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The Norfolk Island Penal station, the Panopticon, and Alexander Maconochie's and Jeremy Bentham's Theories of Punishment

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The Norfolk Island Penal station, the Panopticon, and Alexander Maconochie's and Jeremy Bentham's Theories of Punishment

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Introduction

1 Alexander Maconochie (1787–1860), the originator of the "Mark System", is a major figure in the history of penal discipline. Best known for his attempt to implement the system at the Norfolk Island penal station from 1840 to 1844, disciplinary practices which are considered to have originated in large part with Maconochie include indeterminate sentencing, multi-stage systems featuring progressive relaxations of discipline, the motivation of prisoners through incentives, individualised treatment of prisoners, and open prisons. When Maconochie returned to London in 1844 following his dismissal from Norfolk Island, he proved an indefatigable publicist for the Mark System, producing a series of works that ranged from short pamphlets to detailed theoretical treatises. These works had three purposes: to defend his administration at Norfolk Island, which had been characterised by critics as an indulgent and expensive disaster;[1] to articulate the theory and principles underpinning the Mark System and his penal philosophy more generally; and to keep his ideas in the public eye and thereby secure another opportunity to try out his system.[2] That opportunity came in 1849 when Maconochie was appointed governor of the new Birmingham prison but he was dismissed in 1851, and another bout of pamphleteering followed.[3]

2 Among Maconochie's many works is an eight-page pamphlet, undated though generally assumed to have been printed in around 1847, taking specific aim at aspects of the penal theory of the philosopher and reformer Jeremy Bentham. In "Comparison Between Mr. Bentham's Views on Punishment, and Those Advocated in Connexion with the Mark System", Maconochie implicitly rejected much of Bentham's critique of criminal transportation, and explicitly rejected—even condemned—fundamental elements of Bentham's theory of punishment.[4] Maconochie concluded that mainstream thinking on penal discipline was dominated by "mistakes" that had either "in great measure originat[ed] with Mr. Bentham", or had been "at least sanctioned by his high authority", specifically by his considering deterrence to be the main aim of punishment, when in Maconochie's view the focus should be the reformation of individual offenders.[5] It should be noted that Maconochie's criticism was based on a seemingly very limited reading of Bentham's views on punishment, in that he quoted from in the "Comparison" the third chapter of *Théorie des peines et des récompenses* (1811), the second French recension prepared by Étienne Dumont largely from manuscripts written by Bentham during the 1770s.[6] Maconochie had, therefore, based his condemnation of Bentham on a work which was not, strictly speaking, Bentham's, but which had been assembled by Dumont from Bentham's manuscripts, and to which he had added summaries of Bentham's other works.

3 In his works Maconochie typically did not directly challenge the views of other penal thinkers, instead discussing in generalities when he contended with what were, in his view, problems with systems and theories of discipline. His public challenge to Bentham was, then, fairly unusual. But why did Maconochie not seem to engage with the rest of *Théorie des peines*, nor with Bentham's wider body of work on punishment, and especially the texts constituting *Panopticon versus New South Wales*[7] which were of relevance to Maconochie's interest in, and experience of, administration within the system of criminal transportation? Moreover, why did he not seem to engage with Bentham's panopticon writings themselves, despite his hinting that he was at least aware of the scheme when he noted that adoption of the Mark System would overturn a strain of penal thought that overemphasised "mere architectural details" and attached "too much importance to physical arrangements in the management of men, and too little to moral impulses"?[8]

4 It is worth here briefly establishing the key features of the Mark System, which Maconochie first outlined in 1838, though its essentials remained more or less unchanged throughout his later writings.[9] Fundamental to the system was the abolition of fixed-term sentences, and the conversion of the criminal into a "debtor required to be imprisoned, or otherwise detained, till his debt is paid".[10] The size of the debt was to be dependent upon the magnitude of the offence they had committed, and quantified in a virtual currency known as "marks". Convicts would earn marks to pay off their debt through good conduct and a form of task work, under which "all the manly energies are called out. Time becomes valuable … purpose is given to life. Idleness is shunned. Prurient and other distracting thoughts are rejected. Evasion brings with it its own punishment—it prolongs detention".[11] The Mark System was a muscular penitence in which work was integral to instituting self-command and self-reliance. Corporal punishment was to be avoided and breaches of discipline would instead be punished by fines in marks. Fixed rations, apart from bread and water, were to be abolished, though Maconochie would permit prisoners to spend earned marks on better food and luxuries

—though doing so would, of course, prolong their detention. Maconochie expected that convicts would "be made thus most beneficially to feel the burthen of their own maintenance, and learn economy, and become inured to, and content with, coarse, because cheap, fare".[12]

5 The Mark System was one of progressive freedom. All prisoners would first undergo a short, punitive stage of hard labour, with moral, religious, and practical instruction, before living and working together with a small party of six or so individuals whose own earned marks were placed into the group's collective pot. An individual's fines would also be imposed upon the whole group, so if one prisoner transgressed then they would harm their companions by delaying their collective release.[13] The group stage was thus intended to make "good conduct popular, and misconduct unpopular, in the community, each affecting others as well as the individual actor"[14]—a pedagogical exercise of the value of good, sociable habits, and of the damage wrought upon a community's happiness by selfishness and anti-social behaviour. Passage through the group stage would see "evil passions and propensities to be for ever laid aside", while "considerable powers of self-command ... would be universally called out".[15] Maconochie laid especial importance upon this "peculiar feature of the Mark System", describing it to the writer Harriet Martineau in May 1838 as "my tenet".[16]

6 Bentham and Maconochie shared a similar intellectual heritage in their thinking on punishment, though Hilary Carey has noted that Maconochie was "not a secular Benthamite", but was instead "heir to the Christian utilitarianism espoused by [William] Paley and [Richard] Whately, though transmitted through Scottish Presbyterianism rather than English Anglican liberalism".[17] This paper questions whether Maconochie's rejection of Bentham's views is entirely convincing, since his penal practices, as well as an earlier and lesser-cited work, indicate that Maconochie was, at times, considerably closer to Bentham's position on punishment than "Comparison" suggests. Section I will provide some brief biographical background. Section II will explore a few points about Maconochie's attempt to implement his reformative system at Norfolk Island, at the heart of which was close surveillance and extensive record-keeping to monitor behaviour and individual progress, with echoes of Bentham's panopticon scheme. Section III will examine Maconochie's changing views on criminal transportation, from his essential adherence to the Benthamite anti-transportationist line in 1818, to his qualified support for transportation from 1838 onwards. Finally, Section IV will examine the Mark System and Maconochie's criticism of Bentham's views in more detail.

Background

7 Alexander Maconochie[18] was born in Edinburgh in 1787. Following the death of his father in 1795, Maconochie came under the guardianship of his uncle, Allan, then Regius Professor of Public Law and Law of Nature at the University of Edinburgh, and who became an ordinary lord of the Court of Session when in 1796 he took his seat as Lord Meadowbank.[19] Like Bentham, young Maconochie was, as he wrote, "first destined and partly prepared for the law", though he took a different course, and "with much difficulty" broke away to join the Royal Navy. He saw service in Ireland, Spain, and the West Indies, but was captured by the French at Christmas 1811, remaining a prisoner of war until April 1814; Maconochie was thus unique among senior administrators in the

Australian penal colonies in having endured incarceration for a considerable length of time. Upon release, Maconochie resumed active service and took part in the invasion of Washington D.C. in August 1814, and the Battle of New Orleans in January 1815, before being pensioned off later that year.[20]

8 Returning to Scotland Maconochie stated that he "for six years, led an idle life"—though was sufficiently active to produce works on the colonization of the north Pacific, and a substantial work of political geography on the Pacific more generally.[21] In 1822 he married Mary Hutton Browne and turned his hand to farming at North Queensferry, but when this proved unprofitable he and his family relocated to London, where he was soon among old naval friends including Sir John Barrow, Sir John Franklin, and some of the founders of the Geographical Society of London.[22] Maconochie was appointed as secretary of the Society at its inaugural meeting on 16 July 1830, and on 16 November 1833 was chosen as the inaugural Professor of Geography at the recently-founded University of London.[23] Maconochie's academic career was, however, short-lived: in April 1836 Sir John Franklin was appointed Lieutenant-Governor of Van Diemen's Land, and Maconochie accepted the offer to become Franklin's private secretary.[24] Maconochie accordingly resigned his professorship on 22 August 1836 and set sail for Hobart Town with his family, having agreed beforehand to produce a report for the Society for the Improvement of Prison Discipline on the convict system in Van Diemen's Land. This report proved so damning of the system, and its apparent impact on Van Diemonian society, that Maconochie was forced to leave Franklin's service.[25]

Practice—Superintendent of Norfolk Island, 1840–44

9 Despite his best efforts, Bentham never had an opportunity to put his penal theory into practice. Maconochie, on the other hand, had two. The first came in an experiment, sanctioned by the imperial government, at Norfolk Island from 1840 to 1844. The penal station there had been established in 1825, according to then Governor of New South Wales, Ralph Darling, as "a place of the extremest punishment, short of Death" for "incorrigible" male convicts,[26] and the Island subsequently became a byword for brutality. Maconochie's appointment to Norfolk Island reflected changing imperial penal policies and priorities. The Whig government had, by the late 1830s, concluded that transportation to New South Wales was to be abandoned (and it was duly abolished in 1840), but that it would have to continue to Van Diemen's Land and elsewhere in some form owing to the absence of sufficient penitentiary accommodation in the United Kingdom. Amongst the recommendations of the 1837–8 Select Committee on Transportation, chaired by the Benthamite Sir Wiliam Molesworth, was that that those still liable to be transported could be sent to Norfolk Island or Tasman's Peninsula, "provided the system of punishment now pursued there were completely altered". The Committee also proposed that an experiment should take place to determine "the effect of establishing a system of reward and punishment not merely founded upon the prospect of immediate pain or immediate gratification, but relying mainly upon the effect to be produced by the hope of obtaining or the fear of losing future and distant advantages".[27] In May 1839 the Marquess of Normanby, Secretary of State for War and the Colonies, accordingly informed George Gipps, Governor of New South Wales, of imminent changes to the administration of Norfolk Island. (The penal station was

administered by the New South Wales government from 1825 to September 1844, when it came under the jurisdiction of the government of Van Diemen's Land.) The changes proposed required the appointment of a Superintendent with a "deep interest in the moral improvement of the Convicts", who would be "disposed to devote his whole energies to this important object".[28] Maconochie was available and eager. A detailed reappraisal of Maconochie's time at Norfolk Island is overdue, and his time at Birmingham prison is discussed more ably elsewhere.[29] Nevertheless, in a brief examination of his administration at Norfolk Island some general remarks can be made about how i) when Maconochie was confronted with the reality of running a disciplinary institution he deviated markedly from his written theories, and ii) how his administration contained echoes of Bentham's panopticon scheme.

10 Maconochie faced considerable difficulties in implementing his system, not the least of which was that even before travelling to Norfolk Island he considered it "peculiarly unfit" as "the scene of my charge and labours", and requested that he be allowed to make the attempt elsewhere.[30] Key, in Maconochie's view, to Norfolk Island's unsuitability was that he had been ordered to keep physically separate two distinct bodies of convicts, the "Old Hands" and the "New Hands". Most of the former, around 1,200 in number and already present prior to Maconochie's arrival, had been transported to the penal colonies (most to New South Wales, though a significant minority had been sent to Van Diemen's Land) but had subsequently been reconvicted in the colonies and transported to Norfolk Island. They were to be kept at the main settlement of Kingston in the south of the Island. The latter, around 700 strong, were first conviction men and had arrived at Norfolk Island directly from England and Ireland in 1840, specifically to undergo Maconochie's experimental system. Barely a week after arriving Maconochie concluded, not unreasonably, that on an island of around thirty-five square kilometres in extent and around 900 miles east of Sydney, the difficulty of keeping the two groups separate was "almost insuperable", and he unilaterally declared the Mark System in operation for all convicts.[31] Governor Gipps, who suggested that Maconochie's measure was "illegal", promptly ordered him to obey his original instructions.[32]

11 This was not the only occasion on which Maconochie deviated from his instructions or seemingly exceeded his authority. His tendency to do so was exacerbated by the fact that, to varying degrees and despite having been appointed to oversee an officially-sanctioned experiment, he was philosophically at odds with his superiors in Sydney and London. As early as November 1840, Lord John Russell, Secretary of state for War and the Colonies expressed regret that "the Experiment which was intrusted to ... Captain Maconochie should have been so materially injured in its Execution by the Manner in which he has attempted to work it out", and he reminded Gipps that he had the authority to remove Maconochie, should he see fit.[33] In fact, Maconochie's dismissal was probably inevitable from at least November 1842, when Russell's Tory successor, Lord Stanley, in his proposed reorganisation of the convict system, envisaged that Norfolk Island would "be regarded exclusively as a place of confinement", where misconduct could extend a prisoner's sentence but "No authority except that of the Queen herself will be competent to abridge the time of his detention there".[34] Gipps was broadly sympathetic to Maconochie's aims and intentions, though had noted Maconochie's avocation that "the first object of all convict discipline should be the reformation of the criminal", which "however agreeable it may be to the dictates of

humanity, is not, I believe, the received one of legislators, who rather require ... that it should be a terror to evil-doers".[35] Yet, since Maconochie's experiment had been sanctioned in London, he considered it "right to give him all the support in my power, and every reasonable facility for trying it in his own way". That support extended to granting Maconochie free rein to select junior officers, to sanctioning "whatever expense he thought necessary"—including £50 to furnish a library for the convicts, and £100 to purchase musical instruments since, Maconochie contended, playing music was of an "eminently social occupation" and taught "patience and perseverance".[36]

