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“Punishment is all the charity that the law affordeth them”: Penal Transportation, Vagrancy, and the Charitable Impulse in the British Atlantic, c.1600-1750.

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Abstract:

This article examines the policy of penal transportation to the colonies which underpinned the first British empire in the Atlantic. It argues that the transportation and indenture of the criminal poor came to be justified by empire’s architects as a charitable reprieve from a life course of decaying indigence and idleness. “Charity” of this nature serviced the needs of the British imperial state and its elites, particularly the need for the malleable biopower of indentured labor, but also the demand for increasingly rigorous carceral control. Transportation also created a clear distinction between the poor so reprieved and those still deserving of traditional relief at home. The article names these justifying discourses of judicial punishment-as-charity as ‘welfare colonialism’. We might view this regime as an early forerunner of the terrible paternalisms of “philanthrocapitalism”, and its operation as fundamental to the first British “Empire of Charity”.

Keywords: charity, criminal punishment, penal transportation, colonialism, Atlantic History, poverty, vagrancy.

Short Author Biography: David Hitchcock is Senior Lecturer in early modern history at Canterbury Christ Church University. He researches the social and cultural history of vagrancy in early modern England, and has authored *Vagrancy in English Culture and Society, 1650-1750* (Bloomsbury, 2016). He has also written on the identification of English Quakers as vagrants in the 1650s, on Warwickshire constables and casual relief, on the popular invocation of early modern stereotypes of magic and the monstrous (forthcoming) and on poverty in the early modern British Atlantic.

Article:

In 1618, at the behest of noted parliamentarian and colonial speculator Sir Edwin Sandys, the Virginia Company tabled a formal petition before the London Common Council, asking that one-hundred poor and vagrant children, who “lie in the streets... having no place of abode nor friends to relieve them” be shipped to the fledgling colony of Jamestown at the city’s expense.¹ Seventy-five boys and twenty-five girls were accordingly transported for “running wild in the streets”, for being vagrant, on 27 February 1618; though it should be said that none of those apprehended and sent over were formally convicted in the London court system.² Only a small number of these children survived in the harsh realities of early Virginian life, including two “Bridewell boys” called Nathaniel Tatum and Nicholas Granger who appear to have found some success in their new world.³ Tatum was listed in the muster of January 1624/5 as twenty years old, and by 1638 his name is patented to one-hundred acres of land along the Appomattox

¹ See: Theodore K. Rabb, “Sandys, Sir Edwin (1561–1629)”, *Oxford Dictionary of National Biography Online*, Oxford University Press; and Barry M. Coldrey, “...a place to which idle vagrants may be sent: the first phase of child migration during the seventeenth and eighteenth centuries”, *Children and Society*, 13:1 (1999); p. 35.

² See “Records of Individuals ordered to be sent to Virginia, ca. 1618-37 from Bridewell Royal Hospital”. Library of Virginia, Accession 26237.

³ “Bridewell” refers to the first central House of Correction in England, founded in 1553 on the grounds of a former Royal Palace, bequeathed to the City by Edward VI. For records of the two boys, see: Accession 26237, Library of Virginia: “Records of Individuals ordered to be sent to Virginia, ca. 1618-37”.

river.⁴ Granger appears as a servant of a “Capt. Wm Epes”, aged about fifteen in 1624, and much later as a signee to Virginia’s “engagement” concerning the change of government in England in 1651. The fates of Nathaniel and Nicholas represented for their better-off contemporaries the exact and desired outcome, and indeed the fundamentally charitable nature, of forcible transportation across the Atlantic Ocean. As vagrant children they were—in effect—mere idle bodies to improve, untapped resources to deploy, and the stark fact that only a handful of the one-hundred transported children *survived* that experience was elided by the self-assuredly charitable and paternalistic rationale which occasioned their journey. In the words of Assize Justice Francis Harvey, for vagrants “Punishment is all the charity that the law affordeth them”, and if this punishment was as tender as penal transportation, they had best be grateful for their reprieve.⁵

Charity was a contested and variable part of early modern culture, and subject to intense pressures from the early sixteenth century onwards. Introducing *The Reformation of Charity*, Thomas Max Safley describes how “charity was essentially altered” by political, bureaucratic, and religious change in early modern Europe after 1516.⁶ Charity “became a function of state governments and bureaucratic structures”, and the poor were “examined, categorized, assisted, and regulated in an effort to limit their numbers and control their activities”, he writes. Charity “could take the form of tough love” and it is that precise form of charity which this article is concerned with. Our extant histories of Christian (mainly Catholic) charitable works have stressed a fundamental division between the seven acts of *corporal* charity and the seven denoting *spiritual* charity. Corporal charity included housing the homeless, feeding the hungry, clothing the naked, and so on. Spiritual charity included converting the sinner, instructing the ignorant, and forgiving injuries.⁷ In this special issue numerous forms of both corporal and spiritual charity present themselves to us; from philanthropic subsidy to simple almsgiving, from early modern micro-credit to charitable education. This article examines an empire of charity from a different angle; by exploring an indeterminate space between charity and mercy, where we find a redefinition of judicial pardoning (and thus punishment) as itself a charitable act, one which echoed the spiritual charities of instructing the ignorant and forgiving injury, and purported to offer the corporal charities of housing the homeless, feeding the hungry, and so on. The article interrogates the implicit logic of a seventeenth-century British colonial policy which transported an enormous number of vulnerable people across the Atlantic Ocean. I ask whether charity can be seen not only as a ‘gift’; a reciprocity and social exchange of relative value to both participants, but also as a *reprieve*, a mercy of opportunity or a second chance which also serves the interests of both parties unequally.⁸ Are not all empires built on and justified by such definitions of charity? Is such a rhetoric of charity not how the apologetics of empire today tries to redefine its previous transgressions as virtuous?

⁴ See entries for TATUM and GRANGER, in John Frederick Dorman, F.A.S.G., *Adventurers of Purse and Person Virginia, 1607-1624/5*, 4th Ed. Vol. III, Families R-Z, (Baltimore: Genealogical Publishing Inc., 2007).

⁵ Justice Francis Harvey in the 1630 Assize Resolutions, as quoted in Michael Dalton, *The Countrey Justice* (London, 1697 edn), p. 212; see also: Steve Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England c. 1550-1750* (Oxford: OUP, 2004); pp. 308-309.

⁶ Thomas Max Safley (ed), *The Reformation of Charity: The Secular and the Religious in early modern Poor Relief* (Leiden, Brill: 2003); pp. 2-3.

⁷ Nicholas Terpstra, “Early Modern Catholicism” in Hamish Scott (ed), *The Oxford Handbook of Early Modern European History, 1350-1750: Volume I: Peoples and Place* (Oxford: OUP, 2013), p. 618.

⁸ The ideas of gift-as-exchange originate most powerfully in Marcel Mauss, *The Gift*, and were here adeptly summarized by Ilana Krausman Ben-Amos, *The Culture of Giving: Informal Support and Gift-Exchange in early modern England* (Cambridge: CUP, 2008), p. 5.

