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"Freedom Wears a Cap": The Law, Liberty, and Opportunity for British Convict Servants in Virginia, 1718-1788

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Chapter 1:

Introduction

The Parliament of England produced a considerable amount of legislation during the last decades of the late seventeenth-century and early eighteenth-century. Parliamentary legislation was consistent with John Locke's argument that government's primary function was to protect property rights. By the early 1700's England's so called "Bloody Codes" included over two hundred crimes punishable by death. These capital crimes included murder, burglary, shoplifting, and the reception of stolen property. A judicial system that required the death penalty for thefts involving more than one shilling created a dilemma for judges. Judges were often compelled to choose between three choices. Although benefit of clergy could be issued to first time offenders, judges were often forced to choose between the death penalty and setting a guilty person free. In an attempt to remedy this problem Great Britain resorted to "transportation," a policy that had previously been intermittently employed.¹

The Transportation Act of 1718 allowed convicted felons to be transported to America and bound to labor for terms of either seven or fourteen years depending on the severity of their crime. The transportation of convicts served as more than a punitive purpose. The act ridged Great Britain of an unwanted criminal element and would possibly serve to rehabilitate the individual. The act further served to provide much needed labor for British Colonial North America. Although some convicts in the eighteenth-century were shipped to colonies such as

¹Lucy Moore, *The Thieves' Opera: The Riveting Story of 18th-century London's Most Notorious and Active Criminals* (New York: Harcourt Inc., 1997), 186-191; , A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Oxford: Clarendon Press, 1987), 17-24, 111-118; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge: Cambridge University Press, 1992), 52-60.

Pennsylvania, the overwhelming majority of felons were exported to areas where there was a strong demand for labor such as Virginia and Maryland.²

In the seventeenth-century Virginia received bound laborers from a wide variety of sources including political prisoners, convicted felons, indentured servants, and African slaves. By the early eighteenth-century the supply of African slaves had substantially increased. At the same time the supply of these former groups declined. England's Glorious Revolution of 1688 served to provide greater political stability and limited the supply of political prisoners. Improved economic circumstances resulted in a reduced number of individuals willing to come to the colony as indentured servants. Thus, the resumption of convict transportation in 1718 served to replace the loss of these latter two groups.³

The experience of these convicted felons was portrayed in fictional stories such as Daniel Defoe's novel *Moll Flanders* (1722). Flanders, the main character is led to a life of crime as a result of her destitute circumstances. She amasses a small fortune, but is finally caught. Rather than the death penalty the court orders her to be transported to Virginia, a fate that Defoe depicts as not entirely unkind. Flanders mother tells her daughter that little distinction is made in Virginia between indentured servants and convict servants. This information bears true for Moll Flanders as she is, shortly after her transportation, able to purchase land and live in "very considerable circumstances".⁴

² Ekirch, *Bound for America*, 17-24, 111-118.

³ Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America* (Gloucester, Mass.: Peter Smith Press, 1965), 153-154, 166-167, 178-182. Smith notes that Virginia received prisoners from the English Civil War in 1648, Irish rebels in 1653, and Scottish rebels in 1688; for Virginia's transition to slave labor see Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton, 1975), 305-340.

⁴ Daniel Defoe, *The Fortunes and Misfortunes of the Famous Moll Flanders* (New York: Bantam Books, 1989, 1st Printing 1722), 25-62, 220-259.

Another glimpse of life as a convict servant, a contemporary cautionary tale, is provided in *The Poor Unhappy Transported Felon's Sorrowful Account* (circa 1750). In this story a young boy of modest means falls in with a rough crowd. Seeing the deleterious effect that this crowd is having on their son, the boy's parents find him an apprenticeship with a cooper. This attempt fails to prevent the young man's downward spiral and he soon finds himself convicted of a crime. While several members of his gang are sentenced to death, the main is instead sentenced to labor in Virginia. The details of his account are in stark contrast to that provided by Defoe. The felon endures a terrible crossing of the Atlantic only to find himself examined like a beast of burden by potential masters. The felon gets purchased by a master who works him mercilessly even when he is ill. The convict servant's fortunes takes a turn for the better when he is sold to a kinder master. After completion of his term of service the servant is able to return to England, rehabilitated by his experience.⁵

These two fictional accounts raise questions about convict servitude in Virginia that historians have attempted to answer. What was the social status of transported convicts? How many were transported to Virginia, and how many felons achieved some level of affluence after completing their terms?

The topic has received intermittent attention from historians since the late nineteenth-century. The initial thrust of scholarship tended to downplay the significance of convict servitude in Colonial Virginia. One of the first scholars to take this tone was James C. Ballagh in his book *White Servitude in the Colony of Virginia* (1895). Ballagh claimed, based on his research on Scottish political prisoners, that Virginia received more political prisoners than convicts during

⁵John Lauson, *The Poor Unhappy Transported Felon's Account of his Fourteen Years Transportation at Virginia in America* (St. Peter's Port: Toucan Press, 1969, 1st Printing circa 1750), 8-11.

the seventeenth-century. Ballagh concluded that the total number of felons could not have been all that large. However, Ballagh did accept that eighteenth-century Virginia was “a dumping ground for the felons of England”.⁶

One year later Philip Alexander Bruce put forth a similar argument. Bruce agreed with Ballagh that the majority of imports in the seventeenth-century were those who had taken part in rebellions. Bruce further contended that the majority of those who were imported into the colony were not from the lowest orders of English society. Examining the colony’s 1624-1625 census report Bruce discovered the average age of servants was twenty-three years old. He therefore concluded that the majority of servants could not have been criminals since most had barely reached maturity upon arriving to the colony.⁷

Two historians, writing in the first decade of the twentieth-century refuted the contentions of the Ballagh School of thought. James D. Butler challenged the idea that most of the convicts transported to both Virginia and Maryland were political prisoners. He claimed these earlier studies were patriotic, but inaccurate. The basis for this contention was Butler’s study of the shipping records of political prisoners during the English Civil War. He contended that political prisoners from the Battle of Worcester never reached Virginia, while others were imported into Virginia only if they had not been sold first in the West Indies. Moreover, Butler considered Virginia’s 1670 legislation prohibiting convict importation as proof that the number of convict servants sent to Virginia in the seventeenth-century was larger than originally thought. Butler was also one of the first to examine, in some detail, convict transportation in the

⁶James C. Ballagh, *White Servitude in the Colony of Virginia* (New York: Burt Franklin Press, 1895), 35-38, 52-55, and 86-93.

⁷ Philip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century* Vol.1 (New York: MacMillan and Co., 1935), 70-150.

eighteenth-century. Using records from England's Old Bailey Prison, Butler estimated that at least ten thousand convicts were sent from this prison alone to Virginia from 1718 to 1775.⁸

Historian Eugene I. McCormack agreed with Butler that few political prisoners were brought to Virginia and Maryland during the seventeenth-century. However, he believed that the number of convicts sent over in the eighteenth-century was considerably larger than earlier estimates. Employing colonial newspapers listing the arrival of ships laden with convicts McCormack argued that the number shipped to Maryland alone prior to the American Revolution may have reached as high as twenty thousand. McCormack further contended that Virginia received fewer convicts than Maryland during this time frame because African slave labor was firmly in place. McCormack also believed that those convicts who were shipped to America were indolent rather than violent criminals. The latter argument heralded a shift in the historical debate.⁹

Historians no longer debated the contention that most of those transported to Virginia in the mid and late seventeenth-century were political prisoners rather than convict servants. Instead, Historians writing in the 1920's through the 1940's chose to focus on the moral fiber of convict servants. Historians such as Abbot Emerson Smith, Basil Sollers, and Fairfax Harrison focused on contemporary criticisms of convict servants to prove that they were responsible for an increase in criminal activity in Virginia. Fairfax Harrison expounded on this by detailing an early eighteenth-century split between legislators from Virginia's Northern Neck and the Tuckahoe Region. Members of the House of Burgesses and the Council who were from the Northern Neck wanted to exclude convict servants from receiving freedom dues, but the measure was resisted

⁸James D. Butler, "British Convicts Shipped to American Colonies," *American Historical Review* (1907): 14-32.

⁹Eugene I. McCormack, "White Servitude in Maryland, 1634-1820," *Johns Hopkins University Studies* 22 (1904): 60-100.

by legislators from other Tidewater Counties. The Governor's assistance enabled the act to pass, but it was repealed just two years later.¹⁰

Abbot Emerson Smith's *Colonists in Bondage* (1947) represents the first comprehensive study of convict servitude in the Chesapeake region. Smith agreed with Harrison that the majority of convicts were hardened criminals. Convicts were considered undesirable not only because of their criminal backgrounds, but because they often contracted diseases in prison which they brought to the New World. Smith further argued that the two catalysts for the convict trade were the demand for cheap labor in the undeveloped colonies and the profits to be made by merchants in transporting these servants.¹¹

While the system of convict servitude elicited little interest from scholars in the aftermath of World War II, research on this subject has significantly increased over the last thirty years. Historians since 1980 have portrayed convict servants in a more positive light. Several have concluded that a significant number of transported convicts were skilled tradesmen rather than unskilled laborers. This in turn influenced their belief that convict servants were not responsible for a significant amount of crime in Virginia. The assumption is that skilled laborers would have less of a need to commit crimes than an often unemployed, unskilled laborer. These historians downplayed the fact that these individuals were convicts. The numerous requests by planters to convict merchants for skilled laborers led Frederick Hall Schmidt to contend that nearly one-third of the convicts transported to Virginia were skilled tradesmen. According to Schmidt, these

¹⁰Basil Sollers, "The Transportation of Convicts to the American Colonies in the Seventeenth Century," *American Historical Review* 39 (January 1934): 232-249; See also Fairfax Harrison, "When the Convicts Came," *Virginia Magazine of History and Biography* 30 (1922): 253-258; Abbot Emerson Smith, "The Transportation of Convicts to the American Colonies," *American Historical Review* 39 (January 1934) 232-249; Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1776* (Chapel Hill: University of North Carolina Press, 1947).

¹¹Smith, *Colonists in Bondage*, 32-75.

convicts tended to be employed in greater numbers in areas with diversified economies, such as the Northern Neck and the Shenandoah Valley. Schmidt believed that convicts were generally not responsible for an increase in crime during the eighteenth-century and that convict servants were generally treated no different than indentured servants.¹²

A series of articles written by Kenneth Morgan echoed the sentiments of Frederick Hall Schmidt. Relying on job descriptions found in runaway advertisements for convict servants, Morgan found that many of these individuals were skilled tradesmen and not necessarily poor, unskilled laborers. The similarity in jobs performed by convict servants and indentured servants led Morgan to conclude that distinctions between these two groups disappeared in areas where labor needs were greatest.¹³

Arguably the most extensive examinations on the subject of convict servitude were produced by historian A. Roger Ekirch. Ekirch's "Bound for the Chesapeake: Convicts, Crime, and Colonial Virginia" (1988) provided an analysis of whether or not convicts were primarily responsible for crime in Virginia during the eighteenth-century. His examination of Westmoreland County Court Records (1731-1746) and Richmond County Court Records (1718-1754) demonstrated, despite allegations to the contrary, that convicts did not account for a significant amount of crime in Virginia.¹⁴

¹²Frederick Hall Schmidt, "British Convict Servant Labor in Colonial Virginia" (Ph.D. Diss. The College of William and Mary, 1976), 100-200.

¹³Kenneth Morgan, "Convict Runaways in Maryland, 1745-1775," *Journal of American Studies* 23 (1989): 253-268; see also Kenneth Morgan, "the Organization of the Convict Trade to Maryland: Stevenson, Randolph, and Cheston, 1768-1775," *William and Mary Quarterly* 3rd series, 42 (April 1985): 202-227; Kenneth Morgan "English and American Attitudes towards Convict Transportation, 1718-1775," *History: The Journal of the Historical Association* 72 (October 1987): 416-431.

¹⁴A. Roger Ekirch, "Bound for the Chesapeake: Convicts, Crime, and Colonial Virginia," *Virginia Cavalcade*, 37 (Winter 1988): 100-113; See also Ekirch, *Bound for America*, 167-193.

Ekirch provided a more complete study of convict servitude in the Chesapeake region in *Bound for America* (1987). Ekirch argued that, contrary to Morgan's contention, most convicts were unskilled laborers. The number of skilled tradesmen may have been inflated by the fact that both convict merchants and felons stood to gain by exaggerating their skills. Convict merchants could more readily sell their cargo, while convicts could hope to avoid field labor if they claimed to have a skill. Ekirch also claims that shipping records listing the skills of individual convicts included a large number with no real identifiable skills. These individuals, he contended were more than likely unskilled laborers.¹⁵

The most recent substantial scholarship on convict servitude was produced by Gwenda Morgan and Peter Rushton in their jointly authored work *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (2004). This work attempts to demonstrate that convict servitude was a central aspect of discourse between Great Britain and the colonies. Readers on both sides of the Atlantic were kept informed about the system of convict servitude through newspaper articles. This Trans-Atlantic literary communication fueled a myth prevalent on both sides of the Atlantic. It was that most convicts fled America and returned home. Morgan and Rushton's analysis shows that remarkably few transported convicts returned to Great Britain.¹⁶

This historiography provides some of the major themes present in the historical debate. This thesis will largely focus on how the legislative and judicial systems of Virginia impacted the lives of transported convicts during the eighteenth-century. The Second chapter will discuss the various legislative proposals by Virginia's General Assembly regarding convict servants. The

¹⁵ Ekirch, *Bound for America*, 50-54.

¹⁶ Gwenda Morgan and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (New York: Palgrave Macmillan, 2004), 47-62.

debates over these proposals serves to shed light on how the Virginia Gentry responded to the importation of convicts and why they responded in the manner that they did. They will also serve to explain the status between convict servants and slaves.

Chapter three will examine the functioning of the Virginia court system towards convict servants. Excluding punishment by their owners, the county courts of examination were the first stage of the judicial system where convicts received justice. Convicts accused of misdemeanors could be punished by the county courts if found guilty, while those accused of felonies were sent to the General Court or to the Court of Oyer and Terminer in Williamsburg. The available court orders and minutes of twenty Virginia counties, nearly half the amount of colonies in Virginia by 1776, will be employed in this discussion. This represents a more extensive examination of convicts than any source in print. These court records will be employed to detail the types of crimes convicts were alleged to be responsible for, to identify fluctuations in the crime rate over time, and to analyze the manner in which the Virginia Gentry responded to alleged criminal activity by convict servants. The chapter will further provide a brief discussion concerning the fate of those convicts sent to trial in Williamsburg. A discussion pertaining to the fate of those sent to the General Court or Court of Oyer and Terminer is particularly difficult because of the lack of surviving court records. However, the listing of court decisions in the various issues of the *Virginia Gazette* makes it possible to discuss the justice meted out to a small number of convicts.

The penultimate chapter involves a reexamination of A. Roger Ekirch's findings that convict servants were not responsible for the majority of crime committed in Virginia during the eighteenth century. Runaway advertisements from the *Virginia Gazette* will be used to estimate the number of convicts in individual counties. A comparison of the convict population to the

overall tithable population in individual counties will enable a determination of whether convicted felons committed crimes well in excess of their actual numbers.

The final chapter moves away from the legal system of Virginia in order to examine the opportunities afforded to transported felons as a result of the American Revolution. While particular attention will be placed on convict servants in Virginia, it will be necessary to broaden the discussion to include convict servitude throughout America during the war. For purposes of clarity, throughout this thesis only those convicts sentenced to transportation for criminal activity in Great Britain will be included in this study. The terms felon, transported felon, and convict servants will be in reference to this specific group only and not to other groups that may have committed crimes.

Chapter 2:

“The Lives and Estates of His Majesties Good Subjects are in Great Danger”¹⁷

It is difficult to understand the world convict servants operated in without understanding the legal and political framework of eighteenth-century Colonial Virginia. While a bottom up approach reveals the myriad ways in which the less powerful elements of society resisted or mediated the world where they lived, it can also limit discussion regarding the parameters in which they were forced to operate. As historian, Philip J. Schwarz stated “the heart of human history has at least two chambers, political and cultural. And those chambers are connected.”¹⁸

The colonies of British Colonial America were loosely administered by Great Britain’s Privy Council, but the day to day lives of Virginians were more often impacted by their Colonial Government. While county governments arguably had the most significant impact on the lives of Virginians it is also important to look at the colonial government. It is this colonial government of Virginia that set the parameters in which county governments functioned.¹⁹

The governors of Virginia were appointed by the King of England. However, most governors viewed the position as a sinecure and never made the journey to Virginia. As a result, throughout much of the eighteenth-century, those holding the position of Lieutenant Governor for all intents and purposes functioned as governors. These governors had to approve all laws and were given the power to pardon convicted criminals. Beyond this their powers were limited to appointing Justices of the Peace and Sheriffs who completely dominated the county

¹⁷Waverly K. Winfree. *Being a Supplement to Hening’s Statutes at Large, 1700-1750* (Richmond: Virginia State Library), 212-220.

¹⁸Philip J. Schwarz, *Slave Laws in Virginia*, (Athens, Ga.: University of Georgia Press, 1996), xiii.

¹⁹Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776*, (New York: Norton and Company, 1963), 25-28.

government. Over the course of the eighteenth-century those serving as acting governors increasingly saw their colony wide power diminished in relation to the legislative branch.²⁰

The two legislative chambers of Virginia's General Assembly functioned much like the Parliament of Great Britain. The Executive Council, which performed legislative and judicial functions along with advising the Governor, was composed of twelve members who were appointed by the Governor. They possessed the right to nullify bills passed by the House of Burgesses. Members of the House of Burgesses were elected by the freeholders in each county. These were the only elected officials in all of Virginia government. As the political culture of Virginia evolved so did the power of the House of Burgesses. By the 1720's the House of Burgesses had acquired the power to initiate legislation and the right to hold their sessions separate from the Council. However, both bodies were comprised almost entirely of Virginia's landed gentry. As a result, the legislation considered by the General Assembly reveals the attitudes and concerns of Virginia's upper class in regard to convict servants as well as their attempt to control this form of bound white labor.²¹

The renewal of large scale convict importation in 1718 resulted in a relatively swift response by the Virginia legislature to curtail perceived problems associated with this practice which pitted the interests of convict merchants against those of the gentry. Virginia planters were concerned not only with the acquisition of labor, but the potential harms the introduction of this type of labor might bring to the colony. These harms related to matters of public health, safety, and economic costs.

²⁰Greene, *The Quest for Power*, 25-32; Hugh Rankin, *Criminal Trial Proceedings in the General Court of Colonial Virginia* (Charlottesville: The University Press of Virginia for Colonial Williamsburg, 1965), 20-21.

²¹Rhys Isaac, *Landon Carter's Uneasy Kingdom: Revolution and Rebellion on a Virginia Plantation* (Oxford: Oxford University Press, 2004), 123-126; Jack P. Greene, *Political Life in Eighteenth-Century Virginia* (Williamsburg: Published by the Colonial Williamsburg Foundation, 1986), 30-37.

Some of these concerns resulted from the manner in which convict transportation was conducted. The system of transportation was a disorienting and debilitating experience for convict servants. Given this experience it is only mildly surprising that some felons chose the death penalty rather than transportation.²² Contemporary William Eddis stated there were those convicts “who rather chose to undergo the severest penalties of the law, than endure the hardships which are annexed to their situation.”²³

Those who chose transportation were leaving behind a world of family and friends. Convict servant James Revel recalled that “with melting kisses and heavy heart, I from my parents did depart.”²⁴ This realization was compounded by the condition of jails in Great Britain. Depending upon what region of Great Britain the trial was conducted a convict generally languished in jail for anywhere from two to five months. The conditions in these prisons were less than favorable. Newgate Prison in London was referred to as a “tomb for the living”.²⁵ In Durham, felons awaiting transportation were placed into a pit where they were chained to the floor and forced to sleep on worn straw matting. As a result of these conditions prisons became breeding grounds for disease. The Trans-Atlantic journey further increased the mental and physical debilitation of convicts.

The journey itself involved numerous hardships and perils. Convicts were usually chained below deck for extended periods of time and only allowed on deck in shifts.²⁶ Kept in these close quarters, and in some cases without any ventilation below deck, disease periodically

²² Ekirch, *Bound for America*, 89-93.

²³ William Eddis, ed. Aubrey C. Land. *Letters from America* (Cambridge: Harvard University Press, 1969), 40.

²⁴ James Revel, *The Poor Unhappy Transported Felon's Sorrowful Account of His Fourteen Years Transportation at Virginia, in America Being a Remarkable and Succinct History of the Life of James Revel* (London: printed and sold by J. Evans, circa 1800), 2.

²⁵ *Ibid.*, 89-90.

²⁶ Ekirch, *Bound for America*, 89-90; See also Frederick Hall Schmidt, “British Convict Servant Labor in Colonial Virginia,” (Ph.D. Dissertation, College of William and Mary, 1976), 47-57; Revel, *The Poor Unhappy Transported Felon*, 3-5.

spread from one bound laborer to another. As a result, mortality rates on convict ships varied anywhere from 4% to 14%.²⁷ Those who managed to avoid contracting a deadly illness faced other threats. Enemies of Great Britain occasionally seized control of convict ships. In addition, problems with the ship itself could endanger the lives of individuals. One example of this is found in the story of the convict ship *Rodney*. In the case of the convict ship *Rodney* a series of storms resulted in the passage taking four months. Thirteen weeks out men started dying and by the fifteenth week famine was starting to occur.²⁸

The desperation of convicts to avoid the continued trials of convict transportation is highlighted in the story of one ship bound for the York River in Virginia. Having shot an unusual bird, the captain of the ship offered freedom to the first convict able to retrieve the bird from the ocean. Several convicts dove off of the ship in order to claim the prize. The leading convict reached out one arm to grab the bird, but “his other fell the sacrifice to the jaws of an angry shark.”²⁹

Those convicts who survived the journey found themselves docked at ports like Hobb’s Hole awaiting their sale. Merchants typically notified planters via advertisements in the Virginia newspapers. Merchants often went to great lengths to sell their cargo. Some merchants attempted to conceal the criminal origins of their cargo simply by advertising them as servants.

