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Retribution

All the felonies tried at the Old Bailey had at some point in the past been punishable by death. But there was never a desire to execute everyone found guilty (to do so would create a bloodbath); indeed, for the death penalty to achieve its intended purpose of deterrence it was believed that only a fraction of those sentenced to death actually needed to be executed. For the rest, the magnanimous mercy of the king and his government could be demonstrated to the public by liberally doling out royal pardons and lesser punishments. In essence, the judicial process was as much an exercise in determining which unlucky convicts would be executed as it was a way of determining a more narrowly defined guilt. At the same time, the history of punishment in the eighteenth century is the story of the search for alternatives for those who were spared the noose.

The many dozens of capital convicts sentenced each year were whittled down to a manageable number to be hanged through connivance and artifice. Juries used partial verdicts ('pious perjury') to ensure that the lives of selected convicts were preserved. Many other lives were saved through 'benefit of clergy', which evolved from the medieval practice of handing over convicted clergymen to the church for punishment and asking them to demonstrate their clerical vocation through a reading test. As literacy rates improved, an increasing number of convicts were able to read the 'neck verse' (Psalm 51 from the Bible) and escape execution. In response, a series of statutes removed the most serious offences such as murder, rape and highway robbery from this benefit. In 1706 the reading test was abolished and benefit of clergy became automatic for those convicted of any offence that had not already been excluded. Those convicted of crimes for which benefit of clergy remained were branded on the thumb (with a 'T' for theft, 'F' for felon, or 'M' for murder). This ensured that benefit of clergy could only be claimed once.

Capital convicts ineligible for benefit of clergy still had the chance to claim that they were pregnant or to petition for a royal pardon. Women who

'pleaded their belly' (and there were many, some of whom had taken advantage of the loose living conditions in Newgate to become pregnant) were examined by a jury of matrons, chosen from women present in the courtroom. If the matrons determined you were 'quick with child' (if movement could be detected, signalling the beginning of life), your punishment was respited until after the baby was born. In principle, after the birth you would be put to death, but concern for the child and the cost of rearing it ensured that most new mothers escaped execution. This is one of the reasons why far fewer women than men were hanged.

All capital sentences from the Old Bailey were reviewed by the king and his cabinet following reports presented by the Recorder of London. In addition, the family and friends of convicts sentenced to death frequently petitioned the king for a pardon. In cases where evidence of good character could be produced, the accused was particularly young or the conviction was a first offence or the evidence was problematic, the king readily granted pardons, unless there was a compelling need for an 'example' to deter further crimes. Approximately 50–60 percent of those sentenced to death in the eighteenth century were pardoned. These took the form of either a free pardon or a conditional one. In the latter case, the convict had to accept branding or transportation in place of the noose. In some cases, messages bearing news of a pardon arrived at the very last minute, just as the convict mounted the scaffold.

Of the 33,000 defendants convicted at the Old Bailey in the eighteenth century, 1,600 were hanged. Performed in front of huge crowds, executions were a public spectacle, meant to act as a deterrent to crime. Convicts were drawn in a cart through the crowded streets from Newgate to Tyburn, where Marble Arch stands today. After they were given a chance to speak to the crowd (and, it was hoped, confess their sins), the condemned were blindfolded and placed in a horse-drawn cart. The noose was then placed around his or her neck and the cart pulled away. Until the introduction of a sharp drop in 1783, this caused a long and painful death by strangulation (friends of convicts often helped put them out of their misery by pulling on their legs). Those found guilty of treason and petty treason were subjected to more gruesome punishments: men were drawn and quartered while women were burned at the stake.

Regardless of the particular form of execution, it was a horrific death, rendered to a large extent pointless by the carnival atmosphere of the watching multitude. Pickpockets actively stalked the crowd, mocking the punishment's supposed deterrent effect. Even in the eighteenth century, few people actively praised the death penalty as a social good. Many were concerned at its failure to stop crime, while others pointed to the wholesale loss of lives needed to man ships and populate the colonies. But the alternatives were equally unsatisfactory: pardons provided no punishment at all and branding, which was often done with a cold iron, was felt to be both ineffectual and incommensurate with the severity of the offences being punished. In any case, decreasing tolerance of corporal punishments led to the abolition of branding in 1779.

Other existing punishments also seemed unsuitable substitutes for hanging. The pillory was used for some offences, notably notorious crimes such as sodomy, seditious words, fraud and perjury, where the public destruction of the reputation of the convict was deemed to be an appropriate punishment. But its reliance on the participation of the audience, which was expected to throw rotting fruit and vegetables and the odd dead cat at the culprit, meant that the pillory was alternately too severe and too trivial. For those who aroused intense popular anger, such as sodomites and thieftakers, the punishment could lead to a particularly gruesome death. In contrast, popular heroes such as Daniel Defoe, placed on the pillory in 1703 for seditious libel, were celebrated by the crowd and pelted with nothing more odoriferous than flowers. In many other cases, crowd apathy ensured that an hour in the pillory was passed in at least relative comfort, which is why the punishment for forgery was changed from the pillory to death in 1729. Owing to its perceived ineffectiveness and the cost of maintaining public order, from the last quarter of the century onwards the pillory was used by Old Bailey judges only for fraud and perjury.

Whipping, 'until his [or her] back be bloody', was traditionally carried out in public, with the convict stripped to the waist and bound to the back of a cart as it was drawn slowly through the public street nearest the scene of the crime. Although the courts frequently turned to whipping out of dissatisfaction with alternative punishments, particularly in cases of minor thefts, the character of this punishment changed during the century as more and more whippings were carried out in private. The disruption to traffic caused by the slow moving cart, as well as public apathy or hostility towards the punishment, led judges increasingly to insist that whipping, particularly of women, should be carried out behind closed doors, usually inside, or immediately outside, Newgate Prison, the Old Bailey, or a house of correction.

In frustration at the limitations of these traditional punishments, the eighteenth-century courts turned to two new punishments for felons, transportation and imprisonment. In 1718, confronted with political instability and rapidly rising crime rates, the insecure new Hanoverian monarchy and its Whig government passed the Transportation Act. This allowed the courts to sentence felons convicted of offences subject to the benefit of clergy to be sent to North America for seven years. Although the motives for the introduction of this new punishment included a desire to provide a labour force for the colonies and a belief that it might lead to the reformation of offenders, the act's primary purposes were deterrence and a desire to exile hardened offenders from the country. Almost immediately it became the punishment of choice at the Old Bailey: between 1718 and the outbreak of war with America in 1776 over two-thirds of those found guilty were sentenced to transportation.

Even before the outbreak of war with America, however, transportation began to fall out of favour. Too many convicts were returning from exile before the expiration of their sentences and the punishment's deterrent value

declined as conditions in the rapidly growing American colonies improved. In any case, crime seemed to relentlessly increase despite the vast amount of money spent on transporting offenders to the other side of the world. As a result, when transportation came to an abrupt halt in 1776 a new punishment was already being contemplated: imprisonment. Many were coming to believe that punishments should be graded according to the severity of the crime and that some convicts could be reformed and returned to society as productive members. Imprisonment at hard labour, with its time discipline and severe regimen, came to seem an ever more attractive alternative. Between 1776 and the end of the century over one-quarter of Old Bailey convicts were sentenced to imprisonment.

Nonetheless, transportation was still thought to be useful for the most hardened offenders. Despite the lack of a suitable destination, some convicts continued to be sentenced to transportation during the American War. While they awaited the execution of their sentence, male offenders were confined in the hulks and put to hard labour on the banks of the Thames, while women were imprisoned on land. By the time the war ended in 1783 Newgate Prison was seriously overcrowded and the hulks had acquired an unsavoury reputation for their unhealthy conditions and ease of escape. In a desperate attempt to restore a viable system of transportation, the government attempted to secretly send convicts to the now independent American colonies. Other destinations, including West Africa and Nova Scotia, were also tried (unsuccessfully), before the penal colony at New South Wales was settled on. The first fleet departed for Botany Bay in 1787.

Transportation never recovered the dominant position it enjoyed between 1718 and 1776, but even at the end of the century it remained the most frequently imposed sentence at the Old Bailey, accounting for just over one-third of all punishments. Despite the attractions of imprisonment, it was not yet thought to be sufficiently effective for more serious offenders, particularly those convicted of aggravated forms of theft such as theft from houses, who were still sentenced to transportation. Those convicted of the most serious offences, including murder, robbery and forgery, continued to be sentenced to death. But by 1800 the death penalty was in decline. Although it would survive for a further 165 years, the courts had finally found a sufficient array of acceptable alternative punishments for most convicts.

Tyburn Fair

The majority of men and women found guilty at the Old Bailey and sentenced to hang were subsequently pardoned and suffered some lesser punishment such as branding or transportation. For a minority, however, the black cap and awful words of the judge betokened their actual fate: 'That you, and each of you, be taken to the place of execution, there to be hanged by the neck until you are dead: and may the Lord have mercy upon your sinful souls'.¹ Until 1783 that place of execution was Tyburn and the rituals and emotions of the eight hanging days each year

brought ordinary Londoners face to face with the awful power of the court. Despite the incontestable demonstration of the state's authority, executions were often marred by conflict, as the friends and relatives of the accused fought for possession of the corpse with surgeons and anatomists, keen to use the dead for their own purposes. Hanging days were also holidays, and the crowd found entertainment as well as conflict in the day's rituals.

Francis Place recalled the scene as condemned prisoners were hustled into carts and hauled three miles from Newgate Prison to Tyburn on the western edge of the city, at what is now the fashionable end of Oxford Street:

Within my recollection a hanging day was to all intents and purposes a fair day. The streets from Newgate to Tyburn were thronged with people and all the windows of the houses were filled. The friends and acquaintance of those going to be hanged used to follow the carts in which the criminals were sealed, and if any one bore his fate with indifference or bravado he was occasionally applauded. People used to wait the coming of the carts in different places, some holding a pot of beer in their hands, others a measure of gin, to treat the criminals, for which purpose the cart occasionally made a stop. Others threw oranges and apples to them. Pie men and sellers of gingerbread nuts and other things bawled about. Songs were sung and the ballads sold at the corners of the streets all along Holborn, St Giles's and Oxford Street. Carts were placed along the middle of the street and the people paid a trifle for permission to sit or stand in them to see the culprits pass.²

The journey westward was eventful and full of ritual. The muffled mourning bells rang out first from the spire of St Sepulchre's church, as the condemned had their chains struck off and their arms loosely bound in the press yard before Newgate Prison, and later from the great bell as the procession passed St Giles on its way to Tyburn. Along the route the city marshals and constables struggled with the crowds, which by all accounts were made up of a majority of women and drawn from all classes of society. For the condemned, the journey was a last performance. Some, dressed in finery or their wedding outfits, played to the galleries, preparing to die 'game' to the applause of an audience that grew as the dismal procession travelled westward. Others, clothed in shrouds, took refuge in drink or religion or fainted with fear, knowing that the likelihood of a last minute pardon diminished with each cobble that rumbled under the iron-clad wheels of the carts. Each prisoner shared the cart with two or three others, as well as the coffins intended to take their corpses. The procession stopped at the Bowl Inn in the depths of St Giles and then at the Mason's Arms, where the condemned were anaesthetised with ever more strong liquor.