12 Maconochie did not make it straightforward for Gipps to support him. When he reported to Russell his reprimand of Maconochie for failing to keep the Old and New Hands separate, Gipps found that "no attention whatever was paid by him to my communications ... on the contrary, within a few days after the receipt of them, the whole convict population of the island was, on the occasion of Her Majesty's birth-day, regaled with punch, and entertained with the performance of a play".[37] Gipps referred to the events of 25 May 1840 when, to celebrate Queen Victoria's birthday, the convicts of Norfolk Island were given a day off work, ate fresh meat, drank a toast of (diluted) rum, played team games, and a troupe of convict thespians staged Arnold and O'Keeffe's comic opera *The Castle of Andalusia*, as well as the "tent scene" from *Richard III*. Maconochie, who had hoped to rekindle fond feelings of home among the convicts, subsequently insisted that the celebration was "one of the wisest, and best-considered acts of my whole administration", though recognised that it was considered "an act of high treason against existing notions of prison discipline".[38] The occasion was ridiculed in the colonial press,[39] which remained consistently hostile to Maconochie. For instance, the failed attempt by convicts to seize the supply vessel *Governor Phillip* in mid-1842, in which five convicts were shot dead, was for the *Sydney Morning Herald* the inevitable "practical fruits of that wildest of all wild theories of penal-nursery government, hatched by the mawkish sentimentalism of Captain MACONOCHIE".[40] While Bentham envisaged the general public entering a panopticon to informally regulate the behaviour of the prison's officials, he did not appear to anticipate that those officials might face a hostile press campaign if their methods did not accord with public sentiment, for instance if a reform-minded governor faced a public which favoured retributive punishment. Maconochie himself complained that, at such a distance from Sydney, Norfolk Island was "unfitted consequently for Inspection by impartial Eyes",[41] thus exposing the system—in his view—to unwarranted criticism.

13 Yet it is not clear that Maconochie would have welcomed, or have been able to work with, the sort of transparency Bentham sought to make inherent to the panopticon scheme. At Norfolk Island Maconochie was a benign despot and the Mark System, to a great extent, relied upon his personal capabilities and qualities. He had difficulty brooking criticism or challenges to his methods, running afoul of superior and subordinate alike. Nor does he appear to have been a particularly good administrator—or the type of administrator required by the colonial government, at least. His voluminous, digressive reports to Sydney so irritated Edward Deas Thomson, the Colonial Secretary of New South Wales, that he tartly warned Maconochie that "your frequent Practice of introducing theoretical Reasoning into your Despatches causes the public Correspondence to be both tedious and unsatisfactory". He suggested that Maconochie might instead "adhere more closely than you do to the official Rule of introducing only One Subject into each of your Communications".[42] Thomson had also repeatedly warned Maconochie that he risked unrest among the convicts by his habit of

sending, with every mail from the Island, 'a vast number of Petitions [from prisoners for remission of sentence] recommended for the most part by yourself' which Gipps could not legally comply with and 'which are altogether irregular'; surely, Thomson urged, 'you cannot fail to be sensible of the evils which must arise from your continuing to recommend Persons for removal to this Colony' who were ineligible, evils which Gipps considered to be 'so grave a nature, that His Excellency feels it a most imperative duty to put a stop to it'.[43]

14 Maconochie found himself either opposed by or in dispute with subordinate officers of practically every branch of Norfolk Island's administration, including his de facto deputy, Superintendent of Agriculture Charles Ormsby,[44] as well as Ormsby's successor William Pery.[45] Dr James Aquinas Reid, one of the Island's medical officers, was promised by Maconochie an increase of salary—which never materialised—for acting as his assistant. Furious at being cast aside in late 1842, Reid wrote to a friend in July 1843 of his pleasure when the boat, which "Hismightiness—& his Holiness" had sent out to the supply ship to bring his "valuables" ashore before anyone else's, "emptied itself of all its contents on the bar".[46] Though religiously tolerant, Maconochie was viewed by the Protestant chaplain Thomas Sharpe as a crypto-papist for attending both Protestant and Roman Catholic services. In October 1840 Sharpe denounced Maconochie to his journal, complaining of the Mark System's "pestiferous influence over the poor degraded men on this Island", fully expecting that this "Vain visionary scheme" would "crumble beneath its own weight".[47] Maconochie also clashed with the Roman Catholic chaplain John McEncroe and catechist Lewis Harding.[48] Deputy Assistant Commissary General John Smith, meanwhile, reported to his superiors that "Captain Maconochie fancies himself supreme ... He has contended for absolute power in most of his official despatches and has stated that the success of his system is almost dependent upon having every one under his control", and concluded that a "most radical change is wanted here immediately. The place bears no more resemblance to what a penal Settlement should be than a playhouse does to a church".[49] Similar clashes during Maconochie's time at Birmingham prison have been identified by John Moore, including the "animosity and conflict" between Maconochie and his deputy, William Austin, and the banning by the visiting justices of Maconochie's family from entering the prison, after he had attempted to circumvent regulations preventing his wife Mary and daughter Mary Ann from attending the women prisoners.[50]

15 Maconochie was, as will be discussed below, critical of Bentham for his apparently viewing prisoners in the abstract, capable of being shaped and moulded by external forces alone. Yet the same criticism could be levelled at Maconochie for his sanguine expectation that prisoners would easily comprehend the Mark System, see the sense in it, and adhere to its strictures without resistance. Any resistance, in Maconochie's view, only harmed recalcitrant convicts themselves, exposing them to theoretically indefinite detention. There is no denying that Maconochie introduced generally relatively benign conditions for many convicts at Norfolk Island, and the advent of the Mark System was certainly welcomed by some prisoners. James Lawrence found the arrival of the Maconochies was akin to being delivered by "An Angell and Family", and that "Religion, and Justice stares us in the face the Almighty has now sent us a Deliverer, no Gaol no Flogging in his first year",[51] while for Thomas Cook Maconochie was the "Philanthropic Ruler" of Norfolk Island and "the Champion of humanity".[52]

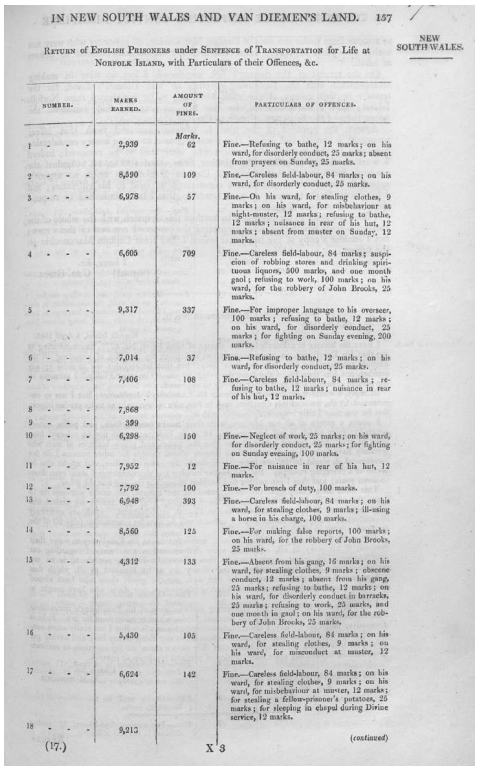
16 Yet Maconochie was still a gaoler, and many convicts resisted his authority. Several sought to abscond: thirty-one convicts, in four separate incidents, successfully got away from the Island in boats from 1840 to 1843. In other words, almost half of the convicts who successfully escaped from Norfolk Island between 1825 and 1855 did so on Maconochie's watch, despite his administration being characterised, in the view of his critics, as indulging every convict's whim.[53] Nor was Maconochie universally popular among the convicts. Aaron Price, a former Norfolk Island convict himself and later free Principal Overseer of Works, noted that some men had "imposed upon [Maconochie's] Kindness and bid defiance to all the Social and Moral rules he wished to inculcate" and, after Maconochie had placed "some of the worst offenders into comfortable situations", they "broke out of Barracks and entered and Robbed his house in the dead of night".[54] During 1841 a satirical "newspaper", styled the "Norfolk Gazette" and taking the form of a pseudo-official publication, was found in the possession of convict Baptist Baxter, though it was later determined to be the work of fellow prisoner Charles H. Curtis. The *Gazette* ridiculed Maconochie's regime, his pretentions, and his habit of issuing pompous public proclamations, referring to him derisively as Norfolk Island's "Lord Chamberlain" and its "Commander in Chief (Not at Horse Guards)".[55]

17 In his writings Maconochie consistently stated that he would primarily punish breaches of penal discipline with fines in marks, avoiding corporal punishment wherever possible. In March 1840 he explained, in a public order to Norfolk Island's convicts, how he intended his system would function. In practice, overseers would observe prisoners at work and record their performance and general behaviour on a daily basis, tallying the number of marks earned or lost on top of the daily "wage" of ten marks per day for "ordinary day labour, well and truly performed". The daily reports, with accompanying reasoning for fines and bonuses, would be submitted to convict clerks to be entered into a central record. Each convict's individual account would be publicly displayed so that they could examine their progress and appeal against fines.[56] As described on paper Maconochie's system—whether it in fact functioned this way is another question—appears as a web of observation, allowing prisoners, overseers, superintendents, and other officials to simultaneously observe and be observed by one another, with Maconochie overseeing everything. He would thus have at his fingertips an objective picture of the economy of behaviour on Norfolk Island at any one time, a picture easily comprehensible to the authorities, convicts, and the wider community. The attempt to embed publicity and statistical measurement into the Mark System would surely have met with Bentham's approval—he had described in 1788 the compilation and making available of quarterly returns for the hulks as "a kind of *political barometer*" and a gauge of the "moral health of the community"[57]—though he may have queried the apparent absence of any meaningful scrutiny of Maconochie himself.

18 The records of the working of Maconochie's system are, however, few and far between. Some snippets can be found in the Van Diemonian conduct records, held by the Tasmanian Archives and Heritage Office, as well as in the correspondence of the New South Wales Colonial Secretary's department, held by the State Archives and Records Authority of New South Wales. In April 1842 Maconochie prepared a set of returns, later printed in Parliamentary papers, of two groups of prisoners, showing the number of marks they had earned, alongside fines imposed upon them and for what offences.[58] These returns provide for the best, yet still imperfect, glimpse at the apparent workings and shortcomings of the Mark System, or at least how the summary

punishment of misconduct operated under it. First, Maconochie presented the records of sixty life-sentenced New Hands. There was presumably a schedule of fines which was referred to when sentencing offenders, but that schedule is difficult to discern from a reading of these returns, as fines imposed for the same offence appear to have been visited more strictly or leniently upon different men. For instance, for "careless field labour" twenty men were fined 84 marks, while William Lambert (no. 26 in the return) was fined 60 marks, Patrick Nix or Six (no. 37) 28 marks, and Terence Rudden (no. 44) was fined 56 marks. Was this an attempt to implement the sort of carefully calibrated individualised punishment, taking into account circumstances, as favoured by Bentham? John Harrison (no. 19) was docked 25 marks for being absent from prayers, while ten men each lost the same number of marks for robbing John Brooks; Timothy Wallace (no. 56) was fined 50 marks for assaulting a fellow prisoner, while John Wilson (no. 60) lost 100 marks for being at the main settlement of Kingston without a valid pass. The rationale for the varying severity of fines is not, without further information, obvious—why would being absent from prayers be apparently equivalent in magnitude to stealing or, indeed, "cutting vines in a prisoner's garden", for which James Ryan *alias* Fitzgerald (no. 45) was also fined 25 marks?[59] Was being absent without a pass an offence twice as bad as an assault?

Figure 1



IN NEW SOUTH WALES AND VAN DIEMEN'S LAND. 157

NEW SOUTH WALES.

RETURN of ENGLISH PRISONERS under SENTENCE of TRANSPORTATION for Life at NORFOLK ISLAND, with Particulars of their Offences, &c.

