisions. The story is too long and involved to be told here, but soon it was obvious that only an excuse was needed for Franklin to dismiss Maconochie. This was found when the arrival of English newspapers revealed that a report by Maconochie which Franklin had sent on, unread, with a despatch concerning the convict system, had been given to the Molesworth Committee which was then investigating transportation, and had been released for publication. Maconochie's criticisms of the local settlers, and his outright condemnation of the system it was Franklin's duty to enforce, were thus made public, and his dismissal was probably unavoidable, but coming as it did from an

old comrade in arms, it was a bitter blow, and it meant the end of his hopes of obtaining a position of any importance in the colonial administration.

Maconochie and his family continued to reside in Hobart, and in 1828 he published "Thoughts on Convict Management," followed in 1839 by "Supplement to Thoughts on Convict Management" and in the same year by "General Views regarding the Social System of Convict Management." Although he was to publish many pamphlets subsequently, the essential features of his proposals are to be found in these first publications.

IV

Maconochie shared with two remarkable Quakers, James Backhouse and George Washington Walker, who were in Van Diemen's Land in 1837, the fundamental conceptions on which he based his proposals, and his discussions with them had much to do with the formation of his ideas.

He sought to define his attitude in anticipation of the opposition he realised his proposals would excite. "I am no sentimentalist", he wrote in his report in 1837. "I most fully subscribe to the right claimed by society to make examples of those who break its laws, that others may feel constrained to respect and obey them. But the individuals thus sacrificed to what is, at best, but a high political expediency (for vengeance belongs to another) have their claims on us also, claims only the more sacred because they are helpless in our hands, and thus helpless, we condemn them from our own advantage. We have no right to cast them away altogether. Even their physical suffering should be in moderation, and the moral pain which we must and ought to inflict with it should be carefully framed so as, if possible, to reform, and not necessarily to pervert them. The iron should enter both soul and body, but not so as utterly to sear and harden them. Another world should be thought of, even by the sternest temporal legislator; and it is frightful to think of the responsibility otherwise attached to him."

In his essay, "Crime and Punishment" (1842), he set out his fundamental proposition. "It is by no means intended . . . to advocate lenity to criminals. This, when injudiciously extended, injures rather than benefits them, and greater, or at least more certain, rather than less, severity would be desirable for them. But it should be made parental, not vindictive, and severity seeking to raise even while it chastens. There is no lesson more important in social science, nor more wanting at present in penal science, nor to which the perfection of both will be found more directly to tend, than that the common interest is the interest of each and all, not of any section merely; that when beyond all question individuals are sacrificed, the public also indirectly suffer." "What is wanted, then, in our conflict with crime is to give due importance to the object of reforming our criminals and to study every means by which we can make severity subservient to that end." "We must make our whole arrangements in arrest of crime prospective, rather than retrospective—preventive rather than merely remedial."

Later in the same work he wrote, "The proper object of prison discipline is to prepare men for discharge; the first object of prison discipline should be to reform prisoners, and then prepare them to separate with advantage both to themselves and

to society after their discharge." In a set of regulations he prepared in 1840 he commenced with the statement, "The object of the New System of Prison Discipline is besides inflicting a suitable punishment on men for their past offences, to train them to return to society, honest, useful and trustworthy members of it, and care must be taken in all its arrangement that this object be strictly kept in view, and that no other be preferred to it."

This being the object, the problem was to find means to achieve it. The "apparatus", as he called it, which Maconochie devised for this purpose involved five ideas, each of them novel in prison administration at that time. They were,

- (I) sentences should not be for imprisonment for a period of time, but for the performance of a determined and specified quantity of labour; in brief, time sentences should be abolished, and task sentences substituted;
- (II) the quantity of labour a prisoner must perform should be expressed in a number of marks which he must earn, by improvement in conduct, frugality of living, and habits of industry, before he can be released;
- (III) whilst in prison a prisoner should earn everything he receives except shelter and the barest subsistence; all else should be added to his debt of marks;
- (IV) when qualified by discipline to do so he should work in association with a small number of other prisoners, forming a group of six or seven, and the whole group should be answerable for the conduct and labour of each member of it;
- (V) in the final stage, a prisoner, whilst still obliged to earn his daily tally of marks, should be given a proprietary interest in his own labour and be subject to a less rigorous discipline in order to prepare him for release into society.

