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JED MARTIN

# Convict Transportation to Newfoundland in 1789

Before the American War of Independence, convicts were regularly transported from the British Isles to the American colonies. The punishment was theoretically merciful (more merciful, that is, than hanging), and by selling the services of the convicts to settlers, the system was also theoretically cheap, useful and reformatory. In practice, convict transportation aroused the resentment of the colonies at being turned into receptacles for British problems. Benjamin Franklin never forgot the incautious explanation of a British official who stated that convicts were sent ‘*for the BETTER Peopling*’ of America. In 1751 he sarcastically proposed to return the compliment by exporting rattlesnakes to Britain, and in the late 1780’s, when the British were pressing the newly independent republic to settle its overseas debts, he proposed to send back consignments of felons, as an earnest of good faith and for the ‘*better Peopling*’ of ‘their promising new Colony of Botany Bay.’<sup>1</sup>

In the half-century before the American revolution, perhaps 30,000 felons were transported from England, 7,500 from Ireland and a trickle from Scotland. Virginia and Maryland were the major outlets and almost all transported felons were sent across the Atlantic. The system was a lottery: some convicts were little more than slaves, others bought their freedom or escaped. When the colonies rebelled in 1775, transportation necessarily ceased. As a temporary measure, in 1776 parliament authorised the detention on hulks in the river Thames of felons sentenced to transportation. This ‘temporary’ expedient dragged on while parliament and ministers sought about for alternatives.<sup>2</sup> Eventually, in 1786, the government decided to establish a prison colony at Botany Bay in New South Wales. The reasons behind this surprising decision have been a subject for much historical debate: the most likely hypothesis is that the government wished to develop an alternative trade

1 L. W. Labaree, ed., *The Papers of Benjamin Franklin* (New Haven, 1959-), Vol. IV, pp. 130-133, and Vol. XIII, pp. 240-242; letter to *Pennsylvania Gazette*, c.1787, in A. H. Smyth, ed., *The Writings of Benjamin Franklin* (New York, 1907), Vol. IX, pp. 628-630.

2 A. G. L. Shaw, *Convicts and Colonies* (London, 1966), pp. 21-57. In 1611 the governor of Virginia had welcomed the importation of felons reprieved from hanging as ‘a readie way to furnish us with men and not allways with the worst kind of men.’ Quoted by E. Williams, *Capitalism and Slavery* (Chapel Hill, 1944), p. 12. See also A. E. Smith, *Colonists in Bondage: white servitude and convict labor in America 1607-1776*. (Chapel Hill, 1947).

route to China in case the existing route through the East Indies was menaced by a prospective Franco-Dutch alliance.<sup>3</sup> The evidence is not conclusive, but it is only in recent years that Australian historians have even attempted to seek positive reasons for the establishment of the colony. Traditionally, most contented themselves with the simple statement that the loss of the American colonies had closed that outlet.<sup>4</sup> This explanation naively ignored the continued existence of British colonies in North America. In Quebec and the Atlantic colonies there was hard pioneer work to be done, and in the West Indies the plantation system was at the mercy of an unreliable and increasingly unpopular slave-trade.<sup>5</sup> Thus there were continuing opportunities to dispose of convicts along traditional lines. In fact it seems likely that convict transportation to North America, although interrupted by the War of Independence, continued at least until 1789. North's government had been urged by parliamentary critics in 1778 to send convicts to Quebec and Nova Scotia, and Pitt's government was rumoured to be considering British North America in June 1786 shortly before they chose Australia.<sup>6</sup> One critic of the Botany Bay scheme argued in favour of sending convicts to Newfoundland, where they could be employed as lumberers.<sup>7</sup> Although the British government sent 750 convicts to New South Wales in 1787, it was two years before news arrived of the expedition's arrival, and more shiploads of convicts be sent out. Meanwhile the London gaols filled up with a backlog of convicts awaiting transportation, and in December 1788 the Recorder of the City protested to the Home Secretary Lord Sydney, at the situation. According to a newspaper report, the Recorder was assured that two ships would be fitted up to take convicts to America before the end of March 1789. No immediate action could be promised as it was too late in the year 'for sending them to Quebec and Nova

3 The most convincing recent work is H. T. Fry, "'Cathay and the way thither:' the background to Botany Bay," *Historical Studies*, Vol. XIV (1969-71), pp. 497-510. Fry offered evidence for some of the hypotheses in K. M. Dallas, *Trading Posts or Penal Colonies* (Hobart, 1969). For an alternative and much criticised theory, see G. Blainey, *The Tyranny of Distance* (Melbourne, 1966 ed.). I have discussed the question in two forthcoming articles, 'The Alternatives to Botany Bay,' *University of Newcastle N.S.W. Historical Journal*, and 'A London Newspaper on the founding of Botany Bay,' *Journal of the Royal Australian Historical Society*.

4 E.g. M. Clark, *A Short History of Australia* (London, 1969 ed.), p. 9; R. M. Crawford, *Australia* (London, 1960 ed.), p. 32.

5 The growth of the French sugar islands, and the rupture with the American colonies increased the problems of the West Indian planters, Williams, *Capitalism and Slavery*, ch. VI. For suggestions that Irish convicts should be sent to the West Indies, see *Freeman's Journal* (Dublin), 15/17 May 1788, 6/9 June 1789.

6 Shaw, *Convicts*, pp. 43, 48.

7 'Might they not have been employed, with equal advantage and utility to the State, in hewing timber for the navy of Great-Britain, on the island of Newfoundland?' *A Short Review of the Political State of Great-Britain at the Commencement of the Year One Thousand Seven Hundred and Eighty-seven* (London 6th ed., 1787), p. 80.