NUMBER.	MARKS EARNED.	AMOUNT OF FINES.	PARTICULARS OF OFFENCES.
		Marks.	
1	2,939	62	Fine.—Refusing to bathe, 12 marks; on his ward, for disorderly conduct, 25 marks; absent from prayers on Sunday, 25 marks.
2	8,590	109	Fine.—Careless field-labour, 84 marks; on his ward, for disorderly conduct, 25 marks.
3	6,978	57	Fine.—On his ward, for stealing clothes, 9 marks; on his ward, for misbehaviour at night-muster, 12 marks; refusing to bathe, 12 marks; nuisance in rear of his hut, 12 marks; absent from muster on Sunday, 12 marks.
4	6,605	709	Fine.—Careless field-labour, 84 marks; suspicion of robbing stores and drinking spirituous liquors, 500 marks, and one month gaol; refusing to work, 100 marks; on his ward, for the robbery of John Brooks, 25 marks.
5	9,317	337	Fine.—For improper language to his overseer, 100 marks; refusing to bathe, 12 marks; on his ward, for disorderly conduct, 25 marks; for fighting on Sunday evening, 200 marks.
6	7,014	37	Fine.—Refusing to bathe, 12 marks; on his ward, for disorderly conduct, 25 marks.
7	7,406	108	Fine.—Careless field-labour, 84 marks; refusing to bathe, 12 marks; nuisance in rear of his hut, 12 marks.
8	7,868		
9	399		
10	6,298	150	Fine.—Neglect of work, 25 marks; on his ward, for disorderly conduct, 25 marks; for fighting on Sunday evening, 100 marks.
11	7,952	12	Fine.—For nuisance in rear of his hut, 12 marks.
12	7,792	100	Fine.—For breach of duty, 100 marks.
13	6,948	393	Fine.—Careless field-labour, 84 marks; on his ward, for stealing clothes, 9 marks; ill-using a horse in his charge, 100 marks.
14	8,560	125	Fine.—For making false reports, 100 marks; on his ward, for the robbery of John Brooks, 25 marks.
15	4,312	133	Fine.—Absent from his gang, 16 marks; on his ward, for stealing clothes, 9 marks; obscene conduct, 12 marks; absent from his gang, 25 marks; refusing to bathe, 12 marks; on his ward, for disorderly conduct in barracks, 23 marks; refusing to work, 25 marks, and one month in gaol; on his ward, for the robbery of John Brooks, 25 marks.
16	5,430	105	Fine.—Careless field-labour, 84 marks; on his ward, for stealing clothes, 9 marks; on his ward, for misconduct at muster, 12 marks.
17	6,624	142	Fine.—Careless field-labour, 84 marks; on his ward, for stealing clothes, 9 marks; on his ward, for misbehaviour at muster, 12 marks; for stealing a fellow-prisoner's potatoes, 25 marks; for sleeping in chapel during Divine service, 12 marks.
18	9,215		

(continued)

(17.) X 3

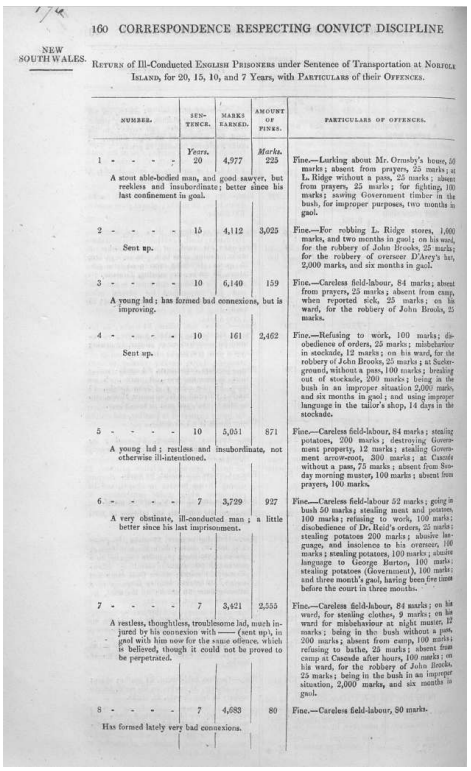
Return of English Prisoners under Sentence of Transportation for Life at Norfolk Island, with Particulars of their Offences, &c.

Credits: *Lords Sessional Papers* (1846), vol. 7, p. 173

19 In the second set of returns, Maconochie presented the accounts of twenty-four "Ill-Conducted" New Hands, a handful of whom had lost more marks than they had earned owing to misconduct.[60] Again, while admitting the shortcomings of the records, the fines imposed upon these men seem a little arbitrary, particularly in the case of some

extremely heavy fines. Francis Randall (no. 20) was fined 100 marks for stealing potatoes, while John Oliver (no. 19) was docked 1,000 marks for stealing and selling a fellow prisoner's clothes. John McDonald (no. 15) was fined 2,000 marks for "insolence and threatening language to Captain Maconochie", whereas William Keenan (no. 14) lost 25 marks for "insolence to police on duty" and another 25 for "threatening language to Mr. Brown",[61] and Matthew Anderson (no. 6) was docked 25 marks for disobeying Dr James Reid. Was the heavy fine imposed upon McDonald, as compared to the smaller penalties given to Keenan and Anderson, because he had made threats to Maconochie himself rather to a low-level official? Given that Maconochie had elsewhere suggested that a life sentence should be equivalent to having to earn 8,000 marks,[62] issuing a fine of a quarter of that total for insolence, potentially adding years to McDonald's detention, seems disproportionate in the extreme. In short, while the system Maconochie described appears intended to embody the sort of close surveillance and recording of convict behaviour that Bentham also believed was integral to reform, from the available records it is difficult to divine either the precise functioning or rationale behind the infliction of fines as summary punishments.

Figure 2



160 CORRESPONDENCE RESPECTING CONVICT DISCIPLINE

NEW SOUTH WALES.

RETURN of Ill-Conducted ENGLISH PRISONERS under Sentence of Transportation at NORFOLK ISLAND, for 20, 15, 10, and 7 Years, with PARTICULARS of their OFFENCES.

NUMBER.	SENTENCE.	MARKS EARNED.	AMOUNT OF FINES.	PARTICULARS OF OFFENCES.
1 - - - - - A stout able-bodied man, and good sawyer, but reckless and insubordinate; better since his last confinement in gaol.	*Years.* 20	4,977	*Marks.* 225	Fine.—Lurking about Mr. Ormsby's house, 50 marks; absent from prayers, 25 marks; at L. Ridge without a pass, 25 marks; absent from prayers, 25 marks; for fighting, 100 marks; sawing Government timber in the bush, for improper purposes, two months in gaol.
2 - - - - - Sent up.	15	4,112	3,025	Fine.—For robbing L. Ridge stores, 1,000 marks, and two months in gaol; on his ward, for the robbery of John Brooks, 25 marks; for the robbery of overseer D'Arcy's hut, 2,000 marks, and six months in gaol.
3 - - - - - A young lad; has formed bad connexions, but is improving.	10	6,140	159	Fine.—Careless field-labour, 84 marks; absent from prayers, 25 marks; absent from camp, when reported sick, 25 marks; on his ward, for the robbery of John Brooks, 25 marks.
4 - - - - - Sent up.	10	161	2,462	Fine.—Refusing to work, 100 marks; disobedience of orders, 25 marks; misbehaviour in stockade, 12 marks; on his ward, for the robbery of John Brooks, 25 marks; at Sutherground, without a pass, 100 marks; breaking out of stockade, 200 marks; being in the bush in an improper situation 2,000 marks, and six months in gaol; and using improper language in the tailor's shop, 14 days in the stockade.
5 - - - - - A young lad; restless and insubordinate, not otherwise ill-intentioned.	10	5,051	871	Fine.—Careless field-labour, 84 marks; stealing potatoes, 200 marks; destroying Government property, 12 marks; stealing Government arrow-root, 300 marks; at Cascade without a pass, 75 marks; absent from Sunday morning muster, 100 marks; absent from prayers, 100 marks.
6 - - - - - A very obstinate, ill-conducted man; a little better since his last imprisonment.	7	3,729	927	Fine.—Careless field-labour 52 marks; going in bush 50 marks; stealing meat and potatoes, 100 marks; refusing to work, 100 marks; disobedience of Dr. Reid's orders, 25 marks; stealing potatoes 200 marks; abusive language, and insolence to his overseer, 100 marks; stealing potatoes, 100 marks; abusive language to George Barton, 100 marks; stealing potatoes (Government), 100 marks; and three month's gaol, having been five times before the court in three months.
7 - - - - - A restless, thoughtless, troublesome lad, much injured by his connexion with —— (sent up), in gaol with him now for the same offence, which is believed, though it could not be proved to be perpetrated.	7	3,821	2,555	Fine.—Careless field-labour, 84 marks; on his ward, for stealing clothes, 9 marks; on his ward for misbehaviour at night muster, 12 marks; being in the bush without a pass, 200 marks; absent from camp, 100 marks; refusing to bathe, 25 marks; absent from camp at Cascade after hours, 100 marks; on his ward, for the robbery of John Brooks, 25 marks; being in the bush in an improper situation, 2,000 marks, and six months in gaol.
8 - - - - - Has formed lately very bad connexions.	7	4,683	80	Fine.—Careless field-labour, 80 marks.

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Credits: *Lords Sessional Papers* (1846), vol. 7, p. 173

20 The fate of William Tarrant (no. 25 in the second return) leads to the most striking contradiction between Maconochie's theory and practice. Tarrant, "A poor lad, weak, and much ashamed" according to Maconochie, was summarily sentenced to 50 lashes on two occasions for same-sex sexual activity, described in the records as "unnatural crime". (According to Tarrant's conduct record, Maconochie subsequently had him flogged him again in August 1843, when he sentenced Tarrant to another 100 lashes

after he was found in the bush in "suspicious circumstances", and subsequently determined to have a "loathsome disease".[63]) Maconochie consistently decried the evil effects of "coercive" punishments—"Men will do for liberty what they will not do for lashes",[64] he aphorised. Though the idea that Maconochie did away with corporal punishment entirely at Norfolk Island has gained some traction,[65] Tarrant was far from alone in being subjected to corporal punishment inflicted under Maconochie's regime.

21 The historiography of Norfolk Island is replete with exaggeration about the extent of summary corporal punishment meted out there. Perhaps the most outlandish claim was that of Margaret Hazzard, who suggested that around a million lashes were inflicted at Norfolk Island between 1825 and 1855.[66] Data are available to assess the extent of flogging for 1829, and for 1833 to 1853,[67] which demonstrate that around 136,000 lashes in total were ordered to be inflicted over that period, a terrible enough total which requires no embellishment.[68] During Maconochie's administration, the annual total number of lashes ordered to be inflicted was lower than in any other calendar year, apart from 1829, 1848, 1849, and 1850. However, the mean average number of lashes per flogging was greater under Maconochie, at 102 in the calendar year 1842, than at any other time.[69] Maconochie himself admitted his more frequent resort to flogging during 1842, claiming that he used it "chiefly" to punish "Insolence, Insubordination and unnatural Offence", though was "ashamed" at having done so. He considered the increased flogging rate "a great Blot on my Year's Management" for 1842, finding that it "gratif[ies] one's own Infirmities of Temper".[70]

22 Maconochie's increased use of flogging during 1842 and 1843 reflects his diminishing authority over some convicts. It perhaps also reflects Maconochie's frustration as, contrary to his statement regarding what offences he punished with flogging, we see prisoners sentenced to corporal punishment for offences outwith that rubric. For instance, on 18 March 1842 Michael McNamara was sentenced to 50 lashes for malingering,[71] while in November 1842 William Sydney Smith was sentenced to 200 lashes and three months in solitary confinement for possession of skeleton keys. Smith was sentenced on 26 January 1844 to a further 300 lashes, to be inflicted in three separate monthly floggings of a hundred lashes each, and to work in irons for six months, for assaulting Baptist Baxter.[72] (The splitting of flogging in this way had, incidentally, not been legal in mainland New South Wales for some time.) A similar picture in regard to corporal punishment has emerged of Maconochie's governorship at Birmingham, such as his having requested and been given by the visiting justices permission to flog a boy named Bedford on a daily basis until he did his work, and his having women confined to straitjackets for days at a time.[73] In other words, frustration that his methods did not always produce the desired results saw Maconochie resort to corporal punishment.

Maconochie's changing views on criminal transportation

23 If we only take into account Maconochie's post-1837 writings, then his views on punishment generally, and on transportation specifically, could typically be characterised as contra Bentham. However, as this section intends to show, a lesser-cited 1818 work of Maconochie's suggests that he had, in fact, begun from a Benthamite anti-transportationist point of view, moving subsequently to a position of, if not

favouring transportation, then being agnostic to its merits and demerits, provided a reformative spirit was introduced into the running of it. First, however, we should turn to the circumstances in which his post-1837 views arose.

