

# England and penal transportation to america history essay



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William Blackstone's Commentaries on the Laws of England published in 1753 echoed the provisions found in the Habeas Corpus Act of 1679. But exile from England was not an unknown practice for those who offended against the political, religious and criminal laws of the country. Early forms of exile or banishment involved abjuration of the realm following a claim of sanctuary. English churches became places of sanctuary for persons who had committed a crime. Claim for sanctuary followed a formula. The alleged felon fled to the church while the local villagers surrounded the church imprisoning the sanctuary seeker inside until the coroner arrived. The sanctuary seeker was given forty days to submit himself to "the king's peace" by opting for a trial, or to abjure the realm from the nearest assigned port, never to return unless given a special license by the king. The coroner presided over the process as the felon confessed his guilt and then walked to the nearest port. Legislation passed in 1531 and amended in 1540, brought about the end of the practice of abjuration by curtailing the crimes for which sanctuary and abjuration could be invoked and the persons who could claim abjuration as an alternative to the vagaries of trial. As a means of mercy, abjuration was superseded by the greater availability of benefit of clergy and branding on the thumb.

Even though the use of abjuration was discontinued after 1540, the tradition of sending undesirables out of England did not end. Between 1584 and 1603, Elizabeth I issued many pardons for Jesuit priests provided they left England. Queen Elizabeth showed mercy by exiling these prisoners instead of executing them, but more importantly deprived them of a platform to disseminate their heretical teachings from the gallows. In 1615, James I

delivered a commission to the Privy Council directing them to choose convicted criminals awaiting death who would be suitable to send to the colonies. These felons could choose to be banished to British overseas possessions for an unspecified period of time instead of being put to death, but they were obliged to stay out of the country until given permission to return. If they did return without permission, the reprieve given would be null and void and the original sentence of death would be carried out. He renewed this commission many times over the next twenty years.

The history of the English practice of transportation of criminals from England to various colonies can be divided roughly into three periods. The first is the early period which spans the years from about 1600 to 1718. During this transitional period, transportation was used for several different purposes and many different kinds of "criminals". After 1718 and the Transportation Act of that year, sending criminals from England to America became more formalized and the numbers of transports increased greatly. The American War of Independence made the American colonies unavailable as a dumping ground for English criminals and the practice of regularly shipping criminals to the colonies stopped for a time but was too entrenched a system to be abandoned. In 1787, the third and best known stage of transportation began as a shipment of 778 convicts embarked for New South Wales in Australia. Much scholarly work has been written about transportation of felons to Australia. Less work has been done regarding the second period and very few studies exist for the first period. I will be primarily looking at the first period and comparing it with the second period to see what kinds of persons were transported, where they went and how

England justified sending her citizens into exile. A comparison of this first period with the 1718 to 1775 period shows the development of the justification of continuing and formalizing transportation as a method of punishment.

Two works exist which cover transportation in the years before 1718. Abbott Emerson Smith wrote *Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1775* which includes a substantial section on the early period. *Emigrants in Chains: A Social History of Forced Emigration to the Americas, 1607-1776* is a work by Peter Wilson Coldham which includes valuable charts showing the numbers of convicts pardoned for transportation in the years from 1660 to 1699 and comparable numbers sentenced for transportation from 1700 to 1775. Other scholars tend to mention transported convicts along with indentured servants and indigent children sent to the colonies as apprentices. Two major works have been written specifically about transportation after 1718. These are A. Roger Ekirch's *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* and Gwenda Morgan and Peter Rushton's *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic*.

The earliest recorded instances of transportation of criminals occurred in the reign of Queen Elizabeth I. William Le Hardy, editor of the *Calendar to the Sessions Records of the County of Middlesex*, stated in the preface,

This Calendar is noteworthy for providing the earliest reference which exists, so far as I know, to the punishment of transportation. This punishment, so freely awarded fifty years later and practised down almost to recent times,

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was used instead of capital punishment, and was looked upon with favour as it provided persons, almost in the nature of slaves, for our new colonies. The first Act dealing with transportation was that passed in 1597 (39 Elizabeth, cap. 4), entitled “ An Act for the punishment of rogues, vagabonds and sturdy beggars,” under which Justices were empowered to send persons convicted to the then newly-formed Colonies.”

