

## His Majesty's Seven Year Passengers

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*Her application to a sober life and industrious management, at last, in Virginia, with her transported spouse, is a story fruitful of instruction to all the unfortunate creatures who are obliged to seek their re-establishment abroad, whether by the misery of transportation or other disaster.<sup>1</sup>*

After the French and Indian War, colonial Americans voiced bitter protests against certain Acts of Parliament. Their protests eventually resulted in armed rebellion against the crown. Colonial resentment toward royal and Parliamentary authority existed long before the problems that arose as a result of the wars for empire. The Transportation Act of 1717 provided the American colonials with yet another reason to protest crown policy. The English devised the Transportation Act in an attempt to overhaul the criminal justice system. American colonials began to use an increasing number of convicts to supplant the diminishing availability of bond servants and the rising prices of slaves. The focus of this paper is the colonial American convict trade and the reason behind colonial resistance to it.

The transportation of convicted felons and other individuals deemed undesirable to society existed prior to the Transportation Act of 1718. The French first thought in the sixteenth and seven-

teenth centuries that convicts and vagrants could best serve the crown by populating Canada.<sup>2</sup> The French attempt failed and transported individuals were repatriated to France. In contrast the English succeeded in its endeavors to transplant the undesirable element in the American colonies. The English success resulted from its goals in comparison with France. France hoped that transported individuals would civilize and christianize the Native American population, whereas the English wanted only to rid itself of the undesirable elements of society. Prior to 1718, English transportees had been convicted of state crimes for religious dissent or political unrest. The Transportation Act modified and expanded the focus of transportation.

Prior to the Transportation Act of 1718, individuals received conditional crown pardons. These people accepted transportation to the American colonies in exchange for a pardon from the death penalty. The Transportation Act made banishment a court sentence. Consequently, the Act modified the criminal justice system of England. The magistrates received a judicial power to convict many individuals that may have escaped conviction from juries unwilling to impose the death penalty. As Alan Atkinson asserts, "by legislative slight of hand, servile bondage was thus added to the common armoury of the penal law."<sup>3</sup>

The banished convicts worked at occupations similar to those of indentured servants. Chesapeake area individuals purchased convicts for skilled and semiskilled tasks. Convicts worked at the Maryland iron furnaces and forges, in the construction trades, in the cottage craft trades, and as seasonal agricultural laborers. Atkinson refers to the freedom dues contained in the Act of Queen Anne.<sup>4</sup> According to the freedom dues statute, each freed indentured male servant received a musket, ten bushels of corn, and thirty shillings from his or her master. Initially, convicts received the same freedom dues, but not after 1740. Attitudes changed

<sup>2</sup> William R. Kennan and James Axell, *Invasion Within: The Conquest of Cultures in Colonial North America*. (New York, 1985), 28-31.

<sup>3</sup> Alan Atkinson, "The Free Born Englishman Transported: Convict Rights as a Measure of Eighteenth-Century Empire," *Past And Present* 144 (1994): 93.

<sup>4</sup> *Ibid.*, 101.

<sup>1</sup> Daniel Defoe, *Moll Flanders*, (New York, 1989), vii-viii.

toward convicts. What caused the reversal of colonial American attitudes?

*Many a Newgate-bird becomes a great man, and we have, ... several justices of the peace, officers of the trained bands, and magistrates ... have been burnt in the hand.*<sup>5</sup>

Before the 1718 Act, many individuals were transported to the colonies, but these individuals were sentenced for crimes involving religion or politics. David Dobson's genealogical work, *The Original Scots Colonists of Early America*, lists many transported Scots guilty of being Covenanters.<sup>6</sup> Other dissenting religious sects received similar treatment from the English courts. The full details of religious banishment eludes analysis due in part to insufficient records prior to 1718. These records listed those convicted of political crimes as well. Cromwellian soldiers, Monmouth's supporters, Jacobites, and others received transportation sentences. In 1716, fifty-five followers of the Stuart Pretender landed at Yorktown.<sup>7</sup> Transportation for crimes prior to 1718 did not encompass large numbers of people. The Transportation Act modified the English criminal court system. The Act allowed the court, in cases within the benefit of clergy, to sentence the defendant for transportation.<sup>8</sup> This produced a drastic increase in the number of individuals deported to the American colonies. Oscar Barch and Hugh Talmage estimate that 40,000 to 60,000 transported convicts disembarked on American soil.<sup>9</sup> This remains a substantial number of individuals and raises a question of where these convicts went? As Richard Dunn explains, "The recruitment of labor for the American Colonies was

<sup>5</sup> DeFoe, *Moll Flanders*, 61.

<sup>6</sup> Dobson's early work comprises a roster of the names, dates, reason for emigration, and occasionally the name of the transport ship. David Dobson, *The Original Scots Colonists of Early America, 1612-1783* (Baltimore, 1989).

