The "vile commodity" : convict servitude, authority, and the rise of humanitarianism in the Anglo-American world, 1718-1809

Nicole K. Dressler
This dissertation examines the role that British convict transportation and penal servitude in America played in the early history of humanitarianism. During the eighteenth century, Britons and American’s ideas about moral obligations and suffering changed drastically toward traditionally detested people, including transported convicts, African slaves, sailors, and the poor. Many histories of humanitarianism and human rights have glazed over the subject’s early modern roots; however, more recently scholars have challenged the unilinear and inevitably triumphal narrative of human rights cultures and launched new investigations into the historical foundations of the movement. This study argues that emerging ideas of punishment, morality, and unfreedom evoked by convict labor created new moral responsibilities, widened the plane of sympathies, and inspired novel denunciations of suffering in eighteenth- and early nineteenth-century Anglo-American culture. It uses legal and judicial records, public commentaries, and the papers of prominent reformers in London and the three colonies (later states) that imported the most convicts on the North American mainland, Pennsylvania, Maryland, and Virginia. It traces the attitudes, ethics, and practices regarding penal servitude from 1718, following a new British law that ushered in an era of massive convict transportation, through the American Revolution.
and into the early Republic period. The study shows how labor systems as a whole played an
unrecognized, critical role and influenced early modern abolitionist and moralist thinking and
rhetoric. In the eighteenth century, transportation and penal servitude generated new critiques
and initiated debates about the proper role of punishment and labor in enlightened societies. By
the end of the first decade of the nineteenth century, moralists and reformers increasingly used
humanitarian discourse to improve the lives of those once unquestionably despised people, like
criminals and enslaved Africans. This new discursive environment helped reformers and
moralists to galvanize early republicans in order to tackle new humanitarian challenges –
challenges that would not fit easily into a narrative of inevitable progress – and advocate for
more humane legal and cultural changes in the new nation.
THE “VILE COMMODITY”: CONVICT SERVITUDE, AUTHORITY, AND THE RISE OF HUMANITARIANISM IN THE ANGLO-AMERICAN WORLD, 1718-1809

BY

NICOLE K. DRESSLER
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DEDICATION

To Ed Dressler and Jennifer Phillips

& in memory of Eddie Dressler
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### ABBREVIATIONS

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<tr>
<td>AOMO</td>
<td>Archives of Maryland Online</td>
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<tr>
<td>MHS</td>
<td>Maryland Historical Society, Baltimore, Maryland</td>
</tr>
<tr>
<td>MSA</td>
<td>Maryland State Archives, Annapolis, Maryland</td>
</tr>
<tr>
<td>HSP</td>
<td>Historical Society of Pennsylvania, Philadelphia, Pennsylvania</td>
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<td>LV</td>
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INTRODUCTION

To tell the story of humanitarianism means that we need to understand the story of harsh coerced labor, hard-fought reforms, and aspirations for freedom and change in the long eighteenth century. This study explores the role that British convict transportation and penal servitude in America played in the early history of humanitarianism. Rather than a quixotic pursuit of the origins of modern humanitarian thought, the study investigates how the Enlightenment, new labor systems, and revolution influenced transatlantic discourse on the eve of familiar developments regarding the rise of this new culture of sensibility. During the eighteenth century, Britons and Americans’ ideas about moral obligations and suffering changed drastically toward commonly detested people, including transported convicts, African slaves, sailors, and the poor. The dissertation examines the transformation of early modern views and practices regarding convicts in the British Atlantic World. It tells the story of how labor systems as a whole (and not just slavery) played an unrecognized, critical role influencing early modern moralist thinking and rhetoric. To better understand how the movement of humanitarianism evolved, this investigation of penal servitude shows revealing changes in moral discourse, cultural values, and humanitarian practices during the long eighteenth century.¹

The dissertation traces the attitudes, ethics, and customs regarding penal banishment and labor in the Anglo-American World after 1718 when the British Transportation Act ushered in an era of massive convict movement to North America. In the eighteenth century, British courts banished over 50,000 convicted men, women, and children to the North American colonies, many of whom were sold as convict servants. The colonies and later individual states in the early Republic also practiced domestic convict servitude, punishing offenders and undesirable people already living in North America. Both in the colonial period and in the early Republic, court authorities could sentence certain lawbreakers, including vagrants, the poor, and runaway enslaved people and indentured servants, to be worked or sold as criminal laborers. Colonial elites and judicial officials understood their authority as essential to a well-ordered workplace and household, and these schemes provided valuable labor for the growing colonial project. Institutional banishment and penal servitude, however, had unintentional consequences for both Britain and America, and moralists and reformers constructed a new discursive environment, one that raised complex questions and debates over coerced labor, unfreedom, and cruelty.

At the outset, I started researching the changes that indentured servants, convicts, and enslaved people experienced during the long eighteenth century, but as I dug deeper, the moral rhetoric surrounding penal laborers from all sorts of backgrounds and statuses seemed puzzling. If these malefactors committed crimes and were subsequently punished, why was there a need to justify the process with moral language? The attitudes and practices at the early stages of this relatively new movement of sensibility seemed to be out of line with recent work on the history of humanitarianism and learning more about the formative phase of this new culture of sensibility has important implications for historical scholarship and our society today.
Many histories of humanitarianism and human rights have glazed over its early modern roots; however, recent scholars have improved the situation, in part by challenging the monolithic “‘textbook narrative of origins’” on human rights cultures. They have recognized the significance of the late 1970s works by Michel Foucault, Michael Ignatieff, and David Rothman as pivotal for shaping our understanding of reform, state power, and incarceration in the Western World. In the mid-1980s, historian Thomas Haskell broadened scholars’ interpretation of moral sensibility by using slavery as lever to better understand the development of humanitarian sentiment and the rise of capitalism. His work showed how expanding boundaries of moral responsibility were connected to the expansion of transatlantic and global markets.2

Scholarship exploring the rhetoric, images, and discussions pertaining to humanitarianism has grown exponentially; however, as historian Margaret Abruzzo noted, scholars still know little about the operative use and meaning of moral language during its formative years. Lynn Hunt’s 2007 work, *Inventing Human Rights*, was an important marker in

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the development of the field, arguing that the explosion in reading material and images of public
exhibition, including torture, engendered new expressions of empathy and facilitated the
emergence of human rights in social and political spheres. She argues that human rights were
indeed revolutionary. Thomas Laqueur found that the attribution to the “rapid progress of
sentiments” – a concept rooted in the “sentimental thesis,” which explains that narratives evoked
sentiments crucial to the formative stage of human rights – is unfit to define early “human rights
cultures.” He argues that the sad and sentimental accounts can just as likely increase or decrease
the “alterity threshold,” the notion of otherness and the boundary between neighbor and stranger.
Further, he found that the expansion of graves and venerations for the dead gave a new meaning
to the value of life. Michael Barnett’s interpretative survey, *The Empire of Humanity*, used a
global approach to explain how three factors (geopolitics, capitalism, and ethics) contributed to
humanitarian climates, finding that humanitarianism resonated with and reflected imperial
agendas. He emphasized the importance of examining humanitarianism’s beginnings to gain a
better interpretation of its continuities and patterns in the international community. Amanda
Moniz, in her recent work, *From Empire to Humanity*, found that the American Revolution
played a key role in shaping the rise of humanitarianism. Before the Revolutionary war, many
Britons and Americans believed in charity as a means to strengthen the empire; however, the war
broke down endeavors for imperial humanitarian activity, and it allowed moralists to recast their
transatlantic relationships, creating new charitable projects and practices.  

3 Halttunen, 303-4; Margaret Nicola Abruzzo, *Polemical Pain: Slavery, Cruelty, and the Rise of
Humanitarianism* (Baltimore: Johns Hopkins University Press, 2011), 3; Lynn Avery Hunt,
Laqueur, “Mourning, Pity, and the World of the Narrative,” in *Humanitarianism and Suffering:
Most of the work on humanitarianism’s formative years revolves around subjects regarding pain and the oppressive institution of African slavery. Karen Halttunen’s 1995 study found that eighteenth-century people refigured the meaning of pain. Orthodox Christians understood pain as both inescapable as a punishment for sins as well as an opportunity to imitate the suffering of Christ, but the interpretation of pain shifted into one that provoked revulsion because severe pain became increasingly unacceptable. As Halttunen put it, “the pornography of pain, which represented pain as obscenely titillating precisely because the humanitarian sensibility deemed it unacceptable, taboo.” Margaret Abruzzo explained that humanitarianism derives from both the vacillating ideas of pain and the growth of moral responsibility towards those who suffer. She argues that “moral concern about pain did not grow directly out of the problem of physical pain; instead, moral concern about pain took root in reflections on the human capacity for morality and sociability.”

Eighteenth-century moralists – including many Quakers, who greatly contributed to the vocabulary of humanitarianism – were not as concerned with the idea of suffering itself, but more so with the maliciousness of administering suffering. Moreover, moralists on both sides of the Atlantic associated notions of civilized society with humane conduct towards others; these actions would lead to moral progress, and the improvement of society’s moral character. Abruzzo explains that “the philosophical


4 Halttunen, 303-4, quotation on 304; Abruzzo, 3, 57, quotation on 57.
underpinnings of humanitarianism took shape in debates about human nature, the nature of God, and the nature of moral action, rather than in discussions about the nature of pain or suffering. In this sense, she refines the work of Hunt as well as Halttunen. Scholars can also see these sentiments take shape in the rhetoric describing eighteenth-century convict transportation and servitude. The moral language used to discuss this punishment showed less of a concern for convict offender suffering and focused more directly on the maliciousness of those who took away offenders’ lives or unjustly sentenced them to severe servitude. Contemporaries used moral language to convey their opinions on convict capacity for reform, their influence on the community, and the degree to which transportation and penal labor was a humane means to punish offenders.

Scholars have discussed the uneven rise of humanitarianism in a number of reform movements, and many of those who focus on labor in the Anglo-American World have given fruitful and sustained attention to the deliberations over the abolitionist movement. Historians have extensively praised and critiqued Eric Williams’ 1944 work, *Capitalism and Slavery*, which sparked significant controversies over abolition’s economic or humanitarian incentives, and still does. On the other hand, Amanda Moniz points out that many scholars of the early modern

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5 Abruzzo, 54, 63, 84, quotation on 84. During the eighteenth century, the Quakers were well known for the abhorrence toward slave cruelty. They worked to persuade other members, particularly slave owners, that enslaved people’s suffering was not in accord with their beliefs, 18-19.


period have carefully explored the beginnings of the antislavery campaign to better understand the early shifts in humanitarian sensibilities, but this one significant movement does not singly explain the rise of the larger cultural movement. Years ago, historian Kenneth Morgan briefly noted that the response to convict transportation showed “the emergence of a humanitarian conscience,” but as this study shows, we need to know more about how these moral ideas about bound labor translated into discourse, influencing the early movement of humanitarianism.  

Scholars have widened frameworks and used different approaches in their studies to explore unfreedom, human commodification, and humanitarian discourse, yet fewer scholars have given sustained attention to the largest group of forcibly removed people from Europe in the eighteenth century: transported convicts. In the late 1980s, A. Roger Ekirch’s pioneering work, *Bound for America*, examined the social origins and consequences of convict transportation. Kenneth Morgan’s thought-provoking study showed that there were ambivalent attitudes regarding the punishment on both sides of the Atlantic, with some showing sympathy and others showing disgust and contempt toward the trade. Gwenda Morgan and Peter Rushton’s 2004 work found that convict transportation was a key component of the British judicial system

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and an important link connecting the British Atlantic World. Historians have traditionally studied American slavery and servitude as separate phenomena, but more recently, scholars have challenged this notion and have problematized our understanding of forms of unfree labor and coercion. In his study of the seventeenth-century British Atlantic, John Donoghue, argues that scholars should understand those who came to the New World involuntarily as another form of slavery, one that “existed alongside the perpetual enslavement of Native Americans and people of African heritage.” In addition, he finds that the calls to end convict transportation in the seventeenth century can be understood as part of the origins of abolition in the Atlantic World.


10 John Donoghue, “‘Out of the Land of Bondage’: The English Revolution and the Atlantic Origins of Abolition,” *American Historical Review* 115:4 (October 2010): 942-974, here, 945. Simon Newman has also challenged the categorization of bound labor. He explains that historians have understood free and unfree labor as fixed, unchanging categories, “with the result that slavery is cast at one end of a continuum as an absolute denial of freedom,” which reinforces the institution as a “‘peculiar’ form of labor.” He argues that this notion simplifies the story of slavery and labor, and since so many laborers were bound or were deprived of certain rights and freedoms, we must interpret slavery “as part of the spectrum of coercion of labor.” The “difference between slavery and other forced labor systems was more a matter of degree than of kind,” Newman argues. Simon P. Newman, *A New World of Labor: The Development of Plantation Slavery in the British Atlantic* (Philadelphia, PA: University of Pennsylvania Press, 2013), 3; Ira Berlin has also noted problems with historians understanding labor categories as
It is important to note that many planters, farmers, forgery owners, and others had an interest in seeking labor of all sorts in order to make the most of the transatlantic system of markets, and they were willing to exploit that labor as needed to achieve their ends. This kind of activity, which matured and flourished in the eighteenth-century, combined with new enlightened ideas of ethical treatment and liberty, is what generated humanitarian rhetoric and discourse in regard to laborers. Everything considered, the study of convict laborers and moral sentiment largely has been studied separately, but in studying these themes together, we gain a richer interpretation of the social, cultural, and intellectual changes that led to the rise of the humanitarian movement in Anglo-American society.

With more calls for studies to examine the early stages of humanitarianism in particular, we need to understand how coerced labor of all kinds shaped the language, ethics, and practices of this movement. This study will address the following questions: to what extent did convict transportation and labor evoke sensibilities and shape elite and moralist attitudes about unfreedom and human welfare in the eighteenth- and nineteenth-centuries? In what ways did interlocutors use penal servitude to discuss and defend or oppose coerced labor systems, such as African chattel slavery? To what extent did these changing views shape penal labor in the new U.S. republic? Answers to these questions will contribute to our knowledge of how moral language operated in the formative years of humanitarianism, broaden our interpretation of the porousness of elite's constructed racial and social hierarchies, and expand our understanding of

the connections between punishment, hard labor, and reformation in the Anglo-American World.\textsuperscript{11}

While some scholars argue that concepts of humanity emerged in the twentieth-century through global war and violence, this study explores the development of the concept and practices regarding humanity as well as moral responsibilities and accounts of sympathy in the deliberations over convict transportation and labor in the long eighteenth century.\textsuperscript{12} During this century, the developing ideas, migrations, and trades from and to Britain and America influenced each other, and this study takes a transatlantic approach to investigate the formative phase of humanitarianism. To be sure, humanitarianism was not exclusively a European or Western notion, nor was it always used by purely altruistic or well-intended people. Additionally, transportation and convict servitude was not exclusively practiced in Anglo-American societies. Penal labor throughout space and time reveals the complicated ways imperial states engaged in state-building and competing visions of moral and political authority. To give further contextualization of the early modern viewpoints presented in this study, the project offers perspectives from authorities and planters in other places, like South Carolina and Barbados. With this considered, I am particularly interested in how the rhetoric that arose in conjunction with penal labor influenced humanitarian rhetoric associated with the antislavery movement and

\textsuperscript{11} Thompson, 332-3.

prison reform. Humanitarianism showcased objections to cruelty as well as adulation for those who alleviated sufferings for others, even when such actions conflicted with one’s self interests. The moral language I track refers to the terms and rhetoric used to draw attention to severe sufferings, alleviate or justify unjust pain, and promote human welfare.\textsuperscript{13}

When discussing the role of convict transportation and labor in the new culture of sensibility, it is imperative to have an understanding of the discursive landscape. What was the moral language and the meaning of words that made up moral rhetoric and vocabularies for eighteenth century interlocutors? Johannes Paulmann argues that examining the “historical lexica of humanity” is key to unpacking the practice and conceptions of the early movement of humanitarianism. The two important principles often associated with humanitarianism are globalism – or a ubiquitous approach to alleviate suffering, as all humans everywhere should be treated ethically and equally – and that relating to humanity. Humanity, as Johannes Paulmann explained it, consists of three principles: “the moral humanitarian principle, the attitude behind it, which motivates and justifies humane behaviour, and the conception of humanity as the collective body of humankind – the object as well as the potential scope of humanitarian action.”\textsuperscript{14} Yet, it was – and still is – a malleable concept used to ignite political action as well as

\textsuperscript{13} Johannes Paulmann, “Humanity – Humanitarian Reason – Imperial Humanitarianism: European Concepts in Practice,” in \textit{Humanity: A History of European Concepts in Practice from the Sixteenth Century to the Present}, eds. Fabian Klose and Mirjam Thulin (Bristol, CT: Vandenhoeck & Ruprecht GmbH & Co., 2016): 287-311, here 289. Regarding humanitarianism, Paulmann notes that, “as a European phenomenon it is something that has developed from Europe’s relation with the wider world. Religious or philosophical ideas about humanity and obligations of individuals and groups are not exclusive to Europeans but have been discussed in many cultures and societies.”

\textsuperscript{14} Paulmann, 288, 291.
individual responses. The language of humanity allowed for people to define who was and was not inside the social compact, and the antonyms of the principles of humanity show how critically the latter relied on the former. For example, the antonyms showcase historical divisions, such as free and enslaved people and the civilized and barbarians. Humanitarian actions aimed to alleviate the problems arising from these changing divisions and examining shifting concepts surrounding bound criminals and new notions of freedom will be crucial in deciphering the moral rhetoric that bolstered reform efforts.\footnote{Paulmann, 294.}

The dissertation uses a variety of legal and judicial records, public commentaries, and papers of prominent reformers. It analyzes the records of elites, moralists, and court authorities in England and the three colonies (later states) that imported the most convicts in the North American mainland: Virginia, Maryland, and Pennsylvania. It uses the records from the Old Bailey Courthouse in England, as well as English newspapers, pamphlets, and public commentaries. I have also investigated archives in Philadelphia, including the Library Company of Philadelphia, Historical Society of Pennsylvania, the American Philosophical Society, and the Philadelphia City Archives. There I examined papers from influential moralists like Benjamin Rush and Roberts Vaux, Pennsylvania Prison Society records, and the Walnut Street Jail Vagrancy Docket. I also used important collections like the Ridgely Papers, held at the Maryland Historical Society, and the Queen Anne County Court Judgment Records, housed at the Maryland State Archives. The latter institution offers online access to many of its historical documents in \textit{Archives of Maryland Online}, and I investigated Maryland’s legal records through this forum. The Library of Virginia holds the Virginia Penitentiary records and maintains the
Legislative Petitions Digital Collection. Investigating these important records provides a fuller understanding of the connections between punishment, hard labor, and reformation in Anglo-American culture.

This study argues that emerging ideas regarding punishment, morality, and unfreedom evoked by convict labor created new moral responsibilities, widened the plane of sympathies, and inspired novel denunciations of suffering in eighteenth- and early nineteenth-century Anglo-American culture. The practice of convict transportation both shaped and was shaped by economic agendas and political discourse, as historians have shown, but Anglo-American interlocutors also used it as significant rhetorical tool that linked emerging ideas of sentimentality with moral accountability. Convict servants, neither completely free nor enslaved, became an important wedge issue to discuss enslaved Africans and other bound laborers, such as indentured servants. They also presented contemporaries with uneasy notions of unfreedom that ignited new discussions on who deserved to be free. The language of humanness evolved with new ideas about proper punishment for offenders. British elites discussed convict servitude as a means to degrade colonist treatment of people held in various forms of human bondage as well as a source of labor which could quiet the growing criticisms of the institution of African slavery. Americans also used convict servitude to discuss the immorality of British imperial practices, heightening their own moral dispositions. Hence, this form of labor contributed to the development of humanitarian discourse, as lawmakers, elites, and moralists conceptualized and recast notions of benevolence, reform, and work.

The story of convict transportation and labor’s role in shaping humanitarianism will be told in four chapters. The first chapter investigates the legal makings and early practices of
transportation and penal servitude in both Britain and colonial America. Expulsion had long been used to deport undesirable people, including vagrants, prostitutes, the poor, and strangers, from communities throughout England. In response to a widely-perceived crime problem, in 1718 the British Parliament passed the Transportation Act as an intermediate punishment that would spare the lives of commonly despised people and banish them from the metropole. As historian Rebecca McLennan pointed out, we know far less about how domestic convict servitude worked in early America. The chapter explores who could become penal offenders, the terms of their servitude, and the explanations surrounding this punishment during the pre-Revolutionary period, 1718-1763. Beginning in the late seventeenth century and continuing into the eighteenth century, many colonial planters based their wealth and status on an extractive economy contingent on the work of unfree laborers. With a highly productive Atlantic system, colonial elites and lawmakers expanded forms of unfreedom, and this chapter shows how the poor were punished with forms of labor or sold into servitude. Understanding the laws and judicial practices of convict transportation and labor is crucial to deciphering how contemporaries used and thought about penal banishment and labor. Understanding how these practices emerged and evolved will give us insight into how transportation and penal servitude operated and illuminate how contemporaries justified and discussed these punishments as a system of unfreedom in Anglo-American culture.


The second chapter addresses British and colonial elite ideas and shifting attitudes regarding the morality of convict servitude as a punishment from 1718 until 1763, the eve of the Revolutionary period. It investigates the extent to which Britons and Americans expressed their concerns regarding convicts and traces how they increasingly became perceived as moral outsiders in colonial society. It explores schemes for convict servitude, reformist language, and sympathy as well as fears regarding these offenders. Colonists like Benjamin Franklin derided offenders for their lack of morality and alleged recidivism – concerns that prompted the Virginia planter William Byrd II to disparage them as the “vile commodity.” The chapter also gives special attention to the collusion of forced laborers, as their escape and potential to revolt encouraged discussions about the lack of moral rectitude regarding convicts and the corruptibility of other servants and enslaved people. Colonial elites and lawmakers expanded forms of servitude and hard labor at home, such as with new terms of punishments carried out in workhouses, and they articulated their attitudes toward economic efficiency and the morality of these punitive sentences. This chapter shows how interlocutors utilized moral language and reasoning to defend legal and judicial decisions regarding banishment and penal labor.

The third chapter examines the attitudes and developments regarding British and American practices of penal labor from 1763 to 1783. By the Revolutionary period, a number of British and colonial elites began to question the efficacy and justice of transportation for all

convicts, using moral and humanitarian language to articulate their reformist critiques.

Institutions of coerced labor, like convict servitude and African slavery, developed and resulted from the expansion of colonialism and capitalism, yet their collapse was brought on, in a large part, by the revolutions sweeping the Atlantic World. The American Revolution corroded long-standing monarchical traditions, redistributed power, and challenged systems of unfreedom.\(^{18}\)

For many Americans and Britons, the Revolution disrupted moral boundaries and their understandings of suffering and responsibility toward previously detested people like convicts, enslaved people, and the poor. With the intellectual and moral currency sparked by the Enlightenment and disruption of British authority, individuals increasingly connected human beings to notions of integrity and the capacity for moral autonomy.\(^{19}\) The rhetoric that arose in conjunction with penal labor paralleled and influenced the better known human rights discourse associated with the antislavery movement. Coercion, either as a form of unjustified or justified labor, held a significant, yet uneasy place in prompting moral thought and responsibility. Thus, penal laborers became an increasingly important forum to talk about the humanness of those held in states of unfreedom as well as how to better order society.\(^{20}\)


Turning to penal culture in the new United States, the fourth chapter investigates the punishment of servitude and terms of hard labor, and its influence on elite and moralist humanitarian discourse from the end of the American Revolution until the end of the first decade in the nineteenth century. After the Revolution, lawmakers and citizens sought new modes to discipline criminal offenders and other undesirable people in ways that aligned with notions of Enlightenment thinking and preserved the peace. By giving lawmakers and other elites a means to spare the lives of capital offenders, keep social order, and act as benevolent authorities, the practice of penal servitude actually expanded, even for lesser crimes, and fueled an evolving discourse on unfreedom and humanitarian duties in the new nation. In 1809, Maryland joined Virginia and Pennsylvania in enacting a plan for institutionalized criminal reform and a penitentiary. The chapter does not seek to offer definitive conclusions on the roots of the penitentiary system. It does, on the other hand, trace the revealing ways people used humanitarian rhetoric and practices to effect important change in the ordering of their society.

My findings reveal a new site for shifting notions of human responsibility and moral thinking, particularly in regard to economic interest and labor. The project also illuminates vital rhetoric and strategies used to abolish or justify tenets of human bondage. To be sure, it does not intend to collapse the experience of enslaved Africans or convicts, the former of which experienced brutal racial prejudice and perpetual and inheritable servitude. Nor does it seek to reduce or simplify the experience of coercion in labor. The study finds that many British and
American elites were less concerned with convict sufferings and instead focused on the severity of their own administration of coercion and pain, unlike later generations of humanitarians.²¹

Considering the work as a whole, convict transportation and servitude shaped the way the formative phase of humanitarianism operated and evolved in the Anglo-American World. One’s lack of mobility and the coercion in labor played key roles in shaping humanitarian sensibilities. The discourse on transportation and penal labor often centered on the loss of local attachments, the severity of labor, and the loss of one’s personal liberty. Convicts and other interlocutors drew on their own and other offenders’ communal attachments and the value of human life as a means to incite sympathy for their situations. The severity of penal labor was justified by some elites but contested by others, as well as by convicts themselves. Hard labor that damaged the body prompted interlocutors to discuss physical and emotional pains endured during the punishment as well as notions of bodily integrity. Loss of personal liberty also evoked sympathies or moral justifications. People questioned if the punishment challenged traditional English liberties or could be justified in that society was now free of a malefactor who could potentially reform. While often evaluated within historical studies on law or prison reform, banishment and penal servitude are important ways to show who was and who was not considered to be inside the

²¹ Hunt, Inventing Human Rights; Richard Ashby Wilson and Richard D. Brown define humanitarianism as “the wish to promote human welfare.” Different from human rights, humanitarian efforts aim to alleviate suffering and aid other human beings. It does not always operate in a defense of rights. See Richard Ashby Wilson and Richard D. Brown, “Introduction,” in Humanitarianism and Suffering: The Mobilization of Empathy, eds. Richard Ashby Wilson and Richard D. Brown (New York: Cambridge University Press, 2009), 9-11; Lynn Festa and Margaret Abruzzo have found that some eighteenth-century counterparts were less preoccupied with sufferers’ pain and more so with upholding their own sense of moral uprightness. See Festa, 9-10 and Abruzzo, 2, 18, 84; For Paulmann the moral sentiments that “we call humanitarianism refers, at its core, to humanitarian principles, humane attitudes, and humanity as a collective body.” See page 289.
social compact, and who deserved benevolence, aid, and humane treatment. The steps toward and even backward from moral universality are important keys to understanding the formative stages of humanitarianism. By the Revolutionary era, this form of unfreedom generated new critiques and initiated debates about the proper role of punishment and labor in enlightened societies. In the early decades of the nineteenth century, moralists and reformers increasingly used humanitarian discourse to improve the lives of those once unquestionably despised people, like criminals and African slaves. This new discursive environment helped the “friends of humanity” to galvanize early republicans in order to tackle new humanitarian challenges – challenges that would not always have outcomes of inevitable progression – and advocate for more humane legal and cultural changes in the new nation.²²

Some historians have argued that the eighteenth century was a time when racial thinking was increasing and thus racial boundaries hardening; however, the language used to discuss eighteenth-century unfreedom and the parallel assertions made regarding convict servitude and slavery shows a porosity in America’s racial and social hierarchies at that time. Examining convict labor gives us insight into the muddy waters of both servitude and slavery as legal categories and cultural practices, as well as how bound men and women understood themselves. Servitude and slavery grew more distinct in the eighteenth century, and convict servitude deepened the divide. Penal servitude also overlapped and informed debates about African chattel slavery and the antislavery movement in illuminating ways. Antislavery advocates used penal servitude as a way to shed light on the harsh punishments both servants and enslaved people endured, and it also exposed linkages that perhaps provoked contemporaries to consider the

conditions of African slavery more closely. Pro-slavery advocates, on the other hand, critiqued their opponents for condemning the slave trade while British courts shipped and transported poor whites elsewhere for a term of temporary labor. In this way, penal servitude was an instructional device used to evoke sympathy for unfree laborers, to critique cruelty in colonial servant laws, and to advocate for new “humane” labor practices, prefiguring the later nineteenth-century debates on humanity and unfreedom.

With widening anxieties about temporary bondage, interlocutors built moral vocabularies and used sentimental accounts to define the humanity of offenders (or lack thereof) and deem them deserving or undeserving of sufferings, labor, and life. Discussions of penal servitude became an important forum for Britons and Americans to establish their own authority as just and moral administrators, as well as a medium to call for new humane legal changes in regard to disciplinary spaces and labor. In this way, the language of humanness and morality emerged and evolved, to a significant degree because of developments regarding banishment and penal labor. The problems of unfreedom spilled over into important humanitarian discussions about labor, punishment, morality, and reformation, sparking lively debates that helped to forge the new culture of sensibility. As Lynn Festa points out, humanitarian sensibility is just one component of the history of humanitarianism, and the latter is just one feature of the history of the long eighteenth century. Yet it frames an important part of what Festa suggests and Abigail Green calls the foundation of human rights. It shows transformations in moral thinking and practices that allowed people to imagine personal and collective change. Institutional banishment and servitude thus reveals a site where moral universality and inclusion could expand and contract, and the punishment offered an important venue for Britons and Americans to express their own
beliefs, sympathies, and moral responsibilities, contributing to the formation of the new culture of sensibility in the Anglo-American World.²³

CHAPTER ONE
BANISHMENT AND THE MAKING OF CRIMINAL COMMODITIES
IN THE BRITISH ATLANTIC, 1718-1763

In 1732, Hercules Kent petitioned for his freedom in Queen Anne’s County in colonial Maryland. Kent was a transported black convict from Great Britain, who had committed a felony that landed him in the British convict trade to the North American colonies. After finishing his seven-year term as a convict servant, his owner, Colonel Hawkins, refused to let him go. The Chesapeake’s lucrative tobacco-centered economy hit a slump in the early decades of the century, and shortages of labor and in some cases of arable land drove planters to maximize profits with laborers and resources at hand. Kent argued he had “honestly and obediently served … in those Plantations” and should be released since he was “a free born Subject of England.” Worried that he would be “held during Life,” Kent implored in his petition, “your Worships in Charity may be pleased to advise and direct him to his native Right Liberty and freedom, and not to suffer him to be made subject to personal Slavery and Bondage.” Despite evidence that he was a temporary penal servant, Kent failed to sway authorities to change his circumstance. He lost the case and owed Hawkins 138 pounds of tobacco for court cost. As a transported servant, Kent had legal rights that were supposed to protect him, but colonial elites and planters frequently manipulated and lengthened terms of service for bound laborers. In this case, race played a
critical role for Kent, who feared being made a chattel slave perpetually, and it was also a factor that likely made it easier to dismiss his claims regarding nativity and freedom.¹

In the eighteenth century, British and American elites and court authorities meted out terms of banishment and penal servitude to people deemed criminal, just like Kent, in order to extract labor, generate capital, and maintain social order. Kent’s case was unusual since there were few people of African descent caught up in the eighteenth-century British convict trade, but the petition is illuminating. It reveals his ideas of nativity, labor, and “right [to] liberty and freedom.”² Drawing on assumptions about rising crime and poverty levels, lawmakers and judicial authorities justified new legal routes to penalize people and contended that banishment and penal servitude would be socially and economically beneficial in building the burgeoning imperial society. From 1718 to the American Revolution, British courts banished over 50,000 convicted men, women, and children to the American colonies, almost all of whom were sold as servants. Colonial American governments and courts also practiced banishment and domestic penal servitude, punishing the poor, women, slaves and servants already living in North America. Such forms of servitude are often evaluated independently, but by bringing banishment and penal servitude – essentially those legally punished with terms of exile or labor – together in a single analytical framework, we can better understand how the systems of both slavery and convict labor influenced ideas of power, coercion, and unfreedom in Anglo-American culture.

How did this punishment regime operate and change in the pre-Revolutionary period? Why did

¹ Queen Anne County Judgement Record 1732-1735, Maryland State Archives (hereafter MSA) CE 450-6, 162-163; Lorena S. Walsh, *Motives of Honor, Pleasure, and Profit: Plantation Management in the Colonial Chesapeake, 1607-1763* (Chapel Hill, NC: University of North Carolina Press, 2010), 4-5, 294-5, 405.

² Queen Anne County Judgement Record 1732-1735, MSA CE 450-6, 162-163.
colonial authorities banish people during a time of intense labor shortages and how did they create new forms of convict labor? This chapter argues that the practice of banishment and penal servitude expanded in the eighteenth century, as Anglo-Americans made creative and aggressive use of servitude to acquire labor for a highly-productive Atlantic system. These practices informed ideas of mastery and unfreedom. Penal servitude emerged and evolved in law and custom and these ideals of power and dependence created new moral quandaries and incited developing sensibilities later in the eighteenth-century British Atlantic.

African chattel slavery became the most significant and brutal form of coerced labor during the eighteenth century, and other forms of servitude were also important components of the widening labor pool. Scholars have made great strides in teaching us more about indentured servants, redemptioners, and convict servants, often examining the transition from lesser forms of servitude to African slavery. They have often deemphasized the role of the former with the rise of the latter. Those who have given attention to servitude in the eighteenth century provide us with important demographic and economic data, but with the exception of convict servitude, we know less about the element of coercion in this form of labor. Christopher Tomlins affirms Edmund Morgan’s well-known conclusion in that laws regarding servitude set the legal platform for African slavery as an extractive labor system that capitalized on profits by the exploitation of laborers. Yet Tomlins and other historians have neglected to examine the “colonial custom of the country,” as many planters treated indentured servants as “goods and chattel” that they owned temporarily. Recently, scholars have problematized posing categories of unfreedom against one

another, which perhaps has led to some conclusions on an easing of temporary bondage during
the rise of an oppressive racialized slave system. Simon Newman explains that African slavery
was unlike other forms of bound labor, but this difference was more in “degree than of kind.” He
shows us that it should be studied and interpreted on spectrum of coerced labor so we can learn
more about how labor worked altogether in the Atlantic World.  

Others have argued that during the eighteenth century, the number of servants decreased
significantly as white settlers looked toward extracting profits from the work of African slaves.
Convict servants do not figure neatly into this notion; while they were not nearly as many of

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4 Simon P. Newman, A New World of Labor: The Development of Plantation Slavery in the
Allison Madar, “Servitude in the 18th-Century British Atlantic World: Old Paradigms and New
Directions,” History Compass (2017), e12411; Christopher L. Tomlins, Freedom Bound: Law,
Labor, and Civic Identity in Colonizing English America, 1580-1865 (New York: Cambridge
University Press, 2010), 7-11, 306-7. Tomlins argues that “the tendency to link the colonial
institution of indentured servitude to that of slavery as variations on the same phenomenon of
legalized bondage produces valuable insights into both, to analogize the restraints applied for
periods of years to comparatively small numbers of white people to the permanent and absolute
subjection of multitudes of Africans is of limited utility.” African chattel slavery was different
than other forms of servitude, but examining these labor systems together can tell us more about
how labor worked in the early modern world. See page 11; Edmund Sears Morgan, American
Slavery, American Freedom: The Ordeal of Colonial Virginia (New York: Norton, 1975); John
Donoghue, “Indentured Servitude in the 17th Century English Atlantic,” History Compass 11/10
(2013): 893-902, here 895, quotation on 898. Also see John Donoghue, “‘Out of the Land of
Bondage’: The English Revolution and the Atlantic Origins of Abolition,” American Historical
Review 115:4 (October 2010): 942-974, especially 945; See also Russell M. Lawson, Servants
and Servitude in Colonial America (Santa Barbara, CA: Praeger, an imprint of ABC-CLIO, LLC,
2018); Russel R. Menard, Migrants, Servants, and Slaves: Unfree Labor in Colonial British
America (Burlington, VT: Ashgate, 2001); Sharon V. Salinger, “To Serve Well and Faithfully”;
Labour and Indentured Servants in Pennsylvania, 1682-1800 (Cambridge; Cambridge University
Press, 1987); Bernard Bailyn, Voyagers to the West: A Passage in the Peopling of America on
the Eve of the Revolution (New York: Alfred A. Knopf, 1986); For a recent work that explores
coercion in servitude before 1718, see John Wareing, Indentured Migration and the Servant
Trade from London to America, 1618-1718: “There Is Great Want of Servants” (New York:
them as enslaved people in the British colonies, they did arrive in increasingly numbers in the eighteenth century (as did indentured servants). Richard Morris in his classic study, *Government and Labor in Early America*, sheds light on issues of both imported and domestic convict servitude regarding law and work. In the 1980s, A. Roger Ekirch’s *Bound for America* shows how the institutionalization of banishment and penal labor was an economic and social mechanism to remove undesirable people out of British streets. Christopher Tomlins argues that slavery made “an ‘other,’ both materially and ideologically… [that] assisted forms of freedom to evolve.” However, with legal restrictions, cultural stigmas, and economic obstacles, servants likely found it difficult to form common bonds with white elites against enslaved people. Others have argued that servants, in many ways, were largely ostracized; colonists limited the ways white and mixed-race servants could take part in those liberties and there were increasing restrictions and legal barriers in joining a “freer” white society. These ideological dimensions would create significant moral tensions and provoked new rhetoric that called for humanitarian change in the latter half of the century (See Chapters 2 and 3). Far from being a negligible or a static social and economic category, temporary unfreedom continued to shape the experiences of many people living in the colonies, and it informed relationships on power, law, and labor in important ways.5

Drawing on legislative and judicial records for both imported and domestic criminal offenders, this chapter investigates the legal makings and early practices of banishment, transportation, and penal servitude in the Anglo-American World. Scholars have explained how the British convict trade to the North American colonies operated, but evidence shows that the legal category shifted over time and was more porous than perhaps we once thought. We know far less about how domestic convict servitude worked in early America. Using sources from Britain, as well as Pennsylvania, Maryland, and Virginia – the three colonies who received the most imported convicts – this chapter investigates who became penal offenders, the terms of their servitude, and the explanations for or against this punishment during the pre-Revolutionary period. It first explores British convict transportation and servitude. Then, it examines how people already living in colonies were banished or punished by colonial courts with terms of labor for crimes, either being sold, given additional terms of service, or placed in workhouses. Examining banishment and penal servitude in this way illustrates how elites, lawmakers, and judicial authorities justified and discussed the significance of coercion in labor, surveillance, social order, and unfreedom in the Anglo-American World.6


6 McLennan, 31.
British convict transportation was a disciplinary experiment designed to alleviate a widely perceived crime problem in early eighteenth-century Britain. The British Parliament passed the Transportation Act in 1718 as an intermediate punishment, one that would spare the lives of those considered undesirable and remove them from British streets. Expulsion had long been used to deport despised people, including vagrants, harlots, the poor, and strangers, from English communities. Fueled by the desire to protect the increase in commercial wealth and from concerns of rising criminal activity, the Whig government created more capital offenses to deter potential offenders and to protect property – offenses that would contribute to the infamous Bloody Code. The number of criminals in London’s Newgate jail and others rose to alarming numbers. With a need for a new method to handle property offenses and the ineffectiveness of execution and corporal punishments in preventing crime, Parliament passed the Transportation Act with relatively little objection. With the new act institutionalizing transportation, British

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7 Gwenda Morgan and Peter Rushton, *Banishment in the Early Atlantic World: Convicts, Rebels and Slaves* (London: Bloomsburg Academic, 2013), 10-11; Douglas Hay, “Crime and Justice in Eighteenth- and Nineteenth-Century England,” *Crime and Justice* 2 (1980): 45-84, here 48-9; “An Act for the further Preventing Robbery, Burglary, and other Felonies, and for the more effectual Transportation of Felons…,” 4 George I, c. 11 (London: Printed by John Baskett, 1718); Ekirch, 1-2, 11-20. In 1615, during the reign of James I, capital offenders could obtain pardons to be banished across the ocean. Some malefactors escaped harsher punishments by claiming benefit of the clergy, and others received royal pardons to transport themselves to the West Indies, but a number failed to do so or they returned before their sentence was complete. After the War of Spanish Succession, unemployment increased dramatically in English cities while poverty and new shops and stocked warehouses reportedly tempted many people into thievery. The concern over a rising crime rate resulted in part because of the growth in print culture, particularly the increase in newspaper circulation and the growing numbers of poor in London and other cities; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the*
juries, judges, and magistrates could recommend or choose to transport an offender guilty of
“Grand or Petit Larceny,” or other offenses punishable by whipping, to the American colonies
for seven years. Many of these offenders served as convict servants. This was a remarkable
divergence in modes of punishment for noncapital offenders, where judges gained the
discretionary power of transportation. For capital offenders – who were traditionally hanged –
judicial officials could issue pardons. With the new legislation, these malefactors could be
sentenced to fourteen years in the colonies. This new legislation ushered in an era of massive
convict transportation, where planters could purchase them in increasing numbers. Thus, for less
serious offenders, transportation seemed harsh, but for those who had committed capital
offenses, the penal option emerged as an outwardly humane alternative to the death penalty. 8

_Eighteenth Century_ (London: A. Lane, 1991), 17, 52-3; F. J. McLynn, _Crime and Punishment in
Eighteenth-Century England_ (London: Routledge, 1989), xi-x, xii; J. M. Beattie, _Crime and the
J. M. Beattie, _Policing and Punishment in London 1660-1750: Urban Crime and the Limits of

8 “An Act for the further Preventing Robbery, Burglary, and other Felonies, and for the more
effectual Transportation of Felons....” 4 George I, c. 11, quotation; Ekirch, 3, 17-8, 30-34.
Hitherto, authorities used the death penalty as a deterrent, and for noncapital offenses courts
punished criminals with brandings, time in the pillory, whippings, short prison sentences, or time
in the house of correction; Beattie, _Crime and the Courts in England_, 470, 500-6. Grand larceny
– the crime of most transportees – was considered a capital crime. This consisted of the stealing
of goods worth a shilling or more, excluding crimes from shops in which the goods equated to
more than four shillings or from homes in which the goods equated to more than 39 shillings.
Petty larceny, which consisted of stolen goods worth less than a shilling, was a noncapital crime
and offenders could be penalized with whipping. Differences between these categories broke
down with the Transportation Act (as well as with the extension of the benefit of the clergy in
1706) as both kinds of offenders could be penalized with transportation. Further, juries could
return partial verdicts assigning capital and noncapital offenders’ guilt of a lesser charge. After
offenders were found guilty, judges could deem non-capital offenders worthy of a lesser
punishment other than transportation and could recommend capital offenders for royal mercy
which exiled the malefactor for fourteen years or for life. See Beattie, _Crime and the Courts in
England_, 182, 506, 509-13 and Ekirch, 28-33; Walsh, 405.
While we are not precisely sure how lawmakers initiated the system of transportation, J. M. Beattie has explained that they passed the Act, in part, as a response to overcrowded jails and an alternative to the death penalty. The established lawyer and recorder of London, William Thompson, likely instigated this legislation. Assize courts passed sentences of transportation on criminals or pardoned those sentenced to death if they were transported. Contributing more significantly to the amount of transportees, justices of the peace could now mete out this punishment for minor offences, which added to the work of the lower courts, known as the quarter session courts. A significant number of transportees came from the Home Counties, where the treasury sponsored subsidies for their transportation. We know that many of them likely committed crimes out of poor economic circumstance or desperation, although some were career criminals. Most were young males, often unskilled. The discretionary power in the law allowed for leniency for those sometimes considered more deserving, such as children.9

Further, many Britons argued that corporal punishment failed as a deterrent, and transportation could save the city treasury money, as it was cheaper than maintaining offenders in jail.10 Additionally, if court authorities wished to spare eligible offenders the death penalty, they had the discretion to do so. A death sentence was cost-effective and efficient, but it was not

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10 Benjamin Balak and Jonathan M. Lave, “The Dismal Science of Punishment: The Legal-Economy of Convict Transportation to the American Colonies,” *Journal of Law & Politics* 18:4 (2002): 879-919, here 883, 897-9. Punishing offenders in workhouses and jails was a less attractive option because of the expense; Ekrich, 17-8, 70-71. Between 1718 and 1772, the crown spent over £86,000 shipping almost 18,000 of London’s convicts across the Atlantic. Johnathan Forward received the contract to ship convicts to the New World and earned £3 for each one transported from London and the Home Counties in 1718 and £5 for those in other parts of England – costs that covered shackles, guards, and assorted jailing fees.
merciful. In 1731, Reverend George Ollyffe argued that transportation was a way to drain “the Nation of its offensive Rubbish, without taking away their Lives.” Ollyffe’s use of “offensive Rubbish” suggested benevolence of judicial authorities in sparing them. Others asserted the punishment would deter other potential malefactors. In one Ordinary account in 1744, they “are sent abroad purely out of regard to Public Good. The Execution of Offenders would be of little Service to the Society, consider’d barely as removing so many Malefactors, the Benefit expected from it arises from the Example, or rather the Effects of the Example.” The record continued, “this the Law seeks, and this is principally sought by the rendering these Papers…public; and this surely must be therefore esteemed a Reason sufficient.” The punishment was a compromise that would preserve lives, benefitting the community as well as those considered undesirable.