24 When Bentham wrote "Letters to Lord Pelham" and "A Plea for the Constitution" in 1802 and 1803, criminal transportation to Australia was a relatively limited enterprise: around 7,000 convicts had arrived in New South Wales since 1788, and the penal colony of Van Diemen's Land had yet to be established. It was also, unlike transportation to North America, largely carried out at public expense.[74] When the Maconochies arrived in Hobart Town in 1837 the penal colonies and the convict system had markedly changed. Following the end of the Napoleonic Wars, by 1840 around 65,000 convicts had arrived in New South Wales, and a further 30,000 had arrived in Van Diemen's Land.[75] The increase in numbers had led to the imperial and colonial authorities seeking a more hands-off, and cheaper, approach to the management of convict labourers. In his reports of 1822 and 1823, Commissioner John Bigge had made two particularly important recommendations.[76] The first was that convict labour was to be arranged under what became known as the "assignment system" whereby, instead of working for the colonial government, most convicts would be allocated to a free settler, provided that settler signed a contract agreeing to supervise, clothe, feed, and provide medical care for their convict workers. In return, the settler would receive the benefit of convict labour, until the convict received their ticket-of-leave, were pardoned, or their sentence expired. Second, the convict system was to be governed by a multi-stage disciplinary system: well-behaved convicts would enjoy gradual relaxations of their condition on the path to emancipation, whereas the ill-behaved would find themselves exposed to forced labour in road and chain gangs, corporal punishment, and banishment to remote penal stations such as Norfolk Island.[77]

25 In Van Diemen's Land the bureaucracy and record-keeping underpinning the convict system was overhauled by George Arthur, Lieutenant-Governor from 1824 to 1836. Arthur regarded the colony as an enormous penitentiary, but one in which there was little effective supervision of convicts, which he considered crucial to their reform. In an 1825 letter to Earl Bathurst, then Secretary of State for War and the Colonies, Arthur gave an indication of how he intended to regulate convict lives in Van Diemen's Land:

> every Convict should be regularly and strictly accounted for, as Soldiers are in their respective Regiments, and that the whole course of their Conduct, the Services to which they are sent, and from which they are discharged, the punishments they receive, as well as instances of good conduct they manifest, should be registered from the day of their landing until the period of their Emancipation or Death.[78]

26 Arthur here described the preparation of a "Book containing the Name and Employment of every convict in the Colony", which he hoped would "lead to great accuracy in accounting for the Prisoners".[79] The system Arthur implemented eventually went well beyond a book: in 1827 he had Van Diemen's Land divided into nine, well-staffed, police districts, with Arthur making decisions on individual convicts' lives by the means of supposedly objective records, which minuted the movement, conduct, and offending of every convict. Given the extent of the surveillance levied by Arthur's system, little wonder, then, that modern observers have suggested that Arthur had established a "conning-tower from which the autocrat saw through a thousand eyes, and heard from hundreds of listening posts",[80] and characterised the paperwork, in the form of richly detailed conduct records which underpinned the system, as a "paper panopticon".[81] Though Maconochie was especially critical of Arthur's convict system,[82]

the record-keeping system he established at Norfolk Island appears to owe a great deal to it—though Maconochie would, of course, have pointed out that the difference between the two was that his system was positive, in that it sought to track progress towards reformation, whereas Arthur's system was negative, typically only recording misconduct, and sought to control the convict population.

27 Throughout the 1830s, transportation, and the assignment system in particular, came under critical scrutiny. Arthur proved to be one of assignment's key proponents, contending that "Bentham's notion, that gaolers should possess a personal interest in the reform of the convicts under their charge, is beautifully realized in Van Diemen's Land".[83] (Arthur may have had in mind the panopticon scheme with its conjunction between the duty and interest of its inspector, or perhaps Bentham's suggestion that transportation to North America was superior to transportation to New South Wales owing to the supervisory role of free settler masters.)[84] Yet at the same time as Arthur invoked Bentham's support for the pro-transportation view, Bentham's 1802–3 critique of transportation was at the heart of the 1830s campaign during the 1830s, led by a nexus of evangelicals, utilitarians, and humanitarians, to abolish the assignment system in, and transportation to, the penal colonies. To briefly summarise Bentham's position, he regarded transportation as having failed to meet any of his five "ends of penal justice". First, and most important in regard to his general theory of punishment which emphasised deterrence, transportation had no deterring effect since the punishment occurred thousands of miles from the population upon whom the effect was supposed to operate. Second, it did not reform since convicts were dispersed across New South Wales, making systematic inspection impossible. Third, it did not incapacitate, since expirees were legally permitted to return to Britain, while serving convicts absconded. Fourth, transporting criminals provided little compensation or restitution to victims of crime in Britain, or to society more generally. Fifth, New South Wales was expensive not only because transportation had failed as an instrument of penal policy but also since colonies were, as a rule in Bentham's view, a drain on the resources of the metropole.[85]

28 Maconochie's report for the Society for the Improvement of Prison Discipline saw him entangled in the debate over assignment, though he exhibited little engagement with Bentham's subsequently influential critique of transportation. Maconochie was scathing in his judgment of assignment, and its wider effects on Van Diemonian society, finding it:

> cruel, uncertain, prodigal; inefficient either for reform or example; it can only be maintained in some degree of vigour by extreme severity ... The severe coercive discipline, which is its principal element, is carried so far as to be at issue with every natural and, in many cases, even every laudable impulse of the human mind. It defeats, in consequence, its own most important objects; instead of reforming it degrades humanity, vitiates all under its influence, ... postpones that which is of higher interest, retards improvement, and is, in many instances, even the direct occasion of vice and crime.[86]

29 When Maconochie sent a summary of his report to Lord John Russell in September 1837, he stressed that he was a disinterested observer. He insisted that, prior to accepting the Society's request to compile a report, he held "few or not strongly conceived opinions on the subject of transportation", and that his "bias was certainly in favour of its existing institutions; so that in drawing my conclusions I have at least not been influenced by any previous reasoning or impression against them".[87] Twenty

years later, Maconochie stuck to this line. When it was put to him that the task work element of the Mark System appeared similar to proposals made by Whately in 1832, he stated that "I had, properly speaking, no previous opinions on Punishment at all: and those which I now conceived were suggested literally ... by the circumstances in which I was placed".[88]

30 Such statements have been taken at face value by Maconochie's biographers. J.V. Barry states that Maconochie's assertions "were never challenged, and what is more significant, they were repeated by persons of sound repute", and suggests that if Maconochie had held "strong views about penal matters before he left England in 1836 it is incredible, in view of his forthright personality, that he would not have been associated with the penal reform movement".[89] Yet as Carey argues, Maconochie's claim to being a neophyte to the topic of punishment was "somewhat specious", pointing to Maconochie's covering letter to Franklin which accompanied his full report. [90] There Maconochie apologised to Franklin for the damning nature of his findings, recalling that "when speculating on this at a distance, I was very differently impressed", and that "in all our conversations during the passage out regarding the controversy between Archbishop Whately and Colonel Arthur on the subject, I uniformly supported the latter's views"—that is, Maconochie had been more persuaded by the pro-transportation view articulated by Arthur.[91]

31 Moreover, in his 1839 work *Australiana*, which appeared in the wake of his dismissal, Maconochie rejected the claims of his critics that he had expressed "a decided opinion ... within four months after my arrival in the Colony ... and that I must consequently have come out with a prepossession against the System". Rather, he claimed to be "Influenced by a strong abstract approval of Transportation as a Secondary Punishment, which I still retain".[92] Yet this "abstract approval" was hardly evident in Maconochie's 1818 work "A Summary View of the Statistics and Commerce of the Principal Shores of the Pacific Ocean". A reading of the work more thoroughly undermines his claims to have held no "conceived opinions" on transportation, or to have held "no previous opinions on Punishment at all" prior to arriving in Van Diemen's Land. Instead, in "A Summary View", he expresses views which exhibit, essentially, the Benthamite utilitarian position on transportation and punishment more generally.

32 In turning to New South Wales,[93] Maconochie examined the "original and principal purpose of its establishment—the reform as well as punishment of convicts". Attempting to achieve both by means of transportation was, he thought,

> quite unattainable by any modification of which it is susceptible, and that the whole subject most imperiously requires revision and reconsideration, upon every principle of policy, humanity, and even justice, which are all, I think, outraged by the further maintenance of New South Wales as a receptacle for the outcast felons, whom we may deem it expedient to exile from their native land.[94]

33 Before addressing the "peculiar incompetence of New South Wales as a corrective prison", Maconochie reviewed the "first principles, which would seem inseparable from the very constitution of a prison", and which would be most "likely to attain that principal and most important object—the reform of convicts, not their punishment only, and still less their exile".[95]

34 First, Maconochie was of the view that the "barriers" confining convicts should be made "insurmountable", in order to bring them to a "true sense of their condition" as

well as to inculcate the "proper or permanent desire of ameliorating it by systematic industrious exertion".[96] Second, convicts should be exposed to "rigorous but paternal superintendence" to "encourage the ends of returning industry and virtue". Third, convicts should be separately confined, with separation of male and female inmates particularly attended to. Finally—and of especial importance given the centrality of this point two decades later to the Mark System—a "strong, permanent, and springing stimulus should be furnished" to industry among convicts, produced by ensuring that "liberation ought to depend upon their own exertion, not solely upon the lapse of time". For the rest of his life, Maconochie retained the view that time sentences were "the worst conceivable measure of punishment", since they "strike despair into the heart of the poor convict, and deaden, not excite laudable exertion". Such sentences were passed "in rioting, vice, and immorality, and when survived at all, only return the culprit to his native country, a worse member of society than when he left it".[97] Connected to this point it is notable, in the light of Maconochie's later insistence that reformation rather than deterrence should be the primary aim of punishment, that in 1818 he appeared to share Bentham's view that deterring future offending was key: Maconochie noted that a time sentence made "no impression whatever on the surrounding mob, for whose edification more than for that of the criminal himself, all punishments should be directed".[98]

35 There is no direct evidence that Maconochie had read Bentham's critique of transportation, which was finally published in 1812 as the *Panopticon versus New South Wales* compilation, but circumstantial evidence suggests that he may have done so. In the first instance, in "A Summary View" Maconochie complained that "the chronicle of New South Wales has been shut up", leaving him to "guess at the present state of this interesting colony". He had thus relied upon a handful of sources, mostly appearing in 1811 and 1812, for statistical information, yet none of these could be described as containing a critique of transportation.[99] Yet Maconochie reported that "disapprobation" had been expressed "at length … by political economists" about the experiment in New South Wales,

> partly suggested by the striking want of success which seemed to attend the whole experiment as far as its object was reformation not punishment, and partly by the very obvious impolicy of some of the measures of administration resorted to by the colonial government.[100]

36 Given the paucity of detailed, published critiques of transportation to New South Wales at the time "A Summary View" was published,[101] and given Maconochie's generally wide-ranging reading, it seems unlikely that he was not at least aware of *Panopticon versus New South Wales*, nor that Bentham was not one of the "political economists" to whom he had referred.[102]

37 Maconochie's criticism of New South Wales in "A Summary View" followed a Benthamite line. Maconochie noted the absence of inspection in the colony: the "only means of employment is agriculture", resulting in convicts being "dispersed promiscuously over its plains, far from the eye either of temporal or spiritual guide". Maconochie pointed out that the "morals of these poor victims of early excess can [not] be looked after with that minuteness with which they ought to be watched", with the end result being that the general "laxity of morals absolutely inseparable from a colony composed of such elements, and organized upon such principles of dissolution as is that of New South Wales, are among the worst and most melancholy features of its

character".[103] These were sentiments that could have come straight from the pages of "Letter to Lord Pelham".

38 Maconochie also concurred with Bentham's view that New South Wales was expensive, that it corrupted rather than reformed transportees, and that the remedy was to substitute for it a system to inculcate good habits and love of work; to "crown all the objections which might be multiplied without end to every part of this most expensive of all our fiscal institutions", there was "no stimulus to industrious perseverance, no excitement to reformation, no temptation whatever to abandon original evil propensities, or to adopt and cherish good and moral habits", Maconochie also found that since convicts were provided for at "public expense" they had "no interest whatever in the works in which they are employed" and their "first object accordingly is to loiter away their time as much as possible". In short, Maconochie regarded the selection of New South Wales as an engine of punishment and reform as "one of those remarkable events in the history of mankind, which attest the slender influence of general principles on political administration".[104]

39 Maconochie did, of course, write "A Summary View" at almost two decades remove from Bentham's discussion of New South Wales, when circumstances in the colony differed significantly. In "Letter to Lord Pelham" Bentham had expressed doubt that it would be possible to attract "*regularly honest*" free settlers to the colony.[105] Maconochie, on the other hand, wrote when the convict population was outnumbered by that of free settlers, and he argued that it was insufficient to only contend with the "moral character of the guilty" when discussing New South Wales. The "moral and religious habits" of the free should "be a sacred consideration with us ... Our political sovereignty over them gives us, in fact, no right to inundate them annually with the sweepings and offscourings of our prisons—those channels and canals by which that worst of jail fevers, a moral pestilence is conveyed". Moreover, the penal nature of the colony "also cast[s] the fetters over their free brethren, and subject[s] them and their property to the same summary, and it must necessarily be sometimes, capricious and ill-directed authority". According to Maconochie, "Every page of the history of the colony teems with instances of the evil consequences" of entrusting military officers with machinery of government, officers "suddenly called on to legislate for a civil society, the intricate nature of whose domestic regulations they had no previous means of studying".[106] In "Second Letter to Lord Pelham" and "A Plea for the Constitution" Bentham had itemised examples of unconstitutional interventions by military governors in the lives of the settlers of early New South Wales, such as in the fixing of crop prices.[107] (Bentham was, though, relatively sympathetic to the position in which the governors of New South Wales had found themselves, namely being forced to make local regulations without having been granted the necessary legal powers by the imperial government.) Maconochie ultimately concluded that not only was New South Wales "unfit for the attainment of its original objects", but that "no convict colony ever can have the smallest chance of success in reforming generally the individuals sent to it"[108]—certainly the Benthamite line, rather than the later qualified support Maconochie offered for transportation.