After a journey that could last up to three hours, the murderous procession reached the execution ground. Most of the year Tyburn was a muddy field by a busy road, home to cows and milkmaids, but on hanging days it became an outdoor theatre. Stands were erected for those who could afford

to pay for a seat and an unobstructed view. On their arrival the men and women set to hang were driven beneath the triple tree and their hands were secured, as the Ordinary of Newgate prayed furiously at their side. A desultory psalm was forced from their lips and each prisoner was given an opportunity to say a few last words. Some delivered long, prepared speeches, while others mumbled incoherently in their fear. The expectation was that the prisoner would admit their guilt and the justice of the sentence passed on them, before commending their own souls to God. Some went to their deaths asserting their innocence to the last, but the majority seem to have played the remorseful part expected of them. Finally, a coarse sack was placed over their heads and with the noose secured around their necks the cart was driven from beneath their feet. Death came through slow strangulation and could take up to three-quarters of an hour – the condemned twisting and struggling as the noose tightened.

For the victim of this state-sponsored murder there was nothing worldly to hope for beyond a quick death and a Christian burial, but to achieve this second posthumous ambition they needed the help of their friends to keep their body out of the hands of the surgeons, ever hungry for a fresh corpse to anatomise.

Richard Shears made a meagre living from two horses, a cart and a lot of hard work. On hanging days, and in company with many Londoners, he earned a few pence from the crowds at Tyburn. On Monday 11 November 1751, he rose before dawn to secure a place near the gallows. His wife, Hannah, later told the court that:

He went between five and six o'clock in the morning with his cart to Tyburn. He went to let his cart for people to get up upon to see the prisoners die.

Unfortunately for Richard Shears, on this occasion he came into conflict with the crowd at the base of the gallows as they struggled with the hangman and the surgeons to secure the bodies of the dead.

That particular Monday nine men and one woman were set to hang. At the last minute, four of the accused, including the one woman, Elizabeth Davis, received a last-minute reprieve. This left only six men, in two carts, to make the long, slow journey to Tyburn. Among the six men were Alexander Byrne and Terence McCane. Both were 23 years old and had grown up in Dublin, before coming to London as teenagers. Their 'scene of action was generally at Spitalfields, Whitechapel and Rag Fair', just east of Tower Hill and the Tower of London. They had been convicted and sentenced to death for robbing Benjamin Smart on the highway of his hat, shoe buckles, tobacco box and 9s.³ And even though nothing could be done to save their lives, their friends were determined to save their bodies from the desecration of the anatomists.

The City authorities were expecting trouble and the two carts 'were conveyed from Newgate to the place of execution, attended by a large number

of constables and a multitude of people'. When they finally arrived at Tyburn, the men:

Prayed very fervently while they were tying up to the fatal tree. After reading some prayers, recommending their souls to the Almighty's protection, they continued praying and calling on the Lord Jesus Christ to receive their souls, till the cart drew from under them.

A few minutes later, the battle for their bodies commenced. Michael Munday later recalled:

There was such a mob. There were near a quarter of a hundred chairmen and milkmen, who seemed to be all concerned in taking away the bodies.

The crowd was made up mainly of Irishmen who worked the streets around the neighbourhoods of Rosemary Lane and Whitechapel. Most almost certainly knew Byrne and McCane, who came from the same neighbourhood and – like most of this particular crowd – were Irish.

In part, their determination to rescue the bodies was tied to a traditional understanding of the nature of the soul and the notion of resurrection and the afterlife. Most people believed in the physical existence of a corporeal soul. Philosophers such as Descartes believed that the soul could be found in the pineal gland at the centre of the brain, but for working-class Londoners in the eighteenth century it was enough to believe that one's soul had a physical existence and that the anatomists threatened its secure passage into the afterlife. The role of the body at the resurrection was also important, as regardless of the mechanism, a whole and consecrated corpse buried with Christian ceremony seemed to most people a more likely route to heaven than the messy reconstitution of the body from the bloody remains discarded in the bucket besides the anatomist's table. There was also a strong belief in ghosts and their ability to haunt the living. The anatomised corpse of a hanged man, not properly laid to rest, posed a threat even to his friends.

The intact corpse of a hanged man, even more than those of the everyday dead of this pre-modern world with its high levels of mortality, also had a particular meaning. The hand of a hanged man was thought to cure wens and cancers and, like the king's touch, could have a beneficial effect on scrofula. It was a common sight to see mothers lifting their children to allow the hand of a hanged man to brush against the child's cheek.

The crowd that rescued Byrne's and McCane's bodies was led by Michael MacGennis and Christopher Williams – known as Kit. But having fought off the surgeons and the hangman, who was keen to claim the dead men's clothes, they had no way of transporting the bodies away from the scene and quickly alighted on the cart and two horses Richard Shears had positioned just by the gallows. One witness at MacGennis's later trial recalled:

I saw Michael MacGennis, and some more, put two bodies up in Richard Shears's cart, against the consent of Shears, who said, Gentlemen I hope you will be so good as not to throw these dead bodies up into my cart, for I am obliged to go home about some business.



Figure 5.02 'The Reward of Cruelty', plate iv of 'The Four Stages of Cruelty', by William Hogarth (1751). © The Trustees of the Western Park Foundation, UK/The Bridgeman Art Library

Another witness recalled a rather less polite exchange:

There was a sort of a skirmish, and Shears was striving to get his horses and cart from MacGennis, and two or three more, who had got them from him. MacGennis would not let him have them, and the man that drove the horses threatened to knock his brains out, if he did not go about his business.

With Kit Williams driving and Michael MacGennis at the head of the two horses, and accompanied by 40 or 50 men, they headed up the turnpike north of Hyde Park towards Bayswater, Richard Shears's entreaties (polite or not) ringing in their ears and two corpses secure in the back. The road eastward,

back to Tower Hill and East London, was still blocked by the execution crowd, while the turnpike to the west was clear.

Michael Munday recalled that:

They drove the horses down to Bayswater, a place beyond Tyburn, about a quarter of a mile, where they stayed and drank, and from thence back by Tyburn with two of the dead bodies in the cart. I saw them use the horses very bad.

Heavy drinking had begun first thing that morning, and a quick top-up at Bayswater was all that was required to keep them going. The crowds having begun to disperse, Williams and MacGennis turned back through Tyburn on their way homeward, and, as Munday explained, they once more encountered Richard Shears, now desperate to recover his cart and horses:

It was after they returned from Bayswater, about ten yards on this side of Tyburn. MacGennis had a hanger under his coat. I saw him pull it out when Shears came to him, and cut him over the head. Shears went bare headed after his cart, with the blood running down his ears. I saw him following his cart almost by Nibs's Pound, and I saw him no more.

A hanger is a short sword, like a cutlass, and a single blow left Shears bleeding profusely, his skull fractured.

Edward Hilton was also there to witness the encounter between Shears and MacGennis:

I saw them coming from Bayswater, swearing by their maker very much, how they would serve Shears if he did not lend them his horses and cart. He called them Gentlemen, and begged and prayed to have them. They used him very ill and called him thief. MacGennis was riding on the top of the corpses. He had a hanger under his clothes. He drew it out, he swore by God, and other bitter oaths, if Shears did not get away and let go his horses, he would jump off, and cut him down. Then he jumped off and struck him on the right side of the head, close to his ear, after which the cart went forwards.

William Latimore was one of the constables who had attended the execution to maintain good order:

I did not follow the cart to Bayswater. I saw the cart come back through the turnpike and Richard Shears came after it with blood running down half an inch thick.

Eventually, having received the insults of the mob and the blow from the hanger, Shears had to give up. Hannah, Richard Shears's wife, heard the news of the fracas later that afternoon:

I heard he was wounded, and gone to Hyde Park Infirmary. I went there, and found him all in blood. I did not see his wounds till after he was dead. On his dying bed, he said, it was a short thick Irish milkman that gave him his death wound, that he was wilfully murdered, and that they ran away with his cart and horses, and that murder will never be hid.

Ironically, George Hale, the surgeon who treated him, was well versed in anatomy. He described the cause of death in graphic detail:

I am a surgeon, and dress under Mr Bromfield, at the hospital. Richard Shears was brought there on the eleventh of November, about two o'clock. He said he had received a large wound on his head. It had pierced through both tables of the scull on the right side, about the temple. It was judged necessary to trepan him [bore a hole in his skull], bad symptoms coming on. We found matter lodged between the membranes of the brain. He had several contusions from the wounds made, I suppose with sticks. He was hearty when he came.

Although a modern reader might suspect that Hale's own intervention was more likely to kill than cure, he had no hesitation in answering the court's question when asked:

Question. What in your opinion was the occasion of his death?

Hale. My opinion is that the wound on his head was.

In the meantime, MacGennis and Kit Williams drove the cart and horses eastward, back to Tower Hill in triumph, along much the same route Byrne and McCane had travelled just a few hours earlier. William Latimore followed, intent on making an arrest:

I saw MacGennis with the rest of the mob at Tower Hill. I followed them. They put the bodies down on Tower Hill, and the constables came and took hold of MacGennis, and also another, named Kit Williams.

At Michael MacGennis's trial for murder, Kit Williams claimed complete innocence: 'They made me drive up one street and down another, just where they pleased. I was charged upon Tower Hill for bringing the dead bodies.' He also claimed to have solicited help for Shears: 'I saw the man all bloody. I said go and get your head dressed, I'll drive your horses as well as I can.'

In the end it was only Michael MacGennis who stood trial. He also protested his innocence: 'I know no more of it than the child in its mother's womb'. And he called a slew of character witnesses in his defence. Thomas Reed testified:

I am a milkman. I have known MacGennis between five and six years. I never saw any thing amiss of him in my life. He has been a lodger of mine above a year and half.

And Mary Palace said:

I have known him six years, he deals where I deal. I never heard he was quarrelsome in all my life, or to have such arms as he is accused with.

And so on. But to no avail. At the end of a long cold trial in mid-January, he was found guilty of murder and was himself sentenced to hang.

Michael MacGennis was 32 years old, happily married and the father of several children. Like Byrne and McCane he had grown up in Ireland, but unlike them the life story he recounted to the Ordinary of Newgate before

his own execution seemed more sober and hardworking than sinful. According to the Ordinary, he was:

Born in the Kingdom of Ireland, of parents whose circumstances would not admit of giving him any education; but they brought him up in a sober way, in the fear of God. He was esteemed a quiet, harmless youth by those who knew him in his early days. He scarce could give any account how his days had passed away, except that he had always worked hard for his living since he was sent into the world. Destitute of friends, and left to take care of himself, he came to England young, and whatever other business he might have followed, that of crying milk about the streets has been his chief employ. He has been married about nine years, and had several children, some of which are still alive. He has left a disconsolate widow, who follows the same calling for a livelihood.

