CONVICT TRANSPORTATION AND PENITENCE IN *MOLL FLANDERS*

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During *Moll Flanders*'s first attempt at life in Virginia her mother offers an account of the way convicts are integrated into colonial society: "[W]e make no difference," she explains, "the Planters buy them, and they work together in the Field till their time is out; when 'tis expired . . . they have Encouragement given them to Plant for themselves."¹ Thus, she concludes, "many a *Newgate* Bird becomes a great Man, and we have several Justices of the Peace, Officers of the Train Bands, and Magistrates of the Towns they live in that have been burnt in the Hand" (86).² So much proves true for Moll and her counterpart, Jack, in Daniel Defoe's *Col. Jacques*, who begin as petty thieves and end as successful colonial entrepreneurs. Not surprisingly, soon after the publication of both these fictional narratives, Defoe described the possibilities opened by transportation to America as "a fair offer of Heaven for such Creatures to begin, not only a new Condition of Life, but even a new life itself."³

In measuring *Moll Flanders* and *Col. Jacques* against the realities of colonial servitude, literary critics and historians alike have wisely encouraged us to read these texts as propaganda. For Maximillian Novak, Defoe stands as a writer who, at a time when ideas of free-trade and laissez-faire were coming to the fore, held on to the outmoded belief that government needed to keep a paternalistic hand on economic development. As Novak explains, Defoe tended to see the colonies as a part of Britain that could expand markets for exports; and within this frame Moll and Jack represent "perfect colonists" who pass "the economic test" they have been given.⁴ Recalling Defoe's personal investments in the servant trade, Paula Backscheider has shown that Defoe's interest in transportation extended from his purse to the pages of fiction.⁵ Based in part on their author's familiarity with the processes involved, Moll and Jack in outline resemble many real-life counterparts but they also exaggerate the benefits awaiting transports on the other side of the Atlantic. Sounding a more skeptical note in his history of convict transportation to British America, A. Roger Ekirch aims to "examine the ability of the colonies to assimilate" British felons and

in so doing refute the idea “depicted by Daniel Defoe” that “[o]nce freed from the rigours of servitude, convicts may have gradually moved into the mainstream of colonial life.”⁶ Poor, untrained, unable to form productive social connections, the “typical convict,” Ekirch maintains, “endured a dreary fate,” leaving no trace in property records and sadly corroborating William Blackstone’s contention that it is “much *easier* to extirpate than to amend mankind.”⁷

This skepticism has usefully drawn our attention to the ideological function of Defoe’s fictions of life in the colonies. But it has so far not produced an understanding of how those fictions engaged rather than avoided the historical contexts informing them. Returning recently to the disparities between fact and fiction in *Moll Flanders*, Dennis Todd has suggested that Defoe’s interest in indentured servants was limited to the “symbolic role” they played in his vision of America and that Moll’s story needs to be read at a distance from the “complex historical particulars of the institution.”⁸ The colonial servant class included many sorts of people, and exiled felons like Moll were a particular legally-defined class of persons in the eighteenth-century Anglo-Atlantic whose transportation was fraught with difficulties from British courtrooms to colonial plantations. As this essay works to show, Defoe captured part of this process in *Moll Flanders*, a narrative intensely interested in the criminal laws and court processes that allowed felons to escape execution by way of exile.⁹ By rendering the early eighteenth-century British penal system in narrative fiction Defoe consolidated the heterogeneous juridical mechanisms that enabled sentences of convict transportation—sentences rooted in the strange history behind the establishment of secondary punishments in British criminal law. *Moll Flanders* certainly occludes some hard facts about transatlantic life, but it also captures subtle features of an expanding juridical world we can only with difficulty reconstruct. From the perspective of legal history, convicted criminals punished with exile in America did indeed receive an “offer of Heaven,” an offer granted on the basis of convict supplication, demonstrations of spiritual conversion, and jurisdictional negotiations enabled by the loop-hole of clerical privilege.

To situate and describe the culture of convict transportation in *Moll Flanders*, this essay brings a revised historiography of the British penal system as well as a transatlantic political and legal context to bear on Moll’s story. The first section revisits the shifting economics of convict transportation and outlines transatlantic exchanges that resulted from the Transportation Act of 1718, exchanges in which reports of criminal behavior took center stage. These debates and the legislative

enactments that spurred them signaled a new, widespread interest in the lives of lawbreakers—an interest at the heart of Defoe's fictional enterprise.¹⁰ The closing section explores the manner in which criminal law redoubled this interest by framing penitence as a spiritual category with legal bearing. Using *Moll Flanders* as a map of this irregular legal-historical terrain, this essay provides a new perspective on the debate over irony that engulfed this text in mid-twentieth century and has persisted in the propaganda question. In light of a legal context wherein religious authority served secular penal imperatives, we can see that if *Moll Flanders* has an ironic aspect, it derives as much from Defoe's engagement with the developing criminal laws of the day as from any other source. The culminating scenes of *Moll Flanders* reveal that convict transportation was enabled by legal fictions—of the condemned's agency and of clerical protection and privilege—subtended by the promise of personal and spiritual reform. Not merely an emanation of the internal springs of conscience, Moll's penitence constitutes a negotiation of her legal status within a penal system in flux, a system depicted by Defoe as lurching toward a reformatory model of correction under the banner of religious authority.

I.

The legal contexts for *Moll Flanders* are as varied as the scholars who have worked to reconstruct them.¹¹ That little attention has been given to the legal processes involved in convict transportation reflects a common historiographic misunderstanding. As J. M. Beattie and others have argued, the remarkable story of the transformation of criminal punishment in the eighteenth century lies outside the spectacular hangings and mental dramas of imprisonment usually associated with that age. In fact, more significant and long-lasting changes resulted from the reworking of the penal system by the invention and adoption of secondary punishments like convict transportation.¹² Before extended imprisonment was even conceivable as a means of punishing criminals, exile to the colonies comprised the only significant alternative to the usual array of corporal penalties: hanging, whipping, and branding. Opening a wide space between execution and lesser physical injuries, punishments of exile like those in *Moll Flanders* sent thieves, murderers, forgers, and other criminals to British America for seven years or more.¹³ Coming into its own in Defoe's day, convict transportation demarcated a special class of offenses, drew significant government funds and attention away from the gallows, and projected a long-term

view of punishment and its effects on criminal identity. Since forced labor punishments justified by the possibility of personal reform have remained an indispensable element of criminal justice into the present, it could be argued that the changes convict transportation set in motion constitute one of the most significant innovations the eighteenth century bequeathed to later criminal law and penal practice. In sum, the years of Defoe's remarkable fictional output coincide directly with what Beattie describes as the creation of "a penal system that could never again operate without a centrally dominant secondary punishment."¹⁴