Occasionally merchants misrepresented the offense for which the convict had been transported. Others tried to mollify concerns of potential buyers by advertising that all of their cargo was

²⁷Schmidt, *British Convict Servant Labor*, 62 ; See also Kenneth Morgan, “The Organization of the Convict Trade to Maryland, Stevenson, Randolph, and Cheston, 1768-1775,” *William and Mary Quarterly*, 42 (1985), 212-213. Morgan’s more exhaustive study of Stevenson firms shipping records to Maryland leads him to quote a much lower figure for mortality rates. Schmidt’s figures come from a look at a handful of ships delivering convicts to Virginia in the 1720’s.

²⁸ Schmidt, “*British Convict Servant Labor*,” 56-59; Revel, *The Poor Unhappy Transported Felon*, 3-5.

²⁹ *Rind’s Virginia Gazette*, July 28, 1774.

healthy.³⁰ Merchants occasionally bathed, shaved, and provided new clothes for convicts in order to increase the likelihood of a sale. However, the months at jail and on the seas were hard to disguise as newspapers frequently reported a peculiar smell to newly arrived convicts.³¹

If a convict did not immediately sell at port then either the merchant himself or a “soul driver” would take them into the countryside.³² At each step along the way they would go through an inspection by their prospective masters. As James Revel described, these potential owners “view’d our limbs turning us around, Examining like horses if we were sound.”³³ Those convicts who failed to sell relatively quickly presented a problem for merchants. Each day spent trying to unload their human cargo delayed their return to Great Britain and their ability to conduct more business. As a result, those convicts who proved difficult to sell were often simply released into the wilds of Virginia.³⁴

Members of the Virginia General Assembly responded quickly to this perceived threat to social stability. Led by James Clayton, member of the House of Burgesses from James City County, legislators passed in 1722 an “Act for Amending the Act Concerning Servants and Slaves and for the Better Government of Convicts Imported.”³⁵ The act called for those merchants who misrepresented their cargo to purchasers to be fined ten pounds current money for each offense. However, the act was intended to accomplish far more than just consumer protection. Consumer protection was at best a secondary consideration.

³⁰ Schmidt, *British Convict Servant Labor*; for example of a convict merchant advertisement see the advertisement for the convict ship *Justitia* in *Rind’s Virginia Gazette*, Feb. 27, 1772.

³¹ Schmidt, *British Convict Servant Labor*, 50-55, 104-111.

³² Schmidt, “*British Convict Servant Labor*,” 127-143.

³³ Revel, *The Poor Unhappy Transported Felon*, 4.

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³⁵ Winfree, *Supplement to Hening’s Statutes at Large*, 212-220; H.R. McIlwaine, ed., *Journal of the House of Burgesses, 1712-1726* (Richmond: Published for the Virginia State Library by Colonial Press, 1912), 669-674. the bill went through several drafts before the House of Burgesses approved amendments suggested by the Executive Council; A. Roger Ekirch, *Bound for America: The Transportation of British Convict Servants to the Colonies, 1718-1775* (Oxford: Clarendon Press, 1987), 139-141.

By 1722 legislators already believed that convict servants were responsible for an increase in crime. This is witnessed in the wording of the act as convicts were held responsible for “many cruel murders and frequent thefts and robberies.”³⁶ In order to help control their labor masters of convict servants were given the right to whip, without any repercussions from the court, those convicts who had previously been ordered whipped by the county justices. In addition, provisions were introduced calling for purchasers of convicts to post a bond of ten pounds for the good behavior of each servant. Realizing that some owners may not report criminal activity by convicts due to fear of losing their bond the bill included exemptions for those cases involving capital offenses.³⁷

In essence, the act of 1722 was attempting to “protect the lives and estates of his majesties good subjects”³⁸ by limiting the number of convicts transported to Virginia. The act did so by providing disincentives to all parties. The posting of bonds and assessment of fees on merchants would have made convict merchants reluctant to ship their cargo to Virginia. The requirement of purchasers to post bond for the good behavior of their convict servants would have further served as a means to prohibit the traffic in convict servants. Some wealthy Virginian planters purchased convict servants, but this source of bound labor was particularly attractive to those who were less affluent, but aspiring to upward mobility. There were obvious advantages for less well-to-do farmers to import this labor. Not only was the initial purchase price cheaper for convict servants, but the seven to fourteen year term of service typically meant that owners of convicts would not have to provide for unproductive labor resulting from infirmity as they would

³⁶Winfrey, *Supplement to Hening’s Statutes at Large*, 212-220.

³⁷Ibid.

³⁸Ibid.

for slaves.³⁹ Moreover, aside from the period of 1759-1763, freedom dues did not have to be provided for convict servants upon the completion of their term of service.⁴⁰ The subsequent fees and assessments called for in the “Act to Amend the Act Concerning Servants and Slaves for the Better Government of Convicts Imported” would have prohibited lesser planters from making this purchase.⁴¹ However, the House of Burgesses and the Executive Council were quickly reminded of where the final power rested as the Privy Council disallowed the law and the importation of convicts continued.⁴²

The conditions on board convict ships presented a vital concern to Virginia planters. However, this concern had more to do with their own personal interests rather than being a result of a humanitarian impulse. Convicts laden with small pox or other diseases could easily spread disease colony wide. The reality of this concern is highlighted by...Aware of the conditions on these ships, the Virginia legislature passed a law in 1766 requiring convict ships to register with the naval office before selling their cargo. Those ships containing individuals with symptoms of small pox or jail fever were to be quarantined.⁴³

Thus the disincentives provided by the Act of 1722 to convict merchants, less affluent planters, and convicts would have essentially brought an end to convict importation in Virginia.

³⁹Kenneth Morgan, “English and American Attitudes Towards Convict Transportation, 1718-1775”, *History* 72 (October, 1987), 428.

⁴⁰William Waller Hening, ed. *The Statutes at Large, Being a Collection of All of the Laws of Virginia from the First Session in the Year 1619*. (Richmond: Virginia State Library, 1819, Reprint 1969), Vol.6, 359.

⁴¹Ekirch, *Bound for America*, 135-140.

⁴²H.R. McIlwaine, ed. *Executive Journals of the Council of Colonial Virginia, 1721-1739*, Vol.4 (Richmond: Virginia State Library), 60-61, 447.

⁴³Hening, *Statutes At Large*, Vol.8, 260.

Virginia was thus confronted with the potential for a swelling population of landless, unemployed criminals.

Much of the legislation over the next decade a half focused on the financial costs associated with convict importation. Some Virginians perceived that convict servants were placing an undue burden on the court system. John Clayton, by 1728 elevated to the position of Attorney General, seemed to believe this was the case. Clayton contended in 1728 that he was forced to prosecute eight convict servants in one session. It is possible that Clayton was disingenuous in his statement regarding the strain that convicts placed on the court system. There are few years throughout the eighteenth-century where the county courts sent eight or more convict servants to trial in Williamsburg. Moreover, Clayton's claim also came with a requested increase in pay for his trouble. The House of Burgesses denied his petition, but the Executive Council petitioned the crown to increase the Attorney General's pay to one hundred pounds sterling. Perhaps Clayton's claim was legitimate and the year 1728 represented an anomaly regarding the criminal activity of convicts. The argument of whether or not convict servants were responsible for elevated crime in Virginia is the subject of the proceeding chapter. For the purposes of this chapter it only matters that many Virginia legislators believed that convict servants were a threat and thus acted accordingly.⁴⁴

The desire to control the costs associated with trials is seen in further legislation implemented in 1738. Convicts accused of crimes were first sent to the county courts of Virginia.

⁴⁴See Chapter 3; See also McIlwaine, *Executive Journals*, Vol.4, 281-284.

Those believed by the County Justices to be guilty of a felony were then sent forward to trial in Williamsburg. The jury for the trial in Williamsburg was composed of members from the community in which the crime occurred. However, the 1738 “Act for Altering the Method of Trials of Certain Criminals” waived this process in cases involving convict servants. The travel of jury members was seen to be too onerous of a burden on individuals and of no benefit to the convict since they “were little known in the neighborhood where they live.”⁴⁵ From this point forward convicts would be tried by a jury of freeholders in the Williamsburg area.

“The Act for Altering the Method of Trials of Certain Criminals” shows a willingness among the Virginia gentry to gradually restrict the rights of convict servants. Not only were convicts no longer allowed to be tried by individuals from their vicinity, but their ability to testify in court was severely curtailed. Convicts were now restricted to providing testimony only in cases involving other convict servants. Although not directly intended to impact convict servants an act of 1746 prevented them from practicing the law. Even those rights granted to convicts benefitted the interests of the Virginia gentry. The granting of benefit of clergy to even those convicts who were illiterate served to enable planters to control this group.⁴⁶

Historian Jack P. Greene has described the period of 1720 to 1763 as one of relative tranquility in Virginia. He contends that Virginia’s government functioned without significant discord or the development of political factions.⁴⁷ In fact, much of the early legislation regarding convict servants appears to uphold this claim. The 1722 Act passed through the General Assembly with little discord. The Executive Council recommended only minor changes to the original draft presented by the House of Burgesses. While the House of Burgesses denied John Clayton’s claim for increased pay both bodies of the General Assembly seemed willing to accept

⁴⁵Hening, *Statutes at Large*, Vol.5, 24-26.

⁴⁶Hening, *Statutes at Large*, Vol.5, 545-547.

⁴⁷ Greene, *The Quest for Power*, 28-31, 187-192.

the notion that convicts were responsible for an increase in crime. Consequently, “the Act for Altering the Method of Trials for Certain Criminals” failed to generate heated disagreement. However, there is evidence that, at the very least, temporary interests groups developed around a core set of issues.

Historian Alonzo Thomas Dill contends that Virginia was marked by occasional sectional conflict between planters living in the James and York River basins and those living north of the Rappahannock River. Planters living within the James-York boundaries had grown affluent from slave labor and dominated Virginia politics. Those living between the Potomac and Rappahannock Rivers were confronted with poorer soil, tended to be less affluent, and held less prominence in the General Assembly. Bills that tended to affect the economic well being of the Northern Neck tended to generate the most heated debate. For example, Northern Neck planters opposed attempts to implement tobacco inspections intended to ensure the sale of high quality tobacco. Their opposition failed as tobacco inspection became a permanent fixture in 1730. This division showed up in 1755 when the duty on slaves was increased to 20%. Those in the James-York basin who could afford the tax, and stood to benefit from an essential monopoly on slaves, supported the increase. This division further shows up in one of the more heated debates involving convict servants.⁴⁸

One of the more controversial pieces of legislation discussed during this time period related to the payment of freedom dues to convict servants. In some ways, the allowance of freedom dues was a reasonable measure. Freedom dues would have enabled those recently freed convicts a chance to integrate themselves into society. The forbearance of this measure would have limited the options of newly freed convict servants. Without freedom dues convict servants

⁴⁸ Alonzo Thomas Dill, “Sectional Conflict in Colonial Virginia,” *Virginia Magazine of History and Biography*, 87 (July, 1979), 300-307.

who completed their terms of service would have been forced to choose between returning back to Great Britain, putting themselves into indentured servitude, or left to roam idly through the countryside where they more than likely would have been compelled to resort to criminal behavior. Despite allegations of the criminal behavior of convicts virtually no discussion of this nature showed up in the debate.⁴⁹

The idea of freedom dues for convicts was first discussed by the House of Burgesses in 1736. The act would have provided convict servants the same amount of freedom dues as indentured servants received. This would have included a musket, ten bushels of corn, and thirty shillings. The bill passed in the House of Burgesses, but was rejected by the Executive Council.⁵⁰ The bill was reintroduced in 1749 with a substantial increase in the dues. Owners of convict servants would now be required to pay three pounds, ten shillings. The bill made it through committee, was engrossed after a third reading, and then sent on to the Executive Council.⁵¹

The legislation evoked a barrage of vitriol from members of the Council from Virginia's Northern Neck. The list of complaints issued by these Council members varied considerably and was, at times, seemingly contradictory. The Council expressed concern that the allowance of freedom dues would actually serve to provide greater incentive for British convicts to continue their criminal behavior. As a result, freedom dues would not only serve to encourage the criminal sort, but discourage indentured servitude. Members of the Executive Council questioned "what honest man would chuse to serve in a country where no distinction is made."⁵² At the same time, Northern Neck councilor Thomas Lee argued that the requirement of such onerous

⁴⁹ Eddis, *Letters From America*, 36-37.

⁵⁰ McIlwaine, *Executive Journals*, Sept.11,1736, 848-849-the Executive Journals do not offer a reason why they rejected the bill; See also H.R. McIlwaine, *Journals of the Virginia House of Burgesses, 1722-1739* (Richmond: Virginia State Library, 1909), 288-294; Dill, "Sectional Conflict," 304.

⁵¹ McIlwaine, *Journal of the House of Burgesses, 1727-1740*, 291-294.

⁵² McIlwaine, *Executive Journals*, 1034-1036.

freedom dues “will take away One Year’s profits, which is too much for a poor man to be loaded with.”⁵³ Lee’s concerns largely represented the interests of his constituency. The fact that less affluent farmers purchased convicts in substantial numbers is borne out in the runaway advertisements listed in Virginia’s newspapers. Runaway advertisements and court cases involving convict servants from the 1730’s through the 1750’s typically involve those convicts residing in the Northern Neck. As Virginia continued to expand in the 1760’s and 1770’s these advertisements show up in newly settled areas such as Augusta County.⁵⁴ Northern Neck legislators lost this fight, but were able to mount enough support to get the law repealed in 1753.⁵⁵

Heated debate regarding convict servitude showed up again in legislation introduced in 1752. The bill called for the owners of convicts to pay the court costs for transported felons brought to trial in Williamsburg.⁵⁶ The leading opposition to this bill argued once again that the bill would prohibit poor farmers from purchasing convicts. It was further argued that convicts made good servants and were not responsible for an increase in crime as the bill suggested. Landon Carter played an instrumental role in pushing this bill through the House of Burgesses. Carter responded “That the not buying of them would be of service because of the great propensity to villainy.”⁵⁷ He continued that the bill would not entirely prohibit poorer farmers from purchasing this labor. Instead, the act would serve to lessen the price of convicts because farmers would be more circumspect in their purchases. Carter left the proceedings satisfied that he had acquitted himself well even though the bill narrowly passed the House in a vote of thirty-

⁵³ Ibid.

⁵⁴ See chapter 4 for study of runaway advertisements;

⁵⁵ Hening, *Statutes At Large*, Vol.5, 550-568; Also mentioned in Dill, “*Sectional Conflict*,” 300-307.

⁵⁶ McIlwaine, *Journals of the House of Burgesses, 1752-1758*, 48-53.

⁵⁷ Jack P. Greene, ed., *The Diary of Colonel Landon Carter of Sabine Hall, 1752-1778*, Vol.1 (Charlottesville: published for the Virginia Historical Society by the University Press of Virginia, 1965), 79-80.

nine to thirty-six. Carter's satisfaction was short lived as the Executive Council struck down the legislation.⁵⁸

Carter's support of this legislation does not negate Dill's argument concerning sectionalism in the colony. Few individuals in the Northern Neck equaled Carter in terms of material wealth.⁵⁹ As a result, Carter's stance should be seen as more of an exception than the rule. In general, the most vociferous critics of convict servitude, and those most willing to impose financial burdens on the owners of convict servants, were those with close ties to the James and York River Basin. Governor William Gooch held convict servants in disdain.⁶⁰ James City County member John Clayton was one of the leaders in pushing through the Act of 1722 and continued to be an outspoken critic of convict servants throughout the decade. Charles City County's William Byrd II commented that the poor tobacco crop of fellow planter Neil Buchanan "was the price payd him for the ship load of convicts he imported. That vile commodity will not go off in York River and tis a pity they shoud in any part of Virginia."⁶¹

Although economic matters occasionally resulted in intermittent sectionalism in the colony members of the Virginia gentry were unified in their desire to prevent social instability. Members of the Virginia gentry were acutely aware of the tenuous hold they maintained over their bound labor. Events such as Bacon's Rebellion and the Tobacco Cutting Riots of nearly a century ago were seared into the collective memory of the gentry. The gentry responded to these threats by implementing the slave codes. The codes aimed to prevent collaboration between

⁵⁸ Ibid.

⁵⁹ Isaac, *Landon Carter's Uneasy Kingdom*, 45-60.

⁶⁰ Ekirch, *Bound for America*, 152.

⁶¹ Marion Tinling, ed. *The Correspondence of the Three William Byrds of Westover, Virginia, 1684-1776*, vol.2. (Charlottesville: Published for the Virginia Historical Society by the University Press of Virginia, 1977), 577.

whites and blacks by making legal distinctions between the groups.⁶² The legal differentiation had served its purpose in the early decades of the eighteenth-century, but the steady increase in the number of slaves resulted in a “deep sense of uneasiness”⁶³ among the gentry. The slave population grew from roughly 115,000 in 1730 to nearly 340,000 by 1755. Counties in the James-York River basins were clearly aware of the potential threat that slaves posed. Several counties in this region had a higher percentage of African slaves than whites. Nor were those counties of the Northern Neck exempt from this fear. In many of these counties slaves comprised 40% or more of the population. The fears of the Virginia gentry were well founded as the colony witnessed several rebellions plotted by slaves.⁶⁴

The influx of convict servants further heightened the fears of the aristocracy. Convict servants alone may not have been able to successfully rebel against the aristocracy. Any attempt to rebel would have required their collaboration with African slaves. That Virginian’s understood this fact is revealed in several contemporary comments. Even in the middle of his diatribe against freedom dues Thomas Lee acknowledge this fact when he remonstrated that “freedom wears a cap that can without a tongue call together all those that long to shake off the fetters of slavery.”⁶⁵ Lee claimed the continued introduction of convicts into the colony would result in their allying with slaves “and in all probably will bring sure and sudden destruction on all his majesty’s good subjects of this colony.”⁶⁶ Governor William Gooch had earlier expressed fears

⁶² Morgan, *American Slavery, American Freedom*, 324-337.

⁶³ Warren M. Billings, John E. Selby, and Thad W. Tate. *Colonial Virginia, A History* (White Plains, NY: KTO Press, 1986), 252; See also Robert E. and B. Katherine Brown. *Virginia, 1705-1786: Aristocracy or Democracy?* (East Lansing: Michigan State University Press, 1964), 61-75.

⁶⁴ Billings, *Colonial Virginia*, 248-255; also see Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: Published for the Institute of Early American History and Culture by the University of North Carolina Press), 66-70, 138-144.

⁶⁵ McIlwaine, *Executive Journals*, 1034-1036.

⁶⁶ *Ibid.*

of potential insurrection between convict servants and slaves.⁶⁷ Colonial observer William Eddis contended that Virginia imposed sterner legal restrictions upon convict servants in comparison to that of Maryland. Eddis believed this was more than likely a result of the fact that Virginians feared that convicts would serve as a bad example that “would tend to universal depravity.”⁶⁸ William Byrd II considered convict servants to be the enemies of mankind.⁶⁹ Echoing the sentiments of some residents of the colony *Hunter’s Virginia Gazette* printed a letter from Maryland claiming that convict servants would corrupt other servants and slaves.⁷⁰ Virginians also had more recent examples of how convict servants could upset the existing system. In 1721, convicts in Annapolis, Maryland unsuccessfully conspired to seize a weapons depot.⁷¹

The Virginia General Assembly thus walked a tight rope in attempting to control their convicts. Convicts needed to be controlled, but prevented from sharing a similar plight to that of slaves. However, as we have seen the General Assembly had little remorse when it came to restricting the rights of convict servants. As a result, convict servants occupied a position viewed by many as closer to that of slaves than that of white indentured servants. Convict servant James Revel claimed that “we and the negroes both alike did fare, of work and food we had an equal share.”⁷² The wording of the 1748 “Act to Alter the Methods of Trials of Certain Criminals” conveyed a similar message. The justification given by the House of Burgesses for limiting the testimony of convicts was that this group “as well as negroes, mulattoes, and Indians, are commonly of such base and corrupt principles, that their testimony cannot be depended upon.”⁷³

⁶⁷ Ekirch, *Bound for America*, 137-138.

⁶⁸ Eddis, *Letters from America*, 64-65.

⁶⁹ Marion Tinning, ed., *The Correspondences of the Three William Byrds*, 577.

⁷⁰ *Hunter’s Virginia Gazette*, May 30, 1751; also mentioned in Schmidt, *British Convict Servant Labor*, 5.

⁷¹ Ekirch, *Bound for America*, 191.

⁷² James Revel, *The Poor Unhappy Transported Felon*, 5.

⁷³ Hening, *Statutes at Large*, Vol.5, 545-547; for additional information regarding the similarities between convicts and slaves see Kenneth Morgan, “English and American Attitudes Towards Convict Transportation”, 424-427.

If the convict servants were held in such low regard then why was there no collaborative resistance by African Slaves and British convict laborers?