To all intents and purposes MacGennis was typical of the men and women who crowded around Tyburn on hanging days. According to the Ordinary, 'He had been used to attend executions, and been often seen there'.

Many of his friends felt his conviction was unfair and a public meeting was called in an attempt to shift responsibility onto someone else and to secure a pardon. Even the Ordinary seemed a little uncertain about the justice of the case. There is a distinctly defensive note in his reaction to MacGennis' refusal to acknowledge his responsibility for Shears's death:

Who did it? We have no authority yet to say, unless we accept the opinion of the court and jury who convicted MacGennis upon full evidence, unimpeached. And as the scheme set up to prove the contrary did not succeed, we can scarce believe, but that he was justly convicted and suffered accordingly.

On 23 March 1752, in company with 15 others, MacGennis journeyed from Newgate to Tyburn and was hanged. According to the Ordinary, 'for some days before his execution he became more hearty, and was in good health when he suffered, being as tight a little man as might swing on Tyburn tree'. This time, an accommodation was reached at Tyburn between the surgeons and the friends of the hanged:

When there, some time was spent in recommending their souls to the Almighty's mercy; and then they were turned off, receiving the due reward of their deeds here. After they had hung a proper time, Hayes and Broughton's bodies were first cut down without the least stir and hurry, and delivered to be carried in a coach to the surgeon of the hospital in Lemon Street, Goodman's Fields, in order to be anatomised. The rest (including MacGennis's corpse) were delivered to their friends. And during the whole time of the execution, there was not the least disturbance.

That same spring of 1752 also saw the passage of the Murder Act, which was designed to deter crime by taking advantage of the popular fear of the anatomist's knife. It stipulated that anyone:

Found guilty of wilful murder, be executed according to law on the day next but one after sentence passed, and that the body shall be dissected and anatomised by the surgeons and that in no case whatsoever, the body of any murderer shall be suffered to be buried, unless after such body shall have been dissected and anatomised.⁴

Although the state's use of anatomisation as a form of punishment might have exacerbated the struggle for the control of the bodies of the hanged at Tyburn, a fragile truce was negotiated, enforced by the sheriff and his officers. The bodies of those sentenced by the court to be anatomised were handed over to the surgeons, while those of all other convicts were handed over without a fight to their friends and families for a normal burial.

Exposed on the Pillory

Like other traditional punishments such as the stocks and penance, the pillory punished through humiliation. By publicly exposing the culprit this punishment announced to the community that he or she could not be trusted. The audience were expected to contribute to the convict's shame by throwing polluting objects such as mud, rotten vegetables and eggs, dead cats, excrement and blood and guts from slaughterhouses. Although sometimes the crowd chose to applaud the convict instead, in other cases the missiles included bricks and stones and the damage done to the target was to more than just his reputation; at least seven died on London pillories during the century.

John Waller had 'a fruitful genius, which he applied to the wrong purposes', and his fraudulent use of the law made him many enemies:

He used to worm himself into the acquaintance of people who had but small fortunes, or such as they acquired by their daily labour, and particularly those who had families to maintain. He would cause such as these to be arrested at his suit, and would not scruple to swear that they were indebted to him in sums sufficient to have them committed to jail, and then under a specious show of compassion would bring them to a composition. He thought he could take advantage of the poorer sort, many of whose families were reduced to beggary by his illegal proceedings.

As a solicitor, he also took money from clients to pursue cases which he had no chance of winning.⁵

Worst of all, he was a corrupt thieftaker, who prosecuted men on trumped-up charges in order to secure a reward. His technique was to identify men whose reputations were poor and who were already considered suspicious and to manufacture charges against them. His most famous prosecution was of the well-known street robber James Dalton, whose gang terrorised London during the late 1720s. In April 1730 he enquired at the Wood Street Compter to determine when Dalton had been released from prison in the preceding year. He then used this information to choose the date for an accusation that

Dalton had robbed him in the fields near Tottenham Court. There were no other witnesses to the alleged crime, but to confirm his accusation Waller used inside knowledge to claim that the pistol used in the attack was the same one Dalton had brandished during his robbery of another man, Dr Mead, for which crime he had already been convicted.⁶

Dalton admitted his many crimes, but always denied that he had robbed Waller. As reported in the *Proceedings*, Dalton:

Denied the fact charged upon him by Waller, and exclaimed against him as a man of a vile character, that he was a common affidavit man, and was but lately, before the time charged in the indictment, come out of Newgate himself. That though he himself had done many ill things, and had deserved death many times, yet not for this fact, he being innocent of it; and said, Waller was as great a rogue as himself, and there was never a barrel the better herring.⁷

Despite his protestations of innocence, Dalton was convicted, sentenced to death and executed on 17 April. Waller's reward for the conviction was £80.

The following year, when Waller prosecuted Charles Knowles and Sarah Harper at the assizes in Hertford for robbing him near Newington, the court treated his evidence much more sceptically. The judge observed:

Though the prisoner Harper was a person of bad character, yet John Waller's being worse, rendered himself notorious, and he having sworn robberies upon several persons [probably only for the reward] who were acquitted as innocent, and had hanged Dalton. The court thought no regard was to be given to his evidence, and thereupon the jury acquitted the prisoners.⁸

Justice finally caught up with Waller in May 1732 when he was tried at the Old Bailey for perverting the course of justice by falsely charging John Edlin with a highway robbery in Hertfordshire. In his typical self-aggrandising manner, Waller claimed:

That he called at the George at New Market, and that either John Eldin or Uriah Davis came and begged alms of him, and then he being moved with compassion, gave him sixpence, and afterwards treated him on the road, as they both travelled the same way, but at the bottom of Botsam's Hill, this man having no sense of the kindness that had been done to him, was so ungrateful as to assault him. And the other man coming up at the same time, they robbed him of three jacobuses, nine guineas, and a piece of mechlin lace. And then they stripped him, and bound him; and there he lay till he was relieved by a passenger.⁹

Waller, conscious that he was no longer trusted, made the accusation under a false name, John Trevor. As the justice of the peace, Justice Gifford, testified at Waller's trial:

The prisoner, by the name of Trevor, charged John Edlin, and another, who was then in Newgate, with robbing him on the highway between Colney and St Albans. I thought that Edlin had an honest look than the

prisoner, and that I had seen the prisoner before, but I could not recollect who he was. I sent to enquire after the prisoner's character, and was told that he was an honest man, and then I committed Edlin to Newgate. After this Waller came to me again, and told me, that I had made a mistake in committing Edlin on the information of Trevor, it should have been on the information of Waller, says he, for my name is Waller, and therefore must beg you to alter it. Oh, is it you Mr Waller? says I, I thought I had seen your face before. Had I known your name when you made this information, I had turned you out of doors, as I did five years ago, when you swore against two street robbers; but since it is so, I shall take a note of it.

When the case came up for trial on the Home Circuit Assizes, Waller, perhaps knowing that his evidence would not be trusted, failed to appear with his two witnesses and the defendants were acquitted. But he did not give up; he simply took his accusations to a different court, as the under-clerk of the Norfolk Circuit of the Assizes reported:

John Waller having ill success at Hertford, came to Cambridge on the Tuesday following, and gave me an information against two men for robbing him, and they were both capitally convicted. The country was not satisfied and there were suspicions that Waller was a rogue. Baron Cummins ordered me to enquire into his character. I enquired of a gentleman at Thetford: Waller, says he, why, he's the vilest fellow living; he makes a trade of swearing away men's lives for the sake of the reward, granted for convicting robbers. This gentleman gave me direction to write to a gentleman for a description and character of the prisoner. I wrote, and received an answer at Bury. The answer described him exactly, and by good fortune it came just time enough to prevent the execution of the two men.

Waller was convicted at the Old Bailey of making a false accusation and was sentenced to a smorgasbord of punishments, reflecting the court's severe disapproval of his actions, and its wish to make the fact of his punishment known as widely as possible.

John Waller is to stand once in the pillory at the Seven Dials, in St Giles in the Fields, and once in the pillory against Hicks Hall, for one hour each time. And to stand on the pillory at the same places, at two other different times, for one hour each time with his hat off, that he may be known by the people. An account of his offence to be written on a paper, and stuck on the pillory every time. To pay a fine of twenty marks; to be imprisoned for two years, and not to be discharged afterwards, till he has paid his fine, and given security for his good behaviour during his life.

Word that Waller would appear in the pillory soon spread and his many enemies looked forward to it with relish. About a week before he was to appear Edward Dalton, the brother of James Dalton, told everyone he saw that:

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He would be revenged on Waller, because Waller had hanged his brother. By God, he said, he shall never come out alive, for I'll have his blood.

Similarly, Richard Griffith alias Sergeant told Thomas James 'that he would do his business'. Even the carman who was responsible for carrying the pillory to St Giles told a witness 'that he had carried almost a sack full of artichokes and cauliflower stalks in readiness; and swore that he would do Waller's business, and he should never live to stand at Hicks Hall'. The day before Waller's first stint on the pillory, William Belt alias Worrel, who had been employed to oversee the punishment, observed: 'He'll stand but once. He had better be hanged, for he shall never come back alive'.

On the morning of 13 June a huge crowd gathered in Seven Dials. Spectators climbed lamp posts and fences and stood on carts in order to get a better view. At 11.00 William Belt brought Waller out of Redgate's alehouse in nearby King Street and placed his head and arms through the holes in the pillory. Immediately, 'the mob, which was very numerous, having been provided with large quantities of cabbage, cauliflower and artichoke stalks, began to pelt him in a most outrageous manner'.¹⁰ These rotten, or not so rotten, vegetables and their stems clearly had the potential to cause serious injury, but some of the crowd were unwilling to leave it at that. After only a few minutes, Edward Dalton and Richard Griffith stepped onto the pillory and assaulted Waller. One of the spectators, Cartwright Richardson, described the attack:

Griffith took hold of Waller's coat, and Dalton of the waistband of his breeches, and so they pulled his head out of the pillory, and he hung a little while by one hand, but pulling that hand out they threw him on to the pillory board.

Belt tried to put him back into the pillory:

But Dalton and Griffith and a chimney sweeper laid hold of Waller, and stripped him as naked as he was born, except his feet, for they pulled his stockings over his shoes and so left them; then they beat him with cauliflower stalks, and threw him down upon the pillory board. The chimney sweeper put some soot into his mouth, and Griffith rammed it down his throat with a cauliflower stalk. Dalton and Griffith jumped and stamped upon his naked body and head, and kicked him and beat him with artichoke and cauliflower stalks, as he lay on the pillory board. They continued beating, kicking, and stamping upon him in this manner for above one quarter of an hour, and then the mob threw down the pillory, and all that were upon it. Waller then lay naked on the ground. Dalton got upon him, and stamping on his privy parts, Waller gave a dismal groan, and I believe it was his last; for after that I never heard him groan nor speak, nor saw him stir.