Despite the magnitude of the conceptual shift convict transportation set in motion, the practice of sending criminals to America was only consolidated in the early eighteenth century in response to obstacles posed by instability of the Atlantic economy and legislative opposition from colonial officials. Novak and Backscheider both identify the Transportation Act as an immediate provocation for Defoe's writing of *Moll Flanders*. This Act was a direct response to laws passed in the colonies of Virginia and Maryland banning the importation of convicts into those jurisdictions.¹⁵ It is well worth noting, too, that this legislation dramatically reimagined the economics of the convict trade in ways that would have appealed to Defoe's peculiar sort of mercantilist attitudes toward colonial expansion.¹⁶ From the mid seventeenth century when conditional pardons authorized by executive authority were first employed under Cromwell to the first decades of the eighteenth century, convict transportation was an awkward and slow process as the costs for shipping convicts across the Atlantic were almost entirely assumed by private individuals looking for profit. Once a sentence of transportation was settled upon (a complex process Defoe lays open in Moll's case), the terms of a transport's physical relocation were negotiated between jailers and merchants calculating values in the servant market. Before the new laws took effect, the system resembled the model of non-convicts that agreed to be sold as servants in America in exchange for the cost of passage.

Without guaranteed public support the rate of transportation—for criminals and non-criminals alike—rose and fell with the undulations of the Atlantic world. Since ships delivering transports were often tobacco traders landing to pick up cargo, the movement of persons was linked to the volume of production and importation.¹⁷ Military and political conflicts and the perceived security of trade routes also affected the rate of convict forced migration.¹⁸ In a scheme ultimately bound to profit motives, female convicts were not as highly valued as their male counterparts for plantation work.¹⁹ Given these variables

it is not surprising to find that transportation was at best desultorily put into effect over its first century of existence. A few hundred pardoned convicts were shipped abroad before the Civil War.²⁰ Even though records are incomplete, extant evidence suggests that the practice gained acceptance (in the criminal courts and through royal prerogative) immediately after the Restoration but did not become a stable practice until after George I took power.²¹ Across all England, conditional pardons did not exceed 175 in a single year before 1700.²² On occasion individual planters and merchants were granted the right to relocate certain numbers of lawbreakers. In 1682 Christopher Jeafferson, a sugar planter based in St. Christopher, successfully petitioned for a grant to take 300 criminals across the Atlantic. Even though he was granted “40s. per head” for the cost of passage, his concern over convict escapes and bribes for prison keepers made him assess the “charge and cost of sending malefactors over . . . greater than I ever could imagine.”²³ Following the crack down on coining and clipping in the final years of the century, London jails became filled with women who had received conditional pardons but were undesired by traders in convict servants.²⁴ The Lords Justices (acting with the King’s authority since 1695) “[r]esolved that no distinction be made” between the sexes, “it being better that the government pay for their transportation, rather than that they should be let loose.”²⁵ Using Treasury money and negotiating with various colonial Agents (most of whom refused the women), in a last-ditch effort in 1697 the Council of Trade and Plantations negotiated for 50 of them to be relocated to the Leeward Islands at a cost of £8 per woman.²⁶

Coming into force four years before Defoe published his transportation narratives, the Transportation Act mandated a change to these unstable underpinnings by building on the example of the female convicts shipped abroad from Newgate. In addition to making “no distinction” between men and women, we might use a useful anachronism and say that the Act infused government money into a privatized system dependent on the appeal and likelihood of monetary gain to investors whose capital suffered the risk of loss. Instead of having shipping costs covered by private parties, under the new laws British courts entered into long-term contracts with individuals who would ship felons overseas.²⁷ These laws institutionalized transportation by overriding colonial objections to the practice, encoding it as a recognized criminal sentence in non-capital cases and by providing monetary support that insulated it from market conditions and other forces affecting the value of field labor. Statistics for the period follow-

ing 1718 show that the number of transports sent out of London and its environs settled at an average of about 250 persons per year from 1719 to 1730 and rose to about 300 per year from 1730 to 1750. In the two decades before the American Revolution that figure increased further to about 350 felons transported per year.²⁸ Most accounts double figures from the metropolis to account for all of England, and while all these numbers might seem low in an age where states hold millions of people in prison these totals reflect a high rate of transportation among all other possible criminal sentences and general immigration numbers. From 1718 to 1769 more than two-thirds (69.5% to be precise) of all felony convictions at the Old Bailey led to transportation.²⁹ Overall, it is estimated that transported felons made up one-quarter of all persons who migrated to America in the eighteenth century from England, Wales, Scotland, and Ireland.³⁰

Charted on a simple graph these figures would show that Defoe's treatment of the transportation theme also coincided with the moment when convict relocation to America was poised to become a statistically significant sentencing option in felony cases.³¹ This outcome follows logically from the changes the Transportation Act set in motion. Yet, these numbers only intimate the corresponding cultural turn whereby a colonially inflected punishment took hold in the Anglo-Atlantic and produced serious and extended discussions of criminal reform despite contemporary claims to the contrary.³² What was it, we might ask, that raised the possibility of profound personal transformations over and above what could easily have remained a matter of distributing the Empire's resources or insuring one or another colony's survival? Put otherwise, we might ask what ideological currents buoyed Defoe's radical confidence on the question of criminal reform the early 1720s, long before discussions of reform and reeducation would emerge in the penitentiary era?

In imagining the possibility of reform under the transportation system, Defoe, like others, might have taken his cue from the Transportation Act itself. 4 George I c. 11 justifies terms of penal servitude by explaining that "punishments inflicted by the laws now in force . . . have not proven effectual to deter wicked and evil-disposed persons from being guilty [of felonies]"; adding that (under the conditional pardon system conducted under the auspices of Royal Mercy) felons have "neglected to perform the said conditions but returned their former wickedness and been at last for new crimes brought to a shameful ignominious death."³³ These deviants, the statute claims, could supply "in many of his Majesty's Colonies and Plantations in America . . . the

great want of servants who, by their labor and industry, might be the means of improving and making said Colonies and plantations more useful to the nation.”³⁴ Although this statute says nothing explicit about the rehabilitation of criminals, the idea makes itself felt in the leap between the “wicked and evil-disposed persons” undeterred by the usual punishments and the industrious laborers who would improve the colonies and by extension the Empire as a whole. The only way the Act remains an internally consistent pronouncement is if its readers accept that some sort of personal transformation on the felons’ part will take place in the colonial context.