In 1839, the British Government offered Maconochie, who was still residing in Hobart, the position of Superintendent of Norfolk Island. The plan was that newly transported convicts should go direct to Norfolk Island and that Maconochie should try out his system on this material. Norfolk Island was quite unsuitable for the experiment, and Maconochie said so, but, there being no alternative, he accepted the appointment.

It was intended by the British authorities that only the newly transported prisoners, about 700 in number, should be on the Island, but there were already there over 900 doubly and trebly convicted prisoners who were regarded as the dregs of the convict system, irreconcilable and irreclaimable⁹. They were men transported from England who, after completing their term of punishment in Australia, had been convicted again, and they had been sent to Norfolk Island because it was a place of terror, *un enfer sur terre*, as it was called by one of the Canadian political prisoners of 1838, whose unhappy fate it was to be transported there. It was the presence of these outcasts, however, that gave his work on Norfolk Island especial significance in the science of penology.

⁹ It is difficult to ascertain precisely the number of convicts under Maconochie at Norfolk Island. He said he had "2,000 men cooped up in a nutshell. Two thirds were the refuse of both penal colonies", i.e. doubly convicted felons from New South Wales and Tasmania. In March, 1843, he had 593 newly transported convicts, and 876 doubly convicted men, but a number had been discharged between his arrival in 1840 and Gipps' visit in 1843, when these figures were ascertained by Gipps.

V

Bishop Ullathorne¹⁰, who had extensive experience of the convict system, observed, "The brief writings of Captain Maconochie abound in the best maxims for men who have to deal with prisoners, and an admirable little manual might be drawn up from them." This is as true now as it was when it was uttered in 1866. Maconochie's memoranda, written after his appointment, but before he took up his duties, and his reports during the four years he was in charge of Norfolk Island, contain ideas and suggestions, as well as full descriptions of his methods, which should be of considerable interest to penal administrators at this day. At a time when the official view of penal discipline was that it should terrify by its harshness, he conceived the notion that music and literature and improved education were useful adjuncts in a prison, and what is more remarkable, he put his ideas into effect.

Just how his system was applied in Norfolk Island is well described in a work published in the year after his death¹¹.

"The mark system rests on four chief principles. Instead of a time-sentence it inflicts a labour-sentence, thus setting the convicts to earn back their freedom by the sweat of their brows; it teaches self-denial, by enabling them to purchase a speedier termination to their slavery by the social qualities, and makes the prisoners themselves coadjutors in the preservation of discipline, by giving them an interest in each other's good behaviour; and lastly, it prepares them for restoration to society, by gradually relaxing the restraints on their conduct and training their powers of self-governance. To carry out his principles, Captain Maconochie treated the convict as a labourer, with marks for wages, and required him to earn a certain number as the condition of his discharge. These marks had an alternative value; they could either purchase extra food, or the deduction of so many days from the sentence. He fixed on ten marks as a fair day's wages, the men being paid by piece-work, and not by time; and for every ten marks he saved, the convict shortened his term by a day. At the stores he purchased daily his necessary supplies, paying for them in marks. The rations were served out at three rates; the coarsest and cheapest cost three, the next four, the best five marks per diem. The abstemious felon might thus save seven marks, and even the self-indulgent five, each day, for the purchase of his liberty; and as extra marks were allowed for over-work and hard work, it was possible to hoard at the rate of eight or ten a-day. The marks, too, furnished the means of disciplinary punishment, a proportionate fine being the penalty for every act of misconduct. And while, by this machinery of marks, Captain Maconochie trained his convicts to self-denial and industry, he secured his other objects by different means. He divided the convicts' sentences into three periods. During the first—the penal stage, the men worked under sharp, stringent discipline. At the conclusion of this, they were allowed to form themselves into companies of six each (being left to themselves to choose their own companions), and they then entered the social stage; in this,

¹⁰ ULLATHORNE, WILLIAM BERNARD (1806–1889), BENEDICTINE, Vicar General of New South Wales, 1832–1840; R. C. BISHOP, and later Archbishop of Birmingham; author of many works, including *THE HORRORS OF TRANSPORTATION BRIEFLY UNFOLDED*; supported the abolition of transportation.