While they were stamping on Waller, 'Griffith said to Dalton, well played partner. And Dalton said, aye, damn him, I'll never leave him while he has a bit of life in him, for hanging my brother.'

After an hour, Waller was taken up and carried to St Giles's Roundhouse and then to Newgate Prison where his mother, Martha Smith, was waiting for him. But the turnkeys of Newgate Prison refused to accept his dead body, and instead it was placed in a coach with his mother:

As soon as Dalton and Griffith saw her go in, they cried out here's the old bitch his mother, damn her, let's kill her too. So they went to the coach door, huzzaing and swearing that they had stood true to the stuff. Damn him, says Dalton, we have sent his soul half way to hell, and now we'll have his body to sell to the surgeons for money to pay the devil for his through passage. Then they tried to pull him out of the coach, but were prevented.

From the vantage point of the coach, Martha Smith described the same events as follows:

My son had neither eyes, nor ears, nor nose to be seen; they had squeezed his head flat. Griffith pulled open the coach door, and struck me, pulled my son's head out of my lap, and his brains fell into my hand.

When Mr King, the coroner, saw the body the next day, he too was appalled:

I never saw such a spectacle. I can't pretend to distinguish particularly in what part he was bruised most, for he was bruised all over. I could scarce perceive any part of his body free. His head was beat quite flat, no features could be seen in his face, and somebody had cut him quite down the back with a sharp instrument.

A jury was summoned, and 'hearing the depositions of several witnesses, brought in a verdict of wilful murder by persons unknown with unlawful weapons'.¹¹

Although the inquest was inconclusive regarding the identity of those responsible, Dalton, Griffith and Belt were subsequently indicted for the murder of John Waller and stood trial at the Old Bailey on 6 September. There was substantial evidence that Dalton and Griffith had actively intended to kill Waller, but William Belt was able to successfully claim that he was powerless to stop Waller's attackers. As one witness testified:

I was there, and neither saw nor heard of any hurt that Belt did to Waller, but so far from it, that he run the hazard of his own life, by endeavouring to put Waller's head in twice. It was not in his power to prevent the abuses the other prisoners committed, for he was forced to get off the pillory to save himself.

Other officers supported this testimony and Belt was acquitted by the jury, while Edward Dalton and Richard Griffith were found guilty and sentenced to death. The judge, Baron Thompson, condemned 'the liberty of the mob in presuming to insult a person defenceless in the pillory, under the sentence of the law, however great his crimes might be'.¹² Both were executed on 9 October at Tyburn, with Griffith maintaining that he was innocent of the murder to the end.¹³

Were Dalton and Griffith the only ones responsible for Waller's death? Although the sheriff claimed his usual fee of £1 10s for organising and supervising the punishment,¹⁴ and while several soldiers were present, presumably to prevent any disorder, there is no evidence of any efforts on the part of the authorities to stop the killing. Indeed, when Dalton and Griffith began to attack Waller, all that Belt did was try to put him back into the pillory. In contrast, when John Middleton stood on the pillory nine years earlier, having been convicted of a similar crime, 20 constables and 104 assistants were employed to protect him – although even this did not prevent the crowd from smothering him to death with dirt. The authorities probably chose not to protect Waller because of disquiet at his corrupt attempts to manipulate the judicial system.

Despite these tragic lapses of order, the pillory was intended to be a much more constrained and ritualised punishment than was experienced by John Waller and John Middleton. Official policing was intended to regulate the actions of the crowd. In the memory of Francis Place, writing in the early nineteenth century:

The constables who on these occasions are a numerous body, form a ring around the pillory, to keep the mob at a distance, and a considerable space is therefore left vacant between the cordon they form and the pillory.

Most pillories were designed to rotate around a central post, so two men could be punished at the same time by being forced to walk around in circles. A small number of women, as representatives of the community, were allowed to enter the space between the pillory and the ring of constables in order to administer the punishment:

These women were supplied with the materials for offence from the baskets of those who brought them, the bystanders giving them money, for their 'wares'. Near the pillory were two stands for hackney coaches, under these there was a quantity of hay, dung and urine trampled into a mass by the feet of the horses. This was collected, soaked in the mud in the kennels and then handed to the women to pelt the men in the pillory, each of whom with her hands full of this stuff waited till one of the miserable wretches came close to her as she stood at the edge of the platform, to discharge the offensive matter at his face, and as the number of these vile women was considerable there was no intermission.

Despite the presence of the officers, a semblance of order could not always be maintained, and on occasion:

The shouting of the mob exhilarated the pelters, and induced many who came as spectators to join in the mischief, and when the blackguardism had reached its height, it was no longer in the power of the constables to stay it, every sort of missile was thrown. A dead cat was a treat, a live one a still greater treat, and woe to the poor animal who fell into the hands of the miscreant. It was, however, soon killed and its carcass thrown about as long as any one could get hold of it. Stones and other

hard substances frequently rebounded from the boards of the pillory and mingled the blood of the criminal with the mud which disfigured him, when struck by a stone or a penny piece many of which were thrown.¹⁵

The inability of the authorities to control this punishment, with the possibility either that the convict would be praised rather than punished or that standing on the pillory could be tantamount to a death sentence, greatly worried nineteenth-century observers. But in the wake of the French Revolution, perhaps their greatest worry was that the crowd would progress from punishment to uprising: 'Those whom you suffer to riot on the side of the laws may soon learn to oppose them with similar outrages'.¹⁶ The use of the pillory was restricted to the punishment of perjury in 1816 and was finally abolished altogether in 1837.¹⁷

The Great Escape

From the passage of the Transportation Act in 1718 until the outbreak of the American Revolution approximately 200 men, women and children were sentenced each year at the Old Bailey to be transported across the seas. For most this meant transportation to the colonies of North America to be sold for indentured labour for 7 or 14 years or for life. To return from transportation was to invite a sentence of death. As a form of punishment, transportation provided a much needed labour force for colonies such as Virginia and Maryland at the same time as it removed undesirables from the streets of London. It also ensured that the number of bodies hanging from the triple tree at Tyburn remained at an acceptable level. But the outbreak of war in 1776 abruptly cut off this convenient solution to the punishment of offenders. As the war dragged on and the number of convicts held in Newgate and on the 'hulks' floating at anchor on the Thames grew ever larger, desperate measures were considered.

Thomas Limpus spent the summer of 1783 in the unhealthy and overcrowded cells of Newgate Prison. He was blessed with a remarkable constitution and, at the age of 20, had already survived three years of imprisonment and a voyage that had killed the majority of his fellows. Almost a year earlier Limpus was convicted of stealing a cambric handkerchief worth 10d and 'sentenced to be transported as soon as conveniently might be, to some of his Majesty's colonies and plantations in Africa, for the term of seven years'. In a desperate attempt to find an alternative to transporting felons to North America, the slave factories of West Africa had been selected. At his later trial for returning from transportation Limpus explained how he was unceremoniously landed at Gorée, on the coast of modern Senegal, in the midst of an ongoing war between the British and the French:

I was landed with nineteen more. The soldiers were drawn up in a circle on the parade. The lieutenant of the island ordered us all into the middle of it, and told us we were all free men, and that we were to do the best

we could, for he had no victuals. There was a ship lay in the bay; I went on shore several times and did work for the governor. I remained there till the time I came home.¹⁸

Gorée was the centre of the West African slave trade and throughout the seventeenth and eighteenth centuries witnessed both the brutal everyday horrors of slavery and constant internecine fighting between colonial powers keen to use the site as a base from which to dominate the trade. To this day the 'house of slaves' at Gorée stands bitter testimony to the millions of black Africans chained and whipped and enslaved in the service of European expansion. For the authorities in London, the idea of sending convicted felons into servitude at Gorée must have appeared to possess an ironic symmetry. But for the men sent to Africa, it was tantamount to a death sentence, with the vast majority dying from disease and malnutrition. Thomas Limpus was one of the few to survive and in the year after his arrival worked his passage back to Britain where he was once again arrested on the streets of London. In a remarkable story of crime and retribution, he was later clandestinely transported to North America and then to Honduras, before finally sailing to Australia as part of the First Fleet.

The importance of the summer he spent in Newgate following his return from Gorée, however, lay in the seeds of fear and desperation he sowed in the minds of his fellow prisoners. Many of Limpus's wardmates had been sentenced to transportation and that summer were marched in irons down to the docks and transferred to a ship in preparation for their journey. No one, however, could assure them of their final destination. Having heard Limpus's tale, many felt certain they were simply being sent to their deaths. Certainly

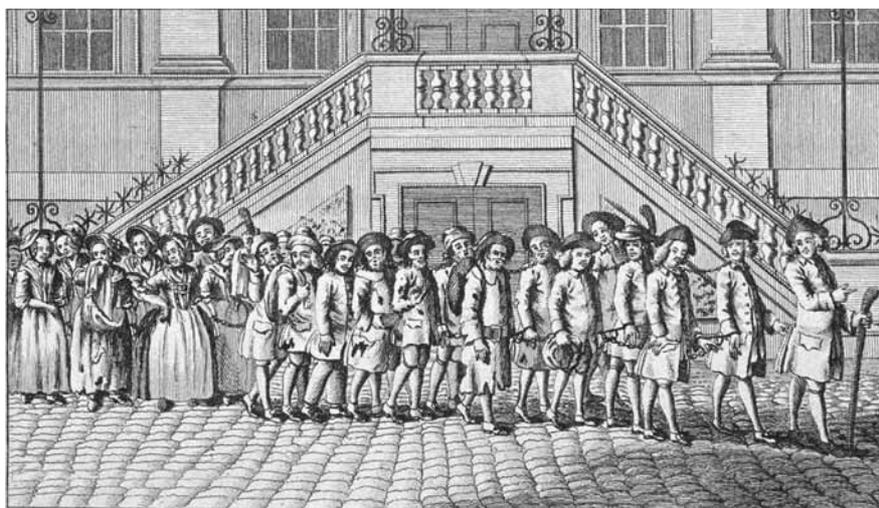


Figure 5.04 Convicts from Newgate being taken to Blackfriars for Transportation (c. 1760). Credit: Guildhall Library, City of London

Charles Keeling, who was sentenced to transportation for stealing a pair of pistols, and his brother John, a sailor transported for stealing a sword, worried that they were destined for Africa. Charles brought up the possibility by way of mitigation at his later trial for returning from transportation: 'Some of the men informed us that our destination was for Africa; if they could not dispose of us in America, they were to dispose of us in Africa'.¹⁹

In dribs and drabs over the course of that July and August groups of five and six prisoners were delivered up in chains to the tender mercies of Thomas Bradbury, the mate of the *Swift*, moored in the Thames at Blackwall. It was put out in the papers that the *Swift* was bound for Halifax in Canada, where many loyalists and freed slaves, refugees from the American Revolution, were attempting to create a new colony, but this was not, in fact, true. The ship's real destination was Baltimore, Maryland, where it was hoped that a few last shiploads of convicts could be offloaded on an uncooperative United States. The plan was that the ship would claim to be short of supplies and in need of temporary shelter and that the prisoners would be sold as indentured servants to unsuspecting or complicit Americans. To maintain the subterfuge, and to ensure that the American authorities remained oblivious to the plan, the ship, which had up to then been called the *George*, was renamed the *Swift*.²⁰ The prisoners, however, were not told of the plan and their fear and uncertainty grew as the date of their departure approached.