Transportation was an economically efficient option designed to protect social peace at home, but it also provided Britons and Americans with a new forum to discuss the purpose of punishment and the morality in banishing offenders outside of communities. In his well-known essay, Historian Douglas Hay argued that Whig elites used criminal law as a means to enforce their authority over the less powerful through judicial terror or benevolence. In a study on property theft, Peter King found that people from a variety of different socio-economic positions,

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including prosecutors, witnesses, magistrates, and juries, powerfully shaped the outcome of cases. While elites may have used the law at times as a mechanism to meet class needs, judicial authorities sentenced troublemakers based on factors relative to the case, such as age, poverty, and reputation, rather than on measures to exclusively enforce deference to the aristocracy. Indeed, court officials’ impartiality is difficult to discern in sentencing patterns definitively. Nonetheless, judges and juries evaluated cases conscientiously and considered the practical, Christian, and community elements relevant to the cases.\textsuperscript{13}

While waiting for transportation, prisoners experienced poor and unsanitary conditions in prisons, resulting in malnutrition and sicknesses. Prisoners could contract smallpox or “gaol fever,” a highly-deadly form of typhus. Some waited months or even years for transportation. In a Durham gaol, a woman gave birth two times while waiting to be shipped to the colonies. Others did not live to see the New World.\textsuperscript{14} When leaving the prisons, convicts walked to the ships “linked with a chain, amongst other transports,” and once they boarded, “they were put


\textsuperscript{14} Ekirch, 82, quotation; Morgan and Rushton, Banishment in the Early Atlantic, 120.
down into the hole.” One observer noted that prisoners were bound “with a collar.” Once offenders were out at sea, they were at the mercy of the ship’s captain and crew. Conditions on board were often grim, as crews rationed food, and many convicts endured the journey in chains. On one ship in 1743, the conditions were so bad that convicts drank their urine to survive. The sentence was a term of banishment, and felons would be penalized if they returned before this sentence was complete.

Although most transportees likely came from Britain, there were people of African heritage who also found themselves in the British convict trade. In total, from 1718-1775, England sent more than 50,000 convicted men, women, and children to the colonies: at least 36,000 from England, 13,000 from Ireland, and 700 from Scotland. Although they could arrive in a number of colonial ports, the majority landed in Maryland or Virginia, where labor shortages were high, and Pennsylvania followed as the third largest importer. The evidence suggesting some people of African descent also found themselves facing transportation is particularly revealing. In one case, two observers saw John Gibbons, who was blankly described as “a Black” from “St. Giles in the Fields,” rapidly walking by, and Gibbons dropped silver “Snuffers” from his pocket. According to the court record, they stopped him, and Gibbons eventually told them about his theft. In court, he was sentenced to transportation. While the number of these

15 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 05 April 2014), February 1753, trial of John Jettea (t17530221-45).

16 Fogleman, 56; Morgan and Rushton, Banishment in the British Atlantic, 104; Ekirch, 101-2.

17 Ekirch, 26-7,114.

18 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 06 October 2017), May 1722, trial of John Gibbons (t17220510-1). For other examples, see Old Bailey Proceedings
offenders pale in comparison to white convicts, it shows that authorities sent black criminals to work as servants in the rapidly growing slave societies in North America, which has hitherto been neglected in the scholarship.

Some convicts came from the Caribbean before facing charges of transportation as convict servants in Britain. In 1745, Philip Launder, identified as “a black,” was charged with theft and sentenced to transportation back to the colonies. Beforehand, he was supposed to join another (unnamed) servant for dinner who came over from “Antegoa” (Antigua) around the same time. They had known each other for about twenty years. The unnamed servant lamented, “I asked him to dine with me, and it is a very hard thing if a man asks a person to eat a bit of victuals, that he must steal a silver spoon.” The record does not give us detailed clues as to what Launder did in “Antegoa,” but it does suggest the unnamed servant maintained a degree of trust for Launder hitherto this point. The servant stated that he “had a great deal of anger about it, for I have all my master's plate under my care.” Since Caribbean slaves were mostly African, it is likely that Launder was born in Africa, endured the Middle Passage, labored as an enslaved person in Antigua, came over to England and somehow earned his freedom, and then was sentenced to return to the colonies, this time to North America as a convict servant.19

19 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 06 October 2017), April 1745, trial of Philip Launder (t17450424-1).
Other examples tell us about revealing connections with African slavery on colonial plantations. In 1765, Charles Johnson tried to sell a couple of silver spoons to a fruit seller. The seller refused to purchase them, and suspecting they were stolen, he asked a bystander to grab the spoons from Johnson. The fruit seller told Johnson that they would return the items to the owner, and on the way, Johnson, probably frustrated, took the spoons and “bent them” and threw them in a yard. John Lewis, who apprehended the thief, explained that Johnson, “acknowledged he had taken these spoons to pay his passage to his mother (he was a black) he said she lived [sic] in the plantations abroad.” Johnson did not defend himself in court and was sentenced to transportation. The document indicates that he was not a free person before the indictment and was perhaps desperate for money as he tried to sell the spoons twice, and previously asked a bystander to find someone to purchase them. We can speculate that perhaps Johnson had a vague idea of where his mother was, and he sought to be reunited with her. These records do not tell us what happened to Johnson and others once they were transported. They do tell us that British convict transportation and servitude was not exclusively a white form of human bondage, and perhaps suggest that colonists even expected to purchase some black offenders as temporary penal servants – servants who were supposed to be protected by law. Coercion, criminality, and race then were malleable categories that contributed to colonist ideas about power, labor, and mastery in colonial society.

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20 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 06 October 2017), December 1765, trial of Charles Johnson (t17651211-28).

21 These records shed light on the problem with assuming that all servants were of European descent as well as the significance of familial connections with unfreedom. See Madar.
Imported Colonial Convict Labor in Early America

As the plantation revolution developed, white colonists enforced a “peculiar social order” that supported planter authority over dependents. During the pre-Revolutionary era, most colonists, indentured servants, convicts, and enslaved people on the North American mainland lived in areas that supported slave systems. The northern colonies maintained an economy fixated on mixed agriculture and commerce, and this non-plantation system or society with slaves was supported by servant and slave labor. Colonies in the Upper and Lower South maintained plantation systems that produced staple crops, including tobacco and rice, and black slaves as well as white servants were the foundation of brutal and lucrative production processes; they were, as Ira Berlin termed them, slave societies. So heavily dependent on coerced labor, the British economies on the eastern seaboard flourished, producing lucrative goods for international markets. After 1720, the demand for both servant and slave labor reached new heights. Chesapeake planters founded their wealth and status on a growing extractive economy that was contingent on unfree people’s toil. Planters acted as “metaphorical fathers to the plantation communities,” and whites applied their understanding of the master-slave relationship to other dynamics, such as husband and wife or employer and employee. Servitude was a customary form of unfreedom, and indentured servants and convicts – who were sometimes legally grouped together – were commonly perceived as the bottom of society’s social strata next to African enslaved people.22

Alongside the growth of African slavery in the eighteenth-century, the Chesapeake’s imported and domestic servants also contributed to the growing labor pool there in important ways. After traveling across the Atlantic Ocean and with most – perhaps nine out of ten offenders – arriving in the Chesapeake (see Figure 1), planters purchased convict servants from auction blocks on the ships or in nearby towns. Even though Georgia been stereotyped as a prototypical convict colony even today (see Chapter Two), it may have only received one vessel selling offenders. The Carolinas likely received less than 200. Generally, shippers liked to select convicts from jails they thought would sell the quickest and sometimes upcoming shipments were advertised in colonial newspapers. Imported convicts provided an alternate source of labor, commonly working as house servants, artisans, unskilled workers, and field laborers. They contributed to the market economy there, supplying labor, adding to planters’ wealth, and providing new settlers to the expanding colonies. Less wealthy colonists particularly sought out convict laborers because they were generally cheaper than enslaved


23 Ekirch, 113-4; Fogleman, 56-7. For a work questioning whether servants arriving into Georgia were convicts rather than indentured servants, see Rodney M. Baine, “Oglethorpe’s Forty Irish ‘Convicts,’” The Georgia Historical Quarterly 78: 2 (Summer 1994): 326-338.

24 Morgan and Ruston, Banishment in the Early Atlantic World, 120-1; Ekirch, 140-2, 144-7.
people and indentured servants. Planters typically preferred male convicts, who were skilled. Female convicts often lacked desired skills, and planters ran the risk of losing their productivity if they became pregnant. Some convicts worked in places outside agriculture sectors, like the Ridgely iron works. Although they could receive terms of banishment for seven years, fourteen years, or for life, most served a seven-year term of servitude. At the end of the colonial period, many of these offenders found themselves in the frontier areas where owners could maximize the profits from their skills and labor in more diversified sectors of agricultural life.25

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25 Ekirch, 26-27, 124-127, 140-7. During the latter half of the eighteenth century, planters bought enslaved people in the Chesapeake for approximately between £35 and £45; convicts costs around £13 for males and between £7 and £10 pounds for females, see pages 124-126; Morgan and Ruston, Banishment in the Early Atlantic World, 120-1.

Because convicts were convicted criminals, many colonial planters considered them shiftless and held less reservations in placing offenders in forms of involuntary servitude than their British counterparts had. Planters worried about diseases coming from jails as well as
convicts disrupting the peace and inciting violence, especially with other unfree laborers.\textsuperscript{26}

Historians have found that the growth of print culture particularly after the 1720s likely helped to spread the notion that many more convicts committed crimes in the colonies or ran away to return to England than those who actually did.\textsuperscript{27} Still, evidence shows colonists’ deep concerns about this form of labor. Both Maryland and Virginia’s legislators, went as far as to enact early laws to limit the importation of convicts. In 1719 and 1723, Maryland’s lower house attempted to pass legislation requiring buyers to offer security, which would guarantee convicts’ good conduct. In 1722, Virginia passed a bill that required the registration of incoming offenders. Additionally, it mandated that ship captains offer £100 security for every one sold and purchasers give ten pounds for each convict’s good behavior and stated that all transactions lasted for the entire duration of offenders’ terms. The Privy Council dissolved this measure.\textsuperscript{28} Pennsylvania passed a duty on convicts in 1722, but only because they delayed sending the law to England. If the Privy Council did not modify the colony’s laws within six months of their receipt in England, they would remain standing. These efforts failed to stem the tide, and the numbers of imported convicts grew throughout the century. After 1745, almost half of the


\textsuperscript{28} Alan Atkinson, “The Free-Born Englishman Transported: Convict Rights as a Measure of Eighteenth-Century Empire” \textit{Past & Present} 144 (1994): 88-115, here, 99-100; \textit{Executive Journals of the Council of Colonial Virginia} (hereafter, \textit{EJC}), ed. H. R. McIlwaine, 6 vols. (Richmond, 1925-66), IV: 60-1, 281-2,447-8. In Virginia in 1732, there was a concern that there was an increase in convicts who were committed for new crimes in the colonies and could not pay their court fees. See 281-2; Parent, 2, 26, 29.
servants arriving in Annapolis maintained convict status, and they made up over a fifth of all of the colony’s white workers. With limited control over those sold on the shores, colonial elites then sought out to use the legal and judicial systems to control and regulate these servants.29

While the Transportation Act directed offenders to be banished, not all offenders expected to labor as servants. Parliament instituted regulations for sentencing and subsidized contractors in order to guarantee convicts would reach the colonies, but it was up to the colonies whether convicts were freemen or coerced servants.30 With this, there was some confusion over whether banishment meant that every offender should labor as a convict servant. Banished for his crime, John Knight petitioned the court in Maryland for his freedom. Knight was “the unhappy misfortune of Banishment for life.” He faced the death sentence at the Old Bailey in London, but the recorder reported there were some “Circumstances of his Innocence,” and he was awarded a pardon – frequently called “Royall Clemency.” Once Knight arrived in the colonies, “Contrary to his Expectation he was sold Equally to those who had received a Sentence of Seven or fourteens [sic] Transportation.” He argued that his particular pardon did not include a term of servitude which was “the Benefit of the Transport Act.” The Maryland court was not persuaded to change Knight’s situation. He lost his case. If servants came over with documentation, it technically afforded them some legal protection – a security unavailable to enslaved Africans. Merchants did not always provide documents relating to convicts’ conditions,

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30 Ekirch, 97, 140.
and many offenders did not have papers. In which case, they served in regard to custom and were all the more subject to colonial market demands.³¹

Some convicts went to court to seek redress for freedom dues or to be discharged from servitude. Historian Christine Daniels makes the point that servants in Maryland negotiated their relationships with masters and were not as powerless as scholars once thought. This difference stems from the scholarly focus on statutes rather than the customary servant laws. Differing from the experience of indentured servants, convict servants may have had less flexibility in negotiations. Daniels even notes that “servants also retained their humanity at law in the form of a vital right; they could petition county courts for redress of their grievances. Any apprentice or servant being “‘misused’ or ‘grieved’ (except convicted felons) could complain” to the Justice of the Peace for assistance. Convict servants did use the court system to petition for what they argued was due to them by custom or law.³² In 1738, Joseph Ward explained that it was the “Custom of the Country” for servants to receive freedom dues “for their hard and Laborious Servitude.” Not only did he not get his dues, but his owner “delays to give him a sufficient Discharge from his Service.” Ward failed to convince the court, and he lost his case.³³ Hercules Kent, the convict who petitioned for freedom based on the fact that he was “a free-born Subject


³³ Joseph Ward Petition to the Court, 1738, Queen Anne County Judgement Record, 1735-1739, MSA CE450-9, 329-30.
of England,” was afraid that he would have to serve past his seven-year term, but he did not win the favor of the court either (see Figure 2). In 1748, John Symmonds served his seven-year sentence, and he argued he was held beyond his term unjustly. Despite having the two witnesses testify on his behalf, Symmonds lost his case. These petitions suggest convicts had an understanding of what English laws and American customs provided, but their efforts to seek redress, at least in these cases, were in vain.

34 Hercules Kent Petition to the Court, 1732, Queen Anne County Judgement Record 1732-1735, MSA CE 450-6, 162-163; John Symmonds Petition to the Court, 1748, Queen Anne County Judgement Record, 1747-1748, MSA CE450-16, 240. There is a case where Sophia Kelly won, but it is unclear if she was a convict servant. She served seven years, but she refers to “Indentures.” See Sophia Kelly Petition to the Court, 1755, Queen Anne County Judgement Record, 1755, page 298, MSA CE450-25.
While historians have debated the degree of difference among forms of servitude, it is clear that elites deviated from English law to maximize the exploitation of servants. Penal servitude was distinct from other forms of unfree labor and unequivocally different from the cruel and dehumanizing institution of African slavery – as the latter was racialized, inheritable, and perpetual. Ideas of race were critical to early understandings of colonial life, and colonists increasingly relegated Africans to categories of inferiority. Convicts epitomized the social vices...
of society, including depravity, violence, and destitution. In many ways, the legal principle of chattel is at the heart of the debate. Chattel is the primary feature of the oppressive slave system in the Atlantic World, and it referred to the movability, ownership, commodification, and perpetuity of bondage for human beings. Christopher Tomlins and Philip Morgan argued that African slaves maintained a slave status from the early days of their importation to colonial Virginia. Roger Ekrich suggested that the difference in servant and slave status was the time of labor and racial subjugation of the latter. Early colonists drew on English law in organizing societal life, but they often modified precepts according to colonial needs. Regarding servant arrangements, English law specified that both parties must consent to change a contract. By law, servitude was the sale of the contractual rights for a servant’s labor. But with colonial labor demands, colonists implemented legal measures to expand the length of servitude, and they conceptualized servants “as a form of property.” While different from African slavery, the increasing restrictions on convict servants shows how colonial elites sought to demonstrate their legal and social inferiority.

While convicts could look toward the end of their servitude and enslaved people remained in an exploitive form of human bondage in perpetuity, one study found that there was a hereditary component to convict servitude. In Virginia, children inherited the chattel or free status of their mother – a law initially instituted in 1662. It was a statute rooted largely in those

35 Madar; See Jared Hardesty, Unfreedom: Slavery and Dependence inEighteenth-Century Boston (New York: New York University, 2016); Ekrich, 151.

36 Jeppesen, 193-5.

37 John Ruston Pagan, Anne Orthwood’s Bastard: Sex and Law in Early Virginia (Oxford: Oxford University Press, 2003), 21-5; Bilder, 750, 757-8, quotation on 758. Indentured servants needed their masters’ approval for marriage, trade, or to leave their assigned premises.
regulating servants’ sexual activity and marriage. A 1691 law ordered all illegitimate mulatto children to serve until the age of thirty-one, and the parish would sell the mother for five years of servitude as punishment. In 1769, a law explicitly stated that if a female convict servant delivered an illegitimate child, that child would be bound; there was no limitation of race in this law, as there was before. The law stated that if “any convict servant woman shall be delivered of a bastard child, during the time of her service, the master or owner of such servant shall be obliged to maintain such child, or be compelled thereto by the county court.” The master is “intitled to the service of such child, if a male until he shall arrive to the age of twenty-one years, if a female until she shall arrive to the age of eighteen years.” This practice may have been common beforehand, and hitherto, the distinction had only in law targeted mixed-race children. Thus, Virginia explicitly provided for a hereditary element to the practice of convict servitude as a way to control female servants and children and legalize patriarchal privilege and servant exclusion.\footnote{William W. Hening, ed., The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619, 13 vols. (Richmond: R. & W. & G. Bartow, 1819-1823; hereafter Virginia Statutes at Large): VIII: 377; Jeppesen, 197-9.}

During the middle of the eighteenth century, colonists articulated convict legal status more clearly, and they associated them, through law, more so with African slaves than indentured servants. Historian Alan Atkinson concluded that between the 1720s and the 1740s, colonists legally perceived convicts as indentured servants and often treated them as such; however, during the middle and latter half of the century, lawmakers passed measures to legally separate convicts from indentured servants. In 1753, “every servant, male or female (except
The Legislative Council of Virginia found that freedom dues belonged to indentured servants, not those punished as British transportees, which otherwise would reward coerced servants. “Putting Volunteers and Convicts on the Same Footing as to Rewards and Punishments, is discouraging the Good and Encouraging the Bad.” They found that this punitive example may be “merciful” to undeserving transportees, but it was “cruel to our Country and contrary to all civil Policy.” This is a critical juncture in how colonists understood coercion, power, and colonial authority. It showed a concern that the trade of servants would be tainted as largely coercive. By “Encouraging” more convicts to make their way to the colony, they would decrease the number of alleged “Volunteers.” It also highlights the colonists’ murky perceptions of unfreedom for servants. Certainly this legal mechanism would save owners the costs of servant freedom dues, but it also reveals Virginia council members’ measures to divide these two labor categories as late as the 1750s, as penal labor should not receive compensation.40

Over the course of the century, convicts lost other rights in colonial society. In 1736, the Executive Council in Virginia discussed whether “persons convicted in Great Briton for Capital Crimes and admitted to Mercy upon the condition of Transportation” should be able to testify as witnesses while in a state of servitude. They suggested that the Governor should contact the Lord

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Chief Justice of England for clarification on how to proceed.\textsuperscript{41} In both Maryland and Virginia, convicts lost the right to testify in court unless the testimony was against another convict. In Virginia, the law affirmed they did not have the right to vote. In 1762, no “recusant, convict, or any person convicted in Great Britain or Ireland, during the time for which he is transported, nor any free negro, mulatto or Indian, although such persons be freeholders, shall have a vote.” This suggests that they may not have been able to vote even after their arranged term of servitude was complete. One historian explained that we will probably never know how many people became freeholders while still under the sentence of transportation, but it probably did not significantly influence elections. It does, however, reveal a sentiment regarding further exclusion for these offenders. It was likely that as freeholders, they were barred from voting in Maryland as well. As time went by, convicts were increasingly disqualified from colonial politics and judiciary life.\textsuperscript{42}

It is significant to note that lawmakers frequently grouped convicts, enslaved people, and others deemed undesirable together into the same legal category. Virginia legislators defended the colony’s restrictive law on barring convicts’ testimony in colonial courts. They “as well as negroes, mulattos, and Indians, are commonly of such base and corrupt principles.” Maryland also sometimes legally homogenized enslaved people and convict servants.\textsuperscript{43} As we will see in

\textsuperscript{41} \textit{EJC}, IV: 385.

\textsuperscript{42} Atkinson, 102-4, \textit{Virginia Statutes at Large}, VII, 519-20; Ekirch, 154.

\textsuperscript{43} \textit{Virginia Statutes at Large}, V: 546-547, quotation 546; Atkinson, 102, 106-7; Proceedings and Acts of the General Assembly of Maryland, 1764-1765, in Archives of Maryland Online, (hereafter, \textit{AOMO}): 59, 277. Beginning in 1732, some legislators in Virginia wanted to exclude convicts who committed serious offenses from eligibility for trial. For capital offenses lawmakers considered having convicts tried in county courts as enslaved people were, but this measure was not implemented. For convicts committing capital offenses, they changed the process of their trial. While most serious offenders and involved members of the community
later chapters, these legal decisions illuminated and created moral tensions that stirred debates among colonists and Britons – debates that led to new usages of moral rhetoric and humanitarian critiques.

Penal Banishment and Transportation in the American Colonies

Like their British counterparts, the American colonies also practiced forms of banishment for criminal offenses and penal servitude. The colonial court systems drew heavily from English law for their own legal frameworks. Settlers created local legal structures that either used or departed from English law depending upon the communal and social landscapes. As a part of this system, punishments were largely public affairs meant to shame offenders and severity was not always the main goal. The purpose was repentance and to set an example of the repercussions for crime. Eighteenth-century criminal law relied on a variety of punishments to deter and shame offenders, such as whipping and fines (the two most prevalently used), the public cage, stocks, and banishment. Colonists used the latter considerably less than their British counterparts.

Colonial authorities considered criminals to be innately sinful and thus, incurable. Public displays of punishments fulfilled the public’s desire to exact revenge and aimed to discourage potential malefactors. Generally, the colonial courts used the death penalty more sparingly than the British. Banishment, often ordered along with a corporal punishment, could be used to oust heretics and as a commutation of the death penalty. David Rothman argues that bodily and non-

traveled to Williamsburg for a trial, for convicts, they were to be tried by inhabitants of Williamsburg. See Atkinson, 102.
corporal punishments were confined means to ensure social peace and without developed agencies for law enforcement, authorities relied on a broad array of capital offenses. The gallows also served to strengthen criminal laws. Banishment and penal servitude gave colonists a space to experiment with a middling punishment in judicial structures, which Rothman described as a “vacillation between lenient and harsh punishment.”

Similar to Britain, colonial courts used banishment as a means to remove malefactors from communities or colonies while sparing them execution. Rothman and other historians have noted that early eighteenth-century jails were not designed to hold people for punishment. Before the American Revolution, banishment was a condition of a number pardons. In Pennsylvania, the governor could issue them for criminal offences except for murder and treason. He did so through his council and probably took any suggestions from judges seriously. Typically, if the offender was a servant or enslaved person, pardons could be granted if the individual was

\[44\] Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 22-3, 31, 34, 37-8, 40-2; Courts punished sinners for lewdness or mischief that was out of the parameters of orderly religious society. Before the Revolution in Pennsylvania, there were approximately 170 convictions deemed capital but 94 offenders lost their lives. See pages 40-2; Mark E. Kann, *Punishment, Prisons, and Patriarchy: Liberty and Power in the Early American Republic* (New York: New York University Press, 2005), 43; Christopher L. Tomlins, “Introduction,” in *The Many Legalities of Early America*, eds., Christopher L. Tomlins and Bruce Mann (Chapel Hill, NC: University of North Carolina Press, 2001), 12-13; David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, 1971), 48, 50-1, quotation 51; Morgan and Ruston, *Banishment in the Early Atlantic World*, 104-5. During the seventeenth century in Britain, banishment served to get rid of political adversaries, rebels, and religious dissenters, and penal transportation added to the labor pool in colonial settlements. While banishment and penal transportation were different, as banishment did not always mean coerced labor, the growth and development of Atlantic colonies sometimes likened these two punishments.
transported to another English colony. In 1747, the courts charged Uty Perkins with horse stealing and punished him with twenty-one lashes and a £30 fee. He had already endured the corporal punishment, and he pleaded to get out of his fine. Swayed, the provincial council ordered that he provide a bond for the amount and leave the province. At the Charles County Assize Court in Maryland, Thomas Compton received the sentence of death for horse stealing, but was issued a pardon in 1749 “upon his leaving this Province in a fortnight.” In Virginia, a vestryman named Major William Gray was “Legally removed Out of the Parish.” For whatever he did to break the law, the vestry revoked his title and replaced him in 1747. Banishment showed what appeared outwardly to be some form of legislative mercy by sparing criminals their lives or relieving them of fees.

Banishment was also a direct consequence of certain crimes. During the late-seventeenth century labor shortages, Maryland legislators reduced almost all larcenies from capital offences to lesser sentences, mostly bodily punishments and fees. Unlike Virginia, Maryland would

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48 *The Vestry Book of Saint Peter’s, New Kent County, Va. from 1682-1758* (Greenville, S.C.: Southern Historical Press, 2006), 203-4. There is another William Gray in the record, but in 1752 the writer remarked again that Gray was still removed from the colony. See pages 217-9.
diverge more distinctly from English law to support their political economy. In 1717, the Maryland General Assembly enacted that anyone counterfeiting, using false copies, damaging, or stealing “the Great Seal of this Province …or the Sign Manual or Seal at Arms of the Lord Proprietary” or other of the colony’s public seals would be punished banishment. Those offenders would receive thirty-nine lashes, two hours in the pillory, “and be Banished the Province for ever.”

In order to secure an offender’s release from prison, family, community members, and offenders themselves used exile as leverage. John Mitchell petitioned for the release of his wife, Ann, out of Philadelphia’s jail. She was given a “Sentence of Death for Burglary, (but reprieved).” He positioned his argument for preserving the life of their child and said that if Ann was released “she shall never return into this City during the Petitioners Life.” In 1724, the Board deemed her “a proper object of Mercy” and recommended her pardon. The Calvert County Assize court in Maryland ordered execution for two offenders, Benjamin Tucker and Roger, for breaking into and robbing a store house. Tucker was young and a first-time offender. A number of people signed a petition on his behalf, “praying that the Life of the said Benjamin Tucker may be spared.” In 1749, both Roger and Tucker received pardons. Roger, noted as a black offender, was considered “an Object of Mercy” and Tucker’s pardon was given on the condition that he leave “the Country within One month from this Day, or that he give Security

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49 Rice, 20-1. Maryland distinguished grand and petit larceny with the sum of 3 pounds sterling which was approximately one thousand pounds of tobacco.


51 *Minutes of the Provincial Council of Pennsylvania*, 3: 240.
for his good Behaviour in the sum of Two hundred Pounds Currency for Three years.”

Tucker’s youth weighted the decision reducing the execution sentence to banishment or security for his good behavior.

It is not entirely clear how the British Transportation Act impacted the colonial practice of banishment, but perhaps it influenced it to a degree. Historians Jack D. Marietta and G.S. Rowe concluded that in Pennsylvania, “the popularity of banishment after 1718 can probably be attributed to England’s Transportation Act of that same year.” After that year, those who were able to avoid execution in Pennsylvania were typically pardoned with the condition of banishment. Since the colony’s founding in 1682, William Penn and other invested colonists sought to create a religiously tolerant, just, and progressive legal framework, and it diverged from many other western judicial systems by shying away from capital punishment. Quakers had tried to reduce or abandon the practice of capital punishment in lieu of a system that worked toward reforming criminals. While this effort took on outwardly progressive approach, it came to a head in 1718 – the same year that Penn passed away and the British institutionalized transportation. Stemming in part from the increase in crime, which Pennsylvanians linked to the growth of German, Scottish, and Irish immigrants in the colony, as well as Quaker refusal to take oaths of allegiance when serving as judicial authorities, legislators passed a new act that created a harsher penal order in the colony. The law drew on English statutes and codified twelve capital felonies, while there were two beforehand: murder and treason. With a harsher penal code,

52 Proceedings of the Council of Maryland, 1732:1753 (1749), 28: 446-7, in AOMO; In another example, youth allowed the servant, Charles Elliot, to escape the death penalty with an immediate banishment in its stead. See Proceedings of the Council of Maryland, 1732:1753 (1749), 28: 464, in AOMO.
banishment served as a means to offer leniency and spare offenders their lives, but it was a limited way to ensure social peace.\(^5\)

In Virginia, imported convict labor impacted the severity of criminal law for others already living in the colony. In the seventeenth century, daytime breaking and entering and the theft of valuables less than five shillings equated to simple larceny and not capital for the first offense. However, in 1730 Governor William Gooch told the Virginia Assembly that robberies of storehouses and warehouses were on the rise, and he attributed the increase to convict servants. Afterward, the amount increased to twenty shillings for this crime, and it became a capital offense. As with England, the colony demonstrated patterns of severity of punishment, embraced a “stylized leniency,” and limited clergiable offenses. Imported convict labor influenced lawmakers, who made it easier for first-time offenders to face execution.\(^5\)

Different than banishment, colonial elites also used transportation as a punishment. Those serious offenders sentenced to transportation could be sent to the West Indies as servants. Since

\(^5\) Rothman, 50; Marietta and Rowe, 5, 7-9, 21-3, 35, 77; Fitzroy, 255-6. Rothman and other historians have noted that early eighteenth-century jails were not considered places to hold people as punishment. Here is an example of case where a criminal was supposed to be held for life. Martha Hunt had been “condemned to Imprisonment for Life,” but in 1724 she received a pardon. See *Minutes of the Provincial Council of Pennsylvania*, 3: 244.

\(^5\) Katharine Preyer, “Penal Measures in the American Colonies: An Overview,” *The American Journal of Legal History* 26:4 (Oct., 1982): 326-353 here, 33, 340. The benefit of the clergy was an English doctrine initially only for clergy members that allowed certain capital criminals to escape the gallows if one could demonstrate they could read or recite from the Bible. In Virginia, petite larceny was a crime of theft of under thirteen pence while grand larceny was a clergiable offense. Horse-stealing was a felony in the eighteenth century, and in 1748, it was no longer a clergiable offense. Stealing away African slaves also became offense without benefit of the clergy; Arthur P. Scott, *Criminal Law in Colonial Virginia* (Chicago: University of Chicago Press, 1930), 214-5. Scott notes there are no more legal changes regarding breaking and entering until after the Revolution.
the seventeenth-century, Virginia’s legal system had most closely aligned with the English system. County courts tried petty criminals, and the General Court heard cases regarding capital offenders – or those cases concerning “life and member.” Unfortunately almost all the General Court records for Virginia were destroyed in 1865, but with the extant evidence, we can piece together what banishment and transportation in Virginia looked like in other ways.\textsuperscript{55} Recorded in the \textit{Executive Journals of the Council of Colonial Virginia}, Matt Inglish and John Fitzpatrick committed “Burglary & Felony in breaking in the Storehouse.” In 1731, the judges found that since they were young, they were “fit objects of Mercy.” Further, “it is the Opinion of the Council that the said Inglish & Fitzpatrick be pardoned & transported out of this colony into some other of his Majesties Plantations for the Term of Seven Years.”\textsuperscript{56} Sending two people “into some other” plantation “for the Term” suggests that they were to become servants, a punishment paralleling imported convict servitude. In Maryland, Mary Oneil found herself in jail for burglary, and in 1738 the Council recommended that she be reprieved on the condition that she would “be transported out of this Province.” The phrasing used here suggests that – although not definitively – someone else, rather than Oneil herself, must remove her out of the colony.\textsuperscript{57} In a much earlier case, in 1707, Arthur Johnson received a reprieve from the death penalty. He had been convicted of horse-stealing, but upon reviewing a petition on his behalf, the court ordered him to “be transported” to the West Indies and “sold as a servant for seven years.” Johnson remained in prison, however, and it was not until 1710 upon his additional request that

\textsuperscript{55} Preyer, 329-31; Scott, 121.

\textsuperscript{56} \textit{EJC}, VI: 249.

\textsuperscript{57} \textit{Proceedings of the Council of Maryland, 1732:1753}, volume 28, 136-7, in in \textit{AOMO}. 
the attorney general prepared the paperwork for his pardon. The record does not say explicitly if he was already a servant or free in the North American colonies, but it does show that in Virginia, to some extent, authorities practiced transportation and penal servitude early in the eighteenth century.

Some court cases attached other forms of labor to the sentence of banishment. One study found that the governor offered pardons or reduced sentences to at least a quarter of those convicted of capital crimes in eighteenth-century Virginia. Courts could make suggestions for pardons, but the Governor authorized them customarily with the aid of his council, with treason and murder as exceptions. These pardons often contained the condition of banishment and sometimes added the condition of boarding a warship. In April, Peter Goffegon received the death sentence for “Negro stealing,” and Richard Thompson, for horse theft. Later that spring, they “received his Excellency the Governour’s most gracious Pardon” on the condition that they join one of the British ships heading to England. These pardons could have simply meant banishment, but alternately they may have been intended to work as sailors.

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58 *EJC.*, III: 163, *EJC.*, IV: xxi; In another case, Evan Roberts was convicted of murder. After given a death sentence, he “prayed that he might be transported” and Governor Francis Nicholson granted him the pardon. See *EJC.*, II: 154-5. There is also an earlier case in which indigenous peoples had been sold to the West Indies. In 1706, John Martin told the board that he “transported thither the Nansiatico Indians and sold them there for 7 years.” He showed the board the certificate from the Lieutenant Governor of “Antegoa” to prove his case. See *EJC.*, III: 98; In 1698, Arthur Jarvis was sentenced to death for burglary, but his punishment was reduced to transportation. See Hon. J. W. Fortescue, ed., *Calendar of State Papers, Colonial Series, America and West Indies* (1697/98) (London: Printed for his Majesty’s Station Office by Mackie and Co. LD., 1905), 11: 514.

59 *Virginia Gazette*, 11 June 1772, 3; Scott, 119-20; Freidman, 42; In Virginia, a harsher 1705 statute replaced the earlier 1691 punishment of banishment for interracial marriages as it was found ineffective and removed laborers from the colony. See Higginbotham, 45-6; Morgan, *American Slavery, American Freedom*, 35.
Transportation was a cost-effective punishment used for convicts, free blacks, and enslaved people. Until 1692, white and black criminals who committed serious offenses, witnesses, and other relevant people had to travel to the capital for a trial by jury in Virginia. Slaveholders had no incentive to lose an enslaved person’s labor or the expense of travel. Thus, colonists created Courts of Oyer and Terminer and “commission of justices of county courts” for slave trials for capital crimes. In 1731, Mary Aggie was “a Christian slave,” and when the York County Court of Oyer and Terminer convicted her of a felony she was also granted a pardon if she was transported beyond the colony and “sold as a Slave.” At least for non-clergiable offenses, enslaved people were probably more likely to receive pardons. This was not due to the slaveholders or other authorities’ intervention, but due to the fact that the colonial treasury had to compensate slave owners for executed slaves. Similar to the law in Virginia and Maryland (as well as Georgia and South Carolina), Pennsylvania offered slaveholders compensation for their slaves sentenced to execution by colonial legal and judicial authorities. This, it was alleged, would discourage masters from concealing slaves’ crimes.

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Authorities found transportation as a suitable example to deter other enslaved people from crime. In 1737, the Governor’s Provincial Council in Pennsylvania—which determined results in disputed court cases concerning black offenders—tried Sampson for burning down a house and sentenced him to execution. What complicated matters in this case was the fact that the president of the council owned the building. Further, the Governor Council records show that there was a deficiency in the prosecution in this case. Although the evidence was insufficient, “a Complyance with their Request in suffering so heinous a Crime to pass unpunished, cannot but be attended with many ill consequences, more especially as the insolvent Behaviour of the Negroes in and about the city…requires a strict hand to be kept over them, & shows the Necessity of some further Regulations.” After delaying the case for three months, the board decided “that so daring a Crime ought not to pass unpunished” and ordered Sampson’s owner, “to transport him beyond Seas to any Colony, Dominion, or State not subject to or depending on the Crown of Great Britain, so as that he do not return into this Province.”

With the framework of British institutionalized convict transportation already in place, the colonies also used elements of this punishment as economic and socially benefiting way to remove unruly offenders who threatened the property.

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65 Minutes of the Provincial Council of Pennsylvania, 4: 243-4, 259, quotations on 244, 259; Marietta and Rowe, 30-2; Higginbotham, 290-2. Originally set-up in 1700, Pennsylvania established separate courts to try free blacks or enslaved people in 1705. Two Justices of the peace accompanied by six freeholders of status would hear criminal cases, from minor cases of theft to serious capital offences. Although William Penn suggested that these courts could provide judicial security for black offenders, the support for these courts likely came from slave owners’ hope for a quicker trial which, would minimalize the loss of labor. Authorities did not give black offenders the rights that their white counterparts had in court, including “right to an attorney, the right to question all accusers, and the right to a jury.” The courts were a means to strengthen control over blacks. Accused free blacks and enslaved people endured the criminal proceedings at these courts until they were disbanded in 1780. See Marietta and Rowe, 31-2.
Enslaved people who were rebellious could be transported and sold in the West Indies. In 1723 people in Middlesex County in Virginia worried over the growing possibility of slave riots since there was a number of “disorderly Meetings of great Numbers of Slaves in a riotous and tumultuous manner.” Authorities took the “Ringleaders” into custody and “upon the Information of [a] Sundry other Slaves, for conspiring and contriving to rise up in Arms and to kill and destroy Several Persons.” The leaders of the plot apparently threatened those who led to the “discovery of their wicked designs.” According to the act, in “preventing the dangers” of allowing the slaves to be released from jail, they decided upon transportation to “the Island of Barbadoes, Jamaica, or some other Island in the West Indies, to be there Sold for Slaves during the Term of their respective Lives.” If they returned, they would face the death penalty. If someone brought them back to the colony against their will, they would be re-transported. The “Account of the Net proceeds” from the sale would go to the General Assembly, and the Treasurer of Virginia would reimburse an enslaved person’s assessed valued to their owners.

Banishment and transportation as legal mechanisms gave authorities alternatives to other forms of punishment in the colonies. These, of course, were not only mid-Atlantic practices. With the New York slave conspiracy in 1741, for example, the court assigned pardons for forty-two men on the condition of banishment. There were at least fifty slave transports, and they were sent to the British, Portuguese, and Dutch colonies in the Atlantic. As the primary receivers of imported convicts, Pennsylvania, Maryland, and Virginia used legal measures to remove white

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and black criminals, which gave them additional flexibility in sentencing options, reduced financial burdens, and were a means to preserve order. In a time when Anglo-American counterparts utilized transportation on both sides of the Atlantic Ocean, this practice contributed to a mentality that removal in lieu of execution or corporal punishment was an important way to protect wealth and safeguard the “peculiar” social order.

Domestic Practices of Penal Servitude in the American Colonies

In 1944 historian Richard Morris noted that in the colonies, “a substantial source of bound labor was provided by persons sentenced to servitude in satisfaction of other penalties.” During the eighteenth century, most colonies created more kinds of serious crimes and elevated the severity of punishments in law. Morris found that larceny and absenteeism were the two major offences in which people served terms of labor for their crime. Generally, the courts punished larcenists with a form of corporal punishment and fines, and if they could not make payment, then courts bound them out as servants. Debt servitude was a fairly common practice in the British colonies. Along with those punished for failure to pay court fees, colonial records are peppered with counts of absenteeism from unfree laborers. Those who escaped and were caught often had to pay for their crimes with additional service. Moreover, women convicted of bastardy were sold for years for this crime. Domestic penal servitude – those punished with terms of labor – upset neat categories of indentured and convict servitude, and people came in to and sought to get out of forms of unfreedom in illuminating ways. Colonial courts and planters

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instituted creative and assertive uses of servitude to acquire labor and address crime and punishment issues.

It is difficult to estimate the number of criminals sold into servitude. In colonial Maryland, authorities punished larceny far less severely than in England and stated that £3 sterling – approximately one thousand pounds of tobacco – distinguished grand from petite larceny. Convicted criminals then had to pay fourfold restitution for their crimes, and many could not make payment. In such cases the courts sold the offenders into servitude. Historian Jim Rice tells us that “it would be easy to underestimate the significance of sale into servitude as a secondary punishment, for court clerks recorded these sales only on loose papers.” Using a rare set of papers, Frederick County court in Maryland for 1786 and 1787 – which happened to be Maryland’s most heavily used courts at that time – sold at least fifteen percent of those imprisoned. This of course does not account for all of the informal agreements, but it does give us a sense that sale into servitude was a very real possibility for many poorer criminals.69

Throughout the eighteenth century, Maryland wavered in implementing servitude for debt. The colony passed a law in 1725 noting that prisoners, without a wife or children, who had a “handy craft Trade and of ability of Body to follow the same or … otherwise of strength and Ability of Body to labour” could become a servant for a maximum of five years. After a year, Maryland dissolved this law, but in 1733, legislators implemented it for six-month period. Officially, Maryland eliminated debt peonage in 1774. However, Christine Daniels found that courts sold thieves as late as 1795. In Kent County Court, Chester, a free black offender took items worth fifteen dollars, and as a result, was sold for a term of seven months. Even as late as

69 Rice, 21.
1777, one Virginia law stated that any person convicted of stealing or robbing bills of credit or paper money had to repay the value fourfold. Upon failing to do so the individual could be “sold as a servant for such a term, not exceeding seven years.” This was in combination with other punishments “not extending to life or member,” giving court authorities discretion as to what they “think adequate to his offence.”

The possibility of becoming a servant worried colonial Marylanders, as poverty and servitude became increasingly enmeshed during the century. In 1763, George Glover placed an ad in the newspaper warning people about his spendthrift wife and expressing his concerns about becoming a servant. He explained that his wife Hannah had “involved me in Debt, more than I can afford to pay for her; and has often said, that she intended to ruin me as fast as she could, and make me a Servant, if it lay in her Power.” Sometimes a malefactor did not even have to be convicted for a sale to occur. In 1728, the court acquitted William Bonner, but since he accrued a fine worth over 1,000 pounds of tobacco, the court clerk documented that he was sold to Christopher Bateman for a five-year term. It is important to note that Maryland debtors who served a term of servitude often did so in regard to custom rather than statute, and court officials

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70 Daniels, “Without Any Limitacon of Time,” 237. Daniels explains that there were two ways to be a debt servant, one through sale of criminal courts and the other through personal arrangements. She differentiates between debt laborers, who served periodically, and debt servants, who were bound “continuously.” English and colonial courts generally considered a debt servant as someone who served at least a year. She also suggests that debt servitude could be more exploitative than indentured servitude; the former did not choose to become a servant. For Maryland, she notes that contracts for debt servants were frequently written in terms of money owed and masters sometimes lengthened terms of service by adding charges for meals, clothes, or interest – a system she likens to mechanism of nineteenth-century share cropping. See Daniels, 236-7, 239, 245-6; Virginia Statutes at Large, IX: 303.
did not sell people for personal debts. By the mid-century Maryland linked the problems with poverty and penal servitude more closely. A 1752 law noted “ma[n]y indigent Persons, or Strangers” have been “for want of Sureties to appear as Witnesses, committed to Prison, by Means whereof such persons have been often Sold as Servants, for the Prison Fees.” This practice was considered a “great Damage, and Loss to the Public, in the Labour of such Person or Persons.” Therefore, if an offender could not come up with “Security for his Appearances to testify as a Witness against any Person,” the county would now pay the prison fees.

Statutes for criminal servitude for offences existed throughout the colonies, but according to Richard Morris, they were particularly prevalent in Pennsylvania and New England for a number of crimes. In early eighteenth-century Pennsylvania, arsonists who could not pay restitution were sold as servants. The Act of 1718 made an important modification noting that grand larcenists would be punished with restitution or sale into servitude. In a 1722 act in Pennsylvania, those involved with counterfeiting were put into a pillory, were ordered to have both “ears cut off,” and received thirty-one lashes. In addition, the offender would pay 100 pounds “to be levied of the lands and tenements, goods and chattels of such offenders, and shall pay the party grieved double the value of the damage sustained by the said counterfeit bills, together with the costs and charges of prosecution.” If the offender could not afford to pay it, then the criminal would “be sold for any term not exceeding seven years for satisfaction of the same.” In 1726, if a white individual married or lived with someone of African heritage as if she or he were married, the offender would be sold into servitude for seven years upon failure to pay


72 Laws of Maryland, Chapter XIII (1752), 75: 532-3, in AOMO.
thirty pounds.\textsuperscript{73} Forgery too could cause someone to be sold into servitude. In places like Massachusetts, the punishment of criminal servitude expanded during the late seventeenth and early eighteenth centuries. In one example, a black offender, Prince, was punished with a fifty-year term of servitude in 1746 for a fine of £181 10s, and in 1730, a white offender was punished with seven years for £174 fee. This example shows a striking inequality in punishment. During the 1740s, currency depreciated making that fee substantially more.\textsuperscript{74} Although uncommon, one could also find themselves sentenced to imprisonment and at hard labor indefinitely. A newspaper in 1730 reported that Richard Evans was charged with bigamy. He was ordered to be “imprisoned during Life, and kept to hard Labour.”\textsuperscript{75}

Women, both free and unfree, faced a particularly revealing type of servitude for criminal offences, and colonies punished both parties involved to further regulate marriage and racial unions. Particularly after Bacon’s Rebellion in Virginia, regulating women’s sexuality became an integral part in supporting patriarchal power and constructing racial lines there. With legal codes rooted in the seventeenth-century, women both free and unfree faced charges for illegal sexual acts and were sold into servitude or had their terms lengthened.\textsuperscript{76} In Virginia, a 1691


\textsuperscript{74} Morris, 346-7.