¹¹ REV. W. L. CLAY, *THE PRISON CHAPLAIN* (London, 1861) pp. 247–8.

the six had a common fund of marks, into which the daily earnings of each were paid, and from which the food and fines of each were deducted. They were thus made responsible for each other's conduct, and moreover, by this means, Captain Maconochie, who well knew the intense selfishness of criminals, hoped to implant kindly and social feelings. In the last, the "individualised" stage, the parties were broken up, and though every man was still kept to penal labour to earn his tale of marks, he was in other respects free. He had his own hut and garden, and, if he wished, he might have a piggery and poultry yard; for the Captain by giving the probationer property and rights of his own, hoped to teach him respect for those of other people."

Norfolk Island is the largest of a group of islands about 900 miles east north east of Sydney. It is not quite five miles long, with a median breadth of two and one half miles, and is in area about 9,000 acres. It is a natural paradise, but for almost 70 years, except during Maconochie's regime, and a period of disuse from 1813 to 1826, it was defiled by the most appalling brutalities.

These were perpetrated under the guise of penal discipline. The gallows stood permanently ready as a visible reminder to unhappy wretches of the fate that might soon be theirs; for years at a time men worked and ate and slept in irons; the lash and the cat-o'-nine tails were in habitual use, and the gag, solitary confinement and the pepper mill were constantly employed as punishments calculated to subjugate creatures made sub-human by deliberate policy. Any manifestation of resentment was classed as insolence, as was the contradiction by a prisoner of the evidence of an official. Subservience, the despot's substitute for respect, was insisted upon, and even the private soldier was entitled to require the outward marks of servility from the convicts. When Dr. Ullathorne, a Catholic priest, went to the Island in 1834, to bring the consolations of religion to men sentenced to death for their part in a rising against the authorities, the men who were reprieved wept with sorrow that they had to go on living, and those doomed to die fell on their knees and thanked God for the release that was to be theirs.¹²

When Maconochie arrived there on 6th March, 1840, the prison buildings were inadequate and overcrowded. Sir George Gipps was the Governor of New South Wales, and Maconochie was subject to his control. Gipps considered that the newly arrived convicts should be kept separate from the "Old Hands", as the doubly convicted prisoners were called, and when Maconochie, because of the practical impossibility of doing anything else, allowed them to mingle, so that all were subject to the same system, he was sternly rebuked. This rebuke was given wide publicity in the colonies, and did much to injure his authority and to expose him to ridicule. Furthermore, the stories of his methods, which contrasted fantastically with the brutalities with which the colonists were familiar, were widely circulated to make him an object of derision. New South Wales had determined to be no longer a dumping place for overseas criminals, and transportation to that colony ended in 1840, though it continued to Tasmania until 1853, and to Western Australia until 1868. "Bush-rangers", as criminals turned highwaymen were known, had terrified the free settlers, and local opposition to the release to the mainland of convicts from Norfolk Island was so strong that it is doubtful if Gipps could, as a matter of practical politics, have

¹² AUTOBIOGRAPHY OF ARCHBISHOP ULLATHORNE (1891), p. 100.

honoured Maconochie's proposal that "Old Hands" who had earned their tally of marks should be released.

Be that as it may, Maconochie was never given the free hand the full authority which he understood would be his when he accepted the appointment, and his four years were marked by disappointment and frustration arising from official indifference and hostility.

