

Initial views from the Digital Panopticon: Reconstructing Penal Outcomes in the 1790s

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[Abstract]

Little attention has been given to the individual experiences, the singular journeys, of the accused through the labyrinthine process of the eighteenth- and nineteenth-century criminal justice system. This is in large part due to the difficulties of manually reconstructing such journeys and the wider criminal lives of offenders. But thanks to digital technologies we can now dismember the archives and reconstruct them with convict lives in mind, on a previously unimaginable scale. This is the aim of the Digital Panopticon, a collaborative research project funded by the UK Arts and Humanities Research Council as part of its “Digital Transformations” programme. It will trace the criminal and wider life histories of 90,000 Old Bailey convicts between 1787 and 1925. This article presents some of the initial findings from the project; focussing on the immediate penal outcomes suffered by those sentenced to death or transportation at the Old Bailey in the 1790s. By using digital technologies to map out such outcomes, the article sheds light on those outcomes that have been less well-explored in the historiography, and deepens our understanding of the key factors which shaped post-sentencing decision making. In the process, it demonstrates some of the ways in which digital technologies allow us to explore the records of criminal justice history in new ways.

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Initial views from the Digital Panopticon: Reconstructing Penal Outcomes in the 1790s

The criminal justice system of eighteenth- and nineteenth-century England has been likened to a corridor of connected rooms or stage sets.¹ At each stage in the judicial process -- from detection and apprehension through to trial, sentencing and punishment -- decisions were made that might remove the accused from the system entirely, or propel them further along the process into a number of possible outcomes. That decision making (including the identity of the decision makers and the criteria upon which their decisions were based) has been the subject of much historical study.² Less attention has been given to the individual experiences, the singular journeys, of the accused through this labyrinthine process. This is in large part due to the inherent evidential and methodological difficulties of reconstructing judicial pathways and the wider criminal lives of offenders. As Tim Hitchcock and Robert Shoemaker note, the archives of criminal justice were created to manage the bureaucracy of prosecution and punishment, not to reveal the criminal's navigation of that system.³ Tracing an individual offender's journey

¹ Peter King, Crime, Justice and Discretion in England 1740-1820 (Oxford: Oxford University Press, 2000), 1.

² Most notably, J. M. Beattie, Crime and the Courts in England 1660-1800 (Oxford: Clarendon Press, 1986); idem, Policing and Punishment in London 1660-1750: Urban Crime and the Limits of Terror (Oxford: Oxford University Press, 2001); King, Crime, Justice and Discretion; Robert B. Shoemaker, Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c.1660-1725 (Cambridge: Cambridge University Press, 1991).

³ Aside from, as Hitchcock and Shoemaker also note, the Ordinary of Newgate's biographical Accounts of the offenders executed at Newgate: Tim Hitchcock and Robert Shoemaker,

through the judicial process (and their life beyond) thus entails piecing together fragments spread almost randomly across hundreds of thousands of pages.

To do this manually is a time-consuming task, but one that can reveal much about the criminal lives of offenders, as a number of recent studies have shown.⁴ This heroic work has necessarily been limited to relatively small sample sizes. The challenge, then, is to reconstruct the criminal histories of tens (even hundreds) of thousands of offenders. Thanks to the digital age this is now possible. Digital technologies allow us to apply our long standing questions about the experience of justice at the individual level, to ‘big data’ -- that is, collections of records and information so large and complex that traditional forms of processing and analysis are inadequate. Digital technologies allow us to preserve a considerable level of qualitative detail from our sources on a scale that allows for comprehensive quantitative analysis. And a range of tools, from electronic databases and Optical Character Recognition, to automated name-linking algorithms, network analysis and data visualisation techniques enable us to dismember the archives and reconstruct them with convict lives in mind. Indeed, one of the greatest opportunities offered by the digital is this ability to reconstitute the archive and thus track convicts as they moved through the judicial system and beyond -- prior to this it was extremely difficult to trace offenders past the point of sentencing. We can, for instance, trace the criminal

London Lives: Poverty, Crime and the Making of a Modern City, 1690-1800 (Cambridge: Cambridge University Press, 2015), 23.

⁴ In particular, Mary Clayton, ‘The Life and Crimes of Charlotte Walker, Prostitute and Pickpocket’, London Journal 33 (2008): 3-19; Barry S. Godfrey, David J. Cox and Stephen D. Farrall, Criminal Lives: Family Life, Employment, and Offending (Oxford: Oxford University Press, 2007); idem, Serious Offenders: A Historical Study of Habitual Criminals (Oxford: Oxford University Press, 2010).

and wider life histories of the 90,000 or so offenders sentenced at the Old Bailey to transportation to Australia or imprisonment within Britain between 1780 and 1925. This is precisely the aim of the Digital Panopticon, a collaborative research project funded by the UK Arts and Humanities Research Council as part of its “Digital Transformations” programme.⁵ To this end, an essential element of the project will be the creation of a freely-accessible, searchable website (at www.digitalpanopticon.org, to be made publically available in 2017) that automatically identifies all of the documents relating to single individuals across over forty different sets of judicial and civil records, and combines these together to form a “life archive” for that person.⁶

This paper presents some of the initial findings from our early forays into reconstructing convict journeys using the Digital Panopticon’s searchable website, particularly in terms of quantitatively and qualitatively mapping out the penal outcomes experienced by Old Bailey convicts following sentencing. These findings are based on the digital record linkage that has so far been conducted between the Old Bailey Proceedings, the published accounts of trials held at London’s principal criminal court -- the project’s core dataset -- and five other datasets of digitised criminal justice records currently on the website which span the judicial process, from

⁵ For more on the project, see The Digital Panopticon: The Global Impact of London Punishments, 1780-1925 (hereafter DP), <http://www.digitalpanopticon.org/> (25 January 2016).

⁶ For a full list of the records that will be incorporated into the website, see DP, “Sources,” http://www.digitalpanopticon.org/?page_id=272 (25 January 2016). The website also allows users to manually add further documents to such computer-generated lives, as well as being able to search for, and create, other life archives.

pre-trial to post-sentencing.⁷ First, the early Home Office “criminal registers” (covering the years 1790-1799) -- lists kept of those committed to Newgate for trial, which frequently provide a note of post-sentencing decisions as well as personal details of the accused.⁸ Second, the British Convict Transportation Registers, a dataset that contains details for some 123,000 convicts transported to Australia between 1787 and 1868.⁹ Third, a dataset of “convict indents” -- documents first compiled as convicts were loaded onto the ships for transportation, and

⁷ Old Bailey Proceedings Online (hereafter OBP), “About the Proceedings,”

<http://www.oldbaileyonline.org/static/Proceedings.jsp> (version 7.2, 25 January 2016).

Records from the Old Bailey Proceedings Online are here cited using the website’s trial reference numbers, given in brackets. These can be searched for at

<http://www.oldbaileyonline.org/forms/formMain.jsp>. Strict criteria for the automated record

linkage have been used. In order to avoid the possibility of false positives, searches of these

five datasets have been limited to London cases, and links have only been made to the

Proceedings when there is an exact match between name and (when given) conviction date as

given in both records. The automated linking has been developed in an iterative process with

extensive manual checking and refinement. Manual checking suggests that the accuracy of

the automated record-linkage is very high.

⁸ Digitised as part of London Lives 1690 to 1800: Crime, Poverty and Social Policy in the

Metropolis (hereafter LL), “Criminal Registers of Prisoners in Middlesex and the City (CR),”

(version 1.1, 25 January 2016). Records from London Lives are here cited using the website’s

unique reference numbers, given in brackets. These can be searched for at

<http://www.londonlives.org/formRef.jsp>.

⁹ British Convict Transportation Registers 1787-1867, “About the Convict Database,”

<http://www.slq.qld.gov.au/resources/family-history/convicts/about> (25 January 2016).

repeatedly augmented up to the point of disembarkation.¹⁰ Fourth, late-eighteenth-century London coroners' inquests, which can be used to identify Old Bailey convicts who subsequently died in Newgate.¹¹ And finally, a dataset of Home Office pardoning records which provide details of post-sentencing decisions.¹² Thanks to this digitised record-linkage we are able to trace convict journeys at a level of detail and on a scale previously unimaginable. The website has produced, at present, over 35,000 fragments of "life archives", meaning two or more records relating to a single individual linked together in a chain, which by the completion of the project will form the basis of much longer chains of records pertaining to individual lives, from birth to death. In many instances we can trace the accused from their committal to Newgate and then on to their trial at the Old Bailey, their sentence and a number of immediate post-sentencing outcomes.