Scotia.’<sup>8</sup> The same report also mentioned rumours ‘that there is an intention of sending some of the men to Newfoundland in the fleet next season.’<sup>9</sup>

The government in London, which had founded Botany Bay, was not the only authority responsible for sending convicts out of the British Isles. The Irish government in Dublin operated in an uneasy junior partnership. No Irish convicts were sent to New South Wales until 1791. Prior to the suspension of transportation to America, individual Irish counties had been responsible for the disposal of their own convicts. As a temporary war measure, the Irish parliament passed an act in 1778 to assemble all Irish convicts on hulks on the river Liffey.<sup>10</sup> When transportation revived in 1786, this centralisation was maintained. As a result, instead of a steady trickle of convicts going to America on a number of ships, Ireland would intermittently export whole shiploads of felons — a system which would naturally have a more painful impact on the receiving country. The Irish Act of 1786 — to which, as the Irish government later indignantly pointed out, the British ministers had allowed the king to assent to without objection — empowered the Lord-Lieutenant of Ireland to send convicts ‘to any of his Majesty’s plantations or settlements in America’ or to any other place outside Europe.<sup>11</sup>

Ireland’s new system of transportation did not work very smoothly. In May 1788 the Lord Mayor of Dublin chartered a ship called the *Charming Nancy* to carry convicts to destinations as far afield as Africa and Botany Bay.<sup>12</sup> At the last minute the unwilling emigrants rioted in the prison, and when they sailed on 19 May, many ‘had their legs, thighs, and hands tied up, where they had received wounds the preceding evening.’<sup>13</sup> Final reports were that they were destined for Nova Scotia, and that they would be escorted by a frigate: the previous convict ship from Dublin had been taken over by its inmates who had headed for France. By May 1788 several were reported to have drifted back to Dublin and to crime.<sup>14</sup> In fact the *Charming Nancy* seems to

8 *Times* (London) 5 December 1788. See also *Annual Register for 1788*, Chronicle, p. 223. E. O’Brien, *The Foundation of Australia* (London, 1937 ed.), p. 188, wrongly connects this with the two ships from Dublin. Sydney’s reported promise may be seen the background of the 1788 Regency Crisis: the attempt of the Prince of Wales to assume the Regency during his father’s illness made Pitt’s government insecure, since the Prince was known to prefer Fox. The City of London was a powerful political force, and Sydney may have felt the need to make any promise to keep its support. His successor, W. W. Grenville, insisted that no British (i.e. English and Scots) convicts had gone to the colonies since 1783. *Historical Manuscripts Commission, 13th Report: The Manuscripts of J. B. Fortescue Esq., preserved at Dropmore*, Vol. I, p. 548.

9 *Times*, 5 December 1788.

10 The Irish act was 17/18 Geo. III, c. 9.

11 26 Geo. III, c.24, clauses 66, 64. Cf. Fitzgibbon to Grenville, private, 2 December 1789, *Dropmore Papers*, Vol. I, pp. 546-8.

12 *Freeman’s Journal*, 10/13 May, 15/17 May, 17/20 May 1788.

13 *Ibid.*, 20/22 May 1788. For the riot, see also 17/20, 22/24 May 1788.

14 *Ibid.*, 22/24 May, 17/20 May, 15/17 May 1788.

have sailed alone. In mid-June 1788 her captain unloaded 140 convicts at New London, Connecticut, where the local citizens threatened to reward him with 'a suit of T — and F —'. Other convicts bribed the captain to put them off at Sandy Hook, New Jersey, and made their way back to Dublin.<sup>15</sup>

In the summer of 1789, the Irish government despatched two further shiploads of convicts. One ship was to turn up months later in the West Indies, but the official destination of the other, the 350 ton brig *Duke of Leinster*, remains a mystery. Not surprisingly, the convicts themselves were not privy to the secret. There had been reports before their departure that they were to go to New South Wales but the Inspector of Prisons had assured them this was not true: the voyage would cost the Irish government 'One Hundred Pounds a Man' and 'no more Convicts would be sent to Botany Bay.'<sup>16</sup> One convict thought some of them were to be landed in Newfoundland and some in Nova Scotia, another believed they were 'to be landed in some Part of the United States'<sup>17</sup> — but many of them were probably unaware that Nova Scotia was not part of the United States. A Dublin newspaper authoritatively reported that any idea of Irish transportation to Botany Bay was 'entirely given up' because of the cost. 'Nova Scotia and the back settlements of Canada, and New Brunswick, want inhabitants' and if the African slave trade were stopped, convicts could go to the West Indies.<sup>18</sup> Early in June 1789 the last consignments of convicts from country gaols were arriving in Dublin, while the *Duke of Leinster* was being fitted up as a prison ship. The Lord Mayor, who was also the shipping contractor, personally inspected it and ordered several barrels of damaged provisions to be thrown overboard.<sup>19</sup> On Saturday 13 June 127 convicts were taken down to the waterside in carts. 'They behaved in a riotous and abandoned manner.'<sup>20</sup> One cart overturned: tumbril-like it was lined with spikes and three of the convicts were cut as they fell. As the convicts were ferried out to ship, several jumped overboard. One was reported to have drowned, and two others were quickly arrested after boldly re-appearing in their old haunts. Incredibly enough, no attempt had been made to keep other boats away: one convict who got away was simply repeating an escape he had made from an earlier convict vessel, and confederates were waiting to pick him up.<sup>21</sup> The escapes were all the more re-

15 *Providence Journal* (Rhode Island), 12 July 1788; *Freeman's Journal*, 26/28 May 1789.