<sup>7</sup> *Calendar of Virginia State Papers and Other Manuscripts*, 1652-1781, ed. William P. Palmer (New York, 1968), 185.

<sup>8</sup> Marion Kaminkow and Jack Kaminkow, *Original Lists of Emigrants in Bondage From London to the American Colonies, 1719-1744* (Baltimore, 1967), 207.

<sup>9</sup> Oscar Theodore Barch and Hugh Talmage, *Leffer, Colonial America* (New York, 1958),

a vital issue from the 1580's to the American Revolution. From the outset, the promoters of colonization, particularly in the Chesapeake and the Caribbean needed servile laborers.<sup>10</sup>

The American colonies experienced a rapid economic expansion during the eighteenth century. Commercial enterprises, such as the tobacco plantations and the Maryland iron works, needed a source of cheap labor. The economic situation in Europe improved with the onset of the eighteenth century, thus diminishing the numbers of the indentured servants available in the Chesapeake area. In response, the English government dumped felons upon the shores of the Chesapeake Bay, and the planters eagerly bought them.<sup>11</sup> The convicts were a commodity cheap in price and dependable in supply. Slave prices doubled in this same time period, which added to the convict servant dependency.<sup>12</sup> Duncan Campbell reported in 1779 to the House of Commons that male convicts sold for 10 £, female convicts for 8 to 9 £, and artificer convicts for 15 to 20 £. Campbell shipped, in twenty years, an average of 473 convicts per year on ships carrying one-hundred to two-hundred individuals.<sup>13</sup>

The transported convicts came from all areas of the British Isles, but the majority were native Englishmen, where over fifty percent came from the London, Middlesex, and Home counties. These individuals committed non-capital crimes. Three-fourths of all the transports were fifteen to twenty-nine years of age. One-half of all the felons were unskilled laborers, whereas low-skilled and skilled craftsmen made up most of the remainder. On average, eighteen percent of all transported felons were female.<sup>14</sup> These were mostly people down on their luck and not career criminals.

Not all transported felons were lower class or petty criminals,

<sup>10</sup> Richard S. Dunn, "Servants and Slaves: The Recruitment and Employment of Labor," *Colonial British America: Essays in the New History of the Early Modern Era*, ed. Jack P. Greene and J.R. Pole (Baltimore, 1984), 158-159.

<sup>11</sup> Dunn, "Servants and Slaves: The Recruitment and Employment of Labor," 164-71.

<sup>12</sup> David W. Galenson, *White Servitude in Colonial America*, (Cambridge, 1981), 160.

<sup>13</sup> "Transportation of Felons to the Colonies," *Maryland Historical Magazine* 27 (Dec. 1932), 265.

<sup>14</sup> Roger A. Ekirch, "Bound For America: A Profile of British Convicts Transported to the Colonies, 1718-1751," *The William And Mary Quarterly*, 42 (1985): 186-94.

for a few were upper class or professional criminals. Henry Justice received a sentence of transportation for stealing books from the libraries of Trinity and Cambridge Universities. The court allowed Justice a coach ride from Newgate to the ship.<sup>15</sup> A band of smugglers, commanded by John Grayling and known as the "Hastings Outlaws" or the "Transports," terrorized the Sussex Coast. This smuggling band incorporated transported felons that returned early from their sentences in their smuggling operations, hence the name "Transport."<sup>16</sup>

Once the individual received his or her sentence of transportation, he or she waited in prison several months.<sup>17</sup> Many convicts contracted smallpox or "Goal Fever."<sup>18</sup> Once on board the ship, the trip took two months or more. Most of these transport vessels were tobacco ships that traded in the Chesapeake Bay area.<sup>19</sup> During the crossing, most convicts were forced to stay below decks. When a storm blew, the effects below decks produced "spewing ... damning ... blasting their legs and thighs" or cursing "Father, Mother, Sister, and Brother."<sup>20</sup> The convicts dined on the following (given in ounces):

Day	Bread	Oatmeal	Molasses	Peas	Pork	Beef	Gin
Sunday	11			8	8		
Monday	11	5 2/3	4				
Tuesday	11	5 2/3	4				
Wednesday	11	5 2/3					
Thursday	11			8		10	3/4
Friday	11	5 2/3	4				
Saturday	11	5 2/3	4				1

<sup>15</sup> *Virginia Gazette* (Williamsburg), 19 November-26 November 1736.

<sup>16</sup> Cal Wilson, "Sussex Smugglers," in *Albion's Fatal Tree*, ed. Douglas Hays. (New York, 1975), 124.

<sup>17</sup> Fredrick Hall Schmidt, "British Convict Servant Labor in Colonial Virginia," (Ph.D. College of William and Mary, 1976), 42.