It is to such penal journeys that we here turn our attention. Our focus is limited to the years 1790-1799, for which the Digital Panopticon currently has the fullest data, and to the penal outcomes experienced by two groups of Old Bailey convicts in particular: (1) those sentenced to

¹⁰ On the indents, see Tasmanian Archives and Heritage (hereafter TAH), "Indents of Male Convicts," <http://search.archives.tas.gov.au/default.aspx?detail=1&type=S&id=CON14>, "Indents of Female Convicts," <http://search.archives.tas.gov.au/default.aspx?detail=1&type=S&id=CON15> (25 January 2016).

¹¹ Also digitised as part of London Lives: LL, "Coroners' Inquests into Suspicious Deaths," <http://www.londonlives.org/static/IC.jsp> (26 January 2016).

¹² The National Archives, "Home Office: Judges' Reports on Criminals," <http://discovery.nationalarchives.gov.uk/details/r/C8911>, "Home Office: Criminal Entry Books," <http://discovery.nationalarchives.gov.uk/details/r/C8877> (29 January 2016).

death; and (2) those sentenced to transportation. The paths from sentence to final penal outcome in such cases were rarely straightforward. In mapping out the judicial outcomes for the Old Bailey condemned and those sentenced to transportation in the 1790s, we here intend to shed light on those pathways that have been less well-explored in the historiography, and to deepen our understanding of the key factors which shaped post-sentencing decision making. By using digital technologies to reconstruct the nineteenth-century paper panopticon that tracked the movements of offenders through the criminal justice system and beyond, we can, for the first time, trace the penal outcomes and wider lives of Old Bailey convicts, both at the individual and collective level. We can recover experiences and stories that would otherwise be lost. And all this with qualitative depth allied to quantitative breadth. In this sense, the digital allows us to do a new form of research (or, at the very least, a form unachievable on the same scale manually). Digital scholarship can thus be a “macroscope”, allowing us to recover and analyse -- at one and the same time -- the rich details of a single convict’s life and the quantitative bulk of tens of thousands of lives taken together; a theme we will return to in the conclusion.

[A] Quantifying the Condemned

It has long been recognized that hanging was by no means an inevitable outcome for those sentenced to death by the courts in the eighteenth and nineteenth centuries. Through the pardoning process many offenders escaped the noose, and there were a number of different routes that capital convicts followed after sentencing. The particular pathways followed by convicts were shaped in large part (and in the first instance) by the decisions of the judges and the ruling authorities within the pardoning process. Much has been written about those who were

left for execution and about the rate with which capital convicts were actually put to death.¹³ The criteria on which decisions about whether to leave an offender to hang or not have also been well-studied. Whilst elite support and claims to respectability could in some instances be crucial, several historians have instead suggested that in the majority of cases the issues of greatest importance to the king's ministers who controlled the pardoning system were, as John Beattie concludes, "the nature of the offence -- particularly the level of violence that had been involved - - the age, gender, and criminal record of the defendant, and the evidence given at the trial by the witnesses, both for the prosecution and defence."¹⁴ Far less has been said, however, about those who escaped the noose. There has been little study, in particular, of the range of penal outcomes that those pardoned from death experienced, the rate at which convicts suffered such outcomes,

¹³ Principally, Beattie, Policing and Punishment, 346-69, 454-61; V. A. C. Gatrell, The Hanging Tree: Execution and the English People, 1770-1868 (Oxford: Oxford University Press, 1994); King, Crime, Justice and Discretion, ch. 10; Peter Linebaugh, The London Hanged: Crime and Civil Society in the Eighteenth Century (London: Penguin, 1993); Andrea McKenzie, Tyburn's Martyrs: Execution in England, 1675-1775 (London: Hambledon Continuum, 2007).

¹⁴ John Beattie, "Looking back at 'Property, Authority and the Criminal Law,'" Legal History 10 (2006): 20. For a fuller discussion, see Beattie, Policing and Punishment, 353-60, 454-7. These factors were also those highlighted by Beattie and Peter King in their respective studies of assizes pardoning cases: Beattie, Crime and the Courts, 436-49; King, Crime, Justice, and Discretion, 332. For the importance of elite support and claims to respectability, see Douglas Hay, "Writing about the Death Penalty," Legal History 10 (2006): 39-46; *idem*, "Property, Authority and the Criminal Law," Albion's Fatal Tree: Crime and Society in Eighteenth-Century England, ed. Douglas Hay et al (London: Allen Lane, 1975), 43-9.

and the extent to which the conditions attached to pardons might also have been influenced by the kinds of factors identified by Beattie (and others) as crucial in the initial decision between life and death. The first half of this paper therefore has two aims. First, through a quantitative study of the immediate penal outcomes experienced by the 700 or so offenders sentenced to death at the Old Bailey in the 1790s, supplemented by a number of qualitative examples, it seeks to provide an initial map of the largely unexplored terrain of the penal journeys of capital convicts. And secondly, by correlating those various outcomes against the crime, gender, age and previous criminal conduct of offenders, it will explore the wider role of such factors in determining the specific condition(s) upon which pardons were granted.

[B] The Hanging Cabinet

It is first necessary to briefly describe how the mechanism of pardoning worked in the metropolis, since this was the key process by which the penal outcomes of the condemned were determined. The system of pardoning in London was, in several important respects, very different to the rest of England and Wales.¹⁵ In London, pardoning rested in the hands of what

¹⁵ The pardoning system in London is discussed at length in A. Aspinall, "The Grand Cabinet, 1800-1837," *Politica* 3 (1938): 324-44; Beattie, *Policing and Punishment*, 346-69, 448-62; *idem*, "The Cabinet and the Management of Death at Tyburn after the Revolution of 1688-1689," in *The Revolution of 1688-1689: Changing Perspectives*, ed. Lois G. Schwoerer (Cambridge: Cambridge University Press, 1992), 218-33; Simon Devereaux, "Peel, Pardon and Punishment: The Recorder's Report Revisited," in *Penal Practice and Culture, 1500-1900: Punishing the English*, ed. Simon Devereaux and Paul Griffiths (Basingstoke: Palgrave Macmillan, 2004), 258-84; Gatrell, *The Hanging Tree*, chs 6, 16, 20-21. For pardoning in provincial cases, see *Judges' Reports on Criminals, 1783 to 1830: HO (Home Office) 47*, 6

came to be known as the “hanging cabinet”, whereby the Recorder of London, the chief sentencing officer of the Old Bailey, was charged with reporting to a meeting of the King in Council all those who had been sentenced to death at one or more previous sessions of the court.¹⁶ Three aspects of the hanging cabinet’s work in the 1790s are especially relevant for our purposes. In the first instance, the delays that had plagued the meetings of the hanging cabinet in the 1780s had largely abated by 1790.¹⁷ As George III returned to health and as the numbers of capital convictions declined in the early 1790s, so the hanging cabinet fell back into its regular, timely schedule. Secondly, the sources of information upon which the hanging cabinet could make its decisions were also increasing in the 1790s. For reports of the trials, Recorders drew first and foremost on the accounts printed as the Old Bailey Proceedings, copies of which were also made available to the Lord Chancellor and the Home Secretary in advance of meetings of the hanging cabinet.¹⁸ Petitions and testimony from the keeper and chaplain of Newgate were evidently also available.¹⁹ But with the creation of the “criminal registers” by the City of London in September 1791 (later taken over by the Home Office in 1793), the Recorder had access to a

vols. (List and Index Society: Chippenham, 2004), 1:iii-x; Beattie, Crime and the Courts, 430-6.

¹⁶ Later petitions were also forwarded to the Home Office on capital convicts from the Old Bailey, and these would be passed on to the Recorder for a written report and recommendation, just as the assize judges were required to do: Judges’ Reports on Criminals, 1:xiii.

¹⁷ Devereaux, “Peel, Pardon and Punishment,” 270; idem, “The City and the Sessions Paper: ‘Public Justice’ in London, 1770-1800,” Journal of British Studies 35 (1996): 472.

¹⁸ Ibid, 471-82.

¹⁹ Beattie, Crime and the Courts, 447.

further source of information on the personal details and character of capital convicts.²⁰ Thirdly and finally, it should be noted that whilst overarching decisions about whether to leave an offender for execution appear to have been reached with some haste by the hanging cabinet, the finer details of what condition(s) the reprieved were required to serve -- decided by the Recorder and the Home Secretary -- often took weeks or months to finalise, and it was not unusual in the 1790s for such conditions to be altered two or three times for individual convicts. Such decisions set in motion the penal outcomes that capital convicts would ultimately suffer. It is to those outcomes, and to the criteria that possibly shaped such decision making, that we will now turn.