This point will be more fully developed in the following chapter, but it merits some attention at this juncture. The lack of collaboration between these two groups can be pointed out to several conditions. First, despite similarities in the legal status of both convicts and slaves, there were still significant differences. While a seven to fourteen year sentence might be tantamount to a life sentence convict servants could hold on to the hope of eventual freedom. Moreover, while certain restrictions could be applied to the offspring of convict servants, the status of convict servitude was not passed down from one generation to the next as was the case with slavery. Subtle distinctions were made in the functioning of the courts as well. Slaves accused of felonies were tried immediately in county level Courts of Oyer and Terminer. Convicts accused of felonies were tried in County Courts of Examination. If it was deemed that there was enough evidence then they were sent to trial in Williamsburg.⁷⁴ The General Assembly was careful not to go too far in their restrictions against convict servants. One proposal calling for convicts to be tried like slaves in the County Courts of Oyer and Terminer was voted down by the House of Burgesses. These subtle legal distinctions, combined with racism, served to prevent any meaningful collaborative attempts between slaves and convict servant to resist colonial authority.⁷⁵

⁷⁴Rankin, *Criminal Trial Proceedings*, 46,92.

⁷⁵Ekirch, *Bound for America*, 150-160; See also Schmidt, *British Convict Servant Labor*, 233-237. Schmidt provides a more benign interpretation of relations between convict servants and slaves arguing that “daily contact would change attitudes for both the better and the worse”. Schmidt’s conclusion is largely based off of a small number of runaway advertisements involving instances where slaves and convict servants ran away together. As I will argue in the following chapter such instances were exceptions rather than the rule. Only a small percentage of convicts ran away with those not of the same race or social status.

Events during the second half of the eighteenth-century resulted in considerably less legislative attention given to convict servants. The French and Indian war occupied the attention of Virginians. The need for unity and military service from convicts during this crisis may have served to produce a benign neglect among the members of the General Assembly. Although restrictions were imposed on convicts serving in the army these were occasionally ignored. The Earl of Loudon contended that convicts frequently served in the army during this war.⁷⁶ Great Britain's post-war policies further diverted the attention of the gentry away from took attention from the colonists. As a result, only two significant pieces of legislation involving convicts were introduced from 1755-1775.

The last piece of legislation passed by the General Assembly related to convict women. Women accounted for a relatively small percentage of the numbers of convict servants brought into Virginia. Representing a largely unskilled class, convict servants were typically brought in to do unskilled manual labor. Males were deemed more preferable for this type of labor.⁷⁷ Another consideration with the preference for male over female convicts involved the potential of unwanted pregnancies. The term unwanted could have had clearly different meanings for the owner and the convict. Living in a society in which few rights were granted to women, female convict servants were doubly condemned. Their status would have been the lowest among all members of white society in Colonial Virginia. Convict servant Elizabeth Bennett learned this when she complained of mistreatment at the hands of her master. Bennett cited bruises on her back and limbs as evidence of this maltreatment, but the Court ordered the convict servant to "go home to her said master and behave herself well and that her master William Muse and his wife

⁷⁶Ekirch, *Bound for America*, 153.

⁷⁷ Ekirch, *Bound for America*, 70, 87, 128-129; See also Morgan, "The Organization of the Convict Trade to Maryland," 212-216.

do use their servant well.”⁷⁸ This lack of power in the legal system left female convicts prone to the whims and desires of their owners. Consequently, their pregnancies may, from their perspective have been unwanted because it represented the product of non-consensual sex. The fact that some of these pregnancies were unwanted is confirmed by the presence of several instances involving infanticide as well as in attempts at abortion. From the perspective of the master, the pregnancy would have been unwanted because they, or the parish, would have to bear the costs of supporting the child.⁷⁹

Female Convicts were attributed to be responsible for a substantial number of bastard children. As a result, the House of Burgesses moved to address this problem in 1769. Masters were able to gain additional service from the convict mother due to a loss of her services while pregnant. In addition, the master retained the rights to her offspring to twenty-one years if female and eighteen years if male. If the father was not the master, and could be identified, the father was to pay for the child. The distinction between convict woman and others can be seen in the same piece of legislation. The illegitimate children of free white woman were bound to serve for the same amount of time as those of convict servants. However, special provisions called for the children of free white woman to be educated, taught a trade, and required to receive adequate provisions.⁸⁰

In conclusion, Virginia planters perceived an immediate threat in Parliament’s passage of the Transportation Act. They contended that there was an increase in criminal activity resulting from the importation of convict servants and that convicts comprised a growing number of vagrants in the colony. Consequently, the Virginia gentry moved in a quick, unified fashion to

⁷⁸*Westmoreland County Orders*, May 27, 1741.

⁷⁹Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: Published for the Institute of Early American History by the University of North Carolina Press, 1996), 187-201, 306-313; See also Rankin, *Criminal Trial Proceedings*, 205-206.

⁸⁰Hening, *Statutes At Large*, Vol. 8, 374-377.

deter the importation of convicts. However, the decision of Great Britain's Privy Council to repeal the 1722 "Act to Amend the Act Concerning Servants and Slaves" was not solely to blame for the continued importation of convicts. The Privy Council could rule that the convict trade could not be prohibited, but they could not compel Virginians to purchase these malefactors. That many planters did so was the result of the steadily increasing demand for cheap labor. This demand was particularly high among those in the northern regions of the colony.

The continued importation of convicts resulted in occasional sectional disputes between planters in Virginia's Northern Neck and those residing in the James-York River Basins. However, this sectionalism did not override the concern among the gentry that "The Lives and Estates of His Majesties Good Subjects are in Great Danger."⁸¹ The Virginia General Assembly walked a tight rope throughout much of the first half of the eighteenth-century in an attempt to restrict the rights of convict servants without giving them cause to ally with slaves. If judged solely by the fact that there were no combined revolts between convict servants and slaves then the laws passed by the Virginia General Assembly were successful. However, the following chapter will argue that convict servants found a myriad of ways to resist the established order. In turn, Virginia's landed gentry did not always feel the need to apply the full measure of the law in their attempts to control this bound labor.

⁸¹ Winfree, *Supplement to Hening's Statutes at Large*, 212-220.

Chapter 3:

“Two Sides of the Same Coin”: Convict Crime and Punishment in Colonial Virginia

On August 18th, 1738 convict servant Anthony Francis Dittond was removed from jail and brought to the Spotsylvania County Court house to face trial for the murder of William Evans from Hanover County. The Spotsylvania justices received testimony from three witnesses who attested to Dittond’s guilt in the matter. Further evidence was provided in the form of assorted “coats, jackets, britches, handkerchiefs, cottons, and other papers”⁸² that Dittond allegedly stole from Evans. The justices deemed the evidence sufficient enough to compel Dittond to stand trial at the General Court in Williamsburg. Two months later the General Court ordered the convict servant put to death for his crime. However, the execution of the convict servant did not go as easily as expected. Dittond was still alive after being suspended from the hanging rope for nearly three full minutes. The executioner attempted to hasten the convicts death by pulling down on his legs. This action split the rope and brought Dittond to the ground. After lying still for several minutes, Dittond “sat up and began to speak again to the attending ministers and the spectators.”⁸³ Dittond asked the audience to pray for him and then willingly allowed the executioner to fit the rope again. The second attempt was successful and after his death the body was given to surgeons for anatomical study.⁸⁴

While Dittond’s case was arguably one of the more sensational executions during the first half of the eighteenth-century, commentary from Virginians shows a belief that criminal behavior was the norm for this element. A May 1751 article in the *Virginia Gazette* stated that transported convict servants were responsible for the “most audacious robberies, the most cruel

⁸²*Spotsylvania County Orders* August 18, 1738.

⁸³Hugh Rankin, *Criminal Trial Proceedings in the General Court of Colonial Virginia*, 117-118 (Charlottesville: The University Press of Virginia for Colonial Williamsburg, 1965); See also *Parks Virginia Gazette* Nov. 24, 1738.

⁸⁴Hugh Rankin, *Criminal Trial Proceedings*, 117-118.

murders, and infinite other villainies.”⁸⁵ William Byrd II held convict servants in disdain suggesting that Virginia was too nice of a place for this element of society. Instead Byrd believed that a more suitable place for convicts was Georgia. According to Byrd there would be no more fitting punishment for convict servants than “to send those miscreants to a climate where they would dye soon out of the way and be miserable while they live.”⁸⁶ Unable to stem the flow of convicts into the colony Virginia lawmakers needed to find a way to control this volatile element. As seen in the preceding chapter, the Virginia House of Burgesses passed a series of bills intended to limit what they perceived as the negative effects related to the importation of convicts. Another means of controlling this bound labor was through the judicial system.

For most Virginians local government was the government that most directly impacted their lives. The central feature of local government was county courts. These courts served to bind the community together in a variety of ways. Usually placed in a centrally located area, the county courts served to bring the community together. Lying idle for weeks at a time, the area of the county court house became a beehive of bustling activity on the three or four days a month that the courts operated. At this time the county courts heard a variety of cases involving property disputes and adjudicated individuals suspected of violating the criminal laws. The court records of individual counties provide insight into the criminal activity of transported convicts. Since court clerks were required to identify those individuals brought to trial who were transported felons, it is possible to track the types of crimes that many convicts were alleged to have committed. This study employs the available court records for nineteen different Virginia counties making it, to date, the single largest study of convict servant criminal activity. Gaps in

⁸⁵ *Hunter's Virginia Gazette*, May 24, 1751.

⁸⁶ Marion Tinling ed., *The Correspondence of the Three William Byrd's of Westover, Virginia, 1684-1776* (Charlottesville: The University Press of Virginia, 1977), 310.

the available court records are supplemented by reports in the extant copies of the *Virginia Gazette*. Runaway advertisements serve as an additional valuable source.⁸⁷

The proceedings of the county courts demonstrated where individuals stood in society. The obligations that inferiors and superiors owed to one another were demonstrated in the functioning of the court. Superiors expected proper deference from their social inferiors. In turn, inferiors expected justice to be meted out to them. A vital interest of the county justices of the peace was to control their bound labor. However, this control could be accomplished through several ways. The justices of the peace could exact the full punitive measures for felonies committed. This would require those believed to have committed a felony to stand trial in the General Court in Williamsburg where the accused faced the death penalty. On the other hand, mercy could be shown by the justices of the peace in the form of “downvaluing” felonies to misdemeanors. Misdemeanors were the purview of the county courts. A “downvaluing” of felonies thus enabled the justices of the peace to punish the accused themselves. Whether ordering full punishment as provided under the law or offering a lighter punishment both methods accomplished the same goal of controlling Virginia’s bound labor.⁸⁸

The last arena of justice for those convicts accused of felonies was the General Court of Williamsburg. It is difficult to ascertain the manner in which convicts were treated by this court

⁸⁷Rankin, *Criminal Trial Proceedings*, 29-33; A.G. Roeber, “Authority, Law, and Custom: The Rituals of Court Day in Tidewater, Virginia, 1720-1750” *William and Mary Quarterly*, Third Series Vol.37 No.1 (Jan., 1980), 29-33; See also Charles S. Sydnor, *American Revolutionaries in the Making: Political Practices in George Washington’s Virginia* (New York: Free Press, 1965), 74-85; for examples of runaway advertisements employed to determine criminal activity see Kenneth Morgan, “Convict Runaways in Maryland, 1754-1775”, *Journal of American Studies*, Vol.23, No.2 (August, 1989), 253-268.

⁸⁸Philip J. Schwarz, *Slave Laws in Virginia*, (Athens: The University of Georgia Press, 1996), 63-96; A.G. Roeber, “Authority, Law, and Custom”, 29-37; Roeber expands on his arguments concerning the function of county courts in his work *Faithful Magistrates and Republican Lawyers: Creators of Virginia’s Legal Culture, 1680-1810* (Chapel Hill: The University of North Carolina Press, 1981) . In pages 114-159 of this book, Roeber argues that after 1750 the county courts of Virginia increasingly came under attack for their lack of legal knowledge and their lack of moral probity. Roeber further contends that lawyers at times challenged the notion of deference to the justices and that the increased presence of lawyers changed the “face-to face” proceedings of the court. However, this factor would not have changed the role of the justices to convict servants as this group usually stood in front of the court with the aid of an attorney.

as most of the records have been lost over time. Available information regarding trials of convict servants at the capitol have been culled from the reports listed in Virginia's newspapers. The total number of cases tracked involving convict servants is relatively small and the information available is generally brief. As a result, any conclusions regarding the administration of justice towards convicts at this level are tentative at best.⁸⁹

The Criminal Activity of Convicts in British Colonial Virginia

One of the more terrifying crimes for Virginia planters was arson. The act not only destroyed property, but threatened the lives of inhabitants. Slaves and servants were disproportionately blamed for starting fires that destroyed property. In a 1730 address to the Virginia General Assembly Governor William Gooch blamed a rash of destructive fires on recently imported convicts.⁹⁰ Gooch's assumption was reasonable as arson was one means for servants to retaliate against what they perceived as unfair treatment at the hands of their masters.⁹¹ However, the perception of Governor Gooch appears to have been far from reality. Out of the seventy-four different cases found in the county order books only one involved arson. Convict servant John Robinson was brought to trial, along with two fellow convicts, for the felonious breaking and entering into the property of John Robb. The three individuals saw their charges commuted to a misdemeanor, but John Robinson was further forced to defend himself against the charge of arson. However, lacking sufficient evidence the Spotsylvania County justices were forced to acquit him of this crime.⁹² Robinson's fortune in the courts points out the difficulties justices faced when confronting arson. Pre-meditated arson was extremely difficult to

⁸⁹ Rankin, *Criminal Trial Proceedings*, 82-85.

⁹⁰ Rankin, *Criminal Trial Proceedings*, 126-130; Compare this small number of convicts brought to trial for arson to that of the fourteen slaves convicted of arson from 1740 to 1785 as noted by Philip J. Schwarz, *Twice Condemned: Slave Trials and the Criminal Laws of Virginia* (Baton Rouge: Louisiana State University Press, 1988), 114-117.

⁹¹ Schwarz, *Slave Laws in Virginia*, 6-7.

⁹² *Spotsylvania County Order Book*, March 2, 1773.

prove and the *Virginia Gazette* contains few cases where individuals, regardless of background, were prosecuted for this crime.⁹³

Counterfeiting occurred in the colony, but rarely by convict servants. Counterfeiting usually took two forms. One means of counterfeiting was to reproduce false hard currency, a technically difficult process. As a largely tobacco producing culture, a more common means of accepted currency were tobacco notes. Forging of these paper notes rendered it difficult for convict servants to pursue this avenue of criminal activity as many lacked the literacy levels required for this crime.⁹⁴ As a result, counterfeiting was not a common criminal activity among transported felons. Convict servant James Knapp was the sole convict servant brought to trial for counterfeiting paper notes. At his trial in 1750 the Frederick County Court found reasonable evidence to send this convict, owned by George Washington, to trial in the General Court at Williamsburg.⁹⁵

Among transported convicts some, as demonstrated in the case of Anthony Francis Dittond, were certainly capable of violence. Arguably an even more disturbing case than Dittond's involved that of Richmond County convict servant John Hesscock. The convict murdered both his master and mistress with an axe and then tossed the wife into a potato hole. When questioned as to the reason for the murders Hesscock responded "None at all that I knew of."⁹⁶ In another case convict Servant Joseph King, brought to court for contempt of authority, attempted to stab one of the justices and went on to threaten the life of another. Considering his actions King received a relatively light sentence as he was "ordered to the whipping post of the

⁹³Rankin, *Criminal Trial Proceedings*, 112-113.

⁹⁴ *Ibid.*, 177-186;

⁹⁵ *Frederick County Orders*, June 2, 1750.

⁹⁶ Peter Charles Hoffer ed., *Criminal Proceedings in Colonial Virginia: Records of Fines, Examinations of Criminals, Trials of Slaves, etc., From March 1710 to 1754, Richmond, County* (Athens: published for the American Historical Association by the University of Georgia Press, 1984), 94-95.

said county and there to receive on his bare back thirty lashes well laid on.”⁹⁷ Despite these examples, it is likely that contemporaries made too much regarding the propensity of convict servants to commit violent acts. Of the seventy-four felons brought to trial eight were charged with murder. The overemphasis by contemporary Virginians regarding the violence is understandable. Members of the Virginia gentry were concerned about all of their bound labor committing violence. Furthermore, violence attracted the attention of readers. Aware of this fact, Virginia’s newspapers gave significant attention to these murder cases.⁹⁸

Theft was the most common criminal act transported felons were accused of in the county order books. Some were surely habitual offenders. For others it was a crime of opportunity. Still others may have stolen goods to supplement inadequate food rations. Westmoreland County convict George Smith was accused of breaking into one storehouse to steal sugar. Shortly thereafter he broke into a dairy to steal bread and meat. Smith would later follow up with a raid into a neighboring home to steal paper, clothing, and some rum. Some convicts may have wanted to exact revenge against their owners. Augusta County convict servant Francis Brown broke into his master’s home and stole 18 pounds worth of paper currency as well as some silverware.⁹⁹ Silverware, easily sold on the black market, was a common item of theft.

Often the items taken were intended to help the convict flee servitude and start a new life. Transported felon John Jones stole a horse and “intended to have got to Philadelphia.”¹⁰⁰

⁹⁷Westmoreland County Orders, July 1, 1732; For another example of violence by convicts that did not result in death see *Westmoreland County Orders*, July 3, 1730. This case recounts the case of Lawrence Green. Green, among other crimes struck a woman named Katherine Thomas. The amount of Green’s theft was relatively small. This combined with the fact that Katherine Thomas did not seem in danger of dying from Green’s attack led the court to order that the convict be whipped and post a bond to Katherine Thomas for his good behavior. Given that most convicts did not have the funds to post bond, Green more than likely had to rely on his owner to do so; For other murder trials see case of Susannah Brusine in *Botetourt County Orders*, October 4, 1774; See also the case of four convicts accused of murder in *PD Virginia Gazette*, October 27, 1774.

⁹⁸Rankin, *Criminal Trial Proceedings*, 117-118.

⁹⁹*Augusta County Orders*, February 15, 1760; *Westmoreland County Orders*, October 26, 1738;

¹⁰⁰Hoffer, *Criminal Proceedings*, 201-202.

Spotsylvania County Convict John Abbot, a barber by trade, was accused of stealing “two geldings, as also four wigs, a case with razors, a pair of silver spurs and some other silver.”¹⁰¹

Those items would not only have served to help him pass as a freeman, but would have enabled him to continue working in his profession wherever he ended up residing. A large number of convicts, like Abbot and Jones, stole horses in conjunction with other thefts. Horse stealing was essential for convicts to both pass as a gentleman and make a quick getaway.¹⁰²

Few convicts were tried in court solely for running away. A 1732 Westmoreland County convict Elizabeth Scott escaped her master and managed to avoid capture for over a month. As punishment for her crime Scott was required to serve her master for an additional six hundred and sixty days.¹⁰³ The fact that so many convicts were tried for the crimes they committed against personal property rather than for running away tends to conceal the prevalence of the practice of “stealing themselves”. The sale price of convicts varied considerably, but one merchant managed to sell 348 convicts for a total sales price of nearly 3,000 pounds. While not as expensive as slaves, convicts were still valuable property.¹⁰⁴

The extant copies of the *Virginia Gazette* are replete with runaway advertisements pertaining to convict servants. Some convicts managed to flee before ever being sold to Virginia planters. Captain McKillup lost roughly “fifty Irish convicts, many of which are said to have landed in Gloucester County”¹⁰⁵ after his ship became stranded on Egg Island. Another convict, Samuel Tudor, fled from the sloop Betsey when it docked at Hobb’s Hole.

¹⁰¹ *Spotsylvania County Orders*, January 7, 1739.

¹⁰² See *Rind’s Virginia Gazette*, February 19, 1767 where Richmond Town convict John Turner was accused of horsetealing and *Frederick County Order Book*, June 5, 1770 case of Thomas Robertson as just a few of many examples where convicts stole horses.

¹⁰³ *Westmoreland County Orders*, July 26, 1732.

¹⁰⁴ A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies*, (Oxford: Clarendon Press, 1987), 77.

¹⁰⁵ *Purdie and Dixon’s Virginia Gazette*, January 28, 1773.

Once sold, convicts continued attempts to flee servitude. This required not only taking property to assist in their attempt, but absconding with new names. Aliases were common among fugitives of the law. Elizabeth Watson took the alias Elizabeth Stewart. She also tried to disguise her age and place of birth. Born in Ireland, Watson pretended “to be born in St. Andrew’s, Holburn, or other parts of London.”¹⁰⁶ Mary Davis changed her surname to Philips and attempted to pass “as a beggar, saying she has lost her husband.”¹⁰⁷ Some chose particularly unusual surnames such Peter Ridgeway who took the surname Hansna as his alias.¹⁰⁸

Presenting themselves as having a specific skill was another means that convict servants used to avoid recapture. Convict servants like George Eaton and Harold Sutton were well familiar with ships and thus tried to pass themselves off as sailors.¹⁰⁹ Convict servant John Coleman was deemed by his master to be “a sly, subtle fellow and pretends to be a shoemaker by trade.”¹¹⁰ The French and Indian War enabled some convicts to try and pass themselves off as soldiers.¹¹¹

The forging of passes was also an important skill for runaway convicts. The ability to do so implies that the convict had some degree of literacy or at least knew someone literate who was willing to forge the pass for them. Two convicts running away from a Caroline County plantation managed to have passes signed by several justices of the peace. Planter Francis Smith was informed that his convict servant Anne Wheatly had forged a pass.¹¹²

In his study of convict runaways in Maryland, historian Kenneth Morgan argues that running away was usually a solitary act. He contends that this self-reliance “meant not worrying

¹⁰⁶*Hunter’s Virginia Gazette*, July 17, 1752.