Nevertheless, under his rule, the dreaded penal settlement lost its brutalizing characteristics, and took on an appearance not dissimilar from a modern open institution. He dismantled the gallows and removed the protective bars from his own house. He weeded out the abandoned characters—the undeterrables and those incapable of reformation—and allowed working gangs of sawyers, woodcutters and similar parties to camp out at the site of their labours. He abolished the obligation to cringe before officials, bidding prisoners, in his own phrase, "to stand up like men, whomsoever they addressed". He held his court in public, frequently acquitting, and he refused to accept anonymous denunciations as a basis for conviction and punishment. He checked petty tyrannies by inferior officers. He built two churches for the men and read the lesson at divine service himself. He established schools and encouraged reading sessions and distributed prizes. The lash and irons were little used. He walked unarmed among the convicts with his family. He permitted prisoners to use knives and forks—previously they ate their food with their fingers—and to have their own cooking utensils. He allowed first class prisoners to wear garments other than convict clothing, and he established a band with instruments and music which cost the authorities £103.15.0, a not inconsiderable sum in those days. Plots were allotted to parties of men upon the mutual association principle, and each party was permitted to keep portion of the produce that it raised, either for the men's own use, or for sale at fixed prices to the commissariat. Far in advance of his time, he allowed the men to grow and use tobacco, not, as he said, "to encourage its consumption, but to legalize an indulgence which it is impossible to prevent". In honour of the young Queen's birthday, on May 25th, 1840, he allowed his charges a holiday and they were permitted without restraint to attend various amusements—a dinner at which they were given a small quantity of rum and lemonade, to drink the Queen's health, sports at which they engaged in their national games, and theatrical performances in which the characters were played by the convicts. The day was unmarred by any abuse of liberty, but when an account of it reached Sydney, and later London, authority, long accustomed to connect the notion of crime and punishment with guilt and misery, was so violently shocked that the decision to recall him waited only on the choice of a successor.

It has been the custom to present Maconochie's period on Norfolk Island as one in which mutiny and murder prevailed because of the fatuities of a visionary idealist. This presentation has no foundation in fact; order was maintained throughout his period of command, and when Governor Gipps visited the island unexpectedly in March 1843, he found "good order everywhere to prevail, and the demeanour of prisoners to be respectful and quiet", and the stories he had heard of increased crime on the island "exaggerated and over-coloured"¹³. It is true that some convicts tried

¹³ Despatch, 1 April, 1843, Gipps to Lord Stanley.

to seize the brig, the Governor Phillip, in June 1842, and a soldier was drowned whilst swimming ashore. Five convicts were killed in the unsuccessful attempt and four of the survivors were later tried in Sydney and executed for their part in this affair, but there was no official suggestion that Maconochie was to blame, and no ground for thinking so.

Maconochie himself claimed that he "maintained perfect order and tranquillity"; that he found the Island "a turbulent, brutal hell, and left it a peaceful well ordered community," and all the evidence shows his claim to be completely true.

But the constant calumnies, and the hostility of officialdom to ideas that were in direct contradiction of assumptions it accepted as unquestionable, finally led to his recall in February 1844. He was replaced by Major Childs, an incompetent who sought to carry out instructions to restore the previous evil methods in place of Maconochie's reforms. This led, on 1st July 1846, to a revolt by some of the convicts, and four of the penal staff were murdered. After a mockery of a trial, twelve prisoners were hanged in two batches on the one day in the presence of the other convicts, drawn up to observe the spectacle, and under a new Commandant, John Price. Norfolk Island became again a place of terror and brutality as dreadful as in its worst days. It was finally abandoned as a penal colony in 1856.

Today, it is an aphorism of penology that men are sent to prison, not to be punished, but as a punishment. Maconochie anticipated this approach. In a pamphlet, "On Reformatory Discipline," published in 1851, he wrote, "It may be said that I . . . overlooked, or even sacrificed the great object—that of punishment—for which the prisoners were sent on the Island but, as I still conceive, not so. I carried into effect the full letter and spirit of the law, and merely did not indulge in excesses beyond it. Every man's sentence was to imprisonment and hard labour; the Island was his prison; and each was required to do his full daily government task before bestowing his time on either his garden or education. What I really did spare was the unnecessary humiliation which it is the fashion to impose on prisoners besides, and which I believe does more moral injury than all other incidents of ordinary prison life put together. It crushes the weak, unnecessarily irritates the strong, indisposes all to submission and reform, and is, in truth, neither intended by 'the law' nor consistent with the professions made by law-givers when framing it."