[B] Penal Outcomes of the Condemned

A total of 748 offenders were capitally convicted and sentenced to death at the Old Bailey in the years 1790-1799. The Proceedings only take us this far, giving little indication of what happened to such convicts after sentencing. By digitally linking the trial records for these 748 offenders to the five other datasets set out in the introductory section, we are now able to trace the immediate post-sentencing outcomes of the condemned (Table 1). About a quarter were left for execution. The majority were pardoned on the condition of transportation (most of whom were subsequently transported, but others not). Others were pardoned on the condition of service in the army or navy, or on a multitude of other possible conditions, such as imprisonment or sureties for good behaviour. Some were granted a free pardon, conferring absolution from the offence without any form of condition. Yet others died in jail while awaiting their execution or

²⁰ On the establishment of the criminal registers, see Devereaux, "The Criminal Branch of the Home Office 1782-1830," in Criminal Justice in the Old World and the New: Essays in Honour of J. M. Beattie, ed. Greg T. Smith, Allyson N. May and Simon Devereaux (Toronto: Centre of Criminology, University of Toronto, 1998), 282-3.

fulfilment of their conditional pardon. Four were pardoned and sent to the Marine Society, two pardoned and sent to the Philanthropic Society, one individual pardoned on condition of a fine, and one individual, also conditionally pardoned, was at large following an escape from the hulks. In short, the outcomes for the most part fall within one of two categories, but with a “long tail” of several other journeys followed by the condemned.

[Insert Table 1 here -- Post-sentencing outcomes of Old Bailey convicts sentenced to death,
1790-1799]

Until a similar map is compiled for other periods, it is difficult to say how typical the 1790s was. What can be said is that execution was much less of a feature in the 1790s than earlier. The 206 capital convicts denied mercy by the hanging cabinet and put to death in the 1790s represent a far more select group than in any other decade of the eighteenth century.²¹ As Simon Devereaux has recently shown, the 1790s represent a dramatic retreat both in the percentage of capital convicts left for death and the absolute numbers of offenders executed as a result, from the appallingly high levels witnessed in the early to mid-1780s.²² Execution levels in London declined markedly with the beginnings of convict transportation to Australia in 1787. And whilst the percentage and number of capital convicts hanged did undergo a slight resurgence following the outbreak of the French Revolution, the 41 per cent of condemned offenders actually hanged in 1791 pales in comparison with the 60 per cent executed in 1787, and even this peak in the 1790s was below the lowest figures typically registered each year since at least 1760.²³ Indeed, when just 15 per cent of the convicts sentenced to death at the Old Bailey in

²¹ For London execution rates from 1701 onwards, see Gatrell, The Hanging Tree, 616.

²² Simon Devereaux, “England’s ‘Bloody Code’ in Crisis and Transition: Executions at the Old Bailey, 1760-1837,” Journal of the Canadian Historical Association 24 (2013): 82.

²³ For annual post-1760 execution levels, see Devereaux, “England’s ‘Bloody Code,’” 82.

1793 were subsequently executed (in absolute terms, nine offenders who lost their lives on the gallows) this was perhaps the smallest annual proportion ever witnessed in the eighteenth century.

Upon what basis, then, were this unfortunate small minority of capital convicts selected for execution in the 1790s, a period when the government was clearly wary about putting large numbers of offenders to death? The nature of the offence and the age and gender of the offender appear to have been crucial. In the first instance, correlating offences against the likelihood of execution suggests that there was, broadly speaking, three categories of crimes when it came to pardoning decisions in the 1790s. First, a handful of offences that were largely deemed “unpardonable”, and for which the perpetrators (whatever their character) rarely escaped the noose. The overwhelming majority (over 80 per cent at the least) of those sentenced to death for riot, murder, mail theft, rape and fraud in the 1790s were for instance subsequently denied the king’s mercy and lost their lives on the gallows.²⁴ Second, a small selection of capital crimes which were not deemed serious enough to warrant execution under any circumstances. Thus, none of the thirteen offenders sentenced to death for pickpocketing or grand larceny were executed. And third, a large number of offences (ranging from highway robbery and burglary to animal theft and returning from transportation) that fell somewhere in between these two extremes and which resulted in a wide range of penal outcomes depending on the particular circumstances of the crime and the identity of the offender.

There appears to have been an extreme reluctance to put women to death for this “middling” range of offences, aside from a very few select examples. Taking those sentenced to death at the Old Bailey in the 1790s as a whole, males were three times as likely to be executed (Table 1). Nor does this pattern purely reflect the fact that women were typically put on trial for

²⁴ On such “crime-invoked responses”, see King, Crime, Justice and Discretion, 327.

less serious offences.²⁵ If we look at the individual offences of burglary, robbery, housebreaking and theft from a dwelling house, in every instance the males convicted of such crimes were up to four times more likely to be executed than their female counterparts.²⁶ Youth, too, seems to have been influential.²⁷ Young offenders under the age of seventeen and sentenced to death at the Old Bailey were less likely to be hanged than those aged 17-26, who were in-turn slightly less likely to be executed than those aged 27 or older (Figure 1). Of course, the relationship between age and pardoning policy was complicated by the nature of the offences typically committed by each age group and by the gender of the accused.²⁸ We can try to isolate the influence of age from these other factors by limiting the focus to males sentenced to death for burglary or housebreaking only (Figure 2). A similar pattern is evident: male housebreakers and burglars under the age of 17 were much less likely to be executed than the young adults convicted of such crimes, although none of those aged over 55 were executed.

[Insert Figure 1 here -- Major post-sentencing outcomes of Old Bailey convicts sentenced to death, by age group, 1790-1799]

²⁵ We have yet to establish the extent to which this was the result of condemned females pleading pregnancy. On this, see James C. Oldham, "On Pleading the Belly: A History of the Jury of Matrons," *Criminal Justice History* 6 (1985), 1-64.

²⁶ Across all four offences, 23.3 per cent of males executed against 5.9 per cent of females

²⁷ Age is recorded for 87 per cent of the offenders sentenced to death at the Old Bailey in the 1790s.

²⁸ For instance, the relative frequency with which the over-55s were put to death in the 1790s (see Figure 1) resulted from four of the offenders in this age category having been convicted of the largely "unpardonable" crimes of coining, forgery or mail theft.

[Insert Figure 2 here -- Major post-sentencing outcomes of male Old Bailey convicts sentenced to death for burglary or housebreaking, by age group, 1790-1799]

As Peter King notes, the more favourable treatment given to the young may have been linked to the fact that they had not yet had time to gather a reputation as hardened offenders, and indeed the issue of previous offending is one that other historians have pointed to as a crucial factor in eighteenth-century pardoning policy.²⁹ From the marginal notes on surviving Recorders' reports, John Beattie concludes that "a condemned man's or woman's best chance of being saved from the gallows was to persuade the Recorder and the [hanging cabinet] that they were not dealing with a dangerous old offender."³⁰ By looking at the pardoning decisions that were made about the Old Bailey condemned in the 1790s, and linking this to the evidence of previous criminal behaviour that can be gleaned about the offenders from comments made in the criminal registers and from computer-generated name-matching of the digitised accounts of trials, we can begin to explore this issue from a different angle to that offered by the surviving Recorders' reports. This is certainly not without its problems: the compiler of the criminal register might not always have recorded what was known about the accused's previous offending; there are difficulties with automated name-matching of the trial accounts (including the fact that offenders might, and sometimes were, previously tried at the Old Bailey under a different name); and information might have been presented during the Recorder's report that is now lost to us. In short, the data presented here does not equate to a comprehensive picture of the criminal records of those who were condemned to death at the Old Bailey in the 1790s. But in

²⁹ King, Crime, Justice and Discretion, 312-3 (quote at 296); Beattie, Crime and the Courts, 440, 443; idem, Policing and Punishment, 354, 357.

³⁰ Ibid, 357.

drawing upon the available evidence and utilising the methodologies opened up by digital technologies, it does provide some at least suggestive findings.

Of the 748 offenders sentenced to death at the Old Bailey in the 1790s, at least forty-seven had previously been put on trial at the court for a different crime, and eight of those forty-seven individuals had previously stood trial on more than one occasion.³¹ Some had been acquitted by the jury, but many had been found guilty: ten trials had resulted in sentences of death (only for the offenders to be subsequently pardoned on condition of transportation or service in the army or navy), whilst others produced sentences spanning the penal range, from transportation and imprisonment, to whipping and service in the armed forces. Clearly in this instance the sample size is too small to undertake any kind of quantitative analysis. However, a qualitative examination of the pardoning decisions made in relation to these forty-seven offenders suggests that whilst in some cases previous criminal behaviour contributed to the offenders losing their lives, nevertheless the mere fact of having previously stood trial at the Old Bailey was not an automatic barrier to receiving the royal mercy.