\textsuperscript{75} \textit{Pennsylvania Gazette}, 23 July 1730.

\textsuperscript{76} Kathleen M. Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia} (Chapel Hill, NC: University of North Carolina Press, 1996), 196-7. For more on gender, labor, and households in the colonial Chesapeake see Terri L. Snyder, \textit{Brabbling Women} and “‘To Seeke for Justice’: Gender, Servitude, and Household Governance
statute ordered that if a free English woman had a “bastard child by any negro or mulatto” she would have to pay fifteen pounds to the parish’s church wardens, and if she could not do so, she would “be taken into the possession of the Church wardens and disposed of for five yeares.” In the following decades, free women increasingly sought refuge in other counties in order to escape this punishment. This concerned lawmakers enough to pass a law in 1727 allowing all courts in the colony to convict “any lewd woman” of delivering an illegitimate child and compel her to pay fees of five hundred pounds of tobacco or fifty shillings. If the fine was not paid, she could face whipping as punishment. Further, the court targeted fathers or “person or persons” in the house and noted that if the heads of households did not alert the churchwardens of the child’s birth or of her departure, they would also face punishment. In this way, the law tasked men as legal administrators in their homes and aimed to ensure the parish received funding for children. Maryland also imposed harsh terms of servitude to regulate marriage. Maryland imposed a law in 1715 that ordered white women, no matter if they were bound as a servant or free, who had a child with a free or enslaved black man to serve for seven years. In 1717, this statute evolved to include both white women and men marrying black spouses. For a free black person, this crime meant the offender “shall become a Slave during Life, excepting Mulattoes


77 Virginia Statutes at Large, III: 87.

78 Virginia Statutes at Large, IV: 212-4; Snyder, Brabbling Women, 53-4. Some women indentured themselves to pay the fines. See Snyder, 158, fn 24; Winfree, ed., The Laws of Virginia, 256-7; Virginia Statutes at Large, VIII: 376 In 1769, Single free women were punished with a twenty-shilling fine but would not be whipped.
born of White Women, who for such Intermarriage shall only become Servants for Seven Years.” Both a white man and woman would serve seven years for this offense. Pennsylvania largely relied on fines and whippings to punish free women for bastardy cases. Particularly for the Chesapeake, elites sought to control women’s sexual activity and labor and barred interracial unions, further solidifying patriarchal power.

For servant women, who were already in a form of unfreedom, charges of bastardy could lead to additional service or sale after their term of servitude expired. Servants could be penalized with labor for marriage without owners’ consent, for fornication, or for an illegitimate child. The law acknowledged “masters’ property interest” and provided that breaks in servants’ working routine, either through abstinence or impairment, or extra costs for servants outside of the parameters of their work routines, warranted additional time on part of the servant. In Pennsylvania in 1700, the law stated that female servants delivering bastard children would serve an additional year. Even into the Revolutionary period, lawmakers added additional years of service for delivering mixed-race children. As late as 1779, Margaret Sexton was ordered to serve two more years after her service, and the overseers of the poor sent her children to be

79 Marietta and Rowe 85-6; Robert Andrew Oszakiewski, “Index to Convict Servants in Queen Anne’s County Court Records,” Maryland Genealogical Society Bulletin 31:1 (Winter 1990): 45-58, here 46; An Act relating to Servants and Slaves, 1715, Chap XXVI, Laws of Maryland, vol. 75: 262, 267, in AOMO; A Supplementary Act to the Act relating to Servants and Slaves, 1717, Chap. XIII, Laws of Maryland, vol. 75: 299-300, in AOMO. In the laws in Archives of Maryland Online, the statement, “who foe such Intermarriage” is printed “who for such Intermarriage” in Thomas Bacon’s 1765 Laws of Maryland at Large. See Thomas Bacon, Laws of Maryland ... (Annapolis, MD: Jonas Green, 1765), laws of 1717, chap. 13, section 5.

80 Morris 349.
servants to her current owner. Maryland courts directed that both free and servant women serve seven years. Margaret Lang was a “Spinster Servant to Humphrey Wells” since 1730 in Queen Anne’s County. In March 1731, she was charged with having a “bastard mulatto Child” – an act deemed an “evill Example.” The Court ruled that Lang “become a Servant for and during the Time of seven Years to commence after she hath compleatly [sic] served and ended her Time of Servitude” to Humphrey Wells. She also had to serve Wells an additional six months for the crime. Her four-month-old son, Henry, was “sold” to Wells for 770 pounds of tobacco. In another case, after completing her servitude, Priscilla Bias ended up in custody of the sheriff. The court planned to sell her as a “criminal Servant.” She was eventually sold for two years which would defer her expense of food while in custody, which amounted to eight pounds and sixteen shillings. Maryland continued this practice into the Revolutionary period. In 1780, Fanny Dreaden was publicly auctioned for a seven-year term of servitude for having birthing a “base born child.”

Even with restrictions, the number of white female servants charged with illegitimate unions increased, and their children’s terms of service was also racialized. Between 1691 and 1721 in Virginia’s Lancaster, York, and Norfolk counties, the ratio of white female servants brought to court for bastardy rose. Servant women persecuted for interracial relations in the

81 Salinger, 109, 111.
82 Oszakiewski, 46-7; Queen Anne County Judgement Record 1730-1732, MSA CE450-5, 160-1.
83 Queen Anne County Judgement Record 1735-1739, MSA CE450-9, 1739, 437, 439; Oszakiewski, 47.
84 Quoted in Morris, 352.
1680s was approximately 10 percent of the cases, and in the 1700s, it jumped to 30 percent.\textsuperscript{85} A 1691 law in Virginia stated that female servants found guilty of bastardy with “any negro or mulatto” would be sold for five years after their original servitude. Their children would be bound as servants for thirty years.\textsuperscript{86} In 1705, the law expanded and intensified in severity, noting that “any woman servant” having an illegitimate child would serve an additional year or pay 1000 pounds of tobacco to her owner. If the child was deemed of African heritage, the court affirmed that after the term of servitude was complete, the servant, or free Christian woman, must pay fifteen pounds or be sold for five years; the child would be bound until the age of 31. In 1753, the law reaffirmed that white servant or free Christian women who had a mixed-race child were subjected to the fee or sale. These laws penalized interracial acts further codifying regulations for unfree women and racial exclusion.\textsuperscript{87}

Male and female servants could receive additional terms of service for a wide range of actions deemed criminal, and running away was a common offense that planters could use to lengthen terms of servitude. Many indentured servants from Europe came to the New World to improve their economic and social status, yet on the ground many experienced harsh working conditions, did not have enough food or clothes, and some endured abuses inflicted by


\textsuperscript{86} \textit{Virginia Statutes at Large}, III: 87, quotation. The law notes the that for free white women, they must pay a £15 fine and if they do not, they would be sold for five years; Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 196-8.

\textsuperscript{87} \textit{Statutes at Large}, III: 452-3. In lieu of servitude, women could pay 1,000 pounds of tobacco; \textit{Statutes at Large}, VI: 360-1; Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 196-8.
authorities. Many servants resisted conditions of unfreedom by obstructing working routines, taking food items, and breaking masters’ tools. Repercussions for these bold actions were hefty, as masters could impose fines, corporal punishment, and sometimes mutilation. Servants escaped from owners for a wide array of reasons, including conflict with masters and the threat or possibility of sale.\textsuperscript{88} In Maryland in 1751, any white servant who persuaded an enslaved person to escape would be punished with four additional years or the servant had to compensate the owner with what the court decided was the market value of the enslaved person.\textsuperscript{89} In Pennsylvania, recaptured servants served five days for every one absent from their owners.\textsuperscript{90} Meting out additional terms of service for escape was an economical way for planters to extract labor and discourage other potential escapees. New and evolving forms of servitude served to deter potential malefactors and addressed the need for more labor in the colonies.

Disorderly People and the Workhouses

Another group of people punished with terms of labor in the colonies was the poor. This punishment sometimes blended with poor relief. David Rothman reminds us to be careful with

\textsuperscript{88} Kenneth Morgan, \textit{Servitude and Slavery in Colonial North America: A Short History} (New York: New York University Press, 2001), 14-6, 20-1, 86-7, 94. Laws for runaway servants extended from the seventeenth-century, and in 1705 a Virginia law stated that servants had an additional month and a half of servitude per 100 pounds of tobacco the owner spent on their capture “and to recover costs rated at one year’s service for 800lb tobacco.” See Morgan, \textit{Servitude and Slavery in Colonial North America}, 14-6, 20; Salinger, 103-5.

\textsuperscript{89} \textit{Proceedings and Acts of the General Assembly May 1748 - December 1751}, vol. 46, 621, in \textit{AOMO}.

\textsuperscript{90} Kenneth Morgan, \textit{Servitude and Slavery in Colonial North America}, 96.
making generalizations regarding colonial relief, as we have few and fragmentary records.\footnote{Rothman, 30.}

Colonial statutes reflect the ideals of colonial elites, as well as the shifting problems with poverty, punishment, and social order. Drawing on Elizabethan poor laws, colonists established poor relief as a local function. While ministerial sermons and assembly laws alike encouraged provisions for the poor, it was not always clear who fell into that category, and communities were hesitant to support those deemed vagrant. Regardless of a person’s moral character, colonists seriously considered the issue of a person’s settlement, which confirms if that individual was a resident or a stranger. It was a justification to exclude and punish needy outsiders.\footnote{Rothman, 4-5, 11, 30.} Eighteenth-century colonial statutes could sentence vagrants and other people deemed idle or disorderly to labor for a term in houses of correction or workhouses. These facilities bordered between a jail and a poorhouse.\footnote{Friedman, 49. Friedman says that the offenders did not significantly add to the labor force.} With labor shortages, colonists were hesitant to put people in prison long-term. To be sure, colonists used the local jails scattered throughout the colonies to hold prisoners before their trials and for debtors and thieves who could not pay prison fees and restitution. Unlike prison facilities in the early Republic, colonial jails did not institutionalize reform efforts, separate criminals by severity of the crime, or require prisoners to labor – jails largely were not disciplinary instruments and the idea of the penitentiary did not exist yet. Colonists did not have a lot of conviction in these buildings either, as they were not
secure and inmates commonly escaped. While limited, workhouses and binding people out to labor as a punishment served as a way to protect social peace and ensure people were, in some fashion, being productive in a growing society.

Early on, colonies practiced sentencing the poor and idle to hard labor. Compared to England, colonists did not dedicate a great deal of money toward constructing workhouses. When they did, they borrowed ideas from England, and their plans “reveal a harsh and punitive element in their thinking about the poor.” Communities chiefly constructed workhouses to fortify settlement laws. The possibility of hard labor might deter vagrants and rogues from coming into the community and using local resources. The spectacle and the possibility of the working conditions inside such a building could discourage other offenders like petty criminals. Although not a primary reason for construction, it became a way to put the idle people to work in colonial society. William Penn in the “Great Law” of Pennsylvania in 1682 prescribed a workhouse for the vagrants and idle people as well as “fellons and thieves.” Separate from

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94 Friedman, 48-9; In some cases, debtors could walk outside of prisons as long they kept within in prescribed parameters – “prison bounds.” There, the offender could beg for clothes or food, and then return to stay in the jail at night; Rothman 52-3, 55-6. Rothman notes there are only rare cases showing the punishment intended to be reformative.

95 McLennan, 23; Rothman 25-6, quotations on 25; Rothman warns people to not overemphasize the significance of these buildings as intuitions this early as they were not widely used throughout colonial society. More broadly though, he states that “by the end of the eighteenth century, almost four thousand workhouses were scattered through the realm, holding something like one hundred thousand inmates” (See page 31).

96 McLennan, 23-4, quotation 24. Eighteenth century laws showed that the poorhouse and workhouse were not synonymous. Rothman explains that the poorhouse’s “task was to lodge, feed, and perhaps employ the town needy. It did not reflect a new sensitivity to the social dangers posed by the mobile lower classes; rather … it revealed a concern for the financial costs of relief.” The needy were not as much as a physical threat as they were a financial burden. Workhouses penalized petty offenders, rogues and vagabonds and the almshouse gave the poor a
other institutions like almshouses, workhouses encouraged idle people or malefactors to work and not cause trouble.\(^97\)

While there were plenty of precepts in English law available, the colonies were slow to build these structures. Many settlers brought with them ideas about labor and human nature, which were notions from emerging Protestant ideals. The principle of hard work, idleness as a vice, and aspiration for economic mobility, combined with the labor demands of the early colonial period contributed to the idea that all people should labor, even as punishment.\(^98\) Many communities faced issues of growing unemployment and poverty, and in the late seventeenth and early eighteenth century, Parliament transmitted directions to build these structures. In 1714, the Maryland received a recommendation to construct a workhouse. Pennsylvania built a public workhouse in 1719, designed to hold vagrants and unruly people rather than poor laborers. Before the War for Independence, at least six parishes in Virginia maintained workhouses or poorhouses.\(^99\)

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\(^97\) Elna C. Green, *This Business of Relief: Confronting Poverty in a Southern City, 1740-1940* (Athens, GA: University of Georgia Press, 2003), 14. Colonial institutions, like the almshouse, relied on and largely resembled the family model, operating as a household. The colonies’ failure in developing jails shows the colonists’ dependence on this model. Prison life would merely reflect that of the household, and colonists did not see it as highly discouraging, corrective, or a relief for the community. See Rothman, 53-4.

\(^98\) Green, 9-10, quotation on 14. In 1672, the Virginia Assembly stated “the justices of peace in every county doe put the lawes of England against vagrant, idle and desolate persons in strict execution” (See *Virginia Statutes at Large, II*: 298).

\(^99\) Morris, 12. To be sure, there was legislation to construct workhouses before the late seventeenth and early eighteenth century. The Plymouth colony passed an act for this institution,
In the years to follow, the demand for workhouses increased. Pennsylvania legislators complained that even though there were provisions for a workhouse in Bucks County, it was never constructed. In 1745, the legislators passed an act for creating a house of correction or a workhouse there. The structure should “be employed for the keeping, correcting and setting at work of all rogues, vagabonds, sturdy beggars and idle disorderly people.” Marylanders sought out and petitioned for legislators to construct these buildings. People in counties wanting workhouses hoped that these facilities would help reduce the amount of money they paid for supporting the poor. Inhabitants of St. Mary’s county petitioned for a workhouse, but it was initially rejected in 1747. Cost was always a factor, and in 1764 the assembly saw the previous year’s levy lists and debated whether building county workhouses would “give great Relief to the Inhabitants in the annual Levies” and better provide for the poor. By 1768, the Assembly stated that both Alms and Workhouses would be built in a number of counties. They stated that any

but according to Morris, we do know how and if this building operated; *Proceedings and Acts of the General Assembly*, October 25, 1711-October 19, 1714 Volume 29: 393, in AOMO; Gary B. Nash, “Poverty and Poor Relief in Pre-Revolutionary Philadelphia,” *William and Mary Quarterly* 33:1 (January 1976): 3-30, here 6; In 1714 in Maryland, the house shows that they did not have serious problems with people deemed vagabonds. They noted “that a sufficient and Charitable Provision” has been implemented and they found “that Vagabonds are so much discountenanced by them that we are troubled with few or none such” (See *Proceedings and Acts of the General Assembly*, October 25, 1711-October 19, 1714, Volume 29: 400, in AOMO).

100 The Statutes at Large of Pennsylvania, V: 28, 36, 475, quotation on 36.


Justice of the Peace or authorized personnel could direct “any Rogues, Vagrants, Vagabonds Beggars and other Idle Dissolute and Disorderly Person … to be kept at hard Labour for any Term not exceeding three Months.”¹⁰³ There offenders would be employed in variety of trade work and labor projects. In Pennsylvania, for example, vagrants, paupers and unruly servants would spin, weave, and cobble as well as be employed in other hard labor projects.¹⁰⁴ In 1753, Benjamin Franklin reflected on the utility of the workhouses: “I am informed of late begins to be the practice in many parts of England, where work houses are erected for that purpose. If these were general I should think the Poor would be more careful and work voluntarily and lay up something for themselves against a rainy day, rather than run the risque of being obliged to work at the pleasure of others for a bare subsistence and that too under confinement.”¹⁰⁵

The workhouses could be used to hold and punish servants and lawbreakers with hard labor. In Pennsylvania, legislatures enacted a statue ordering that servants and slaves who received fines under an act for regulating the nightly watch to suffer public whippings and “kept on bread and water at hard labor in the public workhouse for three days.” Recurring offenders would receive thirty-one lashes and be put to hard labor for six days.¹⁰⁶ Legislators stated that in order to discourage people from engaging in unauthorized horse racing or sports, they would


¹⁰⁴ Morris, 346, fn10.


¹⁰⁶ Morris, 349; *The Statutes at Large of Pennsylvania* from 1682 to 1801, V: 111, 126.
face a penalty of three pounds and for a second offense, five pounds. “A servant, or negro or Indian slave” endured corporal punishment and six days of labor at the workhouse. For a second offense, they would also be whipped and then spend ten days in the work house.107

Those deemed vagabonds could be bound out as laborers for the offense of vagrancy. In 1727, the Virginia House of Burgesses further defined rogues and vagabonds as people “all persons, able in body, and fit to labour” who did not work for wages and wandered from place to place. This category included “all other idle, vagrant, or dissolute persons wandring abroad” who begged and did not lawfully find work, abandoned their homes, and who left wives and children as burdens on the parish. The Assembly found them troublesome because they did not list themselves as tithables and did not pay levies.108 By law, every apprehended vagabond would be returned to the offender’s parish and give a security for good behavior. If he or she did not, then the court could “bind every such vagabond to service on wages, for the space of one year,” or be whipped twenty-five times, depending on the choice of the offender. There must have been issues with employers taking on such a person, as the law stated that if the vagabond was “of such ill repute” that no one was interested in hiring the person, then he or she would receive thirty lashes. One study found that in colonial Virginia, there were few instances where malefactors were punished for vagrancy alone, but combining that offense with instances of petty crime made a better case for authorities to mete out harsher punishment.109

107 The Statutes at Large of Pennsylvania, V: 109-110. For a first offense, enslaved people and servants received fifteen lashes and for a second, the number went up to twenty-one. This act was passed in a session spanning from 1750 to 1751.

108 Virginia Statutes at Large, IV: 209.

109 Virginia Statutes at Large, IV: 208-11, quotation; Scott, 273-4.
The colonies responded to increased burden of managing the poor by toughening their poor relief system and increasing the ways to employ them. In Virginia, stricter tobacco inspection laws decreased the profits for small farmers, which increased their likelihood of eligibility for poor relief. A drought in the mid-1750s exacerbated the problem for many farmers. Younger men moved to the Piedmont leaving a proportionally larger group of older men in the Tidewater region, who had higher probabilities of relying on relief. In 1755, the General Assembly instituted that all parishes could buy, construct, or use buildings for the poor. They deputized churchwardens who could direct constables to deliver all people found begging in the parish to work there for a maximum of twenty days. The “benefit of their labor” went to their maintenance and the parish must “provide cotton, hemp, flax, or any other necessary materials, implements, or things, for setting the said poor to work.” In this case, this seemed to be a mixture of poor house and workhouse.  

The increase in the poor encouraged legislators to create stricter laws and expand forms of labor as punishment. In Pennsylvania, in 1718, 1734, and 1771 residency requirements became more stringent. By 1748, vagrancy became a frequent problem in Virginia. Justice of the peace were to direct corporal punishment for vagabonds “in the same manner as runaways are, from constable to constable” until the offender returns to his former residence. If he or she did not give security for good behavior and find employment, the court ordered “to bind such vagabond to service, on wages, for the term of one year; and such wages, after deducting the

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110 Green, 18-9; *Virginia Statutes at Large*, VI: 475-8. In addition, all people who were sent to the house “shall, upon the shoulder of the right sleeve of his or her uppermost garment, in an open and visible manner, wear a badge, with the name of the parish to which he or she belongs, cut either in blue, red, or green cloth.” This suggests that the inmates would be identifiable if they were outside the building. Outdoor relief was far more widely used than the institutionalization of the workhouse in colonial Virginia (See Green, 15, 19).
charges of the prosecution and necessary cloathing, shall be applied towards supporting the family of such servant, if any, or otherwise paid to the person so bound, after his or her time of service is expired, in full of all other recompence or reward.” If no one received the offender, he or she would receive thirty-nine lashes at the public whipping-post. Here, the language of the statute synonymized a vagabond’s labor with a form of servitude and increased the severity of corporal punishment if no one accepted him or her into service.  

Conclusion

Law and practice regarding banishment, transportation, and servitude spanned the eighteenth-century Anglo-American World, shifting and increasing in important ways. In Britain, transportation was one of the most salient changes to the criminal justice system. No longer would transportation be just for capital felons, but it expanded to incorporate a broad array of petty criminals, and communities now had a new safety valve to remove people considered undesirable across the ocean. In the colonies, convict servants slowly had rights stripped away from them, and through law, increasingly were grouped with enslaved, mixed-race, and indigenous people. Transportees were not the only penal servants in the colonies. Colonial lawmakers and judicial authorities authorized banishment or sale of people deemed criminal. Banishment removed those who threatened the social peace and some offenders were transported in similar ways to British imported convicts. People deemed vagrants, vagabonds, and rogues were also punished with terms of labor by law and in some cases legislation provided

111 Rothman 28-9; Virginia Statutes at Large, VI: 29-31. The Assembly also clarified terms of legal settlement, which required a person to reside in a parish for at least a year.
the legal mechanisms for them to be bound out for a term of service. In the colonial period, colonists did not consider the poor to be a problem with a citizen or for society; it was not an individual or a society’s failure to intervene which were ideas very different from their nineteenth century counterparts.¹¹²

These changing forms criminal punishment were the consequence of a highly-productive Atlantic system that required so much more labor. African chattel slavery was by far the most important labor system in the eighteenth-century British Atlantic World, and the institution had powerful consequences for social ordering, economic markets, and legal structures during the colonial period. But other forms of labor added to and complicated how contemporaries conceptualized labor categories. As the colonies expanded, colonists aggressively sought out new forms of servitude when criminal punishments were found inefficient, and they expanded the available labor pool. While there are important differences and incongruities in what is written as law and what is practiced on the ground, the statutes reflect colonial problems as well as elite thinking on who should be free, bound, and work. As we will see, the expansion of penal labor stirred up new moral questions and pushed the boundaries of what contemporaries considered freedom, reformative, and humane.¹¹³

¹¹² Beattie, *Policing and Punishment in London*, 427; Rothman, 3-4; Friedman, 54.

¹¹³ Rothman, 3-4; Friedman, 54.
In 1740, the well-known Virginia planter William Byrd II fiercely protested the importation of British convict servants into the American colonies. To him, convicts should not be anywhere in Virginia, and he suggested shipping them to Georgia, which he argued needed people. “It would really be a punishment to send those mis[creants to a climate where they wou’d] dye soon out of the way & be miserable [while they do live].” Byrd argued that transporting them to Virginia was not punishment at all; in fact, it rewarded them, allowing transportees to be “happier” than other honest settlers with a chance at new life. It would be much “wiser” to have “those profligate wretches” labor in coal pits, repair roads, create canals, or clean rivers, which would all be a more effective punishment “for the publick good.” The spectacle of their labor, he avowed, would be a far more effective deterrent than the gallows or transportation. Instead, colonists are forced to bear this “vile commodity,” which only discouraged honest settlers and created new “enemies [sic] to mankind.”

William Byrd II, like many other colonial elites, despised the sale of imported convicts on colonial shores. Colonists increasingly associated them as criminal, deviant, and immoral contagions who incriminated other servants and enslaved people. Parliament passed the British Transportation Act in 1718 without much argument, but over time, legal records and public
commentaries show that this form of labor became increasingly controversial. Interlocutors on both sides of the Atlantic drew on moral language and employed sentimental accounts to advocate reform of the convict trade and labor. Historian Roger Ekrich stated that the purpose of transportation was both communal and economic in nature, and regarding the “prospects for human redemption, reclaiming lost souls was at most a secondary goal.”\(^2\) Indeed, the primary purpose of transportation was to socially and financially benefit the metropole. However, as time progressed Britons and Americans increasingly fashioned moralist justifications and critiques to defend or abolish this practice. How did these moral sentiments and vocabularies develop in regard to labor and unfreedom and how did they shift over time? How did Britons and Americans morally justify their own form of banishment and convict servitude? The practice of penal transportation had important implications for how Anglo-Americans imagined morality, charity, and unfreedom, and they increasingly expanded reformist arguments and employed sentimental accounts to effect social, economic, and cultural changes to labor and society. Certainly, the institutionalization of transportation was designed to protect social peace at home, but it also provided Britons and Americans with an important new forum to discuss the purpose of punishment, labor, and the morality in banishing offenders outside of communities.

Using published commentaries, Old Bailey Court records, colonial journals, and newspapers, this chapter traces how elite attitudes in Britain and North America evolved on transportation and servitude, the ways that convicts became increasingly perceived

as problematic moral outsiders in society, and the strategies used to change transportation in the pre-Revolutionary period. It first discusses the early penal and forced labor proposals that Enlightenment thinkers and writers found compatible with notions of charity, liberty, and natural rights. Next, it investigates reformist language used in court rooms and by lawmakers to justify or denounce the punishment. Then, the chapter explores the narratives regarding convict suffering and pays critical attention to ideas of the humanness vis-à-vis the physical body as a means to draw sympathy from readers. Last, it moves into discussions about convicts as immoral contagions to other laborers and the dilemmas arising for colonists from their collusion with enslaved people. The discretionary power to sentence convicts to America was key to the controversy, as it invited judges, lawmakers, families, and other interested contemporaries to offer moral reasoning for or against banishing people to be sold and employed as laborers in the colonies. Further, while some court officials noted the justness of their choice in sentences or expressed their compassion in ordering a lesser sentence, it seems that many were less concerned with the idea of suffering under the punishment itself, and they were more concerned with the maliciousness of administering suffering to offenders. Convict transportation emerged in important transatlantic discourse, and it contributed to the moral vocabulary used to discuss coercion and reform, laying the groundwork for the moral quandaries regarding liberties and natural rights in the Revolutionary era to come.  

Penal and Forced Labor Schemes

During the first half of the eighteenth century, travelers, early antislavery advocates, and enlightened thinkers proposed plans to alleviate poverty and criminality in the metropole and to expand labor in the American colonies, contributing to the growing prosperity of the British Empire. Especially after the 1720s, colonial plantation revenues increased and the Chesapeake tobacco economy, with its ongoing transition to mixed agricultural methods, gradually became more reliant on forced labor, especially African slaves. Importantly, labor became one of the highest demanded and crucial parts of the transatlantic system. With this, new schemes for forced labor appeared for convicts and the poor – the group that so many transportees derived from. Plans from prominent Enlightenment figures like George Berkeley and the renowned Scottish philosopher Francis Hutcheson – whose work contributed significantly to the antislavery campaign – are particularly revealing as these writers adamantly supported individual liberties and wrote about natural rights at length. As Michal Rozbicki explained, “it has usually been assumed that by the early eighteenth century slavery as a system of labour for the British population was simply ‘‘inconceivable,’” as they could not be made into chattel slaves. While there are stark differences between chattel slavery and other forms of servitude, the notion of inconceivability is grounded on the premise that Enlightenment ideology exemplified “a relatively unified system of thought.” In the 1730s, antislavery rhetoric emerged that argued slavery infringed upon natural rights. Partially because of the assumption

in the literature of a uniform Enlightenment in regard to equality and liberty, scholars have neglected schemes for creating penal transportation and labor – plans that promised more inequality. Examining these proposals not only sheds light on sentiments regarding convicts and ideas of liberty, but it also provides a window to how people understood and imagined coercion in regard to people considered criminal and poor. Thus, the schemes for unproductive or threatening people, the calls to change the practice of transportation, and early antislavery proponents’ encouragement for expanding penal labor reveal the critical ways contemporaries conceptualized unfreedom, poverty relief, and imperial ambitions regarding labor and liberty on the eve of a larger humanitarian movement.⁵

Advocates of forced labor schemes of the poor and convicts often argued their points using moral reasoning, and they contended that these plans had the potential to stimulate colonial growth and economically and socially benefit the empire. In his well-known account entitled, *The Present State of Virginia*, Reverend Hugh Jones not only expressed his ideas on convict servitude, but laid out a plan to manage transportees and their work. Jones was an Anglican minister and a lecturer at the College of William and Mary, where he led classes on mathematics and natural philosophy from 1717 to 1721.⁶ He wanted to increase both trade and commerce in colonial Virginia. He found that unemployed and idle people, who “prove as dead Members of the whole body,” and those deemed immoral and villainous should be employed


there since they were destructive to themselves “and a Scandal to Mankind.” Inspired by the Dutch use of coercion for productive Atlantic commerce, he praised those who had engaged in productive capital projects in the colonies and put the poor to work for “the noblest and most useful Undertakings.” Jones esteemed these individuals for their sensibility and virtue. The language used to deride what many Anglicans considered as the lower echelon of society, while bolstering those who engaged in the “noblest” projects, shrunk the cultural space between men of wealth and the poor in order to encourage new schemes for colonial production.  

Certainly, philosophical ideas about hard labor and punishment circulated in British discourse. The writer and physician, Bernard Mandeville noted that some people “are ready to contribute to the Redemption of unfortunate Captives with their Purses; but that among Christians, free-born Subjects ought never to be made Slaves for any Reason….But this is a Singularity peculiar to Englishmen, more built on an Excess of Good-nature, than any found Reason.” The French and Spanish both utilized penal laborers in galleys as did the Dutch in workhouses. Offenders performed a variety of tasks under “a very strict Hand.” He continued, “These are not called Slaves; but such is their Abode, their Diet, and their Discipline, that of those who were to be confined there for any consider Number of Years, I don’t believe there ever

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was one who would not have thought it a glorious Preferment.” He continued, “if, instead of it, he might have taken his Chance, and been sold for a Slave in Turky [sic].”

Jones suggested a division between the kinds of transportees shipped to the colony in order to reduce disorder. Those sent over for idleness should be treated civilly, and robbers, murders, and other serious offenders should be chained, separated, and “made Servants for Life, less they corrupt the rest.” For the latter group, he built in a chance for redemption in the plan in which the hardships of this servitude would be eased if proper authorities deemed them “Objects of Mercy and Charity.” He thought very little of many servants who had hitherto arrived voluntarily or involuntarily to Virginia, ousting them as “the Refuse of Great Britain and Ireland, and the Outcast of the People.” In the future, able-bodied vagrants and beggars as well as petty criminals, “Bridewell Birds,” and felons should be transported and worked seven years without wages, and the public expense of transportation could be defrayed “from the Labour of their Rouges and Beggars.” Colonial employment for troublesome people and the poor, like beggars who had “suffer[ed] their Bodies to Rust,” would give them a means to work and take artful rogues off the streets. Even further, Jones advocated for a separate penal county in Virginia for all transported convicts. There, they could make hemp and flax, and overseers would monitor their work using methods employed in Bridewell. The county would be called Hempshire. The

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work of transportees would be temporally as well as spiritually advantageous, provide them a means to earn a living, and diversify the economy in colonial Virginia. 9

In order to persuade others of his scheme, he sought to remove the conception that white servants experienced a harsh colonial life to convince readers of transportees’ just treatment. This would not only reduce crime, he argued, but would lead to “the Reformation of the most Profligate.” Jones also noted that the good wages and opportunities in the colony explained why so few of the poor depended on parish support. Those there “are never tormented with Vagrant, and Vagabond Beggars” and one reason for this was that there were “Reward[s] for taking up Runaways, that are at a small Distance from their Home.” This suggests that early on, perhaps runaway bound laborers relied on vagrancy support. The plan would also decrease the reliance on African slaves, although Jones found that some people might be repelled by this. He argued that it would “be more Prudence and Charity for our own Poor and Vagabonds,” but assured that the system of African slavery could continue in order to perform certain tasks, like cultivating grain. The former could be “compelled by mild Methods” and work in trades or other tasks “for their Maintenance and Felicity.” Surely, “there can be no Injury in such moderate legal Compulsion,” and their work would support the “publick Good and Opinion of the Community,”

9 Jones, 113-4, 117, 120-2, quotations 113-4, 121. Not all people should go to the colonies. Infants and those with a disability should be supported by their parish. The vagrants and beggars should work “without Wages, with somewhat less Perquisites and Privileges than” their more honest yet unemployed counterparts “both during their Service and afterwards.” Here, he suggested that transportees should be treated differently than other people even after their service because they landed into the system of transportation. See Jones 120-1, quotation on 121. The hemp and flax in the proposed penal county would be add to the naval supply of cordage and for creating linen products.
benefitting “the united Interest of all the Society or Empire.” Jones drew on the language of charity and reform to persuade others into partaking in imperial ambitions and to advance the metropole’s social and economic growth.

Although the Chesapeake received the most convicts in the eighteenth-century North American mainland, it was not the only place considered for penal reform and settlement. Often falsely labeled as a convict colony today, Georgia was intended to be, among other things, a reformatory utopia for debtors. While in Parliament, the emerging social reformer James Oglethorpe took a keen interest in prisoner troubles, and with Parliamentary support, he planned to set up a settlement for England’s poor and unemployed. Viscount John Perceval wrote to Virginia planter William Byrd II describing Oglethorpe as “a young gentleman of very publick spirit.” With the plan underway, perhaps “London will be eased of maintaining a number of persons, who being let out of gaol have at present no visible way to subsist.” After learning of the proposed settlement, Byrd doubted the plan would work. “I’m informed there is a subscription in England for setting an hundred familys of poor debtors on Savana River, which I fear will prove a grave for them. They had better send them to North Carolina.” Here in 1731,

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10 Jones, 54-5, 115-8, 115 and 117-9 quotations. Jones stated that Europeans had “Apprehensions of the imaginary Slavery of the Plantations” which was not valid for Britons. See page 117.


Byrd found the utopian project acceptable, and to preserve the lives of some malefactors and the poor, he advocated for settling them outside of Georgia.

Still, Georgia was supposed to be a safe haven for debtors, criminals, poor whites, and orphans. Philanthropists hoped it would be a place where settlers could produce profitable silks, wine, and other goods in which England had relied on European merchants to supply. It was also set up as a protective barrier between Spanish Florida and South Carolina. Early on, Georgia forbade African slavery, as the attitude at the time advised that slavery there would discourage other white settlers and encourage insurrections from those further south.\(^\text{14}\) Although a few prison debtors came over, the settlement largely aimed to aid the needy. While war, illness, debt, labor needs, and climate plagued the colonists there, they nevertheless succeeded in cultivating land (1,038 acres by 1738). As a result, the colony’s trustees continued to finance the passage of newcomers. In the mid-1730s, wealthy adventurers argued fervently for slavery to be permitted. Unable to secure funding from Parliament, the trustees reluctantly allowed slavery in 1749 and three years later, they forfeited their charter to the King. Oglethorpe’s colony designed “‘Non sibi sed aliis’” – “Not for ourselves, but for others” – developed into something else altogether. It became a place where immigrants, many of whom were once indentured servants, were left to compete with wealthy planters of South Carolina who profited off the labor of enslaved people.\(^\text{15}\)

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\(^{15}\) Allan Kulikoff, From British Peasants to Colonial American Farmers (Chapel Hill, NC: University of North Carolina Press, 2014), 199-200; Russell, 10.
During the first half of the century, ideas about the poor were hardening in the increasingly capitalistic society. Seventeenth-century Protestant ideas toward aiding the needy moved away from the notion of almsgiving to the attitude that those in poverty should labor. British clerics and thinkers held attitudes that pointed out that poverty was unavoidable and maintaining one’s property was more important than donating one’s possessions to the needy. Many thought that the poor were not entitled to the rich’s assistance or property, and these views on aid further defined ideas of a deserving and undeserving poor. It was not only clerics, but a number of thinkers and writers – “political arithmeticians,” as Donna Andrew calls them – debated and centered on ways to alleviate poverty. While these ideas were certainly complex and nuanced, to put them more generally, the largest group of thinkers expressed that the state economy should aim to be commercial, and society must be regulated properly. “Thus, the promotion of the nation’s wealth, power, and virtue, and not the accumulation of riches or the improvement of living standards, was the great end of economic, and all other activity.” With this worldview, late seventeenth-century Britons struggled when Christian prescriptions did not align neatly with conversations of the economic worth of human labor. Sir George Mackenzie’s 1691 work, *The Moral History of Frugality*, berated the greedy as it caused the poor to go hungry and encouraged swindling of others. The Quaker philanthropist John Bellers called to readers’ sense of Christian responsibility; he argued that the wealthy, as stewards, should guide the poor in their employment and teach them virtue. Despite these works, the productivity of the laboring poor – distinct from their religious value – became central to plans for the state’s wealth and prosperity.\(^\text{16}\)

\(^{16}\text{Rozbicki, 41-2; Donna T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth*}\)
The philosopher and Enlightenment figure, George Berkeley proposed his own plans for the criminal and poor in Ireland. In his work, *The Querist*, he hoped to foment conversation on the economic conditions in Ireland with the publication written as a list of questions. He asked, “Whether some way might not be found for making Criminals useful in Public Works, instead of sending them either to America, or to the other World?” Perhaps it would be better to “contrive Employment,” and he suggested that “Servitude, Chains and hard labour, for a term of Years,” would be more of efficient deterrent than the gallows. Poor relief relied on a poor tax, and he felt it did little good since it only increased the number of eligible individuals for aid. He questioned “whether temporary Servitude would not be the best Cure for Idleness and Beggary?” For those who would not or could not work, perhaps the public had a “Right” to put them to make them do so. He inquired, “Whether all sturdy Beggars should not be seized and made Slaves to the Public, for a certain Term of Years.” The outcome of this coercion would be benevolent for the poor, as they could have both food and clothes. In his view, the poor’s struggles were rooted in the absence of employment opportunities, as well as personal incentive, as those employed made little money to provide themselves with proper food and clothing. Berkeley considered his scheme as economically practical and consistent with

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17 Rozbicki, 32; George Berkeley, *The Querist, Containing Several Queries, Proposed to the Consideration of the Public.* (Dublin: R. Reilly, 1725 [i.e. 1735]-37), 13, quotation.
Christian moral principles. Thus, he called for a forced labor system that would be a means to succor the poor and support the public good – to him, a plan of charity.\(^\text{18}\)

Berkeley’s vision and reasoning for this form of coerced labor was rooted in historical practices, as well as Christianity. He asked “whether he who is chained in a Jail, or Dungeon hath not, for the Time, lost his Liberty? And if so, whether temporary Slavery be not already admitted among us?” And then perhaps “Criminals chained in Pairs and kept at hard Labour” could be “edifying to the Multitude.”\(^\text{19}\) Because of offenders’ criminality and beggars’ lack of incentive to work, he did not consider coerced labor schemes for these malefactors as an infringement of their rights or liberties. Part and parcel with contemporary thinking, he viewed a form of slavery and religious equality as congruent and emphasized that God’s love for human beings supported a social hierarchy. To be sure, his scheme for the poor was not an off-the-cuff endeavor, as his experience in the Caribbean and North American mainland colonies certainly bolstered his ideas in the *Querist*. He planned to set up a college in Bermuda and later moved to Rhode Island where he owned and baptized three African slaves. Much to the objection of West Indian planters, he denounced racist ideas and advocated for mitigating enslaved people’s conditions, insisting upon the baptism of Africans. He believed that enslaved people were free in the eyes of God and argued that baptism would improve the enslaved person, as they would be answerable to a divine Christian God rather than only the world of human slaveholders. His experience in Rhode Island – as well as the failure of his proposed

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\(^\text{18}\) Rozbicki, 32, 34; George Berkeley, *The Querist, Containing Several Queries, Proposed to the Consideration of the Public. To Which is Added, by the Same Author, A Word to the Wise: or, An Exhortation to the Roman Catholic Clergy of Ireland* (London: [np], 1750), 41.

\(^\text{19}\) Berkeley, *The Querist*, 41.
college in Bermuda – made him more aware of how difficult it would be to improve human conditions and might elucidate why he proposed broad sweeping measures to remedy the plight of the Irish poor.\textsuperscript{20}

Other celebrated Enlightenment figures proposed plans of forced labor for criminals and the needy. Francis Hutcheson was a leader in the Scottish Enlightenment and an important force for the early antislavery movement. He was a professor at University of Glasgow, and Adam Smith’s mentor. In contrast to Hobbesian egoism, he argued that people were inherently good and moral. They had an innate sense of benevolence for fellow human beings, and this inner working connected individual interests with the larger goals of communities. Natural rights then, he determined, were tied to the societal interests and appropriate behavior. Since rights were designed for the good of the whole, one’s right to liberty was second to the general good. To Hutcheson, the masterless, criminal, and idle hindered a community from becoming socially and economically prosperous.\textsuperscript{21}

Hutchinson argued for a form of coercion to be used for the poor, which was punitive and would help reestablish the master-servant order. He was convinced that this form of what he called “slavery” was just and if temporary forms of servitude failed, no other law would be more efficacious in putting the poor to work than “making perpetual slavery of this sort the ordinary punishment of such idle vagrant.” To him, it was a legal, fair, and a broadly defined category. The individual who bore the damages or injuries committed by the poor “has a perfect right to compensation by their labours during their lives, if they cannot sooner discharge

\textsuperscript{20} Rozbicki, 33-5, quotation on 34.

\textsuperscript{21} Rozbicki, 35.
the claim.” He continued, “A criminal too, by way of punishment, may justly be adjudged to perpetual labours of the severest sort.”

Hutchinson stressed that whatever conditions of servitude the malefactor endured, they would not be stripped of their natural rights and liberties. For “Whatever humanity may be due to such unhappy servants, as they are still our fellow-creatures,” and even “in this worst condition of servitude, neither the criminal, after he has endured any publick punishments which the common safety may require, nor much less the debtor, have lost any of the natural rights of mankind beside that one to their own labours.” Here, humanity becomes a form of collective justice, and Hutchinson reminded readers of the humanness of criminals, despite their delinquencies. Further, he assured that this forced labor plan was in harmony with people’s inherent rights and liberties. As long as the malefactor completed their labor diligently, “they have a right to defend themselves” against brutal acts of violence or torture. They can guard against a master who tried “prostituting them” or forced them to “worship against their consciences.” They could “acquire rights by contract or by any legal deed” that will allow them to give the balance owed to their creditors. Hutchinson’s plan provided a way for malefactors to remove themselves from bondage if they reformed their behavior, but if they failed to do so, they could be sentenced to “Slavery for life” which he suggested would also be a better punishment for other kinds of crimes than what was currently on the books. He thought slavery should be a disciplinary action – and not a result from war – and similar to Berkeley,

Hutchinson was less interested in practicing an absolute form of natural law without considering the public good and order.\textsuperscript{23}

Considering these arguments, Hutchinson was a staunch opponent to perpetual inheritable slavery. While historians have examined his role in pushing against this form of human bondage and his advocacy for universal happiness, Rozbiki argues that we must consider that Hutchinson’s preaching about “disinterested virtue was an old and essentially aristocratic concept, and was assumed to be an attribute” that elites could maintain through education and property. Further, Hutchinson attacked the idea of perpetual slavery, as each person was entitled to their own liberty. “The proof of his losing it [liberty that is] must be incumbent on those who deprive him of it by force.” For Hutchinson, a form of slavery was permissible if the individual gave up his liberty, through crime for example. Pro-slavery proponents though could utilize this argument as a trader who acquired captives; they could argue that they could have theoretically ensured that Africans did not receive a death penalty. At that point, traders had “‘debtors’” who must compensate them with terms of labor, although the captives were to be freed afterwards. This view shows that we should show caution, as perhaps calls for liberty were not as universal, but more elitist in a socially hierarchical society.\textsuperscript{24} The idea of penal labor and humanitarian thought developed vis-à-vis discourse on slavery as the Atlantic system matured. This resulted in part from the argument that new chattel slavery was wrong and hierarchy was essential; temporary bondage then, including convict and indentured labor was deemed appropriate and more humane especially given the alternatives.