The testimony of the Bishop Ullathorne and of Bishop Willson, and of other witnesses, is specific that Maconochie succeeded beyond all reasonable expectations during his command of Norfolk Island. During that period, and at the time of his departure, about 1450 prisoners were discharged, and the percentage of reconvictions was less than three per centum. Of 920 "old hands", supposedly irreclaimables, only 20 were known to be reconvicted. It was a proud boast, as well as evidence of sound reformation, for a former convict to be able to say he was "one of Captain Maconochie's men".

VI

Maconochie returned to England in 1844 determined to campaign for penal reform. He became associated in that cause with a very remarkable man, Matthew Davenport Hill, Q.C., who was the Recorder of Birmingham, and a highly successful and

able barrister. Hill devoted himself to humanitarian labours throughout his life; he was the founder of probation in England. Maconochie wrote a number of pamphlets, among them a valuable essay called "Crime and Punishment," and was indefatigable in his efforts for reform.

In 1849, largely through the efforts of M. D. Hill, he was appointed Governor of the new Birmingham Borough Prison. He was never allowed a proper legal basis to enable him to put his system into effect, however, and in October 1851 he was dismissed from his position by the visiting justices, in whom control of the prison was vested, because of their opposition to what was said to be the leniency of his methods, although other unsupportable reasons were given for their action. He was succeeded by the Deputy Governor, an ex-naval officer named Austin. Austin's discipline was based on cruelty and terror, and after three young inmates had taken their own lives, public indignation forced the appointment of a Royal Commission to enquire into the management of the prison. The shocking disclosures at that enquiry are told in Charles Reade's novel, "It's Never Too Late to Mend." Austin resigned, but the findings of the Commission led to his being charged with assault on one of the prisoners who had committed suicide, and he was sentenced to three months' imprisonment.

Maconochie's good faith and humanitarian purposes were conceded by the Commissioners, but they found that although he was guiltless of the cruelties which occurred under Austin's governorship, he had used methods not sanctioned by law for the purpose of disciplining some intractable inmates. Maconochie claimed in his pamphlets that his system had been successful, and his figures go far to substantiate this, and M. D. Hill and prominent citizens of Birmingham made him a public presentation as a mark of their confidence. But the criticism of the Commissioners seems just, that Maconochie "was led in the pursuit of his objects (of promoting the reformation of the prisoners and the well being of society) to sanction the infliction of punishments which were not warranted by the law, and the employment of which was the more to be regretted, inasmuch as such a course is apt to lead to the use, in the hands of persons not restrained by the same benevolent feelings, of practices equally illegal and more objectionable, from their greater frequency and their general severity."

Maconochie's health failed him after his dismissal, and he was never employed again in penal work. But he continued in his labours for reform by his pamphlets, by giving evidence before committees of enquiry and, by participating in the work of voluntary bodies with similar aims. These activities were extensive, for we tend now to forget how vigorous was the movement for penal reform, both in England and U.S.A., during the 19th century, as we do also the quality and disinterestedness of the persons associated with it.

Maconochie's final years were clouded by sorrow. His eldest daughter died in 1855, and in the previous year his youngest son sustained fatal wounds in the charge of the Heavy Brigade at Balaclava. Illness reduced him to a shadow of his former self, and on the 25th October, 1860, he died at Morden, Surrey, being then aged 73.

VII

As has been mentioned, one of Maconochie's disciples was Walter Crofton, who became Chairman of the Board of Directors of the Irish Prisons. Crofton and his colleagues, avowedly under the inspiration of Maconochie's ideas, attracted world attention for the excellence of their system. It rested on the following principles:—

1) Reward—by making all advantages, including ultimate release, dependent on industry and good conduct, as shown by a record kept from day to day;

2) Individual influence—exercised by the governor, school master, and chaplain, in prisons in which the inmates were not allowed to exceed a number which could be personally known to the governor and his assistants. These numbers were about 300 in ordinary prisons, and 100 in intermediate prisons;

3) Gradual approximation to freedom—in every successive stage of discipline the prisoner was less and less under restraint until in the last stage—the intermediate prison—he was half at liberty.