Some of those executed in the 1790s certainly had long criminal histories, including multiple previous appearances at the Old Bailey. When Daniel Mackaway's case came before the hanging cabinet following his death sentence at the Old Bailey in September 1799 for burglary, his criminal record left a lot to be desired, and this was likely foremost amongst the reasons for his subsequent execution.³² The hanging cabinet were certainly already aware of Mackaway, having previously granted him a pardon for a highway robbery committed two years earlier, on

³¹ Five of the condemned had previously been indicted twice, one offender had faced three previous indictments, and two offenders had stood trial on four previous occasions.

³² OBP, 11 September 1799 (t17990911-5).

the condition of serving in the army.³³ As far back as 1794, when Mackaway was just 22 years of age, the compiler of the criminal register had described him as “a very notorious offender”, followed three years later by the similarly dismaying note, “an old offender”.³⁴ By contrast, John Purdy’s lengthy criminal record did not ultimately lead to execution. When capitally convicted at the Old Bailey in July 1797 for a burglary, this was, as a note in the criminal register stated, the fourth time Purdy had appeared before the court within a year.³⁵ He was nonetheless granted the king’s mercy on condition of being transported for life. Having been transferred onto the hulks at Langstone Harbour, Purdy however found means to escape, and from thence travelled up to Nottingham, where he committed at least four burglaries.³⁶ He was soon apprehended, brought back to London and tried, convicted and sentenced to death for “returning from transportation”. Despite Purdy’s now expansive criminal record, the hanging cabinet again saw scope for mercy, perhaps in light of his defence that conditions on board the ship were such that “there was not victuals enough for any man to live upon by any possibility.”³⁷ He was pardoned on condition of transportation for life, setting sail for New South Wales in 1800.³⁸

³³ OBP, 15 February 1797(t17970215-2); LL, “Home Office: Criminal Registers of Prisoners in Middlesex and the City, 1791-1800” (hereafter “Criminal Registers”), (NAHOCR700030114).

³⁴ LL, “Criminal Registers” (NAHOCR700010029, NAHOCR700020103).

³⁵ OBP, 12 July 1797 (t17970712-4); LL, “Criminal Registers” (NAHOCR700020123).

³⁶ LL, “Criminal Registers” (NAHOCR700030134); OBP, 20 February 1799 (t17990220-40).

³⁷ OBP, 20 February 1799 (t17990220-40).

³⁸ Records included within the British Convict Transportation Registers 1787-1867 database (hereafter BCTR, http://onsearch.slq.qld.gov.au/primo_library/libweb/action/search.do) are here cited using the State Library of Queensland record numbers, which can be searched for

Previous appearances at the Old Bailey did not mean, therefore, that an offender later sentenced to death for a different crime would necessarily suffer the law's ultimate penalty. A further indication that being a known "old offender" was not an automatic ticket to the gallows is suggested by the pardoning decisions that were made in relation to individuals who were described in just such a way in the Home Office criminal registers -- an issue that we can study thanks to computerised linking of those documents and the pardoning records. At least fifteen of the 748 offenders sentenced to death at the Old Bailey in the 1790s were described in the registers as "an old offender", "a person of very bad character", or some analogous term. Nonetheless, this knowledge did not prevent the decision-makers within the pardoning system from sparing the lives of the vast majority of the offenders so described, mostly on the condition of transportation. In the case of Thomas Atwell, sentenced to death in 1796 for returning from transportation, the compiler of the criminal register complained that "to enumerate the offences committed by Attwell [sic] would fill this page of paper, he has been a thief from his infancy and notwithstanding the king's mercy which has been extended to him in three instances within my knowledge he now stands charged for a burglary in Surrey." Perhaps in light of Atwell's fitness for service (a labourer and just 23 years of age) at a time when recruits were desperately needed, the decision was nevertheless made to pardon him on condition of serving in the 77th Regiment of Foot.³⁹

Such were the factors that meant that a (relatively) small minority of the Old Bailey condemned were actually hanged in the 1790s. What of the penal journeys of the majority (some three quarters of the condemned) who escaped the noose? What condition(s), if any, were they

at the above URL. For John Purdy ("Purdie"), see BCTR (record number 21115538850002061).

³⁹ LL, "Criminal Registers" (NAHOCR700020005); OBP, 17 February 1796 (t17960217-32).

required to serve for the king's mercy, and to what extent was this also shaped by the character of the offender and/or the nature of their crime? A comment made in 1795 by the Recorder of London, Sir John William Rose, gives some sense of this, at least in relation to the three conditions of transportation, service in the army and entering into the navy. Reporting on the cases of twenty-eight offenders convicted at the Old Bailey, Rose noted: "I think the justice of the country will not suffer if some few of the prisoners named in the list referred [to as] guilty of light offences and not the old offenders are permitted to go to sea [in the naval service]." "I have recommended some of the old offenders to the indulgence of being sent to the West Indies [in the armed forces]," Rose continued, whereas "the crimes of others are so infamous to society that as to them I cannot recommend... any further extension of mercy [beyond transportation to Australia for life]."⁴⁰ From what we can learn about the crimes, identities and penal outcomes of the condemned through computerised record linkage, this strategy appears to have been put in practice, in addition to other factors not discussed by Rose.

Although transportation to Australia was the penal outcome suffered by the majority of the Old Bailey condemned in the 1790s, particularly females, it was by no means a blanket alternative to death in capital cases (Table 1). It certainly seems to have been the automatic condition for healthy offenders under the age of 55 whose crimes were relatively serious and who did not have good characters on their side. Amongst those whose crimes were considered by Rose in 1795 to be "so infamous" as to require their transportation to Australia were Austin and John Flowers, two brothers convicted of a highway robbery, but in which they apparently treated their victims, "as civilly as many could do" -- a fact that almost certainly saved them from the

⁴⁰ The National Archives (hereafter TNA), Home Office Papers (HO) 47/19, ff.126. Our emphasis.

gallows.⁴¹ For others, it was not just the seriousness of the crime for which they had been convicted, but also their age -- specifically, whether they were so old as to preclude them from transportation. No offenders over the age of 55 were sent to Australia for any capital offence in the 1790s, and instead they were required to serve a term of imprisonment or, in many cases, granted a free pardon (Figure 1).⁴² And even in cases where the offence was relatively minor, a perceived bad character in some instances led to the offender being transported. The evidence presented against William Marson, an 18-year-old weaver from Coventry, at his trial for shoplifting in April 1798 was clear, but on account of his “youth” and no doubt too the testimony of a favourable character witness, the jury found him guilty with a recommendation to mercy.⁴³ The Recorder of London, Sir John William Rose, similarly saw grounds for clemency in Marson’s youth, and whilst Rose apparently considered that a pardon on condition of imprisonment or a return to the offender’s parish might be enough, he ultimately decided against this, being persuaded that, “having made bad connections in town,” Marson would therefore “unlikely remain with his friends in the country.” Instead the Recorder recommended that Marson be pardoned from death on condition of transportation to Australia for seven years.⁴⁴

⁴¹ OBP, 14 January 1795 (t17950114-47).

⁴² The policy of not transporting elderly offenders is discussed further in the following section. John Sharp (Sharpe) seems to have been the only offender over the age of 55 to have been pardoned on the condition of transportation (twice) in the 1790s, but on neither occasion was he sent to Australia: OBP, 9 January 1793 (t17930109-29), 22 June 1796 (t17960622-24); LL, “Criminal Registers” (NAHOCR700060075, NAHOCR700020137).

⁴³ OBP, 18 April 1798 (t17980418-54).

⁴⁴ TNA, HO 47/22, ff. 285-8, HO 13/12, ff. 28, 95.

Marson was accordingly delivered onto the hulks in January 1799, and set sail for Australia shortly thereafter.⁴⁵

Transportation was certainly not a blanket alternative to death in the mid-1790s when the outbreak of the Haitian Revolution and war with France triggered a mobilization drive by the government. Many of the men (and it was always men) sentenced to death at mid-decade who might otherwise have been transported (or even executed) were instead pardoned on the condition of serving in the army or navy.⁴⁶ Indeed, whilst only a handful of capital convicts were pardoned on condition of entering into the army or navy at the opening and close of the decade, in the years 1793-1795 some 54 per cent of male capital convicts were pardoned on this condition (Figure 3). In 1794, at the height of the government's mobilization drive, some thirty convicts, or two-thirds of the males pardoned from death, were entered into the army or the navy. By contrast, just six male capital convicts were pardoned on condition of transportation in the same year. In the mid-1790s, then, recruitment of the armed forces appears to have been the major driving force in pardoning decisions.⁴⁷

⁴⁵ LL, "Criminal Registers" (NAHOCR700030120); BCTR (record number 21133283760002061)

⁴⁶ The overwhelming majority of such conditional pardons specifically required that the offender serve in the West Indies.