\textsuperscript{23} Rozbicki, 36-7; Hutchinson, \textit{A System of Moral Philosophy}, 2:201-2, quotations.

\textsuperscript{24} Rozbicki, 37-8, quotation, 37; Hutcheson, 211, quotation.
Other avid early antislavery voices offered opinions on the practices of both convict labor and African slavery. Benjamin Lay, the devoted and fiery antislavery Quaker who bitterly critiqued both the Society of Friends and the outside world, also commented on the fate of criminals. In 1737, he noted that, “When I say All Slave-Keepers Apostates, I mean them that keep innocent Men, Women and Children in everlasting Bondage.” He argued that “As to petty Criminals, that will not or cannot make Restitution, I think, as well as many other tender Friends and People fearing God and loving his Creation, their Fellow-Creatures, although very wicked, that they had better be kept in Bondage, Exod. 22. 3. that by hard Labour they might be brought to Repentance and Amendment of Life.” He preferred this to the death penalty as there was no repentance with that punishment – an argument that later pro-slavery proponents would draw on to support the African trade and penal reformers would use to argue for the penitentiary in the early Republic. Hard labor though, “and mean Living is an Antidote to Luxury and Idleness, and Captivity the Reverse of Nature might prevent a great deal of Wickedness in the World, and bring many unthinking Creatures to remember and prepare for their latter.” Hard labor then would be a present and future solution for those who have and could be led astray from a legal and moral path.

Other antislavery advocates offered critiques of the convict trade. The well-known trade theorist Malachy Postlethwayt denounced the African slave trade in the 1750s, and he was


26 Benjamin Lay, *All Slave-Keepers That Keep the Innocent in Bondage* . . . (Philadelphia, PA: Printed for the Author, 1737), 137-8. Lay reflects on George Fox’s comments condemning execution for men who stole cattle as “for the Thieves in old time were to make Restitution, and if they had not wherewith, they were to be sold for their Theft.” See page 138-9, quotation on 139.
indeed apprehensive of the traditional methods of the convict trade. He explained that “we have prodigious numbers of vagabonds...[and] there cannot therefore be any cruelty in sending these people, where they shall be compelled to labour, and thereby maintain themselves, and become useful to others.” There, of course, were minor criminals in England, and he elaborated, “it would certainly be good policy, as well as charity, to put them in the way of honest labour.” Importantly, he did not want them to be sent over “like transports or negroes”; the process should not be tainted with “shame” and should have “as little of compulsion as may be.” He assured that there were enough Britons with “liberal hearts as well as weighty purses” who could sponsor such a benevolent project across the Atlantic.27 It is important to note that Postlethwayt’s anti-slave trade views aimed to expand British imperialist endeavors in Africa. He hoped England could gain access to African wealth through stabilized polities, which could not be achieved with the demand for slaves. Nevertheless, early abolitionists relied on his writings to rethink the morality and economic efficiency of the slave trade and labor organization. In 1764, the well-known Virginia antislavery advocate, Arthur Lee published his work, An Essay in Vindication of the Continental Colonies of America, in response to Adam Smith’s Moral Sentiments, who mocked colonists as the “refuse of jails.” Lee condemned the African slave trade, but he did not

offer a plan to replace the labor scheme; instead, he referred readers to Postlethwayt, who stressed that the colonies would be better off by populating them with Europeans.²⁸

These proposals shed light on how elite contemporaries viewed natural rights, slavery in various forms, and liberty. The language of charity couched in these proposals was a means to further persuade readers that these schemes were both economical and benevolent, bettering the lives of criminals and the poor. Historians have pointed toward the incompatibility of slavery and natural rights, yet proposals for penal and forced labor show that contemporaries and Enlightenment thinkers found that a form of slavery was compatible, if administered in a way considered just. Often, it included a form of surveillance and was compatible with Christian thought of the day and in the years afterward. It also suggests that racial categories regarding coercion were still porous in the early eighteenth century, soon to harden during and after the Revolutionary period. These examples provide evidence that in a time of an expanding African slave trade, elite measures identifying liberties for the poor and criminal were not etched too far away from those noted for enslaved Africans. Calls for bettering the treatment for enslaved Africans, cruelly placed in forms of brutal human bondage, and antislavery tracts were sometimes made in tandem with proposals to expand convict labor, affirming the congruity of natural rights and liberties with this form of coercion. The language of punishment and reform

used here contributed to the rhetoric of slavery and liberty, which had important consequences for moralists during and after the American Revolution.29

Reform and Justifications for Penal Transportation

At the same time that thinkers and writers penned new schemes for penal and forced labor, court authorities and colonial elites discussed the moral prerogatives and justifications for the existing system of convict transportation. Anxieties about moral depravity and disciplining laborers became more pronounced in the late seventeenth and early eighteenth centuries. After the sixteenth century, contemporaries understood divisions between the deserving and undeserving poor more clearly, as authorities deemed the latter for punishment instead of aid. In the early eighteenth century, legal reforms challenged and diminished the Anglican Church’s oversight over the lay community, which for centuries expressed and regulated moral problems through the role of the pastor and religious courts. Economic incentives merged with an increasing interest in reforming the poor – as demonstrated by the Society for the Promotion of Christian Knowledge – and penal law was hoped to be one of the most successful devices in accomplishing these efforts. While transportation’s primary goal was to socially and economically benefit the metropole, the practice became an important platform that invited merchants, planters, elites, and other interlocutors to voice their thoughts on morality and

possibility (or lack thereof) of reforming offenders. The cultural distance of banishment and servitude shaped how people imagined the capacity for the fallen or criminal to reform. With a penal policy in place that could relieve the British Treasury, remove undesirable people from communities, and spare some offenders their lives, how, why, and when did this intermediate punishment evoke new and widening moral concerns? As Alan Atkinson emphasized, institutional transportation developed during the period of shifting Enlightenment ideas and moral thinking. The roots of humanitarian sensibility lay in part with the critical Enlightenment philosophies. Francis Hutchinson noted that God provided people with a “‘moral sense’” and argued that human compassion demonstrated that humans were not exclusively selfish beings. Thus, compassion was understood as a precursor for moral behavior. Hutchinson and later Adam Smith furthered these ideas, facilitating people’s beliefs of morality’s existence in biblical writings to the understanding that morality could best be understood by investigating human behavior and sentiments. Smith, who also learned from David Hume, argued that sympathy was the best means to allow people to conduct themselves in social and political arenas to better human welfare. Discussions about compassion for sufferers shifted from individual and private spaces to public ones, and many contemporaries began, rather unevenly, to

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accept humanitarian deeds – acts of benevolence and the reluctance to administer unnecessarily severe pain toward fellow human beings – as essential markers of civilized societies.31

The terms used to talk about these moral concepts also have a history. Words, such as humane or compassion, sometimes had varied meanings from what we define them as today. For instance, humanely and humankind are not defined in the lexicographer Benjamin Defoe’s dictionary in 1735, but they appear in Samuel Johnson’s in 1755. Defoe defined humanity as “Manhood, the Nature and Condition of a Man, Gentleness, Courtesy, Affability, Mildness,” and Johnson offered four different definitions: “The nature of man,” “Humankind; the collective body of mankind,” “Benevolence; tenderness,” and “Philology; grammatical studies.” Defoe defined compassion as, “Pity, a Fellow-feeling, a true Sense of another’s Misfortunes” and Johnson defined it as “Pity; commiseration; sorrow for the sufferings of others; painful sympathy.” Here, at least in print, the 1755 definition of compassion took on the additional sentiment of an uncomfortable sympathy.32 When discussing transportation, contemporaries used


32 B. N. Defoe, A Compleat English Dictionary. Containing the True Meaning of All Words in the English Language: Also the Proper Names of all the Kingdoms, Towns, and Cities in the World: Properly Explain’d and Alphabetically Dispos’d. Design’d for the Use of Gentlemen, Ladies, Foreigners, Artificers, Tradesmen; and All Who Desire to Speak or Write English in its Present Purity and Perfection (Westminster, 1735). From the Defoe’s work, the word “true” is at best, printed ambiguously, but with the print available and in context, the word is likely a match so I have used it in the quotation. Defoe defined “To HUAMANIZE,” as “to civilize, to make tractable, gentle, mild”; Samuel Johnson, A Dictionary of the English Language; in Which the Words are Deduced from their Originals and Illustrated in their Different Significations by
terms like these, and considering these words in their eighteenth-century context will give scholars a clearer perspective on the historical meaning of eighteenth-century moral rhetoric regarding unfreedom.

The language flaunting the moral integrity of court officials showed that some eighteenth-century authorities were less concerned with the idea of suffering under the punishment itself, and more so with administering unnecessarily severe punishments. In the 1743 case of the thief Mary Holmes, the court reduced her sentence to noncapital punishment, and the record shows that her “Life is probably owing to the Compassion of the Prosecutrix: For had this Felony been laid to have been committed (as the Fact was) in a Dwelling-House, it had been a capital Offence.” The prosecution believed that Holmes was undeserving of a lesser charge, but they spared her life regardless, sentencing her to transportation. Compassion here took on a didactic tone, allowing court officials to articulate sympathy and benevolence for a

Examples from the Best Writers. To Which are Prefixed, a History of the Language, and an English Grammar, vol. 1 (London: Printed by W. Strahan, 1755); Page numbers were not identifiable in these editions. Johnson defined humane as “Kind; civil, benevolent, good-nature,” and to humanize meant “To soften; to make susceptive of tenderness or benevolence.” This carries a different connotation than in Defoe’s work. While Defoe defined moral as “belonging to Manners or Civility, or the Conduct of Human Life,” Johnson’s first definition of moral is “Relating to the practice of men towards each other, as it may be virtuous or criminal; good or bad” (see Johnson’s volume 2).


34 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 April 2014), June 1743, trial of Mary Holmes, otherwise Yates, other wise Smith (t17430629-28).
legally undeserving prisoner. In 1748, Thomas Bacon was charged with taking buckles, handkerchiefs, a looking glass, and five pounds, belonging to his mother. Bacon received transportation as punishment, and he was fortunate for that: “The Foreman of the Jury said that the reason of their bringing in so favourable a verdict was, out of compassion to the mother and the family, and not in regard to the prisoner.”\textsuperscript{35} In this case, the court based their decision on pity and perhaps concern for the family, noting that the sentence could have been more severe.

Many Britons understood transportation as a means to give back to some convicts the lives that they had already thrown away through crime, and some court cases linked transportation to notions of individual reform. To be sure, early practices of the punishment were largely thought of as a deterrent, inciting the terror of the law to discourage potential malefactors. It was not institutionally designed for mass criminal reformation nor primarily used to generate the much-needed labor in the colonies. Transportation was designed, after all, to assist Britain with its agenda at home, rather than colonial settlements. Still, court officials suggested that criminal reformation was a reason or a consequence of their sentencing.\textsuperscript{36} In 1743, the young Thomas Broxton stole a “Pebble Snuff-box” worth seven pounds. After evaluating Broxton’s case, the jury “recommended him to the Court for corporal Punishment; but the Court was of Opinion, that it was doing the Boy a great Piece of Service to send him abroad.” Broxton was at least twelve years old, and the court may have considered that he might change his

\textsuperscript{35} Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 April 2014), September 1748, trial of Thomas Bacon (t17480907-55).

\textsuperscript{36} Ekrich, 16-19, 44-5. Ekrich concluded that there is actually little evidence to support that courts seriously considered colonial labor shortages when deciding to transport criminals.
criminal behavior in the colonies. In 1728, Lord Chief Justice Raymond recommended a pardon for a capital offender, Francis Tweed, with the “condition of Transportation.” After reviewing petitions regarding the case, he based this decision on the fact that Tweed was young, from a respectable family, and “promises a reformation,” as the petitioners urged he could become “a new man, and gave great assurances of” such. In another case, one offender faced the death penalty after being indicted for returning from transportation. He pleaded to the court to allow him to go abroad stating that when there, “I hope I shall become a new man.” Although this offender probably said what he believed would save him from the gallows, his testimony – as well as Raymond’s report on Tweed – of becoming a “new man” suggests that they understood transportation to operate with at least some goals of refiguring criminal behavior.

37 *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 21 March 2014), January 1743, trial of Thomas Broxton (t17430114-8). Children under seven years old were largely found innocent of accused felonies. If the child offender was between ages seven and twelve years old, courts judged whether he or she had knowledge of the maliciousness of the charged felony. The courts likely found many young offenders innocent “because he is supposed not of Discretion to judge between Good and Evil,” and only sentenced them to the death penalty if the evidence and situation showed that the malefactor did indeed have discretion.


39 *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 05 January 2015), February 1753, trial of John Jettea (t17530221-45). In another example regarding a felon, Benjamin Larkin, “The Indictment was laid favourably, with a Design to prevent his receiving a heavier Sentence hereafter, hoping that going abroad may reclaim him, the Jury found him Guilty.” They sentenced him to transportation. See *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, 21 November 2017), May 1719, trial of Benjamin Larkin (t17190514-39).
Judges also considered the impact of transportation on the community. Some families lost their household income when courts banished certain family members. Transporting these offenders could also burden the parish with their families’ care. Others considered the offenders’ chances of successful domestic employment. In 1735, the Recorder of London, William Thomson, argued that one notorious thief “‘cannot expect to be employed againe so as to maintaine his family in an honest way.’” Thomson encouraged his transportation. Those sentenced to the death penalty also petitioned to change their fate on the grounds that they had families. After receiving the death penalty, William Ward explained he was a young man with a wife and children. In considering his “Very Distressed Family” and youth, he asked for “Compassion” directed toward him and requested the “Gratious Transportation.” Ann Harrison realized she should be punished, but asked twice for the judges’ “humanity” on the basis that she was a widow with an aged mother and young child at home. Desperation and “distress alone, and not vicious inclination” caused this widow to steal, she pleaded. Even with two indictments, her defense convinced the judges to spare her life, and they sentenced her to transportation. Rather than deliberating over colonial labor shortages, judges often were willing to consider the community as long as that community interest was in metropolitan England.

40 Ekrich, 36, 38-9, 41-2, 44, quotation on 42.


42 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 02 March 2018), September 1761, trial of Ann Harrison, otherwise Johnson, otherwise Williamson (t17610916-23); Ekirch, 44-5.
Colonists noted that some convicts did in fact reform in the colonies. Reflecting on the earlier practices of convict servitude, one traveler, Edward Kimber, noted that “Several of the best Planters, or their Ancestors, have, in the two Colonies, been originally of the Convict-Class, and therefore, are much to be prais’d and esteem’d for forsaking their Old Courses.” He acknowledged that transportation was initially successful, as it provided the vehicle for convicts to reform and emerge as productive members of society; however, he relayed that the attitudes towards convict laborer shifted from “worthy creatures” to one perhaps less than a “commodity.” Thus, the aptitude for reformation seems to be relegated to convict “Ancestors.”

In 1752, Virginia planter Landon Carter discussed a bill that would charge convict owners with court costs if their servants became recidivists. The House of Burgess member John Martin opposed it in a “very long Speach” and found it “an Affront.” It would discourage people from buying them, and he dismissed the accusation that many felonies were conducted by convicts. He argued “that they made the best of Servants,” and much to Carter’s “Surprize” as well as the other Burgesses, another member agreed with him.

On the other hand, others, especially colonial elites, scoffed at the idea of transportation as reformatory, and they expressed their moralist critiques in order to alter or end the trade. In 1721, in the American Mercury, one writer mentioned that “we hear that several of our Merchants Ships have declined carrying any more Felons to the Plantations,” as convicts were

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“serviceable to the Planters; yet they are so notoriously guilty in corrupting the People there, that the Country are heartily weary of them.” Here, the writer remarked that even though there certainly was a market for convicts, they did not benefit society as a whole. Lieutenant Governor to Virginia, William Gooch found it was impossible “of ever reclaiming them from their vicious habits.” He argued that so many committed new crimes, which cost the colony a great deal for their trials. Benjamin Franklin’s opinion on convict labor likely influenced attitudes toward these bound laborers. In 1751, Franklin rationalized that convict’s rehabilitation was not a persuasive justification for the trade: convicts “changing his Nature with the Clime is a mere Supposition, not yet confirm’d by sufficient Facts.” He further beseeched, “What then? Is not Example more prevalent than Precept?" Here, Franklin attacked the understanding that transportation operated on the basis of convict reformation, as there were plenty of examples he thought that showed the contrary.

Domestic convicts also troubled colonial elites. William Byrd II wrote to Benjamin Lynde, the chief justice of the Superior Court in Massachusetts and a classmate of Byrd’s from Middle Temple, about the problem with banishing convicts from that colony. He stated that “I fancy your laws there are so tender, that they put no knaves to death.” Instead, he aggressively


asserted that the colony “by a peculiar sort of banishment condemn them to sail about the world in sloops, & so expose them to the fury of the ocean.” Heatedly, Byrd explained that “Some of these banditi anchor near my estate, for the advantage of traffiquing with my slaves, from whome they are sure to have good pennyworths.” He caught one of them, a fellow named Grant, and he intended to convict him for the crime. Byrd admonished Lynde, “I wish you would be so kind as to hang up all your felons at home, and not send them abroad to discredit their country in this manner.”

Banishment and domestic convict servitude continued into the colonial period, but the language of morality and reform did not circulate in conversations in the way it did for British transported convicts. While we have far more extant sources regarding British transportees than domestic transported convicts in pre-Revolutionary Chesapeake and Pennsylvania, charting the available language around criminal labor throughout the British Atlantic World gives up a better sense of how, when, and where ideas of morality and reform emerged and developed. In 1737, Joseph Noy wallowed in the Queen Anne’s County jail in Maryland under the death sentence. Fortunately for Noy, the Council of Maryland recommended that the Governor, Samuel Ogle, reprieve him on the condition that he would “be transported out of this Province in such time as to his Excellency shall seem proper.” In Pennsylvania, the language around the proposed workhouses was coded as reformative. In 1718, a law passed noting that if offenders who could

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not be disciplined for crimes through “restitution, fine, and imprisonment,” they should be put to hard labor. They would be “employed for the keeping, correcting and setting to work of all rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons.”

There are instances where authorities spoke about reforming convicts’ behavior. Charles Elliot, a servant, received the death penalty for horse stealing. His first owner reported he had a good reputation before running away and causing trouble. He sold him to Nathaniel Folson, who was a “person of an ill Character and Severe,” and Elliot stole the horse to escape him. Writing on his behalf “Geo. Dent and John Hepburn” argued that he was young man and “in all Probability if his life is Spared” he would probably “take new and better Courses.” The members of the council advised a reprieve for Elliot and interestingly in the Calendar of Maryland State Papers, the record states that on the same day a “pardon [is issued] to Folson upon transportation.” Perhaps authorities issued the transportation sentence to Folson on behalf of Elliot’s removal or to Folson himself. Still, Dent and Hepburn assured that Elliot could become a morally upright member of society if his life was indeed spared.

Along with the measures to protect property, colonists were also worried that malefactors would manipulate sympathetic colonists. William Gooch and his councilmen concluded that vagrants did not “betake themselves to honest Labour or Employment.” They

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51 Proceedings and Acts of the General Assembly, 1745-1747 (1749): 44, 700, in AOMO, quotations; Proceedings of the Council of Maryland, 1732-1753 (1749): 28, 463-4, in AOMO. Dent and Hepburn were likely the Justices of Assize in Ann Arundel County, as the Council noted that the governor made contact with the latter; The State of Maryland, Calendar of Maryland State Papers, No. 1 The Black Books (Baltimore: Genealogical Publishing Company 1967), 89.
would act as beggars, or defraud people with “unlawful Gaming,” thereby impoverishing “many of his Majesty’s good Subjects.” Problematic too, they did not contribute financially to the colony through taxes. In Virginia, councilmen found ways to put troublemakers into service as punishment, justifying it as merciful. In 1717, an admiralty court convicted William Stoke and Aure Van Pelt of piracy and cast the death penalty upon them. They had escaped from Charles Vane – a terrifying pirate with a reputation of barbarity – and with them took “90 Negroes” who were pirated away from South Carolina. They told the court they planned to go to Charleston to acquire a pardon. The court found evidence to bolster their account and deemed them as “fitt objects of his Majesties mercy.” However, the Governor worried that the renegade pirates would “be allowed the Liberty of Stragling about the Country.” The council decided that if there was a shortage of manpower they’d best “be Sent to Serve on Board the said Ships as has been Customary heretofore in the case of Vagrant Seamen.”

During the Seven Years War, elites like George Washington lamented the bill that would impress vagabonds. By “compelling these abandon’d Miscreants into the Service,” they would find an escape and give “loose to all their vicious Principles, and invented the most unheard of storys to palliate Desertion and gain Compassion.” Not only would they achieve this end, but they

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53 *EJC*, 3:495-7, quotations on 497. There were earlier accounts of Virginia impressing vagrants. In 1709, the Virginia Council worried that war ships did not have enough men to supply them, and they ordered that a Captain Holloway could impress “all vagrants and idle persons and such as have no visible Estate nor Imploymt to live on and to cause them to be Conveyed on board the said Vessell for her Majestys Service.” The Council also assured that were many vagrants in the counties in order to do so. See page 212-3, 215, quotation 213; Marcus Rediker, *Between the Devil and the Deep Blue Sea: Merchant Seamen, Pirates and the Anglo-American Maritime World, 1700-1750* (New York: Cambridge University Press, 1987).
would gain “Protection also: so that it was next to impossible to apprehend Deserterers while the Civil Officers rather connivd at their Escape, than aided in secureing them.” Here, vagrants in forms of coerced labor could be troubling. If they were punished with impressment, they would rely on people’s compassionate responses stemming from their fibbed narratives.

The Narratives of Convict Suffering

Discourse about the reformation or recidivism of convicts accompanied an emerging narrative of suffering from penal laborers. These accounts became a part of transatlantic conversations and drew attention to notions of bodily pain, severity of punishment, and unfreedom. Historians have shown that epistolary novels and sentimental narratives allowed readers to empathize with a sufferer’s pain and imagine new ways to conceptualize and reduce misery locally and distantly. Sentimentality was a significant cornerstone for the early movement of humanitarianism. However, as Lynn Festa explains, sentimental sympathy though operated selectively and unevenly, “exciting feelings about particularly moving examples of suffering and recognizing these subjects exclusively based on the fact of that suffering.” The “sentimental process” shows the problem in that readers had to decide who would be accepted “within the

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54 George Washington to John Campbell, Earl of Loudoun, 10 January 1757, Founders Online, National Archives; In 1754, Virginia passed a law that allowed the justice of the peace to “enlist men...[who] do not follow or exercise any lawful calling or employment.” See William W. Hening, ed., The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619, 13 vols. (Richmond: R. & W. & G. Bartow, 1819-1823; hereafter Virginia Statutes at Large): VI: 438-9, quotation on 438.
sentimental community” and what qualities constituted as human. As new moral outsiders due to their crimes and subsequent banishment, transported convicts drew on their local attachments, notions of physical and emotional pains, and the value of human life as a means to incite sympathy for their situations. The language used to show the moral rectitude (or lack thereof) and severity of unjust suffering in the punishment shows the important tensions between legal exclusion and emerging notions of cultural inclusion.

Newspapers commonly circulated announcements on the removal of British convicts from prison to the ships bound for the colonies, and the site of deportation itself was sometimes one of a spectacle, which encouraged interested interlocutors to witness and comment on the

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55 Thomas Laqueur, “‘Bodies, Details, and the Humanitarian Narrative,’” in The New Cultural History, ed. Lynn Hunt (Berkeley, CA: University of California Press, 1989): 176-204; Wilson and Brown, 9-11; Karen Halttunen, “Humanitarianism and the Pornography of Pain in Anglo-American Culture,” The American Historical Review 100:2 (1995): 303-334, 303-4; Festa, 3-4, quotations on 4. According to Festa, sensibility “designates the susceptibility or sensitivity of a particular individual and is a quality of a subject,” sympathy “involves the capacity to feel for or empathize with another and is an interpersonal relation,” and sentimentality operates as “a literary form: a rhetorical structure designed both to incite feelings in readers and to direct those feelings toward their ‘proper’ objects” (See page 7).

56 Long before the rise of the new culture of sensibilities, pain – an important element to the rise of humanitarianism – had been intricately connected to Christianity. Suffering was exemplified through the Crucifixion, and medieval Christians deliberated on how the undertaking of pain carried a spiritual reward. Pushing back on English Puritanism and Thomas Hobbes’s argument that the core of human nature is one of self-interest, Latitudinarians found human beings as naturally sympathetic precisely because good deeds engendered positive feelings. Shaped by their work, the third earl of Shaftesbury, Anthony Ashley Cooper, who studied Lockean ideas on the connection of sensation and information, asserted that humans were imbued with a moral sense, which allowed them to assess good actions from malicious ones. Francis Hutchinson identified sympathy as witnessing distress or pain, and during the era of new sensibilities, it prompted human beings to alleviate such suffering. Sympathy, then, was key in promoting benevolence. Elizabeth B. Clark, “‘The Sacred Rights of the Weak’: Pain, Sympathy, and the Culture of Individual Rights in Antebellum America,” The Journal of American History 82:2 (1995): 463-93, here, 471, 476, 478; Also see Karen Halttunen, “Humanitarianism and the Pornography of Pain in Anglo-American Culture,”; Michael N. Barnett, Empire of Humanity: A History of Humanitarianism (Ithaca: Cornell University Press, 2011).
justness of the punishment’s practice.\textsuperscript{57} Family and friends, for example, could gather and say farewell to the transportees. In 1728, when 117 transportees made their way toward their ship, an “Abundance of their Acquaintances attended to pay them the Compliments of a good Voyage; wishing themselves no worse off in the End.”\textsuperscript{58} Other encounters were more intense and sometimes even violent. In 1753, Samuel Bolton testified against John Jettea, who was indicted for coming back to England before his term of transportation was up. In court, Bolton reflected on the first time Jettea made his way to the ship bound for the colonies. He went over to talk to him, admitting that “I am sorry to see you transported.” Jettea went to shake his hand, but surprisingly Bolton refused and, to Jettea’s astonishment, he said “I think it is ten thousand pities you was not hanged.” Bolton told the court that angrily, he “threw a bottle of gin at me with violence, and swore, if I came near him, he'd stick me.”\textsuperscript{59} The site of deportation was a space that invoked intense experiences, and it crystalized ideas of who would be deemed outside of moral communities.

At the site of departure, one’s wealth and status could dictate the treatment of offenders, and some pointed to the unfairness of this practice. Poorer criminals were led by foot to the ship, and once they were aboard the vessel, they then “were all put immediately under the Hatches, and confined in the Hold of the Ship.” Felons of status or wealth (see Figure 3) went by coach and “were treated with Marks of Respect and Distinction.” One observer in 1736

\textsuperscript{57} For an example see American Weekly Mercury, 11 March to 20 March 20th, 1734-1735, 3.

\textsuperscript{58} American Weekly Mercury, 12 September to 19 September, 1728, 2-3.

\textsuperscript{59} Wilfrid Oldham, Britain’s Convicts to the Colonies, ed. W. Hugh Oldham (Erskineville, Australia: Star Printery, 1990), 21; Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 02 March 2018), February 1753, trial of John Jettea (t17530222-45).
grimly reflected that they probably “will be set at Liberty, instead of being sold as Felons” in the colonies. To this writer, this practice was neither fair nor just. “Thus, by the wholesome Laws of this Country, a Criminal who has Money (which Circumstances in all other Countries, would aggravate his Guilt, and enhance the Severity of his Punishment) may blunt the Edge of Justice, and make That his Happiness which the Law designs as his Punishment.” The law, the writer found, should penalize wealthier felons further, as they had fewer reasons to commit crimes.

Figure 3. Convicted lords, esquires, and attorneys prepare for transportation. Political electricity; or, an historical & prophetical print in the year/ Bute & Wilkes invent. : Mercurius & Appeles fect. Source: The Library of Congress (PC 1 - 4422 (D size) [P&P]).

60 American Weekly Mercury, 7 October to 14 October 1736, 1; Ekirch, 52.
Accounts of the voyage across the Atlantic Ocean played an important part in widening the plane of sympathies for transportees. At sea, they were at the mercy of the weather and the ship’s captain and crew. William Green, a young transportee, explained that once he was out to sea in 1762, he was finally allowed to go above deck. He then realized the severity of his situation, as the sight of the ocean and vessel confirmed that he brought himself “to a scene of misery.” Another transportee wrote about the hardships experienced during the voyage to the West Indies. He lamented, “there are none in any Party whatsoever, that have their Minds so far hardened with uncharitable and barbarous Notions, as not to be sensibly touched with the Inhumane Treatment of their misfortunate Countrymen.” Once they were aboard their valuables were taken, and they were “cast into Irons, which in Twelve Days Space did eat their Way into our Bones.” Drawing attention to bodily torments, he asked the recipient to “imagine what a torturing Pain it was for us to lie in that Condition, without the least Ease in the World, for Ten whole Weeks.” He described that once ashore, the men there “treat us as if they were divested of all Humanity,” and he implored the reader to talk to “our compassionate Countrymen” with “tender hearts” in order to offer “something for my Deliverance.” Here, the nameless writer begs the reader to imagine the severity of his condition, and he used humanity to show the absence of moral probity toward human beings. He hoped it would be enough to persuade others to offer him some form of relief.

61 William Green, The Sufferings of William Green, Being a Sorrowful Account of his Seven Years Transportation (London: J. London, 1774), 5.

62 “The Substance of a Letter from one of the Prisoners Who Were Transported from Liverpool to the West-Indies: Being a Short Account of Their Miserable Circumstances, and the (Hitherto) Unheard of Severities They Undergo” (London: s.n. 1716), Library Company of Philadelphia.
In works circulating throughout the British Atlantic World, transportees and observers described the punishment as dehumanizing, one that was akin to the treatment of animals. Arriving in Maryland, William Green described his grim experience and used similes regarding animals to explain the treatment of malefactors. Once he arrived, all the transportees were put in chains and “drove in lots like oxen or sheep” to be sold as convict servants. A number of prospective colonial buyers, he explained, “search us there as the dealers in horses do.” The buyers examine their limbs and teeth to assess their health and ensure they would be able to perform the intended labor. In a poem by James Revel, he too discussed the harsh treatment of convicts as well as that of enslaved people, and he compared his condition with that of horses and sheep. He recalled that after “Our faces shav'd, comb'd out wigs and hair, That we in decent order might appear,” some of the potential buyers “view’d our limbs turning us round, Examining like horses if we were sound.” Years later when his owner died, a planter purchased the enslaved people on the plantation but not the convicts. Revel recounted that “But no transported felons would he have, So we were put like sheep into the fold, Unto the best bidder for to be sold.” These narratives encouraged readers to visualize an animalization of offenders to draw sympathy for them and to warn people against engaging in a life of crime.

The accounts also draw attention to notions of the humanness of the body, focusing on tears and bodily torments when describing penal servitude. Green was “stripped” of his clothes

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63 James Revel, *The Poor Unhappy Transported Felon’s Sorrowful Account of His Fourteen Years Transportation at Virginia in America* (London: Printed and Sold in Stonecutter Street, Fleet Market, 1780). There is some debate on the chronology and authenticity of Revel’s account, yet it still conveys some of the conditions that convicts likely experienced. See Ekirch, 99-100 fn1, and John Melville Jennings, ed., “The Poor Unhappy Transported Felon's Sorrowful Account of His Fourteen Years Transportation at Virginia in America,” *The Virginia Magazine of History and Biography* 56:2 (1948): 180-94.
and given “lousy rags” in their stead. He “cried aloud, and wept” but he “had no fond mother to comfort” him or “friends to pity” him. He linked his bodily torments to his local attachments in order to have readers visualize and empathize with his “scene of misery.” He served his term with a fellow convict, Anthony Atkinson. Upon having the chance to serve a Captain who could possibly offer Green passage to England after his servitude, Atkinson “weeped bitterly” because of their upcoming departure. Serendipitously, the two would later be reunited, but Green reflected that at the time, “the reader may easier conceive our grief at parting then I can relate it.” The images in his narrative represent the social distance between punishment and the happiness evoked by friendship and local attachments (see Figure 4).\(^{64}\)

![Figure 4](image.png)


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\(^{64}\) Green, *The Sufferings of William Green*, 6, 9, 11-2, quotations on 6, 9.
As the Old Bailey Court records show, when offenders faced capital punishment, the Ordinary of Newgate prison – the prison chaplain – reported malefactors’ last words, including their sorrows, regrets, and confessions. He also noted their remorseful weeping for evading their punishment, including dodging their sentence of transportation or returning from the colonies prematurely. John Pritchard found himself facing execution after he received a sentence of transportation and then broke out of jail. He was to be transported for stealing food and property: bottles of cider, a glass, goods, “2 pieces of beef, one piece of pork, a pan of butter, and a cheese.” The ordinary reminded readers that this should be an example to all to accept one’s punishment, as it was “not merely by human, but ultimately and really by divine authority.” The chaplain continued, “How often did he wish with tears, that he had quietly submitted to the lenity of the law in allowing him transportation?”

These accounts were sold street side around the time of an offender’s hanging. With these accounts, the reader could learn more about criminals’ pasts while the ordinary earned a profit. With these, the ordinary accounts also served a moral purpose by showing the consequences of succumbing to sin and a life a crime, and tears implied regret and moral failings.

Along with accounts lamenting bodily sufferings, convicts and other contemporaries remarked on the parallels of their punishment with a form of enslavement. There were, of course, clear legal and cultural differences between perpetual chattel slavery and convict servitude.

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65 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 02 March 2018), Ordinary of Newgate’s Account, October 1757 (OA17571005). Pritchard, who served in his “majesty’s service” in the east Indies, maintained that he stole “thro’ want and necessity,” but the Ordinary responded “But surely, this is a very weak and groundless pretence, while there is so great a call, and so much encouragement for his majesty’s service.”

66 Linebaugh, 89.
Recently, historians have argued that while there were distinctions in forms of unfreedom, examining the variations of slavery and human bondage illuminates an intricate system of Atlantic “‘slaveries.’” Using this analytical framework, we can understand how people understood forms of bondage and how they informed early efforts to justify or alter labor institutions. A transportee sentenced to death for returning prematurely, Stephen Delaforce claimed, much to the ordinary’s suspicion, that “the Lady he was Slave to” had granted his freedom. People in the early modern era had long thought about and conceptualized the word “slavery” as a situation that lacked political liberty, and contemporaries also likened it to the punishment of convict servitude to claim an unjustified devoid of liberty. Thomas Talbot “did not long remain in the Station of a Slave in Virginia” before he escaped to Boston. In 1721, a returned transportee, Henry Woollford claimed “he had just Reason to come Home; because the Law was not…that they should be in such a manner sold for Slaves, which was worse than Death, being Christians by Baptism.” Woollford distanced himself from slavery on the basis that

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68 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 03 March 2018), Ordinary of Newgate’s Account, October 1720 (OA17201026).


70 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 03 March 2018), Ordinary of Newgate’s Account, June 1751 (OA17510617).
he was a Christian and therefore, undeserving of such a punishment. Having “just Reason” suggests that he found the punishment illegitimate because it resonated with a form of slavery.\footnote{Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 01 March 2014), Ordinary of Newgate's Account, April 1721 (OA17210403).}

Some offenders implored the courts to be punished inside their own country, and others even requested to be hanged instead of transported. In 1735, Edward Williams begged the court, “I hope for Mercy in the Kingdom of Heaven. But for Christ's Sake! for the Lord Jesus Sake! let me have my Punishment in my own Country.”\footnote{Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 30 August 2015), September 1735, trial of Edward Williams (t17350911-50).} Philip Gibson, on the other hand, refused to ask for a pardon, arguing that “he had rather die than live.” His friends apparently tried desperately to get his sentence commuted, but he did not bother to thank them as “if he lived he should only be a Burden to himself and them.”\footnote{The Boston Weekly News-Letter, 5 December 1751; Some offenders asked for alternative punishments, including whippings or military service in place of banishment. For a convict who underwent the amputation of a limb in exchange for his freedom see Newport Mercury, 25 July 1763. A few even volunteered for medical experiments. In 1721, medical researchers performed smallpox experiments on six convicts, and the latter would receive pardons in return. See Ekirch, 62-63.} A coin counterfeiter confessed to the ordinary that “he should not value a Reprieve upon his own Account, for the being a Slave abroad was no way preferable, in his Opinion, to Death.”\footnote{Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.2, 04 March 2018), Ordinary of Newgate's Account, May 1725 (OA17250524).}

At the same time that Anglo-American counterparts learned more about the problems and hardships endured by British transported convicts, the extant historical record offers a glimpse of the sentiments expressed toward colonial offenders during the pre-Revolutionary period. In 1735
in Pennsylvania, judicial authorities sentenced Cornelius O’Brien and Edward Fitzgerald to be executed for burglary. The two petitioned for the “Governor’s Compassion” so they would be spared, and the “Sentiments of the Board” were requested to judge their plea. The Board decided that Fitzgerald would be reprieved with the condition that he “leave the Country.” O’Brien “seemed to be more practiced in such crimes,” and because of his criminal past, he “should suffer the Sentence of the Law.” Yet, the Chief Justice discussed the case with the governor, and it was decided that both would be reprieved and “sent out of the Country.”

In 1732, Rudolf Mohr landed in jail for three months after striking “a Blow on the Face” to another man. The latter ended up dying, but it was suggested that he passed due to a fever brought on by his drinking and not from the injury. As a prisoner, Mohr had “nothing to subsist on” and pleaded that he would likely “perish.” He wished for the Board’s “Clemency” so he can have “such Relief.” The petitioner’s friends had long encouraged him to return to his homeland in Germany, and in light of this “accidental Quarrell” the Board determined that he would receive a pardon so “that he may be at Liberty to prosecute his Design” and return to Europe.

In Philadelphia, criminals who were poor and could not pay fines could face banishment as a possible outcome. The Minutes of the Common Council of the City of Philadelphia are littered with accounts of criminals who could not afford court fees and the Council resolved that many must depart the city as a result. In 1751, the Mayor’s Court convicted Prudence Sherrald with running a disorderly house. Petitioning that she could not afford the £5 fee, the Board took

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into account “her Poverty” and resolved the fine if she left the province immediately.\textsuperscript{77} Henry Rawlings could not pay his fines, and he had “suffered a long Imprisonment.” The Board decided to resolve the fee if he gave bond, “departing from this Province to some Place beyond Sea.”\textsuperscript{78} These records show us that courts authorities deemed the criminal poor who could not pay their fees as unworthy of living in the city and to prevent them from being a social or financial burden, they banished them from the area.

**Immoral Contagions and Early Efforts to Alter the Convict Trade**

With the growing Atlantic system and the expansion of forms of labor, colonial elites, planters, and lawmakers developed a mentality regarding ways to protect other colonists and laborers from criminals, and they often argued their platform on moralist terms. Colonial planters and other elites like William Byrd II, Charles Calvert, and Benjamin Franklin all commented on convicts as immoral and problematic people, unworthy of the second chance in life or labor. Contrary to many colonist arguments about convict recidivism in the colonies, the proportion of convicts who were indicted for illegal acts was probably small. Although concerned colonists believed that more convicts committed crimes than likely did, the former defended their moral priorities and distanced themselves from these penal laborers by drawing attention to their

\textsuperscript{77} Minutes of the Common Council of the City of Philadelphia, 1704-1776 (Philadelphia, PA: Crissy & Markley, 1847), 561.

\textsuperscript{78} Minutes of the Common Council of the City of Philadelphia, 658.
immorality and lack of humanness.\textsuperscript{79} The possibility of convicts colluding with enslaved people troubled a number of elites and over time, they increasingly associated these two groups of coerced laborers through law. Authorities also discussed morally appropriate ways to punish other malefactors, like vagrants, already living in the colonies. For planters and elites, imported and domestic criminals were immoral contagions that would commit new crimes and persuade other orderly colonists and unfree laborers to join them in their criminal escapades, disrupting social order and undermining authority. Disparaging the convict trade meant that colonists must elevate their own moral standing through law, status, and discourse, and some colonists believed that they would perhaps be the most persuasive using moral rhetoric to justify further efforts to legally control offenders and prevent social unruliness.

Over the first half of the century, American colonists increasingly discussed convict moral character and their potential for recidivism. In 1740, William Byrd II complained that transportees discouraged the immigration of honest people and crossly asserted that these laborers were the criminal contagions to “mankind,” deeming them moral outsiders. Penal hard labor on public works, he contended, rather than transportation and servitude, was a better punishment as it would benefit society and discourage other potential malefactors.\textsuperscript{80} Reverend Hugh Jones noted that shippers brought in convicts, and “abundance of them do great Mischiefs, commit Robbery and Murder, and spoil Servants, that were before very good.” In


\textsuperscript{80} William Byrd to Mr. Smith, September 6, 1740, in \textit{The Correspondence of the Three William Byrds of Westover, Virginia, 1684-1776}, ed. Marion Tinling (Charlottesville, VA: The University Press of Virginia, 1977), 2:556-7, quotation.
1725, Charles Calvert explained to the Maryland Assembly that if purchasers did not give the additional sureties legally required for convicts, they “were to have their Servants put in prison, [and, therefore] their property would thereby Certainly be invaded, which is an Evill, to be avoided.” He expressed how he wished traders would not sell them in Maryland, yet “while we purchase they will send them, and we bring the Evill upon ourselves.”

In 1751, Benjamin Franklin published a scathing denouncement of the convict trade, which spoke to the diminishing morality transportation engendered. He recalled that colonial assemblies could not write laws abolishing or mitigating transportation because of the metropole’s reasoning in “That such Laws are against the Publick Utility, as they tend to prevent the IMPROVEMENT and WELL PEOPLING of the Colonies.” He explained that regarding domestic criminals, “we put to Death, by Virtue of an old Law,” but this he suggested “is a sanguinary Law, and [it] may seem too cruel.” Perhaps then, the colonists should change the death penalty to transportation, as convicts “may possibly change their Natures, if they were to change the Climate.” The problem, he went on, was that “these Thieves and Villains introduc’d among us, spoil the Morals of Youth in the Neighbourhoods that entertain them, and perpetrate many horrid Crimes: But let not private Interests obstruct publick Utility. Our Mother knows what is best for us.” Therefore, he concluded that domestic criminals, “Rattle-Snakes” as he called them, “seem the most suitable Returns for the Human Serpents sent us by our Mother Country.”

Here, without the ability to legally regulate the trade, elites and planters drew on

81 Jones, 53-4, quotation on 53; Proceedings and Acts of the General Assembly, 1724-1726 (1725), 35: 324-5, quotation 325 in AOMO.

convict depravity and reformist critiques to advocate for more legal power to manage this form of labor.

A writer with the pseudonym Publicus – so named to connote the public good – penned one of the most scornful reports on the trade and applied to readers’ sense of benevolence to change the punishment. In 1753, he asserted that the colonies received “Thieves, Burglars, Pick-Pockets, and Cut-Purses, and a Herd of the most flagitious Banditti upon Earth.” He explained that the colonists were “Members of the same Body Politic, and therefore entitled to equal Privileges” as other people in England. “If so, how injurious does it seem to free one Part of the Dominions, from the Plagues of Mankind, and cast them upon another?” The English hesitated in migrating to the colonies, he argued, not because of the journey itself or the distance between themselves and their familiars, “But from the shocking Ideas, the Mind must necessarily form, of the Company of inhuman Savages, and the more terrible Herd of exiled Malefactors.” Similar to the proposals for coercing the needy to labor in the colonies, he called for sending the “honest Poor” instead of convicts, as European men and women go hungry with their meager wages and burden their parishes. He called for someone to implement this plan; the individual who would do so “would immortalize himself, for a Lover of Mankind.” Here, he used “Lover of Mankind” to advocate the benevolence as well as the moral prestige in creating such a seemingly charitable plan. In an addendum attached to the essay, he requested colonial magistrates to better regulate convicts and he reminded them it was not long ago, “one of your own Body, in Execution of our Laws against Vagrants, made all the Search in his Power, for suspected Persons in his particular District; intending to banish them from us, or secure us in some Measure against them.” He then
declared, “let the Search be universal, and often repeated, and the whole City purged of all its Delinquents.”

While the records do not support the argument that convicts committed significantly more crimes than other colonists, there certainly were occasions of recidivism. The *Pennsylvania Gazette* warned that Joshua Dean had been sent to the colonies for life because of his counterfeiting. A servant to Alexander Spotswood, Dean was a “very sly artful Fellow, discourses well upon most Subjects of the Mechanicks, and is a Jack of all Trades.” Spotswood warned that “the utmost Care will be taken to keep him closely to honest Labour, to prevent so dangerous a Fellow from injuring the Publick: For he is said to be a great Artist at Coining, and to have often Slipt his Neck out of the Halter, by breaking Goal.” Crimes in which convicts colluded with each other were even more costly. In 1740, a convict who was once a schoolmaster escaped with three others, and with his literary skills, he could forge passes for the group. In an

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84 *Pennsylvania Gazette*, 22 June 1738.