¹⁰⁷*Purdie And Dixon’s Virginia Gazette*, February 25, 1773.

¹⁰⁸ Scott and Hoffer, *Criminal Trial Proceedings*, 247.

¹⁰⁹ *Hunter’s Virginia Gazette*, August 1, 1751; *Hunter’s Virginia Gazette*, June 18, 1752.

¹¹⁰*Park’s Virginia Gazette*, September 29, 1738.

¹¹¹ *Hunter’s Virginia Gazette*, September 2, 1757.

¹¹²*Park’s Virginia Gazette*, January 28, 1738; *Rind’s Virginia Gazette*, July 15, 1773; *Purdie and Dixon’s Virginia Gazette*, August 13, 1772.

about accommodating the plans of a fellow deserter.”¹¹³ However, while Morgan’s logic is sound concerning why convict servants chose to flee from servitude on their own, his usage of statistics conceals the reality of this activity. 50% of convicts in his study ran away in groups of two or more. An examination of runaway advertisements in the *Virginia Gazette* demonstrates that sixty out of the one hundred and twenty-seven advertisements sought servants who had run away with other individuals (47.2%). A few, like Thomas Walsom, ran away with indentured servants. Other convicts ran away with those of African descent. Convict servants George Eaton and Charles Davis ran away with a mulatto convict servant named Jack. Another owner contended that convict servant Daniel Young had runaway with “a lusty mulatto fellow.”¹¹⁴ However, the majority of convicts who ran away in pairs or groups did so with fellow convicts. Thirty-nine of the sixty advertisements located referred to two or more convicts conspiring to run away. Only fifteen advertisements were found showing convicts running away with free whites or white indentured servants. An even smaller number of convicts chose to flee with those of African descent (7, 5.5%).¹¹⁵

There are several possible explanations for this fact. In comparison to transported felons indentured servants possessed more legal rights, served a shorter term of service, and in many cases were not stained with a criminal past. An indentured servant who chose to collaborate with a convict risked forfeiting these advantages. In addition, indentured servants comprised a relatively small percentage of the total number of bound laborers in eighteenth-century Virginia.

¹¹³Morgan, “Convict Runaways in Maryland”, 261.

¹¹⁴ *Pinkney’s Virginia Gazette*, November 23, 1775.

¹¹⁵Morgan, “Convict Runaways in Maryland”, 261-Morgan’s study shows that only seven per cent of convicts fled with indentured servants or slaves; The examination of runaway advertisements listed in the *Virginia Gazette* looks at the following years: 1732-1745, 1751-55, 1766-68, and 1772-75. While not a complete listing of all runaway advertisements, the advertisements employed involves a wide spectrum of time and a significant number of the total number of runaway advertisements up through 1775. The results are similar that of Morgan’s more complete study of Maryland. It should further be noted that a small number of convict servants could not escape the issue of race as there were some mulatto convict servants. For an example see *Rind’s Virginia Gazette*, Sept. 22, 1768.

Slaves and convict servants made up the bulk of bound laborers in Virginia during this time period. Cooperation between these groups was made difficult by the fact that slaves would have brought unwanted attention to runaway convict servants.¹¹⁶

The criminal conduct of transported felons remained largely a male dominated sphere of activity. Women accounted for only eight of the seventy-four individuals brought to the county courts to stand trial. This fact is hardly surprising considering that women comprised a relatively small percentage of those transported to Virginia. Convict merchants found difficulties in trying to unload female convicts. Purchasers of convicts frequently expressed concerns regarding female convicts' ability to perform manual labor. Planters were further concerned of incurring additional costs as a result of the convict giving birth. The latter aspect points to one crime that was specifically in the sole sphere of women.¹¹⁷

The society of Colonial Virginia often turned a blind eye to sexual promiscuity among their servant class. However, pregnancy certainly received attention. The House of Burgesses, perceiving that convict women could be promiscuous, moved to address the problem of pregnancy interfering with work obligations. Female convicts who gave birth were forced to serve their owners for an additional year. Her child was to serve until the age of eighteen, if a male, and twenty-one if female. Faced with this fact some pregnant servant women believed their only viable options were abortion or infanticide. Infanticide appears to have been used infrequently by female convicts. Mary Gray of Augusta County was the only convict servant accused of this crime in the available records. Perhaps this fact rests with the idea that female convicts were not as promiscuous as other servants. However, several more likely explanations exist. Convict women may have chosen alternative means, such as abortion, to address this

¹¹⁶Morgan, "Convict Runaways In Maryland", 260-263.

¹¹⁷ Ekirch, *Bound for America*, 18,70,127-128.

problem. In either instance, whether infanticide or abortion midwives may have reported the child stillborn thus making it difficult to prosecute the alleged offender. Perhaps many of these cases went unreported as the child may have been the result of non-consensual relations with their masters.¹¹⁸

Aside from infanticide, criminal activity among female convicts trend towards the same as men. Female convicts were primarily charged with the crime of theft. Often these thefts were done in collaboration with others. Sarah Matts and Constantine Matthews broke into a storehouse stealing items valued at fifteen pounds.¹¹⁹ Augusta County justices found Anne Conner innocent of theft, but guilty of importuning “Thomas Spencer to enter her master’s house and rob the same.”¹²⁰ In total, four out of the six cases where convict women were charged with theft involved collaboration with other individuals. This trend roughly follows the overall trend regarding the criminal activity of transported felons.¹²¹

Punishment and Clemency in the County Courts

The convict servant brought to a county court was immediately reminded of his station in society. This notion of hierarchy was emphasized in several aspects of the court including in its architecture. By the 1730’s most county court houses in Virginia were being modeled after the General Court building in Williamsburg. An individual entering the building would see the

¹¹⁸ *Augusta County Orders*, April 30, 1754.; Kathleen Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: Published for the Institute of Early American History by the University of North Carolina Press, 1996), 200-204.

¹¹⁹ *Caroline County Orders*, June 9, 1739.

¹²⁰ *Augusta County Orders*, May 18, 1765.

¹²¹ For additional cases of women collaborating with men see the case of Ellinor Gorman in Scott and Hoffer eds., *Fines, Examination of Criminals, Trials of Slaves*, 207-208. Also included in this figure is the case of Anne Weldon in *Westmoreland County Orders*, Sept.27, 1732. This case does not clearly identify that others were directly involved with Weldon, but two individuals do provide kings evidence. Kings evidence usually involved co-conspirators turning evidence in return for a commutation of their sentence. Even if Weldon’s case is discounted from this figure, the percentage of women who collaborated with others still roughly follows the general trend of men. For additional cases involving women see the murder case of Susanna Brusine in *Botetourt County Orders*, Oct.4,1774,the Judith Neile theft case in *Augusta County Orders*, May 18, 1765, and the case of runaway servant Elizabeth Scott in *Westmoreland County Orders*, July 26, 1732.

justices seated on a raised platform thus emphasizing their pre-eminence. The senior judge occupied the center while the rest of the judges were seated to the left and right based on their social status and seniority. Surrounding these justices were typically symbols of royal authority.¹²² A further reminder of the low status of the defendants were visually made clear by a railing that served both physically and symbolically as a “demarcation between the judges and the judged”.¹²³

The justices of the peace hearing the case often lacked significant formal training in the law. As a result, a member of the quorum was required to be present. The quorum was made up of those senior most justices thought to be more learned in the law because of their length of service on the court. Regardless of their differences in formal training in the law all justices of the peace were members of the county’s landed gentry. Even if they did not personally own convict servants almost all possessed some type of bound labor. As a result, the justices of the peace comprising the county courts had a vested interest in protecting their ability to maintain bound labor. However, maintaining control of this labor force could be done through either implementing full punitive action against defendants or applying mercy.¹²⁴

There are several means that the justices of the peace could use to apply more lenient punishments. One area was to allow a convict servant to turn king’s evidence. Those who provided evidence leading to the conviction of other defendants would then be eligible for a commutation of their sentence. Convict servant John Robinson took advantage of this opportunity while facing trial in Spotsylvania County. Charged with feloniously breaking and entering into a storehouse along with two fellow convict servants, Robinson turned king’s

¹²² A.G. Roeber, “Ritual of Court Day”, 33-35.

¹²³ Carl Lounsbury, “The Structure of Justice: The Courthouses of Colonial Virginia” *Perspectives in Vernacular Architecture*, vol.3 (1989), 220-222.

¹²⁴ Schwarz, *Slave Laws in Virginia*, 90-96.

evidence. As a result, the other two convicts received a punishment of thirty-nine lashes rather than being sent to the General Court.¹²⁵ Justices of the Peace could also demonstrate leniency by finding the individual innocent. Augusta County convict Judith Neile was found innocent of all charges regarding charges that she had entered two dwellings and stolen items.¹²⁶

By far the most common means that county courts used to justify more lenient treatment of convict servants was their ability to “downvalue” the items stolen. Lowering the value of items stolen to a misdemeanor enabled the county courts to determine the punishment. Francis Cross was charged with breaking into the home of Peter Walker and stealing items valued at 2 pounds. However, Frederick County Justices decided that “on consideration of the evidences and circumstances it is of the opinion of this court that the said Francis Cross is guilty of a petit larceny.”¹²⁷ This decision was made despite the fact that the items stolen far exceeded the twenty shillings threshold for felonies. George Eaton and John Whitnee were charged with stealing items valued at fourteen pounds. Nonetheless, the justices were “of opinion that they are not guilty of the fact, but that they are guilty of a misdemeanor and that they receive 39 lashes each.”¹²⁸ Convict servant Valentine Dutton also received a “downvaluing” of items stolen by Augusta County justices and received instead the punishment of thirty-nine lashes.¹²⁹

In some instances the justices did not feel the punishment fit the crime. This appears to be the case regarding the treatment of Thomas Spencer. Spencer pleaded guilty to breaking and entering as well as theft. However, despite the initial charge of a felony, the court ruled that Spencer be whipped instead of being sent to trial in Williamsburg.¹³⁰ A similar decision seems to

¹²⁵*Spotsylvania County Orders*, March 2, 1773.

¹²⁶*Augusta County Orders*, May 18, 1765.

¹²⁷*Frederick County Orders*, August 4, 1753.

¹²⁸*Spotsylvania County Orders*, August 30, 1773; see also Rankin, *Criminal Trial Proceedings*, 148-149.

¹²⁹*Augusta County Orders*, August 15, 1774.

¹³⁰*Augusta County Orders*, May 18, 1765.

have been made regarding convict servants John Brown and Anthony Sowell. The two convicts were charged with a felony and the justices found the accused guilty. However, the justices held that “the buckles being of small value...it is ordered that they receive each of them at the public whipping post of this county thirty-nine lashes.”¹³¹

Several additional factors may have influenced the decisions of the county courts. The intercession of a respected community figure may have resulted in lesser sentencing. The owner of convict servants occasionally provided testimony in trials on behalf of their servant. The interests of the master in the proceedings of the court were diverse. On one hand, the owner may have wanted the convict punished in order to maintain control over their property. On the other hand, their intercession on behalf of their servant established themselves as merciful and more importantly protected their self-interest. A convict servant sent to trial during the spring or summer months would have meant a crucial loss of labor during the agricultural season. The decision to whip a servant may have caused a temporary loss of labor given that the offender would need time to recuperate. However, the time lost from whipping pales in comparison to the time lost via trial at the General Court. The General Court typically only met twice a year. As a result, a convict sent to Williamsburg may have remained in jail for as long as six months. The master of Augusta County convict servant Patrick Hair interceded on behalf of his laborer. Consequently, Hair’s felony was not only downgraded to a misdemeanor, but he received only twenty lashes rather than the maximum allowed of thirty-nine.¹³²

The behavior of criminals also served to determine the punishment meted out. A failure to demonstrate proper deference to justices often served for convicts to receive harsher punishments. Convict servant James Cachett made this mistake when confronting Augusta

¹³¹ *Augusta County Orders*, August, 26, 1766.

¹³² *Augusta County Orders*, April 1, 1754.

County justices. Court officials did not have enough evidence to convict Cachett of theft, but did order the convict whipped because “he had behaved himself in a disorderly manner.”¹³³

Westmoreland County convict George Smith was tried for stealing food from several individuals living in his vicinity. The justices were unable to gather enough evidence of Smith’s guilt.

However, the justices were perturbed by the fact that Smith had bragged to several individuals that he would deny everything at the hearing. As a result of his insolence the justices ordered that Smith be whipped on two separate days “in order to reclaim him if possible and if possible to keep him from the gallows he being a most incorrigible wretch.”¹³⁴

When it came to murder the justices refused to show a significant degree of leniency. All eight convict servants accused of murder were remanded to trial in Williamsburg. However, attempted murder was occasionally handled differently by justices. Lawrence Green was found guilty of striking and injuring Katherine Thomas. The Westmoreland County justices agreed that Green ought to stand trial in Williamsburg, but refused to do so, instead ordering him to be whipped. Colonel George Eskridge issued orders for his servant Joseph King to be whipped for running away. King responded in kind by attempting to stab his master. As with the preceding case the court ordered the convict to be whipped rather than sent to Williamsburg.¹³⁵ In all cases, but particularly in those cases involving murder, justices walked a fine line in their decisions to offer clemency. Their decisions were not based solely on the facts introduced in the case, but also included the interests of Virginia Planters.

While county court justices at times clearly applied clemency in the decisions rendered by them it still begs a question: How often did they apply clemency in their rulings? At first

¹³³ *Augusta County Orders*, May 27, 1752.

¹³⁴ *Westmoreland County Orders*, Sept. 18, 1738; for a discussion of deference in county courts see A.G. Roeber “Ritual of Court Day”, 30-35.

¹³⁵ *Westmoreland County Orders*, July 3, 1730; see also *Westmoreland County Orders*, July 26, 1732.

glance, it appears that the majority of county courts favored applying the law to its fullest extent. Forty-three of the seventy-three individuals identified as appearing before the county courts were sent on to Williamsburg for trial. The full application of the law seems to be even more apparent when considering the fact that at least six of the cases were clearly in the sole purview of the county courts. Thus nearly 65% of individuals brought to the County Courts were sent to Williamsburg for further trial.¹³⁶ However, this figure roughly corresponds with those given for slaves. Slaves were tried separately from white defendants in specially called Courts of Oyer and Terminer. The same justices who sat for the called courts of examination involving white defendants also sat for these slave trials. Historian Philip J. Schwarz estimates that nearly 30% of slaves tried for capital offenses between 1706-1784 were found innocent. Other slaves saw their charges “downvalued” or received the benefit of clergy. This is not to suggest that the experiences of white convict servants and African slaves were entirely similar. Unlike slaves, few convict servants brought to the county courts of examination escaped without some form of punishment being administered to them. On the other hand, white convict servants punished by the county courts of examination escaped being tried for a capital offense. Furthermore, those sent to trial in Williamsburg still had the opportunity for clemency at the hands of this court.¹³⁷

One clear similarity in the application of the law towards white convict servants and African slaves is that the court system increasingly demonstrated clemency to both groups over the course of the eighteenth-century. A look at the identified cases involving convicts demonstrates this fact. Court cases involving convict servants have been divided up into ten year intervals, with one exception. The first case located involving the trial of a convict servant was in 1724. Rather than allowing this to stand alone it was included in the figures for the first

¹³⁶ See appendix I

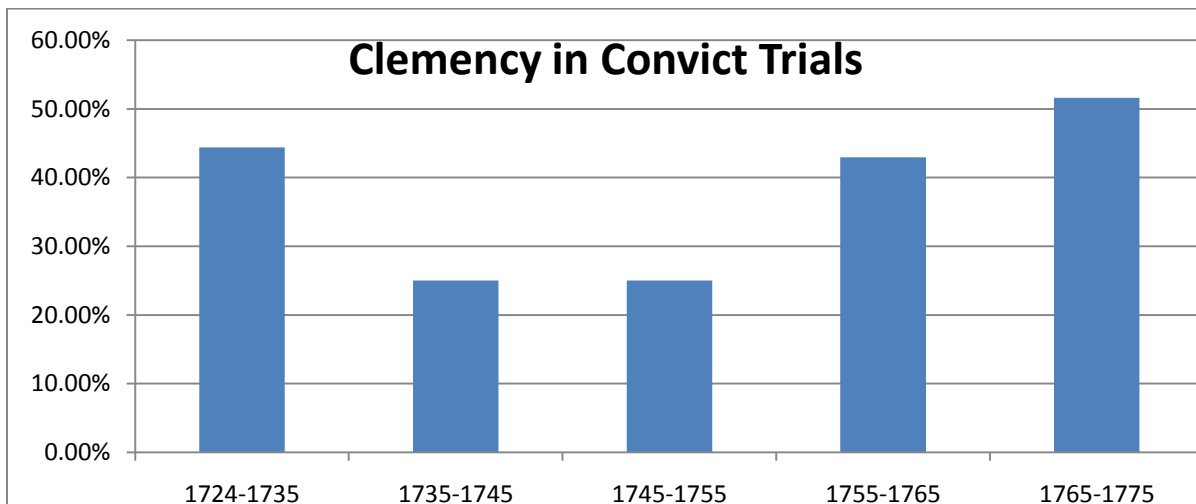
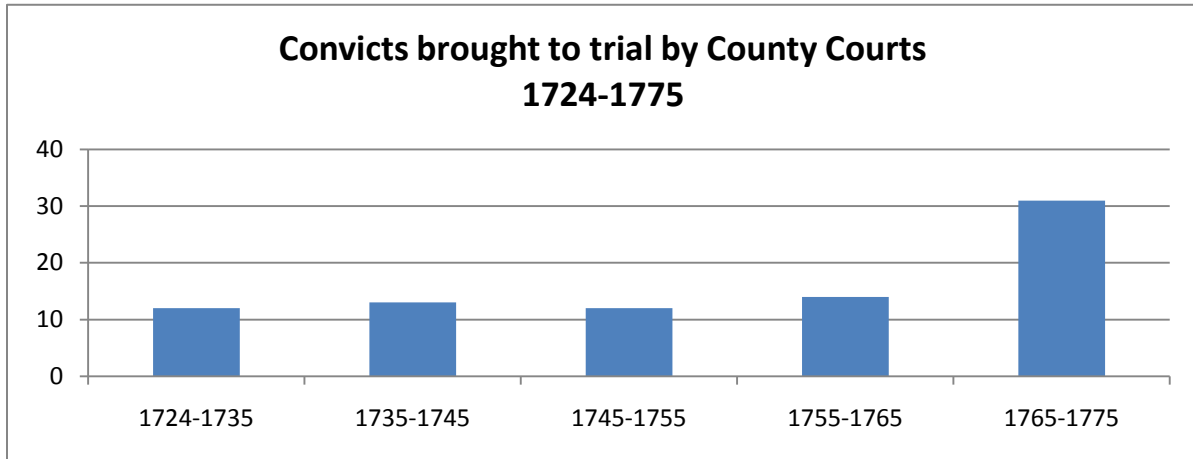
¹³⁷ Schwarz, *Slave Laws in Virginia*, 76-80;

decade.¹³⁸ Convict trials in transition years were included in both ten year intervals. For example, a trial held in 1735 would have been included in the statistics for both the preceding and succeeding ten year interval. While this tends to artificially inflate the total number of convicts being brought to trial it does serve to avoid any discrepancies produced by arbitrarily assigning these intervals. The period of 1724-1735 witnessed four of the nine cases handled solely within the county court system. The percentages of clemency for this period are actually higher than the earlier stated figure of 35%. However, the total number for this period is relatively small and may serve to distort the percentages.

An examination of the following periods warrants greater attention. By the mid-to-late 1730's the system of importing convict labor to Virginia had become well entrenched. As a result, the number of trials involving convicts started to increase. This increase provides a larger pool of accused to analyze. The following two periods of 1735-1745 and 1745-1755 show identical results. Each period saw nine out of twelve convicts sent on to trial in Williamsburg. As the number of convicts brought to trial increased so did the degree of clemency demonstrated by the county courts. The period of 1755-1765 witnessed fourteen cases involving convict servants brought to trial of whom eight were sent on to further trial in Williamsburg (six cases handled by the county courts). The period of 1765-1775 saw the most dramatic increase in crime and at the same time the most dramatic increase in clemency (see charts below). Thirty-one cases were heard during this window of time in which over half were handled solely by the county courts. This figure is even more dramatic when you look at those cases during this period which involved theft. Sixteen out of twenty-six cases involving theft were tried at the County Court level rather than being handled by the Williamsburg courts. The figures reveal that over the

¹³⁸The year 1724 does not mark the first instance where convicts were brought to trial. Discussions and pending legislation regarding convict servants and crime were held by both the Virginia House of Burgesses and the Executive Council of Virginia in the years prior to 1724.

course of the eighteenth-century the county courts increasingly relied on leniency, rather than punishment to the full extent of the law, as a means to control their convict servant population.



