# *Review*

## Norval Morris (2002) *Maconochie's Gentlemen: The Story of Norfolk Island and the Roots of Modern Prison Reform*, Oxford University Press, Oxford

---

This review is being written in the shadow of Norval Morris's death, at the age of 80, on 21 February 2004. I have the misfortune never to have met him, but like so many students of criminal law, criminal justice and penology have been influenced by his spirited arguments for criminal justice and penal reform since his well known joint work with Gordon Hawkins, *The Honest Politicians Guide to Crime Control* (1970). The two friends, co-authors and leading penal reformers both, were united in death with Gordon dying just eight days later, at the age of 84.

*Maconochie's Gentlemen* continues Norval Morris's interest in penal reform by telling the story of Captain Alexander Maconochie's four year period as Governor of the secondary punishment penal establishment at Norfolk Island between 1840 and 1844. Maconochie's term as a reformist and humane governor and his attempt to introduce his 'marks' system of rewards for good behaviour is reasonably well known, in part through John Barry's *Captain Maconochie of Norfolk Island* (1958), which Morris relies on as a 'primary bibliographic guide' (p xi). As Morris notes, those who visit Norfolk Island as tourists learn little of the 1840-1844 period, Maconochie being characterised in tourist literature as 'a bleeding heart sentimentalist who let the convicts get out of control' (p 69).

But what is different about this book is that the bulk of it is a fictional, or perhaps more aptly a 'fictionalised' narrative account, drawing on Barry's more detailed history and other contemporary records. Norval Morris's interest in literature as a form for exploring criminal justice themes was apparent earlier in *The Brothel Boy and Other Parables of Law* (1992). The story is followed by three chapters in more conventional commentary style: 'Maconochie and Norfolk Island after 1844'; 'Why Do Prison Conditions Matter?'; and 'Contemporary Lessons from Maconochie's Experiment'.

The narrative plots Maconochie's period on Norfolk Island though the eyes, or more correctly the voices, of a small group of characters: Maconochie himself; his family, and in particular one of his daughters, Mary Ann; his second in command, Major Simmonds; a number of convicts: Patrick Burke, Mick Salmon; David Ankers, 'Sarge' Westwood, Bony and Burns; with bit parts played by NSW Governor Sir George Gipps; and Sir John and Lady Franklin. Norfolk Island was at this time a place of 'secondary punishment' where convicts who had been transported to NSW or Van Diemen's Land penal colonies and subsequently convicted of further offences were sent to serve their sentences. Such settlements were frequently isolated and brutal places and Norfolk Island in 1840 was no exception. Maconochie's appointment as Governor enabled him to trial his 'marks' system of penal reform, an amalgam of ideas he had outlined in a *Report on the State of Prison Discipline* submitted to the House of Commons Select Committee on Transportation (the Molesworth Committee) which reported in 1838, based on his observations of penal

conditions while in Tasmania as Secretary to the Governor, Sir John Franklin. The major focus of the narrative follows Maconochie's attempt to carry out this experiment and the ensuing interactions with convicts, the military staff who were at this stage the prison guards, his own family and the authorities back in NSW and London.

In this rather unusual, entertaining and readable way, Morris is able to traverse a whole range of issues confronting a penal reformer such as: the nature of institutions of secondary punishment and their reputation as places of particular brutality for 'incorrigibles'; the nature of relationships between convicts and guards and between convicts and members of Maconochie's family (his daughter Mary in particular); the role and power of gangs ('The Ring'); corporal punishment; the conduct of internal disciplinary hearings; the remedial effects of music and reading; the importance of diet and medical attention in maintaining prisoners' health; the treatment of sexual relationships between convicts; and in most detail: the various problems facing the introduction of a system of rewards ('marks') for good behaviour, tied to increased privileges, autonomy and 'tickets of leave'.

The essential elements of Maconochie's 'marks' system are summarised by Morris as:

- 'Work and behaviour' prison sentences instead of 'time' sentences;
- Marks allotted to measure work and behaviour;
- Progress or regress in marks being known to the prisoner;
- Increasing autonomy within the prison as marks accumulate;
- Convict groups to work together with the incentive that each in the group could earn more marks than each working separately;
- Optional and voluntary cell work available should the convict wish thus to earn extra marks;
- Graduated release procedures, including supervision within the community, leading to ultimate freedom (p 62).

