

## MACONOCHIE'S GENTLEMEN: THE STORY OF NORFOLK ISLAND AND THE ROOTS OF MODERN PRISON REFORM \*

SARAH FULTON†

Sometimes truth is seen from the corner of the eye; sometimes it is captured by considering current problems in a different historical and cultural setting.<sup>1</sup>

In *Maconochie's Gentlemen: The Story of Norfolk Island and the Roots of Modern Prison Reform* Norval Morris employs an engaging blend of fact and fiction to reveal the truths, as he sees them, of the relationship between prisons, prisoners and society. Part novel, part polemic, through the lessons taught and learnt by early prison reformer Alexander Maconochie, Professor Morris makes a powerful argument for a penal system fundamentally shaped by concern for the humanity of prisoners. Such concern, Professor Morris argues, is far removed from the excessive, counterproductive, costly and often cruel use of incarceration practiced across the world today. 'Maconochie wouldn't stand for it', he declares, 'and neither should we'.

New Zealand-born and Australian-trained Professor Morris is eminently qualified to undertake such a task. Formerly Dean of the University of Chicago Law School and currently Julius Kreeger Professor of Law and Criminology, Emeritus, Professor Morris has been heavily involved in prisons and prison reform since he was the first researcher given access to English convict prisons in 1948. He has been engaged in numerous government policy roles in the United States and has published several books on the subject including *The Oxford History of the Prison*.<sup>2</sup> While putting him in an excellent position to examine the issues surrounding prison reform it also drives him to ask the 'troublesome question' underlying any such discussion: 'Why should anyone of reasonable ability see the conditions of prison life as meriting serious and sustained concern?'. By humanising his arguments through the use of historical fiction Professor Morris finds an effective vehicle within which to deliver the answer.

Captain Alexander Maconochie provides an intriguing figure for the fictionalised story (though a story closely based on historical fact) which forms the first part of this book. Founder of the National Geographic Society and well-respected retired naval captain, Maconochie becomes obsessed by prison reform and seeks out the unpopular post of Governor of Norfolk Island — a 'brutal, hellish settlement' where those regarded as incorrigible, the worst of the worst, are sent to be punished.

With him he drags his wife and six children 1,000 miles across the sea to this speck of land in the Pacific, there to remain for four years while he tries to 'take the most brutal convict settlement in the young Queen's domain and turn it into what he called a "moral hospital"'.<sup>3</sup> A prisoner of war himself for two years, Maconochie is convinced that 'the criminal in the dock and the judge on the bench were similar mixtures of good and evil, and that on Norfolk Island he would be able to prove that a rational system of convict administration would demonstrate that truth and the redeemability of all but a few convicts.'<sup>4</sup> To most of his contemporaries such notions mark him out as a sentimental fool.

\* By Norval Morris, Oxford University Press, New York, 2002, 1–213 pp.

† BA (International Relations), LLB Student, T.C. Beirne School of Law.

<sup>1</sup> Norval Morris, *Maconochie's Gentlemen: The Story of Norfolk Island and the Roots of Modern Prison Reform* (2002) ix.

<sup>2</sup> *The Oxford History of The Prison* (1995) (editor, with David Rothman). Other books include *The Honest Politician's Guide to Crime Control* (1969) (with Gordon Hawkins); *The Future of Imprisonment* (1974); *Madness and the Criminal Law* (1982); *Between Prison and Probation* (1990) (with Michael Tonry); and *The Brothel Boy and Other Parables of the Law* (1992).

<sup>3</sup> Morris, above n 1, 14.

<sup>4</sup> *Ibid* 19.

The story is told through a series of diary entries written by Maconochie, his bright and willful daughter Mary Ann, and Patrick Burke, an Irish convict sent to Norfolk Island for sedition. From the beginning it is obvious that Maconochie is 'of a different stamp from others who ran prisons',<sup>5</sup> spending much of the voyage to the settlement mingling among the convicts and learning their stories. Upon arrival he sets about transforming the prison — improving living conditions and ordering a stop to the excessive use of physical punishment, ending chain gangs altogether and providing books and musical instruments to those convicts who are able, and willing, to use them.