⁴⁷ For more on the recruitment of offenders (both at the pre-trial and post-trial stage), see Stephen Conway, "The Recruitment of Criminals into the British Army, 1775-81," Bulletin of the Institute of Historical Research 58 (1985): 46-58; Clive Emsley, "The Recruitment of Petty Offenders in the French Wars 1793-1815," Mariner's Mirror 66 (1980): 199-208; Peter King, "War as a Judicial Resource: Press Gangs and Prosecution Rates 1740-1830," in Law,

[Insert Figure 3 here -- Major post-sentencing outcomes of male Old Bailey convicts sentenced to death, by year, 1790-1799]

In this context, it was teenage and young adult males who were most commonly pardoned on condition of serving in the army or navy. Indeed, nearly a quarter of condemned males under the age of 27 were pardoned on condition of serving in the army or navy in the 1790s, whilst mercy on such terms was granted to less than one in ten over that age. This policy no doubt helps to explain why execution rates in the 1790s were so much lower for teenage and young adult offenders than for convicts in their 30s and 40s (Figures 1 and 2). It also helps to explain why, once pardoned, proportionally more offenders between the ages of 27 and 55 were granted mercy on the condition of transportation than younger convicts (Figure 4). If there was a demand for young males in the Australian penal colonies, then, this did not have a substantial impact on pardoning policies in the 1790s at least, when the imperatives of war appear to have played a much greater role.⁴⁸

[Insert Figure 4 here -- Conditions of pardons for all Old Bailey convicts sentenced to death, by age group, 1790-1799]

A twenty-eight-year-old Londoner named William Pope was one of those recommended by Rose to be pardoned on condition of serving as a soldier in the West Indies after he was convicted of burglary and sentenced to death at the Old Bailey in April 1795.⁴⁹ An entry in the criminal register noted that a magistrate in Lambeth considered Pope to be “a very old offender”

Crime and English Society 1660-1840, ed. Norma Landau (Cambridge: Cambridge University Press, 2002) 97-116.

⁴⁸ This accords with King’s findings from an analysis of the judges’ reports: King, Crime, Justice and Discretion, 303.

⁴⁹ TNA, HO 47/19, ff.126-7; OBP, 16 April 1795 (t17950416-47).

and “a very dangerous man to society,” under suspicion of “having committed diverse footpad robberies in the county of Surrey.” Faced with prosecution for one such robbery, Pope had entered service on a ship, but was subsequently “discharged as he said from a pretended hurt he had in his head which disabled him from doing duty as a seaman.” Indeed, the keeper of the criminal register, Edward Raven, went on to complain that when under confinement, thieves such as Pope “will represent anything and propose anything for liberty,” particularly of their being stout, able seamen, “and when the King has indulged them with what they solicit [i.e. a pardon on condition of serving in the army], they then have an excuse if they desert that they are either ruptured or diseased and unable to serve.”⁵⁰ Indeed, that an offender of such bad character as Pope was for a second time granted mercy on condition of service in the army, rather than transportation to Australia, suggests the government’s primary concern with mobilization in the mid-1790s. Pope’s reappearance at the Old Bailey in May 1797 on a charge of unlawfully breaking the condition of his pardon would at first glance seem to confirm Raven’s worst suspicions. Yet notwithstanding his previous duplicity, in this instance an officer testified at the trial to Pope’s good conduct abroad, such that he had been “the means of saving one of his Majesty’s ships, and the whole convoy,” and confirmed Pope’s defence that he had been brought back to England by force, not of his own volition. Pope was acquitted as a result.⁵¹

Since pardon on condition of serving in the army or navy was not an option for reprieved females, decision-makers within the pardoning system instead turned to imprisonment as a suitable alternative when transportation to Australia was not deemed appropriate.⁵² In a fifth of

⁵⁰ LL, “Criminal Registers” (NAHOCR700010103).

⁵¹ OBP, 31 May 1797 (t17970531-33).

⁵² This partly explains why condemned females were four times more likely to be imprisoned than were males (Table 1).

such instances the explanation can likely be found in the age of the offender -- 3 of the 15 women granted a pardon from death on condition of imprisonment in the 1790s were over the age of forty-five and therefore (as discussed in the following section) not deemed suitable for transportation.⁵³ This included Ann Sanmert, a fifty-seven-year-old widow born in Hanover, capitally convicted at the Old Bailey in 1797 of stealing from a dwelling house, an offence for which several women under the age of forty-five, by contrast, were transported as a condition of their pardon in the 1790s.⁵⁴ In other instances it was less an issue of age than misgivings about the justice of the conviction or a sense that transportation was too severe a punishment for the crime. Margaret Kennedy, a twenty-four-year-old single woman from London capitally convicted for pickpocketing, was pardoned from death on condition of twelve months' hard labour in the house of correction and a one shilling fine, as "the judges considered she should have been acquitted of the capital part of the charge at the time of the trial."⁵⁵ Indeed, females condemned for the relatively less serious crimes of pickpocketing and shoplifting were in general

⁵³ Two others were in their early 40s at the time of their conviction, and thus they were perhaps also deemed too old for transportation.

⁵⁴ OBP, 25 October 1797 (t17971025-8); LL, "Criminal Registers" (NAHOCR700030156). Seven females under the age of forty-five and capitally convicted at the Old Bailey in the 1790s of stealing from a dwelling house were subsequently pardoned on the condition of transportation.

⁵⁵ LL, "Criminal Registers" (NAHOCR700020088); OBP, 11 January 1797 (t17970111-37); TNA, HO 47/21, ff.39-40, HO 13/11, ff.112-113.

far more likely to be pardoned on condition of imprisonment (as opposed to transportation) than were members of the same sex condemned for burglary or robbery.⁵⁶

Imprisonment was likewise imposed as a condition for the reprieved elderly, sick or infirm males who were deemed unsuitable for either service in the armed forces or transportation to Australia. Whilst the over-55s who had been convicted on clear evidence for “unpardonable” crimes such as forgery did not receive mercy, those convicted of lesser offences and subsequently pardoned from death were treated with relative leniency compared to middle-aged offenders (Figures 1 and 4). Of the 23 male felons pardoned from death on condition of imprisonment, seven were over the transportation age “limit” of fifty-five. This was the fate of Valentine Harrison, a tallow chandler from Yorkshire aged sixty at the time of his sentence to death for robbery in 1793.⁵⁷ After serving out twelve months in the house of correction as a condition of his pardon, in September 1800 Harrison was back before the courts, this time the Middlesex sessions of the peace, for an alleged fraud.⁵⁸ As a nineteen-year-old condemned for the relatively serious offence of highway robbery, James Wright would have otherwise been amongst the foremost group of offenders to be transported or entered into the armed forces (if not executed) in the 1790s, but being infirm from the loss of one arm it was decided by the Recorder of London that he should instead be committed to the Middlesex house of correction

⁵⁶ 80 per cent of such pickpockets were pardoned on condition of imprisonment, as against 29 per cent of shoplifters, 20 per cent of burglars and 9 per cent of robbers.

⁵⁷ OBP, 11 September 1793 (t17930911-7); LL, “Criminal Registers” (NAHOCR700070032); TNA, HO 13/12, ff.232.

⁵⁸ LL, “Criminal Registers” (NAHOCR700040102).

for six months.⁵⁹ In the case of John Milton, his initial dodge of New South Wales was to be only temporary -- two years after being pardoned from death on condition of six months in the house of correction (rather than transportation), Milton was back at the Old Bailey on a charge of grand larceny, for which he was this time sentenced to seven years' transportation, subsequently setting sail for Botany Bay in January 1802.⁶⁰

For some this was not their first stint in prison, nor was it necessarily to be their last. For George Clayton, a fifty-six-year-old shoemaker born in Manchester and sentenced to death in 1793 for grand larceny but subsequently pardoned on condition of six months' imprisonment in Newgate, this was to be followed by at least eight other appearances at the Old Bailey and several periods of imprisonment in between.⁶¹ Just eighteen months after receiving the king's mercy and serving out his time in Newgate, Clayton was back at the Old Bailey charged with stealing calico, for which he was sentenced to two years in the house of correction and a one shilling fine. Now described by the keeper of the criminal registers as "an old offender" who "has been in custody several times", Clayton was, by his own defence, desperately poor and unwell, driven to commit one offence as he "had nothing to put into [his] mouth." Over the next

⁵⁹ OBP, 10 January 1798 (t17980110-24); LL, "Criminal Registers" (NAHOCR700030188);

TNA, HO 47/21, ff. 70-71, HO 13/11, ff. 127.