Within the troubled context of early modern empire-building, we ought to consider how charity for the poor came to be redefined in the seventeenth century less as individual altruism and increasingly instead as a favorable disposition to the welfare of the imperial state itself. “Harshness to unruly beggars” in both Protestant *and* Catholic states “could be justified as charity towards the body politic; alms could be withheld from wastrels and idlers to prevent them from courting damnation.”⁹ We see exactly this attitude in Daniel Defoe’s *Giving Alms no Charity* when he writes that “the begging, as it is now practiced, is a scandal upon our Charity”, and that the misguided inhabitants of the realm “have such a notion in England of being pitiful and charitable, that they encourage Vagrants, and by mistaken zeal do more harm than good.” “An alms ill directed may be Charity to the particular person” he writes, “but becomes an Injury to the Publick, and no Charity to the Nation.”¹⁰ This harshness towards the individual combined with concern instead for the state was justified, I argue, as a ‘charity of reprieve’. For “the poor of the Devil”, vagrants, beggars, prostitutes, “reconciliation with God depended on religious penance and self-denial”, generally in institutions and spaces which made them work. This articulation of the opportunity for penance as a form of charity for the undeserving poor solves an ethical conundrum inherent to charity and described by the anthropologist Jonathan Perry as the “moral hazard” or spiritual danger of charitable giving: it degrades the long-term spiritual wellbeing of recipient.¹¹ Perry labels this danger “the poison of the gift.” Similarly describing the shifting politics of almsgiving and charity in colonial Ecuador, Cynthia Milton writes that by the later eighteenth century a beggar seeking alms in Quito “now skated between being seen as... a member of the Christian community worthy of alms and as a social pariah worthy of enclosure.”¹² This tendency to divide forms of charity according to the assumed deservingness of the recipient is a powerful development, not only for early modern poor relief, but also in our histories of state formation, welfare, and of course in the history of European imperialism.

All empires have, at their heart, regimes of transnational labor discipline; systems which enable the redeployment of labor either forcefully or voluntarily, whether in service to war or to peacetime occupations. The first British Empire in the Atlantic Ocean was no exception, though the maturation of its capacities to deploy both labor and force took almost a century longer than its imperial rivals such as Spain.¹³ Britain’s empire began, nominally, with the activities of ‘private’ agents, whether they be privateers raiding Spanish treasure fleets or coastal settlements, or private mercantile pacts like the Virginia, Plymouth, or Massachusetts Bay companies, all in receipt of Royal grant, dispensation, or charter.¹⁴ Charity played no significant role as a legitimating discourse for imperialism in this fledgling phase of experimentation, for no other reason than that there was not yet a transatlantic British society in need of the cultural adhesive and legitimating inequalities of power that the concept provided. We can trace the emergence of charity as a justifying rhetoric for empire to the switch from “exploration to exploitation” which occurred in the British empire in the late sixteenth and early seventeenth centuries; “Discoverie” is, after all, its own justification for early

⁹ All quotes between note 6 and 7: Brian Pullan, “Catholics, Protestants, and the Poor in early modern Europe”, *The Journal of Interdisciplinary History*, 35:3 (Winter, 2005); pp. 444-445.

¹⁰ Daniel Defoe, *Giving Alms no Charity and employing the poor a grievance to the nation, being an essay upon this great question* (London, 1704), p. 12.

¹¹ Jonathan Perry, “On the Moral Perils of Exchange” in J. Perry and M. Bloch (eds), *Money and the Morality of Exchange* (Cambridge; CUP, 1989), pp. 66-68.

¹² Cynthia E. Milton, *The Many Meanings of Poverty: Colonialism, Social Compacts, and Assistance in Eighteenth-century Ecuador* (Stanford, C.A.; Stanford University Press, 2007), p. 3.

¹³ See David Armitage, *The Ideological Origins of the British Empire* (Cambridge: CUP, 2004); pp. 1-24.

¹⁴ Joyce E. Chaplin, “The British Atlantic”, in Nicholas Canny and Philip Morgan (eds), *The Oxford Handbook of the Atlantic World, c. 1450-c.1850* (Oxford: OUP, 2011); p. 220.

imperial activities, whereas the dispossession of indigenous peoples or the acquisition of new lands always required other legitimating rationales.¹⁵ Once plantations such as Ulster in Ireland or Jamestown in Virginia had been established, once enclaves on foreign shores needed manpower, then the forcible removal of unwanted people from the metropole and their subsequent recreation as an imperial labor force emerged almost immediately as a self-evidently ethical way of “manning, planting, and keeping” an empire.¹⁶ What was perhaps exceptional about the British system was both the eventual scale of its labor redeployment over more than two centuries and the particular form of paternalist reasoning which justified this penal regime in the first place. British imperialists essentially believed that empire abroad could end poverty at home, and that forcing the criminal, vagrant, or simply problematic poor abroad to carve a caesura between their needs and the emerging domestic welfare state was a charitable exchange which benefitted both those who were sent away and those who remained. Morgan and Rushton write that “the establishment of transatlantic colonies provided the opportunity for selective acts of royal mercy. These were judicious, if not precisely judicial.”¹⁷ It is instructive that the group of elites convened to first consider these pardons and any commutations to transportation overseas was convened from its inception by the Archbishop of Canterbury.¹⁸ The state in effect drew a silent line that paupers and petty criminals were sent across and defined their subsequent unfree labor as an opportunity to transform themselves into productive imperial subjects in a new colonial context.

In this article I explore one of the most powerful and pervasive forms of labor discipline in the early modern British empire’s centuries-long quest to improve poverty and vagrancy out of existence: penal transportation. “Transportation to the Plantations” is one of the iconic judicial technologies of early modern British colonialism: with first Virginia, then Atlantic islands such as Saint Kitts, then floating naval hulks on the Thames river, and finally Australia and colonial India all serving their turn as repositories for the great historical mass of the mildly criminal and the criminally poor. In law and in literature, transportation and the unfree labor which typically accompanied it were justified as acts of mercy, as interventions or granted reprieves in the lives of the poor which could end their poverty, if only the poor person so gifted could grasp the opportunities that the colonial context offered them. In this article I argue that the twin impulses of Christian charity and proper punishment were delicately connected in English culture, and that paupers, vagrants, and petty criminals were in effect the first victims of a British ‘welfare colonialism’. I interrogate two reservoirs of primary evidence; firstly, the proclamatory and polemical discourse which justified penal transportation as implicitly charitable and as ethically just, and secondly (and in brief) some experiences of transportation as charity often unwanted and unasked for in the legal records of those banished from England’s shores.

To begin we ought to chart a very short history of the origins of penal transportation in Tudor and Stuart law and government policy. First, it should be said that *internal* removal—from the context of the locality, town, or parish—has a much longer pedigree than transatlantic penal transportation, but these two strands of penal policy were closely connected. Troublesome beggars were famously banished from the polis in Homeric myth and in classical

¹⁵ Nicholas Canny, “The Origins of Empire” in Canny and Roger Louis (eds), *Origins of Empire: British Overseas Enterprise to the Close of the Seventeenth Century* (Oxford: OUP, 1998); p. 3.

¹⁶ Christopher Tomlins, *Freedom Bound: Law, Labour, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge: CUP, 2010); see Part I, but principally discussion on pp. 21-3.

¹⁷ Gwenda Morgan and Peter Rushton, *Banishment in the early Atlantic world: convicts, rebels and slaves* (London: Bloomsbury, 2013), p. 19.