The first mention of a convicted felon sent out of England is Barnaby Littgold, convicted of burglary on 4 April, 1614, and to be sent to Greenland unless he could raise the required sureties for his good behaviour. The criteria for pardon and transportation at this time were physical health and suitability for work in the newly established American colonies. In 1617, King James I, by renewal of his 1615 commission to the Privy Council directing transportation of suitable convicted felons to overseas possessions, allowed John Browne to be reprieved, “ now prisoner in his Majesties Castle of Canterbury, being a person of able bodye, and fitt to be imployed in the partes beyond the Seaes, hath had his Tryall before them, and standes convicted of felonye”, and be delivered to Sir Thomas Smith, governor of the East India Company “ to be Conveyed into the East Indies or other partes beyond the Seaes where he shall direct, with all convenyent speede”. Before the end of that summer of 1617, Christopher Potley, Roger Powell, Sapcott Molineux, Thomas Middleton, Thomas Chrouchley and George Harrison followed John Browne into the custody of Sir Thomas Smith to be transported beyond the seas. Presumably these men were also physically healthy and employable in the colonies. A year later, at the Middlesex Sessions, Sir Thomas Smith intervened on behalf of Stephen Rogers, who was convicted of

killing George Watkins, and had him reprieved to be sent to Virginia because he was a carpenter and Virginia needed carpenters.

From 1620 to 1660, convicted felons were sent to Virginia or to the English possessions in the West Indies on a more or less regular basis. Until 1634, reprieves were given by the king's commission to the Privy Council issued under an order-in-council, a somewhat cumbersome process. In 1634 the process was streamlined and reprieves were given directly by the king's warrant. In 1655, during the period of the Commonwealth when there was no king to give a warrant, the procedure changed, in Middlesex at least, to make it clear that pardons were issued conditional on the convicted felon accepting transportation to overseas colonies. It is not clear from the records as to whether the pardon was given prior to the acceptance of transportation by the felon or after.

Those transported in the seventeenth century were a motley lot, including political prisoners from the Civil War, and vagrants and rogues who were making nuisances of themselves. In a proactive effort to prevent vagrancy, to rid London of problem children and to provide more workers for the colony of Virginia, the Privy Council gave London City Council authority in 1620 to force one hundred children "out of the Multitudes that swarmed in that place" to be transported to Virginia under apprenticeship of a term of years. During the reign of Charles II, Parliament passed the Conventicle Act, 1664. For the three years it was in force, the legislation, aimed primarily at the new sect of the Society of Friends or Quakers, proscribed any religious gathering of more than five people which was not in accordance with the liturgy of the Church of England. Many Quakers were imprisoned and those convicted of a third

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offence or who refused to swear oaths in court were ordered transported to the West Indies. In some cases, finding captains and crews who would ship the convicted Quakers to the West Indies was a problem. Quakers waiting to be transported warned ships crews of divine retribution if they assisted in breaking up families and oppressing God's people. In some cases it worked and superstitious ships crews refused to take Quaker "passengers". In 1665, a shipping embargo was lifted specifically to allow the transportation of 124 Quakers from Newgate Gaol to Jamaica, Barbados and Nevis in the West Indies. The act was not renewed on its expiry and the numbers of transports declined in the ensuing years.

During the years that England was at war, the numbers of convicted felons transported to the American and West Indian colonies declined. The men languishing in gaol were absorbed into the military or the navy services where they were needed more than in the overseas possessions. In the seventeenth century, healthy convicted felons, religious undesirables, and political prisoners were looked upon as commodities to be used with or without their consent in those places where their country needed them the most. Even child labour could be put to good use in the overseas colonies under colour of preventing them falling into crime and destitution at home.

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While on the whole life at the beginning of the eighteenth century in England was improving, the growing numbers of wealthy and middling strata of society were concerned that crime was a serious threat. The nouveau riche especially feared property crimes and perhaps for good reason. Evidence <https://assignbuster.com/england-and-penal-transportation-to-america-history-essay/>

shows that new shops and warehouses in the cities were an unavoidable temptation for the many displaced rural labourers who had come to the cities looking in vain for work. Reduced to poverty, these rootless poor were forced to steal to live. Added to the urban influx of formerly rural residents were Irish immigrants and hundreds of demobilized military and naval personnel back from the French and Spanish wars also looking for work in a shrinking labour market. Without a standing army or municipal police forces, England had no effective means of preserving social peace in the country. The Bloody Code increased the absolute number of crimes for which the death penalty could be applied, but judges and juries were reluctant to sentence offenders to death for relatively minor crimes. Benefit of clergy had spread to cover not only the majority of minor offences for first-time male offenders, but had become available to women as well. Juries employed the legal fiction of down-valuing stolen goods to protect thieves from the death penalty and returning partial verdicts by which they found defendants guilty of lesser included crimes than the ones for which they were charged. Sentences of whipping, branding, pillorying, and short terms of imprisonment were used to little avail in deterring criminal behaviour. Something new had to be devised to control the masses of offenders. Parliament therefore passed The Transportation Act of 1718.