This silent promise did not go unremarked at the time. It finds an echo in a complaint presented to the Board of Trade in 1718 by the Governor of Jamaica, Nicholas Lawes, a reaction to the first shipments of convicts to arrive in that colony under the mandate of the new legislation: “so farr from altering their Evil Courses and way of living and becoming an Advantage to Us,” Lawes attested, “the greatest part of them are gone an have Induced others to go with them a Pyrating . . . the few that remains proves a wicked Lazy and Indolent people, so that I could wish this Country might be troubled with no more of them.”³⁵ Echoing carefully the language and concept of 4 George I c. 11, especially in the suggestion that former felons would reform and serve to improve the colonies, the Governor assures us that nothing could be further from the actual case. Invoking the interimperial anxieties common around the time of the War of Spanish Succession as well as the fear of slave insurrection, he adds that transports have “Inveigled and Encouraged Severall Negroes to desert from their Masters and go to the Spaniards in Cuba.”³⁶

Complaints of this sort—coming from colonial authorities and focusing on the wickedness of convicts in British America—recurred throughout the eighteenth century in a wide array of genres that reported on the outcomes of transportation.³⁷ When other colonies subsequently introduced laws intended to slow or totally stop the convict trade, they also highlighted the question of criminal behavior. For example, the year Defoe published *Moll Flanders*, the Virginia law mentioned above stipulated that, among other encumbrances, a £100 bond was required to guarantee convicts’ good conduct for two months after their transportation.³⁸ In 1731, ignoring the concern over the smallness of the non-African population the Jamaica colony, a subsequent Governor of Jamaica, Robert Hunter, defended a £100 tax on the importation of convict laborers by explaining that trade people in the colony could no longer sleep with their doors open.³⁹

Raising the question of reform quite seriously as a matter of colonial and penal policy, such laws put protracted accounts of convict lives in the spotlight as a measure of the promise the Transportation Acts had set forward.

This legislative jockeying is part of what Gwenda Morgan and Peter Rushton have recently described as the “criminal Atlantic”: a sphere of activity, subtended by a burgeoning print culture, in which stories of convicts circulated back and forth across the Atlantic as much as the transports themselves; where “every evaluation of the efficacy of the law inevitably led to a discussion of transportation and its consequences,” consequences measured in increments of the life stories of former felons that “emerge haphazardly in many different forms and with very different purposes.”⁴⁰ Newspapers on both sides of the Atlantic printed and reprinted reports of what had happened to convicts after transportation, showing that in some cases (as in that of Charles Wilson Peale’s father) felons had made good in the colonies and that in others they had continued a cycle of criminal activity and punishment.⁴¹ This “media phenomenon” produced a key conduit for incriminations between the colonies and the Imperial center and instantiated an “early form of globalized news.”⁴² For local audiences, printed accounts of a convict transport’s farther adventures replaced local penalties where accusers had felt their individual injuries had been redressed through public shaming or corporal punishments.⁴³

In institutional terms, transportation stories reflected the changing texture of courtroom evidence and offered a medium through which Britain and its colonies negotiated the meaning of their respective positions within the Empire and the legal foundations of imperialism itself.⁴⁴ For the cultural imagination, such accounts reorganized the circuitry between narrative, criminal identity and the law. Yet, as *Moll Flanders* reveals, to comprehend fully the way colonial interests induced changes in criminal law that bear a uncanny modern imprint, we must acknowledge the interstices between secular and religious authority—an overlap that enabled the movement of convicts across the Atlantic by allowing courts to single out and even produce transports from within the larger criminalized population.⁴⁵

II.

Before 1700, exile as a form of punishment had begun to appear in various sites across the Empire. From at least the end of the sixteenth century it had been used to manage difficulties in religious politics in

England and continued to do so importantly in the aftermath of the Jacobite rebellion of 1715.⁴⁶ Exile also became a means of attempting to stabilize social unrest in the colonies as various sites across the globe saw the expulsion of malcontents in efforts to suppress insurrection or attenuate political hostilities. Turned directly against a domestic population (also needing to be governed without a police force and a large army) exile widened a narrow spectrum of punishments, but it needed a legal rationale. Amidst the reform-oriented views that cropped up at the end of the seventeenth century, this rationale came together in a series of legal fictions that linked convict transportation to penitence and abjuration by conferring a clerical status on those who broke secular laws, mostly by stealing.⁴⁷

Straying far beyond the limits of a typical criminal biography, *Moll Flanders* ends not with its protagonist at gallows but instead as a wealthy, penitent planter re-established in Britain and taking control of her life story. In what remains of this essay, I will consider the punishment alternative opened by the institutionalization of transportation as an engine of narrative complication and a provocation for generic suturing. Additionally, to bring the historical framework I have so far outlined to bear on the text's intriguing conclusion as well as the debate over irony it provoked, I will sort out the religious mechanisms Defoe associates with transportation in Moll's case. Reading *Moll Flanders* under the strange lights of sentencing processes that employed centuries old jurisdictional boundaries between ecclesiastical and secular courts helps reframe the enigma of Moll's penitence. Seen in this way, Defoe's text also illuminates a cultural matrix wherein moral doctrines were grafted onto forced labor punishments—punishments that both needed to be distinguished from slavery and yet like slavery served as a hallmark of Britain's colonial agenda throughout the eighteenth century.⁴⁸

A harbinger of the secondary punishments that define modern penal systems, the institutionalization of criminal transportation opened a gray area in criminal punishment—a space between death and injury that enabled a revised set of narrative possibilities in the representation of criminal lives. Despite the fact that Moll seems born to hang, as the proverb of the time promised, her narrative embraces the less ideologically neat possibility that she might suffer punishment and also continue her life in another manner.⁴⁹ By the time we reach the end of Moll's story, the text has prepared us for such indefinite and pragmatic plotting. On two earlier occasions, characters debate the kinds of narrative destinies waiting to receive them and opt for possibilities

that evade hackneyed and unproductive story lines. After having been jilted early in the novel, Moll sees her future contained between the poles of a rigid duality: her abandonment by Robin's older brother signifies an unequivocal "Ruin," a definite "Undo[ing] for ever" (33). In response, Robin proposes that she play the matter differently by agreeing to marry Robin himself and suppressing the fact she'd already taken his brother as her lover. "[C]onsider," he proposes, "what it will be to Marry a Gentleman of a good Family, in good Circumstances, and with the Consent of the whole House, and to enjoy all that the World can give you" (55). "Reason'd . . . out of [her] Reason," Moll acquiesces, abandoning the ideal of an unsullied reputation and the dramatic stereotype of the fallen woman for the more pragmatic alternative of establishing herself in Robin's family and wealth (57).