<sup>18</sup> Testimony of Duncan Campbell estimated one-seventh of the convicts died in prison. More died from smallpox than "Goal Fever" or typhus. Quoted in "Transportation of Felons to the Colonies," 265.

<sup>19</sup> Schmidt, "British Convict Servant Labor in Colonial Virginia," 44.

<sup>20</sup> John Harrower, *The Journal of John Harrower, an Indentured Servant in the Colony of Virginia, 1773-1776*, ed. Edward Miles Riley (Williamsburg, 1953), 24-25; quoted in Schmidt, "British Convict Servant Labor in Colonial Virginia," 57.

<sup>21</sup> Schmidt, "British Convict Servant Labor in Colonial Virginia," 63.

In addition, four days of the week 2 2/3 ounces of cheese were issued. If the convict survived disease, malnutrition, and seasickness, he faced the final degradation: the public sale of himself as a commodity. The convicts were examined for health and skills.<sup>22</sup> The convicts experienced themselves as a commodity at a public auction. In England's goals, a person with money expected and received better treatment or could purchase his freedom once in Virginia. Defoe writes in *Moll Flanders*, "He brought a planter to treat with him...for the purchase of me for a servant...the planter gave us a certificate of discharge...and I was free ... to go...For this service the Captain demanded of me 6000 weight of tobacco and made him a present of 20 guineas besides."<sup>23</sup> Henry Justice, as the fictional Moll Flanders, bought his freedom. William Eddis wrote in his *Letters from America*, "if they are able to pay the expense of passage, they are free to pursue their fortune agreeably to their inclinations or abilities. Few, however, have means to avail themselves of this advantage."<sup>24</sup> Duncan Campbell stated to the House of Commons that families of the convicts conveyed money, through Campbell, to Virginia for the felons' use in purchasing their freedom.<sup>25</sup>

Considering the convict's ordeal, one would expect many runaways. Kenneth Morgan suggests that the convicts main impulse in fleeing existed in escaping the social stigma associated with convict indenture. Morgan offers thirty-eight percent as a low figure for the number of runaways.<sup>26</sup> Some convicts, in order to gain their freedom, were willing to kill. One William Marr, with three accomplices, murdered a man in escaping. Marr surrendered himself, the others were apprehended, and all were sentenced to hang.<sup>27</sup> In many respects, the convicts endured a life

<sup>22</sup> *Ibid.*, 108-107.

<sup>23</sup> Defoe, *Moll Flanders*, 242.

<sup>24</sup> William Eddis, *Letters From America, Historical and Descriptive, 1769-1777*, ed. Aubrey C. Land (Cambridge, 1969), 36; quoted in Kaminakow, Original Lists of Emigrants to Bondage, ix.

<sup>25</sup> Schmidt, "British Convict Servant Labor in Colonial Virginia," 112.

<sup>26</sup> Kenneth O. Morgan, "Convict Runaways in Maryland, 1745-1775," *American Studies* 23 (1987): 255-58.

<sup>27</sup> *Virginia Gazette*, 9 September to 16 September 1737.

similar to the life of an indentured servant. Neither fared well. A French traveller wrote in 1765, "At least ten thousand Convicts and ... indentured Servants, imported yearly ... serve like slaves or convicts and are on the same footing ... being endured to hard labour and fatigue, accustomed to live hard."<sup>28</sup> Slaves, indentured servants, and transported felons expended themselves for the economic gains of others. They were a lowly class.

*There are now in Publick Prison, no less than 10 Criminals; most of them Convicts, who, poor unhappy Wretches, cannot leave off their old Trade, tho' they have had fair Warning, and some of them narrowly escap'd the Gallows before.*<sup>29</sup>

Perception of convicts and the realities involved with convicts offer contrasting views. Richard Dunn summarizes Abbot Smith's conclusion that only rogues, whores, vagabonds, paupers and other undesirable rabble made up the contract labor class of colonial America.<sup>30</sup> Smith's conclusion echoes colonial America's sentiments on convicts. Kenneth Morgan states the opinions of Robert Beverly and Hugh Jones, "[that] murders and robberies perpetrated by felons ... very injurious... loose villains [committed] many burglaries and felonies ... chiefly by imported convicts."<sup>31</sup> Crime in Virginia encompassed all elements of society. *The Virginia Gazette* reported on 16 September 1737 that two robberies took place: one robbery in Prince George County and the other in Surry County, where 70 £ and 20 £ were stolen.<sup>32</sup> Crime existed in Virginia, with or without convicts. As Frederick Schmidt states "[a]ny certain conclusions about the level of criminality, of those transported convicts, however, must await a comprehensive as-

<sup>28</sup> "Journal of a French Traveller in the Colonies, 1765, II," *The American Historical Review* 27 (1921): 84.

<sup>29</sup> *Virginia Gazette*, 9 to 16 September 1737.