In the fictionalised narrative Maconochie has many conversations, especially with three favoured convicts, about the potential benefits, difficulties and dangers in the implementation of his 'marks' system. These include its applicability to 'incorrigibles'; the fact that implementation is dependant on the guards' assessments and reports; the extent to which it could be subverted by or used to further the power of 'The Ring', a gang in control of the illicit convict rum and tobacco trade; the danger that it encouraged 'play acting' by prisoners rather than genuine change; the fact that Maconochie could deliver on the local 'tickets of leave' on the island but not 'tickets of leave' from the island back to the NSW mainland, as these were in the hands of the Governor; and ultimately the fact that Maconochie's ideas lacked popular and media support and were considered sentimental and impractical by many of the guards, some prisoners, and many in the colonial hierarchy in the Australian penal colonies and back in London. Sydney newspapers satirised Queen's Birthday celebrations held on Norfolk Island after Maconochie had authorised the day release of all prisoners, the issue of fresh pork and rum punch, sporting events, a play and fireworks. Prisoners were reportedly well behaved and all returned to quarters, but the shock jock precursors in the colonial press had a high time (shades of the Phuong Ngo Christmas 'banquet') playing the 'lesser eligibility' theme song.

Many of these issues surrounding the 'marks' system are of continuing relevance, albeit that contemporary criminological discussion in the 'governmentality' tradition would characterise attempts to introduce incentives to better prison behaviour and greater autonomy as examples of post 1960s neo-liberal 'contractualism', a manifestation of 'programs' 'technologies' or 'logics' of 'governance of the self', 'governance of populations' and 'governance at a distance'. Rather than the relentless rationalities of 'governmentality', Maconochie's views are illustrative of a much longer tradition of humanism and a desire to treat prisoners with fairness and decency, to reduce brutality and torture and in particular the use of the gag, spread-eagle and lash. Morris argues that the undoubted success of Maconochie's regime, as judged by various contemporary officials such as Governor Gipps in his Report to London and in the subsequent sobriquet 'Maconochie's Gentlemen' applied to convicts under his charge, owes less to his marks scheme and more to his 'empathy and humaneness as superintendent' and to his adherence to an understanding that 'the typical prison runs with the consent of the imprisoned' and that prisoners and staff share a mutual gaol : 'a smooth running orderly prison' (p 191).

After Maconochie's forced departure from Norfolk Island his position was taken by Major Joseph Childs who reversed the reforms and reinstituted a brutal regime which two years later produced a major riot in which five guards were killed. Twelve convicts were hanged. Norfolk Island was closed as a convict settlement ten years later in 1856 after a 'period of extraordinary brutality under Childs and Price' (p 167). John Price, later Inspector General of Penal Establishments in Victoria was assassinated in 1857 by convicts during an inspection of penal hulks in Hobson's Bay, Williamstown, near Melbourne. Seven convicts were hanged. Thus does violence beget violence. Norfolk Island was uninhabited until populated in 1865 with descendants of the Bounty mutineers transported from Pitcairn Island.

The three more conventional chapters that follow the narrative make a strong case for the contemporary relevance of Maconochie's story. In 'Why Do Prison Conditions Matter?' Morris sees the beginning of an answer in 'the fact that the criminal justice system exercises the greatest power that a state can use against its citizens', prison regimes thus defining 'the razor edge between power and freedom, authority and autonomy'. It is not only a question of who guards the guards but also who controls the 'ultimate controllers' and the answer to that question 'spreads governments over a wide range, from systematic torturers to tolerant democracies in which even prisoners retain many protections of citizenship' (p 174). So that, in Churchillian terms: 'The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country' (a quotation used also to introduce the *Report of the Nagle Royal Commission into NSW Prisons* (1978; at p 16)). Or as another who was to suffer torture put it: 'what you do to the least of these, you do unto me'. In short, prison conditions should be devised 'for yourself' (p175), or for 'your brother' (p212).

While Maconochie's influence was strongly promoted by Sir John Barry, Morris points out that much has changed since 1964. In 'Lessons From Maconochie's Experiment' Morris makes a strong plea for the retention of judicial discretion in setting maximum and non-parole periods; stresses the importance of pre-release programs and aftercare assistance; and mounts a powerful case against the creation of supermax prisons (relevant in NSW since the creation of the Goulburn 'supermax'), against the increasing imprisonment of the mentally ill, and against the principle of 'lesser eligibility'.

Morris clearly admires Maconochie and there are perhaps certain parallels between them. Maconochie's ideas were influential in the US prison reform movement in the later 19th century and Morris has been an indefatigable campaigner for prison reform in his 55

year academic career, during which he was the author, co-author or editor of 15 books and hundreds of articles, inspiring readers, students and colleagues. James Coldren, president of the John Howard Association, a Chicago based prison reform organisation which Morris had assisted as a Board member for 20 years was quoted as saying that 'with Norval Morris' passing, incarcerated individuals around the world lost a friend and a powerful advocate'.

While there will no doubt be a festschrift or tribute publication in due course, *Maconochie's Gentleman* may well be Norval Morris's last publication. As such it is a tribute to the humanity, not only of its subject, but also of its author, and a plea for the continuing relevance of the reform impulse in an era of popular punitiveness. More than this, it illustrates an admirable preparedness to experiment with different genres of writing as a way of asking fundamental questions such as 'why do prison conditions matter?' and of attempting to fashion humane and decent answers. May he rest in peace and may his reforming spirit and work live on.

David Brown
Law Faculty, University of NSW