¹⁸ *Ibid.*

law codes, a point that seventeenth-century pamphleteers frequently deployed to buttress the authority of their proposals for the same.¹⁹ The Tudor poor laws, beginning in 1494 under Henry VII right through to the 1597 and 1601 poor laws, all contain both the urge to, and the mechanisms for, the penal expulsion of the undeserving poor from the realm.²⁰ We can clearly see the impulse to remove the undeserving within the very gestation of formal institutional systems of charity. Racialized categories of difference feature also quite prominently in the development of penal codes, for instance Gypsies found themselves the particular targets of bespoke banishment laws across the 15th and 16th centuries in England as elsewhere.²¹ In the Tudor state apparatus the political will and legislative means to banish the poor were clearly present and accounted for, but there simply were not yet any feasible destinations. The 1597 *Act for the punishment of rogues, vagabonds, and sturdy beggars* was in fact the first law to explicitly envision shipping paupers across the Atlantic Ocean to English colonies, and by the accession of James I in 1603 we start to see a new frenetic energy infused into the idea. As one of his first acts as King in 1603, James issued a proclamation “for the due and speedy execution of the Statute against Rogues, Vagabonds, Idle and Dissolute Persons” which ordered all vagrants immediately banished from the realm.²² The proclamation figured the vagrant not only as a threat to “His Majesties loving Subjects” but also, rather incongruously, “to His Majestie and His honourable household and attendants in and about His Court” and listed where vagrants could legitimately be transported via magisterial orders: “The New-found Land, the East and West Indies, France, Germanie, Spaine, and the Low-countries, or all of them.”²³ James was the first English monarch to explicitly enable transatlantic penal transportation as a form of judicial mercy. And in 1615 James gave magistrates the discretion to reprieve felons on the sole condition that they were “employed in foreign discoveries or other services beyond the seas.” From there, and with the rapid (though uneven and dangerous) colonization of Virginia, we see the steady growth of the penal transportation of the poor and socially undesirable throughout the seventeenth century and beyond.

As the seventeenth century progressed the informal use of penal transportation became *de rigueur*. Cynthia Herrup has argued that the redefinition of pardoning and its connection to the demand for labor in the Americas helped to “revolutionize the possibilities of transportation” and English criminal records bear out her observation.²⁴ By the 1620s and 30s Bridewell’s court books are, in A.L. Beier’s phrase, “peppered” with references to the transportation of inmates, by this point still an informal process without formal commutation,

¹⁹ The Homeric beggar in question here was named “Irus”, and the character later became a staple stock figure of English Latin poetry composition on the topics of poverty and idleness; see John Gilmore, “Irus and his Jovial Crew: Representations of Beggars in Vincent Bourne and other eighteenth-century writers of Latin verse”, *Rural History*, 24:1 (Spring 2013); pp. 41-57.

²⁰ For all the poor laws from 1597 to 1733, see: Great Britain, *The statutes at large concerning the provision for the poor, being a compleat collection of all the acts of Parliament relating thereto. To which is added, a table by way of abstract of all the said acts, digested into alphabetical order* (London, 1733). For the text of the 1494 law under Henry VII, see: *The statutes at large, in paragraphs, and sections or numbers, from Magna Charta, to the end of the session of Parliament, March 14. 1704*, Volume 1 (London, 1706), p. 322, 11 Henry 7, Cap. 2.

²¹ David Cressy, “Trouble with Gypsies in early modern England”, *The Historical Journal*, 59:1 (Spring 2016); pp. 49-50.

²² David Hitchcock, *Vagrancy in English Culture and Society, 1650-1750* (London: Bloomsbury, 2016); pp. 28-29.

²³ James I, *By the King. A proclamation for the due and speedy execution of the statute against rogues, vagabonds, idle, and dissolute persons* (London: Robert Barker, September 17th 1603), held at: The Folger Shakespeare Library, Washington D.C.: STC 8333 sheets 1 & 2.

²⁴ Cynthia Herrup, “Punishing Pardon: Some Thoughts on the Origins of Penal Transportation”, in Simon Devereaux and Paul Griffiths (eds.), *Penal Practice and Culture, 1500-1900: Punishing the English* (Basingstoke: Routledge, 2004), p. 130.

and described by Gwenda Morgan as completely “routine”.²⁵ For instance the London Aldermen were pleased to report in 1631 that “fifty vagrants were bound apprentices to merchants to serve in the Islands of Barbadoes and Virginia”. The civil war and Interregnum proved little to no interruption for this system of wholesale removal, though after the Restoration of Charles II the system was increasingly formalized and deployed against a larger number of undesirable groups: Quakers, Monmouth rebels, political dissidents, and a wider range of criminals. The language of transportation also became directly intertwined with the longstanding form of the Royal Pardon, as can be seen in James II’s 1686 pardon of poor prisoners in Newgate, where the prisoners to receive the free pardon were clearly delineated on the proclamation from those “to be Transported”, though both categories of criminal were clearly thought to have received Royal “Mercy and Compassion (the two Cardinal Endowments of a good Christian Profession)”.²⁶ By 1700, penal transportation had become an iconic method by which the English state disposed of the undesirable and undeserving. How this disposal was justified is surely as interesting as how it was propagated, and as we shall see English contemporaries saw transportation as charitable reprieve both to the “deserving poor”, in that it freed up precious resources for their care, and for the “undeserving poor” too, in that it provided them, ostensibly, with the redemptive opportunity of labor abroad as a cure for their idleness.²⁷

In their excellent book *Banishment in the early Atlantic World*, Gwenda Morgan and Peter Rushton characterize the suitability of transportation as a colonial and charitable act as follows: “if poverty did not drive people abroad, then the law might; if they were not deceived, they were forced. The structures at home and overseas combined to blur distinctions and provide the means for supplying the colonies with workers. Internal and external colonialism coincided and overlapped, as mobility at home and abroad dovetailed neatly to provide the means of pacifying the wild people in England and the savage places abroad.”²⁸ Morgan and Rushton also write that “it is clear that formal judicial banishment became part of English law in the final stage of the development of the Elizabethan vagrancy laws – the outcome of a long process of Tudor legislation on the general problem of rogues and vagabonds.”²⁹ Drawing on the work of the historian of crime John Beattie on benefit of clergy and the application of death penalties, Morgan and Rushton suggest that during two distinct moments in English legal history a “coincidence” occurred where increased legal severity was followed immediately by “a search for milder alternatives”, namely penal transportation, and those two moments were the early decades of the seventeenth and eighteenth centuries. Thus “the idea of banishment” began initially as a way of disposing of the vagrant poor, and was quickly developed into “an integral part of criminal justice”.³⁰ In 1718 the system was codified by the Transportation Act, and in Morgan and Rushton’s words this caused a “flood of convicts” whose circumstances and crimes became “a media phenomenon.”³¹ The ubiquity of transportation from this point onwards created a “criminal Atlantic” in which there was a “common interest” in both Britain and its American colonies in British criminals and laws, and thus “British crime and

²⁵ Morgan and Rushton, *Banishment in the early Atlantic world*, p. 15.

²⁶ James II, *His Majesties most gracious pardon to the poor prisoners in Newgate, on Friday the 26th of February, 1685/6* (London, 1686).