16 Examination of James Maguire at St. John's, Newfoundland, 22 July 1789, CO 194/38, fos. 91-94, Public Record Office (microfilm B-678, loaned by Public Archives of Canada).

17 *Ibid.*, Examination of Maguire, and evidence of Matthew Demsey.

18 *Freeman's Journal*, 6/9 June 1789.

19 *Ibid.*, 9/11 June, 11/13 June 1789.

20 *Ibid.*, 13/16 June 1789.

21 *Ibid.*, 13/16 June, 16/18 June 1789.

markable since the convicts had gone on board ship in irons, and were shackled in pairs throughout the voyage.<sup>22</sup>

On Sunday 14 June 1788 the *Duke of Leinster* left Dublin. Her master, an Englishman called Richard Harrison, commanded a crew of about 16 men. She carried 102 men and 12 women, a few of whom had enough money to buy a few privileges. The voyage lasted about four weeks, and although the military guard had been left behind in Dublin, there was no trouble on board. But after four weeks at sea, there was something worse, 'a Kind of Spotted putrid Fever.'<sup>23</sup> No one died, but when the *Duke of Leinster* sighted the Newfoundland coast in mid-July, Harrison decided to offload his cargo as fast as he could. Ninety-seven convicts were put ashore at Bay Bulls, with some provisions which were quickly cornered by the strongest. The remaining seventeen were put ashore at Petty Harbour early the following morning, without supplies. Harrison had evidently disobeyed orders — although Irish law apparently could not touch him — but he took the precaution of telling the convicts to say they had come from the *Charming Nancy*, whose master was already threatened with tarring and feathering at the hands of the citizens of Connecticut. The *Duke of Leinster* sailed away on an unknown course, but not before one of her crew 'from a Dislike of the Masters Conduct and not knowing where the vessel was bound to' had jumped ship at Bay Bulls.<sup>24</sup>

There is only information on half of the convicts so unceremoniously introduced to Newfoundland. A list was made of 65 male convicts early in September: some had presumably died or escaped. 37 of the 65 were aged between 19 and 25. Ten were younger, including two twelve year olds and two of thirteen. Nine were between 26 and 30, six around 40 and two in their fifties. Eighteen had been born in Dublin, eight in Ulster, and the others had come from various places, with only the west and south-west showing themselves to be exceptionally law abiding. Only in a few cases were details of crimes given. There was one murderer, reprieved from execution because of an error in his trial, and a highway robber, who escaped the gallows in Ireland

22 CO 194/38, evidence of Richard Robinson and James Maguire, fos. 89-90, 91-94.

23 Extract of letter from Benjamin Lister, St. John's, Newfoundland, 21 August 1789, CO 194/38, fo. 282. Dr. F. B. Smith suggests that the disease was probably typhus. This paragraph is based generally on *Freeman's Journal*, 13/16 June, and CO 194/38, fos. 89-90, 91-94.

24 Examination of Richard Robinson at St. John's, 20 July 1789, CO 194/38, fos. 89-90. For the legal loophole, *Freeman's Journal*, 14/17 November 1789. There is no reference to the convict affair in D. W. Prowse, *A History of Newfoundland from the English, Colonial, and Foreign Records* (London, 1895). The *Duke of Leinster* had already lost one passenger. Father Fay, a wealthy clergyman convicted of forgery, secured his transfer to a Whitehaven-bound collier off Wicklow Head. From England he travelled circuitously across the continent, visiting Paris on the eve of the Revolution. He set himself up as a cheesemonger in Bordeaux, and attempted to collect rents from property he owned in Ireland. The tenants, however, declined to pay his agents, since Fay had not left Europe. *Ibid.*, 16/18 June, 10/12 December 1789, 28/30 January 1790. Cf. CO 194/38, fos. 91-94.

only to die within a month of reaching Newfoundland. A twenty-one year old country boy, who had become a ribbon weaver in Dublin, had been sentenced to death for forging a note to obtain a pair of silver buckles, and was not even sure how many years his sentence had been commuted to. Two men were transported for coining, one for sheep-stealing and one for a combination of attempted housebreaking and being unable to find bail. Several men were transported for what now seem petty offences — stealing two saddles, or a pound of tobacco, 'Stolen Goods found in his House,' or plain vagrancy. But in many of these cases a token and easily proveable charge had probably been laid against a man suspected of a career of crime, and in some cases prosecution of a lesser offence may have been chosen to avoid the unpleasantness of hanging. One man, transported for seven years for stealing waistcoats, was 'The best Shoplifter in Ireland.' He proved his criminal talents by getting clean away. Another acknowledged himself a thief, even though he did not know the precise offence for which he had been sentenced. Only one man may have been a genuine victim — a labourer from Enniskellin, transported for seven years for 'keeping forcible Possession of a House and Land' — which sounds like the traditional Irish crime of resisting eviction.<sup>25</sup>

The island on which the convicts had landed officially hardly existed as a civilized society. British policy was to treat Newfoundland as a fishing station. To maintain the English West Country fisheries, and hence the supply of seamen for the Navy, colonisation was officially discouraged. In theory, the population of Newfoundland had sailed out in the spring and returned in the autumn.<sup>26</sup> 28,912 people were estimated to have been on the island in the summer of 1789, but in practice over 19,000 remained there for the winter.<sup>27</sup> However, in line with the theory that the community only existed for the summer months, the Governor, usually an admiral, sailed out from England about mid-summer and returned before the ice closed in. The commander of the small military detachment at St. John's served as lieutenant-governor all year round. For the rest, the government of Newfoundland was *ad hoc*. St. John's and the outports had local magistrates of a humble kind but the fishermen administered their own rough justice through 'fishing admirals.' In 1789 the island received a new governor, Admiral Mark Milbanke, who only received instructions to leave England on July 6, and did not arrive until September 4. The lieutenant-governor, Major J. Elford, was a weak man,

25 CO 194/38, fos. 91-96. Much of the 1786 act had been directly aimed at resistance to eviction. The *Freeman's Journal* noted 'several very young boys' among the convicts (11/13 June 1789), and an Irish MP later stated that six were under 14, and some younger than 12. (Parliamentary debate, 15 February 1790, in *ibid.*, 13/16 February 1970).