This negotiatory logic also informs the conversation about legal options that takes place in Newgate between Moll and Jemy, her Lancashire husband. Unable to imagine what he might do or whom he might be outside the parameters of a highwayman's criminal biography ending on the gallows, Jemy tells Moll that he'd rather hang than be transported. "[H]ere," he explains, "he knew what to do with himself, but there [in America] he should be the most ignorant helpless Wretch alive" (303). Moll counters, arguing that, as a transport, he might finally "restor[e] his Fortunes in the World" (303). Much as Robin talks Moll out of avoidable ruin, Moll convinces Jemy to let go of an overly rigid set of narrative possibilities. Both characters swap the "tragic Issue" of one kind of story for more complex, pragmatic, and productive alternatives (293). Defoe makes it especially easy to read Jemy's case as a self-reflexive moment of fiction making that acknowledges its debt to and departure from other biographical forms. Moll thinks of her husband's life in these very terms. She refers to Jemy's life as a "very strange History . . . infinitely diverting" (299); and, at first hearing his account of himself, she confesses that it was "indeed surprizing, and full of an infinite Variety sufficient to fill up a much brighter History for its Adventures and Incidents, than any I ever saw in Print" (159). Returning to Britain after making her fortune as an American planter, she even contemplates writing Jemy's story herself: "I believe he was as sincere a Penitent, and as thoroughly a reform'd Man, as ever God's goodness brought back from a Profligate, a Highway-Man, and a Robber. I could fill a larger History than this, with the Evidences of this Truth" (339).

That Moll attributes Jemy's transformation at the story's end (and by extension her own narrative's appeal) to "God's goodness" should

remind us that even the most forceful endorsements of *Moll Flanders* as a masterwork of ironic plotting and linguistic play recognize the “sincerity of tone” and structure in Moll’s final conversion in Newgate.⁵⁰ John Bender has compellingly argued that Moll’s Newgate epiphanies forecast the advent of the penitentiary by focusing on self-reflection and by linking mental processes to imprisonment.⁵¹ Insisting on the priority of the transportation context, I would add that Defoe’s depiction of the penal system in *Moll Flanders* can also be read productively outside the frame of Moll’s solitary thinking and with reference to her social milieu and contemporary sentencing processes.⁵² Looking at the laws that define Moll’s case (and without which *Moll Flanders* might very well have ended on the gallows), we can see that from her capture to her final punishment of transportation, Moll’s engagement with the law is figured as a supplication to religious power that ostensibly protects and defines her interests. So much can help us understand why even though the concept of criminal rehabilitation fit well with post-Restoration thinking about education and the mutability of identity, correctional mechanisms always carry a compellingly non-secular aspect in Defoe’s transportation narratives.⁵³

As G. A. Starr has shown, Moll’s final imprisonment leads to a series of false repentances that set off a seemingly genuine repentance.⁵⁴ In key ways, however, the spiritual repercussions of these events are not contained by Moll’s actions and thought alone and belong to a wider sphere of activity. Alerted to Moll’s situation, her “old Governess” (a Mother Midnight figure who brokers her protégé’s stolen goods) attempts to help her underling by dissuading the witnesses to her crime from testifying.⁵⁵ When she fails in this endeavor and it becomes certain that Moll will be sentenced to execution, the Governess—suffering in sympathy—undergoes a spiritual transformation. As Moll describes it, the Governess realizes the extent of her wrongdoing:

My poor afflicted Governess was now as much concern’d as I, and a great deal more truly Penitent . . . she believ’d there was a Curse from Heaven upon her, that she should be damn’d, that she had been the Destruction of all her Friends, that she had brought such a one, and such a one, and such a one to the Gallows. (283)

Once Moll is actually sentenced to death, the Governess “was struck with Horror at the Sense of her own wicked Life, and began to look back upon it with a Taste quite different from mine; for she was Penitent to the highest Degree for her Sins, as well as Sorrowful for the Misfortune” (286). Such grievous reflections cause the Governess

to send “for a Minister,” one Moll describes as a “serious pious good Man,” and with whom the Governess “appl’d herself to the Work of a sincere Repentance, that I believe, and so did the Minister too, that she was a true Penitent, and which is still more, she was not only so for the Occasion, and at that Juncture, but she continu’d so, as I was inform’d to the Day of her Death” (286).

By her conversion and her desire for Moll to follow suit, the Governess initiates a series of events that dramatically alter the end of the narrative. Like the Newgate Ordinary, the minister sent to visit Moll in jail encourages her to repent and under his guidance Moll confesses to “for the first time” feeling “real signs of Repentance” (287).⁵⁶ This Minister helps Moll move from her earlier false repentances to “a Condition, that [she] never knew any thing of in [her] Life before” and in which she experiences “a secret surprizing Joy at the Prospect of being a true Penitent, and obtaining the Comfort of a Penitent” (289). The series of conversions thus leaps from the Governess to Moll, and in Defoe’s representation of the criminal justice system these spiritual matters have material bearing on Moll’s case. As Moll describes this process, the Minister’s experience of her “freedom of Discourse”—whereby she “disburthen[ed] [her] Mind”—“qualifie[d] him to apply proper Advice and Assistance,” and “to pray to God” (288). By these terms, we soon after find, the Minister means to assist Moll not only in a spiritual capacity but also in an explicitly legal one. Having heard her story, he “obtain[s] a favourable Report from the Recorder to the Secretary of State” and gets her a temporary reprieve from execution (290).⁵⁷ More than likely, as a legal historical fact this process entailed the following events: the Minister directly or by proxy discusses Moll’s case with a Judge who in turn drafted and submitted a memorial to the King through the Secretary of State’s office.⁵⁸ Containing a description of the circumstances of the case, such communications usually recommended that the condemned person receive Royal Mercy in the form of a conditional pardon or a reprieve.

In Moll’s case, a reprieve is granted; and since it was the Minister who obtained the report and delivered it to the Secretary of State we can assume that the judge recommending her to the King for mercy had been swayed by the account of her repentance. This interplay of religious and legal forces produces two instances of linguistic doubling at this juncture in the narrative.⁵⁹ As Moll’s Minister (and efficacious legal advocate) explains after successfully petitioning the judge on her behalf, “a Reprieve was not a Pardon”; Moll could still in the end suffer execution, but she “had this Mercy” of “more time” (292). Slid-

ing off the Minister's tongue, which mixes the languages of law and religion, "mercy" invokes both a general sense of God's mercy while also connoting Royal Mercy, the force that has spared Moll's life for the moment. Severely shaken as other prisoners are taken to their death, Moll falls "into a fit of crying involuntarily and without Design"; "this fit," she relates, "held me for near two Hours and as I believe held me till they were all out of the World, and then a most humble Penitent serious kind of Joy succeeded; a real transport it was, or Passion of Joy, and Thankfulness" (292). Considering how close she had come to joining her fellows in death, Moll's puns on the word "transport" indicates an emotional upheaval; yet it also acknowledges the legal processes that might turn her reprieve into an actual escape from the hangman's noose. So much becomes especially clear as two paragraphs later she tells us—repeating the word "humble"—of the "Petition for Transportation" that finally puts her beyond execution (293).