On 16 August, the *Swift* left Blackwall:

The next day down to the Galleons Reach, where we received the remainder on board from the ship *Censor* (a prison hulk). We left the Downs the 28th of August.

Under the command of Thomas Pamp and with a crew of 18, the ship sailed with 143 prisoners carefully secured below decks, their legs in irons. Most of the prisoners were landsmen and that first night, as the swells of the channel rocked the vessel to a new and frightening rhythm, the fear of the sea must have combined with a fear of Africa, with its well-earned reputation as a killing field for Europeans. John Harrower, who had made the same Atlantic crossing as an indentured servant a few years earlier, described his experience of being below decks on the first night at sea:

I really think there was the oddest scene between decks that ever I heard or seen. There was some sleeping, some spewing, some pissing, some shitting, some farting, some fighting, some damning, some blasting their legs and thighs, some their liver, lungs, lights and eyes. And for to make the scene the odder, some cursed father, mother, sister, and brother.²¹

Unlike the indentured servants with whom Harrower shared his earlier voyage, the men on the *Swift* were both below decks and in irons. You could not, however, keep people below forever. Good health and the running of the ship demanded that the prisoners be allowed some exercise. They also needed to wash the dirt of Newgate and the hulks from their clothes and skin. And although the leg irons seemed to promise security against a mutiny they did

not hold the prisoners for long. On the evening of the 28th a group of men wrote to the captain asking that he remove their leg irons and threatening to take them off themselves when he refused. According to Thomas Bradbury, 'They took them off themselves with as much ease as if they had not any on.'

On the 29th, as the *Swift* sailed along the channel, the captain must have thought that the danger of a mutiny by the prisoners had passed since he allowed the men to come up on deck in groups, 'sometimes three messes, containing six in a mess, they were in irons'. Captain Pamp rationed out glasses of rum and began the arduous task of settling a frightened ship into the routines of a long transatlantic voyage.

But Pamp had miscalculated the mood of the prisoners. The prospect of being transported to Africa had given them a new determination. 'The reason for our first opposition' was 'reluctance that we were to go to Africa'. At ten in the morning, and still within sight of land, the prisoners 'rushed' the crew. David Hart, who was later accused of being a ringleader, explained what happened next:

After I had done washing myself, I went down. The captain had just given me a glass of rum, and five or six of the convicts came down, who came from the *Censor*, and they said, is not your name Hart, and I said, yes. They insisted on me to help them to get their liberty, and that if I did not I was a coward.

The mate recalled that the:

Captain was calling them up to give them a dram, those that were sick. And when the Captain gave Hart that dram, he bid him go below, and we did not know how to avoid it, but however he returned once or twice, and with the rest that were behind him, together made the rush.

John Kellan recollected that the captain:

Permitted us to come upon deck in a great number, and seeing so fair an opportunity many of us were desirous of taking the ship. A man stood behind me and said, says he, if you do not endeavour to secure your liberty, I will knock you down.

The captain's cabin was soon taken: 'There were many in the cabin before me, seven or eight, some were with Mr Bradbury, the mate, in his cabin'. With the captain and his mate secured, the ship was theirs.

Some of the men who took the *Swift* that day were hardened thieves. David Hart, for instance, had been tried for larceny on four occasions in the preceding three years. His *modus operandi* was to steal packages of goods from errand boys and coaches. On two occasions he was acquitted, and on a third committed to six months' imprisonment. His luck finally ran out in April 1783 when he was sentenced to transportation.²² Thomas Millington was also a substantial thief; he was convicted of stealing 'four hundred and eight yards of muslin, and one hundred yards of muslin for handkerchiefs, and two linen wrappers', worth in total over £137. But most had committed much more

petty crimes and were hapless victims of a system they were unable to navigate. Joseph Pentecross was transported for stealing the mattress from the room he shared with his lover. Charles Thomas received the same sentence for stealing a wooden tub full of butter, worth the princely sum of 5s.

Having secured the ship, the men then had to decide what to do next. Some were for robbing the captain and raping the female passengers and prisoners. Others were more controlled. John Kellan, or Keeling, was one of the few men on board with experience at sea. He seems to have quickly taken command. In his recollection:

I took up a blunderbuss that laid by, and the keys of the bureau were there, and I threatened to shoot a man that was going to take the keys, and I immediately locked the bureau, and delivered the keys to the captain.

Several of the escaped prisoners were in favour of raping a passenger, Mrs Warwickshall, but Kellan stood in their way. Even Thomas Bradbury, the mate, had to admit, 'He protected her from the insult, for they would have behaved rudely to her, if it had not been for some of them that were there'. As for Captain Pamp he seems to have been less concerned about Mrs Warwickshall than about his own position. His first action was to draw 'up a memorial in order to clear himself from any mean suspicion that might arise in the breast of his owner'. The captain's version did not meet with universal approval, and Kellan was asked to revise it. In the end, 'there were two or three of these papers drawn out', either because 'there was some word objected to' or else because the original was blotted with ink stains. John Kellan's name was the first on the list of signatures. Later in court he also claimed to have 'expressed my sorrow to the captain, at being at this time forced to get my liberty'.

With most of the crew locked below decks, the new masters of the ship had to bring it safely into harbour. By this time the *Swift* was off the south coast between Dungeness and Rye. According to Thomas Bradbury:

After they had secured us, they bore away, and went a little to the east of Dungeness, between that and Rye. They let go the anchor and hoisted the boats out and went on shore. As many as could cleverly get into the boats got on shore, with the arms along with them. That was on the 29th, the same day they made the rush. It was six o'clock in the evening that they went on shore.

Samuel Read later claimed he was forced to escape: 'It was not my intent to come on board the boat, but being forced by the person that had the command of the vessel, as I had been at sea before, he insisted'. John White was also a reluctant escapee. He was quietly minding his own business below decks when 'a man came down to me, and said, Jack the ship is taken'. White's only reply was: 'I am sorry for it, I have no friends in England'. In total, 48 men escaped that evening.

In the meantime, the *Swift*, its crew secured below decks and the rest of

the prisoners rapidly consuming the stores of rum, was in mortal danger on a lee shore. It was not until past midnight that the crew regained control:

We told them what danger we were in, and they let the sailors up about half past three. They were many of them drunk, and went down below, and we drove the others down, and secured them there. The next morning we fell in with the *Perseverance* frigate, which conveyed us into Portsmouth.

The escaped prisoners landed on the coast road between the old port of Rye and the small village of Lydd. They soon broke up into small groups and spread across the Kent countryside. Some seem to have quickly lost enthusiasm for the venture, while others made rapid strides to ensure they would escape recapture. One group headed west towards Tunbridge Wells, while others took the road north through the villages of Snargate and Snave, towards Ashford and the road to London. They had perhaps a day before news of their escape spread through southern England and they needed to find a place of safety.

The coast they landed on was notorious for smuggling. In the same year of 1783, the Commission of the Excise estimated that 900 gallons of brandy and geneva were smuggled through Kent and Sussex every single day. It was a hugely profitable trade that relied on absolute secrecy and it occasionally resulted in acts of brutal violence. Just a few years earlier this same coast had witnessed the murder of two men, an excise officer and an informer, a crime that shocked the nation. They were tortured for days before being finally killed, their bodies thrown down a well. As a result the coasts of Kent and Sussex were perhaps the most carefully policed region in the country, but also a place where an escaped convict might hope to find a sympathetic hearing from people with no love for the authorities.²³

Their first night on shore, the evening of the 29th, passed uneventfully, as the men found what shelter they could. Some used this time to put real distance between themselves and the shore. Within 48 hours, by the 31st when news of the escape finally reached the towns of Ashford and Rye, at least a few of the men were already in London. Abraham Hyam, who had stood trial the previous April for stealing five gowns, a shift and cloak from Elizabeth Nathan, and who had been a leading figure in the 'rush', had already reached the capital, 80 miles from their landfall. He was captured 'at a private house in Still Alley, near Devonshire Square'. Others had made less progress.

David Hart and Charles Keeling had journeyed less than 'half a dozen miles' by the same date. On that Sunday afternoon David Hinds, a local butcher, saw them on the road and became suspicious: 'I thought he and his mate were bad, and about half an hour after I had taken them up, we heard they were transports'. Hart claimed that he 'meant to go to town and surrender', while his partner, Charles Keeling, made no resistance and returned to custody 'very quietly'.

A couple of miles away, at Sandhurst, John Kellan and David Kilpack were

also arrested around the same time. Kellan and Kilpack gave themselves up without a fight. At the later trials for returning from transportation the judge repeatedly asked for an account of the prisoners' behaviour on arrest. Many of the escapees had lost the will to resist:

Question. Did he make any resistance?

A. Not in the least.

Q. Surrendered himself quietly?

A. Very much indeed sir, and very civilly.

John White, arrested that same day, 'behaved as well as any person could in his unhappy situation. He did not make the least resistance in the world'. And Thomas Bryant 'surrendered peaceably and quietly'.

31 August was a Sunday and concerted attempts to recapture the men only got properly underway on Monday. At Hawkhurst, the home of a notorious smuggling gang in the 1730s and 1740s, still just a few miles from the coast, four men were captured. George Nash, Joseph Pentecross, Michael Gaffney and Andrew Dickson were confronted by Richard Taylor, who had helped to capture John White on the preceding evening. Taylor was the local innkeeper and clearly felt mixed emotions about his role in the recapture of the men. He repeatedly emphasised at the later trials the passivity and civility of the men when arrested: 'They stopped immediately, and gave themselves up, and confessed before the justice, that they were such people'. Taylor went on to confide to court that, 'They behaved as well as could be expected from men in their unhappy situation, and I am very sorry for them'.

Nathaniel Collier and William Combes took the Canterbury Road north, but only travelled 30 miles before they too were arrested. They were surrounded by a group of men and quietly gave up their 'clubs and bludgeons'. Richard Partridge, John Birch and John Welch had struck out northwest and were captured at Tunbridge Wells. In total, 18 men were recaptured on that single Monday and all but four of them gave themselves up without a fight.

The few prisoners who did put up a fight were also the ones who made the most rapid progress towards London. Christopher Trusty had robbed a coach the previous spring – pistol in hand, a yellow scarf covering his face, and with the very real threat of 'I will blow your brains out' on his lips. He was also one of the most forward participants in the 'rush': 'He was the first that went into the cabin, and stole the Captain's buckles out of his shoes'. By Monday 1 September he was already holed up with two women in a private house in Sun Court, off Grub Street. Four marshals, getting wind of his location, descended on his hiding place and arrested him.