4) Strict supervision after discharge—and certain revocation of ticket of leave on any appearance of a relapse.

So long as this system was under the control of devoted men its success was remarkable, and it influenced penal administration for good throughout the world.

But the Irish experiment apart, it is doubtful whether until recently the reformatory system has been given a fair trial. Legislatures have rarely been generous with funds, public opinion has been usually indifferent and often hostile, and what is of greater importance, men truly dedicated to the difficult and discouraging task of reforming unpromising human material are not in generous supply. Every correctional institution is in the final analysis a reflection of its Warden or Superintendent, for the tone of an institution and the attitude of its staff will depend in large measure upon the extent of his dedication to his work. Maconochie perceived this truth; "a good system in a bad gaol", he observed, "is as much better than a bad system in a good gaol, as a good commanding officer is better for the discipline of a regiment than a good barrack".

The range of Maconochie's proposals is remarkable. He advocated prison farms; schools, and especially industrial schools, for children; segregation of different classes of offenders and a proper system of classification; and the limitation of the use of the bastille-type prison with its masonry, bolts, locks and bars to essential custodial purposes, and the use of "less and less secure but more and more cheerful quarters". The science of finger printing had not been discovered in his day, but he was conscious of the need to identify recidivists, and proposed that each convicted person should receive "a small private brand (as between the toes or elsewhere) which shall be invisible, but yet identify cases of second conviction in any part of the world". Prison work, he thought, required something of the missionary spirit, and he urged that prison staff should be properly trained, employed on a civil service basis, and imbued with the realisation that it was their vocation to reform their charges. Giving evidence before the Committee of 1856, he said that whilst society could not then do without the protection of capital punishment, he considered that it would not be able long to retain it, and he suggested instead a sentence of civil death. After very adequate experience, for he had on occasions resorted to the lash, he thought that

"it was only rarely that corporal punishment operated beneficially", and that the power of inflicting it hardened and corrupted those to whom it was entrusted. Solitary confinement was not a proper disciplinary measure, for "it is vain to talk of ignorant, inert and corrupt minds profiting by their own unassisted reflections". Stripes and all methods of degradation tending to destroy self-respect should be avoided; "there is no greater mistake in the whole compass of existing penal discipline (fertile as it is in such) than the studied imposition of degradation as a portion of punishment."

Maconochie recognised that the complete separation of the sexes inevitably involved undesirable consequences. He proposed that prisoners should be permitted to have their wives and families live with them on Norfolk Island, being debited in return for this indulgence with a large number of marks (2000) which they would have to earn before they would be entitled to release. The Governor, Sir George Gipps, observed drily that, "Women have never yet been sent to Norfolk Island, and the universal impression is that it would be highly dangerous to have them there (not less on account of the male convicts, than of the troops who guard them)."

The humane and resourceful qualities of his mind are well illustrated by the case of Charles Anderson, the man who had been chained to a rock in Sydney Harbour. Anderson as a youth had a good record of naval service, during which he received a severe head wound at the battle of Navarino. In the course of a street riot in a Devonshire sea-port, some shops were broken into, and Anderson, then aged 18, was convicted of participation and sentenced to seven years transportation. He was sent to Goat Island in Sydney Harbour, and because of ill-treatment he absconded. Recaptured, he received 100 lashes and, on being returned to Goat Island, another 100, and was ordered to wear irons for 12 months. During that 12 months he received in all 1,200 lashes for the most trivial offences, such as looking up from his work. He escaped again, and this time was sentenced to 200 lashes, to which 100 more lashes were later added by a sentence which directed as well that he be chained to a rock for two years. He was put in irons, and attached to the rock by a chain 21 feet long. A hollow in the rock served him for a bed, and at night a wooden lid, perforated with holes for air, was put over him and locked into position. His food was pushed into his eating vessel on a pole. Other prisoners were forbidden to speak or approach him under penalty of 100 lashes. His wounds became maggot-infested, but he was refused water which which to bathe them. He remained in this state for several weeks, when the Governor, Sir Richard Bourke, heard of his treatment, and had him released and sent to the lime works at Macquarie Harbour, one of the most dreaded places of punishment, where work involved carrying lime in baskets, on backs already lacerated by the "cat", through the sea for the purpose of loading it into vessels. He escaped again, but was recaptured, given 200 lashes, and returned to his gang. Goaded beyond endurance by the overseer, he killed him, and on conviction was sentenced to death. This sentence was commuted to imprisonment in chains for life, to be served at Norfolk Island.