I will turn momentarily to the meaning of this petition. Yet it is worthwhile to note that this simple pun on the word "transport" encodes various other associations belonging to the early eighteenth-century legal context where the majority of transported felons received such a sentence (commuted from hanging) by identifying themselves as clerics and seeking the protection of the church. In Defoe's Britain, clerical benefits dated back to divisions between secular and ecclesiastical courts established in the twelfth century when the King's courts refused to try an actual cleric who assisted in the murder of Archbishop Becket.⁶⁰ Over the next 600 years, statute law would extend that privilege to all who could read in 1350, to the nobility in 1547, then to all men in 1671, and in the early 1690s—just before the 50 female coiners were sent to the Leeward Islands—to women. Even though the literacy test was done away with in 1706, throughout the eighteenth century statutory construction of felonies used clerical benefits to prescribe corporal punishment or transportation and thus to mitigate the severity of the criminal code.⁶¹ Modern historians accurately characterize this process whereby criminals pleaded clerical benefits in secular courts as a species of legal fiction, a scripted improvisation of identity "devised as a means of evading or modifying laws, which, obstructive or oppressive in particular cases could not be repealed" and not "intended to fool anybody."⁶² Yet, in criminal proceedings where human lives were at risk, this masquerade was taken quite seriously as clerical benefit linked a "transport" of religious feeling to a the evasion of a death sentence.

Hardly just a quirk of courts inclined to recycle rather than destroy felons, the deference of criminal law to ecclesiastical powers that authorized transportation attests to persistence of the medieval practices of sanctuary and abjuration in eighteenth-century Britain. Sanctuary was both a legal and ecclesiastical process whereby a criminal might flee to a church or another sacred place and, after confessing guilt to a secular officer, take an oath to “abjure the realm”; that is, a vow to leave it forever and relinquish any claim to property therein.⁶³ Working in tandem, sanctuary and abjuration allowed criminals to escape, also under a shield of religious protection, the trial and punishments of secular courts. Taken off the books in 1623, abjuration remained a way of thinking about and justifying criminal transportation.⁶⁴ As Blackstone’s *Commentaries* explained at midcentury, “[s]ome punishments consist in exile or banishment, by abjuration of the realm, or transportation to the American colonies.”⁶⁵ Set in this lineage the legal finery that Defoe holds responsible for Moll’s transportation becomes more easily readable. At the moment Moll sees her cohorts carried off to execution, she feels the force of privilege and protection she has received as a result of her demonstration of penitence and her Minister’s intervention in the affairs of secular law. In the long memory of British law Defoe consolidates in Moll’s story, the word “transport” carries the meaning of a conveyance to a sacred place, a jurisdictional perimeter that both protects her from a capital punishment and portends her exile.⁶⁶

While these facets of British legal history inflect the meaning of Moll’s changing status in the eyes of the law, they do not fully account for results of her case. Moll has a reprieve granted on the authority of Royal Mercy. She ultimately escapes death, however, by submitting a petition for a conditional pardon that spares her life in exchange for her agreement to be shipped to America. These events tell us something more specific about the facts of Moll’s felony conviction and the specifics of the case Defoe had in mind when he penned her story. It is well known that the theft of property constituted a felony in early modern Britain. In such cases, however, when the value of the stolen property was less than a certain amount (40 shillings in the time of Queen Anne), felons could ask to receive the benefit of clergy and have a capital sentence commuted to one of transportation or of corporal punishment—often the “burn[ing] in the hand” referred to by Moll’s mother.⁶⁷ That Defoe resorts to having Moll petition for transportation intensifies the suspense of her sentencing, but it also indicates that the value of the pieces of silk she has stolen have put her beyond clerical

benefit and that the jury in the case refused to determine the value of the stolen goods in such a way as to make her offense clergyable.

Moll's only recourse is a conditional pardon through which she would transport herself to America. I emphasize her agency in these matters to foreground the fact that convict transportation—from the seventeenth through the nineteenth centuries—operated with the help of another conspicuous legal fiction. Punishments involving banishment or outlawry were proscribed by the Magna Carta and, after the Restoration, by the Habeas Corpus Act. The exile of lawbreakers evaded these prohibitions, however, by scripting convict agency into the sentencing process and having felons—like Moll and Jemy—elect a conditional pardon. The Habeas Corpus Act explains that “if any person or persons lawfully convicted of a Felony shall in open Court pray to be transported beyond the Seas and the Courts shall thinke fitt to leave him or them in Prison for that purpose such a person or persons may be transported into any parts beyond the Seas.”⁶⁸ In this most famous of British laws, a felon's capacity to shape their legal status is defined by their willingness to “pray”—that is, to plea for mercy or a commuted sentence on the basis of an imputed change of heart.⁶⁹

Of course, a willful choice made in a legal context where life and death hang in the balance would likely have little choice behind it. As Moll herself suggests, presaging the skepticism of modern historians on this point, the choice involved in such cases is no choice at all: “I shall make no Comments upon the Sentence, nor upon the Choice I was put to; we shall all choose any thing rather than Death, especially when 'tis attended with an uncomfortable Prospect beyond it, which was my Case” (293). The appeal of such scenes for literary authors is evident in Aphra Behn's *Oroonoko, or the Royal Slave* wherein Imoinda weeps before the King of Coramantien and implores “a Pardon for a Fault which she had not with her Will committed . . . against her Conscience; but to save her own Life.”⁷⁰ In the eye of the law, however, to be legitimately transported under a legal regime that technically prohibited outlawry, convicts like Moll needed at least technically to recant their vicious habits to clear the way for a request of mercy. Since the mercy they might receive was always in one form or another linked to God's authority, Moll's “humble petition” for transportation is of necessity freighted with the weight and forms of a self-reflexive penitence. In this way, criminal law inscribed a (perhaps all too fictional) space for convicts to take power over their own fate.

The never fully resolved debate over irony in *Moll Flanders* pivoted, for the most part, on Defoe's representation of penitence and

an associated moral worldview. Another perspective opens when we reconstruct the legal processes that authorized criminal transportation and refashioned the meaning of criminal punishment in early eighteenth-century Britain. To think in terms of irony and sincerity misconstrues the manner in which penitence takes on meaning in Defoe's text and, more than anything, expresses a desire to hold Moll responsible for the options she faces as a subject of law. These terms lose their potency and perhaps fall away altogether when we consider penitence, repentance, and pleading for mercy as religious apparatuses scripted into the condition of convict transportation. Published at a moment when laws streamlining the sentencing process and bolstering the economic foundation of criminal exile had just been introduced, Defoe's text consolidates a legal historical vignette about how old laws paved the way for new ones. To borrow a phrase from Jemy, *Moll Flanders* explores "all the Forms of a Transported Prisoner *Convict*"; that is, the surplus of meaning attached to sentences of exile in the colonies (311). In so doing, the narrative urges us to redraw the historical frames we have used to render the culture of punishment legible. Rather than looking ahead to an idealized version of imprisonment, it asks us to imagine a moment in which spiritual concerns and those of the criminal justice system were intertwined in the service of an expanding Empire—a moment when the status of the transport stood as concoction of penitence and jurisprudence peculiar to, as Blackstone would later call it, the "noble alchemy" of British law.⁷¹

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NOTES

¹ Daniel Defoe, *The Fortunes and Misfortunes of the Famous Moll Flanders*. . . , ed. G. A. Starr (Oxford: Oxford Univ. Press, 1998), 86. Hereafter cited parenthetically by page number.