Three others had also reached London. William Matthews, Charles Thomas (alias Godby) and Thomas Millington were hiding out in the house of the now dead John Mills in Onslow Street, Saffron Hill – a poor and

violent corner of North London. Mills had been executed the preceding spring for using a knife to slit open the nose of Thomas Brazier in a vicious running street battle.²⁴ With two other constables, Jonathan Redgrave tracked them down. In this instance, the men were not taken easily:

I am a constable belonging to St James's Clerkenwell. On the 1st of September we received an information that William Matthews with two others were at a house in Onslow Street. I and William Seasons and Thomas Isaacs went to this house, and we were met by a couple of women who endeavoured to prevent our going up. However, we got past them and when we entered the room Matthews stepped towards the bedstead with a poker in his hand. The others were armed, one with a large iron fire shovel, and the other with a large knife. I told the prisoner, knowing him perfectly (though I knew them all three), that it would be impossible to escape, but they might do us some mischief. Matthews, with the others, made a reply that they would sooner die than be taken. Matthews then struck Seasons on the head with a poker, which cut his head very much. He did not cut me. Seasons immediately closed on him, and they fell down on the bed together. Mr Isaacs and I were engaged with the other two men and two or three women, who fought as well as they could, and as much as the men. We had three cutlasses, and very happy it was for us that we had. The other two wounded me here on the head and cut me in the breast. At the same time one of the women struck me on the back of the head and stunned me. When I came to myself I found the blood running down. They said they were only sorry they had not cutlasses, for if they had we never should have gone away without murder.

Thomas Isaacs took up the story:

I was at the house in Onslow Street, Saffron Hill. When we entered the room I observed Matthews with two others. He immediately seized a poker, and with very bad words, said that sooner than be taken they would lose their lives.

I was beat and bruised over the head and shoulders by the women. Then we overpowered the prisoners and handcuffed them, and took them before a magistrate.

Some others had more luck or more sense. William Busby remained free for at least one day longer and was only discovered hiding in a ditch. He would not have been found 'if it had not been for a little dog'. William Blatherham and Francis Burke remained at large for two more weeks, and were only arrested on 15 September, while Charles Stoke kept out of harm's way three more weeks until 7 October and Thomas Wilson two weeks beyond that. He was arrested on 22 October. In total 39 of the 48 escapees were eventually arrested and 26 were once again tried for their lives at the Old Bailey. Most of the cases were heard at the September sessions and in the first instance all the returned transportees were sentenced to hang. In the way of eighteenth-century justice, however, only seven were eventually executed and the rest were pardoned on condition of being transported once again.

The broken spirit of the men who appeared at the bar, victims of imperial politics as much as anything else, is perhaps best summed up by Thomas Millington, who had fought for his freedom with the constables in Onslow Street. When asked to provide a defence, he said, 'I have nothing to say; my heart is quite broke'.

The recapture and retrial of the men did not, however, solve Britain's problems with transportation. The *Swift* was rapidly restocked with supplies of both food and prisoners and once again set out for Maryland, making landfall at Baltimore on Christmas Eve 1783. Captain Pamp informed the authorities that a shortage of supplies had prevented him from completing his fictitious journey to Halifax and he set about selling the prisoners' indentures as servants to local landowners.

Contractors taking transportees across the Atlantic made their profit by retailing the prisoners' labour, so their sale was crucial to the business success of the voyage. In the end, it took months, until spring, to offload all but the last half dozen men. As a result, and by every measure, the voyage proved a disaster.²⁵

Only one more attempt was made to send convicted felons to North America. In April of 1784 the *Mercury* set off with 179 prisoners with the intention of again selling them as indentured servants to the planters of Virginia and Maryland. Once again, however, there was a mutiny, this time off the coast of the Scilly Isles and at least 108 prisoners, including Thomas Limpus, escaped. Most were quickly recaptured and the *Mercury* sent on its way, but this time the newly independent United States resolutely refused permission for the convicts to land. The *Mercury* sailed on to the recently established colony at Honduras, where the ship received an equally unwelcoming reception – the settlers fearing that accepting transportees 'would damage the credit and character of the colony'.²⁶ In the end, in desperation, Britain determined to create a new prison colony in Australia. Among the 757 prisoners who formed the 'First Fleet' in 1787, 10 had sailed on the *Swift* and a further 67 on the *Mercury*, and one, William Blatherhorn, had participated in both mutinies.

Throughout the 1780s British judicial policy was in crisis. A crime wave, crowded gaols and unhealthy 'hulks' combined to put ever greater pressure on the courts and judges. The chaos also had the effect of giving new opportunities to those who found themselves in the none too gentle embrace of the criminal justice system. At the sessions at which the majority of the *Swift* mutineers were tried, men (like Thomas Limpus) who had earlier been sentenced to be transported either to Africa or the East Indies were called before the bar. Most were offered the opportunity of having their sentence commuted to transportation to America. Of the 10 men offered the opportunity to change their sentence only one accepted. The rest calmly declared, in the words of Peter Airey, 'He would rather go to Africa'. In the certain knowledge that Britain no longer had any way of sending them there, these men confidently mocked Britain's imperial ambitions.²⁷

To be Devoured by Savages

The 1780s witnessed a profound renegotiation of power in the courtroom. After the near anarchy of the Gordon riots and with the growing use of defence counsel and the chaos of the prisons and hulks caused by the disruption to transportation, the balance of power tipped significantly in the direction of the men and women who stood trial at the bar. To the discomfort of the judiciary, many defendants became increasingly bold in their attempts to manipulate the procedures of the court.

At the end of the first quarter of the nineteenth century, Francis Place could still recall the women in the 1780s who lived in Rosemary Lane, Wapping and Limehouse – the rough neighbourhoods around the docks in the East End:

When I was an apprentice I went frequently among these girls and at that time spent many evenings at the dirty public houses frequented by them. At that time they wore long quartered shoes and large buckles. Many at that time wore no stays, their gowns were low round the neck and open in front. Those who wore handkerchiefs had theirs always open in front to expose their breasts. This was a fashion which the best dressed among them followed, but numbers wore no handkerchiefs at all in warm weather and the breasts of many hung down in a most disgusting manner. Their hair among the generality was straight and 'swung in rat tails' over their eyes and it was filled with lice. Drunkenness was common to them all, and at all times when the means of drunkenness could be found, fighting among themselves as well as with the men was common and black eyes might be seen in a great many.²⁸

Sarah Cowden, Sarah Storer and Martha Cutler inhabited this world of drunkenness and violence. But in their case, along with the ability to hold their gin, came an ability to hold their own. Eventually they would challenge the very authority of the Old Bailey itself.

As the three sat out together late on a Saturday night in February 1788, Sarah Storer saw a man she knew going past the entrance to Gun Court, just north of the river in Wapping and called out his name – 'Solomons'. When he turned to see who had called him, she rushed up and according to Henry Solomons' later evidence:

Took off my hat, and ran indoors with it. I said let me go about my business. Then there were two or three of them. Cowden was one of them. They made very bad expressions, which I would not choose to mention, and bid me go in and fetch my hat, and they immediately came round me and pushed me into the passage. Storer was in the parlour, and said, here is the hat, come in. Upon that, I went in. Cowden and Cutler immediately followed me in; they were in as soon as I. All three of them together threw me down upon the bed. It was a small room that would not hold above five or six when the bed was let down. Cowden laid upon me; Storer held my mouth fast; Cutler stood with her back

against the door. Cowden took out of my pocket fourteen guineas and some silver, which was more than ten shillings. Storer took it from Cowden and gave it to Cutler, and she ran out with it. Cowden gave me my hat, and said, I might go about my business.

Unfortunately for the three women, Benjamin Ealing who lived two doors down at No. 3 Gun Court, observed the whole scene with vengeful eyes through the casement window. He had sworn a warrant against Storer and Cutler earlier that evening and was still smarting from the experience:

I had taken up Cutler and Storer that night about seven o'clock, for abusing me. Storer had cut my hand with a knife, and Cutler had taken up a poker and struck me over the head, and cut my hat, but they were discharged, and were home again before eight o'clock.

At the Old Bailey he happily confirmed Solomons' evidence:

I peeped into the room, it was a casement, and it was not quite shut. I saw Henry Solomons lying on the bed, struggling very much. I saw Cowden lying upon him. Storer had her hand on his mouth, and Cutler stood with her backside against the door. I sent my wife to call the watchman, but before the watchman came, Mr Solomons came out, and said, I am robbed, I am robbed.

At this juncture Martha Cutler made a rapid escape, but Storer and Cowden were arrested by Solomons, Ealing and John Addis and William Withering, two watchmen brought to the scene by Ealing's wife. Storer and Cowden were searched, but the 14 guineas Solomons claimed to have lost could not be located. Within half an hour, Martha Cutler was also under arrest and confined in the watchhouse, but again the money could not be found.

Two and a half weeks later all three stood trial together, charged with 'highway robbery'. Martha Cutler and Sarah Storer took the lead in cross-examining the witnesses produced against them. They questioned why Solomons was in the neighbourhood at all and implied that he had sought out their small and cramped room in search of sex. And Ealing's animosity and history of prosecution against them was highlighted. At the end of the trial, the defendants were offered the opportunity to present their defence. Sarah Cowden proclaimed her complete innocence, while Cutler and Storer painted the prosecution as motivated by revenge visited on them by Benjamin Ealing in retribution for their earlier encounter. None of this washed with the court or the jury and all three were found guilty and sentenced to hang.

They were not, however, destined to die at the end of a rope. Royal pardons would be offered to all three, 'on condition of being transported for life'. By the spring of 1789 this meant a journey to the far side of the world, Australia and Botany Bay. With good luck this was a journey of almost a year, to an almost completely unknown continent. For many of the convicts, it must have seemed that they were being executed in a new and novel way. For all of them, there could have been little hope that they would ever see home again.

Sarah Cowden, Martha Cutler and Sarah Storer were not going to be exiled in this way without a fight.

The first news of the progress of the settlement in Australia reached London in the last week of March 1789 and throughout April the newspapers were full of accounts of the landing at Botany Bay and the problems experienced by the new colony. The Royal Circus at St George's Fields put on a dance, staged just before the trick horsemanship, entitled 'The New Hollanders', representing every detail of the landing. But news of the real conditions in the colony was probably conveyed to the cells of Newgate by more direct means.²⁹ Storer, Cowden and Cutler had all lived on the docks and at least one of their fellow prisoners, Eleanor Kirvan, ran a bumboat, providing credit and comfort to returning seamen. Through friends and acquaintances they would have quickly heard stories of reduced rations and of the 'shy and ferocious' inhabitants who had reputedly already murdered several of the convicts.³⁰

At the end of the April sessions, six weeks after Cowden, Storer and Cutler were convicted and sentenced to hang, they were among the 23 women brought before the bar at the Old Bailey and addressed by John William Rose, the presiding judge (who had also presided over the trial of Storer, Cowden and Cutler). All the women standing at the bar that day must have received news of their pardon on condition of 'transportation beyond the seas' as a mixed blessing. Sixteen 'accepted the conditions mentioned in his Majesty's pardon', but a further seven, including Cowden, Cutler and Storer, simply refused. Sarah Cowden was the first to speak:

No, I will die by the laws of my country; I am innocent, and so is Sarah Storer. The people that had the money for which I was tried, are now at their liberty, therefore I will die by the laws of my country before ever I will go abroad for my life.