85 *American Weekly Mercury*, 19 June to 26 June 1740, 3; Crimes of collusion did not always benefit the assailants. Around 1740, John Jones planned to escape with John Gregory, a servant. After traveling to William Lewis’s house, they lied to the enslaved people there in order to convince them to hand over a bridle for one of the horses there. The two rode off, heading to Philadelphia. But, on the way the two had a falling out, and Jones told Gregory “damn You Ill Bid you fare well” and he rode away. The two were eventually caught, but not before Lewis, after learning of the scheme, rounded up three men to help him and rode off to find the horse and runaways. See Peter Charles Hoffer and William Scott, eds. *Criminal Proceedings in Colonial Virginia: [Records of] Fines, Examination of Criminals, Trials of Slaves, etc. from March 1710*
example of a serious violent crime, John Hescock confessed to killing his master with an axe. When the court questioned his reason for doing it, he blankly said, “None att all that I knew of.” Some convicts reportedly harmed themselves so their owners could not force them to toil. A convict in Maryland went into the house of his Mistress to murder her with an axe, but he allegedly had a change of heart after seeing her; violently, “he laid his left hand on a Block, cut it off, and threw it at her, saying, Now make me work, if you can.” He presumably escaped to Philadelphia where he lived his life as a beggar. Crimes like these represented violence, collusion, and deceit, encouraging planter efforts to better control laborers, and the latter example reveals how convicts could slip into situations of beggary.

While convicts held a separate legal status from African slaves, they frequently performed similar laboring tasks and their accounts detailing their work abroad provided insight into the work of both convicts and enslaved people. Alongside the growth of African slavery in the eighteenth-century Chesapeake, convicts provided another source of labor (see Figure 5). When one convict sent to Jamaica learned that there was no need of his trade skills, “he was put to Hoeing, planting Tobacco, and all the Hardships that the Negro Slaves endured.” While providing moral instructions and warnings, the Newgate chaplain’s accounts, like this one, gave

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86 Hoffer and Scott, 94.

87 Pennsylvania Gazette, 11 April 1751.

ordinary Londoners valuable insight into how both convict servitude and early systems of African slavery worked in the colonies. 89

Figure 5. Snuff handkerchief (detail) England, plate printing in blue on linen, 1770-1785. The corner of the handkerchief shows a convict servant in jacket and long trousers, banished to America to work alongside a slave in the tobacco fields. Source: Colonial Williamsburg Foundation (1950-104).

The problematic nature of convict servitude and possible collusion with enslaved people fueled colonists’ sentiments on moral corruption and human bondage. A Maryland Grand Jury in

1723 fretted that convicts would convince other servants and enslaved people to convene in “the same Wicked Practices.”

In a letter from Maryland, the writer stated that not only does “the Breed seem to thrive among us,” but “other Servants and Negroes,” as well as children “are corrupted and spoilt.” By the mid eighteenth-century, the problem with coercion and collusion became more pronounced. In Virginia, Councilors Thomas Lee and William Fairfax argued that in regards to the labor force, “as it has been truly said that Freedom wears a Cap that can without a Tongue call together all those that long to shake off the Fetters of Slavery, when the Imports of Convicts under these Encouragements are sufficiently increas’d who are wicked enough to join our Slaves in any Mischief.” Here, the councilors warned against the growing number of convicts and the possibility of unfree laborers criminal activity, which would likely “bring sure and sudden Destruction on all his Majesty’s good Subjects of this Colony.”

Over the course of the century, colonial lawmakers and planters stripped convicts of rights, like the prerogative to testify in court (unless against another convict) and freedom dues. They legally associated them more closely with the legal status of enslaved people (see Chapter 1). The legislature used language here to artfully berate the corrupted morals of those unfree laborers, justifying their...

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90 Presentment of the Maryland Grand Jury, April 1723, Provincial Court Judgements, 1722-24, 132, Maryland State Archives PL 7.

91 Virginia Gazette, 30 May 1751.

92 H. R. McIlwaine, ed., Legislative Journals of the Council of Colonial Virginia (Richmond, VA: The Colonial Press, Everett Waddey Co., 1918), 2:1034-1035; During the middle of the century, colonial lawmakers and planters stripped convicts of rights, like the prerogative to testify in court (unless against another convict) and freedom dues. Atkinson, 101; Also see Legislative Journals of the Council of Colonial Virginia, 2:1034-1035.
reasoning for offering convicts fewer legal securities as the century progressed and elevating themselves as moral administrators.

In the middle of the century, people drew starker distinctions between free people and coerced laborers, casting them even clearer as moral outsiders and creating new modes to enforce labor. In 1749, a petition from a group of women called The Petticoat Club, reminded readers that the strength of a society comes from its population, but they explained that, “We don’t mean such Inhabitants, transported Convicts or Slaves” but “free born Natives.”\(^9^3\) Fears of immigrants and potential for crimes seemed to actuate in “self-fulfilling prophecies.” One study on Richmond County, Virginia shows that from 1711-1746 servants received most of the reduced sentences, and evident in the Richmond County Order books, authorities charged them with over half of all case of theft and property crimes. These records show a number of cases relating to disorder concerning runaways, vagabonds, and servants, and convicts may have exacerbated concerns about all servants.\(^9^4\) In 1751, Philadelphians worried about servants, enslaved people, and vagrants colluding. The writer announced that free and enslaved people have been wandering the city and “have taken House, Rooms, or Cellars, for the Habitations, where great Disorders often happen, especially in the Night time; and Servants, Slaves, and other idle and vagrant Persons, are entertained, corrupted and encouraged to commit Felonies, and other mischievous Offences.” These activities were a “great Annoyance and Danger” and had already proven to “manifest Injury and Damage of the honest Inhabitants of the City. To the End

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\(^9^3\) *The Boston Evening Post*, 17 April 1749.

\(^9^4\) Hoffer and Scott, xxxiv and fn88, quotation fn 88. The ratio of servant thefts and property offenses was based on the court order books and Richmond Criminal Proceedings.
therefore, that all Persons may pay due Obedience to the good and wholesome laws of the Province, enacted for the Security of the People against such Evils.” As a result, this announcement informed readers to be aware that if a free black person was not employed and wandering the city, magistrates could punish them with a term of service “from Year to Year, as to them shall seem meet.” Authorities drew attention to this criminal and moral problem and created new legal routes to coerce Africans to labor as a result.

By the middle of the century, problems with convict servants and potential collusion with enslaved people circulated in newspapers, law, and discourse, and Britons engaged in new legislative efforts and debates about how to properly punish offenders. Postwar demobilization and unemployment left many men with little money or with debt, and some resorted to stealing to survive. For many British elites, the fact that there were proposed alternatives for demobilized men to find work likely made them perceive their plight as less of a social problem and more a feature of the unruly, immoral, and idle poor. These social ills endangered property and social peace and discouraged wage labor. In response to some of these anxieties, Parliament introduced the Murder Act in 1752, which allowed judges to order certain guilty offenders to execution within two days of their sentencing, narrowing the time offenders could appeal. This measure aimed to incite the terror of the gallows and discourage potential malefactors, but it did not solve the crime problem. In fact, during the 1750s and 1760s, merchants carried more transportees than in previous decades, and in 1766, Scotland gained the same legal provisions for transportation.

95 Pennsylvania Gazette, 5 March 1751.
The convict trade served as a safety net for the crime problem, an advantageous outlet to remove malefactors.96

Other substitutes for transportation drew condemnation for their lack of proportionality. In 1752, Parliament debated proposing a bill that would offer hard labor on domestic docks instead of transportation for some offenders. However, this punishment did not sit well with all contemporaries, and the bill never passed through the House of Lords. Some Britons detested the idea of using malefactors instead of law-abiding workers. The Gentleman’s Magazine reported that if felons were confined to work in the dockyards, they would “be distinguished from the artificers employed there by habit, chains, and other marks of slavery.” To “confine such persons to labour” was “even more severe than immediate execution!”97 The rhetoric here used to criticize the idea of domestic hard labor drew on displeasing parallels between convicts and enslaved people, and contemporaries remarked upon the injustice of a form of slavery for white convicts at home.

Some British judicial authorities and philanthropists directed their critiques toward the severity of transportation more pointedly, particularly for minor offenses. Henry Fielding, a well-


known writer and magistrate in Middlesex, commented prolifically on issues of crime and reform, blaming the maladaptive execution of poor laws and the immorality of “the ‘lowest sort of people.’” Fielding critiqued the failures of the judicial in detaining criminals and argued that “‘downcharging’” formal accusations and limiting pardons had reduced the punishment and the law’s terror. Further, in 1753, he explained that transportation for petty thievery seemed so harsh that few judges ordered the punishment. This suggests that some judges understood the severity of transportation and probably used their discretionary power to select the punishment they thought – or could justify – was morally fitting. Fielding argued that transportation for this offense needed modification. Even if offenders preferred to escape their own poverty through colonial servitude, it was more useful for the public to keep those willing to work at home. To Fielding, petty thieves should not wind up in the convict trade. Instead, he proposed that the punishment should fit the crime to prevent offenders and their families from feeling the heavy burden of poverty.98

Conclusion

Lawmakers passed the Transportation Act in 1718 with relatively little objection, but by the middle of the century, the issue had developed into an increasingly contentious moral problem on both sides of the Atlantic. New plans for convict labor, particularly by prominent Enlightenment figures, show that contemporaries considered forms of coercion as compatible

with English rights and argued that they were benevolent alternatives supporting the imperial project. Reform was not the primary purpose of transportation, but the new discretionary power to order this now institutionalized form of punishment gave court officials and other interested interlocutors a new platform to discuss punishment, labor, and morality. With wider discretion, court officials sometimes justified transportation with the language of reform, bolstering their decisions and their positions as moral authorities. Further, the subjectivity built into transportation and the punishment’s reputation for severity encouraged people to weigh in regarding their concerns about the practice, arguing against the usefulness of the punishment or proposing measures to alter or abolition this trade in unfree labor. Narratives of suffering played an important role not only in informing people of the difficulties of convict servitude, but it was an important early window into African slavery as well. The narratives drew attention to the human body, understandings of humanness, and severity of punishment. Colonial elites, like William Byrd II, lambasted the convict trade and collusion with other unfree laborers, and they constructed arguments regarding convict corruptibility, immorality, and humanity to alter the trade. The proposals for new forms of convict labor and discussions about the impact of the practice emerged in important transatlantic conversations, circulating the plastic understandings of slavery, punishment, and reform. Convict transportation and labor became an important mode to discuss shifting meanings of morality and proper treatment for human beings found criminal, and it created and contributed to the language of punishment and unfreedom that reformers would draw on when imagining and advocating for change in the Revolutionary era.99

99 Rozbiki, 45.
CHAPTER THREE

PENAL LABOR, SUFFERING, AND MORAL RESPONSIBILITY DURING THE REVOLUTIONARY ERA, 1763-1783

As “a perfect Stranger, and entirely Friendless,” Cutface Tom became a deceitful, heinous felon. Before 1770, he stole a horse in South Carolina and galloped off to Georgia where he attempted to sell the steed. Alas for this thief – whose real name was Thomas Jones – authorities eventually caught him and found that there were several other indictments against the offender. In Georgia, Cutface Tom received a harrowing death sentence for his crime. Probably desperate, he petitioned to commute his sentence to the punishment of transportation in order to save his life, but to no avail. Fortunately for him, Johann Joachim Zübly, a Swiss minister of a Presbyterian Church in Savannah, took an interest in his case and attended the offender while he waited for his penalty. He became troubled by the impending execution. “His desire to save the life of a fellow creature” encouraged him to dig deeper into alternative ways to help the offender. Before the sentence could be carried out, Zübly found a loophole in the law: Cutface committed the crime in South Carolina, where first-time horse-theft was not a capital offense. Because the prosecution, and not the crime, was carried out in a different province, Chief Justice Antony Stokes and Governor James Wright decided to give mercy to this undeserving offender. “The Governor, Council, and Chief Justice, were all unwilling to wound the Constitution, for the sake of getting rid of a Man whom nobody thought Innocent, and therefore Tom was from mere necessity pardoned, on Condition of Transportation.” With
such a notorious reputation, a long time passed before a shipmaster finally agreed to take the felon “beyond [the] sea.” Once authorities finally brought Cutface Tom on board a vessel, he jumped off the ship and made his daring escape. People mulled over the justice of selecting a pardon with the condition of transportation for this offender, and one writer argued that the Chief Justice in the case “showed a tenderness where the life of a man was in question [and was] proud to be ignorant of the method of putting men to death for convenience.” The writer affirmed that the punishment was a testament to the justice and fairness in colonial legal practices, and “no man, who has any regard for the laws or liberties of his country will complain of Jones’s pardon.” Jurors had a responsibility to the people, and “ought to be the Guardians of the Lives, Properties, and Liberties, of their Fellow Subjects.” When it comes to administering justice, there will be no regard “of persons of what rank, nation, or profession, soever; and that the meanest subject, however unconnected or unknown, (as was the case with Jones) will not be sacrificed to answer any particular end.”

By the second half of the eighteenth century, transportation – the penalty Cutface Tom faced – and convict servitude evoked new discussions as well as contradictions regarding punishment, life, unfreedom, and moral responsibility. The rhetoric in the case above shows an emerging notion that law, justice, and mercy should be applied ethically and evenly, regardless of wealth, employment, or national origin. The language here shows contemporaries inching closer to more inclusive notions regarding human welfare and dignity. Scholars have asked just

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why and how early modern people became so deeply concerned with other human beings who were not a part of their class, race, family, or religious communities. We know the movement of humanitarianism developed in the late eighteenth-century in the U.S. and Europe, but just how and why is still a matter of debate. Thomas Haskell has notably argued that long-distance markets played an important role, while others have spilled a lot of ink on abolitionists’ important work to halt the brutal practice of African slavery. More recently, Margret Abruzzo has argued that the shifting notions of pain, particularly in the debates on slavery, spurred early humanitarian activity. Important as these early developments were, they were part and parcel of the larger story of the rise of humanitarianism. Changing ideas about punishment and labor, particularly control over one’s personal mobility, played a key role in transforming moral thinking in the British Atlantic World. Examining this important change in eighteenth-century people’s morality can look misleadingly simple: moral rhetoric relied on basic assertions about pain and these assertions should be evident to all morally upright people. However, moral claims on unjust suffering drew on notions of suffering selectively; contemporaries relied on shifting ideas of unnecessarily severe pain, as well as the contention that humans were responsible for pain and have an obligation to alleviate it. As Sara Knott and Amanda Moniz have suggested, the American Revolution was, among other things, both a political, but also a moral revolution in the ways people understood themselves and the humanness of others. Examining transportation and convict servitude, practices that comprised of people who were labeled with notions of blame, villainy, victimhood, and suffering, reveals how contemporaries utilized and employed moral rhetoric and transformed their moral thinking in regard to labor.2

2 Richard Ashby Wilson and Richard D. Brown, “Introduction,” in Richard Ashby Wilson and
Further, there is an important debate regarding the extent that humanitarianism shaped the emergence of penal culture in the British Atlantic World. Michael Ignatieff has argued that reform movements in England were not only used to meet class interests, but moralists were also driven by religious and humanitarian forces. David Rothman noted that the Enlightenment and the wave of intellectualism in the eighteenth-century contributed significantly to the development of the later penitentiary. On the other hand, Adam Hirsh has pointed out that the new penal movement was not revolutionary at all: reformative measures such as the workhouse existed in sixteenth-century England for example and became the model for the penitentiary movement to come. It is true, that from the point of the convict trade and labor, there was important rhetoric discussing reformation of offenders before the Revolutionary period. But the developments in the American Revolution led people to engage directly with these new contradictions and puzzling inquiries to change societal order, turn sympathies into action for the individual and public benefit, and manage violence and promote security. In what ways then did convict transportation and labor during the Revolutionary period shape ideas of punishment, morality, and unfreedom? Why and to what extent did people use moral rhetoric to

effect change to convict labor, and how did it contribute to the emergence of the developing humanitarian movement?³

This chapter examines the attitudes and developments regarding British and American practices of convict transportation and labor during the Revolutionary era. It argues that the moral discussions and discourse arising from this punishment expanded the sphere of human sympathy and laid the foreground for changing understandings of moral issues regarding liberties and natural rights in the Revolutionary era. Further, it shows that in an increasingly racialized society, convict servitude became an increasingly important practice that divided servants from enslaved Africans. This vector presented contemporaries with uneasy notions of unfreedom that ignited new discussions on moral responsibility, hitherto largely neglected by scholarship. Using British and American elite papers, legal sources, and public commentaries, the chapter is divided into three sections. The first part of the chapter examines the sympathies as well as revulsions expressed toward British transported convicts. The transatlantic circulation of humanitarian rhetoric was key, and the section pays close attention to notions of unjustified pain and bodily integrity. The second section examines the moral questions and quandaries articulated regarding convict labor and African slavery. The language of a severe

form of penal servitude raised awareness of the conditions of and drew attention to the practices regarding African slaves more directly. Coercion, in the form of unjustified and justified labor, has an important, yet uneasy place in prompting humanitarian thinking. The last section examines the transformation of American penal practices in the mid-Atlantic colonies, later states, and the moral justifications for new or failed policy changes. Importantly, the language of humanness and morality emerged and evolved with ideas on criminalization and punishment. Penal laborers were an increasingly important medium to talk about the welfare and ethics regarding those held in states of unfreedom. Convict transportation and labor then played a key role in the rise of the movement of humanitarianism in the British Atlantic World, spurring an increasingly collective commitment to improving the standards of communities and sparking people’s imagination as to how to better organize and order society.

Sentiments regarding Humanity and the Convict Trade

As labor became increasingly important in both imperial projects as well as social ordering, people on both sides of the Atlantic engaged with emerging accounts of severe suffering and argued over the ethical reasoning and uses of penal transportation and unfree labor during the Revolutionary period. Scholars are used to conceptualizing the American Revolution as a political war. Rhetoric arguing that equality and liberty were fundamental rights circulated throughout the Atlantic World. The idea of popular sovereignty became the new wellspring of political authority, and new ideological understandings of social relationships broke down older forms of subordination. Yet, the war – and indeed the Revolutionary period – was also moral revolution. As Sara Knott has aptly described, a “changing society involved changing selves.
And this was precisely why ‘sensibility’ was so important to the eighteenth century, and especially to the moment of revolution.” Transatlantic discourse about convicts showed shifting notions of sensibility, and these sources draw attention to offenders’ bodily integrity, deterioration of health, and loss of life. With increased knowledge about the trade, a number of Britons and colonial elites began to more fervently question the justice or efficacy of this punishment for all convicts, adding moral and humanitarian justifications to support their reformist critiques.4

After British courts sentenced offenders to transportation, the site of their deportation in Britain and onboard the vessel were spaces where onlookers witnessed convict sorrows and regrets, and they could imagine the difficulties of colonial life, one devoid of familial and local attachments. In one example, in 1766, 100 convicts left Newgate prison to board a ship heading for Maryland. One of the transportees had a fife, and as they walked along the vessel, the convict played a heart-wrenching, yet touching song, “Th[r]o-the-wood-laddie.” As he played, “his f[e]llow prisoners, as they walked to the water side…accompanied the side with their voices.”5 Others pointed toward the shock and cruelty in transporting offenders in chains. After boarding a ship, one observer exclaimed that “all the states of horror I ever had an idea of are much short of what I saw this poor man in; chained to a board in a hole not above sixteen feet long, more than fifty with him; a collar and padlock about his neck, and chained to five of the

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5 *South Carolina Gazette*, 7 July 1766.
most dreadful creatures I ever looked on.”

This visualization of “horror” and suffering struck this observer as too severe – hitherto, unimaginable to him.

Accounts of the voyage across the Atlantic drew attention to convicts’ health and mortality rates. An estimated fourteen percent died during the passage, largely due to the crowded, poor, and unsanitary conditions on the ships and in the jails. In one study, the death rate was more than triple that for German immigrants in Pennsylvania, which was four percent. In one instance, the Gentleman’s Magazine reported in 1768 that a storm drove a convict ship destined to Maryland all the way to Antigua. The “poor wretches” finally arrived “in the most deplorable condition, full of sores, almost starved, and cover’d with vermine.” Eleven died because of lack of provisions, and the others “had eaten their shoes” to stay alive. The account shows a tension between crime and victimhood, and it evokes a sense of pity for malefactors who had little control over their fates. Merchants, of course, had an economic incentive to keep mortality rates low; the more transportees they could sell, the more profits to be had. Still, some expressed what seemed to be an authentic sympathy toward convicts. Andrew Reid expressed

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that he was “grieved so many healthy young People die in the Voyage.” Here, the loss of life troubled Reid, remarking that he would do everything in his “power to prevent it.”

Merchants trading in convicts sought out ways to help improve the health of transportees. Colonists greatly worried about the spread of “‘gaol fever’” and other illnesses into the colonies. One newspaper account reported that when 150 prisoners came out of Newgate to be transported, there were “two carts loaded with sick, whose stench in particular affected many persons, and may probably produce a malignant disorder.” It seems that not all stories about convicts as the source of illnesses were true. In 1770, the Virginia planter Landon Carter wrote in his diary:

We have much been alarmed in this house about a Jail disorder brought into the Neighbourhood by Colo. Frank Lee’s servant bought from Somervill. The man has never been ill himself but only weak from imprisonment and a hard faring sea voyage. However every death that has happened in the neighbourhood has been imputed to that cause and many more that have not had it have been raised to strengthen the report from the frights and apprehensions of the women greatly cultivated by Bob Carter who brought one foolish story or another every time he went out and would not let me reason either to show the inconsistency or falsehood. I sent to Colo. Frank Lee and it is all turned out to a lie. There have been a few deaths but those owing to causes of another nature.

Regardless of the accuracy of these accounts, the circulation of information on convicts’ poor health exacerbated colonists’ fears and further reinforced the bodily detriments of both imprisonment and the voyage to the eastern seaboard.

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9 Ekirch, 82, 103, 82 quotation; *Providence Gazette; And County Journal*, 8 February 1772, 2.

In the 1760s, the colonies passed quarantine regulations which penalized merchants who brought sick convicts ashore. To mitigate the problem, Sedgley & Co. of Bristol added ventilators to increase air circulation, and the Stevenson, Randolph, & Cheston firm built new gratings and portals in ships. William Stevenson stated that the improved air circulation created by ventilators would be in fact insalubrious for transportees. “‘The Guinea Men’” did not use devices that provided better circulation, and Stevenson alleged that those ships allowed enslaved people to have a “‘more equal and moderate current of air.’” The company also began employing doctors for the passages. Of course, merchants wished to reduce morality rates, which in turn, would increase profits, but merchants sometimes expressed serious concerns for convicts’ welfare. James Cheston was particularly bothered by the moral issues regarding mortality in the business, and he nearly quit working in the trade because of it. Stevenson had to reassure him that all businesses had problems, and they would do everything they could to reduce morality rates. While Cheston does not represent all merchants, his disappointment with the trade encouraged Stevenson to affirm that they will do all they could to reduce the loss of life.11

Some interlocutors voiced their opposition to convicts’ poor treatment and health in their working conditions. Both convicts and African enslaved people composed of much of the laborers in Chesapeake forgeries, and the working environment there was brutal. While working at the Northampton furnace, an English surgeon, Randolph Hulse, quit his post because of the atrocious conditions unfree laborers endured. He explained to the owner, Captain Charles Ridgley, that his “‘Employment [was] adapted for those only whose Ignorance, Poverty, or trivial...

11 Ekirch, 107-8, quotation 108. Ekirch estimates that almost 5,000 people died in route to the colonies.
private Practice, will induce them to submit to the meanest Indignity, or the haughty mandate of some imperious Task Master Managers or Overseer.” Hulse derided American practices as too harsh and inhumane. He expressed that “acts of Cruilty have prevailed at some Iron Manufactorys as would extort a Blush from a Turkish Bashaw and he must possess a heart of stone and be deaf to every Sentiment of Humanity.” Here, the stone heart was figuratively non-living and emotionless. He used the term “Humanity” to show the needs of human beings and, attending to these sentiments would improve the conditions at hand. Hulse furthered his point with an account of circumstances a servant faced. He noted that one returned runaway servant endured a punishment of being shackled to a fifty-pound ball. When he made his escape once more, a manager beat the servant mercilessly, causing his death the next day. Hulse reproached Ridgely – who was a tepid patriot – that “what pity it is that One Quarter of the Glove Contending for Liberty should tolerate a wanton abuse of power.” Here, he pointed toward the contradictory calls for liberty by the Americans with the cruelty toward fellow yet unequal people.¹²

Certainly, not everyone expressed an emerging concern for transportees. In one case, a felon who was sentenced to transportation for robbery received a pardon. After avoiding deportation to the colonies, he later committed another robbery. One writer resolved that this “in some respect verifies the old proverb, *Save a rogue from the gallows, and he’ll cut your throat.*”¹³ British sympathizers derided Americans during the Revolutionary period by referring to colonists as convicts, collectively. In 1769, English author Samuel Johnson stated that Americans were “a race of convicts, and ought to be thankful for any thing we allow them short of hanging.” As the author of *Taxation No Tyranny* and opponent of an expanding empire, Johnson conceptualized Americans as backward and uncivilized people, and he mocked them, noting that their society included undeserving convicts.¹⁴

Even with these challenges to the system, the number of convicts and routes for transportation expanded. In response to England extending the institutional framework of the trade to Scotland in 1766, Benjamin Franklin gathered support to petition against both this act and the trade as a whole. In contrast to his 1751 newspaper account deriding the British practice of transportation, here he took more caution to present his case. In the drafted petition, he explained that convicts “corrupt the Morals of the Servants and poorer People among whom they are mixed,” and he argued that many escaped to other colonies where they “commit many

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Burglaries Robberies and Murders, to the great Terror of the People.” With transportation, Britain simply transported the problem from one part of the empire to another, which “cannot increase the common Happiness of his Majesty’s Subjects.” He petitioned for the abolition of the trade, but if this would not be done, then he wished that Parliament would refuse to expand the mechanisms of the trade to Scotland. He ended with a bit of mockery, suggesting that if the latter was to pass, then Parliament should allow the colonists to transport their domestic convicts to Scotland.15 He gave the petition to Richard Jackson, who only showed it to a few members as it still needed to be edited; however “it occasion’d some Laughing; but it was said, the Way to get the Transportation of Felons abolish’d, would be for all the Colonies to remonstrate against it.”16 Attitudes and practices regarding convicts were not uniform, and this example shows that abolishing the practice would require unity amongst the colonies.

The mid-century’s widely perceived crime problem in Britain drew strong criticism, particularly for minor offenses, and the Italian economist Cesare Beccaría’s tract, An Essay on Crimes and Punishments made an indelible mark on these debates. He condemned capital punishment – significant for reformist philosophies – and argued for proportional punishment for crimes. Heavily influenced by Beccarìa, the conservative jurist William Blackstone in the 1760s


noted that the purpose of punishment must be to correct criminal behavior and the punishment must fit the crime committed. The criminal law, he argued, should be based on “principles that are permanent, uniform, and universal” and should conform to “the feelings of humanity, and the indelible rights of mankind.” Here, the “rights of mankind” refer directly to human welfare and should not be divorced from the offender. He found that execution as well as “perpetual disability by exile, slavery, or imprisonment” should only be imposed if the offender is “incorrigible.” Blackstone argued that the king’s pardons, many of which were conditioned on offenders’ transportation, were meant “to make the offender a new man; to acquit him of all corporal penalties and forfeitures …and not so much to restore his former, as to give him a new, credit and capacity.” The troubled rapport between banishment and reform showed how misaligned the punishment was with these emerging notions of proportionality. If the law was to be executed with “feelings of humanity,” it would have to be reconciled with projected ideals and realities on the ground.

Many supported the notion that guilty criminals should be penalized, but it was the severity of the punishment of transportation, especially the mechanism of banishment, that elicited sympathy and criticisms in the culture of widening enlightened sensibilities. One writer using the name Pathopoiea in the *Felix Farley’s Bristol Journal* expressed the problems of transportation for two sisters condemned to the punishment. In 1774, he drew attention to the

younger one who would be “Banished from all her Friends, an affectionate Mother, and other 
Ties more tender, to a foreign Country.” The writer stated that the account should “naturally 
engage the interest of every benevolent Reader” promoting a “Sense of Sympathy.”¹⁸ The 
article’s title, “‘Happy are they who can feel for others Misfortunes’” gestures that not only 
sympathy, but empathy is the route to happiness to this writer. The author assures the reader that 
there is no “greater Blessing” than “Compassion,” what Pathopoiea distinguished as “truly 
divine Nature.” The younger transportee, whom the writer states as innocent, was overwhelmed 
and failed to plead her case effectively. But if she did, “Every Eye must have flowed at the 
pathetic Tale.” Pathopoiea stated, “let the Hearts of every benevolent Person 
plead for her in the 
Cause of Humanity.” Here, the writer urged readers to take action on the transportee’s account, 
perhaps through the petitioning process. Pathopoiea reserved this realm of succor only for 
“benevolent” people, a term the writer used to call to people’s good graces. The term humanity 
takes on the meaning to show fellow feelings regarding the human condition, one where people 
could and should aid deserving sufferers.

The obligation of the state to properly discipline offenders arose in reformist circles. In 
the early 1770s, lawyer Henry Dagge found that banishment for convicts was “very difficult to 
justify...on the footing of sound policy” because the sentence merely transferred the problem to 
another place rather than remedying it. To him, “death, imprisonment, or banishment” was in 
truth an act of “revenge, than a retribution,” as “the suffering of the criminal” does little good to

¹⁸ Felix Farley’s Bristol Journal, 16 April 1774. For a study examining petitions and their 
measures to prevent transportation, see Kenneth Morgan, “Petitions against Convict 
the offender or society. Sharing a similar outlook, the social reformer Jeremy Bentham argued that with banishment, “nothing can be more unequal than the effect which the change of country has upon men of different habits, attachments, talents, and propensities.” The system of transportation was understood to be “a very afflictive train of preliminary hardships” and brought a premature death to some offenders. The convict trade not only became more complicated to justify, but it also developed into an increasingly problematic humanitarian issue, one in which criminal reform needed to be addressed more directly and urgently.

Authorities continued to look for alternative labor projects for offenders that could be deemed more humane. The Earl of Halifax contemplated expanding convict transportation in order to decrease executions. Instead of using the traditional means of convict servitude, offenders could work on public works in the colonies for the benefit of the community, but when the Board of Trade searched for such a venture, they found that there were no projects there that provided “so desirable and humane purposes” without the supervision of the military. The distinguished jurist William Eden discussed banishment as a punishment at length. “At present, banishment is in England, as in Russia, more frequently inflicted as a mode of punishment, than

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permitted as an act of mercy.”²² He found that banishment benefitted the offender but not the community, as they have lost the transportee’s potential labor. He suggested a number of different schemes for public projects including the dock yards and salt mines. “The more enormous offenders might be sent to Tunis, Algiers, and other Mahometan ports, for the redemption of Christian slaves.”²³ Connections between labor, punishment, and reform became more apparent, and moralizing expressions served to separate and justify these issues in order to mete out what was expressed as just and appropriate punishments.

Eden was troubled by the death penalty as a punishment for returned transportees. Some of the offenders committed less serious offences. He questioned, “On the whole, is not such severity inconsistent with that leading principle, which forbids penal laws to attack the natural sentiments of the heart?” He reminds readers that if friends or loved ones have any correspondence with those deemed rebel who were sentenced to transportation, they could also face severe criminal charges. “In the wording of this clause, there is not any saving of even the most innocent interchanges of friendship. Shall then the lawgiver infringe all the ties and privileges of humanity? Shall he point the sword of justice against the bosom of fidelity?” To Eden, friendship and local connections were critical links and “privilege” was an important advantage of being a part of the human family. He then urged lawmakers to “Consult your own


²³ Eden, 28-9, quotation on 29.
heart, and inflict not chastisement on actions, which a good mind cannot disapprove.”  

Here, Eden invoked compassion to reduce the severity in the law.

Some fretted that communities abused the legal mechanism of transportation, shipping away many who did little to disrupt the peace. Joseph Massie, a political economist, explained that people believed that the law provided work for those in need, but the increase in foreign trade and industry drove a significant number of people into poverty. Thus, many regarded the unemployed as rogues or artful beggars. He explained that as a result of the economic and social conditions, many of England’s poor turned desperately to thievery or beggary just to stay alive, and consequently, they had a “Choice of Hanging, Starving, or Transportation.” Massie sympathized with the poor and elicited compassion in order to initiate legal changes to distinguish between criminals and the undeserving of punishment, the needy. He found that it was too “easy to convict” thousands of poor and jobless people because their parishes could not or refused to care for them. For Massie, transportation should only be used in the case when hard labor and the House of Confinement and Corrections failed to prevent multiple accounts of recidivism. Massie and Fielding displayed a heightened sense of proportionality in disciplinary action and urged for legal changes to modify the convict trade. Their use of moral justifications to articulate their frustrations showed that they wanted people to understand them as humble and perhaps sympathetic administrators.  

24 Eden, 28, 31-2, quotations on 31-2.  

Others offered more direct arguments condemning the trade because of its severity and inefficiency. In 1775 philanthropist Jonas Hanway called for the cessation of the trade and suggested that imprisonment take its place. He reasoned that the public lost many able hands through transportation and some malefactors avoided the punishment because of “the humanity of the judges and juries,” as the laws were notably too severe. Instead, he made a case for imprisoning offenders in order to correct their behavior and expressed that the punishment must be proportional to the offenders’ crimes. With so many lost due to execution and transportation he advocated that “we must become ferociously sanguinary, or more determinately humane and consistent.” Here, the loss of life and labor fomented great concern, and he argued it was better to alter the law to conform to compassion in order to preserve lawful adherence at home and maintain an appropriate labor supply. If Britons could not reduce violent and murderous criminal activities, their liberties would be a mockery to other nations, and they would “tell us, ‘you know not what humanity means!”26 What is more, Henry Dagge elaborated that convicts were “reduced to slavery in the Plantations,” and surely this was inefficient. Criminals should perform hard labor domestically, which would be advantageous to their communities. Perhaps only the worst criminals could be banished to Africa or the South Sea. Further, he explained that, “instead of being excluded from Society, [the offender] might, after forsaking the habitude of evil, at length be reclaimed.” Labor at home became an increasingly popular argument and

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contemporaries used humanitarian argument to push their political and economic agendas.\textsuperscript{27} In another example, transportation was considered “injudicious and impolitic punishment” not for the sake of the criminal, but the sake of the community. With merchants transporting malefactors, the “community do [sic] not profit by the example set them by his punishment, and he is dead to his country.” Transportation then was not an effective deterrent and established the offender as a moral outsider.\textsuperscript{28}

Although transportation was increasingly criticized, authorities could not agree on a suitable alternative for convicts. Colonists complained about the trade in “\textit{Human Serpents},” and offenders denounced their punishment as cruel and too severe. But by substituting transportation for domestic hard labor, authorities realized that they would tip the scale of moral disorder at home, and many were reluctant to give up transportation as the penalty for eligible offenders. In 1773, John Fielding reflected positively on transportation noting that it provided convicts with “a fresh opportunity of being an [sic] useful member of society, thereby answering the great ends of punishment, viz., example, humanity, and reformation.” Transportation was not an ideal punishment, but he resolved that it was the “most humane and effectual, punishment we have.” His assertions highlight the moral dimension associated with the debate on deporting malefactors, and his comments indicate that no other punishment would be as efficient or ethical in reforming criminal behavior. The concerns about transportation’s severity and proportionality

\textsuperscript{27} Dagge, \textit{Considerations on Criminal Law}, 2:183-5, quotations on 183 and 185.

\textsuperscript{28} William Smith, M.D. \textit{Mild Punishments Sound Policy: or Observations on the Laws Relative to Debtors and Felons, With an Account of the Frauds Practised by Swindlers, Sharpers and Others}. The 2nd ed., with an Appendix, wherein Hard Labour, Substituted in Place of Transportation, is Elucidated and Proved to be Sound Policy, and Profitable to the State (London: J Bew, 1778), 35.
suggest that there was a greater investment in understanding the relationship amongst punishment, morality, labor, and correction. It also suggests that there was an increasing legitimization of authorities’ legal and moral responsibilities to ensure the welfare of convicts and their communities. In the Age of the Enlightenment, authorities felt increasingly that they had to assess whether – or at least justify that – punishments were rational, modern, and in the moral interest of the community. During the imperial crisis, punishments that caused loss of life and unjustifiable loss of liberty came ever more under attack, and in the years to come, authorities on both sides of the Atlantic would increase measures to secure offenders’ reformation and control their labor, using humanitarian language to support their agendas.

Servitude, Slavery, Sympathy and Subversion

By the second half of the eighteenth century, the practice of convict transportation and servitude evoked new discussions on punishment, morality, and reform, and it overlapped discussions regarding African slavery in revealing ways. With the construction of a highly-productive Atlantic system in the eighteenth-century, men and women became more appreciative of labor as slavery further developed, thus more appreciative of laborers as the commercial economy burgeoned. Convicts maintained a different legal status than other unfree laborers and were not subjected to the harsh and painful racial prejudice experienced by enslaved Africans. Colonial records show that many convicts shared similar poor accommodations with other

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bondsmen and bondswomen, and they endured harsh working environments in the colonies. Poor food and clothing, disease, and maltreatment directly contributed to their difficult experiences there. Colonists purchased these offenders throughout the century, and the accounts of their punishment evoked sympathy for those banished and sentenced to terms of bondage. Interlocutors also evoked the punishment while discussing their stance for or against chattel slavery. Thus, as slavery became a “problem” among many Europeans and colonists in the late eighteenth century, as David Brion Davis aptly put it long ago, so too did convict transportation.  

During the Revolutionary era, people learned more about the brutal conditions for unfree laborers in the colonies, and some convicts compared their plight to a form of slavery to justify their wish for a death sentence rather than transportation. Rob Webber was pardoned with the condition of transportation, but he “made strong instances to be rather hanged, promising to make great discoveries were he permitted to die.” Although he revealed these “discoveries,” which were details of other crimes, he was transported regardless. He explained, “I had rather die than live under Bondage for so many years.” When John Read received an execution sentence for returning prematurely from transportation, he was grateful; he declared that “he would rather die than live a transport, as no man knew the misery of such a state, but those who felt it.” Read reported that he had planned to hang himself if he could not escape from “his slavery and


Here, Read portrayed his punishment as a form of slavery, one that was worse than life. Colonists of course used the rhetoric of slavery, liberty, and labor to push political agendas. James Otis, for example, argued that the colonists did not have “a power of surrendering their own liberty; and the people certainly never intrusted [sic] any body of men with a power to surrender theirs in exchange for slavery.” Convicts though drew on the language to defend their acts to avoid transportation. In another striking example, in 1768, one offender worried about working as a servant and “presented a petition to be hanged” rather than be transported. He stated that he would “rather bear strangling for a minute, than to make sugar all his life-time.” This suggests that not only was there quite a bit of knowledge as to how transportation operated, but it earned a harsh reputation over time – one that was sometimes worse than staying alive. Further, this information arriving in the hands of ordinary Londoners through ordinary accounts, perhaps offered a view of how African chattel slavery could have operated with such severity in the colonies.

Certainly, both convicts and enslaved people shared a stigma as forced laborers in the colonies, and elites pointed toward moral corruption evoked by these two forms of labor to draw class distinctions and implement more regulations. Landon Carter complained that enslaved people and servants took part in “night shops,” a sort of underground meeting for unfree laborers

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32 Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 26 April 2014), Ordinary of Newgate’s Account, June 1770 (OA17700604).


and poor whites to buy, sell, and exchange goods, many of which were presumed to be stolen. In 1772, Carter complained, “I cannot help observing how wise our Leg[isla]ture is never to lissen to my repeated letters in Public against allowing these night shops any being amonst us, and inclined Suffering a Slave or servant on any pretense or with licence from a master to sell to anybody anything whatever; for at best they must steal what they sell.” Here, he advocated for improving the laws, which he found too lenient to control these laborers. In his diary, John Adams noted that in Maryland, enslaved people and convicts performed so much of the labor there which “occasioned the Planters and Farmers to assume the Title of Gentlemen.” By regarding enslaved people, convicts, and all other laborers “in such Contempt, that they think themselves a distinct order of Beings.” In 1772, one writer exclaimed that Virginia hindered its own development, which is evident in the quarantine laws. Legislators created these laws “for the Preservation of our own Lives” as well as the enslaved people already living in the colony. The laws were in response, he continued, to the “Inconvenience waged against them by the Convict and African Trade, those two glorious Importations of Corruption and Slavery to every civilized People.” The writer found that these forms of forced labor were incompatible with a developed and cultured and sophisticated society.

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35 Carter, II: 649. These reported public claims are not found in the Virginia Gazette according to Jack Greene; Albert H. Tillson Jr., Accommodating Revolutions: Virginia’s Northern Neck in an Era of Transformations, 1760-1810 (Charlottesville, VA: University of Virginia Press, 2010), 141; Frederick H. Schmidt, “British Convict Labor in Colonial Virginia,” (PhD diss., College of William and Mary, 1976), 249.

The problematic nature of convict servitude evoked colonists’ sentiments regarding moral corruptibility of other unfree laborers and fears of insubordination and violence. In one Maryland letter, the writer argued that convicts themselves corrupted the morals of enslaved people as well as indentured servants, which provoked insubordination. Colonial legislators also sometimes legally grouped enslaved people and convict servants together. In 1765, Maryland passed a law in which “any Convict servant, Negro, or other slave” found off a plantation with a dog could receive up to fifteen “Stripes on his Naked Back.” This law not only reinforced convicts’ distinct and inferior status in the colonies, but it also coded colonists’ superiority over both criminals and blacks, elevating their own sense of moral worth and legitimizing separateness.\(^\text{38}\) Colonists disparaged convict servants and the trade and in doing so, they elevated their own moral standing through law, status, and discourse. Virginia’s 1769 law explicitly made convict servitude inheritable for all children born out of wedlock, which beforehand the law targeted mixed-race children (see Chapter 1). That legislation further demonstrated the colonies commitment to add new routes of unfreedom as labor became increasingly important and to solidify patriarchal order.\(^\text{39}\)

\(^{37}\) Virginia Gazette, 3 December 1772.

\(^{38}\) Proceedings and Acts of the General Assembly of Maryland, 1764-1765, 59:277, in AOMO.

The American Revolution eroded traditional notions of patriarchal relationships and authority, and it opened up new unprecedented options for imported convicts, servants, enslaved people to seek their freedom.⁴⁰ As tensions between the colonies and Britain exacerbated, the last colonial governor of Virginia, John Murray, 4th Earl of Dunmore, grew increasingly wary of disloyalty amongst colonists. In November 1775, he offered “freedom to all indented servants, negroes, or others (appertaining to rebels) free, that are able and willing to bear arms” against recalcitrant colonists.⁴¹ The American Revolution facilitated the breakdown of ideas pertaining to social hierarchy and more bound laborers decided to reject forms of unfreedom. Dunmore’s declaration of freedom for all laborers and the rhetoric of the Revolution pertaining to liberty informed bound laborers with new ways of thinking in regards to both equality and opportunity.⁴² Although historians in the past have noted the significance of this declaration for enslaved people as well as white colonists – elaborating on both racial divisions and white fears – they have not thoroughly emphasized its importance for all forms of unfree labor. In 1775, Thomas Blackburn worried that his servant, Baker Fullam, may have joined Dunmore’s lot, as he


⁴² Fogleman, 61-2.
“does not object to the colour or condition of any.”

Bound laborers, from all conditions of unfreedom, disrupted the rebel economy, and hundreds escaped to join Dunmore.

Colonial elites impressed convicts and domestic criminals as soldiers, and others warned of their potential for disloyalty and the ill effects of this practice. The Continental Army enlisted convicts sometimes to ensure the British could not get to them first. John Adams, wrote that “In the Middle States, where they had imported from Ireland and Germany so many transported Convicts and Redemptioners, it was possible they might obtain some. Let them try. I had no Objection: But I warned them against depending on so improbable a Resource, for the defence of the Country. Congress confessed the unanswerable force of this reasoning.”

Major General of the Continental Army Nathanael Greene wrote to George Washington in 1778 lamenting that he sent a small party to search for cattle, but they did not return. He imagined that the leading officer must have gotten lost or the group may have captured him and took him

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43 *Virginia Gazette* (Purdie), 1 December 1775.

44 Particularly alarming, sometimes servants and slaves escaped together. An enslaved person named Charles, accompanied by a white servant, found Dunmore’s offer exceptionally appealing. Although he was not reportedly mistreated, “his design of going off was long premeditated,” and had a “determined resolution to get liberty, as he conceived, by flying to lord Dunmore.” See *Virginia Gazette*, 17 November 1775.

45 Bezís-Selfa, *Forging America*, 143. Authorities purchased convicts to aid with the war effort as well. In 1777, the Virginia Council insisted that the Lieutenant Governor to purchase a convict servant who was a blacksmith for 50 pounds. He had five years left to serve and would be directed to the armorer, James Anderson “for the State.” See H. R. McIlwaine, ed., *Journals of the Council of the State of Virginia*, (Richmond, VA: Virginia State Library, 1931), 1: 490.