Maconochie found him there when he became Superintendent, and despite his record for violence, which now included an additional ten convictions for violent assaults since his arrival on the Island, the new Superintendent sought to restore him to his senses. Anderson was then 24 years of age, although the years of brutality made

him appear a middle-aged, broken man. Maconochie put him in charge of some unruly bullocks and ordered that no one should interfere with him. This bold form of occupational therapy was successful, and Anderson and the bullocks grew tractable together. Maconochie next erected a signal station on the highest point in the Island, and put Anderson in charge of it. Anderson lived there, taking great pride in his garden and meticulously discharging his duties as look-out and signalman. When Sir George Gipps, on his visit to the Island in 1843, saw Anderson "tripping along in his trim sailor dress full of importance, with his telescope under his arm," he asked, "What smart little fellow may that be?", and to his astonishment was told "That is the man who was chained to the rock in Sydney Harbour". Ultimately, Anderson lost his reason completely, and died in a lunatic asylum in Sydney, but his devotion to Maconochie persisted to the end.

VIII

In the U. N. monograph, "The Indeterminate Sentence," Maconochie is said to have been the originator of the whole movement leading to the indeterminate sentence. This statement is unquestionably correct, but I am disposed to think that he would have been startled by some modern developments. He was a firm believer in the rights of the individual, and it is highly unlikely that he would have found himself in sympathy with the arbitrary powers entrusted to tribunals such as Adult and Youth Authorities and Parole Boards. It was of the essence of Maconochie's system that a prisoner should learn self-discipline, for he saw, rightly, that crime is usually the product of a surrender to self-regarding impulses in disregard of the social obligations that should have restrained the offender. The *prima facie* proof that he had learned self-mastery was the discharge of his debt to society by hard work and frugal living, undertaken for the purpose of regaining his liberty. But under his system it was fundamental that, within the limits of his status, a prisoner should be in control of his own destiny, and that his freedom should be attainable when he had satisfied a debt, expressed intelligibly to him in marks, by efforts which carried a fixed reward. Similarly, the system fixed in marks the penalties for indiscipline which were added to the original debt and had to be cancelled by his own efforts. One of his aims was to eliminate caprice or unfairness on the part of the authorities in the valuation of a prisoner's labour and behaviour and in the imposition of penalties; he had seen too many instances of the abuse of power in Van Diemen's Land. When he gave evidence before the English Select Committee in 1956, he said, "I do not object to (sentences for) minima of time. I think, on the contrary, that minima of time prevent abuse, and prevent a man getting off too easily, . . . but I would never adopt maxima of time. I am quite certain that maxima of time are excessively injurious." He then expounded his proposals in their final shape; he would no longer treat marks as wages as he had previously advocated; he would, instead, treat them as certificates of daily conduct, awarded in such fashion that caprice should not influence them. He contemplated that marks should be affixed daily by various gaol officials, acting separately, for various aspects of a prisoner's conduct and labour. In this way he considered that the dangers of abuse of discretion would be lessened.