General Court in Williamsburg

Those convict servants suspected them of having committed a felony were sent for further trial in the capital of Williamsburg. Upon arrival they would be placed in the Williamsburg jail until the courts were set to hear the case. Typically the General Court convened twice a year operating for roughly twenty-four days each April and October. Although

convicts could count on relatively swift justice from the county courts, suspects were usually brought to trial within five to ten days, this was not the case with the General Court. Convicts could languish in the Williamsburg jail for as long as six months before their cases were heard.¹³⁹

Once brought to trial the servant would face a jury trial. Prior to 1738 the jury for convict servants would have been comprised of twelve freeholders from the county where the crime was committed. However, the House of Burgesses operated under the belief that a significant percentage of crimes were committed by convict servants. Legislation passed in 1738 allowed convict servants to be tried by a jury of freeholders living in the vicinity of the capital. In doing so the House of Burgesses hoped to alleviate the costs associated with requiring jury members to travel long distances to Williamsburg. Not all witnesses were excused from attending the trial. At least one witness was required in order for a conviction to be made. No hung juries were allowed as the Virginia judicial system required a clear decision. Therefore, the accused convict servant was reliant upon the mercy of the jury.¹⁴⁰

It is difficult to ascertain what type of justice the Williamsburg Court meted out to convict servants. Few available records remain as court records were destroyed by fire. Virtually the only area left to obtain the decision of the courts, other than accounts mentioned in the personal papers of individuals, are brief accounts of court decisions listed in Virginia's newspapers. The most horrific crimes, such as Anthony Francis Dittond's murder trial, received

¹³⁹Rankin, *Criminal Trial Proceedings*, 72-90; See also A.G. Roeber, *Faithful Magistrates*, 114-159 and Gwenda Morgan, "Law and Social Change in Colonial Virginia: The Role of the Grand Jury in Richmond County, 1692-1776", *Virginia Magazine of History and Biography*, Vol. 95, No.4 (Oct., 1987), 461-463. Both studies point to the fact that county courts functioned more slowly in the second half of the eighteenth-century. However, while it is difficult to determine how long it actually took to bring the alleged criminal to trial, the cases presented in the various county order books seems to demonstrate that convict servants trials were dispensed with in a timely fashion.

¹⁴⁰ Rankin, *Criminal Trial Proceedings*, 90-119.

substantial attention in the newspapers. The majority of cases typically received limited attention. Newspapers usually limited their coverage of court proceedings to listing the name of an individual, the crime they were charged with, and the sentence issued by the court. Cases where the trial was extended were often not followed up by the newspapers. This was the case with Spotsylvania County convict servant James McDowell (listed as James M'Douall in the newspapers). Brought to trial under the suspicion of burglary and stealing goods valued at forty pounds McDowell found his case laid over until a following court. The newspapers never printed the eventual court decision. As a result of these difficulties only seventeen decisions involving convict servants were identified in this study. Still, this small sample does not prohibit the drawing of several tentative conclusions.¹⁴¹

In some cases the decisions of the General Court appear to have been surprisingly harsh. This is exemplified in the unusual case involving convict servant William Sherring. Sherring was brought to trial for stealing a ministerial surplice. The convict stole the surplice with the intention of selling it in order to buy food. The Richmond County justices remanded Sherring for further trial, but did note that the case involved extenuating circumstances. The justices contended that Sherring's crime was a result of despair and that he was a "fit object of mercy."¹⁴² This plea in behalf of the accused had little impact on the members of the court. Sherring received the death penalty for the crime of sacrilege. The stern justice is surprising considering the fact that few individuals were brought to trial for sacrilege over the course of the eighteenth-century. Those

¹⁴¹ *Spotsylvania County Orders*, March 29, 1771; *Purdie and Dixon's Virginia Gazette*, June 13, 1771.

¹⁴² Scott and Hoffer, *Criminal Proceedings in Richmond County*, 248-249.

crimes involving matters of religion were typically limited to charges lodged against ministerial misconduct.¹⁴³

In some instances there appears to be little correlation between the types of crime committed and the decisions of the court. Convict servant William Mallard was brought to trial for theft in 1769 and acquitted of the charges. Six years later transported felon James Duffy was given the death penalty for burglary. The seeming inconsistency in the rulings of the court may point to juries paying close attention to the particulars of each case. However, upon close examination of court rulings it is possible to discern certain trends.¹⁴⁴

The Williamsburg Court courts demonstrated little sympathy for those brought to trial for murder. Susannah Brusine was convicted and executed for the murder of her mistress. Anthony Francis Dittond was executed for his notorious murder and the court ordered the convicted body , but had his body donated for anatomical study. Four other convicts accused of murder in 1774 received a slightly better fate than either Brusine or Dittond. Apparently lacking the evidence to convict these four men the court allowed Patrick Ryan to turn “king’s evidence” against his partners in crime. His three partners in turn saw their murder charged “downvalued” to

¹⁴³ Rankin, *Criminal Trial Proceedings*, 142-145; See also Gwenda Morgan, “Law and Social Change in Colonial Virginia”, 470-480. While Rankin argues these crimes were rarely brought to the attention of the courts, Morgan contends that after 1720 the Grand Jury for Richmond County showed a sharp increase in presentments regarding crimes against religion. The total number of Grand Jury presentments for cases involving offenses against religion dropped after 1730 and then rose again in the 1760’s. Whether this was singular to Richmond County or a pattern that was found throughout the colony of Virginia does not alter the fact that Sherring represents the only case of a convict serving being charged with a religious offense. Moreover, the period in which Sherring committed this crime (1754) occurred during a time in which at least the Richmond County courts were prosecuting fewer individuals for religious offenses.

¹⁴⁴ *Augusta County Orders*, June 5, 1775; *Spotsylvania County Orders* January 25, 1769.

manslaughter. This court ruling points to the fact that “downvaluing” of crimes was done, at times, as much out of necessity as a desire to administer a more lenient punishment.¹⁴⁵

Juries appear to have been more lenient in cases involving felonious theft where individuals acted alone rather than in concert with others. The court demonstrated a degree of leniency to five out of seven individuals brought to trial felony theft where they acted alone. Convict servants John Turner and Thomas Robinson were both acquitted of charges stemming from horse stealing. The previously mentioned William Mallard, acting alone, was also acquitted of larceny. Three out of the four individuals who acted in concert with others were treated harshly by the courts. Both convict servant Sarah Matts and Constantine Matthews were given the death penalty on the charge of for breaking and entering. Convict servants Thomas and Alexander Keith were executed for collaborating in breaking and entering case heard in 1767.¹⁴⁶

A stronger argument can be made that the general pattern of leniency established by the county courts was repeated in the functioning of the Williamsburg Court. As with the county courts, the General Court in Williamsburg demonstrated increased leniency over the course of the eighteenth-century. Only two individuals out of five received less than the maximum punishment for their crime in cases heard before 1760. The following fifteen years witnessed the court administering a lesser sentence in eight out of twelve cases. In ruling in this manner the Williamsburg courts applied many of the same devices as the county courts. Acquittal, “downvaluing” of crimes, and the allowance of “king’s evidence” were all employed by the Colonial Courts in order to enable convict servants to receive a more lenient sentence. Unlike the

¹⁴⁵*Purdie and Dixon’s Virginia Gazette*, April 10, 1775; Rankin, *Criminal Trial Proceedings*, 117-118; *Purdie and Dixon’s Virginia Gazette*, October 27, 1774.

¹⁴⁶For the decisions of John Turner and Thomas Robinson see respectively *Rind’s Virginia Gazette*, February 19, 1769 and *Purdie and Dixon’s Virginia Gazette*, June 19, 1770; for the case of Sarah Matts see *Caroline County Orders*, June 9, 1739; for Thomas and Alexander Keith (listed as Keith in county orders, but Heath in the newspaper) see *Rind’s Virginia Gazette*, July 15, 1773.

county courts the Williamsburg courts could also allow the benefit of clergy. This privilege resulted in the criminal receiving a commutation of their first offense. Those receiving benefit of clergy were typically branded on the hand with a hot iron in order to identify them as being a recipient of this measure. Convict servant Billy Hughes was one such recipient of benefit of clergy. Found guilty of robbery by the courts Hughes was “burnt in the hand.”¹⁴⁷

Using the various means of leniency at their disposal, the Williamsburg court was able to limit the application of capital punishment. Seven out of the seventeen convicts brought to trial for capital crimes were executed (41.1%). This figure is only slightly higher than that for all white Virginians facing trial in Williamsburg for capital crimes. Historian Hugh Rankin determined that one hundred and five of the three hundred and thirty-six whites facing trial for capital crimes received the death penalty (31.25%). This demonstrates that while some Virginians may have harbored deep prejudices towards convict servants this prejudice did not necessarily carry over into the decisions of the juries.¹⁴⁸ Perhaps more surprising is the relative leniency in punishment administered to convicts by the judicial system as a whole. Five of the seventy-three cases tried in the county courts were clearly misdemeanors and thus the sole purview of the county courts. Thirty-one of the remaining sixty-eight cases were handled by the county courts while the remaining thirty-seven were sent for further trial in Williamsburg. If the percentages hold true regarding the conduct of the Williamsburg Courts then it is possible that as many as fifty-two of the sixty-eight (75%) convicts tried for felonies would have received less

¹⁴⁷*Hunter's Virginia Gazette* May 9, 1751; Rankin, *Criminal Trial Proceedings*, 62-65. Although benefit of clergy was employed in Virginia throughout the Colonial Period jailers increasingly conducted the branding with a cold iron; As seen in chapter 1 the House of Burgesses periodically passed legislation that lessened the rights of convict servants in comparison to other groups. However, benefit of clergy is one of the few examples where legislators made certain that convict servants had equal access to this process. Most individuals typically recited the fifty-first psalm as part of the process for seeking benefit of clergy. Legislators, believing that a large portion of convict servants were illiterate and thus unable to apply for this leniency dropped the requirement to recite the psalm. For legislation regarding this refer back to Hening's Statutes.

¹⁴⁸Rankin, *Criminal Trial Proceedings*, 121-122.

than the maximum punishment prescribed by law. Of course this figure may be slightly inflated. It is more than likely that at least a few convicts, such as the previously mentioned Judith Neile, were in fact innocent. There are also a few cases where the full value of the goods stolen was difficult to determine and may in fact have fallen into the category of a misdemeanor. In these circumstances the decision of the courts would not have been representative of clemency. However, the totality of the cases demonstrates an increased willingness by the Virginia Court System to avoid issuing full punishment under the law to transported felons.

In summary, despite the fact that some Virginians held deep prejudice towards convict servants it appears this prejudice may have been superseded by pragmatic considerations. As seen in the preceding chapter, attempts by Virginia's colonial government to slow the importation of convict servants met with failure. This failure in part resulted from Great Britain's reluctance to end a system that rid the country of an unwanted element. This supply, coupled with the demand in the colony for affordable bound labor, resulted in a steady influx of convict servants. Unable to significantly stem the tide of convicts, Virginia's legislature aimed to limit the harms allegedly created by transported felons. The primary enforcement of order and justice rested with the county courts. While the county courts could have resorted to severe punishment of convicts they increasingly applied leniency in their decisions. This leniency was not indicative of mercy on the part of the justices. Instead it represented the fact that as property holders justices were interested in protecting the investment of fellow planters. Although the supporting evidence is limited it appears that convict servants sent to trial in Williamsburg stood to receive fair treatment there as well.

The traditional landed gentry of Virginia faced threats from many quarters after 1750. Possible slave insurrections, the growth of dissenting religious denominations, and the growth in

the number of lawyers who challenged the established authority served to remind the gentry that the foundations of their society rested on unstable ground. Virginia's gentry perceived that convict servants could potentially pose a threat to the established system. Convict servants did resist authority in several ways primarily through crimes of theft and by running away from their masters. Whatever the potential threat of this labor supply was both contained and controlled for over half a century.¹⁴⁹

Legislation passed by the Virginia House of Burgesses, while still limiting the rights of convicts, still made distinctions between white convict servants and slaves. This resulted in little collaboration between these two groups as seen in the relatively few instances where convicts and slaves ran away together. It is further evidenced by the lack of criminal activity involving these two groups. This may be obscured by the fact that slaves were tried in separate courts. However, none of the testimony provided in the trials of convicts show any involvement with slaves. This lack of cooperation meant that the Virginia gentry did not have to fear a potential insurrection involving both of these groups.

The relative leniency of the courts proved as an additional effective measure to control convict laborers. This leniency was offered as long as convicts stayed within certain boundaries. Crimes against person were dealt with, in most cases, harshly by the courts. However, the procedure of benefit of clergy and the "down valuing" of crimes enabled the courts to apply lesser punishments for crimes deemed less threatening. The effectiveness of this policy is seen in the relatively low recidivism rate among convict servants.¹⁵⁰ Another test of the effectiveness of

¹⁴⁹ Roeber, *Faithful Magistrates*, 114-159; Schwarz, *Twice Condemned*, 95-99; Woody Holton, *Forced Founders: Indians, Debtors, Slaves and the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999), 74-85.

¹⁵⁰ There are only three cases involving recidivist behavior. See the following for references to these cases, *Westmoreland County Orders*, Sept. 18, 1738 and Oct. 26, 1738 for the cases of George Smith; *Spotsylvania County Orders*, August 30, 1773 and March 2, 1773 for cases involving George Eaton; *Spotsylvania County Orders*, March 2, 1773 for multiple charges brought against John Robinson.

this policy is whether or not convicts were disproportionately responsible for crime in eighteenth-century Virginia. An examination of this will be done in the following chapter. If convict servants were not responsible for a large percentage of crime in Colonial Virginia then this would support the idea that the leniency of the courts successfully served to control the population of convict servants. As historian Philip Schwarz stated in regards to slavery “hangings and reprieves from hangings were simply two sides of the coin used to make their [Virginians] world safe.”¹⁵¹

¹⁵¹Schwarz, *Slave Laws in Virginia*, 96.

Chapter 4:

*“For Abundance of Them Do Great Mischiefs,
Commit Robbery and Murder...”¹⁵²*

The title of this chapter is taken from a contemporary observation made by Hugh Jones in 1724 concerning felons recently transported to Virginia. Revered Jones was of the opinion that all transported felons should be placed in a county by themselves and forced to labor. Jones was not the only eighteenth-century Virginian to make disparaging comments about the influx of British malefactors. Commenting in 1718, William Byrd II hailed convict transportation as a means to populate Virginia. Just eighteen years later Byrd would write to a friend that “I wish you would be so kind as to hang up all your felons at home, and not send them abroad.”¹⁵³ Governor William Gooch contended in 1729 that the mere presence of convict servants in Virginia provided a negative influence on those around them. He claimed that disobedience of planters from the Northern Neck could be directly attributed to the influence of convict servants.¹⁵⁴

Several historians have taken these contemporary comments as proof that convicts were responsible for a significant number of crimes. Professor A. Roger Ekirch broke from this position in his work *Bound For America*. Ekirch asserted that only a small percentage of convicts transported to Virginia were ever brought to the county courts for allegations of crime. This assertion was based on his examination of two counties from the Northern Neck. This chapter will examine Ekirch’s argument and the evidence that he employs to support such a conclusion.

¹⁵² Hugh Jones, *The Present State of Virginia: From Whence is Inferred a Short View of Maryland and North Carolina*, ed. Richard L. Morton (Chapel Hill: Published for the Virginia Historical Society by University of North Carolina Press, 1956, First Printing 1724), 87.

¹⁵³ Jones, *Present State of Virginia*, 87, 134-135; Marion Tinling, ed., *The Correspondence of the Three William Byrds of Westover, Virginia 1684-1776*, vols. 1-2 (Charlottesville: published for the Virginia Historical Society by the University Press of Virginia, 1977), 310, 474.

¹⁵⁴ Kenneth D. Morgan, “English and American Attitudes Towards Convict Transportation, 1718-1775,” *History* 72 (1987): 416-427; Ekirch, *Bound for America*, 137, 141.

It will also examine the court records of several additional Virginia counties known to have received convict servants to see if Ekirch's claims hold true there as well. Ekirch neglected to answer the question of whether or not convicts were brought to trial for crimes at a rate in excess of their percentage of the population. The examination that follows may help to explain the numerous criticisms that contemporaries had regarding convict behavior.¹⁵⁵

Ekirch examined court records from Westmoreland and Richmond Counties. Both Northern Neck counties were reputed to have received a large number of convicts. Ekirch found that Westmoreland's County Courts heard thirty-eight cases involving fifty alleged criminals during the years 1731-1746. Only seven of these cases involved convict servants (18.4%). These seven cases included a total of nine convict servants. This would reduce the total percentage of convict criminal activity in the county down to 18%.¹⁵⁶

Ekirch's study of Richmond County Courts from the years 1720-1754 reveals an even smaller number and percentage of overall crimes alleged to have been committed by convicts. The Richmond County Courts heard one hundred and three cases during this period involving one hundred and forty three defendants. Just eight of these cases involved convict servants (7.8%). In each instance convicts acted alone. Therefore, the total number of convicts brought to trial, relative to the overall number of individuals brought to the court, was a mere 5.6%. While it can be argued that Westmoreland County may have had a minor problem with criminal activity by convict servants, based on the court records Richmond County certainly did not have this problem. Richmond County's figures were roughly 1/3 less than those of Westmoreland County. The figures for both counties appear to lend credence to Ekirch's claim. However, the Northern

¹⁵⁵ A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*, (Oxford: Clarendon Press, 1987), 172-177.

¹⁵⁶ *Ibid.*

Neck was not the only area that received a significant number of convicts. The Virginia backcountry received a substantial numbers of transported felons.¹⁵⁷

Located west of the Blue Ridge Mountains in Virginia's Shenandoah Valley, Augusta County was one of the newly settled areas in eighteenth-century. Separated from Orange County in 1738, the region was initially sparsely settled. Evidence of this is found in the fact that a county government was not formed until seven years later. From 1745 onwards most county citizens having business with the court could look forward to the shorter trip to Staunton, Virginia, rather than to Orange Court House. It was not until 1769 that the need for more efficient county government prompted a shifting of the county borders. Portions of Augusta County, among others, were taken to form Botetourt County that year.¹⁵⁸

The assumption that this area received significant numbers of convict servants is supported by the number of runaway advertisements in *The Virginia Gazette* and *The Pennsylvania Gazette*. Looking at both of these newspapers it appears that Augusta County had at least twenty different runaway convicts from 1760 to 1775. This could mean, if runaway advertisements are a good indicator of the number of convicts imported, that Augusta County may have received more convict servants than any other county in Virginia from 1760-1775. The advertisements occur evenly spaced throughout this period so it would seem that the flow of convict servants into this county was consistent over time.¹⁵⁹

¹⁵⁷ Ibid., 172-177.

¹⁵⁸ Emily J. Salmon, ed., *A Hornbook of Virginia History*, 3rd edition (Richmond: Virginia State Library, 1983), 103-121; Park Rouse, *The Great Wagon Road: From Philadelphia to the South* (Richmond: Dietz Press, 1995), 32-35; J. Lewis Peyton, *A History of Augusta County, Virginia* (Harrisonburg: C.J. Carrier, 1972), 31-53.

¹⁵⁹ *Virginia Gazette*, 1736-1775; See also Marian Dargan, "Crime and the Virginia Gazette," *University of New Mexico Bulletin* 2 (May 1934), 4-6, Dargan points out that there were four newspapers in Colonial Virginia, all of them based in Williamsburg, all of them containing the same name. Dargan excludes one newspaper owned and edited by Purdie and Dixon which started printing in 1775.. As a result, during the period of 1760-1775 there were four Virginia newspapers in operation at various points. These four were Hunter's, Parks, and Rind's, and Purdie and Dixon's. One of the chief reasons behind Rind starting his newspaper was that Hunter, because of his coverage of the Stamp Act, had been deemed by many in the colony to be under the control of the government. For the

Since Augusta County's initial population was very small it may have taken planters in this area some time to start importing convicts. The first called court involving a convict servant occurred two years after the county government began functioning. The criminal activity of convict servants appears to have remained negligible for the first twenty-one years of county government. The county justices heard a combined total of seventy-nine cases involving ninety individuals in the county Courts of Examination used for convict servants and the Courts of Oyer and Terminer for slaves during this time.¹⁶⁰ Three trials involved slaves and four involved servants. Only one of these four is clearly defined as an indentured servant so their exact status remains undetermined. Ten of the trials involved convict servants, thus only a small percentage of overall crimes that were even allegedly committed by the felons (12.7%).¹⁶¹

Located in the northern end of the Shenandoah Valley, Frederick County's early history was very similar to that of Augusta County. It too was formed from Orange County in 1738 and was initially slow to develop. A county government was not created until five years after the county was formed. The lure of cheap land and the hope of avoiding Native American attacks to the north led many Germanic speaking peoples to this area. Among the first settlers to this area were a group of Alsatians led by Joist Hite.¹⁶² The relatively inexpensive cost of employing convict labor, as compared to purchasing African slave labor, must have been appealing to these early settlers. The number of black tithables in Frederick County remained insignificant during

purposes of this thesis, any compilation of figures involving more than one of these newspapers will simply be cited as *Virginia Gazette*; *Pennsylvania Gazette*, 1736-1775; Ekirch, *Bound For America*, 170-177.

¹⁶⁰The case of John Neal is not included in this figure because his trial was remanded to Chesterfield County where it was alleged that Neal committed the crime. See *Augusta County Orders*, July 10, 1753. Repeat offenses by criminals are included in the figure given for total number of individuals involved. However, repeat trials for the same offense are not included in this total. For an example of an individual tried twice for the same crime see the counterfeiting case of Francis McGinnis, *Augusta County Orders*, Sept. 9 and 26, 1765. .

¹⁶¹The trial of Mary Ann Campbell and Ruth Buchanan, *Augusta County Orders* July 10, 1742 and Joseph Shedmore are not included because even though they are listed separately these individuals were being tried in conjunction with others. If all three cases are included the percentage of convict servant crime goes down to 12.2%.