26 'In official eyes, "Newfoundland" became simply the English fishing fleet moving west across the ocean in the spring, and returning back home to England again in the autumn.' G. O. Rothney, *Newfoundland: a history* (Canadian Historical Association booklets no. 10, Ottawa, 1973), p.11.

27 CO 194/38, fo. 125, partly printed in Prowse, *History of Newfoundland*, P. 695.

afraid of responsibility. In the summer of 1789 therefore no firm authority existed on the island. The magistrates, acting at the dictation of local merchants, took charge of the situation.

By July 20, the convicts landed a few miles down the coast two or three days before, had begun to straggle into St. John's. The town was already alive with reports that a house and store at Bay Bulls had been burned down by the 'desperate fellows' from Dublin.<sup>28</sup> 'The circumstance of an Event so uncommon in this Island could not but alarm the Inhabitants,' the magistrates reported.<sup>29</sup> A correspondent of a London merchant house excitedly reported that there were 200 convicts, and that they had brought disease and 'great Disorders' into the town. There was apparently some minor housebreaking, although the stolen goods were recovered,<sup>30</sup> and Milbanke later reported that 'there does not appear to be any Charge made against them, so as to authorize their being committed to Prison' — an admission which the Irish government was to pounce upon.<sup>31</sup> The convicts were alleged to have attempted to burn the town, but the distressing frequency with which St. John's caught fire makes the charge unproven. (An earlier report confined the allegation to an attempt to set fire to a single house in the centre of St. John's, which was probably accident rather than arson).<sup>32</sup> The leading merchants and inhabitants were already concerned that St. John's was 'crowded with Idle Persons'<sup>33</sup> — it had been a particularly successful year for the fishery — and they held a meeting where it was decided to keep 'a watchful Eye'<sup>34</sup> over the newcomers. A system of night patrols was instituted, and a petition sent to magistrates to round up the convicts and confine them in 'a Proper Place remote from the Town.'<sup>35</sup> Lieutenant-Governor Elford supplied a military guard 'to keep them

28 Letter from St. John's, 6 August 1789, in *Freeman's Journal*, 24/26 September 1789.

29 Magistrates to Milbanke, 5 September 1789, CO 194/38, fos. 88-89. The magistrates were D'Ewes Coke, George Williams, Archibald Buchanan and Jonathon Ogden. See A. H. McLintock, *The Establishment of Constitutional Government in Newfoundland* (London, 1941), p. 131.

30 Lister's letter, CO 194/38, fo. 282.

31 *Ibid.*, fos. 98-99. See *Dropmore Papers*, Vol. I, p. 546, for the Irish government's reaction to the statement. In his official despatch to Grenville (20 September 1789), Milbanke took a different line: 'Till those wretches came into the Country, open and professed Villainy, it seems, was little known amongst the lower order of people engaged in the Fishery, but since their arrival, very frequent punishments have taken place for petty Crimes (not very common heretofore) and I am afraid, unless the greatest precautions are taken to prevent it, that the spirit of thieving will soon find too good root in the island to be eradicated (if at all possible) without much difficulty.' CO 194/38, fos. 86-87.

32 *Freeman's Journal*, 24/26 September 1789.

33 Magistrates to Milbanke, 5 September 1789, CO 194/38, fos. 88-89.

34 *Ibid.*

35 *Ibid.* For the petition, see *ibid.*, fos. 90-91. The merchants' spokesman was William Gaden.



in Awe,'<sup>36</sup> a house was rented for the confinement of the convicts and the merchants promised to supply them with food. After ten days, however, the merchants' generosity dried up and, spurred on by a threat of mutiny among the convicts, the magistrates made urgent application to Elford for military stores.<sup>37</sup> The agitated lieutenant-governor agreed, later explaining to Milbanke that most of the food supplied had been condemned as unfit for consumption over a month earlier.<sup>38</sup> But by now Elford had reason to fear reprimand from his superiors. By involving his men in guard duty, he had exposed them to disease. By mid-August it had spread to the soldiers, and among the townspeople. Elford's already chaotic accounts were thrown into disarray by the death of the gaoler.<sup>39</sup> Even so, only the male convicts seem to have been incarcerated, and probably not even all of them, 'while twelve women Convicts (more abandoned than you can conceive of) are Suffer'd to remain at Large.'<sup>40</sup> Not surprisingly in St. John's there was an angry wish 'to punish the master of the ship for the colony he has planted in the most industrious part of his Majesty's dominions.'<sup>41</sup>

Such was the situation when, on 5 September, the day after his arrival, Milbanke learnt officially of the affair from the magistrates. They asked for instructions about supplying food to the convicts 'until some Plan is formed for sending them out of this Country.'<sup>42</sup> The merchants and magistrates had thus jointly settled a two part policy to meet the convict invasion: first, incarceration, and then deportation. It was extremely doubtful whether even the Governor had the legal power to do either, but Milbanke did not intend to quibble. He clearly saw his paramount duty as the maintenance of peaceful fishing, and lost no time in commending the magistrates for imprisoning the convicts thus preventing

many Irregularities in the Fishery which would have been the Consequence of suffering such a Banditti to go at large about the Island.<sup>43</sup>

36 *Ibid.*, fos. 88-89. The house, which belonged to James Winter, was to be 'very much damaged' by the convicts, *ibid.*, fo. 182.