The practice of impressing domestic criminals or sending them to public works spread during the Revolutionary period. Robert Hudgins, for example, stayed in jail for horse theft, and when he became very ill, the jail keeper petitioned for his removal. The Governor pardoned “Hudgins, on condition that he serve three years in the Laboratory at the Point of Fork.”

George Washington worried about impressing vagrant men into Continental Army. He cautioned Major General John Sullivan: “I am informed a great part of Col. Moylan’s men have


48 Willer Hall, ed., Journals of the Council of the State of Virginia, (Richmond, VA: Virginia State Library, 1969), 3: 180. In another example, Peyton Isbell received the death penalty for horse-stealing, but in 1783 the Board advised to administer a pardon “on condition that he serve Seven years in the public Laboratory at the Point of Fork or in any other public Works.” See Willer Hall, ed., Journals of the Council of the State of Virginia, (Richmond, VA: Virginia State Library, 1952), 3: 209-10. A 1777 Maryland law declared “To favour the good people of the state as much as possible, every vagrant or man above 18 years of age, able bodied, and having no family, fixed habitation, or visible means of subsistence” could be enlisted as a solider. Hanson’s Laws of Maryland 1763-1784 Volume 203, 192. MSA, quotation. South Carolina passed a similar law. See Charles Patrick Neimeyer, America Goes to War: A Social History of the Continental Army (New York: New York University Press, 1995), 2. A Robert Drake petitioned to be discharged on the case that he was impressed mistakenly as a vagrant; he won the case. Journal and Correspondence of the Council of Maryland, April 1, 1778 through October 26, 1779 Volume 21, Page 107-8, MSA; Also see Journal and Correspondence of the Council of Maryland, April 1, 1778 through October 26, 1779 Volume 21, Page 115-6, MSA.
been raised in the city of Philadelphia, and are foreigners, and of the most vagrant kind. These men should not be employed for special purposes, where their fidelity would be eminently required.”

In 1777, Gabriel Jones, an affluent lawyer from the Shenandoah Valley, explained to Washington that he had trouble enlisting men in Augusta County. He explained, “for out of 5 Company’s that has been raised I have not heard of a single man of credit or property that ever inlisted Convicts.”

He continued, “Servants & Vagrants are what the majority is composed of so that we have Still in fact every man in the County we ever had whose Interest should oblige him to exert himself, but alas Sir, we have too many enemies among us the Seat of War is at too great distance from them.”

Here, Jones indicated that only unprincipled men would enlist convicts and vagrants.

As the war pressed on, the moral depravity of convicts was further connected with the destruction of society and even the undeserving loss of life. In one alarming account, in 1778, a former transportee, Francis Mercier, received the death penalty for the murder of a French jeweler. In 1773, British authorities deported him to Maryland for horse-stealing, and he avoided being sold into servitude once he arrived. After going in and out of prisons, he joined General Howe’s troops occupying New York City. The British commander eventually gave

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him control of the prison there, which led one writer to remark that, “the manner of discharging that trust was attended with the most glaring marks of inhumanity.” Under Mercier’s watch, several people died, and “The effects of all persons who died under Mercier’s care became his property.” Allegedly, he maliciously passed around “infected cloathes,” and 573 died people in five months. One writer reported, “One cannot but be grieved to find this wretch placed in a situation, where he was enabled to do such mischief, as to bring on this nation the imputation of inhumanity, which it will not easily efface.”

Mercier’s avoidance of punishment and justice combined with the gravity of his brutal actions in the prison, the writer indicated, should cause readers to be saddened that such a dangerous offender had the mobility to shame a nation.

When discussing their rights and liberties, elites and other interlocutors sometimes distinguished themselves from those considered fugitives and vagrants. During the Revolutionary period, colonists fiercely advocated for “all the liberties, rights and privileges, of his Majesty’s subjects in Great-Britain,” as the colonies had been “founded on the natural rights of mankind, and the noble principles of English liberty” thus they should be “perfectly free.”

In the wake of the Stamp Act, a remonstrance from the Virginia Assembly noted the

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51 “York-Town, May 27,” *The Norwich Packet*, 29 June 1778, 1, 4; Gwenda Morgan and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (New York: Palgrave Macmillan, 2004), 150-1. After arriving to the colonies, in a few days, he was suspected of poisoning the convict ship’s captain, “who had treated him with great tenderness.” After being set free for this offense, he allegedly robbed a shop in Baltimore and colonial authorities sentenced him to execution. Governor Eden pardoned him and banished the offender from the province. He eventually made his way north and worked as surgeon for the British forces that were in Boston. After the Battle of Bunker Hill, the Americans imprisoned him, but he escaped, just to later wind up in prison in New York. Once again, Mercier escaped and at the time Howe took over New York City, he joined the General.

injustice of taxing non-consenting colonists. “This Privilege, inherent in the Persons who discovered and settled these Regions, could not be renounced or forfeited by their Removal hither, not as Vagabonds or Fugitives, but licensed and encouraged by their Prince and animated with a laudable Desire of enlarging the British Dominion, and extending its Commerce.”

Unlike those defined as criminal, colonists could not and should not have their rights forfeited by displacement.

Quaker friends in London, Paris, and Philadelphia, including Benjamin Franklin, became increasingly concerned with practices of slavery, especially in the context of emerging notions of liberty in the colonies. Attributed to Benjamin Franklin, in a 1770 fictional work called, “A Conversation on Slavery,” Franklin described the viewpoints of an Englishman, American, and Scottish man to address the moral problems with slavery and other forms of coerced labor. Responding to the fictionalized Englishman’s critiques of colonial slaveholding, the American defended their own claim to natural rights as well as their commitment to liberty and freedom by arguing that many colonists do not own enslaved people and have worked to halt the trade.

“Supposing it then with that Gentleman, a Crime to keep a Slave, can it be right to stigmatize us all with that Crime?” These critiques in Franklin’s piece were in response to Granville Sharp’s 1769 work, *A Representation of the Injustice and Dangerous Tendency of Tolerating Slavery or of Admitting the Least Claim of Private in the Persons of Men in England*. Franklin and Sharp had been introduced to each other and years later, Sharp gave him copies of his 1774 work, *A Declaration of the People’s Natural Rights to a Share in the Legislature, which is the

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53 John Pendleton Kennedy, ed., *Journals of the House of Burgesses of Virginia* (Richmond, VA: Library Board, Virginia State Library 1907), lvi-lvii, quotation, also see pages 303-4.
Fundamental Principle of the British Constitution, to dispense in America. In Franklin’s “Conversation,” he further argued that many colonists are against the slave trade, as much as the abolitionist Granville Sharpe could be.⁵⁴

Amidst the growing opposition to slavery, Franklin’s “Conversation” addressed two important issues regarding morality and coerced labor practices. Regarding Franklin’s first point, the fictionalized American argued that European practices of coerced poor labor were similar to practices regarding African slavery. He argued that those colonists who do hold enslaved people, treat them decently – “with great Humanity” – and take care of them as English authorities do for their working poor. “Your working Poor,” the fictionalized American continued, “are not indeed absolutely Slaves; but there seems something a little like Slavery, where the Laws oblige them to work for their Masters so many Hours at such a Rate, and leave them no Liberty to demand or bargain for more, but imprison them in a Workhouse if they refuse to work on such Terms, and even imprison a humane Master if he thinks fit to pay them better.” Here, Franklin’s fictionalized American character spoke to the plasticity of how contemporaries could interpret the definition of enslavement.⁵⁵


His second point reminded readers that British laws and merchants created and developed the institutions of both African slavery and transported convict servitude in America. Franklin’s fictionalized Englishman noted that American laws governing white servants almost paralleled those for enslaved people in severity. The American defended that they needed those laws that seemed severe to manage intractable enslaved people. He then explained that while hired servants experience mild working conditions, “the Villains you transport and sell to us must be ruled with a Rod of Iron….We do not thank you for forcing them upon us. We look upon it as an unexampled Barbarity in your Government to empty your Gaols into our Settlements; and we resent it as the highest of Insults.” He argued that “If mild Laws could govern such People, why don’t you keep and govern them by your own mild Laws at home? If you think we treat them with unreasonable Severity, why are you so cruel as to send them to us?” Franklin’s fictionalized Scotsman chimed in noting that colonists could refuse to purchase them. If they “were not of a tyrannical Disposition,” and “if you had really a true Sense of Liberty, about which you make such a Pother, you would purchase neither Slaves nor Convict Servants, you would not endure such a Thing as Slavery among you.” In this context, buying forced laborers meant that colonists did not have a “Sense of Liberty” The American defended that the British forced them to repeal laws limiting the two trades. Practices regarding forced labor were increasingly seen as commodification “during Pleasure or during Life.” Those in forms of bondage were allowed the food and clothes owners allotted, which the latter was “contrived to be a distinguishing Badge of Servitude”; Mulford, 333-4.

The refusal to abolish the convict trade also led to the notion that there would not be immediate success in abolishing African slavery. In 1773, Franklin wrote to Richard Woodward, who had championed poor relief measures in Ireland, explaining how pleased he was that a number of people in Pennsylvania favored abolishing the institution of slavery and manumitted enslaved people. He explained that even Virginia requested the King’s permission to abolish slavery, but lamented that they would probably not be successful; if you look at Virginia’s attempt to abolish convict servitude, he elaborated, one could see that the former request will likely be rejected. \footnote{\textit{“From Benjamin Franklin to Richard Woodward, 10 April 1773,”} \textit{Founders Online}, National Archives, last modified February 1, 2018, http://founders.archives.gov/documents/Franklin/01-20-02-0094. [Original source: \textit{The Papers of Benjamin Franklin}, vol. 20, \textit{January 1 through December 31, 1773}, ed. William B. Willcox. New Haven and London: Yale University Press, 1976, pp. 155–156.].} “The Goal [sic] Distemper being frequently imported and spread in Virginia, by the Ships transporting Convicts, occasioning the Death of many honest innocent People there, a Law was made to oblige those Ships arriving with that Distemper to perform a Quarantine.” But this law, Franklin affirmed, was repealed because it hampered the merchants’ trade; the prerogatives of distant merchants supplanted those of colonists. \footnote{\textit{“From Benjamin Franklin to Richard Woodward, 10 April 1773,”} \textit{Founders Online}, National Archives, last modified February 1, 2018, http://founders.archives.gov/documents/Franklin/01-20-02-0094. [Original source: \textit{The Papers of Benjamin Franklin}, vol. 20, \textit{January 1 through December 31, 1773}, ed. William B. Willcox. New Haven and London: Yale University Press, 1976, pp. 155–156.].} Frustrations with the convict trade as well as imported African chattel slavery led colonists in Virginia to articulate a bolder refusal to accept either trade, as domestic slavery had burgeoned. In 1774, Surrey County
resolved “that as the Population of this Colony with Freemen, and other useful Manufacturers, is greatly obstructed by the Importation of Slaves and Convict Servants, we will not purchase any such Slaves or Servants hereafter to be imported.”\textsuperscript{58} The statement was a stark defiance to English law, further exacerbating imperial tensions.

A focus on the sufferings and sympathies evoked by the convict trade shows the way this early rhetoric informed discussions on African slavery. Christopher Brown has shown that the antislavery movement gained steam through the popularization of the eighteenth-century campaign, and John Donoghue has encouraged scholars to investigate how other forms of labor, such as the seventeenth-century practice of convict servitude, contributed to the early sentiments that condemned unfreedom.\textsuperscript{59} Eighteenth-century interlocutors used the convict trade as a didactic device to help illuminate the reasons why contemporaries, in the words of one observer, found that “the most wretched Slavery….would render the life of any humane man most miserable.” In the abolitionist Granville Sharp’s well-known work, \textit{The Just Limitation of Slavery in the Laws of God}, an extract of a revealing anonymous letter exposes the horrid disciplinary measures that enslaved people and convicts endured. The writer stated that the “punishments of the poor negroes and convicts, are beyond all conception.” In more detail, he elaborated that:

\begin{quote}
they are often punished for not doing more than strength and nature will admit of…One common punishment, is to flea their backs with cow hides, or other instruments of barbarity, and then pour on hot rum, superinduced with brine or pickle, rub’d in with a corn husk, in the scorching heat of the Sun. For certain, if your judges were sensible of the shocking treatment of the convicts here, they would hang every one of them, as an
\end{quote}

\textsuperscript{58}\textit{Virginia Gazette} (Rind), 21 July 1774, 3.

\textsuperscript{59} Brown, \textit{Moral Capital}; Donoghue, “‘Out of the Land of Bondage.’”
infinitely less punishment, and transport only those, whose crimes deserve the severest
death. Better be hanged seven hundred times, than serve seven years here.  

The extract, printed in the work of one of the most important leaders of the early
antislavery campaign, shows what the writer denounced as unjust pain and brutal physical
punishment meted out on unfree laborers in the colonies. It used both convict servitude and
African slavery to degrade the colonists as “savage and brutal masters” and to draw sympathy for
those in unfree conditions. Perhaps the author found that showing parallels of white convict
servitude would help readers better understand and perhaps empathize with the horrors of
African chattel slavery, a system he “abhor[red] and abominate[d].” He concluded that “If I had
a child, I had rather see him the humblest scavenger in the streets of London, than the loftiest
tyrant in America, with a thousand slaves at his beck.”

Bringing up the point that merchants used documentation in both the indentured and
convict servant trades, some antislavery advocates used the lack of a contract to argue against
African slavery. In a pamphlet, which also circulated in the newspaper, Philadelphian Richard
Wells recognized the significance of a few well-known arguments for the anti-slavery advocates.
He reiterates that in “In vain shall we contend for liberty, as an ‘essential [sic] in our
constitution,’ till this barbarous inhuman practice is driven from our borders.” All “inhabitants of

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60 Granville Sharp, The Just Limitation of Slavery in the Laws of God, Compared with the
Unbounded Claims of the African Traders and British American Slaveholders (London: Printed
for B. White and E. and C. Dilly, 1776), Appendix No. 2, 42-3.

61 Sharp, The Just Limitation of Slavery in the Laws of God, Appendix No. 2, 42-3; Brown,
Moral Capital, 93, 172-3, 175, 179-80. Brown notes that Sharp did not circulate materials on the
cruelty of slavery to evoke emotions, as that would deem the campaign as philanthropic. Rather,
he found it a moral responsibility to do so as it defied the laws of God.
“America” have the same liberties as those in the metropole, and with this, “what right we support slavery?” It seems he was referring to the famed Somerset case of 1772, where Lord Mansfield deemed an enslaved person, James Somerset, free, and many affirmed that all enslaved people entering Britain earned that same status. Further, the writer argued that slave traders have no right to purchase Africans – as they have no “personal contract.” According to Wells, merchants who sell servants needed a contract, an indenture, as buyers do not rely on the captain’s word. “If he be a convict, and has forfeited his life to the laws of his country, and is respited for transportation, I presume no captain ever came over… [without the] authentic documents from the records of Newgate.” He further asserted that some convicts argued for their liberty once they arrived on colonial shores, since many maintained that servitude was not part of the punishment, and it contradicted their English liberties. “If this be the case—if the English constitution guards the liberties of men, who have been condemned to die for the breach of their own country’s laws, how come …we undertake to inflict so barbarous a punishment upon the natives of Africa, for their transgressions in Guinea?” This, he asserted “is the last wretched argument of refuge, which the advocates for slavery insist on.” He urged that, “on behalf of the injured and distressed,” traders should show “the records of their courts, or the proofs of their crimes; if you do neither, what better testimony do you shew for your possession than the house-breaker or highwayman?” 62 Here, the writer makes a powerful call that encouraged readers to think about these two forced labor trades in similar ways to show the injustice of the African slave trade.

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62 Hirsch, 102; “To the Printer of the Providence Gazette,” Providence Gazette; and County Journal, 24 September 1774, 4. The author alludes to the Somerset case noting that “The instant a slave sets his foot in England he claims the protection of the laws, and puts his master at defiance.” For the full text, see Richard Wells, “A Few Political Reflections Submitted to the
Antislavery advocates on both sides of the ocean used convict servitude as a lever to distance themselves from slavery and to heighten their own moral civility. Granville Sharp influenced many leading abolitionists and moralists, including Anthony Benezet, Benjamin Franklin, and Benjamin Rush, and historians of slavery have argued for Benezet’s critical influence on Sharpe and other antislavery proponents. British antislavery advocate James Ramsey shared the sentiment that convicts and enslaved people endured unnecessarily severe cruelties by the hands of colonists. He explained that American planters treated indentured servants and “their African slaves and English convicts…with full as much severity as was practiced only on Africans in the sugar islands.” Ramsay highlighted the cruelty of American masters who did showed a lacked of moral responsibility toward unfree laborers. 63 This transatlantic dialogue, then, underlined national difference: British antislavery advocates deliberated on the inhumane violence of American slavery and Americans discussed the degrading impact of unfree people on American soil.

Focusing on the Caribbean, some slaveholders suggested that convict servitude could be used as a solution to outwardly ameliorate slave conditions. After arriving in Barbados in 1780, British plantation owner, Joshua Steel, who used the pseudonym Philo-Xylon, suggested improvements to the system of slavery there. With the creation and support of the learned institution, the Barbados Society for the Encouragement of Arts, Manufactures and Commerce, Consideration of the British Colonies, by a Citizen of Philadelphia” (Philadelphia, PA: John Dunlap 1774); Brown, 78, 96-100.

he spent the rest of his days prompting ameliorative changes to plantation management strategies to increase economic efficiency. On his plantations, he prohibited the punishment of whipping and rented land and offered wages to enslaved people. Although local planters opposed Steele’s plantation strategies, as they destabilized racial and hierarchical conceptions of society there, British abolitionist Thomas Clarkson praised his reform efforts, noting that they should be an example to other plantations. In considering economic growth on the island, Steele knew that replenishing enslaved people was costly, and he suggested that the slave trade could be supplemented with convict laborers. “This Proposition implies a compassionate Feeling for the innocent, but oppressed Africans, on one Hand; and a Degree of revengeful Aversion against our own incorrigible convict Countrymen, on the other.” Here, he reasoned that the convict trade was a solution that demonstrated sympathy toward enslaved people and forced criminals to repay their dues to society. To be sure, Steele was primarily concerned with diversifying the economy there. The island largely relied on sugar production and did not maintain a manufacturing sector, which could have provided work for poor whites living on the island. Poor relief was expensive to fund, and planters’ harsh treatment of enslaved people led to additional costs for the island. Further, he argued that the “Evils arising from Negro Slavery” resulted from a division “between black and white Servants; which puts the former, and all their Race, out of the Protection of the Laws of Humanity.” In the current state of laws, he explained that if convicts arrived, they would exploit this condition: “their disdaining to Work with Negroes, would provoke Punishments, which in their Turn, would excite Rebellions,” and white locals would regard convicts with alarm and disgust, because of their status. Thus, he argued, “it is not merely Humanity, or Piety,
in the Hearts of the Planters, which are wanting to Rectify what is amiss; – but it is, a total Alteration of the local Laws, agreeable to the Dictates of Humanity and Piety.”

Some writers connected transportation and slavery with reform. One English writer, Manasseh Dawes in 1782 noted that, “Slavery or transportation tends to make men sensible of their crimes, while it holds out an exemplary terror to others; and by employing them, you make them useful, until employment growing habitual to them, it works their reformation.” The author suggests that evidence can be found in the colonies. Crimes, he notes, are absent unless people have “too much idleness and debauchery.” In general, the criminals cannot discern right from wrong and “have no sentiment.” Here, the criminal is outside the bounds of the moral community, and the author linked criminality and a form of slavery with reform.

Far from remaining silent on this issue, proslavery advocates compared the convict and slave trades to validate and further their agendas. Proslavery advocate Edward Long used convict transportation to justify what he described as African nations’ mechanisms for commodifying criminals and their role in the slave trade. To persuade readers, Long asserted that African states had the same right to sell their offenders as the English did. He argued that “In England,

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64 David Lambert, White Creole Culture, Politics and Identity During the Age of Abolition (New York: Cambridge University Press, 2005), 41-3, 50, 53-7; Philo-Xylon, pseud. Letters of Philo-Xylon: First Published in the Barbados Gazettes, During the Years 1787 and 1788, Containing the Substance of Several Conversations at Sundry Times, for Seven Years Past, on the Subject of Negro Laws, and Negro Government, on Plantations, in Barbados (Barbados: Thomas Wilmott Perch, 1789), 51, quotations; Morgan and Rushton, Eighteenth-Century Criminal Transportation, 155.

multitudes are hanged, and many more sent to the plantations and sold into slavery; some for a term, others for life.” What Long called African convict sales was a practice he argued was “agreeable to the principles of humanity…[because] captives also should be exiled, rather than cruelly tortured to death.” The loss of life as a punishment, he added, was not reformative.66

Here, Long drew on the rehabilitative feature of punishment, a theme rooted in Enlightenment reform measures and one that had an uneasy history with institutional banishment in the British Atlantic.

The distress of the English poor became a prominent theme in proslavery discourse. In the 1780s, planter Gilbert Francklyn stated that accounts of widespread cruelty toward West Indian slaves were largely unfounded. If there were enough individuals “capable of treating their slaves, their fellow creatures, with cruelty,” he suggested that “the planters may be allowed humbly to hope their numbers may not be augmented by Great Britain unloading her gibbets, or emptying her gaols into them, in order to furnish the planters with industrious labourers, in the stead of the negroes meant to be emancipated.”67 Defenders of slavery used convict servitude as


67 Brown, Moral Capital, 370; Gilbert Francklyn, Observations, Occasioned by the Attempts Made in England to Effect the Abolition of the Slave Trade; Shewing, the Manner in which Negroes are Treated in the British Colonies in the West-Indies: and Also, Some Particular Remarks on a Letter Addressed to the Treasurer of the Society for Effecting such Abolition, from the Rev. Robert Boucher Nicholls, Dean of Middleham (London: Reprinted at the Logographic Press, 1789), xviii. For a discussion on the comparison of the convict trade to Australia and the slave trade, see Emma Christopher, “‘The Slave Trade is Merciful Compared to [This]’: Slave Traders, Convict Transportation, and the Abolitionists,” in Emma Christopher, Cassandra Pybus, and Marcus Rediker, eds., Many Middle Passages: Forced Migration and the Making of the Modern World (Berkeley: University of California Press, 2007): 109-128, here 113-4.
a possible consequence for those disrupting the institution and as a strategic tool to bolster their arguments of an alleged commitment to human welfare. With the intellectual and moral currency sparked by the Enlightenment and eruption of British authority with the Imperial Crisis, institutions of slavery increasingly came under attack, and convict labor offered another scheme that was morally justifiable in British Atlantic World.

Some people made the case that forms of slavery were not too far removed from the coercion in workhouses as well as in carceral spaces. Since the seventeenth century, supporters of workhouses had to resolve oppositional arguments that the facilities removed English liberties. The former Solicitor General John Dunning, who had previously collaborated with Granville Sharp, took the opposing view in the famed Somerset decision, pointed to the coercive measures used to force the poor to work. He reasoned, “I may observe, there is an establishment, by which magistrates compel idle or dissolute persons, of various ranks and denominations, to serve.” He continued, “In the case of apprentices bound out by the parish, neither the trade is left to the choice of those who are to serve, nor the consent of parties necessary; no contract therefore is made in the former instance, none in the latter; the duty remains the same.”68 Others argued that criminals, because of their crimes, should have owners to compel them to labor. One English writer, William Smith, asserted that, “Society have a right, for a certain time, in proportion to the degree of criminality, to be absolute masters of the person and labour of a criminal, who robs another of his property in order to oblige him to repair by his labour and slavery the depredations he has made upon others, and thereby to atone for his breach of the laws of society. By such a

mode of punishment, the spirit of freedom would receive fresh vigour.”69 Penal labor then gave
freedom a renewed meaning, and perhaps appreciation. Others resolved that the concern over
coerced labor as punishment was really one of aesthetics. One English writer resolved, “‘I find,
where the shoe pinches; change the word slavery into a term that has not so harsh a sound to a
British ear, and all is easy.’”70

Those who advocated the hardest to abolish slavery, were in many cases avid
proponents for developing prisons. Responsible for taking part in drafting England’s
Penitentiary Act of 1779, William Blackstone noted that England was such a place filled with
liberty that enslaved people became free as soon as they arrive there. William Roscoe, who
served as a president of the Liverpool Society for Promoting the Abolition of Slavery, called
for the development of the penitentiary and punishment by hard labor. Roscoe critiqued Jeremy
Bentham, an antislavery advocate, for his support of solitary confinement. He argued that
Bentham believed this punishment, “in the darkest dungeon, would be a place of liberty.”71
Interlocutors found that incarceration and punishment at hard labor was a morally justified
form of slavery. “Slavery is often mentioned with detestation by a freeman, as a scandal to his
country; but it is because he does not understand the effect intended by it, as a consequence of

69 Smith, Mild Punishments Sound Policy, 40-1.

70 Quoted in Hirsch, 76.

71 Hirsch 76; William Roscoe, Observations on Penal Jurisprudence, and the Reformation of
Criminals. With an Appendix; Containing the Latest Reports of the State-Prisons or
Penitentiaries of Philadelphia, New-York, and Massachusetts; and Other Documents (London:
Printed by J. McCreery for T. Cadell, J. and A. Arch, and W. Pickering, 1825), 57 quotation. For
more on the penitentiary act in England, see Laurie Throness, A Protestant Purgatory:
some crime committed."\textsuperscript{72} To justify what some referred to as penal slavery, some people drew on Lockean ideas of natural laws, arguing that criminals breached these laws and thus were deserving of such punishment. According to Locke, no one could be enslaved who joined a civil society, as it would be a breach of natural rights. Criminals broke the social contract, so they were outside the bounds of that contract. Therefore, punishment of enslavement as well as a death was justifiable.\textsuperscript{73} Antislavery advocate Benjamin Rush was a leading advocate for penal reform, but one writer pointed to the alleged contradiction of Rush’s philosophies on reform, coercion, and incarcerating malefactors. “But on his plan we should have slavery in abundance, because a slight punishment would multiply murders, and according to his plan all the murders must be forever slaves.”\textsuperscript{74} During the Revolutionary period, many reformers embraced the Lockean idea that those who committed crimes took themselves out of the social contract and were subject to incarceration – a notion that has long roots in English Common Law.\textsuperscript{75} As African slavery became increasingly unacceptable, perhaps then, convict labor as a whole allowed for states to gradually accept another form of human bondage, based on the fact it was

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\item \textsuperscript{72} Dawes, 68.
\item \textsuperscript{73} Hirsch, 77-8.
\item \textsuperscript{74} Hirsch, 77; \textit{The Pennsylvania Mercury}, 2 October 1788, 2.
\item \textsuperscript{75} Hirsch 78, Leonard W. Levy, \textit{Jefferson & Civil Liberties: The Darker Side} (Cambridge: Belknap Press of Harvard University Press, 1963), 33-4. In the Magna Carta, “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.” “The Text of Magna Carta,” Fordham University, https://sourcebooks.fordham.edu/source/magnacarta.asp. 33-4.
\end{itemize}
morally justified. Yet these contradictions regarding convict labor and African slavery created new moral quandaries that spurred the developing humanitarian rhetoric in the years to come.

The American Revolution halted convict transportation to the United States, and after the outbreak of the war, proposals for more humane punishments and condemnations of cruelty in regard to offenders emerged on both sides of the Atlantic. In 1776, the British Parliament stated that transportation was encompassed “with various Inconveniences,” and offenders can be “reclaimed from their evil Courses” if they receive “proper Care and Correction,” perhaps suggesting that British authorities were more morally upright than Americans. Building on the mechanisms of transportation, officials asserted their legal and moral authority by incentivizing behavior corrections in hopes that convicts would better serve their communities and refigure themselves as morally upright members of society.76 English authorities, however, were not prepared to manage the crowded jails. Around the same time as the practice of transportation to the American colonies ended, the movement to create new prisons in England gained traction in large part from the philanthropist John Howard’s work, *The State of the Prisons* in 1777. Regarding transportees, Howard noted that they experienced “many cruelties and impositions” and their “condition was in many respects equally contrary to humanity and good policy.” For years, reformers, including Howard and Jeremy Bentham, contended that discipline administered domestically, which could be more uniform rather than subjective, was more effective than deportation for malefactors. Still, some contemporaries maintained that transportation was a

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viable penal option, particularly for capital offenders. In the 1780s, Parliament members contemplated West Africa as a potential destination, but interlocutors contended that convicts would perish there. In 1786, they decided that Botany Bay would be far enough away to prevent premature returnees, and the environment would allow convicts to establish new lives there. In an 1802 account, Bentham reflected on the unintentional consequences of transportation in British America: “Unequal in its essence, rendered still more unequal by its accidental concomitants, it was to one man as bad as death, to another a party of pleasure.” In the years to come, isolation and banishment from Britain’s communities remained central to Parliament’s penal policy.  

One might ask whether the experience of shipping convicts to North America really did change British views on the practice and contribute to developing humanitarian sentiment, since they continued to ship convicts for generations thereafter to a different place. In fact, there was a qualitative difference in transportation to Australia and not just a change in destination. While the perspectives on convicts varied over time and with different authorities, overall there was a greater effort toward reform as well as control over convict labor than had been the case in the

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North American colonies. Before the end of the North American convict trade, interlocutors increasingly perceived convicts as criminals carrying out their punishments and less so as exiles, discussing the practice in context of Enlightenment principles. These notions were furthered in New South Wales. There were similarities to the colonial system: convicts in Australia had a system of passes for leaving their place of work, there were procedures for disciplining offenders, and some earned payment with their emancipation – as the process of pardoning was termed. On the other hand, with a more centralized system, governors in New South Wales – rather than the shippers, as was the case in the American colonies – took charge of new transportees. They could send them to private masters or to work for the government, or they could free them via pardons or a type of parole. To be sure, convicts experienced a number of different hardships during their punishment. The early journeys to the penal settlement, for example, were marked with illnesses, hunger, and lack of clothing and supplies. Some people wanted the penal colony to be one of deterrence, but governors like Macquarie and Bourke, and almost all judges wished for it to be rehabilitative. From the perspective of penal reformers, moral improvement, it was hoped, would be substituted for physical punishment. This never happened with transportation to North America. Throughout the colonial era British officials especially and even writers of British commentaries remained largely unconcerned with what actually happened to convicts sent to North America. While in the 1770s, English magistrates may have been less inclined to utilize transportation, with overcrowded prisons and nowhere else to send them, the system, as historian Alan Atkinson put it, “received a new lease of life” and this was in part due to “the moral dimensions of empire were now made to overlap with those of criminal punishment.” In other words, the experience with North America offered ways to
inform the views on how the practice of long-distance convict transportation should work. Emerging notions about cruelty and humane treatment toward fellow human beings swirled in reformists’ corners, and the new methods reflected the hope for a more efficient system, as well as the impact and goals of emerging debates and discourse on humane treatment. While British convict transportation did not end as a practice for several more decades, it contributed to the rise and development of humanitarian discourse.

From an American standpoint, the experience with convicts encouraged legislative change regarding the practice. As the Revolution sparked new political discussions on slavery, it also gave many Americans pause to reconsider other practices of bound labor. Political leaders in the newly formed United States wasted little time in legally halting convict transportation. In 1788, for example, a Virginia law noted that “much injury hath been done to the morals, as well as the health, of our fellow-citizens,” and the state banned imported criminals beginning the following January. The immoral contagion and disease brought by convict transportees then became critical reasons for abolishing the trade. After the war, Pennsylvania moralists and legislators paved the way for a reformed penal order. Lawmakers instituted a system that sentenced offenders to terms of penal servitude and grounded it as one that would reform criminals and benefit the public. Legislators and moralists prided themselves on an enlightened disciplinary system, but this penal plan faced years of unanticipated disorder and calls for more

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78 Bruce Kercher, “Perish or Prosper: The Law and Convict Transportation in the British Empire, 1700-1850,” *Law and History Review* 21:3 (Autumn 2003): 527-584, here 541-2, 567-8, 581-4. Kercher states that, “slavery, convict labor, and indentured labor were all different, but in Virginia and Maryland they had much in common as well: people, or their labor, could be property and with that word came a powerful body of rights.” See page 582; Atkinson, 92, 109-15, quotation on 113; Gillen, 765-6; Christopher, “‘The Slave Trade is Merciful Compared to [This],’” 123-4 and passim.
effective and humane legal revisions. Americans banned foreign convict trades, yet convict labor emerged as a pivotal part of the new nation’s penological plan. Nevertheless, early Americans’ identifications of unnecessarily severe suffering and efforts for rehabilitation fueled the later reform movement and galvanized early republicans to embark on a campaign for more humane legal and cultural changes regarding punishments in the new republic.  

Convict Labor and Reform in Revolutionary America

At the same time that convicts underwent terms of banishment and servitude as punishment, elites and moralists began to seriously rethink their own criminal code and practices on both sides of the Atlantic. Throughout Europe, philosophers participated in competitions and drew up plans for humane ways to manage crime problems and to discipline offenders. Kings modified penal policies to fit a more liberal context, and moralists came together to aid the criminals in poor conditions in kingdom jails. Before the American Revolution, colonies used penal practices based on English ideologies, including brutal punishments that incited terror as well as the pardoning process and the commutation of sentences, demonstrating power and mercy of the colonial authorities – all of which were selectively practiced. Reformers, on the other hand, like Thomas Jefferson and Benjamin Rush,

79 Fogleman, passim; Winfield Scott Craig, “Bonds of Empire: The Politics of Penal Colonies in the Founding of America and Australia” (Ph.D. diss, Florida State University, 2014); McLennan, 23, 25-7, 30-4 and passim; William W. Hening, ed., The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619 (Richmond: R. & W. & G. Bartow, 1819-1823), 12:668-9, quotation on 668.

hoped for proportional and less severe methods of discipline, and a decrease in judicial discretion rather than an increase. While colonies relied on numerous practices to punish free and enslaved people, including transportation for people like Cutface Tom, the custom of putting them to work became an important model for moralists and reformers during the Revolutionary era and afterward.\(^81\) During the war, the breakdown of long-standing social and political hierarchies lessened the cultural distance between different people, and with revolutionary ideology promoting ideas of virtue, justice, and liberty, humanitarian rhetoric, used by all sorts of people, gained a new currency in the public conscious and political rhetoric.\(^82\)

During the era of the American Revolution, elites and lawmakers began to confront the problems with the criminal laws more directly. A prominent advocate for reforming the criminal code, Thomas Jefferson of Virginia found English law to be full of complications and tautologies. He particularly did not approve of the notion of \textit{lex talionis}, an eye for an eye. Like many other colonies, Virginia relied on a set of English laws and traditions with various legal punishments for offenses, but did not have a distinct set of criminal codes.\(^83\) Influenced by

\(^81\) Rice, 22-4; McLennan, 18-9.

\(^82\) See Nash, \textit{The Unknown American Revolution} and Wood, \textit{The Radicalism of the American Revolution}.

Beccaría’s *An Essay on Crimes and Punishments* and William Eden’s *Principles of Penal Law* – who had worked with the well-known prisoner reformer John Howard – Jefferson wanted punishments to be “strict and inflexible, but proportioned to the crime.” An admirer of John Howard, the physician Benjamin Rush supported both the war effort and became one of the most pivotal champions of moral reform. He denounced horse racing, fairs, drinking, licentiousness, swearing and encouraged temperance instead. Rush wrote in 1778, “Our enemies hold out a thousand examples of discipline and conduct to us which we refuse to imitate. But they go further and show us that they possess more humanity towards their *sweeping of the jails of Europe* than we possess for the sons of the virtuous farmers of America.” Here humanity took on the tone of moral uprightness, and Rush regretted that Americans were not doing more to improve prison conditions.

Pennsylvanians experienced change from its colonial past perhaps more so than the rest of the colonies, revising their criminal code for the first time since 1718. In 1776, they had a new state constitution and claimed they were much more democratic and moral than beforehand. The radical Whigs prompted new changes in the judicial system: Pennsylvania temporarily closed its courts in 1776 until a new government could be established, many of

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those commissioned who did not support the new state judiciary stepped down, and an emergency ordinance appointed new people as justices of the peace. Because of wartime conditions, certain crimes became more dangerous than they had in times of peace. Because people were deeply concerned with the instability of currency, anything done to depreciate its value, including the Quakers’ denial to exchange it, was considered treason. Counterfeiting became a capital crime, and horse theft (as horses were valuable to an army) warranted a harsher punishment. Although Pennsylvania’s Supreme Court maintained a reputation for moderation in regard to charges of treason, some people heavily criticized Pennsylvania’s brutal punishments. Quakers were especially harsh critics of authorities, like Chief Justice Thomas McKean, particularly during the early years of the war, and Quaker Friends denounced the rising number of executions, which included their members. On the other side of the coin, corporal punishments generally decreased in frequency during and after the war there. After 1767, authorities punished property crimes, traditionally penalized with whipping, with incarceration. The new state passed orders to jail Quakers, possible Loyalists, and other criminals, and hundreds of prisoners wallowed in jail for long stretches of time.

American lawmakers and reformers worked to revise the penal code, with new ideas on how to properly punish people, and terms of labor became an important part of the penal policy. Jefferson wrote to Edmund Pendleton in 1776, that the death penalty should only be used for murder and treason, and other crimes should be punished with labor in public projects, as the sight of penal labor would show public revenge. In 1777, when he met with the

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86 Marietta and Rowe, 179-81.

87 Marietta and Rowe, 189, 191-3.
committee to revise the Virginia’s statutes, they agreed to remove capital punishment (excluding murder and treason) and replace the punishment with different degrees of hard labor.\(^8\) The 1779 bill, “A Bill for Proportioning Crimes and Punishments in Cases Heretofore Capital,” noted the importance of reforming offenders and the benefit of labor on public works projects would have for the community. Experience, he argued, showed that “cruel and sanguinary laws defeat their own purpose by engaging the benevolence of mankind to withhold [sic] prosecutions, to smother testimony, or to listen to it with bias.” Proportionality would encourage people to comply with “their duty to see the laws observed.”\(^8\) The *lex talionis*, Jefferson wrote to George Wythe in 1778, would “be revolting to the humanised feelings of modern times” as the practice would “exhibit spectacles in execution whose moral effect would be questionable.”\(^9\) Jefferson articulated the assumption that all viewers possessed a similar sense of enlightened empathy and that would evoke sentiments of repulsion for all witnesses.\(^9\)

\(^8\) Peterson, 94-5; Knepper, 131.


\(^9\) Like other bills proposed, the Virginia legislature had to delay its passage or rejection of the bill because of the war. Knepper, 133.
Jefferson wished to expand the practice of hard labor, and solitary confinement became an important component of emerging penology as well. In revising the statutes, he established three categories of punishment: life, limb, and hard labor. Authorities could sentence those guilty of certain crimes, including manslaughter, arson, burglary, horse stealing, and larceny, to terms of labor.\footnote{Peterson, 95-8.} He asserted that offenders “shall have their heads and beards constantly shaven, and be clothed in habits of coarse materials, uniform in color and make, and distinguished from all others used by the good citizens of this commonwealth,” which would help identify offenders if they escaped. The public, offenders, or their acquaintances should not “disarm the public justice, or alleviate those sufferings, which, making part of the punishment intended by the law, should be incurred equally by all.” This new institutionalized suffering, then, should not be mitigated by any means and should be uniform and inclusive for all criminals sentenced to the punishment. The keeper would attend to their food, clothing, lodging, and “safe custody,” paid for by the public. Keepers could impose corporal punishments on the “idle, or guilty of any trespass, and to restrain in irons such as shall be incorrigible otherwise.” However, if any keeper was found to be guilty of “partiality or cruelty,” he could be replaced with someone with “discretion, humanity and attention.” If an offender escaped “without good cause to be judged of by the General Court, the term of his condemnation shall be lengthened two days for every one he shall be absent.” This punishment is strikingly similar to those of runaway servants and enslaved people during the colonial
period.\footnote{68. A Bill for the Employment, Government and Support of Malefactors Condemned to Labour for the Commonwealth, 18 June 1779,” \textit{Founders Online}, National Archives, last modified April 12, 2018, http://founders.archives.gov/documents/Jefferson/01-02-0132-0004-0068. [Original source: \textit{The Papers of Thomas Jefferson}, vol. 2, 1777–18 June 1779, ed. Julian P. Boyd. Princeton: Princeton University Press, 1950, pp. 513–515.]. For punishments of runaway servants and enslaved people see Chapter 1.} After the war, the Assembly debated the bill, but it narrowly failed to become law (see Chapter 4). Historian Merrill Peterson suggests that there is a reasonable possibility that Jefferson’s bill shaped Pennsylvania’s influential implementation of public penal hard labor in 1786. Nevertheless, Jefferson as well as Pennsylvania reformers looked toward the successful European implementations of solitary confinement to strengthen their penal policies. While in France, Jefferson learned of a charitable society’s success implementing penal labor in addition to solitude. The British Parliament passed the Penitentiary Act in 1779, which insisted upon solitary confinement, religious order, and hard labor, but the Act did not directly lead to the fruition of the penitentiary. However, authorities in jails as well as workhouses practiced solitary labor. Jefferson acquired an architect’s plans for a prison in Lyons, which was designed to carry out solitary confinement, and he used the plan to create a model of a state penitentiary for Virginia. He hoped it would be one that implemented both punishments, and his work undoubtedly informed the penitentiary to be built in Richmond years later.\footnote{Peterson, 98-9, 130; Knepper, 134; “From Thomas Jefferson to James Buchanan and William Hay, 26 January 1786,” \textit{Founders Online}, National Archives, last modified April 12, 2018, http://founders.archives.gov/documents/Jefferson/01-09-02-0194. [Original source: \textit{The Papers of Thomas Jefferson}, vol. 9, 1 November 1785–22 June 1786, ed. Julian P. Boyd. Princeton: Princeton University Press, 1954, pp. 220–223.].}

At the same time reformers like Jefferson sought to revise the criminal codes courts, authorities practiced selling offenders into servitude or sentencing them to terms of hard labor,
sometimes flaunting their moral authority. Historian Richard Morris stated that there is evidence that both Pennsylvania and Virginia utilized prison contract labor even before 1780. In 1779, the Pennsylvania Gazette circulated an Act for preventing counterfeiting, noting that, if a counterfeiter could not pay his court fees, the offender would “be sold as a servant, for any term not exceeding seven years, for satisfaction.”  

Maryland sold thieves well into the 1790s. Johnathan Dean received a pardon for a term of three years in the lead mines in Virginia. After he broke out of jail and was recaptured, the Council advised the Governor to dismiss the crime as long as he served his term. During his time as governor, Thomas Jefferson pardoned capital offenders and commuted the sentence to hard labor on public projects, frequently in the lead mines. With a need for musket balls for the war, high expense of labor, and as a seemingly humane punishment compared to execution, other governors followed suit until 1785, when the Court of Appeals deemed it unconstitutional. Servitude on public works, Jefferson assured, was both merciful. To him, the sights of their labor were “living monuments of public vengeance.” For enslaved people, crimes like running away could land them in the lead


mine. Two enslaved people named Juba and Gilbert, escaped to Dunmore’s fleet in 1776, but were caught, and the Committee of Safety sent them to the lead mines “to be employed for the public use.” In 1780, petitioners attested that the two “have already suffered” from the punishment, which they argued would deter them from trying the likes again. The petitioners, though, were far from being sympathetic to the enslaved people’s pains; they argued that Juba and Gilbert would be “of little Value” if they continued in the mines and requested their release.100

Banishment of domestic thieves, without an attached term of labor, still fueled the imagination and law in the Revolutionary period. A story circulated in 1778 about a thief called “POLL-TAX,” who allegedly pretended to be a beggar. He was “described to be of a death-like complexion,” appearing “to be older than any man now living.” Poll-Tax was the leader of a dangerous gang, “all inimical to the rights of a free people.” In the past, he swindled merchants and laborers, who “in charity contributed their mites towards his relief.” As one writer explained, “The great landed men” gave to him “in fear of provoking him to compensating his wants upon their farms.” Elites then gave charity in hopes that he would avoid their properties if he robs again. Another criminal “of this Banditti” went by the alias of “LITTLE ROBER [sic] on the HIGHWAYS,” but there was no need to fear of him, as “he is but a puny rogue, armed with only a spade or shovel, from which if you can patiently bear a few strooks [sic] upon the back and shoulders, you may prevent his pilfering your pockets.” It was hoped that someone could capture these felons, and they “may at least be banished to Golconda, or the

100 Petition of George Daniel and Maurice Smith to the Honorable the Speaker & House of Delegates of Virginia, 20 May 1780, Legislative Petitions, Richmond, Virginia, Library of Virginia, Legislative Petitions Digital Collection.
wilds of Arabia.” Banishment as a punishment made it into Maryland’s constitution. If any senator, councilman or congressman received profits in an illegitimate manner, “he shall suffer the punishment of wilful and corrupt perjury, or be banished this State forever, or disqualified forever from holding any office or place of trust or profit, as the Court may judge.” For some, banishment, as punishment, continued into the Revolutionary period as a means to rid communities of aggravating offenders.