This provides the environment within which Maconochie can put into practice his theory of a Marks System of Convict Discipline (according to his daughter Mary Ann 'he always wrote it thus, as if it demanded to be capitalised'),<sup>6</sup> a system through which, to the mockery of many, Maconochie proclaims that the prisoner is to hold the key to his own cell. Such a system allowed prisoners to earn marks for diligence and good behaviour, leading to less severe stages of punishment and possible early release — turning, in Maconochie's mind, current imprisonment practices 'from a brutal and useless severity into a forceful engine to achieve social conformity'.<sup>7</sup>

But Maconochie has much in his way — overcrowding, disinterested prison guards, gangs, bad press, a colonial administration which does not allow for full implementation of his system, and a growing relationship between his daughter and one of his convicts which challenges the very basis of his theory — a commitment to the likely worth of all individuals, convicts included. After four years of effort, he is forced to ask himself whether his Marks System is really up to the task after all, or whether in fact 'one had to have a bee in one's bonnet about some penal theory before one would willingly and humanely fulfill a quite ordinary administrative role'.<sup>8</sup> Was it really simply a matter of choosing between 'a system of revenge, hiding behind the cloak of deterrence, and a system which allowed room for redemption' — to his mind 'a choice between brutality and decency'?<sup>9</sup>

Professor Morris' account of Maconochie's story works quite well, but as a novel in its own right it lacks character depth and development, and the emotional intensity necessary to draw this reader in. It reads, it seems sometimes, as too much of a 'lesson'. It is through the second part of his book, however, that Professor Morris makes the force of the story immediately apparent, and creates a nexus between our brutal convict history and modern prison conditions. His examination of the issues of modern penology through the lens of Maconochie's story is rationally and eloquently stated, and obviously based in a profound commitment to the dignity of the human person. Professor Morris' book, as a whole, delivers the impact that might otherwise be lacking from the didactic novella.

Professor Morris sets out a case for a prison system which does, indeed, allow room for redemption, rather than a vengeance-based system, posing as effective deterrence, which, in Maconochie's words, 'demeans society, makes torturers of prison guards, and lessens public safety'.<sup>10</sup> Prison conditions matter, because the criminal justice system exercises the greatest power that a state can use against its citizens, and because we are alike and subject to the same weaknesses. 'So when devising prison conditions', Professor Morris states, 'you should devise them for yourself'.<sup>11</sup> 'But that doesn't mean that that you should be self-indulgent'.<sup>12</sup>

<sup>5</sup> Ibid 22.

<sup>6</sup> Ibid 15.

<sup>7</sup> Ibid 20.

<sup>8</sup> Ibid 151.

<sup>9</sup> Ibid 156.

<sup>10</sup> Ibid 156.

<sup>11</sup> Ibid 175.

<sup>12</sup> Ibid.

Professor Morris bases his argument on the assumption that both deterrence and rehabilitation are myths, but that some people can change for the better in prison if given the opportunity and that others should not be made worse by the experience. He examines issues of sentencing, aftercare of prisoners, punishment of mentally ill prisoners and the 'deep end of the prison system' in the United States — supermax prisons where the 'worst of the worst' are sent — to conclude that current practices are far removed from the concern for the humanity of prisoners that transformed Norfolk Island in Maconochie's time from a 'turbulent, brutal hell' to a 'peaceful, well-ordered community'.<sup>13</sup> Current practices, based on misplaced ideas of deterrence and incapacitation and widespread acceptance of the notion that nothing works to reform prisoners, are out of tune with fiscal probity, justice, social utility and fundamental human rights.

While the focus of this discussion is on the situation in the United States, Professor Morris' observations do have relevance in an Australian context. We have experimented with the idea of 'supermax' prisons,<sup>14</sup> and his stark description of the severe sensory deprivation and resultant psychological disintegration engendered by such facilities serves as a strong warning against any moves contemplated back in that direction. The recent establishment of the Goulburn High Risk Management Unit, commonly billed as a 'supermax' facility, indicates that while we may have learned from some of our mistakes, the ideas behind them have not been abandoned.

Professor Morris' discussion of sentencing practices also has immediate relevance in Australia, particularly following recent debates on mandatory sentencing and the constant media attention paid to 'inadequate' sentences. He argues that both Maconochie's Marks System and systems of fixed sentences are flawed and that judges are the best qualified and best politically protected members of society to define the upper limit within which a person should be confined in jail. This upper limit should then be subject to good time that vests in proportion to each year spent in detention. Professor Morris' focus on the punishment of mentally ill prisoners and discussion of the vital importance of after-care facilities are also of universal applicability, and provide interesting insights for policy monitoring and development.

It is, however, in Professor Morris' case for a prison system shaped not by a desire for vengeance, but rather by a belief in humanity, and the dignity that this brings to a community as a whole, that his book delivers the greatest, and most universal, impact. This is not a book which provides the reader with all the facts and figures necessary to go out and prove their case with respect to prison conditions and reform. But that is not what it is meant to be.

<sup>13</sup> Ibid 159.

<sup>14</sup> The Katingal Special Security Unit in New South Wales, opened in 1975, was such a facility. It was ordered closed by the Nagle Royal Commission in 1978 because its cost was 'too high in human terms'.