37 *Ibid.*, fos. 88-89.

38 Elford to Milbanke, 9 September 1789, signed 'Your most obedient and very humble Servant,' *ibid.*, fos. 97-98.

39 *Ibid.*, and Lister's letter, *ibid.*, fo. 282. Cf. (Milbanke to Nepean), 18 March 1790 for the governor's criticism of Elford's general keeping of accounts, *ibid.*, fo. 186.

40 Lister's letter, *ibid.*, fo. 282.

41 Letter in *Freeman's Journal*, 24/26 September 1789.

42 Magistrates to Milbanke, 5 September 1789, CO 194/38, fos. 88-89.

43 Milbanke to magistrates, 10 September 1789, *ibid.*, fos. 98-99, Milbanke was anxious to establish a regular system of courts on the island, complaining to Grenville (6 June 1790) that it was 'impossible for me to act in any matter of Law, without the greatest danger of being prosecuted for so doing . . . ' *Ibid.*, fo. 190, and McLintock, *Establishment of Constitutional Government*, pp. 63-68.

Furthermore, Milbanke took seriously the national British aim of clearing Newfoundland in the winter. In three summers as governor he was to reduce the population of St. John's by 800. In 1790 he contemplated driving Catholic priests from the island, in the hope that removal of spiritual support would dissuade Irish fishermen from wintering.<sup>44</sup> Irish convicts were neither advantageous to the fishery nor were they a defensible exception to the general principle of depopulating the island. Milbanke was in no doubt that they had to go. There were, he wrote to the magistrates, only two problems to be solved — where were the convicts to be sent, and who was to pay? 'The first I shall take Order for myself and trust to His Majesty's approving of my Conduct therein.'<sup>45</sup> Milbanke's intention was to ship the Irish to England for disposal by the British government, which was to create an imbroglio in Anglo-Irish relations. The second problem — money — called for local self-help 'as I know of no Department of the British Government upon which I could draw.'<sup>46</sup> Milbanke suggested that St. John's and outports should each raise half the cost, and asked the leading inhabitants to meet and consider the matter. It was the nearest that pre-constitutional Newfoundland came to taxation by consent. Twelve leading merchants and inhabitants replied by suggesting a tax of ten shillings on each merchant ship, four shillings on each fishing boat and three shillings on each inhabitant.<sup>47</sup> Milbanke then empowered the magistrates of the outports to collect the suggested amounts, hopefully explaining that they were 'equally interested in getting rid of such a Banditti' as the people of St. John's.<sup>48</sup> Without waiting for the money to appear Milbanke advertised on 17 September for tenders from shipping.<sup>49</sup> He chartered the Dartmouth brig *Elizabeth and Clare* for 400, but she did not sail until 24 October. Incidental costs had proved higher than expected, and

44 McLintock, *op. cit.*, pp. 92-93.

45 Milbanke to magistrates, 10 September 1789, CO 194/38, fos. 98-99.

46 *Ibid.*

47 *Ibid.*, fo. 99. The address was dated 14 September 1789.

48 *Ibid.*, fos. 100-102. The address was undated, and was sent to nine out-port districts.

49 *Ibid.*, fo. 102. Shippers were to contract to provide weekly rations for each convict of 3-1/2 lbs of bread, 2 lbs of flour, 3 lbs of pork, 3 pints of pease, 1/2 lb of butter. This was less generous than 1802 rations on voyages to New South Wales. Shaw, *op. cit.*, p. 115.

the enforced levy produced disappointingly little. Eventually Milbanke, anxious himself to get away before winter, settled most of the bills out of his own pocket.<sup>50</sup>

With strict instructions 'to be particularly careful' of his charges, the captain of the *Elizabeth and Clare* was ordered to sail to Spithead and await instructions from the British government.<sup>51</sup> On board were 74 male and six female convicts; over 30 of the original 114 were unaccounted for. Some must have died, some probably escaped, and in a few cases there may have been fishermen who decided that an abandoned woman was better than no woman at all. All eighty convicts arrived safely about mid-November, although the *Elizabeth and Clare* was leaking, and in no condition to sail on to Dublin. H.M.S. *Salisbury*, carrying Admiral Milbanke with his report that 'every thing was perfectly quiet' on the newly purged island, arrived about the same time.<sup>52</sup>

The admiral had acted. The politicians and lawyers now wrangled. In London the Home Secretary, W. W. Grenville, on the advice of the English lord chancellor, Thurlow, decided to send the convicts to Dublin. The British government foresaw that their arrival would create a problem for the Irish courts, which the Irish government might have to help unravel. Consequently Grenville sent a private warning to the lord-lieutenant's secretary, Robert Hobart. The British government recommended rejection of the bright idea — apparently suggested in Whitehall — that the inmates of the *Elizabeth and Clare* should be tried as convicts returned from transportation: not only would such a prosecution be unfair, but the certain refusal of any jury to convict them would probably make it necessary to release them all. The most appropriate course open to the Irish judges seemed to be to remand the convicts until the Irish parliament had decided what to do with them. The British

50 CO 194/38, fos. 110-120, 180-183. Milbanke's account is not altogether clear. He had spent £775.1.7: charter of ship, £400; rent of house for prison, £50; army victuals £221.8.0; clothing from Navy, £73.0.0; medical fees £10.10.0; 'Forty old beds' £10; and irons, £10.3.7. The British government added the ship charter and cost of the irons, deducted £184 raised in four out ports (Harbour Grace £90; Trinity £54; Placentia £20; Trepassey £20) and paid the Governor's secretary £226.3.7. The remaining £364.18.0 was presumably raised in St. John's, and perhaps rounded off by the government. Parliament voted £1182.10.0 for the civil administration of the island in 1790-91. *Ibid.*, fo. 188.

