

book is still divided into four main divisions, part one giving a general introduction, part two dealing with the history of the courts and the profession, part three covering the history of the common law, while part four deals with the history of equity. There are three appendices, one on the influence of civil and canon law in England, a second on the law of persons, a subject characteristically lacking in most recent treatises on legal history, and a third illustrating diagrammatically the growth of the Court System. Despite the new appendix and table of statutes and a much enlarged table of Year Book cases, the overall size has not been greatly increased.³ This has been achieved by reducing the size of the history of equity section, by deleting some speculation and by Dr. Kiralfy making his own contribution fairly concise.

The principal changes are these. The author has re-written several passages in the chapters on the forms of action and the history of tort. He has treated crime and tort separately, given an account of the history of the main crimes, a task that Potter did not undertake, and he has inserted a short new section on statute as a source of law. The passages concerning jury trial and the Year Books have been considerably rewritten. All of these changes are for the better, with the exception perhaps of the new section on statutes which is not very enlightening, due to an attempt to give too much detail in too small a compass.

Throughout, Dr. Kiralfy has shown a willingness, not so often found in the earlier editions of Potter, to express clearly stated opinions in an attempt to solve difficult problems.⁴ This is again, in the reviewer's opinion, a change for the better. Once a difficulty has been outlined a clear opinion is more likely to stimulate thought and discussion than cautious suggestion, and the added clarity which Dr. Kiralfy has given the book makes it more readable. This is a most important asset so far as Potter's *Historical Introduction* is concerned, since it is often the only legal history text that the unambitious first year student does try to read. And there is something to be said for his point of view, since the *Historical Introduction* still, under the editorship of Dr. Kiralfy, contains probably more material than any other single text-book on English legal history.

R. W. BENTHAM.*

Alexander Maconochie of Norfolk Island: A Study of a Pioneer in Penal Reform, by the Honourable Mr. Justice John Vincent Barry, of the Supreme Court of Victoria, with a Foreword by Professor Sheldon Glueck, Melbourne, Oxford University Press, 1958, xxi and 277 pp. (£2/10/0 in Australia.)

This book is much more varied than its modest title and sub-title suggest. It is not only a biography and narrative, but also a closely reasoned contribution to learning which will be of value to lawyers, historians, sociologists and philosophers. Even so, it is not a text-book and its lucid, readable style¹ will appeal equally to laymen and scholars. The learned author has used the remarkable life story of Alexander Maconochie, R.N., K.H., as the framework for a survey of prison methods and reforms—particularly those introduced in early colonial Australia.

The biographical background introduces the reader to a man who was able to combine the practical with the abstract, who was quite selfless and who devoted most of his life and the whole of his fortune to the cause of penal

³ The third edition contained 650 pp. of text and Index, as compared with 675 pp. in this, the fourth, edition.

⁴ See, e.g. at 305, 306, the deft way in which the author deals with the maze of conflicting opinions as to the importance of the Statute *In Consimili Casu*.

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¹ On the point of style, it is, in the reviewer's opinion, a welcome relief to find the logical spelling "judgement" preferred in a legal treatise.

reform. Maconochie had no heart for the law, which his father wished him to study, and he spent his early years at sea, eventually receiving his commission in the Royal Navy. His travels stimulated an enduring interest in geography and by 1830 he had become the first Secretary to the Royal Geographical Society; a few years later he was appointed first Professor of Geography at University College, London. By 1837 he had been promised a high administrative post (probably that of Treasurer) in Van Diemen's Land, on the faith of which he resolved to leave England with his family in the temporary rank of Secretary to his friend, Sir John Franklin, who had then been appointed Lieutenant-Governor to that Colony. Maconochie did not receive his promised position, but he had an early chance to survey for himself the treatment of convicts and to be revolted by the cruelty and misery which he discovered. He published a report condemning the system as "cruel, uncertain, prodigal;. . . . The severe coercive discipline . . . defeats . . . its own most important objects; instead of reforming it degrades humanity".² Maconochie began to publish pamphlets in justification of his report—which had been roundly criticized. By 1839 he announced that he would "go the whole hog" on the cause of penal reform, and shortly afterwards he welcomed the chance to prove his ideas, afforded by Governor Gipps' offer that he become superintendent of the Norfolk Island prison. He was allowed to use his own methods, subject to the qualification that doubly convicted men already on the Island (the "old hands") must remain under standard discipline, but he could try his system on "new hands" arriving at the settlement while he was in charge. As the author points out, the test was hardly a fair one, and Maconochie himself complained that the isolation of the Island would defeat his object of rehabilitating prisoners for life in society.