² As Starr notes, "Train Bands" were local military groups. See his explanatory notes (362n6). From the late fifteenth century forward, criminal courts used branding on the hand and (around the turn of the eighteenth century) on the face as a punishment that would simultaneously injure and identify felons whose death sentences were commuted.

³ Defoe, "On the Return to England of Transported Felons," *Daniel Defoe: His Life and Recently Discovered Writings*, ed. William Lee, 3, vol. (Hildesheim: Georg Olms Verlagsbuchhandlung, 1968), 2:95. A question has been raised about the extent of Defoe's connection to *Applebee's Journal*, where this letter first appeared. See P. N. Furbank and W. R. Owens, *Defoe De-Attributions* (London: Hambledon Press, 1994), xxii–xxiv. To date, however, the attribution of this particular letter to Defoe has not met with a specific challenge. Moreover, as my argument will show, the timing, diction, and sentiments of this letter are in keeping with the attitudes to convict transportation foregrounded in Defoe's fiction.

⁴ Maximillian E. Novak, *Economics and the Fiction of Daniel Defoe* (Berkeley: Univ. of California Press, 1962), 154. For Novak's discussion of Defoe's relationship to mercantilism, see 1–31.

⁵ Paula Backscheider shows that in 1688, as a partner in a transatlantic voyage, Defoe staked money on a servant cargo. He paid £1.7.6 per person for the conveyance of several non-criminal servants and an additional £1.7.0 per person to supply these persons with shoes and coats. In return, he received a profit of £8.5s for one of the men sold in Maryland. See *Daniel Defoe: His Life* (Baltimore: Johns Hopkins Univ. Press, 1989), esp. 482–3, 487–8.

⁶ A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718–1775* (Oxford: Clarendon Press, 1987), 4. For a similar view, see A. G. L. Shaw, *Convicts and the Colonies* (1966; Melbourne: Melbourne Univ. Press, 1981), 30–1.

⁷ Ekirch, 3 and 167–193 more generally. A felon with some money, like Moll, might buy their freedom in America, but such cases are hardly representative. Like most historians who have studied convict transportation, Ekirch finds convict transports wallowing at the lowest levels of colonial society and rarely meeting with any kind of financial or social success. *Bound for America* takes Blackstone's claim as its epigraph. It originally appeared in *Commentaries on the Laws of England*, 1765–9, 4 vol., (Chicago: Univ. of Chicago Press, 1979), 4:17.

⁸ Dennis Todd, *Defoe's America* (Cambridge: Cambridge Univ. Press, 2010), 156.

⁹ Generally speaking, *Col. Jacque*, published within a year of *Moll Flanders*, has been lumped in with its better known counterpart as an idealistic fiction of transportation. This view does not acknowledge that Jack does not sell himself into service and is not a criminal sentenced to transportation. Even though it is beyond the scope of this short essay to give the matter a thorough consideration, *Col. Jacque* stands as a complex reworking of the vision of transportation that appears in *Moll Flanders*—one that remakes the transport's story into a narrative model of reform applicable to convicts and non-convicts alike.

¹⁰ As historians are now coming to recognize, transatlantic legal exchanges of this sort played a key role in binding together the British Atlantic and laying the groundwork for later articulations of federalism. See Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge: Harvard Univ. Press, 2004). Convict transportation represents an example of policy “being made in the colonies rather than in London”; see J. M. Beattie, *Crime and the Courts in England, 1660–1800* (Oxford: Clarendon Press, 1986), 481 and 479–482 more generally.

¹¹ John Bender sees *Moll Flanders* as part of the eighteenth-century cultural milieu that enabled the rise of the penitentiary as a model of punishment. See *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (Chicago: Univ. of Chicago Press, 1987). Reaching contradictory conclusions, John P. Zomchick and Mary Jo Kietzman put Defoe's text in dialogue with contemporary trial reports in, respectively, “‘A Penetration which Nothing Can Deceive’: Gender and Juridical Discourse in Some Eighteenth-Century Narratives,” *Studies in English Literature, 1500–1900* 3 (1989): 535–611, and “Defoe Masters the Serial Subject” *ELH* 66 (1999): 677–705. Beth Swan shows the extent to which Moll uses legal language and acts as an advocate in criminal court in “Moll Flanders: The Felon as Lawyer,” *Eighteenth-Century Fiction* 11 (1998): 33–48. More recently, Melissa J. Ganz has opened the context of contemporary marriage law as key to Defoe's views on that subject in “Moll Flanders and English Marriage Law,” *Eighteenth-Century Fiction* 17 (2005): 157–182.

¹² Beattie, 450–1. Shaw hinted at this revised view earlier calling the transportation system a “major ingredient of English criminal law” in the eighteenth century (25); also see 28–9.

¹³ The 1718 Transportation Act made seven-year sentences the standard punishment for non-capital offenses but also allowed for 14-year sentences to be granted in capital cases through the system of royal pardons.

¹⁴ Beattie, 513.

¹⁵ See Novak, 146–7 and Backscheider, 487. Also see Shaw, 32–3. Ekirch explains how this legal contest over transportation unfolded on the North American mainland (see 133–66). Abbott E. Smith offers a Jamaican parallel in his *Colonists in Bondage: White Servitude and Convict Labor in America 1607–1776* (Massachusetts: Peter Smith, 1965), 103–4.

¹⁶ The idea of selling British labor to the colonies was an idea that sat uncomfortably with typical mercantilist views, see Beattie 480 and Ekirch.

¹⁷ Records of the first government contracts immediately following the Transportation Act also show that a few convict ships had served as slave ships. See 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* (Baltimore: Genealogical Publishing Co. Inc., 1994), 173–6.

¹⁸ See Smith, 100. Periods of peace following war usually saw elevated levels of crime and punishment as many men became unemployed and the state could afford to turn its attention to domestic matters. In this regard, the end of the War of Spanish Succession in 1713 may be seen as a catalyst for the new approach to criminal punishment developed and implemented in the following decade. See Ekirch, 14–8.