¹⁶²Rouse, *The Great Wagon Road*, 21-25; Salmon, *Hornbook of Virginia*, 103-121; Ekirch, *Bound For America*, 123-128.

the initial years of settlement. Both newspapers employed in this study contained numerous accounts of convict runaways from Frederick County. Among the more famous convict owners from this area was no less than George Washington.¹⁶³

Despite the importation of substantial numbers of convict servants to Frederick very few were ever brought to the county court for examination. From 1748 through 1761 Frederick County Justices presided over forty-five called courts. No Courts of Oyer and Terminer were held during this period. Out of the forty-five total cases only two involved convict servants (4.4%). Francis Cross and George Washington's servant James Knapp were the only two brought to the court for allegedly committing crimes during this time.¹⁶⁴

West of the Northern Neck and nestled alongside the Rappahannock River, Spotsylvania County was created slightly earlier than the previously two mentioned counties. Portions of Essex, King William, and King and Queen County were taken to establish Spotsylvania in 1720. Among the early settlers to this region would have been those who chose to relocate from the Northern Neck. Although Spotsylvania planters heavily employed slave labor, they also consistently placed newspaper advertisements for runaway convict servants throughout the colonial period.¹⁶⁵

The County Orders and Minutes for Spotsylvania County present an unusual statistic problem. Several cases that would normally appear under called courts were listed in the regular court proceedings. However, at least twenty-two cases involving crime were heard by the Spotsylvania County Justices from 1739 through 1745. Two cases involved slaves of which one, named Colley, was delivered to his overseer because the crime was alleged to have been

¹⁶³ Ekirch, *Bound For America*, 123-128; for number of black tithables in Frederick County see Robert E. and B. Katherine Brown, *Virginia 1705-1786: Democracy or Aristocracy* (E. Lansing: Michigan State University Press, 1964), 73 Table I,II.

¹⁶⁴ Frederick County Orders, August 4, 1753 and June 1, 1756.

¹⁶⁵ Brown, *Democracy or Aristocracy*, Table I, II; Salmon, *Hornbook of Virginia*, 103-121.

committed in Orange County. Richard Henvin, William Peake, and Peter Maguire were servants of an undefined status that were brought to trial. Thus John Abbott, brought to trial for breaking and entering, was the only servant specifically listed in the records as a transported felon.¹⁶⁶ The low percentage of convict servants brought to trial for crimes between 1739 and 1745 supports Professor Ekirch's contention. could be looked at as further proof of Professor Ekirch's contention. However, that low incidence of criminal activity may also reflect a failure of the county recorder to include all of those convict servants brought to trial. In either case, a county that imported so many convict servants deserves a second examination.

Spotsylvania County Justices heard forty-seven criminal cases from 1769-1775. An overwhelming number of cases, twenty not counting retrials for the same crime, involved slaves. No indentured servants were listed in the County orders for these years. However, eight cases did involve convict servants (17%). Although much smaller than the total number of crimes committed by slaves it is a much higher percentage than for the earlier period studied.¹⁶⁷

The final county included in our study is Fairfax County. Located close to Spotsylvania, Fairfax was one of the newly created counties in Northern Virginia. In order to develop a more efficient government it was formed from Prince William County in 1742. Fairfax County planters imported significant amounts of both African slaves and British convict laborers. Both groups accounted for a small percentage of crimes in the area. Twenty-six criminal cases were heard between 1749-1763. One involved a slave and two involved convict servants (7.7%). Convict servant Samuel Gray was brought to trial for stealing goods out of the office of the

¹⁶⁶For information on the slave Colley see *Spotsylvania County Orders*, Nov 2, 1743; For the court hearing of William Peake see *Spotsylvania County Orders*, August 5, 1743 and for Richard Henvin and Peter Maguire see *Spotsylvania County Orders* May 28, 1745.

¹⁶⁷*Spotsylvania County Orders*, 1769-1775; For a specific example of a convict servant brought to examining courts see *Spotsylvania County Orders*, Nov. 21, 1770.

county clerk for which he was remanded to trial at Williamsburg. Convict John Green was brought to the bar for allegedly stealing a horse. He too was remanded to trial at Williamsburg.¹⁶⁸

The figures for the counties under examination appear to uphold Ekirch's claim that transported felons were responsible for only a small percentage of crimes in Virginia. In three of the six counties discussed, the percentage of crimes that convicts were allegedly responsible for was well below 10%. Augusta County convicts were allegedly responsible for only a slightly higher percentage of crimes in their county. Spotsylvania County, during the years 1739 to 1746, had very few crimes committed by transported felons. However, both Spotsylvania and Westmoreland Counties had periods where convict criminal activity appears significant (see Table I at the top of the next page). Perhaps a more relevant question is not whether convict servants committed a large percentage of total crimes, but whether or not they committed crimes well in excess of their relative numbers. If such a situation did in fact exist then it is possible that Virginia planters' concerns about the criminal activity of transported felons may have been justified.

Answering this question is highly problematic because there are currently no reliable figures concerning the number of convict servants that each county annually imported. Fortunately, Dr. Ekirch has provided a means for estimating these figures. He used the runaway advertisements listed in the *Virginia Gazette* as an index of how many felons each county may have annually received. The usage of runaway advertisements in order to gauge the number of convict servants in a given county is highly problematic. One or two particularly harsh masters in

¹⁶⁸Brown, *Democracy or Aristocracy*, 73, Table I, II; *Fairfax County Orders* Nov. 9, 1754 and *Fairfax County Minutes* August 21, 1756.

Table I

Criminal Prosecutions of Convict Servants in Virginia

County and Years	# of cases	# involving Convicts	%involving Convicts
Westmoreland, 1731-1746	38	7	18.0
Spotsylvania, 1769-75	47	8	17.0
Augusta, 1745-1765	79	10	12.7
Richmond, 1720-1754	143	8	7.8
Fairfax, 1749-1763	26	2	7.7
Frederick, 1748-1761	45	2	4.4

could serve to inflate the number of runaways in any given county. The type of work that convict servants were asked to perform may have also influenced the number of runaways. However, given the difficulty involved in divining the motives of runaways, runaway advertisements may offer the best approximation of convicts employed in each county.

The current study deviates from this method in several critical areas. Firstly, runaway advertisements from the *Pennsylvania Gazette* will also be included in this study. Ben Franklin's newspaper, one of at least a dozen Philadelphia newspapers to operate during the colonial period, had the largest and longest period of circulation of any Philadelphia newspaper. Given this fact, it is thus likely that a majority of Virginia owners who advertised in Pennsylvania would have used Franklin's newspaper. Because convict servants from northern and western Virginia tended

to flee into Pennsylvania, owners occasionally placed advertisements in the *Pennsylvania Gazette*.¹⁶⁹

The second deviation in methodology is that only those runaways specifically listed as convicts will be included in this study. Dr. Ekirch's inclusion of all white runaways in his study blurs the distinction between convict and indentured servants. This is a distinction that owners generally made in their advertisements, the county courts repeatedly made in their orders, and the colony's legislative body made on several occasions. Therefore, the distinction will continue for the purposes of this study. In an effort to focus on numbers of individuals, not runaway attempts, repeat offenders are excluded. Lastly, those convicts who fled from ships are also not included in this study. Many of those who fled from ships were newly arrived transports whose final destination had not been determined.¹⁷⁰

All totaled there were seventy-three advertisements by Virginians for runaway convict servants between 1736 and 1759. It has been estimated that Virginia imported at least 8,000 convicts between 1718 through 1745, or roughly two hundred and eighty-six annually. Virginia possibly imported 12,000 convicts from 1746 through 1775. This would mean that on average of four hundred convicts were annually imported to Virginia during these years. By taking the number of runaway advertisements listed for each county during the assigned period of time and applying their percentages to the total imported we can then obtain an approximation as to how many convicts each county imported. Of course, the figures obtained for each county could have been strongly affected by the fact that many runaways were not caught. It is well documented

¹⁶⁹For information on the *Pennsylvania Gazette* see Billy G. Smith and Richard Wojtowicz, eds., *Blacks Who Stole Themselves: Advertisements For Runaways in the Pennsylvania Gazette, 1728-1790* (Philadelphia: University of Pennsylvania, 1989), 4-6.

¹⁷⁰Lester J. Cappon and Stella F. Duff, eds. *Virginia Gazette Index* (New York: Published for the Institute of Early American History and Culture by the Whitehall Research and Publishing Co., 1950), 253, 589-590; Ekirch, *Bound for America*, 170-177.

that numerous convicts were able to successfully escape, a point that will be dealt with more completely in the following chapter. However, many other convicts were caught and returned to their master. The subsequent lengthening of terms of servitude might very well have balanced out the loss of labor.

The numbers reveal that per capita counties of the Northern Neck may have, as contemporary observers contended, received the largest number of convicts during the first four decades after the resumption of the Transportation Act. Four of the eight counties that annually imported the largest number of British convict servants were from the Northern Neck. Only one Tidewater county outside of the Northern Neck, Gloucester County, would have figured in the top eight. Two of the top eight counties were from the Northern Neck and only one lay west of the Blue Ridge Mountains.

Four of the eight counties that are specifically the focus of this study were among the eight that may have received the largest number of convicts. Westmoreland County imported nearly thirty-one convicts between 1718 through 1745. They would have seen a total of forty-four convicts arriving each year between 1746 and 1759. Frederick County and Spotsylvania County would have received approximately twenty-four convicts annually for the first twenty-eight years of the trade. They each imported between 1746 and 1759 an average of thirty-three felons each year.¹⁷¹

The data indicates a marked demographic shift in the convict trade over the last sixteen years of the colonial period. The Northern Neck, with the exception of Richmond County, would have imported a much smaller number of convicts during the closing years of the colonial period. Instead, the movement of convicts seems primarily to have been settled in the newly occupied

¹⁷¹ Ibid.

areas of the colony.¹⁷² Four of the eight counties that annually imported the most convicts were from Northern Virginia. Three of the eight lay west of the Blue Ridge Mountains. Westmoreland County is the only one in our study that did not figure in the top eight importers of convict labor during this period. Importation averages for the six counties of this study are summarized below in Table II.

Now that we have figures for the average number of convicts annually imported into each Virginia county, only one more computation needs to be performed for this study. The average convict population for a seven year period will be compared with the tithable population for the period under study. This is an important distinction as we will soon see. Although most felons were transported for seven-year terms, nearly twenty per cent were transported for fourteen-year

Table II
Average Annual Convict Importation
Into Virginia Counties

County	1718-1745	1746-1759	1760-1775
Westmoreland	31.34	43.84	12.5
Spotsylvania	23.51	32.89	50.0
Augusta	-----	-----	50.0
Richmond	15.67	21.92	25.0
Fairfax	7.84	10.96	25.0
Frederick	23.51	32.89	20.0

terms. This necessitates including these fourteen-year servants in our total of convicts in each county over a seven-year period. The distinction will become clearer in the following example.

Westmoreland County may have received two hundred and thirty-two newly imported convict servants from 1740 through 1746. During the preceding seven years the county may have imported two hundred and nineteen convict servants of whom roughly one fourth would have

¹⁷²Ekirch, *Bound for America*, 141, 144.

been imported for fourteen year terms. This would bring the number of transported felons laboring in Westmoreland County during year 1746 to a total of two hundred and seventy-six. If we were to compare convict populations with total population estimates the contrast would be stark. Westmoreland County may have contained nearly seven thousand people by 1755. This would mean that convicts comprised 3.97 % of the population, but would have accounted for over four times that amount of crime. However, if we compare the convict population to their reference group then the figures are considerably more equitable. One of the closest corresponding years for which tithables are listed is 1755. By 1755 Westmoreland County contained 2,532 tithables. This means that convict servants would have comprised 10.9% of the tithable population, but would have been responsible for 18% of its crime.¹⁷³

The same formula can be applied to the other counties in this study. Estimating that Spotsylvania County annually imported nearly fifty felons over the last sixteen years of colonial rule means that Spotsylvania would have purchased three hundred and fifty felons. An additional seventy convicts would have remained in the county serving out their fourteen year terms, bringing our total by 1775 to four hundred and twenty. The 1774 Court Orders for Spotsylvania County lists a population of two thousand and eight hundred tithables. Convicts would have comprised nearly 15% of the tithable population, but were allegedly responsible for only 17% of crimes.¹⁷⁴

The figures are similar for some of the other counties studied. Richmond County may have contained two thousand and twenty-four tithables by 1755. Approximately one hundred and seventy-seven convicts would have been laboring in the county around 1754. Therefore, only 8.75% of the tithable population would have been responsible for 7.8% of crimes in the county.

¹⁷³ Brown, *Aristocracy or Democracy*, 73, Table I,II.

¹⁷⁴ *Spotsylvania County Orders*, 1774, 23.

For the period under discussion, convicts would have comprised just 8.8% of the tithable population and only a slightly higher percentage of individuals tried for crimes. Frederick County convict servants would have made up nearly 10% of the county's tithable population, but less than half that percentage of crime.¹⁷⁵

Augusta County presents its own set of difficulties and must be discussed separately from the other counties studied. The last sixteen years prior to the American Revolution saw Augusta County import nearly fifty convicts each year. However, if we strictly rely on runaway advertisement as an index of convict importation then we would have to assume that Augusta County did not import any convicts prior to 1760. The Court Orders for Augusta County clearly shows this to be a mistake. There were several instances where convict servants were brought to Examining Courts during these years.¹⁷⁶ Established later than many of the other counties in our study it is not surprising that Augusta residents placed no runaway advertisements up through 1745. However, it is a surprise that there are no runaway advertisements listed during the following fourteen years. Explanations for this lack of runaway advertisements may lie in the fact that very few editions of the *Virginia Gazette* have survived from the fifth decade of the eighteenth-century. Runaway advertisements can only serve as a rough guide to convict importation and not as a literal fact.¹⁷⁷

Using those runaway advertisements from 1760 forward it can be surmised that Augusta County probably received fifty convicts each year. If we assume that levels of convict importation roughly paralleled those of Spotsylvania County, then Augusta County would have received an additional thirty-three convicts in 1759. Adding forty-six servants who would have

¹⁷⁵ See Table III in this chapter for a summary.

¹⁷⁶ See *Augusta County Orders* May 17, 1752 for case of James Cachette or Sept. 16, 1747 for case involving Patrick Burk and Bridgett O'Dowland for just a few of several examples of convict servants being tried in court prior to 1760.

¹⁷⁷ J. Peyton Lewis, *A History of Augusta County, Virginia* (Harrisonburg: C.J. Carrier, 1972), 15-25.

still been serving their fourteen-year term would bring the total number of convict laborers in Augusta County to three hundred and seventy-nine by 1765. The tithable population for Augusta County by the mid-point of our period would have been two thousand three hundred and thirteen. Convicts would thus have comprised 16.4% of the population, but, once again, would have been responsible for a much smaller percentage of crime.

It appears from the evidence summarized in Table III that there was little truth to contemporary statements that convicts were responsible for the majority of crime in eighteenth-century Virginia. Only Westmoreland County can be said to have experienced a remarkable degree of crimes committed by transported felons that were brought to the attention of the court. Although this might be the case, it is still understandable that so many negative

Table III

Relative Criminal Activity by Convict Servants

County	# of Convicts	# of Tithables	Convict % of Tithable Population	% of crimes by convict servants
Westmoreland	276	2,532	10.9	18.0
Spotsylvania	420	2,800	15.0	17.0
Augusta	379	2,313	16.4	12.7
Richmond	177	2,024	8.75	7.8
Fairfax	148	1,686	8.8	7.7
Frederick	250	2,513	9.95	4.4

comments abounded. Virginia's class-conscious society would have been acutely aware of the status of these convict servants. Most of those felons transported to Virginia would have come from the lower orders of British society. Although a few others would have been relegated to

transportation, most would have received the same treatment as Sir Charles Burton. Burton was convicted of theft and sentenced to transportation in 1722. Probably due to his social standing Burton's sentence was commuted to a whipping.¹⁷⁸

The Irish origin of a substantial number of convicts may have worsened the attitudes of some Virginians towards the convict trade. Perhaps as much as one quarter of the felons transported to the colonies came from Ireland. Ireland was seen by Englishmen as being on the cultural margins of the British Empire. Thus, Irish Catholic convict servants may have been twice condemned.¹⁷⁹

The Virginia gentry's concerns about maintaining an orderly society clearly affected their attitudes towards convict importation. Despite recent, fairly benign interpretations of the moral fiber of convict servants, it should not be forgotten that transportees were carrying the stain of criminal behavior. Certainly there were enough criminal incidents involving transported felons to provide validation for those already prejudiced towards convict servants. Lord Fairfax, Proprietor of the Northern Neck, befriended convict William Parsons. Fairfax was polite enough to invite Parsons to spend the night at his home. Parsons reciprocated the kindness by stealing money and departing abruptly on one of Fairfax's horses.¹⁸⁰

Virginia's newspapers may have also played a role in forming the public's perception, and that of previous historians, that convict servants were responsible for much of the crime in the colony. Owning and operating a newspaper in the colony was not always financially viable.

¹⁷⁸ Peter Wilson Coldham, *Emigrants in Chains: A Social History of Forced Emigration to the Americas of Felons, Destitute Children, Political and Religious Non-Conformists, Vagabonds, Beggars and Other Undesirables, 1607-1776* (Surrey, England: The Genealogical Publishing Co. Inc., 1992), 137.

¹⁷⁹ For a discussion of the Irish convict trade see Ekirch, *Bound for America*, 24-26, 46-47, 83-89; For a discussion of English attitudes towards the Irish see Nicholas Canny, "the Marginal Kingdom: Ireland as a problem in the First British Empire," in *Strangers Within the Realm: Cultural Margins of the First British Empire*, eds. Bernard Bailyn and Philip D. Morgan (Chapel Hill: Published for the Institute of Early American History and Culture by the University of North Carolina Press), 36-44.

¹⁸⁰ Coldham, *Emigrants in Chains*, 145-146.

This is evidenced by the fact that there were five different newspapers in the colony at various points from 1736 to 1775. Colonial editors were often confronted with a dearth of news. Slow news periods were often filled by printing stories pertaining to Greco-Roman history, more recent literature, or news from London. The opportunity to report on a recent crime not only served to fill space in these papers, but appealed to colonial readers whose “interest was aroused by reading of unusual crimes in their own colonies.”¹⁸¹ This is seen in the reporting of the 1738 murder trial involving convict servant Anthony Francis Dittond. *Park’s Virginia Gazette* referenced the Dittond case on five separate occasions. Exempting runaway advertisements that repeated mention of the same criminal activity there were only two other murder cases that attracted as much attention.¹⁸²

Editor William Parks seems to have relished reporting on the alleged criminal activity of convict servants. Aside from the Dittond case, he reported in 1737 that the Williamsburg jail was filled with convict servants. As noted in preceding chapters there were few years in which the number of convicts sent to trial in Williamsburg. 1737 does not appear to be one of those years where a significant number of convicts were sent to trial in Williamsburg. Two years later Parks noted with approval that numerous criminals had been executed in England rather than sentenced to transportation. This is not to imply that Parks printed these articles merely to sell newspapers. Parks may very well have opposed convict transportation, but his frequent reporting certainly appealed to his audience. Located in Williamsburg the primary readers of the Virginia Gazette

¹⁸¹Dargan, “Crime and the Virginia Gazette,” 55-56.

¹⁸² Dargan, “Crime and the Virginia Gazette,” 54-55; there are five references to the Dittond Case. For an example, see *Parks Virginia Gazette* Nov. 24, 1738, ; the only other cases receiving this much attention in the Gazette was that of indentured servant William Marr. For references to Marr’s case see *Parks Virginia Gazette* Feb. 25, 1737, June 10, 1737, Sept. 16, 1737, and Oct. 21, 1737; The case that received the most attention involved Col. John Chiswell. See Purdie and Dixon’s *Virginia Gazette*, July 11, 1766 for an example.

would have been the landed gentry of the Tidewater region. This group largely relied on slave labor and was the most outspoken regarding their criticism of convict servants.¹⁸³

The perception among some Virginians that the colony was experiencing increased criminal activity over the course of the eighteenth-century may have been related to population growth. The population of Virginia tripled from 1730 to 1760. This increase in population would naturally have led to an increase in crime. A significant portion of this increase would have been the result of an increase in the number of slaves.¹⁸⁴ Through importation and natural increase the slave population would have nearly equaled that of whites in Virginia. Consequently, the number of African slaves, convict servants, and indentured servants would have left Virginia with as many bound subjects as, if not more than, freeholders. Therefore, the fact that these groups may have committed more crimes than others shouldn't be surprising. Dr. Philip Schwarz, in his study of slave crimes in Virginia, has demonstrated that slaves were not responsible for crimes out of proportion to their percentage of the population. If the present study concerning convict servants holds true then neither group, convict servants or slaves, committed a level of crimes out of proportion to their individual populations. The explanation for the prevailing belief that Virginia's bound laborers were prone to excessive criminal behavior is that historians have been listening to the voices of a vocal, but influential minority while ignoring the historically voiceless majority.¹⁸⁵

In conclusion, Dr. Ekirch may be right concerning the lack of criminal activity by convict servants. Perhaps too much attention has been paid to the comments of a few, rather than the

¹⁸³Dargan, "Crime and the Virginia Gazette," 54-58; Alonzo Thomas Dill, "Sectional Conflict in Colonial Virginia," *Virginia Magazine of History and Biography*, 87 (July, 1979), 300-310.