40 Maconochie had also contemplated, in relative detail, the solution to the evils of transportation. Again, the solution was strikingly Benthamite: "penitentiary houses would alone appear to me to have a chance of success; and these might, I think, be regulated so as even to insure it". He sketched out an "undoubtedly incomplete"

system of penitentiary discipline as an alternative to transportation, one in which both echoes of the panopticon and outlines of the Mark System might be discerned. Male and female convicts would be housed separately, and no prisoner would be given as a right provisions beyond those that "scarcely … support life". All else would have to be earned, with prisoners working for "reasonable wages" and sharing with their keeper the "benefits of their labour", and they would not be released until they had earned and saved a specific sum of money. Prisoners would be permitted to purchase from their savings better rations and "every species of refreshment, even spirits, for a constrained temperance is no gain at all". The temptation "to dissipate their gains at once" would, Maconochie expected, "be checked in its abuse by the natural desire for liberty which would animate every bosom". In other words, teaching the ability to resist the urge to immediate gratification "would be the most valuable of all the gifts which such an institution could bestow" upon its inmates. Those sent to Maconochie's ideal prison, like those sent to the panopticon, would emerge as useful, industrious members of society, able to withstand any temptation to reoffend. Maconochie expected that even a "thousand penitentiary houses constituted as I propose, would not equal in a lapse of years the expense of New South Wales, as a place of exile, for a single season". They might even "become sources of revenue; who are to enjoy the fruits of the labour of their prisoners, would willingly pay a rent for the places"[109]—echoes again of the panopticon, on this occasion its running by contract management.

The Mark System and Maconochie's criticism of Bentham

41 The Mark System's version of internalised self-restraint was not to be actuated by fear of detection of misbehaviour followed by certain punishment, but would instead ensure that the prisoner was "habituated to study the good will and interests of others as his own".[110] The stress on sociability had led Maconochie, following a similar trajectory to Bentham, to largely reject solitary confinement—apart from during a "short period of separate imprisonment in the beginning of a course of penal treatment"[111]—despite his earlier enthusiasm. Though Bentham's objection was largely owing to separation's deleterious effects upon a prisoner's mental health, Maconochie found that it rendered convicts submissive and artful hypocrites, who while "excellent *prisoners*" were unprepared for exertion outside gaol.[112] Maconochie recognised that, in the 1840s, opposition to solitary confinement set him at odds with the dominant thinking that favoured separation, but he anticipated that his system would bring "better impulses into play", and that prisoners would thus "be found just like other men. They are born social beings, so fashioned in the hand of their Creator; and it is in society, *the society of their equals*, not in seclusion from it, or in exclusive contact with their superiors, that their most valuable qualities will infallibly be called out".[113] The Mark System was thus to be a miniature simulacrum of the society into which reformed prisoners would emerge.

42 When Maconochie first outlined the Mark System in detail in 1838 he had essentially reversed his 1818 views on transportation, penal colonies, and prisons. "I like transportation as a Secondary punishment", he now insisted, since when an offender was "brought to open shame in any community, his only chance of complete recovery from the habits and tendencies which have led him to it consists in a removal from the

scene of his offence". A "community", he continued, had a "right to demand from him an example, as of lawlessness, so also of its consequences", and "in this light I think Transportation capable of being made much more effective than any Penitentiary system". Maconochie completed his rejection of most of the key tenets of the Benthamite position by questioning "in all its aspects, both in principle and in detail" the "*real value*" of a penitentiary, and casting doubt on the "benefit, usually so much insisted on, of a community actually *witnessing* the punishments inflicted on transgressors of its laws". On the contrary, if a punishment was "known to be *certain*" and would "terminate only on adequate proof of reform", then Maconochie was of the view "that direct punishments are even better *not* seen".[114] Maconochie was, of course, lobbying at this time for an opportunity to put his system into practice in the penal colonies, and from a pragmatic point of view, condemning them outright would have been counterproductive to his employment chances. Nevertheless, Maconochie was convinced that in seeking to introduce a reformatory spirit into convict management he would thereby establish a universal system of punishment, not one beholden to any institutional arrangement, which would reflect life beyond incarceration.

43 Many of Maconochie's ideas were not new. He owed a debt, like Bentham, to Cesare Beccaria's contention that a regime of mild, fixed, and certain to be inflicted punishments would best serve society.[115] William Paley had also been of the view that certainty was a greater deterrent to crime than severity, that aversion to labour was a major source of crime, and that punishments "ought to be contrived with a view to the conquering of this disposition". Paley's solution was a regime of solitary confinement with hard labour, while allowing the prisoner to retain all or a portion of their prison earnings, and to improve their conditions depending upon how hard they worked. In addition, Paley proposed the introduction of task sentences "in order both to excite industry, and to render it more voluntary".[116] Whately was of the view that completion of a task sentence represented "some indication of amended character", and suggested that prisoners might shorten the duration of their sentences by exceeding the mandated amount of daily labour. Whately's object, like Maconochie, was to "super-add to the habit of labour, which it is the object of most penitentiaries to create, an *association* not merely of the ideas of disgrace and coercion with crime, but also of freedom and independence with that labour".[117] Maconochie's achievement might, then, reasonably be viewed as an attempt to bring such ideas to fruition as a coherent, developed system, though with additions of his own.

44 As Gascoigne has noted, "like Bentham and other Enlightenment *philosophes* Maconochie viewed human behaviour as characterized by a desire to maximize pleasure and minimize pain".[118] Yet there is obvious tension between the two on this point. Bentham began from the position that "all punishment is mischief: all punishment in itself is evil", and that the infliction of that pain could only be justified if it excluded a greater evil.[119] Maconochie, meanwhile, was of the view that "We may not do evil that good may come. There is no qualification to this precept".[120] Punishment held no intrinsic evil for Maconochie, and provided that it had "reforming agency" he "care[d] little about its amount", since if suffering were "wisely administered, so as to produce reform, it can scarcely be considered an expense at all". Bentham had drawn the distinction between "the idea only of the punishment (or, in other words, the *apparent* punishment) that really acts upon the mind", and the "punishment itself (the *real* punishment) [that] acts not any farther than as giving rise to the idea"; it was, for Bentham, the "apparent punishment, therefore, that does all the service. I mean in the

way of example, which is the principal object. It is the real punishment that does all the mischief".[121] In other words, apparent punishment was potentially a less expensive, in terms of evil inflicted, means of achieving the prevention of future offences than actually inflicting that punishment. Maconochie appears to have rejected the distinction between real and apparent punishment, wondering if a prisoner would "not be cured, whether others see it or not?"[122]

45 Maconochie also took issue with Bentham's contention that the main object of punishment was "to prevent the recurrence of similar offences to those punished", finding such reasoning "defective" and inflicting a "cruel wrong" upon prisoners. Maconochie wished to focus upon individual criminals, with deterrence achieved only through the cumulative effect of the reformation of individual prisoners.[123] Maconochie also objected to the principle of exemplary punishment. He stated in 1838 that while he "most fully subscribe[d] to the right claimed by society to make examples of those who break its laws", those

> individuals thus sacrificed to what is, at best, but a high political expediency ... have their claims on us also, claims only the more sacred because they are helpless in our hands, and thus helpless we condemn them for our advantage. We have no right to cast them away altogether. Even their physical suffering should be in moderation, and the moral pain 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.[124]

46 It seems that it was in denying the primacy of deterrence as a function of punishment that Maconochie most strongly diverged from the Benthamite line—though Bentham might have argued that if an individual was deterred from offending, then from a practical point of view they had been reformed. The difference between the two could, however, be characterised as one of psychology and assumptions about what deterrence and reformation meant. For the religious Maconochie, reformation meant the complete removal of the impulse or intention to commit crime; for the secular Bentham, this was impossible and instead conditions must be established to restrain such impulses, such as formulating punishments that would cause an individual to prefer to commit either a lesser rather than a greater offence, or no offence at all.

47 Both men agreed, however, that punishment should be approached as a science. "Vice is a disease", Maconochie argued, "and Penal Science is just moral Surgery. The means it employs must often be painful; but its object should always be benevolent—always the *speedy* discharge of a *cured* patient".[125] Maconochie found this analogy useful, arguing elsewhere that if a man broke his leg, "however rashly or carelessly, we have him into an hospital, and cure him as speedily as possible, without ever thinking of modifying his treatment to as to make his case a warning to others. *We here think of the individual, not of society*". Yet, when a

> poor fellow-creature becomes morally dislocated ... we abandon all thought of his welfare, and seek only to make "an example" of him. "*We think of society, not of the individual.*" I am persuaded that the more closely and critically we examine this principle, and whether abstractly, analogically, or above all Christianly and politically, the more doubtful it will appear;—yet it lies at the root of nearly all our Penal Institutions, and the reasoning on which they are founded.[126]

48 Convict management was, then, in Maconochie's conception, the science of curing moral defects, further exemplified by the Biblical epigraph (also bearing further witness to the importance of religion in his thinking) on the title page of three of his works—"They that be whole need not a physician, but they that are sick".[127] It should be

said, however, that Bentham also placed great importance upon reformation of individual convicts, and had used a similar analogy to Maconochie when he stated that he "Considered with a view to moral health, as well as to physical comfort, a Panopticon is a vast hospital; but an hospital of that improved and hitherto unexampled description, in which, ... the condition of the patient is at all times open to all eyes".[128]

49 In addition to Bentham's "great mistakes" in considering that the primary function of punishment was "merely to *deter* from crime, instead of to *prevent* it by all means", Maconochie also considered that Bentham had undervalued the "benefit to the State from systematically endeavouring to *reform*" criminals. More "crime and misery", Maconochie suggested, "have been thus directly and gratuitously created than by any other mistake in administration", which "in great measure originat[ed] with Mr Bentham, and [was] at least sanctioned by his high authority".[129] Bentham's errors owed, in Maconochie's view, to his being "Sequestered, both by his position and habits, from actual contact with criminals", leading him to consider them "far more malleable, when secluded within four walls, than they really are ... [and] capable of being acted on to any extent by the external impulses which he proposed to bring to bear on them".[130] Moreover, that there was in the 1840s an overemphasis on "mere architectural details" when reckoning with punishment was, Maconochie contended, also owing to Bentham.[131] (Maconochie may have had in mind the Pentonville Model Prison, which had opened in 1842; if he had, and despite Pentonville sometimes being referred to as a panopticon of sorts, given its un-Benthamite regime of strict separate confinement, silence, and useless penal labour, then these accusations seem unfair.) As Maconochie put it, "the means of gaining the permanent *will* of criminals have been subordinated to those of securing their temporary conformity to certain fixed regulations".[132] In short, in Maconochie's view Bentham was a technologist, fixated on tinkering with institutional arrangements but dealing with criminals themselves only in the abstract.[133]

50 Bentham would surely have taken issue with these claims. While it was nowhere near as extensive as Maconochie's, Bentham certainly had contact with criminals. On 8 January 1778, for instance, he toured the hulks at Woolwich, saw the convicts at work, and spoke to some of them including the criminal celebrities David Brown Dignum and George Barrington.[134] As Janet Semple has plausibly speculated, this visit to the hulks may have been a formative moment in shaping Bentham's penal thinking: the "memory of these convicts, their good behaviour under the eye of authority, and the value of their labour may have persuaded Bentham that his panopticon would be both practicable and profitable".[135] Connected to this is that, as Moore has noted, "Bentham, like Maconochie did not tie his system to any particular institution".[136] Maconochie seems to have fallen into the error identified by Anthony Draper, in relation to modern assessments of Bentham, of having "gone so far as to draw Bentham's general penal principles from the regime proposed for the panopticon".[137] Moreover, Bentham and Maconochie sought to achieve the same thing by means of their practical schemes of punishment, namely the lifelong alteration in the sensibility of offenders, and the production of reformed and industrious individuals. While Bentham may have described the panopticon as a "new mode of obtaining power of mind over mind, in a quantity hitherto without example",[138] Maconochie was equally capable of resorting to a similarly unsettling metaphor to describe the effect of the Mark System. The group stage of the system would result in the placing of "fetters" upon "even the most

hardened,—fetters which would be only the more effectual because they would be unseen,—because they would proceed from the individual's own class, unconsciously to himself, and consequently unresisted".[139]

51 As we have seen, Maconochie considered fixed-term sentences to be at the root of all evil in punishment. They were illiberal and inequitable, not being eligible to be shortened by good conduct (but they could be lengthened by misbehaviour), and they fell most heavily upon the best-conducted prisoners.[140] Serving a fixed sentence caused a prisoner's mind to become "stagnant", and they sought "only to cheat" time until they had eked out their sentence.[141] A concomitant evil to that of fixed-term sentences was that they typically compelled prisoners to hard labour, which Maconochie regarded as inefficient, expensive, and gave the prisoners no interest in doing anything beyond the bare minimum required of them, and which as a result gave to transportation the "taint of slavery".[142] There is a degree of agreement between Bentham and Maconochie on the arrangement of efficient penal labour. As Moore points out, in Maconochie's view the "the harmonious working of any human institution required the identification of the common interests of all parties",[143] an analogue of Bentham's interest-duty conjunction. Bentham had himself cautioned against forms of compulsory labour, for fear of prisoners being "taught to loathe" work. Bentham had concluded, for instance, that the servile labour demanded as per the Hulks Act of 1776 had been "*made* hard, that it may be *called hard*; and it is called *hard*, that it may be frightful". The effect was to give a "bad name to industry, the parent of wealth and population", while economy was "sacrificed in a thousand shapes". Bentham's corrective measure was to offer, in a panopticon, a variety of employments to the inmates—the "one great improvement in the economy of a prison" since work of all types could be provided for prisoners of all ages, capabilities, and dispositions, without any risk to their health. In addition, the principles of economy and lenity would have seen the panopticon's inmates provided with as much cheap, nourishing food as required to sustain their labour[144]—though, as we have seen, Maconochie would likely have regarded this as perverse as it made prisoners accustomed to being provided for. Yet the difference between the two, again, may not have been terribly wide. Bentham would have countered by pointing out that the principle of severity meant that the food must not be particularly palatable, while the connected principle of "no greater eligibility"[145] required that conditions experienced by an inmate of an institution should not be superior to those of an honest free labourer,[146] preventing an acclimatisation to prison conditions.