²⁷ On the distinction between “deserving” and “undeserving” poor and its roots in late medieval piety, local relief, and medical care, see both: Carole Rawcliffe, *Medicine and Society in Later Medieval England* (Sutton, 1995); and Marjorie K. McIntosh, *Poor Relief in England, 1350-1600* (Cambridge: CUP, 2011).

²⁸ Morgan and Rushton, *Banishment*, p. 15.

²⁹ *Ibid.*, pp. 9-10.

³⁰ *Ibid.*, p. 19.

³¹ Gwenda Morgan and Peter Rushton, “Print Culture, Crime, and Transportation in the Criminal Atlantic”, *Continuity and Change*, 22:1 (May 2007), p. 49.

punishment, and the consequences for criminality and social order in the colonies, were joined together in a variety of common discourses.”³²

Christopher Tomlins highlights a second important development in the judicial history of penal transportation: the creation of jurisdictions by royal charter, and the longstanding right of monarchs to prevent or enable the movement of their subjects abroad should they so wish. “Charters licensed departures”, he writes, and “they also established jurisdictions to manage arrivals. Migration became a process of moving people from one jurisdiction to another.”³³ The establishment of English master and servant law into colonial jurisdictions created by royal charters obeyed a similar transferral process, in effect copied out of a statute book in England and into another in, say, Virginia, and by 1630 “most of the laws dealing with... the voluntary transoceanic movement of people were laws relating to indentured servants”.³⁴ This transference of law, and the open-ended grant of regulatory powers over mobility which every American colony charter thus provided, created in turn the all-important context in which the members of the Virginia Company, London Bridewell’s Governors and eventually magistrates and parish officials across the realm felt perfectly encouraged to pursue the peopling of the new world with paupers, vagrants and petty criminals; people who were destined, in their view, for misery and the gallows were they to languish at home.

Both parish officials and colonial improvers were often guided towards transportation by explicit royal decree or at the urging of the Privy Council in addition to the implicit backing of grants or charters. We have already touched on James I’s 1603 proclamation, which was far from exceptional in this regard. In 1620 the Privy Council wrote to Edwin Sandys, by now leading the Virginia company himself, explicitly granting both the company and the city of London the right to send poor and vagrant children to the plantations against their will, and wrote that “the City deserves thanks and commendation for redeeming so many poor souls from misery and ruin”, and that “if any children disobey or are obstinate we authorize the imprisonment, punishment, and disposal of them”.³⁵ If the charity of transportation was not willingly taken up, those ungracious enough to refuse it would find themselves recipients regardless. Charles I also issued at least three different proclamations encouraging penal transportation, one in 1629 and two in 1630.³⁶ One of the first royal proclamations by Charles II after his coronation in 1661 was about “the suppressing of rogues, vagabonds, beggars, and other idle persons.” Charles was crowned on April 23rd, this proclamation was issued on May 9th. Quieting the social and political turmoil of the “late troubles” was a priority of his regime, and responding to “the great and unusual retort” of vagrants and “Idle Persons of all Ages and Sexes” in and about London was seen as a crucial part of the restoration of stability. Anyone caught wandering or begging without a London settlement after May 24th was to be whipped and sent to their home parish, “except those that are willing to go to the English Plantations”, who would both forego the whipping, *and* receive subsidized transport to the new world. William and Mary issued several similar proclamations, including one via the Scottish secret council in 1692 which mandated fifteen years of forced service for any young vagrants

³² *Ibid.*, p. 50.

³³ Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (Cambridge: CUP, 2010); p. 77.

³⁴ Mary Sarah Bilder, “The Struggle over Immigration: Indentured Servants, Slaves, and Articles of Commerce”, *Missouri Law Review*, 61 (Fall 1996), p. 751, as quoted in Tomlins, *Freedom Bound*, p. 78.

³⁵ “America and West Indies: January 1620”, in *Calendar of State Papers Colonial, America and West Indies: Volume 1, 1574-1660*, ed. W Noel Sainsbury (London: Her Majesty’s Stationery Office, 1860), p. 23, and see: Coldrey, “...a place to which idle vagrants may be sent”, p. 37.

³⁶ TNA: State Papers Domestic: May 17 1629, VOL. CXLII., [91a]; April 23 1630, VOL. CLXV., [16a]; & Sept. 17 1630, VOL. CLXXIII., [34a]

apprehended, and as we shall see Scottish writers complained of the depopulation of both the Highlands and Lowlands by merchant speculators who purchased the resulting indenture contracts.³⁷ Two common themes emerge from these proclamations and permissions; first, that *work* was the essential charity and cure for a vagrant existence, and secondly, that vagrants could be made to benefit the state particularly by sending them to labor abroad.³⁸

“Mynister matter for all sortes and states of men”: The Charity of Transportation to Plantations in Improvement Literature

We have considered the language of lawgivers and proclamations, but why did contemporaries consider penal transportation charitable for the poor in particular? In law, first and most obviously—as Peter King, Douglas Hay, J.M. Beattie, Cynthia Herrup, Jim Sharpe and many others have demonstrated—because transportation was not death: “to hang until dead” was the proscribed punishment for all felonies, including all thefts over the value of two shillings, and while it was a punishment often mitigated by pious perjury, it was still the normalized law of the land.³⁹ But from the early 17th century a second constellation of reasons emerged justifying the penal transportation of the poor in particular, a rationale which outlined the broad “publick benefits” that could be derived from “improving” both paupers and vagrants but also empire itself, simultaneously. As early as the 1590s Richard Hakluyt’s *Essay on Plantations* made an explicit case for exporting paupers to labor in the new world, where he envisioned a social organization that would “mynister matter for all sortes and states of men” in a manner that would keep all from “idleness” and deprivation.⁴⁰ However the idea comes to implicit fruition in the seventeenth century in improvement literature and fully visible in eighteenth-century sermons and pamphlets. The picture that Paul Slack’s *Invention of Improvement* paints of colonial designs to increase population, set more land under the plow, and generally to grow the wealth and strength of empire, seems to me to underplay the role explicitly envisioned in these endeavors for the forcible transportation of paupers and vagrants.⁴¹ One of the most common phrases in improvement literature across the seventeenth century is “settinge the poore on worke”, and the locations best envisioned as supplying this work tended to be either workhouses or plantations, each one a frankly radical departure from the parochially-focused practices enshrined by the Elizabethan poor laws. Improvement literature in the seventeenth century was clearly in the grip of a utopian fervor and heavily favored transplanting poor populations into imperial spaces.

In 1624, Richard Eburne penned a dialogue called *A Plaine Pathway to Plantations* in which he explicitly envisioned exporting the poor and unemployed to Virginia and Newfoundland. Eburne’s aim was to write something new “(for none that I know, hath yet

³⁷ See below, and Anon, *An Essay Against the Transportation and Selling of men to the Plantations of Forreigners* (Edinburgh, 1699).

³⁸ The notions of idleness as sin, and of work as both charity and remedy, have a long history in the discourse of medieval and early modern poverty. I introduce the seventeenth century implications in chapter one of *Vagrancy in English Culture and Society*, see pp. 21-31, and pp. 31-35 for transportation in particular.