51 *Ibid.*, fo. 118. Possibly Milbanke chose Portsmouth, which had been the assembly port for the first Australian fleet, rather than Plymouth, the naval base closer to Ireland, in the belief that the British government would send the Irish convicts to New South Wales.

52 *Dropmore Papers*, Vol. I, p. 542; Milbanke to Grenville, 15 November 1789, CO 194/38, fo. 120.

government hoped they would find a solution which would prevent the repetition of an affair so full of 'awkwardness, inconvenience, and expence.'<sup>53</sup>

The Dublin government did not share Grenville's equanimity about the affair. The Irish lord chancellor, Fitzgibbon, protested that 'from the reign of Queen Anne down to the present time' Ireland had sent convicts to the British colonies 'not only without objection, but with full permission from the British government.'<sup>54</sup> Hobart insisted that Pitt's government had offered no objections to the renewal of the practice in 1786. Milbanke had no right to send the convicts back, and the Newfoundland authorities had acknowledged that their imprisonment for so many months had been without justification.<sup>55</sup> But what was worse was Milbanke's decision to send the convicts 'with a regular invoice to the British Government, to be re-exported under an invoice from that Government to us.'<sup>56</sup> Had he shipped them direct to Ireland, the authorities at Dublin might quietly have disposed of them. But thanks to Milbanke's 'highly indiscreet'<sup>57</sup> action, the matter now became one of Anglo-Irish relations. Henry Grattan and the Irish Whigs were particularly sensitive to domination from London, and if the British government supported the Admiral in overriding a recently accepted Irish act, the Irish Commons would be in 'ferment'<sup>58</sup> at this 'national indignity'.<sup>59</sup> The Newfoundland convicts would certainly put Dublin Castle on the defensive. Nor could the Irish lord chancellor see any way of preventing the convicts from swarming around Dublin as they had St. John's. The sheriffs of the city had discharged their warrants in putting them aboard the *Duke of Leinster*, so they could not be arrested for escaping from any local jurisdiction.<sup>60</sup> In desperation the Irish government resorted to a traditional method of dealing with an intractable problem: a revenue cruiser was sent out to intercept the transport and bribe her master to stay at sea until further instructions arrived from London. Hobart expressed the hope that the British government itself would divert the convicts 'to some part of America, or to some place out of Europe.'<sup>61</sup>

53 Thurlow to Grenville, November; Grenville to Hobart, private, 25 November 1789, *Dropmore Papers*, Vol. I, pp. 542-544. It is ironic that Hobart should have been so troubled by convict transportation. In 1804 the chief town in modern Tasmania was to be named after him when another convict colony was founded.

54 Fitzgibbon to Grenville private, 2 December 1789, *Dropmore Papers*, Vol. I, pp. 546-548.

55 Hobart to Grenville, private, 1 December 1789, *ibid.*, Vol. I, pp. 544-546.

56 Fitzgibbon to Grenville, private, 2 December 1789, *ibid.*, Vol. I, p. 548.

57 *Ibid.*

58 Hobart to Grenville, private, 1 December 1789, *ibid.*, Vol. I, p. 546.

59 *Ibid.*, Vol. I, p. 545.

60 *Ibid.*, Vol. I, pp. 547-548.

61 *Ibid.*, Vol. I, p. 545.

The Irish government's attempt to head off the ship aroused the anger of the British government. London did not intend to transport the convicts anywhere itself. They had broken no English law and consequently, should they come within any English county jurisdiction, they could claim *habeas corpus*. No English law either required or allowed their transportation to the colonies, and they could only legally be sent back to Ireland. Even if there were laws, Grenville advised Fitzgibbon that it would be unwise to invoke them:

No convicts have been transported from this country to any of the British colonies in America since the last peace, and all the colonies have uniformly expressed a decided resolution not to receive them.<sup>62</sup>

In the circumstances, it was doubtful whether the British parliament had the power to compel the colonies to accept convicts, since this necessarily involved interference in their internal affairs.<sup>63</sup> As a supplementary point, Grenville helpfully added that Irish acts of parliament had no more force in British colonies than decision of the States of Jersey.<sup>64</sup> Hobart icily replied that he was aware of this, but that since the act of 1786 had received the royal assent it was a 'justifiable presumption'<sup>65</sup> that no barrier existed in English law. However, slightly shamefaced at their earlier panic, the Irish government had recalled their revenue cruiser.

Although the British government continued to feel that it did not much matter whether Milbanke had been right or wrong, Grenville came up with a 'very material'<sup>66</sup> point which was to provide the Irish government with an escape from its difficulty. The Irish Act of 1786 provided for convicts to be sent to the British colonies in America. But, Grenville pointed out, 'Newfoundland is in no respect a British colony, and is never so considered in our laws.'<sup>67</sup> Both King William's Act of 1698, which was 'Newfoundland's fundamental constitutional document throughout the eighteenth century'<sup>68</sup> and Palliser's Act of 1775, were at pains to prevent its settlement.<sup>69</sup> Governors were even empowered to force people off the island at the season: 'many do

62 Grenville to Fitzgibbon, 2 December 1789, *ibid.*, Vol. 1, p. 548. In fact, the convicts seem to have been briefly kept in prison at Portsmouth, *Freeman's Journal*, 28/30 January 1790.