Mr. Justice Barry explains that Maconochie had self-assurance to the extent of being rash: that he was so convinced of the strength of his cause, he would modify or ignore express instructions from higher authorities if they stood in the way of his own plans. His actions, if reasonable, were so hasty that they jeopardized success. This was demonstrated shortly after his arrival at Norfolk Island when he celebrated the occasion of Queen Victoria's birthday by proclaiming a holiday (even for "old hands"), treating the prisoners to a dinner, a play and a fireworks display and giving them the liberty of the Island. The incident, though harmless, was reported to the Governor and when, with the addition of uninformed rumour, it was made public, "the reaction varied from shocked astonishment to vigorous disapproval, and from derisive mirth to hostile indignation".³ Lord John Russell was prompted to suggest Maconochie's removal.

The methods of prison management which Maconochie used must have seemed eccentric in his time. Where, by ordinary contemporary standards, convicts were treated like beasts, Maconochie abandoned all tortures and used the lash and fetters only for the most incorrigible. He set out to restore decency and civilized life among his charges. He encouraged them to work, to improve their positions by self-help, for instance by making and keeping gardens: he stimulated religion and saw to the building of churches: he started adult schools and had "much confidence in the softening influence of music".⁴ In these things he was strongly opposed by a group of ruffians amongst the convicts called "the ring". They were of the most depraved class and had tremendous influence through fear over their fellows. One of the penalties suffered by Maconochie in breaking up "the ring" was that its members organized a vindictive propaganda campaign which stimulated official hostility to him. In truth, the

² Quoted at 47.

³ At 105.

⁴ So much so that "impulsively he had bought 'the entire stock of Mr. Ellard, music-seller, now leaving the colony for England'" to take to the Island (83). See 114.

Island's administration ran very well and his reforms were vindicated. His particular contribution—to which the author gives close attention—was the "Mark System of Prison Discipline" which contemplated task, not time, sentences for prisoners. By performing his allotted labours, the prisoner would earn a daily tally of "marks of commendation". From this tally a deduction would be made for food, shelter and clothing, but this could be offset by frugal living. Offences against discipline were punished by loss of marks, not by physical violence. Over a period, the prisoner could earn sufficient marks (probably five or six thousand) to win his freedom. The fundamental principle was "nothing for nothing; everything must be earned".⁵

Meanwhile unfavourable reports had continued to flow into New South Wales and public prejudice against Maconochie became so great that Governor Gipps decided to examine the position for himself. Unheralded, he sailed to the Island in 1843 and was surprised to find that good order prevailed there. After a minute investigation Gipps was convinced that the disparaging allegations were false and that Maconochie's experiment was a success. "I should regret to see the experience wholly thrown away which Captain Maconochie has, during the last three years, gained in the management of prisoners".⁶ This recognition came too late. The British Government was concerned at reports of the indulgences at Norfolk Island which threatened to weaken the value of transportation as a deterrent. The decision had been made to remove Maconochie and instructions for his recall had already left England before Gipps began his tour of inspection.

Reviewing the evidence which he has collated, the author is able to confirm Maconochie's own assertion that he "found the island a turbulent, brutal hell, and left it a peaceful, well-ordered community".⁷ It is remarkable that most earlier writing (including academic research) condemned Maconochie through uncritical acceptance of contemporary bias against him. Mr. Justice Barry has assiduously avoided falling into the same error and has done great service, not only to Australian history but to the whole history of penal reform, by separating fact from prejudiced opinion. His conclusions are verified by detailed notation and references to sources. It may be a matter of passing regret for the specialist that more documentation of original materials was not possible in the book: though the present liberal footnotes could hardly have been extended without spoiling and overburdening the appearance of the text.⁸