³⁹ See: Peter King, *Crime and the Law in England 1750-1840: Remaking Justice from the Margins* (Cambridge: CUP, 2006); Douglas Hay (et al), *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Penguin, 1975); J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986); Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: CUP, 1987); J.A. Sharpe, *Crime in early modern England, 1550-1750* (New York: Longman, 1999).

⁴⁰ Richard Hakluyt, *Discourse Concerning Western Planting* (orig. 1584; Cambridge, M.A: J. Wilson, 1877), p. 39.

⁴¹ See Paul Slack, *The Invention of Improvement: Information and Material Progress in Seventeenth-Century England* (Oxford: OUP, 2015).

travelled this way)” for the “For the perswading and stirring up of the people of this Land, chiefly the poorer and common sort to affect and effect these Attempts better then yet they doe.”⁴² One assumes “perswading” then, should be the operative mode, but once engaged in dialogue, the characters Respire, a farmer, and Enrubie, a merchant (and likely a play on Eburne), very quickly agree that forcible transportation to plantations for “idlers” is both charitable and just. It is taken as given early on that Albion herself proves insufficient, and indeed that the realm is overfull with the poor and undeserving: “it is a thing so evident” says Respire, “that for the idle people of our Land, the great number of them, which is almost infinite... the Land is not any way able to set them aworke” and the solution, which “needs no prooffe, is to place abroad the Inhabitants thereof”. Enrubie comments on “a thing almost incredible to relate, and intolerable to behold, what a number in euery towne and citie, yea in euery parish and village, doe abound”, swarms of paupers who will be the “very ruine of the whole Land within a while, if it be not looked unto”, and surely, “if they were transported into other regions, [it] might both richly increase their owne estates, and notably ease and disburden ours.”⁴³ Eburne’s language of justification for this proposal deployed the Old Testament parable of God’s harsh mercy for the Israelites, and the story of Christ sending forth his disciples as “*lambes among wolves*” in order to explain how transportation, as a “trial”, should be considered charitable to the poor. To *deserve* the promised land, Eburne suggests, the poor (like the Israelites) must “feelee some perils by the way”, such as wandering the wildness, the pursuing Pharaoh, and we therefore “must not looke to have the hand of God’s providence extended unto us without some dangers and incumbrances.”⁴⁴

The efficacy and godliness of plantations thus established, and the dangers of a surcharge of poor revealingly described, the question in a *Plain Pathway* quickly became who should be encouraged to emigrate, and who should be forcibly sent. Eburne’s answer to the second question is “idlers” and vagrants. The character Enrubie makes the case for this in terms of a charitable exchange, and by drawing on an analogy to the apprenticeship of poor children (itself a frequent part of parochial charity): “if you should keepe [your children] all at home, and have not werewith to set them to worke, nothing to employ them in... must they not needs fall to Idlenesse?” “Having no worke for them at home” he says, instead the father must “place abroad your children into other houses, as it were, into Colonies, where they may be set aworke; and so the onely way to rid Idlenesse out of a whole parish, towne, countie or country” is the same.⁴⁵ Eburne anticipates the exact trajectory of English penal policy when he muses over the benefits of rounding up vagrants and petty criminals to ship to the new world, and besides, vagrants are “are strong and able persons, such as could and would worke and labour well, if they were well ordered and employed”, and petty criminals, sinners, surely merited a charitable reprieve: people who “no doubt being first chastised, and then well governed, and of better meanes provided, may prove honest and good men and women afterward.”⁴⁶ Moreover, this charity extends well beyond its vagrant and criminal recipients to the laboring poor as well: “A third sort there are, as it were a mixt kinde of people, neither altogether idle, nor yet well and sufficiently set aworke. Of these, some worke at a low and small rate, many times glad to serve for any thing, rather than to begge, steale, or starve”, and for these humble folk, either the bright prospects of land and labor in the new world—or else easier access to relief and employment at home—would be occasioned by transportation to plantations.

⁴² Richard Eburne, *A Plain Pathway to Plantations that is, a discourse in generall, concerning the plantation of our English people in other countries* (London, 1624), frontispiece, and p. 1.

⁴³ *Ibid.*, p. 10.

⁴⁴ *Ibid.* p. 29.

⁴⁵ *Ibid.*, p. 13.

⁴⁶ *Ibid.*, p. 59.

The idea of siphoning off population surplus to useful ends—both as a hard charity for the undeserving, and to simultaneously free up resources for the deserving poor—had a wide following amongst learned society. For instance, the merchant John Bland produced a lengthy proposal to improve British trade which eventually saw print under his name in 1659. Bland’s *Trade Revived* combined entirely pedestrian proposals for the promotion of shipping and “manufactures” with a virulent anti-Semitism (Jews were “horseleeches of the commonwealth”), and with a detailed defense of the transatlantic transportation of paupers, whether the poor wanted to migrate or not.⁴⁷ Bland’s rationale was not just imperialist, it was also explicitly consumerist: “How much greater advantages should we make if that vast Country of Virginia were manured” he asked, “having therein so many millions of people... who would be civilized, and become consumers?”⁴⁸ The nation, he mused warmly, would “finde an admirable remedy for the disburdening itself of our supernumerary people, without fomenting of wars to be rid of them” and Virginia’s fertile soil and vast expanses would “give them by their industry very great riches.”⁴⁹ Many poor men would thus be “reared up to wealth and honor, which now come to nothing but grow to be beggars from Town to Town”. Bland ended his tract with an itemized list of rules that would ensure future prosperity, he said, for the realm. These generally revolve around honesty in trade, including standard weights and measures and holding to bargains struck, but Bland also advocated the “golden rule” about doing unto others as one would have done unto them, and from this perspective he argued that the opportunities afforded by pauper colonization of Virginia were fundamentally a charitable exercise that those transported should be profoundly thankful for. As the seventeenth century progressed these questions of crime, poverty and surplus people gained increasing urgency.⁵⁰ In 1674 the Farmer Richard Haines spoke for many when he asked: “How can our Country be without store of Beggars, Rogues, and Vagrants, till so vast an Inconvenience find a Remedy? And will it not be Pity (or rather a shame) if in one of the most ingenious Nations in the World for Knowledge, Vertue, and Religion, the Expedient should be yet to seek [sic]; or if found, not put in practice?”⁵¹

Later in the century Matthew Hale’s famous *Discourse Touching Provision for the Poor* outlined the fundamentally charitable rationale behind projects both domestic and foreign: when speaking about the principle of workhouses he wrote that “charitable minded Persons would have as it were a Pillar whereunto to fasten their Charity, which would prevent many Difficulties in the faithfull Administrations thereof, and would invite Benefactors”.⁵² Hale held firmly to the principle that “no man will be so vain, and indeed hurtful to the Publique as to

⁴⁷ John Bland, *Trade revived, or, A way proposed to restore, increase, enrich, strengthen and preserve the decayed and even dying trade of this our English nation* (London: Printed for Thomas Holmwood, 1659), pp. 12-14.

⁴⁸ *Ibid.*, p. 11.

⁴⁹ *Ibid.*, p. 12.