¹⁹ See Backscheider, 485n42. Also see Beattie, 480–4 and Coldham, *Emigrants*, 54–5, 62–3.

²⁰ Beattie, 472.

²¹ Beattie, 475–9.

²² See Coldham, 159–160 for statistics taken from the Patent Rolls from 1655 to 1719.

²³ Jeafferson to Captain Willett, London, 2 December 1682, in *A Young Squire of the Seventeenth Century*, ed. John Cordy Jeafferson, 2 vol. (London: Hurst and Blackett), 2:6.

²⁴ See Beattie, 481–3; and Shaw, 33.

²⁵ *Calendar of State Papers, Domestic Series*, 1697 (London: His Majesty's Stationery, 1927), 160.

²⁶ The Agents for New York did not declare an outright refusal, as Jamaica and Massachusetts had, but instead stipulated that the women could be sent over “if they are young and fitted for labour, and provided that they be committed to some person who will take care for their clothing and diet after arrival . . . and who will dispose of them in service for some certain number of years, not less than four nor exceeding seven.” See *Calendar of State Papers, Colonial Series*, 1696–1697 (London: His Majesty's Stationery, 1904), 559.

²⁷ This change can be seen as part of an unprecedented financial investment in the problem of crime enabled by the rapid increase in government revenue Britain saw at the beginning of the eighteenth century. See Ekirch, 18; and Beattie, 508.

²⁸ This data appears in Smith, 311.

²⁹ Ekirch, 21.

³⁰ Ekirch, 27.

³¹ For such a graph, based on the punishment pattern in the county of Surrey for the period from 1660–1800, see Beattie, 620.

³² Take for example the satirical representations of transportation in Aphra Behn's *The Widow Ranter* and James Revel's "The Poor Unhappy Transported Felon's Account of his Fourteen Years Transportation, at Virginia in America." Written and performed in the last decades of the seventeenth century, Behn's play was only published posthumously. The only extant versions of Revel's poem date to the eighteenth century. However, as Jim Egan argues, it was most likely written much earlier. See James Egan, "James Revel 1640s?—?" *The Heath Anthology of American Literature*, ed. Paul Lauter, 5th ed. (Boston: Houghton Mifflin, 2006), 278–81.

³³ 4 George I c. 11 § I in *The Statutes at Large from the First Year of the Reign of King George the First to the Third Year of the Reign of King George the Second*. 8 vol. (London: Woodfall and Strahan, 1768–70), 5:174.

³⁴ 4 George I c. XI § I in *The Statutes at Large*, 5:174.

³⁵ Quoted in Frank Wesley Pitman, *The Development of the British West Indies, 1700–1763* (New Haven: Yale Univ. Press, 1917), 55–6.

³⁶ Quoted in Pitman, 56.

³⁷ For examples, see Ekirch, 136–138 and 168; Richard Hofstadter, *America at 1750: A Social Portrait* (New York: Knopf, 1971), 49; Smith, 129–31; and also Eugene Irving McCormac, *White Servitude in Maryland 1634–1820*, Johns Hopkins University Studies in Historical and Political Science Series 12, No. 3–4 (Baltimore: Johns Hopkins Univ. Press, 1904), esp. 209–17.

³⁸ See Smith, 119–20.

³⁹ See Pitman, 56.

⁴⁰ Gwenda Morgan and Peter Rushton, *Eighteenth-Century Criminal Transportation: The Formation of the Criminal Atlantic* (Houndmills: Palgrave, 2004), 66–7.

⁴¹ See Morgan and Rushton, *Eighteenth-Century Criminal Transportation*, 63–97. On Peale's story and for a broader analysis of newspaper exchanges concerning transported convicts, see Morgan and Rushton, "Print Culture, Crime, and Transportation in the Criminal Atlantic" *Continuity and Change* 22.1 (2007): 49–71, esp. 52.

⁴² Morton and Rushton, "Print Culture," 50.

⁴³ See Morgan and Rushton's account of Daniel Bishop and the transatlantic paper trail his transportation produced in *Eighteenth-Century Criminal Transportation*, 62–4. A useful analog for this process appears in Adam J. Hirsch discussion of the concerns attending the establishment of centralized prisons the early United States. See *The Rise of the Penitentiary: Prisons and Punishment in Early America* (New Haven: Yale Univ. Press, 1992), 32–46.

⁴⁴ Piecemeal as they were, throughout the eighteenth century transportation narratives defined and questioned penal servitude as a colonial and legal practice, and the often conflicting accounts given—showing continued criminal depravity after transportation as well as rehabilitation—record how distinct communities shaped the larger legal regime they inhabited. The archival record of these criminalized migrants opens onto the legal pluralities and processes of the Atlantic world described Lauren Benton in her *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge Univ. Press, 2004). More recently, Benton has focused specifically on convict transportation as a process common to European imperial expansion whose "uncertainty" reflects the commingling of law and "extrajudicial actions." See *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010), 171.

⁴⁵ In a groundbreaking essay, Douglas Hay observed that “[i]n its ritual, its judgments and its channeling of emotion the criminal law echoed many of the most powerful psychic components of religion.” See “Property, Authority, and the Criminal Law” in *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England*, eds. Douglas Hay et al. (New York: Pantheon, 1975), 29. Much of Hay’s evidence comes from the second half of the eighteenth century. In the period I examine in this essay, before the installation of individual sentiment and personal forgiveness as an ideological means of redistributing the power over life and death, the boundary between secular and sacred discourses appears even more permeable even as it is directly attached to juridical processes.

⁴⁶ See Shaw, 21–25 and Margaret Sankey, *Jacobite Prisoners Of The 1715 Rebellion: Preventing And Punishing Insurrection In Early Hanoverian Britain* (Aldershot: Ashgate, 2005).

⁴⁷ For a discussion that links the social reforms movements to penal experiments moving toward a rehabilitative model, see Beattie, 494–500.

⁴⁸ The most thorough analyses of the way the systems of convict labor and African slavery related to one another in British America have been penned by David Eltis. See “Labour and Coercion in the English Atlantic World from the Seventeenth Century to the Early Twentieth Century,” in *The Wages of Slavery: From Chattel Slavery to Wage Labour in Africa, the Caribbean, and England*, ed. Michael Twaddle (London: Frank Cass, 1993), 207–226, and his “Slavery and Freedom in the Early Modern World,” in *Terms of Labor: Slavery, Serfdom, and Free Labor*, ed. Stanley L. Engerman (Stanford: Stanford Univ. Press, 1999), 25–49. As he proposes, the sentencing of felons to periods of plantation labor constituted by far the most convenient and inexpensive option for providing the colonies with an adequate labor force. However, as he concludes, there is “no purely economic explanation as to why European prisoners were never sentenced to a lifetime of servitude in the plantations” (“Labour and Coercion,” 218). The turn to African slavery over convict labor has to find its basis somewhere else—more than likely in the cultural currents that defined one practice against the other.