¹⁸⁴Warren M. Billings, John E. Selby, E, and Thad W. Tate, *Colonial Virginia, a History*, (White Plains, NY: KTO Press, 1986), 251-254.

¹⁸⁵Philip J. Schwarz, *Twice Condemned: Slave Laws and the Criminal Laws of Virginia*, (Baton Rouge: Louisiana State University Press, 1988), 75-83.

relative silence of the majority.¹⁸⁶ However, one more possibility does exist. The historian should not lose sight of the fact that masters of convict servants may have been reluctant to lose their source of labor unless the convict exhibited violent behavior. The time and money involved in bringing a servant to Examining Courts and then, possibly to the General Court in Williamsburg, would have been considerable. This would have been particularly acute if the crime had been committed during peak seasons of agricultural production. Moreover, unlike the case of African slaves, owners who lost their convict servants due to legal punishment did not stand to receive any compensation for their loss. Rather than running the risk of losing their source of labor, owners may have preferred to handle matters on their own. The owner could administer punishment by depriving the servant of food, clothing, or passes to visit fellow convicts living nearby. Legal limitations may not have prevented the owner from administering this type of punishment. County courts, as shown in preceding chapters, were reluctant to accept the word of convicts concerning mistreatment at the hands of their owners. Consequently, it is far from certain whether or not convict servants were responsible for a substantial amount of crime in Virginia. However, the present evidence points to the fact they were not in fact more prone to criminal behavior than other Virginians. Prejudices held against convict servants because of their origins, the promulgation of their criminal behavior by Virginia's newspapers, and the social structure of the society led the Virginia gentry to believe otherwise.¹⁸⁷

¹⁸⁶ For a few examples of positive statements concerning the convict trade see Morgan, "English and American Attitudes," 426-427.

¹⁸⁷ Robert McColley, *Slavery and Jeffersonian Virginia* (Chicago: University of Illinois Press, 1973), 64-65.

Chapter 5:
“ready to bear arms in exchange for freedom”¹⁸⁸:
Convict Servants
in the Era of the American Revolution

The work of historians over the past several decades has served to shed greater light regarding the impact the American Revolution had on slaves and bound servants. Benjamin Quarles seminal work *The Negro in the American Revolution* (1961) provided insight regarding the total numbers of African-Americans that served in the British and Patriot forces as well as their opportunities and experiences. Quarles contended that the loyalty of African-Americans was determined by which side offered the best opportunity for liberty.¹⁸⁹ Gary B. Nash expounded on Quarles in several works highlighting the alacrity with which African-Americans responded to the opportunities provided by the Revolutionary movement.¹⁹⁰ More recently, Woody Holton’s *Forced Founders* (1999) argued that the American Revolution not only provided Virginia slaves with an opportunity to improve their status, but helped propel Virginia into war with Great Britain. While African slaves have received substantial attention most scholars have neglected the role that British convict servants played in, or the opportunities provided to them by, the Revolution. It has only been in the past decade that convict servants have received even limited attention on this subject. Typically this has involved no more than a couple of paragraphs of information regarding convict servants in the American Revolution.¹⁹¹

¹⁸⁸ Benjamin Quarles, *The Negro in the American Revolution* (Chapel Hill: University of North Carolina Press, 1961), 51.

¹⁸⁹ *Ibid.*, 14-24, 57-65.

¹⁹⁰ For examples see Gary B. Nash, *The Forgotten Fifth: African-Americans in the Age of Revolution* (Cambridge: Harvard University Press, 2006), 5-20 and Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Viking Press, 2005), 150-166.

¹⁹¹ For examples see Catherine B. Cox, *A Proper Sense of Honor: Service and Sacrifice in George Washington’s Army* (Chapel Hill: University of North Carolina Press, 2004), 9-20; Woody Holton: *Forced Founders: Indians, Debtors, and Slaves and the Making of the American Revolution in Virginia* (Chapel Hill: Published for the Institute

This neglect has occurred despite the fact that convict servants were known to have served in several other eighteenth-century conflicts.¹⁹²

The primary focus of this chapter will be on the opportunities provided to convict servants in Virginia by the American Revolution. However, the nature of military operations and recruiting makes it necessary at points to expand the discussion to include areas outside of Virginia. Given the similarities, Maryland will receive particular attention. In addition, since the state militias served as the foundation for the Continental Army, the latter will be incorporated into the discussion as well.

Tensions between Virginia planters and Royal Governor Lord Dunmore during the summer of 1775 provided the first opportunity for convict servants to seek to improve their circumstances. Fearful of Virginia rebels seizing the colony's supply of weapons Lord Dunmore ordered sailors from the *HMS Magdalen* to remove them from the powder magazine in Williamsburg, Virginia on May 12, 1775. Nearly a month later, as tensions escalated, Dunmore fled the capital seeking refuge on the *HMS Fowey*. Many Virginia leaders feared that Dunmore was planning to arm an invasion force to regain control of the colony. They were not far off the mark as Dunmore began engaging Patriot forces by September of 1775. Flushed with his success at the Battle of Kemp's Landing, Dunmore proclaimed his intention to emancipate and arm slaves for use against Virginians.¹⁹³

In *Forced Founders*, Historian Woody Holton posited the idea that heightened fears of

of Early American History by the University of North Carolina Press, 1999), 150-160; Michael Stephenson, *Patriot Battles: How the War of Independence Was Fought* (New York: HarperCollins, 2007), 25-27.

¹⁹² A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the American Colonies, 1718-1788* (Oxford: Clarendon Press, 1987), 153. Ekirch identifies that convict servants served in a campaign against Cartagena in 1741 as well as serving during the French and Indian War. Even Gordon Wood's Pulitzer Prize winning work, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991) fails to mention convict servants in more than a single sentence, see page 51.

¹⁹³ John E. Selby, *The Revolution in Virginia, 1775-1783* (Williamsburg: the Colonial Williamsburg Foundation, 1988), 41-44;

slave revolts, combined with Dunmore's threat to emancipate slaves, served to accelerate Virginia's path to independence.¹⁹⁴ The fact that Virginians were angered by Dunmore's actions is visible in the writings of several Virginians. The *Virginia Gazette* published several salacious references linking Dunmore with slaves.¹⁹⁵ In a letter written by George Washington to Joseph Reed just a few months after Dunmore's Proclamation Washington stated that "I do not think anything less than the life or liberty, will free the colony from the effects of Lord Dunmore's Resentment and Villainies."¹⁹⁶ Similarly, Robert Nicholas Carter's commented that "the person of no man in this colony is safe, when marked out as the object of their [slaves] vengeance."¹⁹⁷ This fear is further evidenced in Thomas Jefferson's initial draft of the Declaration of Independence. Jefferson accused King George III of "exciting those very people to rise in arms among us, and to purchase that liberty of which he deprived them, by murdering the people upon whom he also has obtruded them."¹⁹⁸

One of the more startling examples of the early difficulties between Dunmore and Virginians provided by Holton is that of a fifteen year old runaway slave girl. Punished by her master, the slave girl fled for the governor's mansion in Williamsburg. Her attempt proved unsuccessful because she arrived in Williamsburg after Dunmore had fled the capital for the safe confines of the HMS Fowey.¹⁹⁹ Holton sees significance in two key points. First, the unnamed slave girl attempted to runaway in February 1775, nine months before Dunmore officially

¹⁹⁴ Holton, *Forced Founders*, 150-160.

¹⁹⁵ Holton, *Forced Founders*, 151-152.

¹⁹⁶ Philander D. Chase, and Frank E. Grizzard Jr., David R. Hoth, and Edward G. Lengel, eds. *The Papers of George Washington, Revolutionary Series, 1775-1783*, Vol. 3 (Charlottesville: University of Virginia Press, 1985-2008), 23.

¹⁹⁷ Julian P. Boyd, ed. *The Papers of Thomas Jefferson, 1760-1776*, Vol. 1 (Princeton: Princeton University Press, 1950-1951), 257; for further examples of the anger Virginians felt towards Dunmore over the emancipation of slaves see Holton, *Forced Founders*, 149-152; Quarles, *Negro in the American Revolution*, 9-23; and *Dixon and Hunter's Virginia Gazette*, Nov. 5, 1775.

¹⁹⁸ David Armitage, *The Declaration of Independence: A Global History* (Cambridge, Mass.: Harvard University Press, 2007), 57.

¹⁹⁹ Holton, *Forced Founders*, 154-155.

delivered his Emancipation Proclamation. The second was her choice to seek refuge at a “building that until recently had symbolized the enforcement, not the evasion, of white rule.”²⁰⁰

The young slave girl, like many other runaway slaves in 1775, was returned to her master.

Dunmore’s Emancipation Proclamation was not intended as a humanitarian gesture, but rather as a pragmatic military consideration. Only those fit to assist the military were allowed to join the British. In the end, the total number of former slaves serving in Dunmore’s regiment was roughly two hundred. Despite the limited numbers accepted, Dunmore’s actions clearly had both symbolic and real meaning to slaves.²⁰¹

It is possible that the import of these events carried over into other areas of the colonies labor force. Dunmore’s proclamation declared that “all indented Servants, Negroes, or others (appertaining to rebels) free that are able and willing to bear arms.”²⁰² Convict servitude was a form of “indented” servitude. Beside that convicts would have been covered by “others.”²⁰³

There is ample evidence to argue that convict servants also saw opportunity in the turmoil between Great Britain and the colonies. Numerous runaway advertisements in the *Virginia Gazette* express fear that servants, who otherwise might not have run away, were enticed by the British enclave at Norfolk. Convict George Newton, a new arrival to the colony of Virginia in the Spring of 1775, was apparently previously employed in a London customs house. Newton seems to have had a rough go of it in Virginia. At the time of his May 20th runaway attempt he was described as having a head wound and several scars on his arm. Newton took off with a variety of his master’s goods. He also departed with a slave named George (a skilled

²⁰⁰ Ibid, 155.

²⁰¹ Selby, *Revolution in Virginia*, 66-67; Holton, *Forced Founders*, 154-163

²⁰² Selby, *Revolution in Virginia*, 66.

²⁰³ Holton, 162.

woodworker) and possibly a slave named Tim from a neighboring plantation. Not surprisingly, Newton's owner suspected that the three men were moving in the direction of Dunmore's forces as he stated that three men would probably "endeavor getting on board the man of war."²⁰⁴

Charles White and James Leighton were convicts purchased to work at the Marlborough Iron works in Frederick County. Both men decided to steal away on November 9th, 1775. Joining the two convicts was a slave named Will. The inclusion of Will in this venture was an interesting choice. Will's skin complexion would have drawn attention at most periods of Colonial Virginia History, but more so at this time of heightened tension in Virginia. Furthering this problem of being readily identified as a slave was the fact that Will was wearing an iron collar (with the horns cut off). Perhaps the decision of the two convict servant to include the slave was simply based around the fact that Will, known to be fond of alcohol, would be an amiable partner on the trip. More likely though is that they shared the same attitudes and seized the same opportunity. Will was known "to say some atrocious things in respect to the dispute between Great Britain and the colonies."²⁰⁵

Richmond County convict William Wells was also a new arrival to the colony of Virginia in the Spring of 1775. Based on his owner's description of him, Wells might have made a good companion to the previously mentioned slave Will. Wells was deemed to be "very saucy, and fond of liquor."²⁰⁶ Unlike the previous two examples, Wells chose to go it alone in his runaway attempt. Wells first attempted to pass himself off as a sailor at Hobb's Hole, but failing at this he left with two sailors intent on making their way to Norfolk (once again into British lines). Not all

²⁰⁴ *Pinkney's Virginia Gazette*, June 1, 1775.

²⁰⁵ *Ibid*, Nov. 23, 1775.

²⁰⁶ *Dixon and Hunter's Virginia Gazette*, Dec. 10, 1775; These are just a few examples of convicts who may have been headed to British lines. For other examples, see *Purdie's Virginia Gazette*, April 21st, 1775. Convicts William Pierce and Ralph Emmanuel left Dumfries, Virginia. Their owner assumed that they would try to pass for sailors.

convicts intended to go directly into military service, but used the conflict between Great Britain and the colonies to assist in their attempt for freedom. Convict servant John Williams used his rudimentary knowledge of military drill as a means of cover to escape capture.²⁰⁷ David Hinds and George Dormon were expected by their owner to attempt to pass as soldiers in order to successfully escape the bonds of servitude.²⁰⁸

The total number of runaway convict servant further demonstrates that convict servants used the turmoil of the period to their advantage. Virginia experienced a dramatic increase in the number of runaway convicts from 1773 through 1775. The various editions of the *Virginia Gazette* published a total of forty-nine advertisements for runaway convict servants during this period. This total easily surpasses that of any other three year time frame in the eighteenth-century. The number peaked at nineteen in 1773, dipped slightly in 1774, and then rose to seventeen in 1775. Obviously, the comparison of this three year period to earlier periods has its flaws. The *Virginia Gazette* did not start publishing until 1736. Thereafter, the sporadic printing of the various newspapers of the same name, and the fact that many editions are missing, provides limited data through the mid-1760's. Comparing 1773-1775 still represents the most intense period of attempted runaways by convict servants. Moreover, the number of convict servants choosing to runaway may have actually been higher than reported during 1775. As seen in the earlier examples of George Newton, Charles White, James Leighton, and William Wells many convicts were attempting to head directly to British lines in the Tidewater area of Virginia. It is reasonable to assume that other convicts were attempting to do the same and that their owners, deeming the return of their property from British lines hopeless, may have chosen not to add to their losses by paying for an advertisement.

²⁰⁷ *Purdie's Virginia Gazette*, August 4th, 1775.

²⁰⁸ *Purdie's Virginia Gazette*, July 25, 1777

In all likelihood the total number of convict servants who made it to Dunmore's lines was significantly smaller than that of slaves. The majority of Tidewater planters preferred slaves over convict servants. Thus, slaves would have had greater capability of making it to Dunmore's force. In addition, some of the convicts employed by Dunmore were new arrivals immediately impressed into service.²⁰⁹ However, as seen in the runaway advertisements Dunmore's Proclamation presented both symbolic and real meaning not only to slaves, but to convict servants as well.

Lord Dunmore's Emancipation Proclamation was not the only opportunity in 1775 for convict servants to alter their status. Dunmore hatched an additional plan that called for an alliance between French settlers and Native American tribes from the Ohio River Valley. The French and Native American forces would push east through the frontier area of Virginia and eventually converge with Dunmore's forces at Alexandria. The expectation was that the two groups would be assisted in settled areas by both indentured servants and convict servants. The movement of troops through the western part of the state would have placed them right in the path of an area possessing a significant number of convict servants. As William Cowley explained to George Washington, Dunmore's liason John Connolly was "going to put into execution that is in regard to convicts and indentured servants to set them at their liberty and to give them land to join him."²¹⁰ This may have included some convict servants from Fincastle County. Richard Heill was said to have been telling slaves and servants in the county that if they

²⁰⁹ *Dixon's Virginia Gazette*, Dec.9, 1775.

²¹⁰ Chase, *Papers of George Washington, Revolutionary Series* Vol.3, 42-45, 218;see also Chase, *Papers of George Washington, Revolutionary Series*, Vol. 2, 68.

cooperated with Dunmore's plan they "would get their freedom in a month."²¹¹ The plan never fully materialized as Connolly was captured and confessed the details of the plot.²¹²

Convict servants outside of Virginia were also presented with the opportunity to serve Great Britain. British officer Thomas Gage enlisted "a group of Tories, blacks, and Scottish convicts"²¹³ to serve with him in New England during the latter part of 1775. While specific numbers were not given, convicts more than likely comprised only a small percentage of these units. Unless the convicts employed by Gage were fresh transports from prison he would have had limited numbers to draw from in Massachusetts. New England received far fewer convict servants in comparison to areas such as Pennsylvania, Maryland, and Virginia.²¹⁴ Historian Gary B. Nash has commented that some slaves "were quick to seize the opportunities for securing their freedom that emerged from a society in rebellion."²¹⁵ The various attempts by convict servants to flee from their masters and serve in the British army throughout 1775 demonstrate that the same can be said of convict servants during this period.

The decision of British officials to employ convict servants in the army elicited a strong response from Virginian's. John Leacock's play *The Fall of British Tyranny*, written in 1776, provides a hint of this resentment. In a discussion with "Lord Kidnapper" (Lord Dunmore), the boatswain complains that the navy does not need to utilize slaves because they already have low class convict servants on board. The ship's cook further complains that he does not have enough

²¹¹ Michael A. McDonnell, "Class War?: Class Struggles During the American Revolution in Virginia," *William and Mary Quarterly* 63 (April 2006), 310-325.

²¹² Holton, *Forced Founders*, 162-163; John Leacock, *The Fall of British Tyranny, or American Liberty Triumphant*, on microfilm at the State Library of Virginia, Fiche 131, Evans 14825 ; for further references to this plot see also *Purdie's Virginia Gazette*, Dec. 22, 1775 and *Dixon and Hunter's Virginia Gazette*, Feb. 17, 1776 ;For references to convict servants being more prevalent in the frontier regions of Virginia see Richard B. Morris, *Government and Labor in Early America* (New York: Octagon Books, 1975), .pages 320-340. If the number of runaways from a specific area is indicative of the convict population in an area then Augusta County had a large number of convicts by 1775, see chapter 1.

²¹³ *Pinkney's Virginia Gazette*, October, 26, 1775.

²¹⁴ Cox, *A Proper Sense of Honor*, 10-13; see also Ekirch, *Bound for America*, 112-113.

²¹⁵ Nash, Gary B. *Race and Revolution*, (Madison, Wisconsin: Madison House, 1990), 58.

food on board for everyone and that he “will throw up his commission before I’ll stand cook for a parcel of scape gallow, convict tory dogs, and run away negroes.”²¹⁶ The play, written for an American audience, highlights Dunmore’s villainy in pushing for the incorporation of these groups into the military. In addition, the lack of food offered to the convicts and negroes portrays a commonly discussed aspect of Virginia’s planters that those who ran to Dunmore’s lines would not be treated fairly.²¹⁷ However, the line of the play that may have resonated most with American audiences was Dunmore’s comment to his chaplain that his decision to use these forces “is making dog eat dog, thief catch thief, the servant against his master.”²¹⁸

Virginian’s were also made aware of General Thomas Gage’s use of convicts in 1775. In regard to the Gage’s enlistment of convicts the editor of the *Virginia Gazette* pondered “Whether a regiment of such beings can be called loyal sensible Americans the world can judge.”²¹⁹ The fact that the editor chose to mention this practice reveals that Gage’s arming of not only blacks, but convict servants, resonated with the reading audience in Virginian. Printed less than a month before Dunmore’s Proclamation, it seems that Virginians were fearful of both groups being employed against them. This point is further emphasized by the editors closing comment that similar regiments were being raised in other colonies.²²⁰ This is not to suggest that the British decision to arm convict servants engendered the same emotions from Virginians as did the decision to arm slaves. Virginians responded to the British arming of slaves with both greater frequency and vitriol than they did regarding that of convict servants. The explanation for this reaction rests largely with the fact that slaves overwhelmingly outnumbered convict servants.

The slave population of Virginia may have numbered as high as 250,000 by 1775 while the total

²¹⁶ Leacock, *Fall of British Tyranny*, 42-49.

²¹⁷ Quarles, *Negro in the Revolution*, 20-25.

²¹⁸ Leacock, *Fall of British Tyranny*, 47-49.

²¹⁹ *Pinkney’s Virginia Gazette*, Oct. 26, 1775

²²⁰ *Ibid.*

number of convict servants imported to the colony throughout the entire eighteenth-century more than likely did not exceed 20,000.²²¹ Moreover, the largest concentration of slaves was found in the region close to Dunmore's lines.²²² Furthermore, the diatribes against Dunmore's usage of convict servants served to unite colonists against the crown as it provided additional proof of Dunmore's iniquities.²²³

Since convict servants were of use to the British, Americans began to ask if they could be useful to the patriot cause. Colonial officials such as Maryland's Thomas Johnson recognized that convicts could add to the number of enlistments in the state militias.²²⁴ This was of particular importance by 1776. Recruiters throughout the thirteen states initially had little difficulty enlisting soldiers in the aftermath of the battles of Lexington and Concord. Recruiters such as Hugh Stephenson and Daniel Morgan found themselves able to fill their enlistment rolls quickly with what they considered to be quality men. However, by the following year the initial surge of patriotism was gone and fewer men were willing to serve in the Patriot effort. The problem of manpower was further exacerbated by restrictions the Continental Congress placed on enlistments. Congress, seeking seasoned soldiers, started to require enlistment terms of three years or more. The increased length of service, coupled with the declining enthusiasm among the populace, meant that states would necessarily have to lower their standards regarding recruits.²²⁵

Recruiters increasingly skirted the rules in order to meet their enlistment quotas.

Unscrupulous recruiters, paid a bounty for each enlistment, signing any willing individual regardless of their physical infirmities. Some recruiters falsified the names of enlistees, collected

²²¹ Frey, Sylvia, "Between Slavery and Freedom: Virginia Blacks in the American Revolution," *The Journal of Southern History*, Vol. 49 (August, 1983), 142; Ekirch, *Bound for America*, 118.

²²² Frey, "Between Slavery and Freedom," 142.

²²³ Holton, *Forced Founders*, 150-160; Quarles, *Negro in the Revolution*, 14; Selby, *Revolution in Virginia*,

²²⁴ *Papers of Captain Charles Ridgeley*, Maryland Historical Society MS 692.1.

