

North America - Cast Away: Criminal Transportation

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Origins

From the very beginning of the age of exploration and discovery, the utility of overseas developments to the mother country as a depository for deviants and the poor was a factor in policy and propaganda. Richard Hakluyt specifically mentioned its positive features in the reign of Elizabeth the First though Sir Francis Bacon, writing a generation later, was more sceptical. The pattern of criminal transportation varied not only between the three kingdoms of England and Wales, Ireland and Scotland, but from place to place within the three kingdoms.

In the early seventeenth century, rogues and vagabonds figured prominently among transportees as did orphans and the poor as Griffiths demonstrates in his analysis of the records of Bridewell. But, by mid-century, transportation came to reflect the political and religious turmoil affecting Britain and Ireland. Rebellious subjects from England and Wales, Ireland and Scotland as well as Catholics and the wrong sort of Protestants such as Quakers and Covenanters were despatched to the West Indies and North America. In the later seventeenth century, serious offenders, initially sentenced to death and pardoned on condition of 14 years transportation, emerged as a dominant feature in the transatlantic trade. Despite the need for labour, colonists protested against the influx of these undesirables. They protested again when Parliament passed the 1718 Transportation Act but their protests were ignored.

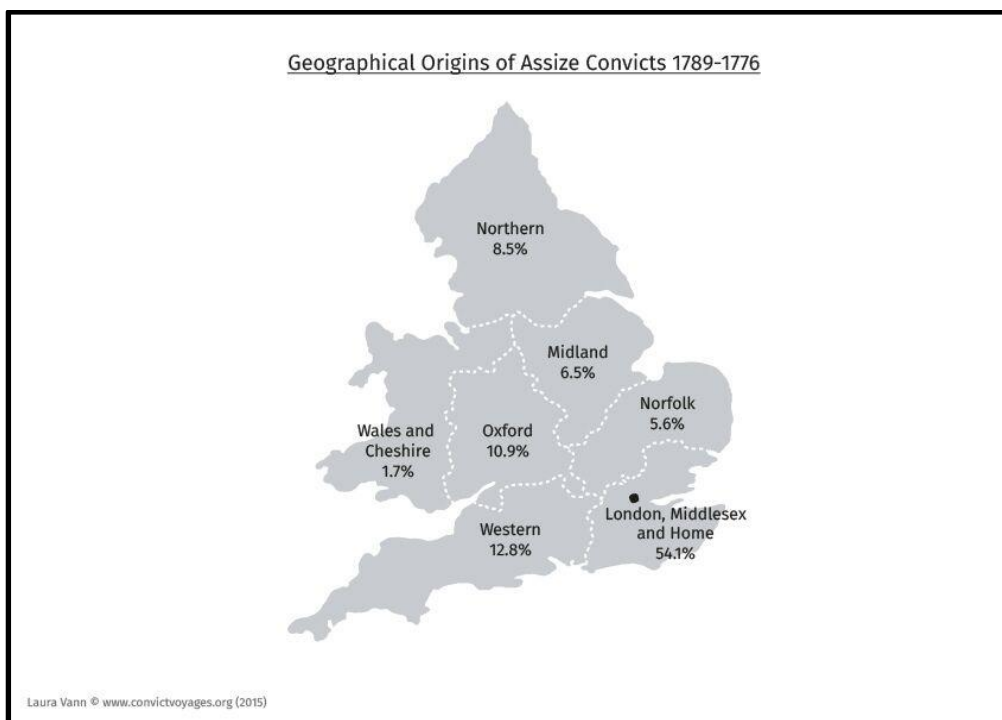
The 1718 Transportation Act was the consequence of a crisis not only of law and order, but the culmination of a quest for an alternative form of punishment to the death penalty and the fact that existing penal policy failed to act as a deterrent to wrongdoers. The problem was not confined to London, though it was especially severe in the capital in the 1690s. Violent street robbery plagued the city and as a result of the great recoinage, convictions for clipping and counterfeiting coin swelled an already growing gaol population made up of those either awaiting trial, execution or transportation. The problem of overcrowding in London gaols was aggravated by the merchants, who, dependent on sales for their profits, were reluctant to carry certain types of convicts to the American mainland: those who were too old or too young, infirm or female. In 1696 London gaols were filled with women who had been brought before the courts on charges of offences against property but the courts were reluctant to hand down too many death sentences and authorities in the West Indies declared they did not want them.