⁵⁰ Contextually on surplus population, see: Paul Slack, “*Plenty of People*”: *Perceptions of Population in early modern England* (The Stenton Lecture, University of Reading, 2011), pp. 1-24; a good contemporary example commenting on the relationship between criminal behaviour and social contagion in the empire is Josiah Woodward, *The Great Charity of Instructing Poor Children, A Sermon Preached at St. Botolph Aldgate* (London, 1700); on how impressment was used to both punish criminals and regulate labour, see Nicholas Rogers, “Vagrancy, Impressment and the Regulation of Labour in Eighteenth-century Britain”, *Slavery & Abolition*, 15:2 (1994); pp. 102-113.

⁵¹ Richard Haines, *The prevention of poverty; or, New proposals humbly offered, for enriching the nation advancing His Majesties revenue and great advantage both of the city of London and country, by encrease of trade from our own manufactures, setting all poor people at work, preventing unnecessary law-suits, restraining the insolencies of bayliffs, extortions of goalers, promoting the relief of distressed prisoners, and suppression of beggars, vagrants, &c.* (London, 1677); p. 8.

⁵² Matthew Hale, *A Discourse Touching Provision for the Poor* (London, 1683), p. 31.

give to such as Beg, and thereby to encourage them, when he is sure they may gain their living by Working”.⁵³ It followed from this principle that the chief charitable aim of any commonwealth should be the provision of work for the able-bodied, and that the off-hand charity of the street would be much better spent collectively on larger projects, whether these be workhouses, hospitals, or colonial plantations. Hale’s maxim explains exactly how penal transportation and indentured labor worked in the minds of contemporary projectors. The fundamental paradox of the early modern laboring poor—that their industry did not lead to prosperity but rather to continued indigence—could be solved at a stroke by forcible transportation. Justifying the transportation of idle vagrants was even easier. An anonymous “affectionate lover of his prince and country” put it quite baldly in 1685, when they argued “that lusty common vagrants, which such as through Idleness become useless and burdensome to the Commonwealth, be either forced to labor in some honest way, or else (as a punishment of their Idleness) be Transported to our Foreign Plantations, to be there employed, and made useful.”⁵⁴ These proposals relied in turn on the mercantilist logic evident in navigation acts, the concept of a balance of trade, and other forms of early modern protectionist economics.⁵⁵ Contemporaries believed that by denying resources to one group of undeserving needy more bread, alms, and even physical space could be made available to another group; those who were feeble, sick, bereft of kin—the deserving poor. And let us not forget the famous 1697 poor law proposals of John Locke, who argued to the Board of Trade and Plantations in that year that his plans for incarceration, “working schools”, forced servitude, and pauper badging (to determine eligibility), when “rightly considered” displayed “what is the true and proper relief for the poor. It consists in finding work for them, and taking care that they do not live like drones upon the labor of others.”⁵⁶

Though we have in the main considered a growing consensus in favor of penal transportation amongst seventeenth-century thinkers, it should be noted that not all commentators agreed that transportation was profitable, charitable, or even advisable, and that a handful of pamphlets inveighed at length against the practice. One of the most interesting was published anonymously in Edenborough in 1699 by a “sincere well-wisher to the Honour and Interest of his Country”, entitled *An Essay Against the Transportation and Selling of Men to the Plantations of Foreigners*.⁵⁷ In it the author set out a range of concerns over the depopulation of the Scottish countryside by predatory merchants and ship captains. The author deploys the wisdom of the ancients to buttress his claims, particularly Xenophon’s maxim in his *Discourse upon improving the revenue of the State of Athens* (conveniently translated into English in 1697) that “the true wealth and greatness of a Nation consists in numbers of People well employed”.⁵⁸ Transportation directly contradicted this maxim, particularly the transportation of *Scottish* labor to *English* plantations: “How it comes to pass” asks the author, that Scotland’s “Commons are the only free-born People in Europe, whose unhappy fate it is

⁵³ *Ibid.*, p. 32.

⁵⁴ Anon, *Some proposals offered to publick consideration, before the opening of Parliament, May 19, 1685 by an affectionate lover of his Prince and country* (London, 1685), p. 3.

⁵⁵ On the pervasiveness of mercantilism, see: Jonathan Barth, “Reconstructing Mercantilism: Consensus and Conflict in British Imperial Economy in the Seventeenth and Eighteenth Centuries”, *The William and Mary Quarterly*, 73: 2 (April 2016); pp. 257-290.

⁵⁶ John Locke, “An Essay on the Poor Law”, originally before the Board of Trade in September 1697, the version consulted here was reprinted in Mark Goldie (ed), *Locke: Political Essays* (Cambridge: CUP, 1997), quote from p. 189.

⁵⁷ Anon, *An Essay Against the Transportation and Selling of Men to the Plantations of Forreigners* (Edenborough, 1699), pp. 1-24.

⁵⁸ *Ibid.*, p. 2.

to fall under the lamentable predicament of being slaves to Forreigners”⁵⁹ The pamphlet subsequently lays out a detailed case for why transportation weakens the kingdom, based in no small part on the reasonable proposition that the “servants” indentured by merchants and shipped across are likely to be younger, healthy, but poorer males, and that the remaining labor pool will over time become denuded and overfull with those “distemper’d in Body or Mind” and thus an increasing expense, and finally that Scotland’s resources (particularly its coastal fisheries) were criminally underused already. The due provision of welfare for the needy in such a context would surely prove untenable in the long term. The author closes with a lament about the acceleration of the decay of trade in Scotland, and how allowing the spiriting away of its people can only hasten this process: “Good GOD! What a generation of Pigmies are we now dwindled into?” he asks, in effect precluding one of the defining debates of the eighteenth century over the nature of population and national strength.⁶⁰

We can also find many canonical examples in fiction of this consensus that penal transportation was a charity of reprieve. Particularly in the work of Daniel Defoe, such as his 1722 novel *Colonel Jack*. Jack begins life on the streets of eighteenth century London: “I was a dirty Glass-Bottle House Boy, sleeping in the Ashes, and dealing always in the Street Dirt, it cannot be expected but that I looked like what I was, and so did we all”, he was “a Beggar Boy, a Black-Guard Boy, or what you please, despicable, and miserable, to the last Degree.”⁶¹ As a boy he inhabits a range of vagrant stereotypes: idle and pilfering youth, canny “apprentice” pickpocket, member of an underworld gang, deserting soldier, and kidnapped indentured servant. Eventually Jack’s essential good nature, his “gentility”, wins out and he is recognized and rewarded, first as an industrious plantation overseer, then as a planter and merchant himself, and finally as both military officer and gentleman. Tim Hitchcock argues that *Colonel Jack* can be read “as an advertisement for the efficacy of a newly popular punishment” but that it also contained “shards and fragments of the reality of many young children’s lives.”⁶² It was the charity of penal transportation which enabled Jack’s transformation, his colonial self-fashioning, and it was to penal transportation that the English criminal justice system routinely turned to mete out both punishment and mercy after 1718.

By the beginning of the eighteenth century British learned and literary opinion broadly agreed on the desirability and essential charitability of the transportation of poor people to the colonies across the Atlantic Ocean, whether voluntary or forced. The language of this justifying discourse had also matured into a self-evident rationale for colonial policy, and the most compelling example of this shift is surely the creation of the colony of Georgia for the “worthy poor” in 1732. A sermon preached by a William Berriman before the Georgia trustees survives in printed form from 1739, and is worth quoting at length; it is our clearest example yet of how the “charity of reprieve” had become inseparable from British colonialism:

“Besides the Charity and Private Benefit of Reforming the Vicious, and providing for the Indigent, it has been judg’d the Wisdom and Policy of flourishing States, to consult the Common Weal and Safety, by transplanting Colonies, as they have Opportunity, and Paring off those Excrescencies (as I may call them) of the Body Politick; that, instead of being burdensome or dangerous at Home, they may be usefully employed

⁵⁹ *Ibid.*, p. 5.

