

unnecessary. Again, however, it is only fair to point out that progress in the development of legal theory depends largely upon analysis of the unspoken assumptions which lie behind decisions. These assumptions often represent the first breach in the wall of precedent, and the author is justified in proceeding on the basis that if a proposition is assumed without discussion the case can be treated as an authority for the correctness of the assumption. Indeed, in various places throughout the book the reader will feel that the authorities are made to do duty of which those who decided them had no conscious thought. This is true to some extent of the whole system of precedent, but particularly so in this difficult field, in which it must be rare to find that the judge who decides the case is expert.

Dr Ford has produced a first-class work. His analysis is penetrating, he has covered an enormous range in a short compass, and his book should have an important influence on the development of the law relating to associations.

R. M. EGGLESTON*

Alexander Maconochie of Norfolk Island, by THE HON. MR JUSTICE J. V. BARRY. (Oxford University Press, Melbourne, 1958), pp. i-xxi, 1-277. Price £2 10s.

Mr Justice Barry's biography of Alexander Maconochie is an important study in three branches of knowledge. It is a definitive biography of one of the greatest of penal reformers; it is an intriguing study in Australian history; and it is a major contribution to the theory of the treatment of criminals.

Maconochie's revolutionary belief was that it would be desirable to use the time a criminal spent in prison to try to reform him by helping him to develop a sense of social responsibility; the alternative belief, almost universally accepted in the first half of the nineteenth century and still not moribund, is that prison should be a place of terror which would serve as a constant warning to the potential criminal and in which the convicted criminal should so suffer that he would determine not to return. There is no prison administration that does not today accept the reformatory idea for most prisoners; there was none that did accept it when, in 1840, Maconochie became Governor of the hell on earth that was the Norfolk Island penal settlement.

Prison as a place of punishment, and not merely as a place where men are awaiting trial or punishment, seems to have had its first trial in the Walnut Street Gaol in Philadelphia in the last decade of the 18th Century. Its precursors were banishment and transportation. Maconochie was led to an interest in prisons through being requested to study transportation. The London Society for the Improvement of Prison Discipline asked him, when he was leaving for Van Diemen's Land as Private Secretary to the Lieutenant-Governor, Sir John Franklin, to prepare a report on the working of the convict system. This undertaking, when allied with his own integrity, originality of mind and compassion, made of him a dedicated man, a major contributor to knowledge in the social sciences, and, incidentally, a persistent nuisance to his superior officers in the Government of Van Diemen's Land, New South Wales and England.

In 1840 Maconochie was given the chance, as Governor of the Penal Settlement on Norfolk Island, to apply some, but by no means all, of the

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far-sighted ideas on prisons and prisoners which he had developed in his turbulent early years in Van Diemen's Land and first enunciated in his report to the London Society. Fettered by official opposition to what was regarded by many as an idealistic, unreal and dangerous theory of punishment; lacking the opportunity to apply the fundamental principle of his scheme of prison administration, that the prisoner should earn his release by his conduct, in effect, 'keep the key of his prison'; and given an appallingly bad group of convicts on whom to test his theories, Maconochie demonstrated the wisdom of his methods to all who will honestly study his work on Norfolk Island. It is a moving story of a man's vision and humanity, of his successful application of ideas of great significance in the face of deeply entrenched opposition—Mr Justice Barry tells it superbly.

Alexander Maconochie's theories were the foundation and his application of them the prototype of the reformatory movement in prisons throughout the world. He was an inventor in social science. His ideas have influenced, and influenced much more than they realize, penal administrators throughout the world, and his words have passed into the accepted language and clichés of prison administration. Yet he and his life were known to few people. Mr Justice Barry has rescued a great man from undeserved obscurity, pointed many lessons for the present and future from a study of his life and ideas, and performed this task in a highly readable and frequently moving way. To be an inventor in the social sciences, to oppose current prejudices, particularly on a subject so fertile in prejudice as the punishment of criminals, requires a relatively rare form of personal courage. Both the subject and the author of this book have, in their lives and writings, manifested this courage. Maconochie had this courageous integrity in full measure, and his life was saddened by the response it provoked from his society. He was not, apparently, embittered by the frequently cruel opposition he encountered. To the end he preserved a kindly demeanour, a prolific and determined advocacy of his ideas, and a firm courage in personal and public adversity.

In the final chapter of this biography, Mr Justice Barry assesses Maconochie's achievements and relates his ideas to current theoretical problems in criminology. This work is therefore a judicious combination of biography, of vignettes in Australian history, and of studies in the history of ideas (which is, perhaps, the most important form of history); there is no doubt that it will live as a basic text in the literature of the social sciences.

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Evidence in Criminal Cases, by FRANK L. BUNN, O.B.E., of Gray's Inn, Barrister-at-Law, 3rd ed. (The Law Book Co. of Australasia Pty Ltd, Melbourne, 1957), pp. i-xi, 1-115. Price 14s. 9d.

The stated aim of Mr F. L. Bunn's book *Evidence in Criminal Cases* is to provide police officers and others with knowledge and understanding of the rules of evidence in criminal cases.

It is to be regretted that the author's book is hardly likely to achieve his aim.

The principal defect of the book is the lack of any apparent system in

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