Conclusion

52 Maconochie and Bentham shared a number of similarities, such as their training in, and abandonment of a career in the law, and their wide-ranging interests and ideas, including an enthusiasm for identification marks.[147] Most obvious of all was their consideration that existing modes of punishment were inadequate and even counter-productive, their having approached penal discipline as a science, their focus upon the importance of reforming convicts and deterring others from offending, and their having expended a great deal of time, energy, and money attempting to bring practical applications of their theories of punishment to fruition. Bentham spent a dispiriting decade unsuccessfully attempting to persuade the British government to build a

panopticon penitentiary. From 1838 onwards Maconochie's life was consumed by the Mark System—in 1848 Charles Dickens remarked that Maconochie's "head seems to be so full of the Mark System that he has not room to turn another idea in it".[148] His experiment at Norfolk Island was condemned as a failure, and he endured reputational damage when the 1854 Royal Commission into conditions at Birmingham, prompted by the suicide the year before of fifteen year-old prisoner Edward Andrews under the administration of William Austin, revealed evidence of extra-legal punishments inflicted upon prisoners on Maconochie's orders during his governorship.[149]

53 A year after Maconochie's death, his friend Matthew Davenport Hill remarked that "To Captain Alexander Maconochie is owing, more than to any other individual living, the rational and humane system of prison discipline, which, though very slowly, yet surely, is extending itself through our land".[150] (Hill had told the House of Lords Committee on the Execution of the Criminal Law of 1847 that, though he knew Bentham "very intimately" and had the "highest Reverence" for him, he believed him "entirely wrong in some of his Views on the Subject of Punishment" and had come to have "great Confidence" in Maconochie's proposals.)[151] Some of Maconochie's ideas were subsequently incorporated into Walter Crofton's Irish convict system, and in 1870 were embodied in the founding principles of the American Prison Association.[152] Yet during his final years Maconochie saw his theories and methods out of favour, his and his wife's money expended on promoting the Mark System and, after his dismissal as governor at Birmingham prison, there was minimal chance of further employment as a prison administrator. Bentham had certainly felt the sting of humiliation at the failure of the panopticon scheme though he did, eventually, receive substantial financial compensation for his losses. However painful was the panopticon experience for Bentham, Maconochie's experience of putting into effect a system of penal discipline radically opposed to dominant views among the public and politicians alike, being exposed to public scorn as a result, and being forced by circumstances to contradict his firmly-held principles and written theories might suggest that Bentham—for his long term reputation—was ultimately best served by the panopticon having only ever existed on paper.

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NOTES

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For one such (highly) critical engagement with Maconochie's views and methods, and his attempt to implement them at Norfolk Island, see [Rogers, Henry], "What is to be Done with our Criminals", *Edinburgh Review*, vol. 86 (1847), pp. 214–72.

2. Captain Maconochie, *On the Management of Transported Criminals* (London, C. Whiting, 1845); Captain Maconochie, *Crime and Punishment. The Mark System, Framed to Mix Persuasion with Punishment, and Make their Effect Improving, Yet their Operation Severe* (London, J. Hatchard and Son, 1846); Captain Maconochie, "The Mark System" (London, printed by W.H. Compton, 1847); Captain Maconochie, *Norfolk Island*, second edition (London, John Ollivier, 1848); Captain Maconochie, *Secondary Punishment. The Mark System* (London, John Ollivier, 1848).

3. Captain Maconochie, "On Reformatory Prison Discipline in County and Borough Prisons" (Birmingham, printed by William Grew and Son, 1851); Captain Maconochie, *Account of the Public Prison of Valencia* (London, Charles Gilpin, 1852); Captain Maconochie, *Penal Discipline: Three Letters suggested by the interest taken in the recent inquiry in Birmingham* (London, Thomas Harrison 1853).

4. Captain Maconochie, "Comparison Between Mr. Bentham's Views on Punishment, and Those Advocated in Connexion With the Mark System" (London, printed by W.H. Compton, n.d).

5. Maconochie, A., "Comparison", p. 5.

6. See Chapter III, "Du But des Peines" in *Théorie des peines et des récompenses*, ed. É. Dumont, 2 vols. (London, Vogel and Schulze, and B. Dulau and Co., 1811), i. 12–31. Volume one of *Théorie des peines* was translated into English by Richard Smith and published as *The Rationale of Punishment* (London, Robert Heward, 1830), pp. 19–22, which was reproduced in *The Works of Jeremy Bentham*, 11 vols., ed. John Bowring (Edinburgh, William Tait, 1838–43), vol. i. 396–7 (hereafter "Bowring"). Maconochie, like Bentham, could read French, and the quotations presented in "Comparison" are Maconochie's translations of passages from *Théorie des peines*.

7. i.e. Bentham's "Letter to Lord Pelham, Giving a Comparative View of The System of Penal Colonization in New South Wales, and the Home Penitentiary System, Prescribed by two Acts of Parliament of the Years 1794 & 1799" (London, printed by Wilks and Taylor, 1802), "Second Letter to Lord Pelham, &c. &c. &c. In Continuation of The Comparative View of The System of Penal Colonization in New South Wales, and the Home Penitentiary System, Prescribed by two Acts of Parliament of the Years 1794 & 1799" (London, printed by Wilks and Taylor, 1802), and "A Plea for the Constitution: Shewing the Enormities Committed to the Oppression of British Subjects, Innocent as well as Guilty, in Breach of Magna Charta, The Petition of Right, The Habeas Corpus Act, and The Bill of Rights; as likewise of the Several Transportation Acts, in and by The Design, Foundation and Government of the Penal Colony of New South Wales: Including an Inquiry into the Right of the Crown to Legislate Without Parliament in Trinidad, and Other British Colonies" (London, printed by Wilks and Taylor, 1803). These works were first published by as *Panopticon versus New South Wales: or, The Panopticon Penitentiary System, and the Penal Colonization system, Compared* (London, Robert Baldwin, 1812).

Authoritative versions of these texts, along with hitherto unpublished material, will be published in *Panopticon versus New South Wales, and other Writings on Australia*, ed. T. Causer and P. Schofield, a forthcoming volume of *The Collected Works of Jeremy Bentham* (hereafter CW). Preliminary versions of the texts, which are cited in this paper, can be accessed at https://blogs.ucl.ac.uk/bentham-project/2018/09/05/benthams-writings-on-australia-pre-publication-versions-now-online/. For Bentham's attempt to use his writings on criminal transportation to cajole the British government into proceeding with his panopticon penitentiary scheme, see Causer, Tim, "'The evacuation of that scene of wickedness and wretchedness': Jeremy Bentham, the panopticon, and New South Wales, 1802–3", *Journal of Australian Colonial History*, vol. 21 (2019), pp. 1–24.

8. Maconochie, *Secondary Punishment*, pp. 10, 5.

9. See Captain Maconochie, *Australiana: Thoughts on Convict Management, and Other Subjects Connected with the Penal Colonies* (London, John W. Parker, 1839, first published Hobart Town, 1838)

10. Maconochie, A., "Comparison", p. 7.

11. Maconochie, A., *Secondary Punishment*, p. 5.

12. Maconochie, A., *Secondary Punishment*, p. 6.

13. Maconochie, A., *Australiana*, pp. 18, 74.

14. Maconochie, A., *Secondary Punishment*, p. 7.

15. Maconochie, A., *Australiana*, pp. 22.

16. Maconochie to Martineau, 1 May 1838, British Library Add. MSS 38,835, fo. 25.

17. Carey, Hilary M., *Empire of Hell: Religion and the Campaign to End Convict Transportation in the British Empire, 1788–1875* (Oxford, Oxford University Press, 2019), p. 155.

18. Though Maconochie himself used the spelling "M'Konochie" until 1832, apart from when referring to his works which appeared prior to 1832, for consistency "Maconochie" is used here throughout.

19. Cairns, J.W., "Maconochie, Allan, Lord Meadowbank, 1748–1816", *Oxford Dictionary of National Biography*, https://doi.org/10.1093/ref:odnb/17720.

20. "Captain Maconochie, R.N., K.H." in *Our Exemplars, Poor and Rich; or, Biographical Sketches of Men and Women who have, by an extraordinary use of their opportunities, benefited their fellow-creatures*, ed. M.D. Hill (London, Cassell, Petter, and Galpin, 1861), pp. 214-20.

21. Ibid., p. 220. See M'Konochie, Alexander, "Considerations on the Propriety of Establishing a Colony in one of the Sandwich Islands. Being the Substance of a Memoir submitted to the consideration of the Right Honourable the Secretary of State for War and Colonies, and the Lords Commissioners of the Admiralty" (Edinburgh, printed by Walker and Greig, 1816), and Captain M'Konochie, "A Summary View of the Statistics and Existing Commerce of the Principal Shores of the Pacific Ocean" (London, printed for James M. Richardson and William Blackwood, 1818).

22. Later the Royal Geographical Society.

23. See University College London Council Minutes, Special Collections, University College London Library, UCLCA/CC/1/2, pp. 421–2.

24. Maconochie told his friend Sir George Back that he had accepted the position owing to a "specific promise" from Franklin that "an endeavour would be made to procure me the Treasuryship, or some equally prominent and important office in the colony as soon as possible—it was never dreamed that I was to remain permanently as a household drudge": see Barry, John Vincent, *Alexander Maconochie of Norfolk Island: A Study of a Pioneer in Penal Reform* (Melbourne, Oxford University Press, 1958), p. 16.

25. For more on Maconochie's report, see Section III, below.

26. Darling to Under-Secretary Hay, 10 February 1827, *Historical Records of Australia, Series I: Governors' despatches to and from England*, 26 vols (Sydney, Library Committee of the Commonwealth Parliament, 1914–25), vol. 13, p. 105.

27. "Report from the Select Committee on Transportation; Together with the Minutes of Evidence, Appendix, and Index", 3 August 1838, *Commons Sessional Papers* (1837–8), vol. 22, p. 44. In referring to *Commons Sessional Papers* all page references given are to the manuscript page numbers added to the pages, rather than to the pagination of the printed papers themselves.

28. Normanby to Gipps, 11 May 1839, *HRA*, vol. 20, pp. 152–3.

29. See Moore, John M., "Alexander Maconochie's 'Mark System'", *Prison Service Journal*, no. 198 (2011), pp. 38–46; Moore, John M., "Labouring out of Adversity: Maconochie, Political Economy and Penal Labour", *The Howard Journal*, vol. 57 (2018), pp. 182–203; and Moore, John M., "Reformative rhetoric and the exercise of corporal power: Alexander Maconochie's regime at Birmingham Prison, 1849–51", *Historical Research*, vol. 89 (2016), pp. 510–30.

30. Gipps to Glenelg, 23 November 1839, Enclosure (Maconochie to Thomson, 13 November 1839), in "Copies or Extracts of any Correspondence between the Secretary of State and the Governor of New South Wales and Van Diemen's Land, on the Subject of Secondary Punishment", 15 June 1841, *Commons Sessional Papers* (1841, session I), vol. 17, p. 355. Maconochie suggested that he

might be allowed to carry out his system in Van Diemen's Land, either on the Tasman Peninsula or at Maria Island: see ibid., 356.

31. Gipps to Lord John Russell, 27 June 1840, Enclosure C, ibid., p. 398.

32. Gipps to Russell, 27 June 1840, Enclosure D (Thomson to Maconochie, 28 April 1840), ibid., p. 400.

33. Russell to Gipps, 12 November 1840, in "Copies or Extracts of any Correspondence between The Secretary of State having the Department of the Colonies and the Governors of New South Wales Respecting the Convict System Administered in Norfolk Island Under the Superintendence of Captain Maconochie, R.N.", 23 February 1846, *Lords Sessional Papers* (1846), vol. 7, p. 457. In referring to *Lords Sessional Papers*, all page references given are to the manuscript numbers added to the pages, rather than to the pagination of the printed papers themselves.

34. Stanley to Franklin, 25 November 1842, in 'Copies or Extracts of any Correspondence between the Secretary of State and the Governor of Van Diemen's Land, on the Subject of Convict Discipline:—(Part II.)', 3 April 1843, in *Commons Sessional Papers* (1843), vol. 42, pp. 455, 454.

35. Gipps to Russell, 24 February 1840, *Commons Sessional Papers* (1841, session I), vol. 17, p. 408.

36. See Gipps to Russell, 25 February 1840, Enclosure No. 4 ("Memorandum on the Formation of a Library at Norfolk Island"), and Enclosure No. 5 ("Memorandum on the Expediency of Cultivating a Taste for Music in Prisoners"), ibid., pp. 363–3, 366–7.

37. Gipps to Russell, 27 June 1840, ibid., p. 394.

38. Maconochie, *Norfolk Island*, p. 6.

39. See, for instance, the *Sydney Herald* of 1 and 6 July 1840.

40. *Sydney Morning Herald*, 21 October 1842. Original emphasis.