In the 1770s, Philadelphians made considerable efforts to alleviate prisoner suffering. The assembly appointed a committee to examine the Philadelphia prison in 1770, and they found it to be in a miserable condition. Many prisoners went without bedding and clothing, and the churches provided the very few blankets they had. One person starved to death in 1770, and in response, the assembly raised the daily allowance for each person from two to three pence per day. Still, that was not enough; three starved to death in 1772, which allegedly shocked the public. The St. Patrick Society sent a sum between £30 and £40 for the prisoners’ support. A reverend, named Mr. Stringer, from St. Paul’s Church offered a sermon prescribing relief, and he raised £30. There was allegedly a petition amongst the debtors in the prison, begging for food so they would not perish, which further fueled the demand for charity. While some

101 “Stop Thief,” The Norwich Packet, 29 June 1778, 1.

102 A Declaration of Rights, and the Constitution and Form of Government agreed to by the Delegates of Maryland, in Free and Full Convention Assembled November 11, 1776. http://avalon.law.yale.edu/17th_century/ma02.asp.


Philadelphians, offered money, others prepared food for the hungry prisoners. The prison reformer, Roberts Vaux, reflected in a pamphlet that before the outbreak of the Revolution, the “benevolent and independent citizen” and Philadelphian, Richard Wistar “was in the practice of causing wholesome soup prepared at his own dwelling, to be conveyed to the prisoners and distributed to them.” He noted that “This fact indicates the wretched condition of the objects of his liberality, as it cannot be presumed that such an interposition would have taken place, but from a full conviction of its absolute necessity.” Here, he pointed to a moral obligation and responsibility to keep prisoners alive. According to Vaux, Wistar seemed to be the first person who was “unconnected with the administration of the criminal laws” to attend to prisoners. This could suggest that other judicial or legal authorities have perhaps aimed their efforts to attenuate prisoners’ suffering, but nonetheless, he had an important influence on the first generation of penal reformers.105

In February 1776, several civic leaders and citizens in Philadelphia came together to form the Philadelphia Society for Assisting Distressed Prisoners. A jailer, William Webb, reflected on the reasoning for the initiation of the society stating, “The cry of distress was so importunate, that the charitable felt it incumbent upon them to adopt some measures of relief, and a Society was formed under the title of the Society for the Relief of Distressed Prisoners,

105 Roberts Vaux, Notices of the Original, and Successive Efforts, to Improve the Discipline of the Prison at Philadelphia, and to Reform the Criminal Code of Pennsylvania: With a Few Observations on the Penitentiary System. (Philadelphia, PA: Kimber and Sharpless, 1826), 8. The extent to which Wistar’s work raised awareness of the prison conditions more broadly cannot be discerned with extant records, but according to Vaux it likely influenced the emergence of the Philadelphia Society for the Relief of Distressed Prisoners who offered inmates’ “relief, as the natural and happy precursor of the important changes in punishment” (See 8-9, quotation on 9).
the germ, no doubt, of the present Society. This...Society procured a wheelbarrow, properly covered with canvas, with which they went from door to door soliciting food, which they daily distributed among the prisoners.”

Thus, one of the most influential prison societies in early America formed, asserting to have a moral obligation to relieve the distress of prisoners, who could do little about their welfare while incarcerated.

The Philadelphia Society for the Relief of Distressed Prisoners provided support and donations for prisoners in order to better their conditions. Benjamin Rush was likely a leading figure in establishing the society, and many Quakers took part in this new group. In Philadelphia, it was difficult for Quakers to contribute to politics, as the American Whigs confirmed “a test oath” in 1776 which Quakers could not participate in, thus, it largely ousted them from political participation. Members of the society paid dues of 10 shillings annually, and they elected a treasurer and twelve managers, two of which would visit the jail a minimum of one time per week and offer victuals if needed. The Society asserted that prisoners were in poor conditions, especially during the winter, which “hath often filled the humane breast with tender


107 Meranze, 143fn29; Marietta and Rowe, 182, 186. During and after the Seven Years War, Quakers found themselves forced to reject their principles through mandated oaths, and in turn, many resigned. Pennsylvania’s new government was particularly disheartening for Quakers. After the Supreme Executive Council ordered houses to be searched and guns seized, in 1777, without a trial, seventeen Quakers were eventually exiled to Virginia.
commiseration of their sufferings.”¹⁰⁸ Before breaking ground for the Walnut Street Jail in 1773 (see Figure 6), all prisoners stayed at the Old Stone Prison on the southwestern corner of High (now Market) and Third streets in the city.¹⁰⁹ The Society noted that many convicts simply could not afford to pay their jail fees and thus the community lost out on potentially productive members of society. “To find many, whose labour might be useful to the public, languishing out their days in a prison, when the payment of their fees would have set them at liberty long ago, must strongly urge the feeling mind to solicit their enlargement.” The Society requested for donations, and they implored, “Who can visit that house of variegated misery, and not wish to clothe the naked shivering wretches!—To kindle a fire on the cheerless hearth and spread warmth and gladness through the damp and melancholy apartments!” They affirmed that “The charitable and humane will rejoice in this opportunity.” They assured people that as managers, they would be true, “competent judges of their [the prisoners] real wants.” Not only did they put themselves on a morally high platform – on the fact they created a charitable society to improve prison conditions – but they affirmed that only those who donated would be deemed, “charitable and humane,” contributing to a benevolent cause.¹¹⁰


The Society seemed to be initially successful, but the war halted progress. By August they reported in the newspaper that since their formation, no prisoners “have suffered for want of firing or victuals” since the society began its work. For the past few weeks, they did not even need to collect donations, but they implored their constituents to continue their support and subscriptions, so in the future, the society could continue with its “benevolent intentions.”¹¹¹

Their work and influence helped to secure that carceral discipline was included in the state’s 1776 constitution. While initially successful, when the British entered and occupied the city, the

group temporarily disbanded. In 1777, General Howe used the jail as holding place for American rebels and soldiers. It was not until after the Revolution that Philadelphians reworked the 1718 criminal code – as William Penn’s philosophy advocated for more humane and mild treatment – and the new penal policy would embrace the institutionalization of penal labor.  

While there were efforts underway to revise the criminal code, improve prison conditions, and alter practices of penal hard labor, Americans also began to increase the use of workhouses. They put the poor, servants, vagrants, and other unfortunate people, to work as a more economic and allegedly humane means to manage societal order. Based on English poor laws, Americans traditionally supported their poor through community engagement, familial support, and taxes. The difficulty with maintaining the poor was generally not deemed a serious social problem, a flaw of inhabitants or communities, or a communal error. People understood poverty to be rotten luck and the lack of relatives to support them. Widows, the elderly, and orphans were especially at risk for falling on difficult times. One approach was to sell the labor of the poor to the public. According to the merchant Thomas Cope, traditionally “The overseer called the township together, held an auction at which any person might bid, & whoever offered the lowest terms won the prize. Of course, as his intention was to make a

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profit, the consequences to the poor are easily to be conceived.”114 While there was some
growth in efforts to aid those in need, it was not until the Seven Years War and afterward there
were substantial revisions to how city leaders approached assistance and punishment for the
poor. As Gary B. Nash put it, in regards to Philadelphia, “the Great War for Empire affected
colony society in ways that vastly altered the nature and extent of urban poverty, evoked new
attitudes toward the impoverished, and resulted in new approaches to dealing with their plight.”

With increasing migration, people living longer lives, wartime inflation, and relief costing
taxpayers more money, communities sought out additional ways to deal with the idle and other
offenders.115 Thomas Cope described the practice of selling paupers an “abominably inhuman
custom,” and he preferred an institution that prompted the poor to work instead, such as a poor
house.116 After the middle of the century, colonists started building a number of new
workhouses, both for those who were poor and in order to detain and coerce the idle or those
deeded unruly people.117

114 Smith, “Poverty and Economic Marginality,” 109-10; Marcus Wilson Jernegan, “The
Development of Poor Relief in Colonial Virginia,” Social Service Review 3:1 (1929): 1-18, here,
10-11; Elizabeth Cope Harrison, ed., Philadelphia Merchant: The Diary of Thomas P. Cope,
1800-1851 (South Bend, IN: Gateway Editions 1978), 11-2, quotation on 11; See also Klebaner,
Benjamin J. Klebaner, “Pauper Auctions: The ‘New England Method’ of Public Poor Relief
Essex Museum Historical Collections 91:3 (1955), 1-16.

115 Smith, “Poverty and Economic Marginality,” 109; Nash, Poverty and Poor Relief in Pre-
Revolutionary Philadelphia,” 5-6, 10-11, quotation on 10; Zachary Ryan Calo, “From Poor
Relief to the Poorhouse: The Response to Poverty in Prince George's County, Maryland, 1710-

116 Harrison, The Diary of Thomas P. Cope, 11.

117 Smith, “Poverty and Economic Marginality,” 110; Richard B. Morris, Government and Labor
(New York: Columbia University Press, 1946), 12-13; Also see, Martha W. McCartney,
With the increase in workhouse construction, colonial authorities justified hard labor, especially for those deemed vagrant. In 1768, Maryland noted the problem with the increasing number of the poor and enacted that alms and workhouses should be constructed in a number of counties. Overseers of the poor were responsible for “the better relieving regulating and setting the Poor to Work and punishing Vagrants Beggars Vagabonds and other Offenders and for the Good Government of the said Alms and Work-House.”\textsuperscript{118} People deemed rogues, disorderly, or others “who follow no Labour Trade Occupation or Business and have no visible means of Subsistance whereby to Acquire an Honest Livelihood there to be kept at hard Labour for any Term not exceeding three Months.” The overseers were also responsible for compelling inmates to work, and the money gained from their labor would go toward supporting them.\textsuperscript{119}

In 1766, Thomas Wharton wrote to Benjamin Franklin, “We are in great Hopes, that, the Work-House now erecting will greatly contribute to restore the Manners, and rectify the Lives of many dissolute Persons; as well as Implant in the Minds of the rising Youth, the Habit of Frugality and Industry.”\textsuperscript{120} Poverty was a growing problem in Virginia too, and in 1755 the General Assembly permitted counties to build workhouses, and Gloucester County built its

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workhouse in 1764.\textsuperscript{121} The workhouses did little to save the colonies money. Virginia gradually sold or deserted these institutions – which were deemed a means of “reformation of vagrants” – during and after the Revolutionary era.\textsuperscript{122} Still, this notion furthered the idea that the idle people were in some ways criminal and should labor as punishment. In the \textit{New York Gazette}, one writer stated that “Vagrants and vagabond should be set to hard labour, and proper punishments, devised for those, who harbor and encourage these pests to society.….It is the duty nevertheless of the publick, and of every leading man in it, not only to guard against such vices, but also such follies of individuals as affect the welfare of the whole.”\textsuperscript{123} While workhouses did not become significant as a separate disciplinary facility, the model of labor as punishment was essential to Americans in early Republic. In the years after the Revolution, putting people to work \textit{inside} the penitentiary and other disciplinary spaces would be key in the new nation’s penological plans.

Conclusion

Banishment and penal servitude played an important role in shaping humanitarian sensibilities in the revolutionary period. Britons and Americans used transportation and servitude as an instructional device to evoke sympathy for unfree laborers, to critique cruelty in

\textsuperscript{121} Elna C. Green, \textit{This Business of Relief: Confronting Poverty in a Southern City, 1740-1940} (Athens, GA: University of Georgia Press, 2003), 18-9.

\textsuperscript{122} McCartney, 298-300; Henings, 12:578, quotation.

colonial servant laws, and to advocate for new humane labor practices, prefiguring nineteenth-century debates on humanity and unfreedom. The practice of convict transportation shaped, and was shaped by, economic agendas and political discourse, as historians have shown, but it was also a significant rhetorical tool that linked emerging ideas of sentimentality with moral accountability — as with the case of Cutface Tom. Evoking ideas of compassion, sympathy, dehumanization, and humanity helped to structure moral vocabularies that contemporaries used to support their agendas. Additionally, it exposed linkages with chattel slavery that perhaps provoked interlocutors to consider the conditions of African-American bondage more closely.

Discourse about banished offenders commonly centered on notions of a form of slavery, and while convict servitude was distinct from perpetual African enslavement, it shed light on some of the cruelties practiced in labor systems. Transportation’s reputation for severity encouraged contemporaries to weigh in with their concerns, arguing about the usefulness of the practice and proposing measures to support or abolish this trade in coerced labor. While some interlocutors noted the justness or severity in the punishment, it seems that many were less concerned with the idea of suffering under the punishment itself, and more so with the maliciousness of administering suffering to offenders. Elites and judicial authorities punished people, including vagrants, already living in America with forms of labor, and they added their moralist approval or critiques. Elites, like Thomas Jefferson, worked to revise the penal code with new ideas on how to properly punish people with hard labor, and to reinvigorate workhouses. The connections between labor, coercion, and crime became more tightly enmeshed. Motivated by a new, increasing humanitarian consciousness, people found that emerging ideas about liberty and freedom came increasingly into contradiction with attitudes
and practices regarding forced labor. As forms of severe suffering and coercion became increasingly yet unevenly unacceptable, moralists would put their sentiments into action in order to improve conditions for those in forms of human bondage, significant for the formation of human rights cultures in the British Atlantic World.
CHAPTER FOUR
PUBLIC DISCOURSE AND THE DEVELOPMENT OF HUMANITARIANISM
IN THE MID- ATLANTIC STATES, 1783-1809

For almost two years, Nancy Valentine waited for relief from her jail cell in Petersburg, Virginia. She had allegedly committed arson, a heinous crime in the eyes of the court, and needed fifty dollars to pay the fee to get out. In 1805, Nancy was destitute, unable to come up with the money. To make matters worse, she had her small infant in jail with her – both of them enduring the “the miseries of her confinement.” In her petition for relief, Nancy worried that she would be sold into penal servitude to satisfy the fine. She dreaded “to expose herself and child to slavery, by resigning herself into the hands of strangers from a distance.” She had previously asked for mercy on the account of “her extreme poverty and wretchedness” but was told to wait for some “benevolent” authority to aid her. Nancy was undoubtedly at a loss when this relief “proved fruitless.” Desperate and probably tired and anxious, she implored the General Assembly of Virginia to offer her mercy, hoping for what was “just and reasonable.” She pleaded that the state’s expenses surpassed her value, “even if she was sold for life.”

Nancy’s petition gives us a window into prison conditions in the early American republic, and it sheds light on the distress and anxieties regarding penal servitude, a punishment of forced

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1 Petition of Nancy Valentine to the Honorable the General Assembly of Virginia, 19 December 1805, Legislative Petitions, Petersburg, Virginia, Library of Virginia, Legislative Petitions Digital Collection.
labor increasingly meted out by courts in the wake of the American Revolution. For many
Americans, the war disrupted moral boundaries and their understandings of suffering and
responsibility toward previously detested people like convicts, enslaved people, and the poor.
After the Revolution, lawmakers and the citizenry sought new modes to discipline criminal
offenders and other undesirable people in ways that aligned with notions of Enlightenment
thinking and preserved peace and order. New measures to rework penal codes and modes of
punishment, however, had unintentional consequences for moralists, lawmakers, and prisoners,
and these efforts had powerful implications for the formative stage of humanitarianism.  

This chapter investigates the punishment of penal labor in America, and its influence on
elite and moralist humanitarian discourse from the end of the American Revolutionary War until
the turn of the first decade in the nineteenth century. Historians have debated the humanitarian
agendas surrounding labor systems – most notably African slavery – and prison reform in North
America; however, scholars know little about the practice of penal servitude in the early
Republic or how it shaped cultural ideas about coerced labor and new moral sensibilities. How
did this punishment operate in the early Republic and to what extent did it shape elite and
moralist ideas about morality and unfreedom? Sometimes combined with the punishment of
transportation, penal labor was an important trajectory that separated categories of servitude and
slavery. The chapter argues that by giving lawmakers and elites a means to spare the lives of
capital offenders, keep social order, and act as benevolent authorities, the practice of penal
servitude expanded, even for lesser crimes, and it fueled an evolving discourse on unfreedom and

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2 Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the
American Penal State, 1776-1941* (New York: Cambridge University Press, 2008), 2-9, 23, 31 fn
55; Amanda B. Moniz, *From Empire to Humanity: The American Revolution and the Origins of
humanitarian duties in the new nation. Evoked by new sentiments on punishment and coerced labor, penal labor served as a forum for new debates on the duty of compassion, preservation of life, and moral justifications for or against unfreedom in the new U.S. Understanding how new responsibilities and notions of morality expanded and contracted will help us interpret the formations of the larger cultural development of humanitarianism.\(^3\)

Scholars have explored a number of different topics to better understand how humanitarianism and human rights cultures worked. Unhinging this revolution in sentiment from a rigid capitalist structural analysis, scholars found that eighteenth-century contemporaries refigured the meaning of pain. Regarding rights cultures and the importance of the Revolutionary period, Lynn Hunt explained that changes to people’s perception of rights were related to shifting understandings of moral autonomy. This understanding and practice necessitated people to hold a growing respect for other individuals’ bodies: a principle implying as Hunt describes, “your body is yours and my body is mine.” She explains that “equality of rights is unimaginable without a strong sense that others are like you in body and mind.” It also required an expansion of a sense of empathy. Hierarchies and forms of subordination, like those broken down in the war, had not created spaces to engage in equal relationships. Hunt argues that this form of “‘imagined empathy’” created the “psychological foundation of democracy and human rights.” Regarding the critical concept of humanity to humanitarianism, some scholars have argued that this concept emerged in the twentieth-century, through brutal conflicts in global settings. On the

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other hand, Fabian Klose argues that the abolition movement during the long nineteenth-century had important implications for the development of this concept, entrenching it as an important component of international law. These scholars help us understand changes in regards to suffering, unfreedom, and liberty in the eighteenth and nineteenth-century Anglo-American World.4

Scholars have widened frameworks and used different approaches in their studies to explore forms of unfreedom and humanitarian discourse, yet few have given sustained attention to humanitarian debates evoked by penal servitude. Michael Meranze and Rebecca McLennan’s works are critical for framing our understanding of penal change and reform in early America. Meranze examines shifting notions of liberal discipline in Philadelphia from the 1780s to 1830s and argues that “discipline was a continually renewed effort to shape public communication, individualize social problems, train dutiful citizens, and marginalize social divisions and alternate ways of life.” A little over a decade later, McLennan used a longer chronological approach to explore the evolution of penology and disciplinary action on penal labor, one spanning the late eighteenth through the first third of the twentieth century. She finds that the issue of unfreedom dynamically shaped power relations in regard to convicts and authorities. All of these historians have written a great deal about humanitarianism or unfreedom, but they have

not examined how penal labor shaped our understanding of this new cultural development. Analyzing the attitudes and views of this form of unfreedom contributes to our understanding of penal labor and to the larger debates on the emergence of humanitarianism and unfreedom.\(^5\)

This chapter uses legal records, moralist correspondences and papers, and commentaries to analyze the changing understandings of suffering, moral responsibility, and reformation in the early American republic. Figures like Thomas Jefferson, Benjamin Franklin, and the Philadelphian physician and reformer Benjamin Rush, contributed profoundly to these debates.

While the chapter largely aims to investigate the discourse on penal servitude in Pennsylvania, Maryland, and Virginia, it also draws on views and debates from other states and across the Atlantic to show the circulation of ideas regarding servitude, banishment, reform, and moral responsibility in the British Atlantic World. In the wake of the American Revolution, the practice of penal labor expanded and a discourse arose that came into conflict with post-war ideas about liberty for free whites and blacks and for enslaved people. This tension grew out of the Revolution and influenced how early republican sentiments and responsibilities changed regarding unfreedom and punishment, thus shaping new legal and humanitarian agendas in early America.\(^6\)

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\(^6\) This study is not one that argues that humanitarianism singly drove the change from public displays of seizure and damage to the body to one of private confined labor. Rather, the study
Early Reforms in the New Republic

In the wake of the American Revolution, early republicans had to recast their economic, political, and cultural landscapes. The war corroded monarchical traditions, redistributed political authority, and transformed modes of power for ordinary people, paving the way for a more democratic society to take root. The revolutionary rhetoric that circulated during the war facilitated the breakdown of traditional social hierarchies and weakened the ideological underpinnings of coerced labor systems: it contributed to the decline of white servitude, halted imported British convict labor, and challenged the expanding institution of slavery. Regarding the sphere of crime and punishment, the war set republicans down a path to find the best “Christian and ‘republican’” modes to punish offenders. The colonies’ harsh penal measures based on the English “Bloody Code” had long been criticized in America and Britain, especially after Cesare Beccaria’s famous attack on capital punishment in 1764. With a new dialogue on crime and punishment, early republicans aimed to shed “monarchial” laws regarding discipline and to create new just modes of punishment. Many Americans believed that criminal activity increased in the post-Revolutionary years, and they sought to bridge republican ideology with modes of punishment. In 1784, one writer recorded, “scarce a morning arrives, but we hear of some house or store having been broken open the past night….It must give every man of feeling [sic] the most sensible pain, when he observes how insufficient our penal laws are.” To be sure, it is hard to assess whether there was an actual increase in criminality that resulted from the maps where humanitarian arguments emerged in order to chart them over the long durée, and it seeks to demonstrate the change in values regarding suffering, pain, and sympathy.
failure of the criminal system, but many early republicans believed there was a cultural and moral problem at hand. In the last decades of the eighteenth century, they searched for modes of punishment that were humane, aligned with republican values, and was proportional to the offense, but how to create such an institution troubled many lawmakers, moralists, critics, and reformers for years to come. 7

Colonial laws and practices offered precedents in building a new system, but with the exception of penal servitude, Americans dismissed many of the legal norms on discipline they had borrowed from their mother country. Lawmakers and reformers in the 1780s did not have a proven penological plan at hand, but they could draw on transatlantic ideas. England’s 1752 Dock Yard Bill, for example, proposed penal labor as a legal punishment. It did not aim to reform offenders, but to deter potential malefactors through the sight of public hard labor. Although the bill failed, its emphasis on domestic penal labor as a mode of discipline was significant. Closer to home, the colonies had long practiced buying, selling, and working imported British convicts and offenders already living in North America. States like Maryland continued this practice for years after independence. Although servitude as a punishment has deep roots in English Common Law, it is significant that it made it into the Continental

Congress’s Northwest Ordinance in 1787. The Ordinance forbade slavery and involuntary servitude in the Ohio River region, except for “the punishment of crimes whereof the party shall have been duly convicted.” Slave owners could not have their enslaved people in the region, but those who owned convicts could indeed bring them into the new territory. Even though early republicans rejected systems of unfreedom and many, like Benjamin Franklin, morally condemned the colonial convict trade for years, lawmakers allowed penal servitude to expand into the west with this landmark law. Lawmakers could champion their new bill’s commitment to the expansion of freedom, but it paradoxically authorized an expansion of unfreedom for anyone deemed criminal.⁸

In the last quarter of the century, republicans wanted to deter potential malefactors from a life of crime and ensure reformation was part and parcel of punishment, but how and by what means could it be done? Ideas and uses of cruelty in discipline were not new in the post-

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Revolutionary period, and the constitutional ban on “cruel and unusual punishment” prescribed a foundation of acceptable conventions in punishment. Enlightenment thinkers like Locke and Montesquieu pointedly critiqued unjust notions of severity and cruelty.  

Beccaría famously reasoned that the death penalty and torture were ineffectual and unjust, thus hindering societal progress. Importantly, he suggested “‘life-long servitude’” as a punishment, but did not go into detail of the logistics of implementing such a punishment. While reformers across the Atlantic World debated the roots of criminality and condemned excessively severe punishments, they offered far less on the most efficient and practical ways to conduct disciplinary measures.

Colonial judicial authorities relied on public and corporal punishments and executions as a measure to deter criminals and induce the terror of the law, but early Republicans increasingly agreed that a death sentence and severe corporal punishments was not the solution. In the colonial period, offenders found guilty of thievery, robbery, counterfeiting, or rape walked shamefully to their public execution platforms, an open display of punishment that drew large crowds, sometimes in the thousands. In the new states, constitutions and judicial authorities showed a new and strong commitment to reduce the severity of punishment. Maryland’s

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Declaration of Rights, for example stated that “sanguinary laws ought to be avoided.”\textsuperscript{11} One supporter of criminal reform wrote, “the punishment of death precludes the possibility of the amendment of the criminal by any human means. Every hope of reformation is at once cut off without a single effort to accomplish so just and benevolent a purpose.” Benjamin Rush and the influential Federalist attorney general, William Bradford, strongly opposed the death penalty on moral grounds. Death was not a deterrent to Rush, and he thought of it as a monarchical punishment. Instead of arguing its ineffectiveness and utility, like Becarría, he was more concerned with the reformation of criminals. Thomas Jefferson had proposed limiting execution for the serious crimes of murder and treason. Benjamin Franklin argued for proportionality in punishment in 1785 and advocated for limited use of the death penalty. After he read an account describing a woman who faced capital punishment for stealing, Franklin suggested that the thief could have made the appropriate reparation through her labor.\textsuperscript{12}

Pennsylvania paved the way for a reformed penal system, breaking away from old colonial traditions and institutionalizing penal labor. During the post-war years, Pennsylvania had the largest urban and commercial port in the nation, and Philadelphia elites worried about wartime inflation, crime, and growth in the number of impoverished dwellers and migrants who fell outside a traditional household structure – the “masterless” poor. Merchants, lawyers, and property owners fretted that the city was in disarray, and petitions bombarded lawmakers, urging

\textsuperscript{11} Meranze, \textit{Laboratories of Virtue}, 19-21, Quoted in Masur, \textit{Rites of Execution}, 71-2; McLennan, 32.

revision to the criminal code. The idea of industry in lieu of idleness was well rooted in the Protestant ethic, and many almanacs advocated that hard work engendered virtue – a significant feature organizing early Republican life. Responding to the denunciations of the death penalty and embracing a new republican mode of public punishment, the Pennsylvania General Assembly passed an act for public penal labor in 1786. The law sentenced offenders “to undergo a servitude for any term or time at the discretion of the court” not exceeding ten years. Offenders, who would be called “wheelbarrow men,” would be kept at “hard labor” working to clean or repair streets or sent to toil in mines and forts, or “such other hard and laborious works” for the public benefit. The state then removed execution and corporal punishments for crimes like robbery, burglary, sodomy, horse stealing, and larceny; those found guilty of first-degree murder, however, could still face execution. Lawmakers and reformers thought that the shame and humiliation of penal public work would encourage offenders to give up their criminal ways. This law dynamically changed the connection between the public display of punishment and the suffering body. Reflecting on Beccaria’s legacy, lawmakers took pride in their enlightened new system of punishment, and they assured that the display of hard labor would deter potential offenders and reform convicts into morally upright members of society.

While Virginia and Maryland did not lead the way in penal reform as Pennsylvania did, the two states also passed laws on public hard labor law. In 1785 the Virginia legislature passed a

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bill stating the governor could pardon capital offenders “upon such conditions of bodily labor.”\textsuperscript{15} Virginia, however, lagged behind in the broader reformation of their penal laws. Jefferson sponsored a bill entitled, “A Bill for Proportioning Crimes and Punishment in Cases Heretofore Capital,” which proposed the punishment of hard labor for a variety of offenses, but it failed in 1786 by a single vote.\textsuperscript{16} Still, the practice continued to be used to punish certain criminals. In 1786, a Virginia board advised the Governor to pardon several criminals who stole horses and committed robbery and a felony on the condition that they “perform bodily labor” for a certain number of years.\textsuperscript{17}

Influenced by Pennsylvania’s experiment, Maryland also passed a similar law on public hard labor law. In 1789, with what would also become known as the “‘Wheelbarrow Act,’” lawmakers concurred that criminals should contribute to the infrastructure and facilities in the increasingly commercialized state. For many serious crimes, as well as petty larceny, male offenders could “serve and labour for any time…not exceeding seven years…on the public roads of the said county, or in making, repairing, or cleaning the streets, or baseman of Baltimore-town.” Women, on the otherhand, went to “some place of confinement,” the workhouse, and would be kept at “constant labour.” With this, lawmakers reaffirmed the connection between punishment and labor, which had been hitherto reserved for a smaller number of offenders sold into

\textsuperscript{15} McLennan, 33; William W. Hening, ed., \textit{The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619}, 13 vols. (Richmond: R. & W. & G. Bartow, 1819-1823), 12:45 (hereafter, \textit{Virginia Statutes at Large}).


servitude. This law did not use explicit reformatory language, but it justified the utility of hard labor. Baltimore developed into a major port city with numerous public works projects. Offenders used picks, shovels, and wheelbarrows to repair the state’s roadways. William Bradford found that even though Maryland still had the death penalty on the books, authorities rarely used it, and it was *de facto* abolished: “the punishment of hard labor, continually offered to the public eye, will be considered as the only penalty prescribed by law,” he wrote. This form of penal labor increasingly gained purchase as a justifiable and utilitarian means to preserve lives and benefit the public.¹⁸

A wide range of criminals could receive terms of penal labor, and authorities also punished the poor with coerced labor in incarcerated spaces in the mid-Atlantic region. Vagrants, thieves, beggars, runaway servants and enslaved people all could be relegated to categories of moral depravity and endure the punishment of penal labor. Vastly different from crimes against people or property, vagrancy was a broad criminal category, one describing homelessness, jobless, and reliance on others for provisions. Middling and elite Philadelphians understood poverty as an option, selected by some of the poor, rather than a result of their conditions, and they held them accountable for their moral and social lifestyles. The “masterless” men and women could steal food or clothing, which made property less safe, and their impoverished appearance made many fearful that the city needed a more highly disciplined system. Instead of being pitied or given alms, some of the poor ended up in prison. Mary Connor, for example, was

sentenced to thirty days of hard labor for “cohabitating with negroes & being an idle vagrant.” Mary Price received the same sentence for “being a disorderly woman.” Colonial communities usually assisted those who could not support themselves, typically through the almshouse and the system of poor relief, but in the early Republic, places of incarceration often managed the increasing number of the poor.¹⁹

Criticisms, Debate, and Rising Humanitarian Discourse

Enlightenment ideas about discipline and severity contributed significantly to changing the ways Americans and Europeans thought about pain and sympathy for undesirable people, including convicts and slaves. The intellectual and Enlightenment origins of human sensibilities toward undesirable people, including criminals, were rooted in changing philosophical understandings of pain and sympathy. Influenced by John Locke’s esteemed work on sensation and human understanding and the Earl of Shaftsbury’s philosophy on moral sense, Scottish Enlightenment thinkers furthered ideas of human capabilities of sympathy for others. Moral sensibility could powerfully curb ideas of self-interest and protect the community in a time when

¹⁹ Newman, *Embodied History*, 40-3, 46. Newman finds that servants, slaves, apprentices, sailors, prostitutes, those discovered intoxicated or unable to care for themselves, and people found to threaten civic order could be deemed vagrant, therefore punishable, if they were homeless and jobless. In his study on Philadelphia, Newman found that one fourth of those charged with vagrancy were identified as black and approximately 46 percent were women. The largest category in the city’s vagrancy dockets were those without a home and job, and runaways were the second largest group. See pages 46 and 48; Mary Conner, 20 February 1795, and Mary Price, 23 February 1795, Walnut Street Jail Vagrancy Dockets, Philadelphia City Archive, Philadelphia Pennsylvania.
the Western World steadily grew more commercialized. Discussions about compassion for sufferers increasingly became public rather than private, and many people further connected humanitarian acts with their understanding of civilized societies.

Although initially and seemingly agreeable to Enlightenment thinking and republican ideology, public hard labor became problematic for many Americans in practice. Historian Michael Meranze articulated the effects of “mimetic corruption,” a process in which observing criminal punishment became a criminal contagion. Wheelbarrow men labored in public view, but Philadelphians who watched them at work did not increase their respect for the law, nor did the law usher in the much hoped for reformation of convicts. Instead, public labor was often the site of fights, drinking, and violence. Many offenders plotted their escape, and some were successful. Robert Turnbull, a lawyer from South Carolina observed the Philadelphia prison system and reflected that “the convicts who were sentenced to the wheel-barrow, and chained and dispersed along the streets and roads, exhibited, from the difficulty of superintending them, the most shameful scenes of drunkenness, indelicacy and other excesses in vice.”

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Although moralists held high hopes for public hard labor, many found it was a failed experiment. One observer, Ann Warden, described the conditions for the wheelbarrow men, noting that “The convicts here have recently been condemned to hard labor instead of execution, and now clean the streets.” They labored with an “iron collar around their neck and waist to which a long chain is fashioned and at the end a heavy ball.” Their heads were shaved, and they wore a “mixture of dark blue and brown stuff” and “woolen caps.” Some bystanders would talk with the wheelbarrow men while others derided them. Some convicts were able to walk away from their post and asked onlookers for money or acquired liquor. Worse, contemporaries did not feel as though the malefactors were reformed through the punishment. Ann Warden found that offenders “were much averse to this shameful exposure,” and they even “preferred death to it.”

In 1787, Franklin noted that the law for public labor failed to reform offenders. Benjamin Rush worried that “employing criminals in public labour, will render labour of every kind disreputable.” Reflecting on the experiment, Jefferson agreed. These offenders were a “public spectacle” and the work “on high roads, produced in the criminals such a prostration of character, such an abandonment of self-respect, as, instead of reforming, plunged them into the

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most desperate and hardened depravity or morals and character.”  

As Robert Turnbull put it, “unfortunately…for the friends of humanity” this punishment failed to significantly reduce the crime problem or recast offenders into morally upright members of society.

Yet early republicans stood behind the reformatory nature of penal labor. In August of 1787, Benjamin Rush was moved to see one of the wheelbarrow laborers taking a short rest and playing with his pet dog, which came over from England with him. The companionship struck Rush, and he affirmed for him that “a heart is not wholly corrupted and offers at least one string by which it might be led back to virtue that is capable of so much steady affection even for a dog.” To Rush, the dog’s loving behavior toward his owner “conveyed a faint idea by his fidelity of that infinite love, which follows the human species however much distress, debased by crimes, or degraded by the punishments of a prison, or ignominy, or of pain.” Here, Rush found human vice could be amended, which was evident in the affectionate bond between humans and animals. For him, it was the capacity to love that made beings human, therefore worthy of aid and reform.

Before he became a lawyer, John Quincy Adams also thought about the nature of hard labor and capital punishment. In 1787, the future sixth president of the U.S. observed that interlocutors who regularly rejected capital punishment suggested hard labor instead. He found that perpetual hard labor and imprisonment was to “be a more rigorous atonement for a crime.”

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27 Turnbull, A Visit to the Philadelphia Prison, 9-10.

Adams thought this punishment invoked the terror of the law, and it should be the “principal object of a legislator.” He added that, “the addition of confinement will be but a small restraint to the greatest part of mankind who know, that whether innocent or guilty, they must depend upon hard labour for their subsistence.” For Adams, convicted criminals would pay their dues back to society by compulsory labor, and it was far superior to the death penalty.

The confidence in individual rehabilitation and republican ideology galvanized support for limiting executions and establishing public hard labor as a punishment, but how to effectively reform offenders was still the question at hand. Adjusting Beccarían concepts on the terror of the law, Rush advocated for private rather than public labor. Punishment inside closed doors, one sealed away from onlookers and public interaction, would be the appropriate moral remedy. Rush drew ideas and inspiration from John Howard’s notable work, *The State of Prisons* (1777). He advocated in a famous 1787 pamphlet that “BODILY PAIN, LABOUR, WATCHFULNESS, SOLITUDE, and SILENCE” are the penal measures necessary for reformation. With criticisms mounting against the wheelbarrow scheme from moralists, the charitable group, the Philadelphia Society for Alleviating the Miseries in Public Prisons – which regrouped after the War – and others, the Pennsylvania legislature in 1790 decided that convicts, with the exception of a few very serious criminals, would undergo a term of hard labor at the Walnut Street Jail. With this, the Philadelphia prison became a penitentiary – a space for discipline that led to criminal

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reformation through individual penitence – and inmates underwent terms of hard labor and solitude as part of their punishment.  

With the new system of penal servitude, reformers advocated for humane treatment toward convicts who were now walled off from society. The development of the penitentiary effectively displaced the practice of offenders becoming penal servants to private individuals.  

While observing offenders at their work, Robert Turnbull in 1796 wrote that prisoners were “employed in beating hemp, picking moss, hair, wool or oakum,” and they also produced nails, shoes, or clothes, and cutting wood and stone. Kept separate from men, women worked on “spinning cotton and mop yarn, carding wool, picking cotton, sewing and preparing flax and hemp,” and some worked at “washing and mending.” Turnbull remarked that while it was humane and reformative, it was still a punishment powerful enough to evoke terror in potential malefactors. Turnbull argued that all countries’ legislatures should ensure that criminal confinements were clean and not overcrowded. “To impose filthiness on a convict is cruel; for surely he is sentenced to imprisonment, not to linger out a miserable existence by the hand of disease. Even the highest grade of guilt cannot forfeit our compassion in this respect towards a criminal.” The Philadelphia Society for Alleviating the Miseries in Public Prisons also argued for ethical treatment in a socially distant and disciplinary space. They found that charitable organizations were necessary to ensure that societies could provide aid when the legislation failed to ensure proper human welfare. “From the weakness and imperfection of all governments,

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30 Masur, 79-80, 82-3; McLennan, 37; Benjamin Rush, *An Enquiry into the Effects of Public Punishments ...* (1787); Meranze, 140-1.

there must necessarily exist, in every community certain portions of distress, which lie beyond the reach of Law to prevent or relieve.” Treating convicts ethically could not and should not be divorced from societies’ obligations and compassion, and not just in the U.S., but elsewhere.32

Importantly, Rush and other contemporaries advocated that reforming penal laws were their moral responsibility, and it was part and parcel to a larger duty of Christian and moral benevolence toward the public and prisoners. Jefferson and his lesser known compatriot George Keith Taylor were the vanguard of penal reform in Virginia. Taylor made important assertions of moral responsibility to effect change to the criminal code. In 1796, he affirmed to the House of Delegates, “it is our duty as sworn servants of the people, who are bound to increase their political happiness, and to remove every vestige of oppression, to accelerate, by every means in our power, the noble work of reform.”33 Here, Taylor affirmed that it was the delegates’ duty to revise the criminal codes to promote the wellbeing of the prisoner and society. In a letter to his longtime friend, the West-Indian born doctor, John Coakley Lettsom, Rush proudly recounted that the work of the Philadelphia Prison Society and others who strived to change the penal culture was “not only of humanity but of virtue in general.” Their work was not just a humanitarian venture to Rush, but a republican one as well. He argued that even if the movement failed, “men grow good by attempting it.” Here, he showed that the process of reforming jails


33 George Keith Taylor, Substance of a Speech Delivered in the House of Delegates of Virginia, on the Bill to Amend the Penal Laws of this Commonwealth (Richmond: Printed by Samuel Pleasants, Jr., 1796); Paul W. Keve, History of Corrections in Virginia (Charlottesville, VA: University of Virginia Press, 1986), 15-6;
and alleviating “human misery” moralized men, a route that allowed them to cultivate sympathy and compassion for the sufferer. Circulating his ideas on morality, Rush distributed his moral thermometer (see Figure 7) which displayed the connections amongst the evils of drinking, crime, and punishment. Publishers reprinted the thermometer in an array of periodicals, newspapers, and almanacs, including *Columbian Magazine* and England’s *Gentleman’s Magazine*. As historian Thomas Laqueur noted, the eighteenth-century contemporaries witnessed and practiced a democratization of ethical obligation as more people understood their obligation to help others and prevent suffering. People like Rush and Jefferson displayed and published their writings on moral responsibilities as important ways to galvanize humanitarian sentiment.\(^\text{35}\)

\(^{34}\) Moniz, 6, 51; Benjamin Rush to John Coakley Lettsom, 28 September 1787, in Butterfield, *Letters of Benjamin Rush*, vol. 1, 441.

U.S. and European moralists relied on each other for information and strategies to expand their campaigns, and they also discussed their work, to some extent, developing globally. Quaker merchant and prison reformer, Thomas Eddy wrote Jefferson explaining how impressed he was with Pennsylvania’s approach to criminal reform. With this, Eddy remarked, it was “my duty to spread principles tending to promote the general good of Mankind,” and in doing so, he and others increased the likelihood of more “benevolent institutions.” The notion of mankind in Eddy’s account shows a broad appeal to the betterment of society. Thomas Laqueur reminds readers that ignoring or neglecting humanitarian problems “is the ubiquitous other side in the history of human rights,” and indeed these reformers sought to highlight the problems and possible solutions needed to solve these issues. The Philadelphia Society for Alleviating the Miseries in Public Prisons esteemed the work of “the Friends of Humanity in Europe.” In a letter to John Howard, the Society hoped “that you may enjoy the pleasure of Seeing the Success of your Labours in the Course of Humanity in every part of the Globe.” Likely to Howard, Rush wrote that he wanted to add his “acknowledgements with those of your British & Irish fellow citizens, for the immense Services you have rendered to humanity & science by your histories of prisons & Lazarettos.” He explained, that “The operations & progress of truth, tho’ slow, is sure. Your excellent works I have no doubt will prove a seed of improvement in criminal law for future generations.” Reformers and elites considered their work critical to popularize the movement to improve penal conditions for the present as well as future communities.\footnote{Clark, 492-3; Moniz, 49; Mark E. Kann, *Punishment, Prisons, and Patriarchy: Liberty and Power in the Early American Republic* (New York: New York University Press, 2005), 47; To Thomas Jefferson from Thomas Eddy, 9 February 1802,” *Founders Online*, National Archives,}
While promoting new moral ideas on a republican form of penal labor, Americans distanced themselves from an earlier version of this punishment: the colonial convict trade. Even as late as 1790, John Adams asserted that he was not a descendant of an Irishman, German redemptioner, or a transported convict. Franklin had long opposed British transportation of convicts to the colonies, and his sharp critiques circulated in numerous newspapers. In 1787 he asserted that the colonial convict trade was not only a failure, but imported convicts were criminal contagions. He reminded readers of a time when Britain sent convicts purportedly “‘for the BETTER Peopling’” of the colonies – “a Mark of her parental Tenderness.” Mockingly, he contended that “we are therefore much in her Debt” as the colonial trade encouraged so many new criminals in the young nation that they could now send “ample Remittance in the same Commodity” to Britain. Since the Wheelbarrow law failed to reform offenders, he suggested that Americans should show their “Good Will” by mandating that all British vessels trading in the U.S. now transport American convicts across the Atlantic. Here, he attacked the lack of morality associated with the trade, one that halted over a decade before, and he discussed the practice’s role in current economic and moral affairs. To Franklin, British imperialist efforts had exacerbated the crime problem, and he argued that convicts were better off banished out of

American society. While many colonists criticized the colonial system of convict servitude, here Franklin ignored the hypocrisy in continuing a similar practice of penal labor.\textsuperscript{37}

Convicts themselves and their counterparts learned to make use of morally charged and reformatory language to get out of their sentences. In 1788, a few prisoners petitioned the Supreme Executive Council of Pennsylvania asking them to “Banish us to New Spain or to any Other part,” arguing that the sentence would benefit the public and be “an Act of Charity.” So sure they would not return, they stated, “We & each of us are willing to bind ourselves to that Honorable Board under penalty of having the Awful Sentence of Death passed upon us, if We, or either of us Return to the United States before the Limited time of the Sentence pronounced upon, us, is Expired.”\textsuperscript{38} They applied to the Board’s sense of moral probity by confirming the charity in their release, a “Favor [that] shall be ever Acknowledge’d with gratitude.” Jefferson received petitions from convicts hoping to have sentences reduced. In 1806, petitioners argued that Phillip Williams lived an honest life, working as a teacher, until his first offense. For his crime, he received a sentence of seven years hard labor. Having served almost two years of the sentence, petitioners hoped and thought the punishment he endured “will be a Sufficient

\textsuperscript{37} From John Adams to John Trumbull, 12 March 1790,” Founders Online, National Archives, http://founders.archives.gov/documents/Adams/99-02-02-0868; Benjamin Franklin to the Editor of the Pennsylvania Gazette, (unpublished), c. 1787, Franklin Papers, Digital Edition; For Franklin’s views on the colonial convict trade see Ekirch, Bound for America.

\textsuperscript{38} The Petition of Ten unfortunate Criminals, 16 February 1788, Pennsylvania Prison Society Records, 1787-1966, Series 2: Papers, 1787-1848, Box 1, Folder 10, HSP.
enducement for a reform (if realy Guilty).” They asked if he could be returned to his family and friends so he could once again enjoy “the Privileges of a free Citizen.”