Next came Martha Cutler: 'Before I will go abroad for my natural life, I will sooner die'. And then Sarah Storer: 'I will not accept it. I am innocent.' In quick succession, four more women addressed the court. Sarah Mills, another East End woman convicted of stealing a watch from a sex-starved drunk in an alley behind an alehouse off Ratcliff Highway, declared, 'I will go to my former sentence. I had not power to speak on my trial'. And she concluded, 'I would rather die than go out of my own country to be devoured by savages'.

Mary Burgess, who had been in prison for over a year and a half, and who was convicted of stealing almost £4 worth of household goods from James Detheridge, replied in a similar vein:

I had rather go to my former sentence. I had rather die than leave my child and husband behind me. I am very willing to die; I will die before I will leave my poor child in a strange place. I am satisfied I am a dying woman, and I will go to my former sentence. I will die an innocent death; I beg pardon for making so free.

By this time Judge Rose was growing increasingly restive.

It is my duty to tell you if you refuse the pardon now, it will be too late ever to expect it afterwards. Consider what you are about. It is my duty to give you that notice, you certainly will be ordered immediately for execution.

Burgess's reply was swift and certain: 'Well, I am very glad to hear it. I do not care how soon'.

Next came Jane Tyler and Eleanor Kirvan, who had both appeared at the same sessions two years previously and had spent the intervening years in Newgate. When addressed by the court, Tyler said: 'My Lord, I will not accept it. I will go to my former sentence. I will die first. I think I have suffered hard enough to be in gaol three years for what I have done.' And Eleanor Kirvan said:

I hope this honorable court, or any of the gentlemen in company, will not object to what I shall say. I have lain in prison three years. I do not intend to object to my sentence, but I am not in a situation to go abroad; if I was I would go. The crime deserved death, it is an injury to the community, but I never was guilty of it. I have two small children. I have no objection to confinement for life, for I cannot live long.

At this point the judge tried to reason with the prisoners:

If you do not accept it now I have no power. After you have accepted it you may apply further for mitigation, but if you do not accept of these terms, you stand as a person condemned to suffer death, and will be in the situation of those who are so condemned, and will certainly be ordered for execution, and it will be too late to recall your opinion. I recommend you to accept of that favour.

The 'Second Fleet' for Australia was already in preparation and it is clear that part of the motivation behind this series of refusals was a calculated and desperate hope that they could avoid punishment altogether. At the very least, if they could delay the process for just one or two sessions there was every possibility that transportation as a punishment would be abandoned in light of the unpromising news trickling in from New South Wales. But their actions must also be seen as part of a more subtle power play between defendants and the court. Eleanor Kirvan had already escaped death once by claiming her 'belly'. After her trial in 1786 for forging a dead sailor's will in an attempt to collect his wages, she 'pleaded that she was with child; upon which a jury of matrons was empanelled, who withdrew with the prisoner, and returned with a verdict, that she was with quick child'. Her sentence 'was accordingly respited'. At a time when the court was anxious both to clear Newgate of prisoners and to avoid hanging too many of them in case the bloodbath led to public disorder; at a time, just a few years after the Gordon riots, when the uneasy relationship between defendants and the court seemed most vulnerable, women such as Cowden, Storer and Cutler represented a powerful threat to judicial authority. The last thing the court could afford was the sight of a large number of young women (Cowden was

only 21), delivering speeches and dying 'game' before a massed London audience.

Transportation to Australia seemed to many lower class Londoners a punishment too far; an abnegation of the rights of true born Englishmen and a show of principled resistance would have rapidly garnered broader support. The spring and summer of 1789 witnessed the mutiny on the *Bounty*, the beginnings of the French Revolution and the final ratification of the Constitution of the United States. Rebellion was in the air in London as much as in Paris or on the South Seas. It was not the moment to provide a public platform, even if it was a scaffold, for the self-confident and pugnacious women of Limehouse and Wapping.

Having sent the women away, Judge Rose called them back at the end of the sessions. He was clearly frustrated by their refusal to accept transportation and once again tried both the offer of hope of mitigation, and the threat of immediate execution:

I find there are several of you who have refused his majesty's most gracious pardon on the present occasion. You have been convicted of very heinous offences, and you seem to forget that the king, in his great goodness has saved your lives; having saved your lives, your not being inclined to accept that pardon arises from a hope that you shall not be sent off so soon as the other prisoners. I think it my duty, who have not the power to alter the sentence at all, to tell you that this sort of conduct will be considered as an aggravation of your offences; and if you have any hopes that your sentence will be altered, you had much better accept of the king's pardon now, and try what interest you have to get that sentence mitigated; but if you go from the bar now, you will remain under sentence of death; and you may depend upon it, that you will suffer death with the first culprits, at the next execution. I hope you will take the advice of the court, and accept the pardon, if not it will certainly be too late hereafter.

But his pleas fell on self-confident ears. Burgess replied: 'I am satisfied with what I hear about Australia. I will suffer death before ever I will go abroad with them. I am very well satisfied with the death that was ordered for me.' One after the other, all seven women refused.

The court ordered them to 'be confined in separate cells and fed on bread and water'. At first sight, the women had won the reprieve they desired. Unfortunately, the 'Second Fleet' had still not sailed when they were brought to the bar again six weeks later on 9 June. The cells of Newgate were unhealthy places and a diet of bread and water did not help. Mary Burgess was too ill to appear and Eleanor Kirvan disappears from the records, probably dead of gaol fever. In the interval between the sessions more detailed and official accounts of the foundation of the new colony had reached a wider public and it is possible that the women came to believe that transportation need not be a certain sentence of death after all. Regardless of their motives, when at the end of the sessions the royal pardon was read out once more,

one after another the women agreed to its conditions. Jane Tyler, 'Yes, I will'; Martha Cutler, 'Why, I must'; Sarah Mills, 'Yes'; Mary Burgess, 'I am sorry for the trouble I gave the court.'

That is, all except Sarah Cowden and Sarah Storer. Cowden's response was to bargain with her life:

I will tell you what – I am willing to accept of whatever sentence the king passes upon me, but Sarah Storer is innocent. I would not care whatever sentence I went through, I will accept it if that woman's sentence is mitigated.

The judge was having none of it:

Sarah Cowden, the only question you have to answer respects yourself. The king, after you had justly forfeited your life to the laws of your country, has been graciously pleased to extend his mercy to you, and to spare that life which has been so forfeited; but his majesty has thought fit to annex a condition to his pardon. You therefore have nothing to do with the case of any other person but yourself; and you are to choose, whether you will accept of the mercy of your sovereign, and preserve that life which he has put into your power to save, or whether you choose to be remanded to immediate execution?

Her answer did not please him: 'I will accept of my sentence willingly, if this woman's sentence is mitigated'.

In the argument with the judge that followed, Cowden more than held her own:

Judge. Are you, or are you not willing to accept of your life on the condition your sovereign has offered?

Cowden. I will never accept of it without this woman's sentence is mitigated.

Judge. Remove all the women from the bar but Sarah Cowden.

Cowden. Gentlemen, I hope you will excuse me for being so bold to speak in the court, but this woman is as innocent as a child unborn. She happened to come into the place where this robbery was done, she asked for the loan of a pair of bellows, and she was cast for death. And after being cast for death, I think to be cast for life is very hard. If this woman's sentence is not mitigated I will freely die with her. I am but a young girl, I am but one and twenty years of age.

Judge. You will attend to this; the government of the country will not suffer the mercy of the king to be trifled with; if you continue to refuse his majesty's pardon, I think it right to tell you your fate, and also that of your companion, for whom you seem so much interested. I have offered the king's pardon to you; if you refuse it, I shall order you to be remanded; and you must prepare to die the day following; you shall be executed the day following.

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Cowden. I hope I shall have more mercy shown me than ever I had at this bar.

Judge. If you are sufficiently prepared to die on Thursday next, the court will give orders accordingly?

Cowden. That I am.

Judge. Let her stand committed to the cells, and let the sheriffs prepare for an execution on Thursday morning. Take her away.

At this point, William Garrow intervened. He had had a good sessions and was clearly on a roll. He had represented 14 men accused of everything from perjury to murder. Nine out of the 14 had been declared innocent and walked free from the court and of the five found guilty, only one was sentenced to death. He volunteered to go and speak to Cowden and convince her of her mistake and reluctantly Judge Rose agreed.

While Garrow was trying to reason with Cowden, Judge Rose turned his attention to Sarah Storer. After Sarah Cowden had done so much to protest Storer's innocence, she could do no less than refuse: 'No, I will not'. But then her will broke:

Judge: These women have done rashly, I meant in mercy to them to have given them further time, that by the death of one obstinate offender, sufficient warning might have been given to the rest. But you have voluntarily desired to be brought into court, for the purpose of insulting the court?

Storer: I am willing to accept of it though I am innocent; I am willing to accept of it with all the felicity in life.

With one last show of passion, however, she added: 'I am willing to go, but not for my life, I never will'. Ignoring her caveat, the judge simply filled out the order and intoned to all the prisoners who had accepted the pardon: 'The court orders and adjudges you to be transported for your natural lives'.

By this time Garrow had convinced Cowden to change her mind, but he was then confronted with the necessity of begging Judge Rose to hear her speak one last time:

Garrow. When I appeal to the court, and observe that the admonition your lordship has given has had that effect, which your lordship's admonitions seldom fail to produce, I humbly conceive your lordship will permit that unfortunate woman to be brought in once more.

Judge. It is only subjecting the king's mercy to insult, to suffer her to be brought up again.

Garrow. My lord, I shall have no objection to go into the gaol with her.

Judge. I do not think that the king's mercy should go a begging, or be subjected to insult. The justice of the country is concerned, that the unhappy persons, who have forfeited their lives, should be made examples of; but I can show no indulgence to those who treat the mercy of the king with contempt, no application can be heard, that does not come from the prisoner, and an application, even coming from the prisoner, must be now received with great doubt.

Garrow. I only ask the court, to consider the order not to be irrevocable.

Judge. As to me it is irrevocable; I shall order the execution, unless the king otherwise directs; and the sheriffs will prepare accordingly.

Garrow. My lord, I do not attend your lordship, nor address myself to the court, in the character of a counsel, but as a very humble supplicant, for a very miserable wretch, who desires now, having seen the folly of her behaviour, humbly to entreat that she may be permitted to accept that pardon of his majesty, which she has dared contumaciously to refuse.