41. Gipps to Russell, 1 May 1841, Enclosure No. 1 (Maconochie to Thomson, 20 March 1841), *Lords Sessional Papers* (1846), vol. 7, p. 443. Members of the public were forbidden from visiting Norfolk Island from 1825 to 1855. The only governor of New South Wales or Van Diemen's Land to visit during this period was George Gipps, who inspected the Island from 11 to 16 March 1843. His report on Maconochie's experiment was broadly positive: see Gipps to Lord Stanley, 1 April 1843, *Lords Sessional Papers* (1846) vol. 7, pp. 565–79.

42. Thomson to Maconochie, 29 July 1842, *Lords Sessional Papers* (1846) vol. 7, p. 483.

43. Thomson to Maconochie, 12 November 1841, SARANSW, NRS 988 (Colonial Secretary of New South Wales: Letters Sent, Copies of letters to Norfolk Island, May 1825–12 June 1851), item 4/3824, Reel 766, pp. 404–6. See also Thomson's letters to Maconochie of 27–30 January 1841, 6 May 1841, and 19–26 July 1842, ibid., pp. 274–5, 304, 469.

44. It was alleged that Ormsby had instigated a convict to steal government sheep in order to undermine Maconochie's authority: see the extensive and inconclusive investigation at Maconochie to Thomson, 12 May 1841, State Archives and Records Authority of New South Wales (hereafter SARANSW), NRS905 (Colonial Secretary: Main series of letters received, 1826–88) Bundle 4/7104, unnumbered item. Ormsby was removed from his position in August 1841.

45. William Henry Tennison Pery, 2nd Earl of Limerick from 1844, had been accused by Maconochie of running an illicit still on his premises: see Maconochie to Thomson, two letters of 8 January 1844, SARANSW, NRS905 Bundle 4/2658, SARANSW, items 44/853 and 44/854.

46. See Reid to Henry Curzon Allport, 14 August 1840, 27 September 1842, and 1 July 1843, "Letters from Dr Reid to H. C. Allport, 1840–1843", Mitchell Library, State Library of New South Wales (hereafter SLNSW), Ar 26, items 1, 3, and 7.

47. Sharpe, Thomas, "Journal on Norfolk Island, 1837–40", SLNSW, B217–8 (CY 1225), B218, pp. 246, 256, 312–3.

48. See Daly, R.A., "Archdeacon McEncroe on Norfolk Island, 1838–42", *Australian Catholic Record*, vol. 36 (1959), pp. 285–305, McEncroe to Thomson, 17 January 1842, and Maconochie to Thomson, 30 March 1842, SARANSW, NRS905 Bundle 4/2582.1, items 42/509 and 42/3190.

49. Smith to Deputy Commissary General Miller, 16 June 1842, SARANSW, NRS905 Bundle 2/566, Reel 769.

50. See Moore, J.M., "Reformative rhetoric", pp. 525, 522–3.

51. Lawrence, James, "Historical Autobiography", in "Norfolk Island Convict Papers, ca. 1842–1867", Dixson Library, SLNSW, DLMSQ 168/Item 1, p. 79.

52. Cook, Thomas, *The Exiles Lamentations*, ed. A.G.L. Shaw (Sydney, Library of Australian History, 1978), pp. 79, 117.

53. For a discussion of escape from Norfolk Island, see Causer, Tim, "'Only a place fit for angels and eagles': the Norfolk Island penal settlement, 1825–55". PhD thesis, University of London, 2010, pp. 210–30. For an account of one man who escaped from Norfolk Island during Maconochie's administration, see Harris, James, "James Thrayle: A Story Founded on Fact", in *The Paglesham Oyster: Containing Tales of Fact, Fiction, and Romance, Music, Poetry, Charades, Riddles, Engimas, Etc., Etc.*, ed. J. Harris, H.J. Hatch, and J. Wiseman (Rochford, Arthur Harrington, Jun., 1870), pp. 3–29.

"Thrayle" was a pseudonym given by Harris to the convict James Punt Borrit who led a successful escape from Norfolk Island in 1841. Borrit and his confederates reached New Caledonia within eight days, and Borrit subsequently returned to England, living in Liverpool for sixteen months before being identified as an absconder. He was subsequently convicted of returning from transportation, and sentenced to be transported for life. He was sent directly back to Norfolk Island, where he arrived in February 1845 aboard the *Hyderabad*. See Borrit's conduct record at CON33/1/86, 19809, TAHO.

54. Price, Aaron, "History of Norfolk Island from the period of its Discovery in the year 1774 to 1 August 1854", Dixson Library, SLNSW, DLMSQ 247, p. 100–1.

55. Maconochie to Thomson, 12 May 1841, SARANSW, NRS905 Bundle 4/7104, unnumbered item.

56. Gipps to Russell, 27 June 1840, Enclosures B and C, *Commons Sessional Papers* (1841, session I) vol. 17, pp. 396–400.

57. Bentham, J., "A View of the Hard-Labour Bill", Bowring, iv. 29. See also Quinn, Michael, "Bentham on Preventive Police: The Calendar of Delinquency in Evaluation of Policy and the Police Gazette in Manipulation of Opinion", *International Criminal Justice Review*, (2019), https://doi.org/10.1177%2F1057567719827343, pp. 1–28, for Bentham's proposed use of criminal statistics and their influence on public opinion.

58. Though the returns as printed in Parliamentary papers were anonymised, the names of the prisoners are given in Maconochie to Thomson, 4 April 1842, SARANSW, NRS 905 4/2566, Reel 769 item 42/5193.

59. See Maconochie to Gipps, 4 April 1842, Enclosure ("Return of English Prisoners under Sentence of Transportation for Life at Norfolk Island, with Particulars of their Offences, &c."), in "Copies or Extracts of any Correspondence between the Secretary of State having the Department of the Colonies and the Governors of New South Wales and Van Diemen's Land on the Subject of Convict Discipline", 9 February 1846, in *Lords Sessional Papers* (1846), vol. 7, pp. 173–5.

60. "Return of Ill-Conducted English Prisoners under Sentence of Transportation at Norfolk Island, for 20, 15, 10, and 7 Years, with Particulars of their Offences", ibid., pp. 176–8 respectively

61. Probably Jeremiah Brown, a sergeant in the Island's police: see Thomson to Maconochie, 10–14 February 1840, SARANSW, NRS 988, item 4/3824, Reel 766, p. 162.

62. Gipps to Russell, 27 June 1840, Enclosure B, *Commons Sessional Papers* (1841, session I) vol. 17, p. 397.

63. See Conduct Registers of Male Convicts arriving in the Period of the Probation System, 1840–53, Tasmanian Archives and Heritage Office (hereafter TAHO), CON33/1/52, 12355.

64. Maconochie, A., *On the Management of Transported Criminals*, [p. 2].

65. For instance, see Alarid, Leanne Fiftal, *Community-Based Corrections,* Eleventh Edition (Boston, CENGAGE Learning, 2017), p. 46.

66. Hazzard, Margaret, *Punishment Short of Death: A History of the Penal Settlement at Norfolk Island* (Melbourne, Melbourne University Press, 1984), p. 160.

67. Data for the period January 1833 to December 1839 are taken from Maconochie to Thomson, 27 May 1840, Appendix B ("Summary of Abstracts of Punishment inflicted at Norfolk Island from 1833 to 1839"), SARANSW, NRS 905 Bundle 4/2502, item 40/6200. Data for the period 1 January 1840 to 31 December 1853 were compiled from an analysis of the following series of Conduct Registers held by TAHO: Male Convicts arriving in the Period of the Assignment System, 1803–43 (CON31); Male Convicts arriving in the Period of the Probation System, 1840–53 (CON33); Male Convicts arriving under the Assignment System on Strength in Nov. 1844, 1844–92 (CON34); Male Convicts arriving on Non-Convict Ships or Locally convicted, 1840–97 (CON37); and Male Convicts Whose Records were transferred from the Probation Series, and of Certain Others, 1840–6 (CON39). For a fuller discussion of punishment at Norfolk Island, see Causer, T., "Norfolk Island penal settlement, 1825–55", pp. 231–69, and Appendix 6, pp. 334–49.

68. See Causer, Tim, "Norfolk Island: A tiny fist of volcanic rock", *Convict Voyages: A global history of convicts and penal colonies* expert essay, http://convictvoyages.org/expert-essays/norfolk-island.

69. The next greatest mean average was 100 lashes per flogging for the calendar year 1837.

70. Gipps to Stanley, 1 April 1843, Enclosure, ("Report of Proceedings and Observations in regard to Convict Management made in Norfolk Island in 1842"), *Lords Sessional Papers* (1846) vol. 7, p. 527. See also Maconochie's remarks about flogging and its effects both on those who ordered it and endured it in *Norfolk Island*, p. 27 n.

71. CON33/1/55 14188, TAHO.

72. CON33/1/71 16666, TAHO.

73. Moore, J.M., "Reformative rhetoric", pp. 520–4.

74. By 1812, when the texts were published as *Panopticon versus New South Wales*, around 4,000 more convicts had arrived in the colony.

75. The figures above were derived from Bateson, Charles, *The Convict Ships, 1787–1868*, 2nd edition (Glasgow, Brown, Son & Ferguson Ltd, 1985).

76. Bigge had been commissioned by Earl Bathurst, the Colonial Secretary, to identify ways in which the transportation system might be made cheaper and a more deterring punishment. Bigge based his findings upon a tour of the penal colonies from 1819 to 1821.

77. See Maxwell-Stewart, Hamish, "Convict Transportation from Britain and Ireland, 1615–1870", *History Compass*, vol. 8 (2010), 1221–42, at 1231–2.

78. Arthur to Bathurst, 3 July 1825, *Historical Records of Australia, Series III: Despatches and Papers Relating to the Settlement of the States*, 6 vols. (Sydney, Library Committee of the Commonwealth Parliament, 1921), vol. 4, pp. 288–9.

79. Ibid., pp. 288–9.

80. Forsyth, W.D., *Governor Arthur's Convict System: Van Diemen's Land, 1824-46, A Study in Colonization* (Sydney, Sydney University Press, 1970) [originally published 1935], p. 55.

81. See Kippen, Rebecca, and McCalman, Janet, "A Test of Character: A Case Study of Male Convicts Transported to Van Diemen's Land, 1826–38", in *Lives in Transition: Longitudinal Analysis from Historical Sources*, ed. P. Baskerville and K. Inwood, (Montreal, McGill-Queen's University Press, 2015), pp. 19–42, at 19, and McCalman, Janet, Smith, Leonard, Silcot, Sandra, and Kippen, Rebecca, "Building a Life Course Dataset from Australian Convict records: Founders & Survivors: Australian Life Courses in Historical Context, 1803–1920", in *Population Reconstruction*, ed. G. Bloothooft, P. Christen, K. Mandemakers, M. Schraagen (London, Springer, 2015), pp. 285–98, at 286.

82. See Maconochie's *On Colonel Arthur's General Character and Government* [1837–8] (Adelaide, Nag's Head Press, 1989), and Carey, H., *Empire of Hell*, p. 156.

83. See "Extract of a Despatch from Lieutenant-Governor Arthur to Viscount Goderich, &c. &c. &c.", 27 February 1833, in "Report from the Select Committee on Transportation; Together with the Minutes of Evidence, Appendix, and Index", 14 July 1837, Appendix No. 1, No. 10, in *Commons Sessional Papers* (1837) vol. 19, p. 375. See also Arthur's *Defence of Transportation, in reply to the remarks of the Archbishop of Dublin, in his Second Letter to Earl Grey* (London, George Cowie & Co., 1835), pp. 36–7, in which he quoted from the *Rationale of Punishment* to support his position.

84. According to Bentham, in North America the transportee would find "a master, waiting to take charge of the delinquent as soon as landed ... one of a neighbourhood all composed of men of thrift". The convict would thus "be trained up, in unremitting habits of unavoidable industry, during his bondage", all the while "under the care of those, who in the case of each individual under their charge, not only had nothing to gain by his death, but had everything to lose by it": see Bentham, Jeremy, "Letter to Lord Pelham", ed. T. Causer and P. Schofield, pre-publication version, The Bentham Project, 2018, pp. 31, 70, https://discovery.ucl.ac.uk/id/eprint/10055298/.

85. Ibid., pp. 9–10.

86. "Report on Convict Discipline", in "Copy of a Despatch from Lieut.-Governor Sir John Franklin, to Lord Glenelg, dated 7 October 1837, Relative to the Present System of Convict Discipline in Van Diemen's Land", 11 April 1838, in *Lords Sessional Papers* (1837–8) vol. 9, p. 157.

87. Maconochie to Russell, 30 September 1837, in "Report on the State of Prison Discipline in Van Diemen's Land, &c. by Captain Maconochie", in *Commons Sessional Papers* (1837–8) vol. 40, pp. 237–52, at 239.

88. Maconochie, A., *Penal Discipline: Three Letters*, p. 8.

89. Barry, J.V., *Alexander Maconochie*, p. 19. See also Clay, John, *Maconochie's Experiment: How one man's extraordinary vision saved transported convicts from degradation and despair* (London, John Murray, 2001), pp. 66–71. The criminologist Norval Morris, in his fictionalised account of Maconochie's time at Norfolk Island, suggests he was of the view Maconochie had been aware of debates in punishment for some time, having his Maconochie state "For years I had followed the debate between Jeremy Bentham and John Stuart Mill and Sir James Fitzjames Stephen about the governance of prison, about transportation and the purposes the prison and the penal colony might serve": see *Maconochie's Gentlemen: The Story of Norfolk Island and the Roots of Modern Prison Reform* (Oxford, Oxford University Press, 2002), p. 25.