⁶⁰ See for reference the transcript of Paul Slack’s Stenton Lecture, *Plenty of People*.

⁶¹ Daniel Defoe, *The History and Remarkable Life of the Truly Honourable Col. Jacque*, Samuel Holt Monk, ed. (London: OUP, 1965); p. 7.

⁶² Tim Hitchcock, *Down and Out in Eighteenth Century London* (Hambledon: Continuum, 2004), p. 41.

Abroad, and return a large Increase of Profit to their native Country, as a Proper Tribute for the Provision that is made for them.”⁶³

Those “Excrescencies of the Body Politick” are of course the poor and paring them off like the rind from a cheese was to be accomplished by “transplanting” them, to fulfil a charitable obligation of the state yes, but also now to produce a profit for that state. We might see in this passage and many others like it some echoes of Aristotelian theories of “natural slavery”; the natural slave benefits from being a slave even if he does not know it, because to be a slave is the proper fulfilment of his nature.⁶⁴ The vagrant is deployed as a colonial resource and this is a charity to him, because to work gainfully in the interests of the state redeems, and renders proper, his nature.

The Charity of Transportation in Law After 1718:

The Transportation Act of 1718 is commonly described by historians of crime and the law as a watershed in the development of noncapital punishment. One of the most magisterial assessments of the radical and wide-ranging implications of transportation on law and the courts forms a chapter in John Beattie’s *Crime and the Courts in England, 1600-1800*.⁶⁵ While introducing his own brief sketch of the judicial development of transportation, Beattie pondered the historian’s difficulty in explaining the shift towards noncapital punishments and in assessing the rationale behind criminal punishments generally, and he is worth quoting at length:

“The emergence of transportation was by no means straightforward; nor was it the only new departure in penal practice in this period... The forms of punishment employed by a society at any moment are shaped by a variety of interests and intentions. They arise in response to what must often be antagonistic considerations, including the framework of law, what is technologically possible, what seems desirable or necessary in light of the apparent problem of crime, what society is willing to accept and pay for.”⁶⁶

Transportation had several attractions for both jurists and to projectors it seems. For magistrates it offered a powerful secondary punishment method, and from the 1660s onwards judges bent the operation of benefit of clergy law (itself a longstanding mechanism of mercy baked into legal structures) to jail and eventually transport felons who might otherwise have left court with a brand and back scars.⁶⁷ For colonial officials, speculators, merchants, and projectors, transportation offered both ready labor, and a clean conscience.

But laws have unintended effects, and as Ashley Rubin has recently demonstrated in her quantification of the Old Bailey sentencing data this was certainly the case for the 1718 Transportation Act.⁶⁸ The Act served as a “mesh-thinning” device in the operation of eighteenth century criminal law; it in effect replaced other “less intense” punishments such as the pillory or whipping post rather than serving to draw down the frequency of capital

⁶³ William Berriman, *A sermon preach'd before the Honourable Trustees for establishing the colony of Georgia in America...* (London, 1739), p. 8.

⁶⁴ Anthony Pagden, *The Burdens of Empire: 1539 to the Present* (Cambridge: CUP, 2015), p. 104.

⁶⁵ J.M. Beattie, *Crime and the Courts in England, 1600-1800* (Oxford: Clarendon, 1986), pp. 450-519.

⁶⁶ *Ibid.*, p. 470.

⁶⁷ *Ibid.*, p. 475.

⁶⁸ Ashley T. Rubin, “The Unintended Consequences of Penal Reform: A Case Study of Penal Transportation in Eighteenth-Century London”, *Law and Society Review*, 46:4 (2012); pp. 815-851.

punishment. In addition, in the years after the passing of the Transportation Act “the probability of escaping execution after being sentenced to death was much smaller.”⁶⁹ She writes that the “huge diversion of offenders from more lenient corporal or financial punishments to a lengthy punishment represents a significant mesh thinning of the criminal justice net. Moreover, this decline was proportionately much larger than the decline observed in capital sentences”; in other words, the Act was used principally to punish minor offenders, among whom were counted the vagrant poor.

Briefly then, what did the penal transportation of vagrants and poor criminals look like in legal practice? At the Old Bailey, London’s busiest early modern court, approximately seven thousand different proceedings listed transportation and indenture as a punishment between January 1674 and December 1750.⁷⁰ The vast majority of these cases concerned petty larceny. Of the cases specifically about vagrancy, fifty-four defendants were called “rogues”, fourteen were “disorderly”, nine seemed to be gypsies, and many were simply caught “wandering”.⁷¹ Charles Grant was typical of the type of pauper transported, he stole a bundle of linen clothes while begging at the doorstep of a Thomas Grant in 1736, and was apprehended when he returned to beg there again, & he “said by way of Excuse, that he wanted a Shirt, therefore he took them: That he was in Liquor and had forgot the Door, else he would not have come there again, and that he gave this Shirt back to the Prosecutor with a very good Will, and in a very good natur’d Manner.” The veteran William Hoyles was tried at the Old Bailey in 1746 for stealing “two quilted petticoats” when they were hung out over a hedge on Finchley-Common. The account notes that Hoyles seemed “a poor, Vagabond creature. He said he had serv’d his Majesty 25 years.”⁷² Hoyles was sentenced to transportation and the standard term of indentured service. In 1718, the same year as the Transportation Act became law, Mary Herbert was caught stealing “Towels, Napkins, and Pewter Platts” from her employer the tavernkeeper John Innocent and was sentenced to be transported. Herbert said that she “being a poor Woman had carried them away with broken Victuals” and had given them to her daughter Elizabeth, who was acquitted.⁷³ And there is the piteous tale of John Oney, who was sentenced to death in 1728 for returning from transportation contrary to statute at the age of seventy-four, after having been convicted of sheep stealing “in the twelfth Year of his late Majesty” (likely 1726). John deposed that that he was “so aged, and infirm, that no one would buy, or employ him; and that after he had rambled, and begg’d about the Country, for a considerable Time, a Captain gave him a Pass”, and that “in America they put him on Board against his Will” back to England.⁷⁴ The ordinary recounted that he “frequently wept over his Misfortunes very passionately” in Newgate, and “desired me to pray for him, which I did, and he was very thankful”.⁷⁵ In these accounts transportation seems a strangely uncharitable ‘reprieve’.

However, families of convicted felons could also petition the crown for clemency in the form of transportation, and the State Papers domestic record several examples of robbery or burglary where relatives petitioned for this course. Isaac and Mary, the parents of Daniel Hughes, petitioned Queen Anne in March of 1714 to reprieve their son, who they said had been

⁶⁹ *Ibid.*, p. 836.

⁷⁰ Records start in 1674. This was a simple statistic collated from an Old Bailey Online search, see: www.oldbaileyonline.org, search parameters were: January 1674 to December 1750. All verdicts, punishment of transportation.