⁶⁰ OBP, 11 January 1797 (t17970111-10, t17970111-9), 24 October 1798 (t17981024-10);

LL, "Criminal Registers" (NAHOCR700020103); BCTR (record number 21111957480002061).

⁶¹ This might not have been Clayton's first appearance at the Old Bailey: three other prosecutions were brought against individuals named George Clayton in the immediate years prior to 1793, but it has not been possible to verify if these were the same man.

five years Clayton was convicted of seven separate grand larcenies, resulting in seven more periods of imprisonment, to each of which was added a public whipping.⁶²

For a significant number, some eighteen, of the offenders sentenced to death at the Old Bailey in the 1790s, their lives came to an end within the walls of Newgate, rather than on the gallows just outside. The largest annual total of such deaths occurred in 1790, when nine of those sentenced to death passed away in Newgate. This was in fact the tail end of appallingly high levels of convict deaths in London's prisons during the later 1780s, as delays in meetings of the hanging cabinet led to scores of condemned offenders being held in Newgate to await their fate, along with countless more offenders sentenced to transportation and sat in prison before being sent to Botany Bay.⁶³ At least 39 individuals convicted at the Old Bailey in 1788 later died in prison, a figure that jumped to 58 in 1789, before falling to 37 in 1790 and 11 in 1791, as the pressure of numbers on London's prisons abated.⁶⁴ Indeed, during the remaining part of the

⁶² LL, "Criminal Registers" (NAHOCR700070040, NAHOCR700030034, NAHOCR700040036, NAHOCR700040044); OBP, 30 October 1793 (t17931030-58), 28 October 1795 (t17951028-67), 10 January 1798 (t17980110-58), 20 February 1799 (t17990220-22), 29 October 1800 (t18001029-59), 20 May 1801 (t18010520-54), 13 January 1802 (t18020113-32), 14 July 1802 (t18020714-9), 26 October 1803 (t18031026-41).

⁶³ For the woeful conditions in London's prisons in the later 1770s and 1780s, see Hitchcock and Shoemaker, London Lives, 339-40.

⁶⁴ This is based upon nominal record linkage between the Old Bailey Proceedings and the London coroners' inquests. The numbers of such convicts who had been sentenced to death in each of those years was: five in 1788, eleven in 1789, nine in 1790 and none in 1791.

1790s, relatively few of those condemned to death subsequently died in prison, at an average of about one or two felons each year.⁶⁵

The majority, although not all, of the capital felons who died in prison passed away after having been conditionally pardoned. John Gilbert was fifty-eight years' old in July 1798 when he was convicted of coining and sentenced to death at the Old Bailey, a sentence from which he was pardoned the following month on condition of being transported to New South Wales for life.⁶⁶ Two years prior to this Gilbert had spent a year in Newgate for a separate coining offence, but in this instance he was not to leave the prison alive: on 5 April 1799, after nine months awaiting transportation, Gilbert died in Newgate following a lengthy "decline and arithmatic [sic] complaint", being "an elderly man" with an apparent "inward decay".⁶⁷ Lawrence Jones was, by contrast, awaiting his forthcoming execution when he took his own life in Newgate on 9

⁶⁵ This pattern is more widely evident in the numbers of criminals (including those tried by other courts in the metropolis) who passed away in London's prisons in the later 1780s and 1790s: in total, the coroner for London and Southwark investigated the deaths of 42 offenders in prison in 1788, 119 in 1789, 84 in 1790, 20 in 1791 and an average of 41 deaths each year between 1792 and 1799 inclusive. This count is based on the indexes to the London and Southwark coroners' inquests held at the London Metropolitan Archives (hereafter LMA), CLA/041/IQ/02/055-056, in addition to a study of the original inquests for Newgate: LMA, CLA/041/PI/01/001-002.

⁶⁶ OBP, 4 July 1798 (t17980704-52); LL, "Criminal Registers" (NAHOCR700030072); TNA, HO 13/12, ff.37.

⁶⁷ OBP, 2 December 1795 (t17951202-26); LL, "Criminal Registers" (NAHOCR700020059); LL, "City of London Coroners' Inquests" (hereafter "Coroners' Inquests"), (LMCLIC650120175).

December 1793. The forty-year-old Londoner found no mercy from the hanging cabinet following his conviction for highway robbery, and he was therefore left for execution. Clearly overcome by distress that “the world would frown” upon his wife in the wake of his ignominious public execution, Jones consequently found means to hang himself in his cell, despite the best efforts of the under-keepers to prevent this by chaining him to the floor. The investigating coroner, Thomas Shelton, and the inquest jury, showed little sympathy for Jones’ plight. On a verdict of “felo de se”, Jones’ corpse was subsequently buried in a hole dug in a nearby street, with his clothes and irons still on.⁶⁸

[A] Qualifying the Left Behind

Capital sentences were only a small proportion of all those passed at the Old Bailey for serious crimes. Our attention now shifts from those convicts originally condemned to death, to the much larger proportion of felons sentenced to transportation. In this case too, the Digital Panopticon allows us to determine whether the punishment was actually carried out, to assess how the selection process of convicts operated, and, most importantly, to examine the alternate penal journeys that awaited a large proportion of those initially bound for Australia.

To date, considerably less attention has been given to the pathways and legal practices which saw some men and women sentenced to transportation shipped to Australia while others were left behind. Indeed, while we know an increasing amount about the convicts who built and shaped modern Australia, we know surprisingly little about their peers who were initially consigned to the same punishment, but who were ultimately left in England.

⁶⁸ OBP, 30 October 1793 (t17931030-69); LL, “Criminal Registers” (NAHOCR700070048), “Coroners’ Inquests” (LMCLIC650060895).

Much like capital sentences, a sentence of transportation was not a de facto one-way ticket to Australia. While some convicts sentenced to transportation would arrive in the colonies within months, others might: receive pardons which freed them or altered their sentence; die waiting to sail; or serve out their entire time in prison or one of the notorious hulks -- floating prison ships. However, transportation was unusual in that, unlike capital convicts, the paper trail which allows us to quantify and qualify the process of how and why some were transported, and others were not, is minimal. The mechanisms and decision-making process that took some convicts to Australia and saw other stay behind in England have left scant record. The conclusions historians have provided on this matter are largely drawn from analysing the characteristics of those that arrived in Australia. As such, our understanding of how convicts were selected for sail is incomplete.

By exploring the range of journeys taken by those who were sentenced to transportation but who never arrived in Australia, we can shed a little more light on the complex criteria which governed penal transportation. Firstly, however, it may be useful to provide an overview of what historians have already gleaned about the process of post-sentencing selection of transported convicts. While most of the literature on this subject relates to transportation during the nineteenth century, it still provides a useful framework for our discussion.

[B] Post-Sentencing Selection

As with a capital sentence, the factors of age, gender, offence type, previous character and timing, could all impact the likelihood of a sentence of transportation being passed in court.⁶⁹ Traditionally, historians of colonial Australia suggested that it was the very worst of convicts, the unskilled dregs of England's gaols, drawn from the criminal class, that were sent out of sight,

⁶⁹ King, *Crime, Justice, and Discretion*, 267.

and out of mind, to Australia.⁷⁰ However, as research has evolved, a much more complex view of how convicts were selected for transportation has become apparent. After sentencing, many have suggested that there was a second set of considerations, little recorded, that determined who was bound for Botany Bay. As early as the 1960s, A. G. L. Shaw noted that the proportion of convicts that actually arrived in Australia after sentencing could range from as little as 30 per cent to as much as 75 per cent.⁷¹ David Meredith's contribution to Convict Workers in 1988 suggested that the disparity between sentencing and implementation, was actually caused by a rigorous process of secondary selection based on a convict's usefulness to the colony on the grounds of factors like age (below fifty), good health, and perhaps even record of behaviour.⁷² More recent studies have supported early findings on post-sentencing implementation. Deborah Oxley, in her seminal work on women and transportation, Convict Maids, disputed that all available convict women were sent to Australia, instead suggesting that "overt policies regarding sentences, health and age were clear: exile was ostensibly reserved for those awarded the

⁷⁰ S.Garton "The convict Origins debate: Historians and the problem of the "criminal class" ", Australian and New Zealand Journal of Criminology 24 (1991).

⁷¹ A. G. L. Shaw, Convicts and the Colonies: A study of penal transportation from Great Britain and Ireland to Australia and other parts of the British Empire (London:Faber and Faber, 1966), 150.