90. Carey, H., *Empire of Hell*, p. 163.

91. Maconochie to Franklin, 20 May 1837, in *Lords Sessional Papers* (1837–8) vol. 9, p. 153. See also Whately, Richard, *Thoughts on Secondary Punishments, in a Letter to Earl Grey* (London, B. Fellowes, 1832), pp. 53–103, to which Arthur had responded in 1835 with his *Defence of Transportation*.

92. Maconochie, A., 'Supplement' in *Australiana*, p. 14 n.

93. M'Konochie, A., "A Summary View", pp. 153–89. Maconochie very briefly turned to Van Diemen's Land at ibid., pp. 189–92.

94. Ibid., p. 162.

95. Ibid., p. 175.

96. Ibid., p. 176.

97. Ibid., pp. 176–7.

98. Ibid., p. 177.

99. See Ibid., p. 161, where Maconochie stated that he had based his discussion of New South Wales upon: "Report from the Select Committee on Transportation", 10 July 1812, *Commons Sessional Papers* (1812) vol. 2, pp. 573–689; Mann, David Dickenson, *The Present Picture of New South Wales* (London, John Booth, 1811); a "very recent" publication which had "added a short notice of the alterations made in 1812, in some parts of the constitution, by which the colony was

administered", probably the anonymous *The History of New South Wales*, second edition (London, J. Hatchard, 1818); and extracts from the *Sydney Gazette*.

100. M'Konochie, A., "A Summary View", p. 160.

101. That is not to say that transportation to North America had not been subject to criticism. For instance, William Paley had argued that it had been found to "answer the purpose of example very imperfectly", since it was "in reality a slight punishment" to someone without property or regular subsistence because the punishment inflicted "is unobserved and unknown", and it resulted in the same punishment being "extended to crimes of very different character and malignancy": see *The Principles and Morals of Philosophy* (London,, R. Faulder, 1785), p. 543. In a similar vein, William Eden had found that transportation "as practised in England; is often beneficial to the criminal, and always injurious to the community", since the nation was "deprived of a subject" who was "merely transferred to a new country; distant indeed, but as fertile, as happy, as civilized, and in general as healthy, as that which he hath offended": see *Principles of Penal Law*, second edition (London, B. White and T. Cadell, 1771), p. 33.

102. Henry Grey Bennet's *Letter to Viscount Sidmouth, Secretary of State for the Home Department, on the Transportation Laws, The State of the Hulks, and of the Colonies in New South Wales* (London, J. Ridgway, 1819), avowedly inspired by Bentham's works, appeared the year after Maconochie's "A Summary View".

103. M'Konochie, A., "A Summary View", pp. 178–9. Cf. Bentham, J., "Letter to Lord Pelham", esp. pp. 10–16 on the absence of inspection in New South Wales.

104. M'Konochie, A., "A Summary View", pp. 179–80.

105. Bentham, "Letter to Lord Pelham", pp. 33. Original emphasis.

106. M'Konochie, A., "A Summary View", pp. 180–1.

107. See Jeremy Bentham, "Second Letter to Lord Pelham", ed. T. Causer and P. Schofield, pre-publication version, The Bentham Project, 2018, https://discovery.ucl.ac.uk/id/eprint/10055301/, and Jeremy Bentham, "A Plea for the Constitution", ed. T. Causer and P. Schofield, pre-publication version, The Bentham Project, 2018, https://discovery.ucl.ac.uk/id/eprint/10055304/.

108. M'Konochie, A., "A Summary View", p. 183.

109. Ibid., pp. 183–6.

110. Maconochie, *Australiana*, p. 21–2.

111. Maconochie, A., *Norfolk Island*, p. 24.

112. Ibid., p. 10. Original emphasis.

113. Ibid., p. 10. Original emphasis.

114. Maconochie, A., *Australiana*, p. 59. Original emphasis.

115. Beccaria, Cesare, *An Essay on Crimes and Punishments* (London, 1767) (first published as *Dei Delitti e Delle Pene* in 1764). For Bentham's intellectual debt to Beccaria, see Schofield, Philip, '"The first steps rightly directed in the track of legislation': Jeremy Bentham on Cesare Beccaria's Essay on Crimes and Punishments', *Diciottesimo Secolo*, vol. 4 (2019), 65–74.

116. Paley, W., *Principles of Moral and Political Philosophy*, pp. 544–5.

117. Whately, R., *Thoughts on Secondary Punishment*, pp. 35–7.

118. Gascoigne, John, with Curthoys, Patricia, *The Enlightenment and the Origins of European Australia* (Cambridge, Cambridge University Press, 2002), p. 141.

119. Bentham, Jeremy, *An Introduction to the Principles and Morals of Legislation*, ed. J.H. Burns and H.L.A. Hart, intro. F. Rosen (Oxford, Clarendon Press, 1996), p. 158. Hereafter *IPML*.

120. Maconochie, A., *Norfolk Island*, p. 15.

121. Bentham, J., *IPML*, pp. 178–9.

122. Maconochie, A., "Comparison", pp. 4, 3. For Bentham on apparent punishments and their cheapness, see *IPML*, pp. 178–80.

123. Maconochie, A., "Comparison", pp. 1, 3, 4.

124. Maconochie to Franklin, 20 May 1837, Enclosure No. 1 ("Report on Convict Discipline") in *House of Lords Sessional Papers* (1837[illegible]8) vol. 9, p. 155.

125. Maconochie, A., *Australiana*, p. 20 n.

126. Ibid., p. iv n. Original emphasis. Maconochie made a similar comparison between curing criminal offending and curing illness elsewhere in his works: see "On Reformatory Prison Discipline", p. 4, and *Penal Discipline: Three Letters*, p. 4.

127. Matthew 9: 12, which appears on the title pages of *Secondary Punishment*, *On the Management of Transported Criminals*, and "On Reformatory Prison Discipline". For more on the importance of religion in Maconochie's thought, see Carey, *Empire of Hell*, pp. 155–82.

128. Bentham, J., "Letter to Lord Pelham", p. 42.

129. Maconochie, A., "Comparison", p. 4.

130. Ibid., p. 5.

131. Maconochie, A., *Secondary Punishment*, p. 10.

132. Maconochie, A., "Comparison", pp. 4–5.

133. Ibid., pp. 4–5.

134. For Bentham's account of his visit to the hulks, see Bentham Papers, Special Collections, University College London Library, Box cxvii., fos. 1–2.

135. Semple, Janet, *Bentham's Prison: A Study of the Panopticon Penitentiary* (Oxford, Oxford University Press, 1993), p. 108.

136. Moore, J.M., "Labouring out of Adversity", p. 185.

137. Draper, Anthony J., "An Introduction to Bentham's Theory of Punishment", *Journal of Bentham Studies*, vol. 5 (2002), p. 1.

138. Bowring, iv. 39

139. Captain Maconochie, *General Views Regarding the Social System of Convict Management* (Hobart Town, J.C. Macdougall, 1839), p. 24.

140. Maconochie, A., *On the Management of Transported Criminals*, p. 9.

141. Maconochie, A., "On Reformatory Prison Discipline", p. 4. This line of thinking was almost certainly influenced by Maconochie's time as a prisoner of war when, upon realising that he could do nothing to hasten his release, he found himself "heart-broken" with "nothing to look forward to but a protracted and harsh confinement": Hill, M.D., (ed.), *Our Exemplars*, p. 218.

142. Maconochie, A., *On the Management of Transported Criminals*, p. 9.

143. Moore, J.M., "Labouring out of Adversity", p. 189.

144. Bentham, J., "Panopticon Postscript—Part II", in Bowring, iv. 144, 141.

145. Quinn, Michael, "Mill on Poverty, Population and Poor Relief: Out of Bentham by Malthus?", *Revue d'etudes bethamiennes*, vol. 4 (2008), https://doi.org/10.4000/etudes-benthamiennes.185.

146. Bentham, Jeremy, "Essays on the subject of the poor laws", in *Writings on the Poor Laws: Volume I*, ed. M. Quinn (Oxford, Clarendon Press, 2001), pp. 39–44.

147. Maconochie had suggested "fixing on all criminals under the new system a small private brand (as between the toes, or elsewhere), which shall be invisible unless specifically sought for, but yet shall identify cases of second conviction in any part of the world": see Gipps to Russell, 25 February 1840, Enclosure No. 7, *Commons Sessional Papers* (1841, session I), vol. 17, pp. 370–1. Bentham had, in "Indirect Legislation", proposed that all British subjects be tattooed for the purposes of identification: see Engelmann, Stephen G., "'Indirect Legislation': Bentham's Liberal Government", *Polity*, vol. 35 (2003), pp. 369–88, and Sophie Coulombeau, "Jeremy Bentham's 'Universal Tattoo'", *BBC Radio 3 Free Thinking*, 13 June 2014, https://www.bbc.co.uk/programmes/p020v6gb.

148. Dickens to Angela Burdett Coutts, 10 May 1848, *The British Academy/The Pilgrim Edition of the Letters of Charles Dickens, Volume 5: 1847–1849*, ed. G. Storey and K.J. Fielding (Oxford, Oxford University Press, 1981), p. 304.

149. See Moore, J.M., "Reformative rhetoric".

150. See Hill, M.D. (ed.), *Our Exemplars*, p. 213. Hill (1792–1872), penal reformer and lawyer, recorder of Birmingham 1839–66, was instrumental in securing his close friend Maconochie's appointment as governor of Birmingham prison in 1849.
151. See "Second Report from the Select Committee of the House of Lords appointed to inquire into the Execution of the Criminal Law, especially respecting Juvenile Offenders and Transportation", *Lords Sessional Papers* (1847), vol. 7, pp. 55–6.
152. See Moore, J.M., "Maconochie's Mark System", p. 46; Barry, J.V., *Alexander Maconochie*, p. 231; and *The Declaration of Principles of the 1870 Congress, Revised and Reaffirmed at the Sixtieth Annual Congress of the American Prison Association* (New York, 1930).

ABSTRACTS

Alexander Maconochie (1787–1860), the originator of the "Mark System", is a major figure in the history of penal discipline and is best known for his attempt to implement it at the Norfolk Island penal station from 1840 to 1844. Among Maconochie's many works is the eight-page "Comparison Between Mr. Bentham's Views on Punishment, and Those Advocated in Connexion with the Mark System", in which Maconochie rejected Bentham's critique of transportation, as well as fundamental elements of his theory of punishment. Maconochie concluded that mainstream thinking on penal discipline was dominated by "mistakes" that either "in great measure originat[ed] with Mr. Bentham", or had been "at least sanctioned by his high authority".This paper questions whether Maconochie's rejection of Bentham's views is entirely convincing, since his penal practices, as well as an earlier and lesser-cited work, indicate that Maconochie was, at times, considerably closer to Bentham's position on punishment than "Comparison" suggests. Section I will provide some brief biographical background. Section II will explore Maconochie's attempt to implement his reformative system at Norfolk Island, at the heart of which was surveillance and extensive record-keeping to monitor individual behaviour and progress, and in which there are echoes of Bentham's panopticon scheme. Section III will examine Maconochie's changing views on criminal transportation, from his adherence to the Benthamite anti-transportation line in 1818, to his qualified support for transportation from 1838 onwards. Finally, Section IV will examine the Mark System and Maconochie's criticism of Bentham in more detail.

Alexander Maconochie (1787–1860) est une figure majeure de l'histoire pénale. Il est à l'origine du « Mark System » et est surtout connu pour avoir tenté d'appliquer son système au bagne de l'île Norfolk de 1840 à 1844. Parmi ses nombreux ouvrages, on compte un opuscule de 8 pages intitulé « Comparaison entre les vues de M. Bentham sur la punition et celles préconisées en connexion avec Mark System », dans lequel Maconochie rejette la critique benthamienne de la transportation des bagnards, ainsi que les éléments fondamentaux de sa théorie de la punition. Maconochie conclut que la réflexion dominante sur la discipline carcérale est dominée par des « erreurs » qui, « dans une large mesure, venaient de M. Bentham », ou avaient été « au moins sanctionnées par sa haute autorité ». Cet article interroge ce rejet par Maconochie, puisque ses pratiques pénales, ainsi qu'un travail antérieur moins cité le montre, indiquent qu'il est parfois beaucoup plus proche de la position de Bentham sur la punition que ne le suggère « Comparison ». La première partie fournit quelques brèves informations biographiques. La seconde explore la tentative de Maconochie de mettre en œuvre son système au bagne de l'île de

Norfolk, au cœur duquel se trouvaient la surveillance et la tenue de registres pour surveiller comportements et progrès individuels, et dans lequel se trouvent des échos du plan panoptique de Bentham. La troisième section examine l'évolution des positions de Maconochie sur la transportation des bagnards, depuis son adhésion à la ligne benthamienne en 1818, jusqu'à son soutien nuancé pour la transportation à partir de 1838. Enfin, la dernière partie examine plus en détail son système et la critique que Maconochie fait de Bentham.

INDEX

Mots-clés: Alexander Maconochie, Jeremy Bentham, île de Norfolk, panoptique, histoire pénale, Mark System, Terre de Van Diemen, bagne, mouvement anti-transportation
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