63 *Dropmore Papers*, Vol. I, pp. 568-549.

64 Grenville to Hobart, 5 December 1789, *ibid.*, Vol. I, pp. 550-551.

65 Hobart to Grenville, 9 December 1789, *ibid.*, Vol. I, pp. 551-552.

66 *Ibid.*, Vol. I, p. 549.

67 *Ibid.*

68 Rothney, *Newfoundland*, p. 16.

69 Grenville referred to an act of 1773, which Fitzgibbon could not trace. Palliser's Act was obviously intended, Grenville to Fitzgibbon, 9 December; Fitzgibbon to Grenville, 14 December 1789, *Dropmore Papers*, Vol. I, pp. 552-553, 554-555.

in fact remain, but I believe this is only from the want of means for bringing them away.'<sup>70</sup> Certainly convicts had never been sent there, even before 1776.

The Irish government anxiously seized on the loophole. If Newfoundland was not a British colony, then the sentence of transportation had not been carried out, and the convicts could be remanded. Fitzgibbon insisted on satisfying himself on the point by reference to the statute books, but once the point was proved he saw no reason why 'we should act merely on the defensive.'<sup>71</sup> The Lord Mayor of Dublin might be accused of breach of contract in not carrying the convicts to a colony, a manoeuvre which would keep the initiative. It would help deter any 'mischievous'<sup>72</sup> prosecutions.

There remained the question of where to send convicts, any convicts — for the British government, still not confident of the success of New South Wales, was also seeking about for alternatives. Grenville hoped British convicts might be used to build a military canal through the Great Glen of Scotland, to give the navy a route from the North Sea to the Atlantic. However, Henry Dundas, the government's leading Scottish minister, doubted the value of the scheme and feared that it would need too many troops to guard convicts to the satisfaction of the local landowners. Grenville in his turn ruled out Dundas's suggestion that boy convicts might be formed into military units for colonial service as unacceptable to military prejudices.<sup>73</sup> Landing convicts in the United States was 'an act highly offensive to a country now foreign and independent,'<sup>74</sup> even if contracts were properly carried out. Transportation to any of the remaining colonies now seemed ruled out, for

you may depend upon it that, after the example set them by Admiral Milbanke, none of our Governors will suffer any of these people to be landed . . .<sup>75</sup>

If any were illicitly landed, they too would certainly be sent back, at the expense of the Irish government.<sup>76</sup> In any case, Grenville asked whether 'setting the wretches on shore without provisions, tools or clothing in a place

70 *Ibid.*, Vol. I, p. 549.

71 Fitzgibbon to Grenville, 14 December 1789, *ibid.*, Vol. I, pp. 554-555.

72 *Ibid.*, Vol. I, p. 555. The loophole was not very wide. Clause 64 of the 1786 act allowed transportation to 'other place or places not in Europe' as well as to 'British plantations or settlements in America.' Newfoundland may not have been a colony, but it was certainly out of Europe.

73 Dundas to Grenville, 17 December; Grenville to Dundas, 24 December; Dundas to Grenville, 28 December 1789. *Dropmore Papers*, Vol. I, pp. 555-556, 556-558.

74 Grenville to Hobart, private, 25 November 1789, *Dropmore Papers*, Vol. I, pp. 542-543.

75 *Ibid.*, Vol. I, p. 543.

76 *Ibid.*, Grenville seemed to regard the United States as a savage country, arguing that it was 'extreme cruelty' to land convicts there without supplies, to be 'left to starve' or 'massacred by the inhabitants.'

where they must have perished but for the humanity of the inhabitants' really constituted a proper system of transportation.<sup>77</sup> It was beginning to look as if, far from the British government's being able to resume transportation to British America, as had apparently been contemplated in December 1788, neither London nor Dublin had any alternative to New South Wales. Grenville and Hobart had already discussed this possibility, probably earlier in 1789. The main problem was expense: it cost £17 to send each convict to Australia, and clothing, supplies and miscellaneous costs, the Irish House of Commons was told in February 1790, brought the cost to around £70. Sir John Parnell, the Irish Chancellor, decided to sound out members before any decision was made. One Irish MP favoured a decent system of reformatory penitentiaries, but another thought £60 or £70 was a cheap price for ridding Ireland of each malefactor.<sup>78</sup>

A month later a new storm burst, as a footnote to the Newfoundland affair. 'We are not yet quit of the troublesome subject of Irish convicts,' wrote Grenville.<sup>79</sup> One consignment had gone on the *Duke of Leinster*, but there had been a second ship. Months later it had arrived in the West Indies, and landed convicts on Barbuda. It would be difficult to imagine a more disastrous choice, unless it were an even smaller island. Jamaica or Barbados might have absorbed convicts, but Barbuda, with its tiny population of about 1500, could barely even maintain and control them. Worse still, there was no doubt that Barbuda, unlike Newfoundland was a British colony.<sup>80</sup>

The Irish parliament had already acted. The bill to send convicts to Botany Bay, foreshadowed in the Irish Commons debate of 15 February 1790, passed its committee stage on 5 March and received the royal assent on 5 April.<sup>81</sup> The Newfoundland affair only confirmed the farcical inadequacy of the existing system. Exporting convicts through private contractors meant that the government had little control over their fate. There was talk of tightening the law to prosecute defaulting sea-captains like Harrison, but at the same time the American Congress was advising states to pass stricter laws against

77 Grenville to Fitzgibbon, 9 December 1789, *Ibid.*, Vol. I, pp. 552-553.

78 There is a full report of the debate in *Freeman's Journal*, 13/16 February 1790. A shorter misdated report from the *Dublin Chronicle*, 18 February 1790, is in *Historical Records of New South Wales*, Vol. II, pp. 752-754. The *Freeman's Journal*, 18/20 March 1790, also noted that the increased expense of sending felons to New South Wales would be 'amply compensated by their being prevented from returning.' For evidence of earlier discussion between the two governments, *Dropmore Papers*, Vol. I, pp. 542-543.