Some reformers began to argue that the avenue to reformation was not only good for some people, but it also overlapped certain rights and should be more universal. Lynn Hunt has argued that the American Revolution and French Revolution engendered new rights discourse, brightly highlighted in conversations on abolition and women’s equality. Rights language constantly evolves, demonstrating the relationship between people, politics, and what is morally acceptable in society. Hunt argues that the “rights of man,” embedded in the French Declaration of the Rights of Man and Citizen, were indeed conceptualized as human rights. Rights language did take on a variety of forms in the eighteenth century, and phrases like natural rights, rights of mankind, and rights of humanity are important to consider when considering what and how early republicans conceptualized what rights were. In 1788, the new Pennsylvania Abolition Society noted that “This present age has been distinguished by a remarkable Revolution. The human mind has felt its influence. Mankind begins at last to consider themselves as Members of one family.” In the sphere of crime and punishment, William Bradford stated that the principles of


punishment should serve to protect the “rights of humanity and …deserve[s] a place among the fundamental laws of ever free country.”\textsuperscript{42} He praised Maryland, as it was initially in this state “alone that the general principle was asserted.”\textsuperscript{43} Further, Benjamin Rush argued the need for moral universalism toward criminals on the basis of their humanity. “Every body acknowledges our obligations to universal benevolence. But these cannot be fulfilled, unless we love the whole human race, however diversified they may be by weakness or crimes.”\textsuperscript{44} Ideas about moral duty and rights of criminal reformation took root and began to shift outside of communities into wider understandings of moral responsibilities toward human sufferers.

During the eve of penal reform, discussions about the suffering enslaved person heated as the antislavery movement gained purchase, and discourse about criminality and the inhumanity of slavery overlapped and informed debates about unfreedom. In 1789 Benjamin Rush drew parallels regarding the improvement of criminal treatment and antislavery agendas. In a letter to Noah Webster he explained that it was as unpopular to advocate for abolition in the 1770s “as it is now to defend the claims of criminals to the rights of humanity or to the means of reformation.” An avid supporter of abolition and criminal reform, Rush emphasized the importance of advocating for previously detested people, both enslaved people and criminals, the

\textit{Justice in the City of Brotherly Love} (Baton Rouge, LA: Louisiana State University Press, 2011), 158.

\textsuperscript{42} Bradford, 3-4, quotation on 4. Bradford defines the principles of punishment as those which center on the preclusion of crime, are used only in cases where it is unequivocally necessity, and are administered proportionally.

\textsuperscript{43} Bradford, 4.

\textsuperscript{44} Rush, \textit{An Enquiry into the Effects of Public Punishments Upon Criminals}, 1787.
latter he affectionately called the “other class of friends.” Friendship, here, is a human quality that even criminals could display, and their humanness justified ethical treatment.\(^{45}\) Robert Turnbull found that in the Philadelphia prison, blacks, mulattoes, and whites do not have the “degrading distinctions” as there are in states upholding slavery. According to Turnbull, the former two have the same privileges as white convicts, and they all sat together at the same table for a meal, which was eye-opening to him. Pennsylvania had implemented gradual emancipation, and in his view, once the enslaved person was a certain age, “he is placed upon the same footing with an indentured servant.” To be sure, racism certainly was in jails and beyond them. Simultaneously, poverty and lawbreaking created communities of people from all different backgrounds, and reformers drew on this plurality to discuss the justness of criminal treatment. Turnbull continued, “What portion of rights this class of the community at this moment possess, the board of inspectors are extremely careful and jealous of; so much so, that they direct the visiting inspectors constantly to bear in mind, that all men are free until legal proof is made to the contrary.” To make his point, he stated that “They therefore take care that no person is held in confinement on a mere suspicion of being a runaway slave.”\(^{46}\) A proponent of abolition and penal reform, Turnbull esteemed Philadelphia for what he believed to be ethical practices of prisoners, indicating that other states should do the same.

Some lawmakers drew on notions of civility and the cruel practices of slaveholding to advocate for legal reform. George Taylor Keith, the lawyer who sponsored the legislation for

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\(^{46}\) Turnbull, 29; Newman, *Embodied History*, 58.
Virginia’s penitentiary, argued to Virginia’s House of Delegates that the criminal laws of the past were “cruel to no purpose.” Early republicans were free, possessing “mild virtues of humanity and civilization,” and it was in those “fierce and barbarous” times that criminal laws began. He attested that the current system was “a tyrannical infringement on natural right,” and it fails in part because the criminal’s circumstance evokes “the sympathy and compassion of his judges.” He argued that “Laws should be made with reference to the morals of the people.” Considering this notion, “Each individual feels, enjoys and glories in his freedom. It produces an elevation of sentiment, a pride of spirit which will never stoop to meanness. But in proportion as your laws degenerate from the principles of liberty, your people become mean and abject.” As an opponent of slavery and advocate of criminal reform, he implored the Virginia House of Delegates in his speech hastening penal revisions, “how long, I pray you, shall we continue to be governed by a system calculated for the control of savages and slaves?”

Taylor appealed to delegates’ sense of civility and sensibility in order to affect legal changes for criminals and break down a long-standing argument for slaveholding.

The Penitentiary and Banishment in the Early Republic

Using Pennsylvania as a model, other penitentiaries emerged, and penal labor lay at the core of their plans. New York passed a law in 1796 authorizing the construction of a penitentiary, and New Jersey’s facility was in operation in 1797. For Virginia, Jefferson’s failed criminal reform bill in 1786 no doubt was a great disappointment to him, but a decade later the

47 Keve, 2-3; Taylor, *Substance of a Speech Delivered in the House of Delegates of Virginia.*
lawmakers passed a new penal plan that would support convict labor.\textsuperscript{48} When Virginia wished to delay the new bill – Jefferson and his committee’s edited version – reforming penal laws in 1796, George Keith Taylor defended the law’s urgency. The bill he argued imbued the “principles of humanity” and “substitute[d] a system of clemency and mercy for a code of carnage and horror.” Instead of laws that deprived the lives of offenders, he argued that the best punishment was “by labour, the repentance and the reformation of the culprit.” Following Pennsylvania’s example, penal labor would encourage the offender to reflect on the errors of their criminal past, “but lest labor alone should prove insufficient, a certain proportion of solitary confinement is superadded.” Taylor’s speech must have been influential; Virginia approved the penitentiary that year and opened the new building in 1800.\textsuperscript{49}

In Maryland, the ideas and language regarding criminal revisions surrounded legislators, but they wanted to pursue other options before they turned to the penitential model. Both the punishments of banishment and servitude were already in the law books. The British, with the penal colony at Botany Bay in Australia, and the French colony in Guiana also used a combined sentence of transportation and a term of servitude. However, Maryland authorities found that institutional deportation of all convicts westward or to other states was impractical. In 1804, a resolution consented to building a penitentiary, but interestingly, there was little discussion about


\textsuperscript{49} Taylor, Substance of a Speech Delivered in the House of Delegates of Virginia (1796); Rice, 19; Keve, 2-3; Masur 71, 82; Philip J. Schwarz, Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865 (Baton Rouge: Louisiana State University Press, 1988), 25; McLennan 37-8, 41-2.
this initiative until 1808, when lawmakers announced a renewed interest in the idea. In 1809, they passed the Penitentiary Act, and the new building opened in 1811, embracing the “rational” penal philosophy of proportionality, certainty, and deterrence. Around the end of the first decade of the nineteenth century, ten states, including eight in the north and Maryland and Virginia, opened penitentiaries.\textsuperscript{50}

Even during the rise of the penitentiary, judicial authorities continued to combine the sentences of banishment and penal labor for some offenders.\textsuperscript{51} Maryland authorities practiced banishment and sold criminal slave offenders, for example. In 1787 the General Assembly passed a law stating that the governor could issue pardons to capital offenders, and if the malefactor was an enslaved person and either ordered to leave the state or be transported, the governor could authorize the sheriff “to contract and take proper security for the transportation of such slave, agreeably to the condition of his pardon; and the sheriff my [sic] either sell such slave subject to such condition, or empower some other person to sell him in the place to which he shall be transported, for the benefit of the state.” Similar to Virginia, the treasury compensated slave owners if the state executed an enslaved person, so it was in the state’s interest to transport


\textsuperscript{51} McLennan, 54, 77. McLennan points out that in the late 1810s, legislatures seriously discussed the broader use of banishment and penal colonization in lieu of the penitentiary style of discipline. Importantly, these conversations had deep roots in the colonial and early national period. Likely borrowing from its parent country, Pennsylvania for example used banishment for some capital offenders in 1718, exiling criminals out of the colony.
convict slaves into slavery elsewhere. In 1789, justices had the discretion to punish enslaved people charged with capital offenses instead “to serve and labour” on Baltimore’s public roads no more than fourteen years. In regard to spared enslaved people and also servants, who were charged with crimes that were not punishable by execution, the justices “shall, immediately on conviction and condemnation” assess the value of the slave or time of servitude remaining for the servant and compensate that sum to the owner. If they survived their sentence of hard labor, at the end of the term they would be “sold at auction” with the money going to county treasuries. In 1795 and later in 1803, Maryland reaffirmed the governor’s power stating that he could render any death sentence to labor or banishment; if the criminal was an enslaved person, the sentence would be “transportation, and sale in some foreign country for the benefit of the state.” In 1802, for example, John, a “salt slave” of Henry Dukebart, was guilty of arson in Baltimore County in 1802. He was sentenced to “banishment without the United States,” and Dukebart received seventy pounds for John.

Banishment and servitude had long been used to punish offenders in America, but in the post-Revolutionary period these punishments emerged in new proposals in revealing ways, particularly for enslaved people. Virginia had used sale and transportation for convict slaves,

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52 Laws of Maryland, Session Laws, Chap. XVII (1787), 204: 271, in AOMO.

53 Laws of Maryland, Session Laws, Chap XLIV (1789), 204: 429-32, quotation on 429, in AOMO. Servants “shall not be sold for a longer time than shall remain unexpired of his or her servitude at the time of his or her being so adjudged.” See page 429.

54 Laws of Maryland, Chap. LXXXII (1795), 647:72, in AOMO; Laws of Maryland, Chap. XCII (1803), 559:48, quotation 48, in AOMO. In this 1803 law, the Maryland ordered the treasury to compensate slave owners if slaves were banished.

55 Laws of Maryland, (1802):559, 73-4, quotations on 74, in AOMO.
especially for runaways or rebels, in the past, and authorities transported them to other colonies or the West Indies. At the time the penitentiary opened, enslaved people and free blacks were often considered as either deserving of bodily punishments, sale and transportation, or death. Laws for white offenders committing serious offenses, such as horse stealing, landed them in jail for a certain number of years, but these same offenses sentenced black malefactors to the death penalty. Even before the end of the American Revolution, Virginia compensated slave owners for their losses in enslaved people at market value, which was a point of contention, since criminal slaves were devalued and recovery fees were factored into the evaluation. Because it was expensive for the state, the legislatures permitted the governor to reduce capital sentences of enslaved people and as in the 1800 law, “such slave be sold,” and then be “transported beyond the limits of the United States….and shall never afterwards return.” In a system that appears, in some ways, similar to British colonial convict servitude, buyers paid the state a sum for convict slaves and offered a bond ensuring the slave would be carried out of the state in three months. These enslaved people, known as “transports,” waited in the penitentiary sometimes for long periods of time before buyers finalized the arrangements. Transportation, however, was not always an easy practice to execute, since there was no reliable legal mechanism to supervise slave dealers. More pressing is that the events in the Caribbean limited the slave markets around the beginning of the nineteenth century. The slave revolt in 1791 in Haiti, followed by French abolition decree in 1794, hastened market closures for transports. The British and Spanish colonies found themselves hesitant to admit new slaves as well, even though the system of slavery endured for several decades in the Caribbean. Historian Phillip Schwarz found that at least twenty-nine enslaved people in Virginia were transported from 1801-1804, and that number
reached sixty-nine for the period of 1815-1819. He concluded that some were sold in markets in Spanish Florida and the Caribbean, including the Tortugas, Suriname, Cuba and St. Croix. Whether restrictions were relaxed or buyers colluded with smugglers, this punishment for slave convicts expanded in nineteenth century and continued until the American Civil War.  

While Americans outlawed the practice of imported convict laborers, merchants still smuggled convicts into the U.S. Years before James Madison’s presidency, he received letters from a shipper, Turrell Tufts, in 1804. According to Tufts, the Suriname government forced merchants to bring their convicts to the U.S, and he was told this was an “old practice,” one also utilized in neighboring Demerara. He explained that the government there chose “not to punish White People in a Public & ignominious manner, the reason is they conceive that the Slaves would have less respect for their masters.” As a result, most convicts, ended up on ships bound for the U.S. “without noise or complaint—the masters fearing that a Knowledge of the facts would get them into difficulty.” Tufts pleaded with Madison to stop the practice, which he expected would increase: “that every American Master here will be forced to take one.” The practice was kept in secret because merchants feared the consequences of their home government, and he asked for Madison to keep the matter and his identity out of the public eye. Tufts listed a number of other merchants who were subjected to these impositions and urged Madison to intercede, as surely a month without U.S. trading privileges would incite “a revolution” there. Madison was furious that vessels brought those “obnoxious persons to our

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57 To James Madison from Turrell Tufts, 7 January 1804 (Abstract),” Founders Online, National Archives, [Original source: The Papers of James Madison, Secretary of State Series, vol. 6, 1
ports.” It was a practice he found “so injurious to the public safety, and so derogatory to the respect,” and a penal offense, and Madison prepared for making a report to solve this issue.  

This account does not delineate the hardships of servitude, but it shows that penal banishment continued to be an Atlantic problem that invoked concerns of “respect” and security well after the colonial convict system ceased.

Humanitarian Discourse Rising from Banishment and the Penitentiary Movement

The conceptions of penal hard labor for offenders crystalized at a point when other forms of bound labor were decreasing, particularly indentured servitude and apprenticeships. Free-born republicans felt they both had and deserved certain rights, those promised in the Declaration of Independence, and to find themselves in what they considered forms of slavery or involuntary servitude was a profound violation to the nature of the republic. This principle shaped republican political and moral ideas and conduct. As historian Rebecca McLennan has explained, the “penitential mode of legal punishment prescribed by law of 1790 signaled an important departure

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not only from established religious and political-economic conventions, but from certain established principles of customary and natural rights.” Decades ago, Edmund Morgan argued that southern slavery allowed Americans to embrace republican ideas of liberty and freedom. Adam Hirsch has provocatively suggested that we flip this idea around: perhaps in northern spaces, liberty allowed Americans to alleviate concerns on revolutionary contradiction and allowed for a different kind of human bondage during the rise of the penitentiary. But, it was not limited to northern states. Penal servitude flew in the face of republican ideas of virtue and freedom and prompted new rhetoric to justify or critique this punishment on humanitarian grounds.  

Opponents openly criticized the enlightened experiment. One critic, signing as Cato, affirmed that men in civil society had certain rights, including “the goods acquired by his labour,” and citizens should not be subject to tyrannical punishments. Further, “laws founded on erroneous notions of interest, of humanity” or religion only encourage disorder, and one only needed to visit the jail to see a “hell on earth” where “all characters and colours crowded together, [were] oppressed by their misery, their dirt, and their despair.” Cato determined that a republican society should “unite men upon an equal footing” and rather than rehabilitating offenders. It was the “duty of such government, to remove dishonest men by death, or banishment.” Cato argued the penitentiary was an ill-founded idea, rooted in misplaced principles that harmed rather than benefited the public. 

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59 McLennan 37-8, 41-2, quotation on 42; Meranz, 85; Hirsch, 76.

60 Pennsylvania Mercury, 6 September 1788, 2-3.
Sharp critiques and anxieties came from convicts themselves, similar to the prisoner, Nancy Valentine, who worried about being sold into slavery for life. Petitioning on behalf of seventeen prisoners in 1797, Alexander Howard said that several convicts had received the sentence of “Life to hard Labour and Solitude.” He argued that some of them were not guilty of the charges, and some officials used their power arbitrarily and unlawfully to convict them. He contended that it was “A hard Case that in a free Country Innocence should Suffer.” Many of the prisoners “bled in the late war wherein We laboured for freedom,” he lamented. Howard assured them that if they were freed from their harsh imprisonment, they would reform and become morally upright people in society.  

Similar to Alexander Howard, convict Stephen Burroughs criticized the idea of imprisonment after the nation just finished a brutal war in the name of liberty. In 1798, Burroughs recounted his three-year sentence of imprisonment at Castle Island in Boston Harbor in the 1780s. He expected a punishment in a county jail and was horrified when he discovered the court sentenced him to Castle Island. He questioned how can “a country which has stood the foremost in asserting the cause of liberty, that those who have tasted the bitter cup of slavery, and have known from hence the value of liberty, should so soon after obtaining that blessing themselves, deprive others of it?” Liberty was central to American life, he pleaded, but how then could lawmakers “substitute slavery for death” when revising the “sanguinary and cruel” laws. Critics of penal servitude drew on displeasing parallels of slavery and hard labor,

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and they found the severity of the punishment prompted unnecessarily severe suffering and contradicted the principles of republican society.\textsuperscript{62}

Banishment removed people out of the community, away from family, friends, and sympathizers, to a foreign place, and in the last third of the eighteenth century, this exile evoked criticisms regarding patriotism and unfairness in the loss of liberty, especially for enslaved people. Rush, for example, considered “perpetual banishment, as a legal punishment… next in degree, in folly and cruelty, to the punishment of death.” He argued that “Exile, when perpetual, by destroying one of the most powerful principles of action in man, viz. the love of kindred, and country, deprives us of all the advantages, which might be derived from it, in the business of reformation.” Banishment to Rush was unnecessarily cruel and undeservedly denied people the means to come back into their communities.\textsuperscript{63} The British abolitionist Thomas Clarkson attacked the pro-slavery argument stating that African criminal commodification was unjust, and he reasoned that it was neither proportional nor humane. No punishment was worse than losing one’s liberty especially since it was often combined with “the agonizing pangs of banishment” – which excluded those transported of “local,” “personal,” and “national” attachments of mankind.” It was also often combined with severe corporal punishments that many African slaves suffered. There was no crime that deserved this horrid punishment, Clarkson aptly argued. Discourse for and against banishment and penal servitude circulated widely throughout the

\textsuperscript{62} Masur 87-88; Stephen Burroughs, \textit{Memoirs of Stephen Burroughs} (Hanover, NH: Benjamin True, 1798), 118-9, quotation on 119.

\textsuperscript{63} McLennan, 54; 77; Rush, \textit{An Enquiry into the Effects of Public Punishments Upon Criminals} (1787).
Atlantic, and it was difficult to ignore the moral tensions surrounding exile and the deprivation of liberties.  

Banishment and subsequent penal servitude gained new traction in rhetoric about labor, suffering, and moral corruptibility, especially for enslaved people. In 1783 James Madison stated his enslaved person Billy wanted “that liberty for which we have paid the price of so much blood.” Since he might corrupt other enslaved people, the most fitting punishment was transportation. George Washington supported the punishment, and he wanted to transport his “‘Rogue and a Runaway’ enslaved person to the slave market in the West Indies. Even as early as 1776, Thomas Jefferson stated that convicts should be punished “by working on high roads, rivers, gallies &c. a certain time proportioned to the offence. But as this would be no punishment or change of condition to slaves (me miserum!) let them be sent to other countries.” He continued, “by these means we should be freed from the wickedness of the latter, and the former would be living monuments of public vengeance.” In a 1779 proposal to revise criminal laws, he advocated for transportation as a punishment for convict slaves in Virginia, and in 1801 he asked Governor James Monroe to request the Virginia legislature to implement this punishment as law. Gabriel’s conspiracy in 1800 only hastened white Virginians’ efforts to determine a punishment for unruly enslaved people that they deemed effective. Months after learning about the conspiracy, Monroe agreed to support the legal provision for transportation and the legislature


passed the law. Phillip Schwarz found that “the most convincing evidence that most white Virginians believed transportation to be an efficacious deterrent is that it became the de facto practice and then [it was] legalized at the very time when slave resistance appeared to be growing.”66

Transportation and penal labor for slave convicts played an under recognized and neglected role in the history of humanitarianism. Not only was this punishment a means to spare lives of slave offenders, but in some cases it was the only way to spare their lives. Benjamin Henry Latrobe, the designer of Virginia’s penitentiary, witnessed the hanging of William Harris, a slave convict, in 1796. He reflected that Harris “had always entered hope of a reprieve or at least that some Gentleman would buy him, as the phrase is, from under the Gallows, in order to carry him out of the State. This it seems is often done.”67 This was probably a common practice as the Virginia Council journals show several pardons in the last two decades of the eighteenth century: from 1782 to 1786, there were at least forty-one according to Schwarz. In a later example, John, an enslaved person charged with burglary and theft received the sentence of hanging for his crimes. A Brunswick County petition in February 1808 on John’s behalf pleaded:

Takeing into consideration the bad effects of frequent Capital punishments – the fatal consequences of punishing crimes of greater and lesser magnitude alike – the Cruelty of taking the life of a fellow Creature when the possibility of his innocence may exist; and

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when his Crime is not such an one as to evince the plainest proof of a Soul utterly depraved ....[we] feel ourselves induced from motives of policy and feelings of humanity to intercede in his behalf. 68

The petition was a success. With doubt as to whether John had been ordered to commit the crime by his master and the repulsion of taking a possibly innocent life, Governor Cabell and council decided to transport him instead. This punishment preserved the lives of almost a thousand slaves, many of whom received the sentence of transportation on the encouragement of petitioners. As new penal transports, their lives were undoubtedly were filled with misery and the hardships of slavery elsewhere. It was a quick and economical punishment, but it was also defended as a humanitarian alternative to the death penalty.69

Some elites also discussed creating their own penal colony for malefactors both inside and outside the United States. In 1801, James Monroe wrote to Thomas Jefferson in response to the anxieties building up from Virginia’s slave conspiracy. He asked about obtaining land “to which persons obnoxious to the laws or dangerous to the peace of society may be removed.” This would offer a different punishment for those malefactors otherwise sentenced to death. “It was deemed more humane, and it is hoped would be found in practice not less expedient, to transport such offenders beyond the limits of the state.” Monroe added that legislatures’ “obvious intention[s]” showed preference for colonizing land in the U.S. Western territory. He was unsure


whether the legislature would also use the new site for other offenders not condemned to death, but he suspected that if the site opened, they probably would do so.\textsuperscript{70}

Jefferson – who sponsored the Northwest Ordinance – entertained the idea, both for capital and perhaps less serious offenders. He answered that there was nothing to stop Virginia from acquiring land “North of the Ohio,” but it could be expensive and he questioned whether “such a colony” would be desirable, especially to those states in its direct vicinity. Jefferson was more concerned with serious crimes connected to Virginia’s anxieties with unruly enslaved people – those charged with conspiracy, treason, or rebellion – and he expressed his racial views regarding the problem. After considering other options on the continent, he resolved that the island of St. Domingo would be a good choice since “people of their own race & colour” already live there and established their own government. If that would not be acceptable, then Africa was a potential site.\textsuperscript{71} Monroe presented the idea to the General Assembly. They affirmed the punishment for black criminals, and they wished for the “asylum” to be in Africa or in the Spanish or Portuguese colonies in South America.\textsuperscript{72}

\textsuperscript{70} To Thomas Jefferson from James Monroe, 15 June 1801,” \textit{Founders Online}, National Archives, http://founders.archives.gov/documents/Jefferson/01-34-02-0274. [Original source: \textit{The Papers of Thomas Jefferson}, vol. 34, 1 May–31 July 1801, ed. Barbara B. Oberg. Princeton: Princeton University Press, 2007, pp. 345–347.]. Monroe also writes “We perceive an existing evil which commenced under our colonial system, with which we are not properly chargeable, or if at all not in the present degree, and we acknowledge the extreme difficulty of remedying,” removing blame for the current tumultuous climate to an earlier time.


\textsuperscript{72} To Thomas Jefferson from James Monroe, 13 February 1802,” \textit{Founders Online}, National Archives, http://founders.archives.gov/documents/Jefferson/01-36-02-0379. [Original source:
lawyer Rufus King about the issue, telling him about those involved with a recent insurrection: their “execution could not but excite sensibility in the public mind and beget a regret that the laws had not provided for… [an] alternative.” He urged King to inquire about transporting criminal enslaved people outside the U.S., such as to Sierra Leone and indenturing them “as the Germans & others do who come to this country poor, by giving their labour for a certain term to some one” in order to fund the crossing. Despite efforts, Rufus King could not convince Sierra Leone to take slave convicts. To a broader point, the notion of transporting and working those deemed criminal did not exist in a vacuum; these ideas circulated though different political circles and transportation was increasingly favored and justified as more humane over capital punishment for serious slave convicts.7

While the issue of banishment generated widening concerns for some, those who were sentenced to labor in the penitentiaries also demonstrated the problems in the criminal system. Prisoners defied prison authorities and resisted working conditions, through actions like slowing the rate of production (even napping on their tables instead of working) and starting fires and

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riots. Once the Walnut Street jail in Philadelphia opened as a penitentiary in 1790, a large number of prisoners nearly achieved a breakout and escape. McLennan found that in Philadelphia, “convicts routinely succeeded in enforcing the customary working man’s ‘rights,’ including that of ‘Blue Monday,’ laying down tools and ceasing work in flagrant violation of the penitentiary rules.” 74 Families and friends also exercised what they felt was their right to help or visit their loved ones in prison – an inconsistency with penitentiary thought and principle of separating convicts from the outside world. Almost anyone could purchase a pass and family members, peddlers, or employers could give prisoners food, money, tobacco, knives, and rum. After the first decade of the nineteenth century, it was apparent that penal theorists and criminal reformers needed to rethink the relationship among criminals, community members, and the prison staff members. In the 1790s, criminal reformers, including Rush, experienced several problems with the jail’s chief keeper, who expressed discontent with the new penitential mode and did not enforce its basic principles. Two decades later, the jail’s inspectors still found keepers who traded goods with convicts, and the practice became an accepted custom. This was not what Rush and others had planned for this enlightened experiment. 75

The location of the penitentiaries also raised concerns for many people. Petitioners in Richmond, Virginia expressed their satisfaction with the passage of the penitentiary since it would reduce the need for capital punishment and reform malefactors, but they showed concerns for the proposed location. “Human nature is more apt to sympathize with human creatures in distress than to feel horror at its cause, and its tenderness may excite pity for the sufferer, rather

74 McLennan 43-5, quotation on 44.

75 McLennan, 47-8; Meranze, 222.
than abhorrence of the crime.” Residents worried they might not only see the miseries of
offenders, but they might hear the “yells” of those who were given additional corporal
punishments.76 Here, the petitioners recognized a form of suffering for laborers, and they would
rather have offenders moved away from their vicinity in the community – out of sight, out of
mind.

Even though the penitentiaries did not live up to reformers’ expectations, it was still
deemed a step in a progressive liberal tradition for many reformers. Thomas Eddy wrote to
Virginia Governor James Wood affirming “there is abundant reason to rejoice that the voice of
Reason and Humanity has not been raised in Vain [as] a spirit of reform has gone forth the
empire of prejudice and inhumanity is silently but most inevitably crumbling to pieces [and] the
humane mind will be unfettered.”77 Reflecting in 1809 on his work on criminal changes in the
last decades of the eighteenth century, Jefferson noted that the “experience has convinced me
that the change in the style of the laws was for the better,” and it garnered attention and
admiration across the Atlantic. Interestingly, when it came to considering whether George Keith
Taylor’s sponsored law to punish criminals in the penitentiary, he remarked that if the “change in
the stile & form of the criminal law….was for the better is not for me to judge.” He reflected that
his own bill on criminal changes failed – although it became the basis of the Virginia
penitentiary law – and it “employed me longer than I believe all the rest of the work.” He added

76 Petition by 8 Richmond Inhabitants against the Proposed Location of the Penitentiary, 1797,
Records of the Virginia Penitentiary, 1796-1991, Series I. Penitentiary Papers, 1796-1865, Box
1, Folder 3, Library of Virginia, Richmond, Virginia.

77 Thomas Eddy of New York to [Governor James Wood], 23 April 1797, Records of the
Virginia Penitentiary, 1796-1991, Series I. Penitentiary Papers, 1796-1865, Box 1 Folder 4
Letter, Regarding the Penitentiary, Library of Virginia, Richmond, Virginia.
that then, he did not have sufficient knowledge of Pennsylvania’s disastrous wheelbarrow act or the addition of solitary confinement as a legal punishment, but no doubt he still found that the failure of his bill was hard to digest.\textsuperscript{78} As McLennan confirms, the problem that emerged with the penitentiary was not simply that it lacked the necessary resources or effective administration, but it was because family members, convicts, and prison administrators made the penitentiary a place for unruliness and ineffectiveness. In the years to come, reformers would try to change the moral culture of prisons, a path that led to the rise of nineteenth-century contractual penal servitude.\textsuperscript{79}

Out of this contentious relationship, new ideas about suffering, responsibility, and moral universality emerged in the early nineteenth century. Moralists found that reforming convicts as moral outsiders was a failure, and they needed to have the community’s support. In the early nineteenth century, Rush continued to advocate measures that would facilitate criminal reformation. In 1803, he urged prison reformer Thomas Eddy to offer better meals to prisoners on the condition that private donors funded these provisions. Rush proposed that this measure facilitated the connection between criminals and “their fellow men” and would demonstrate to them that citizens still had “a fund of kindness” for malefactors, “suffering for the injuries they had done.” He resolved that “in this way the kind parent of the human race often visits his most refectory children, and sometimes by that means brings them back again to himself.” Although he found confined private punishments – those segregated from the community – as reformative


\textsuperscript{79} McLennan, 48-9, 52.
in the eighteenth century, here he showed the importance of societal support for criminal reformation and a moral responsibility to connect the two.⁸⁰

Conclusion

The discourse on penal labor reveals changing understandings of suffering, moral responsibility, and reformation in the early American Republic. First, in the American Revolution’s wake, there was a growing discourse both for and against penal servitude based on humanitarian grounds, and elites and legislatures took on new moral roles as just and benevolent administrators in pursuing their agendas on criminal reform. Second, the abolition of the death penalty for certain offenses was an important victory in the movement of new sensibilities, and historians have spilled a lot of ink detailing this campaign in the Anglo-American World. Importantly, penal servitude was imperative to this movement, as lawmakers substituted this punishment for the death penalty on the basis that it was reformatory, and it allowed early republicans to practice new modes of Enlightenment thinking. The legal punishment of banishment was sometimes combined with penal servitude sentences, and for some offenders, largely slave convicts, this was not only a punishment that spared their lives, it was the only one that saved them from the gallows – even though afterward, they undoubtedly faced the brutal hardships of slavery elsewhere. Last, in the 1780s, cultural ideas and legal categories of slavery and freedom were muddy and sometimes overlapped, and in the post-Revolutionary years, the two grew apart and increasingly more distinct. Significantly, the 1787 Northwest Ordinance’s

prohibition of slavery and involuntary servitude except for “crimes” allowed for the expansion of penal servitude in the new U.S. western territories, and this form of labor became an important legal category wedged further between servitude and African slavery.  

In the years before the abolition of the slave trade, the penitentiary took root and ideas about banishment and servitude circulated as the alternatives to traditional modes of punishment. Important reformers and elites like Franklin, Jefferson, and Rush, contributed to this emerging moral culture. Franklin, crossly commenting on the colonial convict trade, noted that the wheelbarrow laws were not rehabilitative, and he favored deportation in the late 1780s. Jefferson continued to advocate for criminal reform and hard labor during the early Republican period, finding that for slave convicts, banishment abroad was the more humane alternative to the death penalty. Rush also advocated for penal servitude in lieu of capital punishment, but he pushed hard on the notion of criminal reformation. In the wake of the American Revolution, Rush found that criminals should be segregated from society, but in the early nineteenth century, he resolved that moral exclusion failed to facilitate criminal rehabilitation. Hard labor was once solely punitive or compensatory, and contemporaries shifted their view on this punishment as redemptive, one worthy of a humanitarian focus. 

Human rights and the broader movement of humanitarianism were indeed revolutionary, as Lynn Hunt argued. The American Revolution prompted new discussions about criminal punishments to reduce unnecessary suffering, which materialized in legal discourse.  

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82 Hunt, “Revolutionary Rights,” 105-6; Moniz, passim.
labor emerged as a pivotal part of the new nation’s penological plan and was an important means that allowed lawmakers, elites, and reformers to decide who and was not inside the social compact. The expansion and contraction of moral universalism for offenders came in ebbs and flows, as some were deemed moral outsiders and others could be reformed with hard labor. Reformers increasingly used moral language to improve treatment of those deemed criminal and to chart new moral responsibilities and duties of compassion in order to promote public welfare and reduce crimes. For the “friends of humanity,” the identifications of unnecessarily severe suffering and punishment and their efforts for rehabilitation popularized the reform movement and galvanized early republicans to support more humane legal and cultural changes in America. Yet, the changes were still unsatisfactory and problematic to many early Republicans. Humanitarians would have to contend with the issue of the deprivation of liberty in an alleged liberty-infused nation to justify or renovate an insufficient system of discipline in early America.
CONCLUSION

Even with the development of institutionalized penal reform in the early Republic, civic leaders continued to propose schemes for convict transportation, but they were dismissed as economically and morally unfit. After the turn of nineteenth century, the U.S. became more commercialized, and Americans and newcomers became more mobile and transient. The growth in urban centers and expanding trading patterns were conducive to criminal activity. Community leaders worried that people who lacked property, who did not participate in religious or communal activities, or did not maintain family obligations, were more likely to commit crime. They were particularly concerned about wanderers and newcomers in towns. As late as the 1820s, Dr. James Mease, pupil and companion of Benjamin Rush, proposed transportation to mitigate the crime problem. He argued that “the friends of humanity promised themselves” that prison labor would allow convicts to acquire or enhance a trade, and it would transform them into morally upright people; yet, he contended, the experiment had failed. Drawing on the British tradition, he argued that English court authorities only ordered sentences of seven or fourteen years and not for life, which he favored as a punishment in Pennsylvania. “A criminal, therefore, who has undergone the moral and mild discipline, which the humanity of his country had devised for his reformation, and commits a second offence, shows that he is unworthy of future trials, to reclaim him from the paths of vice.” Mease lamented that the Society for the Prevention of Pauperism in New York rejected the plan in 1822, as they found it expensive, impractical,
disproportionate, and not reformative. To the Society, the federal government could not transport people “beyond the jurisdiction of municipal authorities, while the present form of government remains, and the people cherish their existing moral and civil institutions.”

Banishment, transportation, and penal servitude played an important role in shaping humanitarian sensibilities and discourse in the eighteenth and nineteenth centuries by widening the plane of sympathies and moral responsibilities. The institutionalization of transportation in 1718 – the punishment Mease argued prevented the spread of “moral contamination” – transformed the ways authorities practiced punishment and was one of the most significant disciplinary actions in the eighteenth century.

While some scholars have located the emergence of the concept of humanity in global war and violence in the twentieth century, examinations of the convict trade and labor shows that the concepts were already emerging in the eighteenth century. The discourse surrounding this punishment reveals linguistic precursors and growth in moral responsibility that contributed to the concepts and practices of humanity and to the emerging humanitarian sentiment in the eighteenth and nineteenth centuries. Anglo-American counterparts used concepts of humanity in

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2 Mease, 23-4, 55, quotation on 55.
different ways, including a means to promote sympathy and alleviate suffering, as a description of the nature of human beings, and as a reference to human beings as a collective whole. It was also a means to draw and break down hierarchies, where those who could succor were at one end and the sufferer at the other. Historians have also defined the term as one that connotes a social space, human quality, and a process, and with an examination of convict labor, it was also a didactic cultural tool, used to call together moralists and to affect legal as well as cultural change. It offered civic leaders the intellectual and moral currency to critique social ills, call for aid to improve prison conditions, and alter forms of unfreedom. They also used the concept as a moralizing agent, as the calls of humanity directed people to get involved with the welfare of the suffering prisoner, and as Benjamin Rush reminds us, “men grow good by attempting it.” Many criminals were once inside moral communities, and transportation and penal labor provided contemporaries with a significant platform to imagine the best and most ethical routes to reform many of them and to return them back to that community.³

Parliament passed the Transportation Act of 1718 with little objection as a social and economic means to reduce the crime problem in the metropole. As the trade expanded, colonial authorities purchased and worked convict laborers, and they drew on understandings of coercion,

criminality, and race to support mastery and subordination in colonial society. All in all, colonists seeking labor aggressively created and expanded routes for unfreedom to capitalize on the burgeoning transatlantic markets. This kind of activity provoked new questions and proposals on proper treatment, and Anglo-American authorities would assertively confront and debate these ideas as the Atlantic system expanded in the eighteenth century.4

As the eighteenth century progressed, Anglo-American counterparts fashioned moralist justifications or critiques on coercion, punishment, and labor. The Enlightenment inspired a new moral currency, that encouraged defenses of and sympathetic responses to unnecessarily severe sufferings. As accounts circulating reports of convicts’ harsh experiences in the colonies increased, interlocutors learned more about the practices of convict servitude and African slavery as well as poverty. Some Britons regarded the colonies as a successful place for a form of poor relief, where people could be transported and become morally refigured through servitude. Concurrently, proponents of colonialism considered the colonies as a space where African slaves could be managed with strict discipline. They furthered this argument noting that African slaves would be in allegedly better condition than the poor in Europe, who contemporaries derided as vulgar, course, and uncouth. These notions may have influenced how some enlightened figures

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like Francis Hutchinson and George Berkeley argued that a form of slavery could be a means of poor relief.⁵

During the Revolutionary era, Britons and Americans sought out new changes to their penal system, and convict servitude became an instructional and rhetorical device in the emerging debates on African slavery. Revolutionaries and moralists championed the rhetoric of liberty and autonomy as a new means of ordering societies, but the practice of convict servitude raised questions and moral quandaries about independence and coercion. The outbreak of the American Revolution halted convict transportation to North America and forced Britons to select Australia as an alternative to American colonial transportation – just as attitudes and moral ideas about penal labor were in flux on both sides of the Atlantic. In transatlantic discourse, convict transportation and servitude increasingly linked sentimentality with moral accountability. Antislavery advocates used the concept of this punishment as means to shed light on the cruelties African slaves endured, and others conceptualized it as a way to alleviate economic or social problems brought on by the institution of slavery. Proslavery advocates justified their agendas by comparing African slavery to poor Europeans, especially those who ended up in the convict trade. As the connections between labor, coercion, and crime became more tightly enmeshed, emerging ideas about liberty and freedom came increasingly into contradiction with practices of forced labor.⁶

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In the years after the American Revolution, institutionalized penal labor became central to reformers and lawmakers’ penological plans. In accord with Enlightenment principles, Americans implemented penal labor as a punishment deemed proportional and rehabilitative, but this punishment had significant problems on the ground. To fill this gap between humanitarian visions for penal reform and the practice of the punishment, leading citizens offered charitable donations to those offenders in need, used moral language to support penal labor rather than execution, and mobilized supporters to help them in their cause. Through discourse, they and other early humanitarians worked to humanize those who had previously been deemed undeserving of aid or charity, appeal to lawmakers’ sense of benevolence and sensibility, and draw on sympathetic accounts to effect change. For the “friends of humanity,” identifying and alleviating unnecessarily severe sufferings for unfree people would become the major challenge in the road ahead – a challenge that did not always have predictable outcomes.\(^7\)

Convict transportation and servitude has important implications for how we understand early humane attitudes and humanitarian principles. Elites and moralists increasingly identified convicts, people who had little control over their mobility and welfare after conviction, as deserving rather than undeserving of aid. Coercion in the Age of Enlightenment and Revolution did not mesh well with the rhetoric of liberty, independence, and freedom. While prison labor was a justified form of punishment to many, as convicts committed crimes against society, there were accounts of cruelty, starvation, illness, and abuse regarding prisoners. Civic leaders felt

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\(^7\) Kann, 43.

justified continuing this punishment if the treatment became more humane. As a principle, universal claims in regard to the welfare of human beings became slowly and unevenly recognized as an important part of humanitarian work. While penal reform had its successes and failures and citizens offered aid to prisoners selectively, the experience with convict transportation and labor directly confronted people with the problems of moral exclusion. With heightened hopes of rehabilitation for criminals and for measures to better protect communities, moralists assumed new moral responsibilities to alleviate pain and suffering and solicit aid for those who would hopefully return to society reformed.\(^8\)

Understanding more about convict servitude will also allow us to learn more about the institution of African slavery and labor altogether. Court records, convict narratives and ordinary accounts, pamphlets, and newspapers offered Anglo-American counterparts important insight into how convict servitude and the institution of slavery worked. Furthermore, historian Edmund Morgan’s powerful book, *American Slavery, American Freedom*, made an inedible impact on the field of early American history, arguing that in the wake of Bacon’s Rebellion in 1676, race became key to defining slavery and freedom. He reasoned, “The fear of a servile insurrection alone was sufficient to make slaveowners court the favor of all other whites in a common contempt for persons of dark complexion.”\(^9\) Convict servitude, and other forms of unfreedom, complicate this narrative. The former had legal constraints, economic obstacles, and a culturally repugnant reputation, making it challenging to create a unified form of white solidarity against

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8 Paulmann, 287-311, here 290, 297-8, 302, 306.

enslaved people as well for convicts to take part in a “freer” white society. Convict servitude, as a form of mostly white coerced laborers, played a key role in widening the gap between indentured servitude and African slavery in an increasingly racialized society.10

In addition, the language of slavery also complicates the narrative of coerced labor in the Age of Revolution. Historians have long studied the term “slavery,” and American revolutionaries used it to galvanize political support for independence and to object to British rule.11 Yet the language used by convicts to discuss slavery and the parallel scenarios presented in the records suggests that there was fluidity in the ways people thought about this form of human bondage. Further, convict servitude appeared in anti- and proslavery rhetoric in important ways. Writers used convict servitude as a means to teach people about the conditions of unfreedom, evoking sympathy for those in forms of human bondage and prompting change in colonial laws to ameliorate the conditions of slavery. Others used it to defend the practice of African slavery, since English authorities transported their offenders abroad. The work here also suggests that the simultaneous development of the convict labor system in the U.S. and problems


with African slavery does, in some ways, presage the rise of the convict-lease system after the destruction of slavery in the South – a story for another project.¹²

Importantly, the language of humanitarianism evolved and broadened with new discussions on transportation, penal labor, and the proper punishment for offenders. Lynn Hunt has argued that the American Revolution and French Revolution sparked a new “language of rights,” which evolved in concepts and applications. Margaret Abruzzo noted that interlocutors employed a “novel moral language” to discuss conceptions of pain in regard to slavery, and it did not always serve benevolent goals, as was the case with proslavery advocates who argued their agendas on humanitarian grounds.¹³ The language of humanitarianism also evolved in discussions about punishment and labor, and the Revolutionary period had powerful implications for moral thinking and action. In discourse about penal laborers and conditions, leading citizens used new moral vocabularies to effect change. Moralists called themselves, “friends of humanity,” and they promoted ideas of “universal benevolence” to improve human conditions. Kindness and fair treatment for human beings was part and parcel with the “rights of humanity.” Social neglect was replaced by the call of moral obligation. “Universal benevolence” was to replace selective caring. These were ideals, of course, and humanitarians applied them selectively and unevenly. But it shows important shifts in moral thinking and beliefs, and these


notions reflected and guided changing social norms, garnered increasing sums of money and donations, effected political agendas, and empowered people to take part in cultural change. The language of humanitarianism became a powerful tool especially after the Revolutionary era, which allowed people to reimagine how society and culture would look during the long-eighteenth century.\textsuperscript{14}

As recent crises around the globe have heightened scholarly interest in the historical development of human rights and philanthropy – particularly in regard to modern forms of unfreedom, migration, and human trafficking – investigations analyzing attitudes regarding coerced labor, humanitarianism, and moral thought during the long eighteenth century enriches our historical knowledge. It can also inform our current human rights debates, such as that on prison reform as well as slavery, by illuminating the vital language borrowings of campaigns that created change and by showing the fruitful strategies employed in altering or abolishing coerced labor. Unfreedom and human trafficking are crises affecting millions of people in our world today, where victims are abducted, abused, sexually exploited, or forced into brutal labor conditions. In 2016, the International Labor Organization estimated that approximately “40.3 million people are in modern slavery.”\textsuperscript{15} Learning more about the ethical tensions and successful or failed actions surrounding past coerced labor systems creates a wider historical consciousness

\textsuperscript{14} Paulmann, 306; William Bradford, \textit{An Enquiry How Far the Punishment of Death is Necessary in Pennsylvania} (Philadelphia: T. Dobson, 1793), 4, quotation; Benjamin Rush, \textit{An Enquiry into the Effects of Public Punishments Upon Criminals, and Upon Society} (Philadelphia: Printed by Joseph James, in Chesanut-Street, 1787), quotation.

regarding current humanitarian problems, and it allows us to make more careful, informed
decisions when creating agendas within our own reform movements. Like our counterparts of the
past, this important work could allow us to reimagine how our society operates, how
humanitarian campaigns can aid sufferers, and how human rights are made in our world today.
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