In the closing chapters, Mr. Justice Barry traces the later life of Maconochie, which was devoted to the publication of many papers and pamphlets on penal reform. For one period, Maconochie was Governor of Birmingham Prison where again he was attacked by enemies—who seemed constantly to assail him—and eventually dismissed. As the author observes—"the Machonochie story is at once fascinating, saddening and instructive . . . in life he was the object of hostility and vilification, and in death he has been the victim of grave misrepresentation".⁹

The more significant research, for the Australian reader, is that touching Norfolk Island. Secondary literature on Australian history is sparse and the problems confronting writers in the field are very great because of the amount of source material to be studied (usually with little catalogue assistance) and because of the risk of making mistakes. The thoroughness of the present book is admirable. There is very little inaccuracy—the only one of a few trivial flaws worth noting is the reiteration of a popular fallacy that Count Strzelecki was the first discoverer of gold in Australia.¹⁰ At the same time, this volume

⁵ At 75.

⁷ Quoted at 167.

⁸ Some important papers are published at length in the appendix to the book, 243-261.

⁹ At 2, 3.

¹⁰ At 81. The first recorded discovery of gold in Australia was that of Mr. Surveyor McBrien who in 1823 "found numerous particles of gold in the sand in the hills convenient

⁶ Quoted at 143.

contributes much-needed knowledge to Australian penal and criminal science. Maconochie's theories and methods set the foundations of many enlightened prison systems of modern times: he inspired the ideas of appealing to the inherent good in convicts, of encouraging them to help themselves and to accept responsibilities, and of using progressive stages in restoring prisoners to society. His work summarized the humanitarian concept of prisons as moral hospitals for the treatment, cure and release of their inmates.

In Australia penal science and local legal history have been sadly neglected as subjects of serious study. The publication of *Alexander Maconochie* will help to remedy this neglect and to stimulate wider knowledge and interest. It is fortunate that Mr. Justice Barry has been able, in addition to the burdens of his office, to give us this valuable chapter in our country's past, and a chapter no less significant in the long and arduous story of penal practice and penal reform throughout the world.

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The Results of Probation: A Report of the Cambridge Department of Criminal Science. Edited by L. Radzinowicz, LL.D. London, Macmillan & Co. Ltd., 1958. xiv and 112 pp. (£1/14/9 in Australia.)

This is the tenth volume in the English Studies in Criminal Science series published by the Cambridge Department of Criminal Science. Among its important predecessors in this series are *Crime & Abnormality*, *The Modern Approach to Criminal Law*, *Mens Rea in Statutory Offences*, *The After-Conduct of Discharged Offenders* and *An Introduction to the Criminal Law in Australia*, all of which, in their various ways, are important contributions to criminological knowledge. The same cannot, in this reviewer's opinion, be said of *The Results of Probation*. It is incomplete. It is no more than a survey and, as such, is of only slight value in the urgent task of developing knowledge of the efficacy of various methods of treating criminals. It is the report of the first steps, the preliminary ground clearing in a research project, and is not a report of a completed project.

From *The Results of Probation* one learns the results, in terms of later avoidance of convictions and in terms of later avoidance of reappearance in court during the currency of the probation order, of a substantial group of offenders placed on probation. These success (or failure) rates are broken down by age, sex, type of offence, previous criminal record, conditions and duration of probation, and in other ways, until a survey of a considerable group of offenders so treated is achieved. All this is interesting but, in itself, not helpful. It does not assist a court contemplating placing a particular offender on probation (and considering the conditions of such an order) to determine the wisdom of such a sentence (or the conditions to be imposed). It does not help to build up knowledge of how and for whom probation is an effective treatment. It is the basis upon which the answer to such questions can begin to be searched out, and searched out by techniques more methodologically sophisticated than are here deployed.

There can be little doubt of the value of probation as a technique of treating certain offenders—but which? If we learn that of 100 offenders sent to prison for a first offence, 50 later reappear in court, while of 100 offenders put on probation for a first offence, only 20 later reappear in court, can we conclude that probation is to be preferred to prison for first offenders? Of course not. We are comparing diverse treatments for unmatched groups; such

to" the Fish River near Bathurst. See reproduction of McBrien's field book and commentary in E. F. Pittman, *The Mineral Resources of New South Wales* 1. (N.S.W. Govt. Printer, 1901). The discovery by Count Strzelecki in 1839 was of auriferous pyrites in the Vale of Clwydd.

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