William Thompson, Solicitor General and Recorder of the City of London, guided the passage of the 1718 bill through Parliament. He acted as the link between "the central administration, parliament and the city." The Act transformed penal policy by allowing judges in the superior courts, the assizes, to sentence felons directly to transportation for 7 or 14 years in the colonies while maintaining the option of pardoning some persons, initially sentenced to hang, on condition of 14 years transportation. The most significant feature of the new Act, however, was that it allowed justices of the peace (the magistrates in the lower courts, the quarter sessions) to sentence those found guilty of lesser crimes – usually misdemeanours – to 7 years transportation. It also specified that those who returned to England before the term of their sentence had expired should face execution. In addition, it was recognized that if the system was to work effectively the government

needed to fund it. Consequently, the Treasury agreed to pay the merchant Jonathan Forward £3 per head, later raised to £5, to carry convicts sentenced by the courts of London and the Home Counties to the American colonies, a trade which he dominated for the next 20 years. In other parts of the country, arrangements were made by local authorities and paid for by county taxes.

Numbers

Counting convicts is not an exact science. In some counties, such as those in the Midland Circuit, Assize records (kept centrally) have not survived; county records (kept locally) are also patchy. Abbot E. Smith, a pioneer in the study of criminal transportation, put the figure for those sent to the colonies from 1661 to 1700 as 4,600. The number transported from Britain and Ireland between 1718 and 1775 is usually given as around 50,000, but this figure includes those transported from Ireland which Ekirch estimated as about 13,000 but Kelly has revised downwards to between 10,000 and 11,000. Numbers for Scotland remain problematic though should probably be revised upwards. The Transportation Act of 1718 was extended to Scotland in 1766 before which transportation was limited to capital offenders who were supposed to remove themselves. In Ireland, which had its own parliament, legislation in 1703 and 1705 permitted the transportation of vagrants whose numbers appear to have equalled those of criminals.



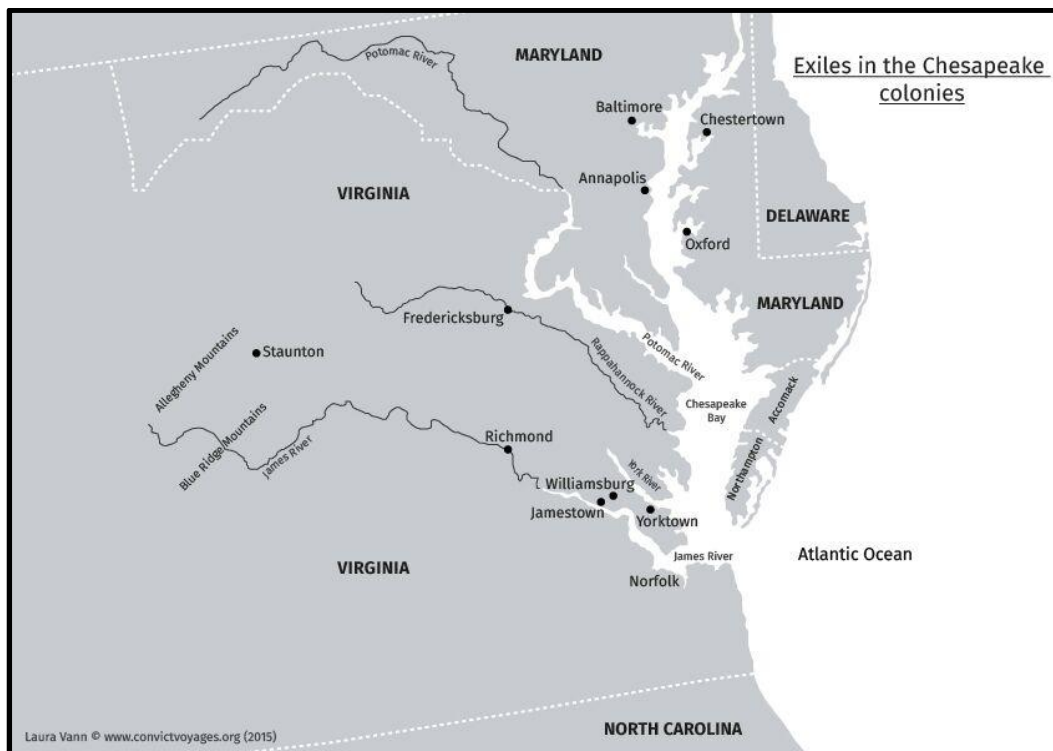
There is also the question of how widely transportation was adopted outside London and the Home Counties where it lacked a government subsidy. A parliamentary source based on data for the period 1769 to 1776 produces a figure of 54% for London and the Home Counties compared with 46% for the rest of England and Wales. Government contractor Duncan Campbell provided a similar estimate when in 1779 during the course of the Revolutionary War he stated that numbers were roughly equal.