<sup>30</sup> Dunn, "Servants and Slaves: The Recruitment and Employment of Labor," 161.

<sup>31</sup> Kenneth O. Morgan, "English and American Attitudes Towards Convict Transportation, 1718-1775," *History* 72 (1987): 424.

<sup>32</sup> *Virginia Gazette*, 9-16 September 1737.

assessment of eighteenth-century criminal records."<sup>33</sup> Fear that convicts perpetrated crime relates, in a similar manner, to the way colonials feared slave revolts or servant insurrections. Some of this fear can be traced to Bacon's Rebellion. Governor Berkeley wrote in 1676, "how miserable that man is, that Governes a People when six parts of seven at least are Poor Endeighted Discontented and Armed."<sup>34</sup>

Conversely, Crèvecoeur writes how safe the colonies were from crime. He states "[the] apparatus of law, its coercive powers are seldom wanted or required. Seldom is it that any individual is [arrested] or punished; their jails conveys no terror."<sup>35</sup> Boston either existed as an anomaly in colonial society or Crèvecoeur mistook fact for fancy. He writes that transported felons rehabilitate through industrious labors yielding "exemplary" and "useful citizens."<sup>36</sup>

Another aspect, that of self-perception, clouds the views on convicts. Dr. Samuel Johnson called America "a race of convicts."<sup>37</sup> This statement raised an outcry in America. Johnson made this comment during the American Revolution. This at a time when America, at war with Britain, actively sought support and allies on the European continent and would be sensitive to criticism.

If convicts did not produce massive crime waves, and they were eagerly bought-up as a source of cheap labor, then what caused Americans, such as Benjamin Franklin, to oppose convict transportation? Transportation, even in England, had sustained opposition. Many in England viewed transportation as ineffective and that there existed a need for a system of secondary and proportional punishments.<sup>38</sup> Colonel Landon Carter prepared a bill for the House of Burgesses that made masters liable for con-

<sup>33</sup> Schmidt, "British Convict Servant Labor in Colonial Virginia," 3.

<sup>34</sup> Wilcombe E. Washburn, *The Governor and the Rebel*, (Chapel Hill: University of North Carolina, 1957), 31; quoted in Greene and Pole, ed., *Colonial British America*, 167.

<sup>35</sup> J. Hector St. John de Crèvecoeur, *Letters From an American Farmer and Sketches in Eighteenth-Century America* (New York, 1986), 124.

<sup>36</sup> *Ibid.*, 88.

<sup>37</sup> Morgan "English and American Attitudes Towards Convict Transportation," 416.

<sup>38</sup> *Ibid.*, 422.

victs' good behavior, which appears as contradicting behavior for a man who used convict labor and considered them the best servants.<sup>36</sup> During the French and Indian War, Governor Fauquier directed Colonel William Byrd, III to purchase two ship loads of convicts for use as soldiers in the Virginia Regiment. The Governor thought convicts would make excellent soldiers.<sup>40</sup> But the answers pertaining to colonial attitudes against convicts remain unanswered. Could the answers lay elsewhere?

In 1718, when the Transportation Act passed into law, something began and something ended. This first half of the eighteenth century witnessed England's tightening of control over the American colonies and ending the era of "salutary neglect." Beginning with King William and his Parliament, the colonies experienced greater restrictions on their self-determination. Some of these controls revolved around immigration to America. England possessed an enlightened attitude in foreign immigration to America. The colonies passed naturalization laws, both special and general, and assumed the right of issuing letters of denization. These letters were forbidden by the Privy Council in 1699.<sup>41</sup> When the colony of Pennsylvania tried to prevent German immigration, the Crown disallowed this.<sup>42</sup> The outcry against convict transportation existed in colonial resistance to all immigration. When the colonies of England passed anti-transportation laws and anti-immigration laws, were these a symptom of rebellion at a perceived loss of self-autonomy? The escalation of English control and American resistance eventually created a war. The transportation of convicts produced one more grievance against Crown authority and led to claims for further right of self-rule in the colonies. The convicts lived their lives at society's feet, produced labor for others gain, and existed as an object of

loathing and distrust. America voiced its opinion against transportation not on moral grounds nor for the betterment of society nor in preventing crime, but as a point of contention between themselves and the crown. Americans disliked the Transportation Act, not so much from having convicts dumped on their shores, but hated the law because it forced them to take the convicts.

London Carter, *The Diary of Colonel London Carter of Sabine Hall, 1752-1778*, ed. Jack P. Greene (Charlottesville, 1965), 79-80.

James Titus, *The Old Dominion at War: Society, Politics, and Warfare in the Late Colonial Virginia* (Columbia, 1991), 135.

Edward E. Poppel, *Colonial Immigration Laws: A Study of the Regulation of Immigration by the English Colonies in America* (New York, 1907) 74-75.

*Ibid.*, 49-50.