After the passage of the Transportation Act, or to give its long title, " An Act for the further Preventing Robbery, Burglary, and other Felonies, and for the more Effectual Transportation of Felons, and Unlawful Exporters of Wooll; and for Declaring the Law upon some Points relating to Pirates", convicted felons could be sentenced to transportation, as opposed to accepting



transportation as part of a conditional sentence. Justices of the peace or magistrates now had the ability to sentence offenders to transportation and therefore many more convicted persons were transhipped to the English colonies. The numbers increased from about one hundred per year by 1720 to nine hundred per year by 1775.

The preamble to the Transportation Act of 1718 gives the stated intent behind the passing of the law.

“ Whereas it is found by experience, that the punishments inflicted by the laws now in force against the defences of robbery, larceny and other felonious taking and stealing of money and goods, have not proved effectual to deter wicked and evil-disposed persons from being guilty of the said crimes:

And whereas many defenders, to whom Royal Mercy hath been extended upon condition of transporting themselves to the West-Indies, have often neglected to perform the said condition, but returned to their former wickedness, and been at last for new crimes brought to a shameful and ignominious death:

And Whereas in many of His Majesties colonies and plantations in America, there is great want of servants, who by their labour and industry might be the means of improving and making the said colonies and plantations more useful to this nation;...”

The goals of transportation to America stated in the preamble may have been what some legislators hoped to achieve, but its major advantage was

that of removing offenders from England. “‘ The intent of the law’, Sir William Thompson later remarked, ‘ being to prevent their doing further mischiefs which they generally do if in their power by being at large’.” It could be argued that incarcerating felons would have also prevented “ their doing mischiefs”, but given the numbers of convicted offenders in the early eighteenth century, this would have necessitated a number of new long term gaols with their attendant administrators. At the local level, the administration of justice was carried out by justices of the peace (JPs) who were appointed part-time government officials. They acted autonomously in their jurisdictions and were, among many other duties, responsible for the establishment and maintenance of local gaols. JPs reacted favourably to the new legislation because “ transportation served the interests of JPs; it increased their existing discretionary authority, and it helped minimize the administrative burden of their office. Parliament’s insistence upon the imprisonment of felons would have demanded a significant investment of JPs’ efforts in the supervision and correction of criminal offenders on home soil.” Furthermore, an effective prison system would have required the central government to supervise more closely the local administration of justice. At both levels, there was no desire to increase costs and workloads. Transportation was the ideal system until government later became more centralized and the regions retained less autonomy.

Statistics showing the numbers of offenders and criminal convictions for which a sentence of transportation was handed down are difficult to compile. There was no interest in collecting crime statistics related to transportation in the eighteenth century until the American Revolutionary War closed off

the availability of the colonies as a criminal destination. Authorities then needed to know what provision to make for convicted felons who would have to be kept in England. Scholars have estimated that over the period 1718 to 1775, the number of transports sent to America from the British Isles was between 35, 000 and 50, 000 with the higher end of the range more probable. The majority of these felons or about 35, 000 were sent from England and Wales and were native English. There are indications that a substantial number of transports from England were Irish immigrants who had crossed to England to either look for work or evade Irish authorities. Better records of transport numbers exist for the London area because the Treasury paid subsidies to ship's captains for each person carried to America from 1718 to 1772. On the other side of the Atlantic, about a quarter of British immigrants to America in this period were convicts.

Roger Ekirch produced a profile of the felons shipped to America. The overwhelming majority were male comprising over eighty percent of the totals for the period. Women tended to commit less serious crimes and were accorded greater leniency at trial and sentencing than men. The typical age range of transports from the information available appears to be between fifteen and thirty. Using a representative sample of two shiploads of transports from the early 1720s, Ekirch found a majority of male felons were labourers with no identifiable trade, one-fifth were low-skilled weavers or fishermen, one quarter were tradesmen and craftsmen, while two were wealthy tradesmen and professionals. Other samples confirm that the majority of transports were of the lower orders and largely unskilled labourers. These people were the ones most at risk during times of

dislocation and unemployment. Grand larceny, or the theft of goods over one shilling, formed the largest category of crime for which felons were transported in the eighteenth century. More dangerous criminals were normally executed and petty offenders were dealt with by whipping, pillorying, fines, short-term incarceration and other more minor punishments.