⁷² D. Meredith "Full circle? Contemporary views on transportation," in Convict Workers: Reinterpreting Australia's Past, ed. S. Nicholas (Cambridge: Cambridge University Press, 1988), 14. For the selection criteria Meredith cites Parliamentary Papers (hereafter PP), "Report from the Select Committee on Convict Establishments," 1810, IV, C348, 16 [Originally published in 1798 and reprinted in 1810]; PP, "Report from the Select Committee on Secondary Punishments," 1831, VII, C276; PP, "Report from the Select Committee on Gaols and Houses of Correction," 1835, XI, C438, 277.

severest punishments, women who were badly behaved while detained, along with other serving shorter sentences but whose health was strong and under forty-five years”.⁷³ It was these convicts, she suggested, selected from all those sentenced to transportation, who arrived in Australia. Ongoing studies from Hamish Maxwell-Stewart, Matthew Cracknell and Kris Inwood are beginning to explore the possibilities of biometric criteria for selection, however as of yet, these studies are unable to tell us whether height or weight really could determine whether a convict was selected to sail to Australia.⁷⁴

Much has been made of the testimony of John Capper -- the superintendent of the Hulks - - to the 1812 select committee on transportation. When it came to the issue of selection, Capper stated “many are not fit to send there and many not fit from old age which would render them a matter of great burden to the colony. . . We seldom exceed the age of fifty; where a man is fifty years of age he is not sent” (for women the age limit was set at forty-five years).⁷⁵ Capper added “generally speaking they are very young that go out, from London in particular”.⁷⁶ Capper’s testimony, and the consideration that has been given by historians to age and health as selection criteria, does suggest that, in theory at least, some formal post-sentencing process of selection existed. However, it remains unlikely that such criteria were definitive, static, or even consistently adhered to.

⁷³ D. Oxley, Convict Maids: The Forced Migration of Women to Australia (Cambridge: Cambridge University Press, 1996), 60. See also: A. Summers, Damned Whores and God’s Police: The colonization of Women in Australia (Melbourne: Penguin Books, 1994).

⁷⁴ H. Maxwell-Stewart, M. Cracknell and K. Inwood, “Height, Crime and Colonial History,” Law Crime and History 5 (2015): 41

⁷⁵ PP, “Report from the Select committee on Transportation,” 1812 (314), 77-8 (16 for index)

⁷⁶ Ibid. See also Meredith, “Full Circle?” and Oxley, Convict Maids.

A range of other criteria have been suggested as important for the post-sentencing selection of convicts, all of which must be understood as dependent on their own contextual factors such as era, colony, and specific colonial administrators.⁷⁷ Both Oxley and Meredith noted that while the rate of convicts shipped to Australia “usually reflected penal imperatives in Britain”, the level of transportation at any given time could also respond to the labour needs of particular colonies.⁷⁸ However, as Godfrey and Cox discussed in their article on the final convicts sent on the last fleet to Western Australia in 1867, the needs of the prospective colony were not always the only consideration. In the later phases of transportation a colony might ask for a certain kind or number of convicts, or a particular demographic of prisoner, which we know they did not always receive.⁷⁹ Britain might send those most needed by the colony, or those they most wished to be rid of. Babbette Smith suggested, particularly in the case of transportation to

⁷⁷ While convict transportation to Australia ran uninterrupted for eighty years (1787-1868), it is important to acknowledge that each colony had its own systems, requirements, and procedures when it came to receiving felons from the other side of the world. Though there is significant crossover in the convict histories of both New South Wales and Van Diemen’s Land, each represents a unique era in transportation history. Similarly, the final years of convict transportation to Western Australia differed significantly from earlier colonies. However, the experiences and records of each colony combined have much to teach us about the overall scope and function of penal transportation in the long nineteenth century.

⁷⁸ D. Oxley and D. Meredith, “Contracting Convicts: The Convict Labour Market in Van Diemen’s Land 1840-1857,” Australian Economic Review 45 (2005): 47.

⁷⁹ B. Godfrey and D. Cox, “The Last Fleet: Crime, Reformation, and Punishment in Western Australia after 1868,” The Australian and New Zealand Journal of Criminology 41 (2008): 240.

Western Australia, that the wishes of the convicts themselves may have had a role to play in who boarded a vessel and who was left behind.⁸⁰ Robert Hughes suggested that bribing corruptible officials could allow names to be taken “in or out of the ‘Bay drafts’ -- the lists of who was to be shipped to Australia”.⁸¹ Writing more than forty years later Smith too suggested that with “fierce competition” for passage on transport vessels, lists of convicts to sail tended to favour those with the money to influence officials.⁸²

Ultimately, while there is evidence to suggest that a number of factors, from health and age, to colonial need, or penal imperative, could contribute to convict selection after sentencing, the phenomenon remains almost as mysterious to historians as it was to those waiting to sail. The criteria for selection may have also changed throughout the eighty year period of transportation to Australia. For example Smith details the frustration felt by those serving on the hulks in the 1850s at the ‘constant changes in policy’ regarding selection for transportation. Smith notes that in any given period selection might favour the well behaved, or the most hardened criminals.⁸³

The information on convicts who arrived in Australia is so detailed that, as Maxwell-Stewart noted, it can even tell us “the colour of the eyes of some 160,000 convicts”.⁸⁴ This wealth of knowledge on Australian arrivals means that, understandably, research on selection remains focussed on those who sailed. However, this leaves a prohibitively large gap in our knowledge of how the system of transportation truly worked, a fact not lost on those who have

⁸⁰ B. Smith, Australia’s Birthstain (Crows Nest: Allen and Unwin, 2009), 78.

⁸¹ R. Hughes, The Fatal Shore (London: Collins Harvill, 1987), 142.

⁸² Smith, Australia’s Birthstain, 108.

⁸³ Ibid.

⁸⁴ H. Maxwell-Stewart, “Convict Transportation from Britain and Ireland 1615-1870,”

History Compass 8 (2010): 1224.

spent decades researching this issue. Oxley surmised, “it is imperative that we discover who out of that pool of potential transportees was actually sent to Australia, who was not, and why. Such questions regarding selection procedures will not be answered until further rigorous investigation is made of the British court records. Only then can hidden agendas in the colonisation of Australia be discerned”.⁸⁵ We cannot fully appreciate how post-sentencing selection for transportation worked while we know so much about those who arrived in Australia and little about those that were left behind.

It is this British perspective on selection for transportation, long recognised but little researched, that the Digital Panopticon gives us the chance to begin piecing together. By tracing all of those sentenced at the Old Bailey to transportation, rather than only a subset of convicts actually transported to Australia, and bringing together the largest collection of British records for the study of convicts to date, the Panopticon enables us to connect records detailing alternate penal journeys to a large population of the left behind. While a comprehensive quantitative analysis of the numbers and characteristics of those not selected for voyage presently remains elusive, the following discussion seeks to qualify the nature of the penal journeys taken by those sentenced to transportation, but never sent to Australia.

A total of 1,759 offenders were convicted at the Old Bailey and sentenced to be transported “beyond the seas” in the years 1790-1799. The penal outcomes of these convicts can be separated into four broad categories: transported, pardoned, left to servitude in England, and deceased. Each will be explored in turn below. However, due to the immense complexities of both the digital record-linkage process, and the multiple materials involved in tracing the journeys of those sentenced to transportation, it must be noted that all numbers offered are provisional.

⁸⁵ Oxley, Convict Maids, 60.

[B] Penal Outcomes of Convicts Sentenced to Transportation

Of the 1,759 Old Bailey convicts sentenced to transportation in this period, only 855 (48.6 per cent of those sentenced) can be traced to a convict voyage headed for Botany Bay.⁸⁶ However, it is worth noting that this figure is substantially larger than the one suggested by Shaw when he wrote that in the early period of transportation “less than a third [of those sentenced] were actually sent away”.⁸⁷ Yet this figure is also less than the two-thirds which has been suggested for later periods of transportation.⁸⁸

[Insert Table 2 here -- Post-sentencing outcomes of Old Bailey convicts sentenced to transportation, 1790-1799]

Linking the pardoning records with the rest of our data allows us to see how judicial intervention could transform an initial sentence of transportation into a range of different penal outcomes. The process by which pardons were granted to those awaiting transportation differs little from that which saved many from the gallows. However, while extensive work has been conducted on the pardon process for capital convicts, the rates and conditions of pardons for those sentenced to penal transportation are less well known. Pardons for transportees can be separated into two groups; free pardons which set a convict at liberty and conditional pardons. The latter granted convicts liberty on the understanding that they found work, served in the armed forces, left the country, provided sureties for good behaviour, or reduced a punishment to imprisonment.