⁷¹ The 1718 law is: 4 Geo. I, cap. XI, *Statutes of the Realm*, British History Online.

⁷² “May 1746, Trial of William Hoyles”, *Old Bailey Proceedings Online*, Ref: t17460515-9. I also comment on this example in *Vagrancy*, p. 31.

⁷³ “Mary Herbert, Elizabeth Mills, theft from a specified place, 23rd April 1718”, *Old Bailey*, Ref: t17180423-16.

⁷⁴ “John Oney, Returning from Transportation, 16th October 1728”, *Old Bailey*, Ref: t17281016-19.

⁷⁵ “The Ordinary of Newgate’s Account, 11 November 1728” *Old Bailey*, Ref: OA17281111.

led astray by a hardened criminal and was maliciously liquored up enough to become an accessory to a house burglary.⁷⁶ They wrote that “your distressed petitioner’s son who lyes now under sentence of Death in Newgate was never any Ill Action before from his birth, and being so young, was made Drunke with one more who is one Old Offender and now Under the said sentence and brought the said youth into ye said Fact it being the last way he has to Leave”, and begged for transportation “in consideration of his youth and being the first Fact he ever committed.” The Buckinghamshire bricklayer John Lawes petitioned similarly on March 20th, 1714 for his son Moses who had been “unhappily seduced by evil Company” and tried on the same Assize date as Daniel Hughes (March 8) for a highway robbery. “Your petitioner’s Family never had any dishonest action imputed to them (this only excepted)” Lawes wrote, “as will be testyfyed to your Majesty by severall Persons of great Quality and Distinction and your petitioner’s family being under the utmost affliction for this unfortunate accident”. Lawes begged for a commutation to transportation for Moses, “upon pain of Death never to return into there your Majesties Dominions.”⁷⁷ In the case of Daniel Hughes at least, mercy was not forthcoming, but it is instructive that by the early decades of the eighteenth century, transportation was widely considered a mercy worth pleading for and as a likely commutation for a range of felonies, so much so that desperate parents made it the focus of their supplicatory pleas. The Ordinary records Daniel’s sentence and apparently rather ungracious departure from this life on 10 March 1714.⁷⁸ A Moses Woodfield is tried and executed for robbery in December of 1714, but of a Moses Lawes there is no sign.

Conclusions:

On 17 May 1676 Elizabeth “Betty” Longman, an “Old Offendor”, “Famous Engine of Wickedness”, and a roguish woman “Wholly incorrigible”, was hung until dead at Tyburn. She was, the Newgate Ordinary tells us, a newly-returned colonist of the reluctant variety, who had “obtained the benefit and favour of Transportation” for her previous thefts, but once landed in Virginia had quickly “procured Monies remitted from some of the Brotherhood here”, bought out her indenture, and returned to England where she offended once again.⁷⁹ Transportation, noted a few contemporary commentators, did not solve the problems that Betty Longman represented, it merely displaced them.⁸⁰ Our survey of the redefinition of punishment as a charity of reprieve throws the biographies of contemporaries like Elizabeth Longman, or John Oney—each ironically condemned to die *because* they were transported, rather than despite it—into sharp relief. The development of transportation as a fate deemed perfectly suitable for both vagrant children in 1618 and for an “Old Offendor” in 1718 serves as an apt summary of early modern English attitudes towards poverty, criminality, and mercy, and towards the redemptive potentiality of empire.

It remains to draw this all together. Historians such as Christopher Tomlins, David Armitage, Alison Games, Bernard Bailyn, Malcolm Gaskill, Christopher Tomlins, Gwenda Morgan and Peter Rushton have all elucidated just how crucial the English, then British, regimes of indenture and penal labor were to the formation and maintenance of empire in the British Atlantic. What I have hopefully highlighted here is that vagrants and the undeserving

⁷⁶ TNA: SP 34/31 f. 21, “1713/14 March 8 Petition of Isaack and Mary Hewghs to queen, begging a reprieve or pardon with transportation for their young son”.

⁷⁷ TNA: SP 34/23 f. 41, “Mar 20 1713/14 Petition of John Lawes of Loaks, Buckshire, Bricklayer”.

⁷⁸ “The Ordinary of Newgate’s Account, 10th March 1714”, *Old Bailey Proceedings Online* (www.oldbaileyonline.org), Ref: OA17140310.

⁷⁹ “The Ordinary of Newgate’s Account, May 1676”, *Old Bailey Proceedings Online*, Ref: OA16760517.

⁸⁰ One of the best examples of this worry over displacement is found in the sermons of Josiah Woodward, see *The Great Charity of Instructing Poor Children* (1700), “Satan’s Wandering Blackguard”, p. 14.

poor were one of the first and most promising targets of transatlantic penal policy, that in crucial respects the entire transportation regime of the British empire was constructed with them in mind, and that the punishment *itself* was regarded as a charity of reprieve. Without this steady, seemingly inexhaustible source of cheap labor, disposed of according to the preferences of governmental, judicial, and mercantile elites, the grand British imperial project envisioned so wistfully by contemporaries likely never would have been realized. Without the immensely self-satisfied rationale behind charitable banishment, it is unlikely that a policy of forcible indenture, frequent abjuration of *habeas corpus* in advance of 1718, and transplantation as newly-minted colonial resource abroad would have lasted until almost the mid nineteenth century, nor would it have developed into a fully realized and globe-spanning penal system. That heady fiction of a “settled, planted” New World, that land of absolute social and propertied equality—so famously promised by John Smith—would have remained a fiction, an image like the one in the ballad *London’s Lotterie* in 1612, where one stanza goes as follows:

Who knowes not England once was like
 a Wildnesse and savage place,
 Till government and use of men,
 that wildnesse did deface:
 And so Virginia may in time,
 be made like England now;
 Where long-lovd peace and plenty both,
 sits smiling on her brow.⁸¹

By the eighteenth century then, vagrants, petty criminals, and other poor people had become an unimproved resource that could be usefully *deployed* by empire; swept off the streets of London and forcibly shipped abroad at the whims of their betters, to strange spaces and hostile climes, there to be “set on worke” for seven years at a stretch in the household or fields of another, and all this was broadly considered a charitable act in the service of both the poor at home and the empire abroad. Arguably the most pat summary of attitudes towards poverty, charity, and work belongs, in the end, to Richard Dunning, who pithily wrote the following in 1685: “work for those that WILL Labour, Punishment for those that WILL NOT, and Bread for those who *cannot*.”⁸² Transatlantic transportation could admirably provision all three of Dunning’s injunctions, and it could do so while simultaneously realizing the colonial visions of men like Richard Hakluyt, and while carving out a British Empire built on the paternal “charity” of its chief architects and beneficiaries. Poverty could be vanquished at home, it seems, by forcibly exporting it to imperial peripheries.

⁸¹ *Londons Lotterie: / With an incouragement to the furtherance thereof, for the good of / Virginia, and the benefite of this our natiue Countrie; wishing / good fortune to all that venture in the same* (London, 1612); English Broadside Ballad Archive (number) 20085.

⁸² Richard Dunning, *A Plain and easie method shewing how the office of Overseer of the Poor may be managed* (London, 1685), in “the prefatory dedication”.

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