Convict Voyages

Convict voyages usually lasted 6 to 8 weeks after which conditions on board deteriorated rapidly. Some convicts died of disease before reaching their destination. Mortality rates were not unduly high but there were exceptions. Some vessels were lost at sea; others met with catastrophe along perilous coastlines of England and Wales and North America. Some vessels leaving Bristol found it difficult to get out of the Bristol Channel separating the West Country and South Wales. “Going to hell in a handcart” was how some described their passage. There were also problems with the convicts among whom unrest could turn to mutiny as in the case of James Dalton who in 1720 with a group of mutineers forced the captain of the *Honour* Richard Langley to put in to the Spanish port of Vigo. Some vessels were captured by privateers.

Destination

Most convicts were sent to the Chesapeake colonies of Virginia and Maryland. These were tobacco-growing colonies heavily dependent on slave labour and characterized by non-nuclear patterns of settlement. Bampfylde Moore Carew, whose several accounts of his eventful life as convict, vagrant and gypsy were widely read, though not always reliable, describes how it was the custom to groom convicts before they were put up for sale. Those who were not sold along the rivers which penetrated deep into the Virginia interior or at the mouths of Maryland’s many creeks, were driven inland along well-worn paths moving from one county courthouse to another by so-called “soul drivers.”



Who Were the Convicts?

Convicts were predominantly young and male and not highly skilled. They, like their female counterparts, had usually been found guilty of property theft. They were not members of a criminal

class or organized gangs but rather members of the working poor. Women whose numbers have been traditionally underestimated were a sizable minority especially in the towns and at the quarter sessions. Despite the unpopularity of Britain's penal policy in the colonies, there was no problem in selling convicts as indentured servants given the shortage of labour, but what planters really wanted was skilled artisans. Runaway advertisements identify convicts with a range of skills but these represent only a minority of convicts: very few runaway advertisements, a major source of information on convicts in the colonies, listed convicts as labourers. Runaway Edward Billingham, a convict servant from County Durham condemned at quarter sessions for stealing 2 geese, was one of them. His master, Sampson Matthews of Staunton in Augusta County on the Virginia frontier, identified him as a chimney sweep and labourer. He was 30 years of age and "makes but an ordinary appearance" (*Virginia Gazette*, 17 October 1766). Others ran away from the many iron works in Virginia and Maryland.

Gender

According to Lodine-Chaffey, of approximately 15,000 individuals sentenced to transportation at the Old Bailey, over 4,000 were women. That is, between 1/4 and 1/3 of the total. Morgan and Rushton found women in the majority of those transported from the Newcastle quarter sessions in the third quarter of the eighteenth century and often amounted to a third of those transported from elsewhere in the northeast, northwest, Bristol and the western circuit. There is little evidence that women were treated more leniently by the courts than men. Only a few like Sarah Wilson, Susanna Buckler and Sarah Knox were able to reinvent themselves in the colonies.