But some convicted felons were of a higher stratum of society. Henry Justice was one such criminal. Justice was a barrister tried and convicted for stealing books from the library of Trinity College, Cambridge in May, 1736. He spoke in his own defence and insisted that he had only taken the books out of the library to use them for a short time intending to return them in due course. He attempted to prove that as the books were the property of the Masters and Scholars of Trinity College of which he was a Scholar, he could not steal his own property. Unfortunately he had sold some of the books to raise money to pay rent and shipped many others to the country or to the continent, so his intent to return them was suspect. The jury was having none of it and convicted him of grand larceny. Even after his conviction, he tried to avoid transportation by offering to help recover some of the books he had sold. Once again, he was unsuccessful and was sentenced to be transported to America. But he and several other fellow criminals were wealthy enough to pay for their own passage and to stock the captain's cabin with provisions for the voyage. Upon landing in Virginia, he received such a hostile reception that he and two other transports, one of which, Wreathcock, was an attorney fallen into bad company, took ship again for England. From there, he went to the continent and set himself up in

Rotterdam where he edited an edition of Virgil. After his death in 1763, the catalogue of his estate included many rare and valuable books.

American colonists were ambivalent in their attitudes to the convicts from England. Some lamented the increased danger of receiving so many convicted criminals into American society, but many more were quick to buy the relatively cheap services of the transports to work their tobacco farms and plantations. Many convicts were treated very poorly by cruel masters who felt they were punishing the criminals for their offences. In the eighteenth century, American colonists were connected to England by print media - pamphlets, newspapers and letters - and by the reports of people who travelled back and forth across the Atlantic. They were able to follow who was being tried in English courts and for what crimes. The Virginia Gazette reported on the trials at the Old Bailey for its readers who would soon be host to felons from London and district, and the Maryland Gazette kept its readers apprised of events in Bristol and the West Counties from whence came the majority of their transported felons. While Americans found the more spectacular crime reports in the newspapers titillating, some soon grew to resent serving as the dumping ground for English undesirables. Benjamin Franklin, the editor of the Pennsylvania Gazette, railed against the Transportation Act and England's peopling of the colonies with thieves and villains. He advocated collecting rattlesnakes and sending them to England to be liberally distributed in the gardens of wealthy Englishmen and in St. James Park. Most colonies at one time or another tried to keep transports out, but were unsuccessful. Written and verbal reports more often than not focussed on the exceptional and spectacular in regard to transports and

ignored the convicts who served their time and thereafter became good American citizen.

Reports of the careers of transported criminals moved back and forth across the Atlantic. English readers of newspapers were able to continue to follow the careers of many of the most notorious of the transports after they landed in Virginia or Maryland. They also knew which criminals ran away from their masters and how many times they ran. Newspapers reported instances of convicts returning to England or going to Europe. Even criminals had a form of paparazzi.

Transportation was an ideal form of punishment for English felons in the seventeenth and eighteenth centuries. England was not ready for either a standing army or for professional police forces to keep the peace within the country. Both institutions were anathema to the idea of English freedom at home. But without an effective check on the criminal tendencies of the poor urban masses, mostly those displaced from rural agricultural communities, society risked descending into anarchy. In the early seventeenth century, transportation was sporadic and cumbersome requiring authorization by the King or the Privy Council. Felons were conditionally reprieved but were sometimes required to find and pay their own way out of the country. The honour system for criminals generally did not work well. Refinements during the commonwealth period and in the latter half of the century clarified the legal status of transports as the recipients of conditional pardons. The length of transportation was set for a specific term rather than an indeterminate period. All of these changes served to entrench transportation as a viable punishment for serious crimes which gave the appearance of a more

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merciful sentence than execution. Transportation also served to increase the sovereign's authority because it required a convicted felon to appeal to the monarch for pardon. Deterrence may or may not have been a result of transportation in the later years of the seventeenth century, but by then getting rid of criminals from England was more important.

By 1718, urban population had increased substantially and with population increase came more crime. English people still did not favour incarceration in gaols and penitentiaries for criminals. Once again, transportation was viewed as the ideal answer to the question of disposal of criminals. The Transportation Act expanded and standardized the practice while containing the cost and effort expended by the government on punishing miscreants. For the remainder of the eighteenth century, the administrators of justice from Parliament to the JPs gave only lip service to benefits of transportation accruing to the colonies or to the criminals themselves. Transportation benefitted England and that was sufficient for the practice to continue.