Finally, Judge Rose agreed, and 'Sarah Cowden was brought in once more'. Perhaps because her friend, Sarah Storer, had finally submitted to her sentence, or perhaps because William Garrow was as eloquent outside the courtroom as within, Cowden finally agreed:

Judge. Sarah Cowden, you stand attainted of felony; his majesty has been graciously pleased, to extend his royal mercy to you, on condition of your being transported for life, are you willing to accept his majesty's mercy on that condition?

Cowden. Yes sir, I am.

For Sarah Cowden, however, the story was not yet finished. At least two of the 'refusers' were put aboard the *Lady Juliana*, which was scheduled to leave British waters with 226 female convicts on 29 July. While at anchor in Portsmouth harbour on the night of the 28th four of the female convicts quietly escaped. Among them were Sarah Cowden and Mary Burgess. John Nicol, the ship's steward, later recounted the incident:

Others did all in their power to make their escape. These were such as had left their associates in rapine on shore, and were hardened to every feeling but the abandoned enjoyments of their companions. Four of these made their escape on the evening before we left England, through the assistance of their confederates on shore. They gave the man on watch gin to drink, as he sat on the quarterdeck, the others singing and making fun. These four slipped over her bows into a boat provided for their escape. I never heard if they were retaken. We sailed without them.³¹

Of these four women, three were eventually recaptured and retried. Mary Burgess remained free for over three years until August 1792, supporting herself by selling old clothes around Petticoat Lane. Still complaining of poor health, she was arrested in her bed and once more tried at the Old Bailey. Again found guilty and sentenced to hang, she was eventually pardoned and transported for life, finally arriving in Australia on 25 October 1794. Sarah Cowden fared rather better. She was arrested at the end of September 1792, a little over a month after Mary Burgess. By this time she was making a living in Spitalfields in the silk industry and was able to call a string of witnesses to her reformed character. Although found guilty and sentenced to death, the jury 'recommended her to mercy', and the presiding judge, Lord Kenyon, added his own recommendation and admonishment: 'If you are let loose, I hope you will pursue the same line of industry which you have done according to the character you have had given you this day'. But, Cowden did not have to wait on the king in this instance. Instead, she pleaded her belly:

A jury of matrons were empanelled on Sarah Cowden's application to the court that she was pregnant, and they returned a verdict that she was with quick child, upon which the execution was stayed.

She was never transported and was soon once again free on the streets of London.

For the court, its problems were not finished by the apparent capitulation of Cowden and her colleagues in June 1789. At the September sessions that year, as the 'Second Fleet' continued its preparations for departure, a further 12 men also refused the king's pardon. Some claimed innocence, questioning their treatment at the hands of the court. John Durham complained bitterly of his conviction on the basis of uncollaborated evidence and declared: 'I think I ought to suffer as a man; I am very sorry I must refuse it'. In this instance, it was not until the October sessions that all the men could be convinced to accept transportation and it was only when the colony in New South Wales became more established and secure that men and women stopped challenging the authority of the court in this way.³²

Tools for a Breakout

Towards the end of the eighteenth century the judges at the Old Bailey turned for the first time to imprisonment on a large scale as a punishment for convicted felons. In the last two decades of the century over one-quarter of convicts were sentenced to a period of incarceration, often at hard labour. Imprisonment had become attractive owing both to dissatisfaction with the main alternative punishments (death, transportation and whipping), and because it promised to reform offenders. In order for London's prisons to realise that ambition, however, prison buildings and disciplinary regimes needed to be radically overhauled. That process would take time and the thousands of convicts sentenced to imprisonment in the late eighteenth

century experienced a regime little changed from the traditional system of open wards and loose governance.

The passage of the Penitentiary Act in 1779 heralded the beginning of a new era in the history of imprisonment. Authorising the construction of two new prisons in the metropolis, the statute prescribed an entirely new type of incarceration for felons. By following a strict regime, prisoners were to be reformed through a combination of hard labour, religious instruction and solitary confinement. Rather than focusing on retribution and deterrence through inflicting pain on the body, punishment would for the first time concentrate on reforming the convict from within. Everything from the prisoners' uniforms to their sustenance was designed to humiliate them and force them to reflect on the errors of their ways: their food and drink were to consist only of 'bread, and any coarse meat, or other inferior food, and water, or small beer'.³³

Fortunately for the convicts, the two prisons were never built, largely because the government was unwilling to pay for them. Nonetheless, the aspirations of prison reformers were gradually achieved through the piecemeal reconstruction of existing prisons and the occasional building of locally funded new ones. In London, a new house of correction was built at Coldbath Fields, where convicted felons were subjected to the controversial system of solitary confinement. But London's primary prison for felons, Newgate, remained largely unchanged. Rebuilt to the same design in a fortress-like neo-classical style in 1780–83 following its destruction during the Gordon riots, Newgate was an imposing structure when seen from the street, with its 300 foot long rusticated stone walls, with no exterior windows. Nonetheless, prisoners continued to be kept in large open wards rather than individual cells. And although the prison was divided into three main quadrangles, for male felons, female felons and debtors, in practice the different categories of prisoners were able to intermingle in parts of the prison such as the tap room. These included the accused awaiting their trials at the Old Bailey and convicts held awaiting the execution of sentences such as transportation and the death penalty, as well as the essentially new category of those convicts imprisoned as a form of punishment. Among the last was Renwick Williams, the 'Monster', who was imprisoned in 1790 for six years for his knife attacks on young women.

In 1799 one prisoner awaiting the execution of his sentence was William Harper, convicted in February and sentenced to death for impersonating a sailor in order to collect the prize money owed to the crew of the ship *The Powerful*, in reward for the capture of *The Countess of Rochmandorff* at St Helena in 1797. Unfortunately for Harper, when he presented his forged certificate it turned out that the real William Harper had already collected his prize several months before.³⁴ Another prisoner awaiting his execution was John Tate, who had been convicted of robbing a sailor in East Smithfield of his knife and 6s in company with John Connaway – also known as Irish Jack.³⁵

Prisoners in Newgate were still allowed to have visitors and those visitors were allowed to bring food and drink, but, in a sign that prison life was changing, they were no longer allowed to have hard liquor. A regular visitor to the prison in the spring of 1799 was Elizabeth Willoughby, the common law wife of John Tate. According to John Pitt, one of the prison turnkeys, Willoughby 'was every day in the prison, backwards and forwards, to a man that she called her husband'. On 25 March:

I let her in; she had been there some little time, about half an hour, and went out to get some refreshment for the prisoners. She returned again in about twenty minutes. I was walking backwards and forwards in the passage, and I said to her, what have you been after. I thought she might have been out for spirits, or something of that sort. I asked her what she had got; says I, give me the bottle that you have got.

Pitt then proceeded to search her:

I put my hand down her side, and felt something in her pocket; then I took her into the tap room and searched her, and in her pocket I found three spring saws, and four gimblets. Then I said, you have got more things about you; I then felt her breast, and found something concealed down her bosom; then I sent for Mr Kirby, and I saw these two chisels, and handles, taken from her bosom.

Rather than alcohol, Pitt had discovered a complete set of tools calculated to engineer an escape from Newgate, despite the prison's formidable construction. As Pitt explained:



Figure 5.05 Newgate Prison, rebuilt 1780–83. Credit: General Photographic Agency/Hulton Archive/Getty Images

The spring saws would cut any iron in the world, the fetters, or the bars of the prison; and the chisels would break the walls for them to get out. The gimblets would make holes in the door, one after another, round, and would take any panel out of a door, with a saw.

Believing that Willoughby had more tools hidden about her person, he sent for a woman, Ann Sells, to search her 'more privately than a man in decency ought to do'. According to Sells, 'I searched the prisoner, and found nothing upon her, any further than in her pocket, a paper, and the money that was out of the change'. On the paper was written, 'three spring saws, four spike gimblets, two strong chisels, the saws with frames' and there was a sketch of what the saws should look like.

At this point the keeper of Newgate Prison, John Kirby, was summoned (the long-serving former keeper, Richard Akerman died in 1789). Kirby asked Willoughby to explain why she had these tools:

She said, she was sent out by a man with a bushy head. I knew by that she meant Harper, a man who is under sentence of death, and has a very bushy head; and she told me he had given her a paper. I can swear that it is Harper's handwriting.

Joseph Russell, a shopman to an ironmonger's in Foster Lane, off Newgate Street, a few blocks away from the prison, had sold her the tools:

I served her with those articles, three saws, two chisels, four gimblets, and two handles. There was a model of the pattern of the saw upon the paper which she produced; she said to me, I come from Saffron Hill, and presented me with that paper. I wrote what the articles came to upon that paper, and signed it with my name; they came to nine shillings and three pence. She smelt very strong of liquor. We had many different kinds of chisels, and I asked her what sort she wanted; she said, she did not know. I asked her what trade the person was that they were for; and she said a carpenter. She gave me a guinea, and one of my masters gave her the change.

The fact Willoughby had been drinking helps explain why the turnkey simply assumed she was concealing a bottle. But regardless of her state of mind, she had been caught red handed. Her defence at her eventual trial at the Old Bailey seemed more an explanation, than an attempt to escape punishment:

I came to John Tate, as I used to do every day, I used to take him his dinner. As I was coming away, Harper followed me, and asked me if I would go of an errand for him. I said I would; he told me to go to Saffron Hill, and I went there, and they told me to go to this gentleman's house for the goods.

Unsurprisingly, the jury found her guilty. Her sentence, ironically given how well she knew the prison, was to be confined in Newgate for two years, and to pay a 1s fine. Elizabeth Willoughby was thus given more time to spend with her pretended husband, at least until John Tate's sentence was carried out.³⁶

Conclusion

Each of the punishments imposed by the judges at the Old Bailey proved to be problematic. The disorder of 'Tyburn Fair' subverted the supposed deterrent effect of the death penalty. Crowds transformed the pillory according to their whim into either a celebration of the convict or a scene of chaos and death. Transportation was subverted by the extraordinary ability of convicts to find their way back to England, not to mention the difficulty of finding a colony wishing to serve as a receptacle for Britain's undesirables. And imprisonment failed to live up to its promise of reforming offenders. But most crucially, each new experiment in penal policy failed to stop the apparently ever rising tide of crime. Punishments that were supposed to deter others from committing crime or reform offenders manifestly failed to do either.

Yet the judges soldiered on. Corporal and capital punishments increasingly fell out of favour owing to changing cultural attitudes towards violence and the growing faith in reform and so transportation and imprisonment grew in popularity despite evidence that not only were they costly but they did not work. There was simply no alternative. What the eighteenth-century judicial system bequeathed to modern Britain is not only the punishment of imprisonment, now long established as our primary method of dealing with felons, but also the stubborn belief, in the face of all the evidence, that this punishment has the potential successfully to reform convicts and prevent crime.