Whether or not this proposal was practicable is immaterial; its significance is that

it shows clearly his desire to confine official discretion within narrow limits in assessing a prisoner's progress towards release. The greatest merit any system can have is to be nearly independent, for its operation, of the vagaries of the human beings who exercise power under it. Maconochie's emphasis was always upon the desirability of a prisoner's knowing where he stood, and what he had to do to gain his liberty. I do not think he would have cared for a system where the time of release depends, not upon a prisoner's own efforts, but on a tribunal's estimate of the significance of those efforts, and of various other considerations which may not be known or disclosed to him. Maconochie would probably have found himself in agreement with the view Sir Lionel Fox has expressed,¹⁴

"If the date of his release is entirely vague, and dependent on the decision of some Board or Committee which will be taken on grounds that are never likely to commend themselves to a disappointed prisoner even if he understand them, he will be in a state of constant unrest, always 'sweating on the next Board' instead of concentrating on the job in hand, and thrown into resentment whenever A is lucky and B is not, whether B be himself or one of his friends. This does not make for "a happy prison". Nor is it certain that either the prison staff or a Board—with or without the advice of psychiatrists—on the basis of past records and of behaviour in prison conditions, could make enough good guesses about the behaviour of prisoners after release to justify a system of selective discharge in the face of these disadvantages".

IX

It is impossible within the scope of this article to present an adequate picture of Maconochie, the penal scientist, the reformer, and the very gallant gentleman, but the judgment of some of his able contemporaries, who knew the man and the nobleness of his character, may be offered by way of conclusion.

At the presentation at Birmingham in 1851, after his dismissal from the governorship of the prison, Matthew Davenport Hill addressed him thus: "We feel that by your writings, and by the experiments which you have instituted, the science of prison discipline has been much advanced. . . . Years must probably elapse, and many trials must yet be made before a perfect system can be devised; but we feel that no future explorer will act wisely, who does not make himself acquainted with the charts you had laid down before he sails on his voyage of discovery".

"I believe", said Bishop Ullathorne, in 1866, "that the name of its (the Mark System's) inventor, Captain Maconochie, is destined to a future celebrity side by side with John Howard. . . . There stands the leading principle, destined after no long time to enter into all other systems of reformatory punishment".

And of the man himself, let the anonymous writer¹⁵ of his obituary speak:

"At the time when it was our privilege to become acquainted with Captain Maconochie—now several years ago—his hair was already snowy white, and his general appearance betokened premature old age, the consequence, doubtless, of hard service in tropical climates during his early years, and of the bitter disappointments of his later life, under which probably he must have succumbed, but for his singularly

¹⁴ Fox, *ENGLISH PRISON AND BORSTAL SYSTEMS*, p. 306.

¹⁵ In the *JOURNAL, FRIEND OF THE PEOPLE*, Nov. 17, 1860. Probably FLORENCE DAVENPORT HILL.

buoyant and sanguine disposition. In his demeanour were combined the frank cordiality of a sailor with the refinement and courtesy of high breeding and the nobler attributes of a sincere Christian. It was his genuineness of character, his entire forgetfulness of self, his gentleness of manner—the overflow of a loving heart which, combined with great mental powers and earnest piety, gave Captain Maconochie that marvelous ascendancy over the most abandoned of men which the narratives of his residence at Norfolk Island reveal. This wondrous influence is rarely granted, but when we recognise it in a Demetz, a Montesinos, a Howard, an Elizabeth Fry, a Sarah Martin, or a Maconochie, let us reverence it as one of the most precious gifts of the Almighty, and fitly honour those of His servants whom He has been pleased thus to endow.”

The centenary of Maconochie's death falls in 1960, and the occasion should not be allowed to pass unnoticed. It is far from easy to obtain the pamphlets in which he set out his philosophy and his proposals, and some of his most interesting contributions to penal science, the reports he made when Superintendent of Norfolk Island, are buried in the volumes of the English Parliamentary Papers, a series which is not readily available, outside the great libraries, to American and Continental scholars and students. A memorial of a kind that would have pleased Alexander Maconochie would be a volume reprinting the more important of his pamphlets, and some of his reports from Norfolk Island. Such a volume would serve a dual purpose; it would commemorate a pioneer of great significance in the development of penology, and it would make available to criminologists, for use in the solving of still intractable problems, the authentic record, not only of his worth as a penal administrator, but also of the humane wisdom that inspired and directed his labours.