²²⁵ Cox, *A Proper Sense of Honor*, 10-13;

their fee, and then listed the recruit as a deserter.²²⁶ Other recruiters simply turned a blind eye to the status of their recruit. The master of Virginia convict servant Charles Sherry acknowledged this practice in a runaway advertisement by stating that “I desire that no recruiting officer may enlist the above servant man.”²²⁷ Recruiters apparently cared nothing about Virginia convict servant Charles White’s background when he departed with a “recruiting party in the neighborhood.”²²⁸ In 1777 recruitment was becoming so difficult in Virginia that the General Assembly passed legislation allowing servants skilled in ironworking or arms manufacture to enlist.²²⁹

The fact that recruiting agents were relaxing their requirements for enlistees meant that some of the lesser sort found their way into the Continental Army. While the Continental Congress never formally condoned the participation of convict servants they were certainly aware that convicts were serving in the Continental Army as early as 1777. George Washington apprised the Continental Army of this fact in a letter dated May 13th, 1777.²³⁰ The Congress also acknowledged the fact in a 1778 resolution preventing prisoners of war and deserters from the British army from serving in the Continental Army. The original draft of the resolution included all convicts “except such as have served out their times in the Continental Army, or such as have families or considerable property in any of the States.”²³¹ However, this clause was stricken from

²²⁶ Stephenson, *Patriot Battles*, 27.

²²⁷ *Purdie’s Virginia Gazette*, Feb. 28, 1777. This was the second attempt by Charles White to runaway and join the Patriot forces.

²²⁸ *Dixon’s Virginia Gazette*, Nov. 22, 1776.

²²⁹ William Waller Hening, *Statutes at large*, Vol. 9, May, 1777, pages 275-276.

²³⁰ Worthington C. Ford, ed. *Journals of the Continental Congress, 1774-1789*, (Washington, D.C., 1904-37), letter dated May 13, 1777 @ American Memory, <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan. 15, 2010).

²³¹ Ford, *Journals of the Continental Congress*, Feb. 26, 1778 @ American Memory, <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan. 15, 2010).

the final draft. Confronting manpower shortages, and unable to control recruiters, Congress essentially gave their tacit consent to the enlistment of convict servants.²³²

The enlistment of convict servants coincided with a relaxation on recruitment policies for African-Americans. Towns in Massachusetts started to enlist both free blacks and slaves. Although southern states were reluctant to arm slaves, Virginia relaxed its ban and started to allow free blacks to serve in the army. By the end of the war over 5,000 blacks had served in some capacity in the Patriot forces.²³³

It is difficult to determine the total number of convict servants that may have served in either the state militias or the Continental Army. Most enlistment rolls provide scant background information concerning their recruits. In addition, as noted previously many recruiters attempted to conceal the identity of convict servants. However, it appears that Maryland relied more heavily on convict enlistments than other states. Nearly half of the recruits for one Maryland unit were foreign born. Several of these recruits may have been convict servants.²³⁴ While a study of one unit may not be representative of the whole militia, Maryland recruiters had no problem compelling convict servants to enlist. Moreover, in 1782 Maryland provided a considerable bounty to those who enlisted. This proved particularly attractive to poorer citizens including some convict servants recently released from their servitude.²³⁵

Virginia appears to have been less reliant on convict servants to fill their enlistment rolls. A study of Virginia units discovered that over 80% of enlistees were born and raised in

²³² Ibid.; See also Quarles, *Negro in the American Revolution*, 60.

²³³ Cox, *A Proper Sense of Honor*, 10-13; Quarles, *Negro in the American Revolution*, 53-58;

²³⁴ Cox, *Proper Sense of Honor*, 14

²³⁵ Stiverson, E. Alfred Jones,

Virginia.²³⁶ This may be partly explained by Virginia's decision not to enlist convict servants in the earliest stages of the conflict. Thus Virginia may have lost out on the opportunity to recruit a considerable number of convict servants. Non-importation agreements, put in place by 1774, choked off the flow of convicts into Virginia. Surry County, Virginia implemented their own ban in July of 1774 based on the belief that "the population of the colony with freemen and other useful manufacturers is greatly obstructed by the importation of slaves and convict servants."²³⁷ Thus the decision by Virginia recruiters to wait until 1776 to start enlisting convicts meant that they were doing so right at the time that the supply of convict servants was dwindling. This is demonstrated by the fact that the number of runaway convict servants listed in the *Virginia Gazette* dropped significantly in the period after 1775. Only twelve advertisements for runaway convict were found for the period of 1776-1778.

The need for labor may have also lessened the number of Virginia convicts enlisted into the state militias and in the Continental Army. The need to maintain their labor supply would have been particularly acute for those less affluent farmers who tended to purchase convicts. It was only when it became apparent that convict servants would run away to the British forces that some Virginian's had a change of heart. Rather than lose their labor without compensation planters started to use convict servants for their own benefit. Convict servants were sent as substitutes to exempt planters from military service. Some planters auctioned off their servants to fill the place of other individuals who wanted to be exempt from military service.²³⁸

²³⁶ Cox, *A Proper Sense of Honor*, 14.

²³⁷ *Purdie and Dixon's Virginia Gazette*, July 21, 1774; See also *Dixon's Virginia Gazette*, Sept. 16, 1775 for an example of a ship laden with convicts being forced to leave Virginia without unloading their cargo.

²³⁸ Stephenson, *Patriot Battles*, 23-27; see also Cox, *Proper Sense of Honor*, 18-30; and Selby, *Revolution in Virginia*, 132-136, 209-214

The initial indecisiveness of many state militias and the Continental Congress on setting clear criteria for the recruitment of convict servants further rested on two additional considerations. As demonstrated in the preceding chapters convict servants were held in contempt by the overwhelming number of colonists who did not own them. This contempt was still apparent at the onset of the Revolution. The editor of the *Virginia Gazette* echoed this scorn as he reminded readers in 1776 that, among others, “the refuse of English goals”²³⁹ was being recruited to wage war against the colonists. Colonial citizens were naturally reluctant to countenance the same practice. George Washington was openly critical of the decision of some to enlist convicted felons in the army. While camped in Morristown, New Jersey in the Spring of 1777, Washington communicated to the Continental Congress his concerns about the presence of convict servants in some of the Virginia regiments. With desertion rates already high, Washington contended that the desertion rate would be even higher among those regiments currently on the march to Pennsylvania. Washington’s assertion rested on the belief that a significant number of these men had been purchased from their masters by recruiting agents desperately hoping to fill their quotas. Washington believed these men were likely to desert to the ranks of the British forces and take their muskets with them (an important consideration because of the inability of the Continental Congress to adequately supply their army). As a result, Washington suggested that congress halt the enlistment of convict servants into the army.²⁴⁰

Even in Maryland, the state most willing to enlist convict servants, there was a prevailing belief among some that convict servants made for unreliable soldiers. Maryland officer William

²³⁹ *Dixon and Hunter’s Virginia Gazette*, Feb. 17, 1776.

²⁴⁰ Worthington C. Ford, ed. *Journals of the Continental Congress, 1774-1789*, (Washington, D.C., 1904-37), May 13th, 1777 @ American Memory, <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan. 15, 2010).

Smallwood believed that convict servants were unreliable soldiers. Dealing with frequent desertions, Smallwood felt that he had struck upon a solution to this problem. Four of his soldiers were scheduled to be executed for desertion. Smallwood carried out the process almost to the end when the soldiers, to their relief, were given a reprieve. Smallwood claimed that this “struck such a damp to desertion that scarce an old soldier has since deserted, but now and then a new levy out of the convicts recruited in Maryland.”²⁴¹

Both Washington and Smallwood were familiar with convict servants.²⁴² However, others further removed from large numbers of convicts still voiced their objections. Perhaps the most vociferous opponent of employing transported felons for military service was John Adams. Adams diatribe against convict servants was a response to British General William Howe’s encouragement of convict servants to desert the Continental Army. Adams believed that convicts would respond to this offer because “They have no tie to this country. They have no principles.”²⁴³ Adams compared this practice to that of the Roman General Sylla who had employed bribery to convince the soldiers of his Roman rivals to desert. Perhaps deservedly so given the performance of General Howe during the war Adams quipped that “Howe is no Sylla, but he is manifestly aping two of Syllas tricks, holding out proposals of terms and bribing soldiers to desert.”²⁴⁴

The opinion of individuals like Adams and Washington regarding the unreliability of convict servants was confirmed in several instances. Thomas Cox was a relative newcomer to America at the onset of the war. He had been convicted of forgery in 1773 and sentenced to

²⁴¹ Chase, *Papers of George Washington, Revolutionary Series*, Vol.15, 52.

²⁴² Washington not only employed convict servants, but may have been tutored by a convict. For a reference to this see Ekirch, *Bound for America*, 144-145.

²⁴³ Ibid.

²⁴⁴ Ford, *Journals of the Continental Congress*, May 24, 1777 (Letter from John Adams to Nathaniel Greene)@American Memory <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan.15, 2010).

transportation to America. Like many convicts, Cox's stay in America was short lived as he made his way back to England shortly after arrival. It is unclear whether or not Cox, upon his return to England, was successful in concealing his identity as a fugitive convict. Regardless of the situation, Cox found himself engaged in business in Maryland at the onset of the war. For Cox, being in Baltimore was clearly the case of being in the wrong place at the wrong time. Maryland seems to have been one area that had little remorse about enlisting convicts into the Continental Army. It is not surprising then that Cox found himself convinced by a Captain Grice to serve in the Continental Army. As a result, Cox enlisted with fellow associate Joseph Thompson. Both men may have felt as if they had no choice in the matter as Thompson would later point to intimidation tactics used by recruiters such as tarring and feathering. Although both men enlisted they took the first opportunity they had to desert from the army and eventually returned to England.²⁴⁵

William Harding, convicted of highway robbery, was sentenced to seven years service in America. With the outbreak of hostilities in America, Harding's owner compelled him to enlist in the Continental Army. Harding's loyalty to the Continental Army seems to have been tenuous at best because he quickly deserted the army. His desertion was short lived as Harding was captured and kept under guard during the Battle of Brandywine Creek. Facing the possibility of death for his desertion, Harding had a change of heart and took an oath of allegiance to serve in the Continental Army. However, Harding seems to have confirmed the fears of John Adams. Hearing of Howe's offer of a pardon Harding ran away and joined the British forces in Philadelphia.²⁴⁶

²⁴⁵E. Alfred Jones, "*English Convicts in the American Army in the War of Independence*," New Jersey Historical Society, Vol.7, No. 4 (August, 1922), 287-288.

²⁴⁶ *Ibid.*, 288-289.

Not all convict servants were welcomed by the British. Upon his return to Great Britain convict servant William Wheeler claimed to British authorities that he was twice drafted into the Continental Army against his will. This plea did little to help out Wheeler's cause as the British courts sentenced him to death for failing to complete his term of service. Wheeler's case may have had unknown unique circumstances that compelled the courts to deliver such a harsh sentence against him.²⁴⁷

Gunsmiths were sorely needed throughout the war. Historian E. Alfred Jones identified three convicts with skills as gunsmiths who were employed as gunsmiths in the Continental Army. William Tonks, John Ward, and Thomas Allen were each shipped to the colonies in 1774. Each deserted and sought refuge with Governor Tryon of New York. Tryon, a Tory, sent the men back to England where it seems they received no harm upon their return. The story of these three men demonstrates that the punishment of Wheeler for returning to Great Britain may have in fact been an anomaly.

American General Nathaniel Greene incorrectly assumed that a group of convict servants under his command were disloyal. At one point running short on supplies, Greene sent out several small parties to forage from the surrounding countryside. One group composed of several Virginia convict servants was sent out on February 15th, 1778 to collect cattle. Greene became concerned when they had not returned by February 17th. Individuals from Springfield, Pa. reported seeing a group of soldiers fitting the description of this unit, with no officer in charge, moving through the town late in the evening of the 15th. This led Greene to conjecture that these men had taken their officer prisoner and made out into enemy lines. This was a reasonable assumption according to Greene not only because of the reports from Springfield, but because

²⁴⁷ Ibid., 288-291.

the majority of this unit was comprised of Virginia convicts. Greene's fear was shown to be unfounded. Shortly after Greene dashed off his letter to Washington addressing his concerns about these absent soldiers, they all returned back with apparently no problems resulting from their foraging.²⁴⁸

Virginia convict servant Edward Miller proved to be a reliable soldier for the Continental Army. The basis for this assessment rests with the testimony of Daniel Maupin. In 1832 Congress passed legislation providing for pensions to veterans of the Continental Army. In that same year, Maupin petitioned the Albemarle County, Virginia courts to receive this pension. As part of his claim, Maupin stated that he first volunteered for the army in September of 1776. However, family pressure seems to have weighed greater on Daniel Maupin though because his parents disapproved of his decision. As a result, Maupin hired a convict servant Edward Miller as a substitute for him. According to Maupin, Miller had at that point served over three years of his 7 year sentence and seemed to prefer life as a soldier to that of a servant. Maupin claimed that Miller "served the three years, made a good soldier and returned home."²⁴⁹ Unfortunately, there is only one additional reference to convict servants in the Southern Pension records and this yields no information regarding their service. Consequently, it is difficult to render a complete evaluation regarding the service record of convict servants. However, there are several considerations that influenced the reliability of military service provided by convict servants.

The strongest incentive for convict servants would have been their desire for liberty. In the first year of the war Great Britain was the only option for convict servants and many responded to this opportunity. Americans were forced to reconsider their policies in light of the

²⁴⁸ Richard K. Showman, ed. *Papers of Nathanael Greene, Jan. 1777-Oct. 1778* (Chapel Hill: Published for the Rhode Island Historical Society by the University of North Carolina Press, 1980), 288-290.

²⁴⁹ *Southern Campaign Revolutionary War Pension Statements and Rosters*, <http://www.southerncampaign.org/pen/> (Accessed on Jan.15,2010), ssearch terms Daniel Maupin, Edward Miller, or convicts will pull up this information.

events of 1775. While some Americans were forced to confront the dilemma between proclaiming their own freedom while curtailing the freedom of others this played only a minor role in the decision to enlist convict servants. Both the state governments and the Continental begrudgingly started to enlist convict servants over the course of the war. That they chose to do so was a result of the fact that convict servants forced the hand of American officials. Convict services could either assist the war effort of Great Britain or fill the enlistment quotas of the American forces.

Convict servants may have in fact been unreliable soldiers in many cases. The length of time that a convict servant had been in America, and the treatment they had received, may have influenced the extent of their loyalty to the patriot war effort. As one writer observed convicts who had been in Virginia for seven to fourteen years were “not the children of Great Britain.”²⁵⁰ Edward Miller’s loyal service in the Continental Army may have been predicated on the fact that he had been in Virginia for over three years. It is also equally possible that he had no family to compel him to want to return to Great Britain. Regardless of the case, military service offered him the opportunity to complete the final years of servitude, if he lived through it, and pursue a new life.²⁵¹ Recent arrivals, and those who had strong familial bonds back home, may have been more inclined to support Great Britain. The earlier mentioned comments of John Adams demonstrate that he was aware of the bonds many convict servants had to their mother country.²⁵² The previously mentioned desertions by William Tonks, John Ward, and Thomas

²⁵⁰ *Rind’s Virginia Gazette*, June 1, 1769.

²⁵¹ *Southern Campaign Revolutionary War Pension Statements and Rosters*, <http://www.southerncampaign.org/pen/> (Accessed on Jan.15,2010), search terms Daniel Maupin, Edward Miller, or convicts will pull up this information.

²⁵² Ford, *Journals of the Continental Congress*, May 24, 1777 (Letter from John Adams to Nathaniel Greene)@American Memory <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan.15, 2010).

Allen support this argument.²⁵³ Each was a new arrival that quickly deserted from the Patriot Army.

The opportunity to improve their financial situation also helped to determine the loyalty of convict servants. Lord Dunmore's offer of land as well as liberty to convict servants reveals an understanding of the convict servant mindset. The realization of this fact led George Washington to recommend to Congress that if convicts had to be enlisted they must be granted full pay.²⁵⁴ Congress never formally acted on this, but some convicts would have received payment for their service. The convict servants referenced by Washington were substitutes for their owners and thus would not have received payment unless this was negotiated in advance with their master. However, others who ran away to enlist on their own would have received payments.²⁵⁵

The American victory at Yorktown and the signing of the Treaty of Paris nearly two years later brought an end to the war. Those convicts who survived combat were now free to pursue new opportunities. More than likely those convicts who served with Great Britain returned to Britain. Those convict servants who faithfully served in the American military would have been free to pursue a new life. This new life was more than likely marked by a high degree of geographic mobility. Convict servants more than likely chose to move westward where there was cheap land, a social structure that was not as stratified as in areas like Virginia and

²⁵³ Jones, "English Convicts in the American Army," 286-291; Cox, *A Proper Sense of Honor*, 24-33.

²⁵⁴ Worthington C. Ford, ed. *Journals of the Continental Congress, 1774-1789*, (Washington, D.C., 1904-37), May 13th, 1777 @ American Memory, <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan. 15, 2010).

²⁵⁵ Edward C. Papenfuse, Edward C. and Gregory A. Stiverson. "General Smallwood's Recruits: The Peacetime Career of the Revolutionary War Private, *William and Mary Quarterly*, Third Series, Vol. 30, No. 1, (Jan., 1973) 117-132.

Maryland, and where they could operate without individuals in the community knowing about their criminal past.²⁵⁶

The end of the war did not bring an immediate end to the importation of convict servants. A non-importation agreement in effect throughout America during the war had an additional consequence other than just hurting British merchants. The prisons of Great Britain were overflowing with criminals because of the inability to transport them. This fact, combined with a crime wave in England during the 1780's, convinced Great Britain to resume to their policy of transportation. Meanwhile the Continental Congress, preoccupied with managing the war effort, had not bothered to consider the matter of convict importation. As a result, merchant George Moore arrived in the port of Baltimore on Christmas Eve of 1783 offering to sell 143 convicts. Moore's arrival in the dead of winter, when the need for labor was low, made it difficult for him to immediately sell all of his convicts. Moore's second attempt to sell convict servants ended up in failure. Moore not only had to deal with an attempted rebellion by the convicts, but also found his ship banned from entering any port in The United States. He finally resorted to unloading his prisoners in British Honduras.²⁵⁷

The Continental Congress continued to receive reports of British attempts to unload convicts in America. John Hancock claimed that a ship laden with convicts had left Ireland and unloaded convicts in Massachusetts in August of 1787.²⁵⁸ Many of the reports show that Lord Dunmore had once again found his way into a dispute involving convict servants. After leaving

²⁵⁶ Stiverson, "Smallwood's Recruits," 131; Frederick Hall Schmidt, "*British Convict Servant Labor in Colonial Virginia*." (Ph.D. Dissertation, College of William and Mary, 1976), 281-284; Ekirch, *Bound for America*, 190-205.

²⁵⁷ Ekirch, "Great Britain's Secret Convict Trade to America, 1783-1784," *American Historical Review*, (Dec., 1984): 1285-1291.

²⁵⁸ Morris, *Government and Labor*, 327; see also, *Journals of the Continental Congress*, (Letter dated Sept.21, 1787) @American Memory <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan.15, 2010).

Virginia in 1776, Dunmore returned to England for a brief period awaiting a new assignment. His next assignment placed him as Governor of the Bahamas. There Dunmore continued to introduce slaves into the colony and took on a significant number of convict servants as well. Dunmore's solution to the oversupply of convicts was to once again unload them on the former colonists. The assistance of British General Consul proved invaluable in ascertaining the origins of these convicts and the person responsible for their importation. Confederation Secretary of Foreign Affairs John Jay reported that corroborating evidence was found to show that a British ship from New Providence, Bahamas had unloaded twenty-five Irish convicts in New York City. Congress further reported in 1788 that Lord Dunmore was responsible for initiating the transportation of convicts from New Providence to Maryland. Congress responded with a relatively mild rebuke to the British Secretary of Foreign Affairs, implying that Dunmore had acted on his own initiative rather than directly responding to orders from his superior.²⁵⁹

The number of convict servants imported during the period of 1776-1789 probably totaled no more than a thousand.²⁶⁰ However, the numerous complaints regarding the continued transportation of felons forced Congress to act. Congress responded by passing a resolution in September of 1788 recommending that the states pass legislation banning the importation of convicts. The states followed through on this recommendation. Virginia placed a ban on the importation of convicts by January of 1789. The law called for offenders to receive a three month prison sentence and to be levied a fine of fifty pounds for each person imported.²⁶¹ This

²⁵⁹ Ford, *Journals of the Continental Congress* (letter dated Sept.17, 1778), @American Memory <http://memory.loc.gov/ammem/amlaw/lwcite.html#jc> (Accessed on Jan.15, 2010); see references to Dunmore at same site Sept. 16, 1788.

²⁶⁰ Aaron S. Fogelman, "From Slaves, Convicts, and Servants to Free Passengers: The Transformation of Immigration in the Era of the American Revolution," *Journal of American History* 85 (June, 1988), 44.

²⁶¹ William Waller Hening, ed. *The Statutes at Large, Being a Collection of All the Laws of Virginia, From the First Session of the Legislature in the Year 1619*, May, 1777, Vol.9 (Charlottesville: University of Virginia Press, 1969, first published 1819-1823), 668-669.

enactment essentially marked the end of convict servitude in Virginia. By the early 1790's there would only be a handful of convict servants left in America. The trials and tribulations of British felons would later be shifted to Australia.