⁴⁹ Ideologically, most criminal biographies were designed to perpetuate a fantasy about the power of law to guarantee safety from criminal violation. As Lincoln B. Faller explains, “[t]heir necks safely wrung, processed and packaged in ways that declared them fit for consumption . . . criminals lived their lives over and over in readers’ imaginations, committed their crimes and met their deaths again and again” (*Turned to Account: the Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* [Cambridge: Cambridge University Press, 1987], xi). However, as Morgan and Rushton have shown, reports of the lives of transported felons worked in another way by repeatedly dramatizing the failure of punishment. See their “Print Culture,” 54–6.

⁵⁰ Novak, “Conscious Irony in Moll Flanders,” *College English* 26 (1964): 201.

⁵¹ Bender, 43–6.

⁵² For a discussion of the social dimensions of the pardon process, see Hay, 43–4.

⁵³ I am thinking of accounts that describe the impact of Lockean sensationism on education and concepts of personal development. See, for example, G. J. Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago: Univ. of Chicago Press, 1992), 3–6, and Jay Fliegelman’s introduction to *Prodigals and Pilgrims: The American Revolution Against Patriarchal Authority* (Cambridge: Cambridge Univ. Press, 1982), 1–6.

⁵⁴ Starr, *Defoe and Spiritual Autobiography* (Princeton: Princeton Univ. Press, 1965), 152–160.

⁵⁵ For an account of the long tradition this figure draws on and Defoe's version of this figure, see Robert A. Erickson, "Moll's Fate: 'Mother Midnight' and *Moll Flanders*," *Studies in Philology* 76 (1979): 75–100.

⁵⁶ Given Defoe's diction, it is difficult to say with absolute certainty that this is the same Minister who attends to the Governess. Nonetheless, Defoe takes care to distinguish this Minister from the Newgate Ordinary: Moll explains that "he did not come as the Ordinary of the Place, whose business it is to extort Confessions from Prisoners, for private Ends, or for the father detecting of Offenders" and that her disclosures would "remain with him, and be as much a Secret as if it was known only to God and myself" (288). For an account of Defoe's association with the Newgate Ordinary, see Robert Singleton, "Defoe, Moll Flanders, and the Ordinary of Newgate," *Harvard Library Bulletin* 24 (1976): 407–13.

⁵⁷ That Moll's repentance encourages her Minister to solicit an appeal on her behalf raises the broad question of equity in the courts—a matter that subtends the issue of leniency given criminals. As Brook Thomas explains, calls for equity result from a sense that positive law has diverged too far from natural law. In Britain, this gap was managed and mended by special courts that functioned as an extension of the King's authority, an authority in itself that emanated from God. See *American Literary Realism and the Failed Promise of Contract* (Berkeley: Univ. of California Press, 1997), 26–27. The intervention of the Secretary of State on Moll's behalf is of this sort: it represents the intervention of a power greater and higher than law into the machinery of law itself.

⁵⁸ I am grateful to Starr's explanatory notes for pointing me to a discussion of this procedure in Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750: The Movement for Reform, 1750–1833* (New York: Macmillan, 1948), esp. 110–1 as well as A. L. Cross, "The English Law and Benefit of Clergy During the Eighteenth and Early Nineteenth Centuries," *The American Historical Review* 22 (1917): 544–565. For an especially useful note on this point, see Cross, 558n67.

⁵⁹ Novak offers a compelling account of the linguistic play in *Moll Flanders* of which this instance takes part. See "Defoe's 'Indifferent Monitor': The Complexity of *Moll Flanders*," *Eighteenth-Century Studies* 3 (1970): 353–7.

⁶⁰ See William Holdsworth, *A History of English Law*, 17 vol., ed. A. L. Goodhart and H. G. Hanbury (London: Methuen, 1956–1982), volume 1, esp. pages 615–6.

⁶¹ Holdsworth, 1:295.

⁶² Cross, 544. Turning again to Behn's *The Widow Ranter*, we can see how laughable this flimsy masquerade was for some. When Whiff asks to receive clerical benefits in a mock trial staged between buffoons, his cohort, Whimsey, acting as judge retorts, "The Clergy, I never knew any body that ever did benefit by em, why thou canst not read a word!" and nonetheless sentences him to transportation—to England. See Behn, *The Widow Ranter; or the History of Bacon in Virginia in The Works of Aphra Behn*, ed. Janet Todd, 7 vol. (Columbus: Ohio State University Press, 1996), 7:337.

⁶³ Holdsworth, 305. William Blackstone also discusses this process at the open of his account of the defenses available to lawbreakers brought before the law. See his *Commentaries*, 4:326–7.

⁶⁴ As historian André Réville was inclined to ask, weren't eighteenth-century sentences of penal servitude "beyond the seas," more of a "recollection rather than an innovation?" See his "L'Abjuratio Regni: Histoire d'une Institution Anglaise" *Revue Historique* (Sept.–Dec. 1892): 42. This translation is my own.

⁶⁵ Blackstone, 4:370.

⁶⁶ In a London newspaper notice from 1724 later reprinted by Benjamin Franklin's Boston paper, a group of convicts awaiting transportation are described as "100 Head of *black* cattle, lying ready for Exportation to Virginia." The allusion to the kind of livestock typical to the Scottish highlands marks the criminals as political prisoners and calls to mind the exile of Jacobites after the 1715 rebellion. *Moll Flanders* not only casts convict transportation as a religiously-charged process, but it also attempts to dispel the specifically Catholic stigma associated with this penalty on both sides of the Atlantic. See "London, Jan. 27" *New-England Courant* 145 (Boston, MA) 4 May to 11 May, 1724.

⁶⁷ Cross, 561.

⁶⁸ 31 Charles II c. 2 § 14 in *The Statutes at Large from the First Year of King James the First to the Tenth Year of the Reign of King William the Third*, 8 vol. (London: Woodfall and Strahan, 1768–70), 3:400.

⁶⁹ Kietzman finds convict agency in the "serial subjectivity" criminals deployed to confuse their accusers. *Moll Flanders*, she argues, suppresses even this limited power by forming convict identity through retrospective narration that yields a unified subject (676–8). The processes I have described suggest instead that law itself leads convicts to accept their lives as having a purposeful narrative cohesion leading from vice to penitence.

⁷⁰ Behn, *Oroonoko, or the Royal Slave* in *The Works of Aphra Behn*, ed. Todd 3:76.

⁷¹ Blackstone uses this term to describe the use of benefit of clergy by the "English legislature" whereby "an unreasonable exemption of particular popish ecclesiastics" was made "into a merciful mitigation of the general law, with respect to capital punishment" (4:364).