79 Grenville to Westmoreland, private, 17 March 1790, *Dropmore Papers*, Vol. I, p. 567.

80 *Ibid.* Abraham Rees, *The Cyclopaedia* (London 1817), Vol. III, 'Barbuda', estimated the island's population at 'about 1500.'

81 Parliamentary reports, *Freeman's Journal*, 4/6 March, 3/6 April 1790. Thus an all-Protestant parliament returned by an all-Protestant electorate quietly laid the foundations for the substantial Catholic element in Australia's population.

the importation of convicts.<sup>82</sup> If contractors and their agents were to face prosecution on one side of the Atlantic for carrying out their contracts, and on the other side for breaking them, few would undertake the task. In any case, the Atlantic itself was no prison wall. In 1788 a Dublin paper had hoped the felons would be sent at least as far as the Bahamas, since 'in consequence of the frequent return of shipping from *Nova Scotia* and *Canada*' a more northerly destination would quickly mean 'the affectionate return of our native rogues, to try over again their experiments of dexterity.'<sup>83</sup> In March 1790 Dubliners estimated that at least a hundred felons had returned from America in the previous twelve months — not counting the Newfoundland contingent — and most of them had resumed their places in 'the most desperate gangs which infest this metropolis and its environs.'<sup>84</sup> Governor Milbanke had probably done Ireland a favour by returning eighty malefactors under lock and key. In April 1790 Waterford merchants were reported to have done 'more business the last season with Newfoundland, than has been known for these several years past.'<sup>85</sup> The unwilling passengers from the *Duke of Leinster* would not long have remained in exile. In a sense, the convicts would have made an even greater mockery of their punishment had they remained in North America. Already it seemed ironic that free emigrants were voluntarily seeking the exile 'so much dreaded by malefactors.'<sup>86</sup>

What became of the Newfoundland convicts themselves? At Portsmouth as at St. John's, there was no provision to feed them, and a public subscription was necessary to keep them alive. A coasting vessel was fitted up to replace the *Elizabeth and Clare*, and the new transport arrived at Dublin on 22 January, 1790, avoiding the hazards of a winter crossing and the inducements of bribery. Parliament had opened the previous day, and an anticipated general attack by the Whig opposition engulfed the minor issue. Some felt the convicts had suffered enough, and that they should be allowed to serve the rest of their sentences at home. Others believed they would be sent to garrison the unhealthy posts in West Africa: they were presumably well qualified to recruit for the slave trade.<sup>87</sup> Their fate is uncertain. In 1791, 75 Irish convicts were transported from Cork to New South Wales. Eleven of them may have been Newfoundland veterans.<sup>88</sup>

82 *Ibid.*, 12/15 December 1789; 7/9 January 1790.

83 *Ibid.*, 10/13 May 1788.

84 *Ibid.*, 18/20 March 1790.

85 *Ibid.*, 1/3 April 1790.

86 *Ibid.*, 9/11 June 1789.

87 *Ibid.*, 10/12 December 1789, 28/30 January 1790. Cf. *Dropmore Papers*, Vol. I, p. 564.

88 I am grateful to Mr. H. J. Gibbney of the Australian Dictionary of Biography for this information. The estimate is tentative: there are six variations in spelling, the Newfoundland lists were incomplete and some Irish surnames are very common.



Whether as cause or confirmation, the Newfoundland affair of 1789 marked the end of convict transportation to the British American colonies. There were some later proposals, but mainly to open up wild country further west. A penal settlement on Vancouver Island, planned in 1790 as an offshoot of distant New South Wales, not surprisingly never materialised. An unofficial suggestion to send convicts to the Queen Charlotte Islands in 1849 received even less consideration. Joseph Howe believed that a transcontinental railway would require convict labour.<sup>89</sup> In 1846, the need for railways in the established colonies led Gladstone, as Colonial Secretary, to sound out the lieutenant-governors of the Maritime provinces: if they would agree to accept convict labour, the British government would be prepared to put money into the Halifax and Quebec railway 'which they would not otherwise contemplate.' From New Brunswick Sir William Colebrook thought that transportation would 'occasion very great jealousy and alarm.' From Nova Scotia, Lord Falkland rejected it as 'distasteful to every class in the community.' Sadly Gladstone concluded that

the circle of space within which we can deposit Convicts becomes progressively narrower, while we much need it being greatly widened.<sup>90</sup>

In British North America, this was the legacy of the Newfoundland affair of 1789.

89 V. T. Harlow, *The Founding of the Second British Empire*, Vol. II (London 1964), pp. 439-441; CO 42/563, fo. 216, R. M. Martin to Grey, 27 November 1849; J. A. Roy, *Joseph Howe* (Toronto, 1935), p. 161.

90 Shaw, *op. cit.*, pp. 318, 331-332. Falkland's successor, Sir John Harvey, however, believed that 'irrational prejudices' should not prevent the use of British convicts in the Maritimes. Far from receiving convicts, North America provided 149 convicts for Australia following the 1837-1838 rebellions in Canada. For their fate, see M. M. McRae, 'Yankees from King Arthur's Court,' *Tasmanian Historical Research Association Papers and Proceedings*, XIX (1972), pp. 147-162.