Perceptions of Convicts

Convicts were not conspicuous among those prosecuted in the courts of Virginia and Maryland. They were "felons of the common sort" or "inferior note," much like Edward Billingham, and differentiated from the much smaller numbers of "felons of distinction," subjects of great notoriety whose crimes attracted widespread attention and news of whose passage across the Atlantic preceded them. Among the latter was Henry Justice, a barrister, found guilty of stealing books from a Cambridge University Library, who when he pleaded for an alternative sentence was told by the judge at his trial "that his case was greatly aggravated by his education and his profession" (*London Evening Post*, 11 May 1736). Nonetheless in recognition of his class and status, he was conveyed to the Thames in the coach of government contractor Jonathan Forward and crossed the Atlantic in the captain's cabin. He was not welcome in Philadelphia where he and some friends had headed on their arrival and they were driven out of the colonies.

A few well-publicised cases contributed to the notion that those bound for America were in fact serious offenders. Probably the most infamous was the case of Jeremiah Swift who murdered two of his master's children and injured a third at Elk Ridge, Maryland and was hanged in chains in 1751. This was the case taken up by Benjamin Franklin along with two others almost as gruesome which occurred around the same time. Previously Franklin had shown little interest in transportation but now he denounced the mother country for the practice of sending felons across the Atlantic. What good mother ever sent "thieves and villains" to corrupt her children he asked, and advocated that the colonists send rattlesnakes to Britain in return. His diatribes, printed and reprinted in American and British newspapers, were circulated widely on both sides of the Atlantic.

Convict Narratives

These took many forms but seldom that of a traditional narrative with the notable exception of Daniel Defoe's *Moll Flanders*. They can be (re)constructed from newspaper accounts, last dying speeches, pamphlets, runaway advertisements and court records. Among the most intriguing is that of Joshua Dudley who was sentenced for perjury having confessed to secret knowledge of the threat of arson in the Portsmouth dockyards in 1770. Tried in the Old Bailey, he was lucky to escape with a sentence of transportation. He published a memoir of his life in 1772 while awaiting the execution of his sentence in which he outlined his career as a confidence man and womanizer. Two years later an account on his life as a convict was published in English newspapers such as the *Cumberland Packet* and the *Leeds Mercury* in which he recounted how, having gained the confidence of his mistress in Virginia, he was given the guardianship of her daughter when her mother died. When she too died, he allegedly inherited their estate and slept with her coffin in his room. Dudley's account was subsequently reproduced in the *Virginia Gazette* where it was denounced as a fabrication since he was still serving time as a convict on the Virginia frontier. Sarah Wilson, on the other hand, was a relatively successful fraudster with a long career (related in English and American newspapers) of posing as a distressed noblewoman in England and the King's sister in North America, promising favours to all who took her in. Most convicts, however, led undistinguished lives and merged with the local population achieving neither prominence nor notoriety, as did their children. Charles Willson Peale and John Lamb were the exceptions.

The trade in convicts to the North American mainland came to an end with the War for Independence but not the practice of expelling undesirables. After some debate, the refusal of the American states to accept further cargoes and the scandal of substituting hulks on the Thames with their high mortality rates, the British government redirected the convict trade to the other side of the world – to Australia. There was, however, a significant difference: Australia was founded as a penal colony; Virginia and Maryland were merely the recipients of convicts. Of all the attempts to exploit convict labour in overseas colonies, only the Australian project could be said to have worked in the longer term. This probably explains why the Australians celebrate their convict legacy, while the Virginians in particular did their best to obscure theirs.

Significance

The removal of those subject to transportation was always regarded as a good thing due to their undesirability on account of their poverty, youth, religion, politics or criminality or some combination of these factors. But what was the motivation behind the 1718 Act? That the Act represented a change in penal policy is generally agreed but consensus over its meaning is not. One school of thought emphasizes the use of criminal transportation as a substitute for hanging and therefore a humanitarian measure – the extensive use of the “bloody code” in England being viewed with incomprehension on the Continent. The other points out that the use of transportation in the lower courts for relatively minor offences – theft valued at under one shilling – was a heavy penalty to pay for a minor offence. Instead of branding or whipping or release without punishment, convicts were to serve 7 years as indentured servants in an alien environment some 3,000 miles away where the conditions of labour were far harsher than those in England. Few returned.

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