⁸⁶ A total of 827 individuals were traced to a BCTR entry (some also has a convict indent attached) and just twenty-eight were connected to a convict indent alone.

⁸⁷ Shaw, Convicts and the Colonies, 150.

⁸⁸ Oxley, Convict Maids, 60.

Full pardons were the rarest form of mercy offered to convicts in this period. A few (predominantly women) might be discharged if their cases, such as pregnancy, a large number of children to provide for, great age, or illness was felt to warrant such unrestricted freedom. John MacDonald was sentenced to seven years' transportation in 1797 for the theft of a watch.⁸⁹ His plea for clemency cited the following factors: 'first offence, good previous character, has served 10 years in the army... and is now very ill in Newgate and in a very short period he "most probably, will terminate his existence"'.⁹⁰ John was granted a free pardon so that he could live out the remainder of his life outside prison walls and outside of the state's responsibility.

Far more common were pardons that reduced punishment or asked for insurance of a convict's good behaviour. Nineteen-year-old apprentice Henry Stephens was granted a pardon on the condition that he return to his master's service for the remainder of his apprenticeship, and then provide security to ensure his good behaviour for the remainder of time left on his sentence.⁹¹ Pickpocket Mary Smith escaped passage to Australia in return for serving seven months in a house of correction, and paying a one shilling fine, as did thief Thomas Watkins, who was sentenced to serve three months in Newgate and to pay the same.⁹² Often by the time a petition for clemency was addressed, the small term of imprisonment that was substituted for transportation had already passed, and so prisoners were set free much in the same way that they would have been if a free pardon was granted. Conditional pardons were predominantly granted to young, first-time offenders (especially with good characters or good family backgrounds) or those with heavy family responsibilities or particularly tragic circumstances.

⁸⁹ OBP, 15 February 1797 (t17970215-32).

⁹⁰ TNA, HO 47/24, ff.353-6.

⁹¹ TNA, H 47/12, ff.134-6.

⁹² TNA, HO 47/15, ff.13-21, 126-9.

During the 1790s there were a small group of convicts who escaped formal transportation after receiving a pardon to undertake “self-transportation” to the colonies. This unusual pardon type seems to have been in operation only during the very early phases of transportation. Information on the process is almost entirely missing from current historiography. Those pardoned on condition of self-transportation, like William Pearce and Thomas Carr, have no records of transportation but would have presumably still arrived in Australia.⁹³ It is unclear whether these convicts would have been integrated into the convict system once in Australia, or if they lived as free migrants, and thus how we should interpret their journeys. Further study of the self-transported would make a fascinating contribution to the history of early transportation to Australia.

As has already been demonstrated in the case of capital convicts above, transportation was not the automatic fate awaiting all who were of peak age, fit and useful. A not-insignificant proportion of men awaiting transportation were pardoned to serve in the army or navy. Of the 162 male Old Bailey convicts recorded in the HO 47 records of applications for clemency 1790-1799, forty of them (24.6 per cent) -- again around one-quarter -- were recommended to mercy on condition of enlisting in the forces or serving in the West Indies. Interestingly, unlike the case of capital convicts, this type of pardon was recommended fairly consistently throughout the decade, rather than peaking during the wars of the mid-decade years.

The proportion of those released to “serve” was in all likelihood much bigger than formal pardon records suggest. Matthias Knuckey, a nineteen-year-old blacksmith, found guilty of grand larceny and sentenced to seven years’ transportation, was pardoned the following year on the

⁹³ TNA, HO47/15, ff.201-4, 122-5.

condition he spend his sentence serving in the West Indies.⁹⁴ Knuckey does not however appear in the HO 47 records. Likewise, no entry exists for Joseph Burford either, a twenty-two-year-old tailor due to be transported for seven years for the theft of a watch and coat in 1792.⁹⁵ However, the “criminal registers” of prisoners recorded that he had been “pardoned 12 November 1794 to serve in the West Indies” and discharged.⁹⁶ The larger proportion of men who were pardoned on these conditions may well have clustered mid-decade when, Hughes notes, men otherwise eligible for transportation found themselves “press-ganged into the navy, or even dragged into the uniformed rabble of the British army”.⁹⁷ Of course, war often meant not only an increased need for men to serve in the military, but also a shortage of available ships to send to Australia.

Some individuals had either the requisite experience, or willingness, for military service. Twenty-one-year-old rope maker William Reynolds was noted to be both of “previous good character” and “willing to serve in HM navy”. He was pardoned to serve as a soldier in the West Indies less than a year after his original sentence was passed.⁹⁸ Similarly, William Hunt had a record of good conduct from more than six years in the “2nd Life Guards”.⁹⁹ He was pardoned six months after sentence to serve in the West Indies.¹⁰⁰ However, willingness, experience and

⁹⁴ OBP, 30 April 1794 (t17940430-30); LL, “Criminal Registers” (NAHOCR700020088).

Knuckey was eventually sentenced to death after being found guilty of returning from transportation: OBP, 14 September 1796 (t17960914-2).

⁹⁵ OBP, 12 September 1792 (t17920912-29).

⁹⁶ LL, “Criminal Registers” (NAHOCR700030010).

⁹⁷ Hughes, The Fatal Shore, 161.

⁹⁸ TNA, HO 47/19, ff.20-3; LL, “Criminal Registers” (NAHOCR700010043).

⁹⁹ TNA, HO 47/19, ff.73-6; LL, “Criminal Registers” (NAHOCR700010105).

¹⁰⁰ Ibid.

even opportunity were no guarantee of pardon on the condition of service. John Clack appealed for clemency on the grounds that he had already served eighteen months of his seven year sentence on a hulk at Woolwich and that he had been “offered a post by Captain Charles Craven of HMS Trimmer”.¹⁰¹ Yet, while there is no record of transportation for Clack, there is no register entry to suggest that a pardon was granted to him either.

There is qualitative, if not quantitative, evidence to suggest that family circumstances may have helped men with selection for pardon to serve in the forces. William Terry had no previous military experience or previous good character, yet his application for clemency noted he “has a wife and young children to support”.¹⁰² Less than three months after sentence he was pardoned to serve in the West Indies.¹⁰³

Sending young and healthy men to serve in the British forces provided a useful and cost-effective option for relieving the oversupply of convicts waiting to sail to Australia and the crowds amassing on the prison hulks. In future, closer attention to a comparison of the credentials and characteristics of the often young, healthy and useful convicts offered a range of pardons, and those selected for voyage to Australia would help to broaden our understanding of selection criteria under the convict system.

Arguably the largest proportion of those who were sentenced to transportation but left behind in England, and the majority of the 383 criminal register entries we have examined, were not the pardoned, but those men delivered to the hulks but never transported. We know least about why some men were left behind, while others from the same hulk were taken to Australia. While never explicitly, the historiographical focus on the young, healthy and useful sent to

¹⁰¹ TNA, HO 47/17, ff.173-82.

¹⁰² TNA, HO 47/19, ff.98-100; LL, “Criminal Registers” (NAHOCR700010113).

¹⁰³ Ibid.

Australia has often implicitly implied that those left behind somehow did not meet this desired criteria. However, we do not have to look far to find cases in which those who served on the hulks were virtually indistinguishable from their transported peers.

Alexander Patten was seventeen when found guilty of burglary and theft under the value of forty shillings in February 1796.¹⁰⁴ Ten months later Alexander, a five foot two inch tall painter from London was transferred to one of the hulks in Portsmouth.¹⁰⁵ There are no records of Alexander applying for a pardon, or any records suggesting ill health. He was young, somewhat skilled, and presumably healthy. Yet almost five years later, in 1801, Alexander was still confined in the Perseus hulk, where he served out the remainder of his sentence.¹⁰⁶

When looking at the men left to stagnate in the hulks, the idea that age, health and skill were consistently used to select convicts after sentencing for voyage seems unfathomable. However, there may have been practical concerns which, on top of the characteristics historians have identified, played a role in deciding who was sent and who stayed behind. At the sessions held at the Old Bailey on 31 October 1792, thirty-eight men were sentenced to transportation. Only three of them, including Thomas Poore, a burglar and five foot four inch tall former mariner from Exeter, would eventually make the voyage to Australia.¹⁰⁷ Poore was delivered onto the Stanislaw hulk at Woolwich shortly after trial. Likewise, John Harrison (thirty-nine, no listed occupation, five foot five inches tall) a thief was delivered to the Prudentia hulk at Woolwich before both he and Poore sailed to Australia on the Ganges in 1796.¹⁰⁸ Yet Richard

¹⁰⁴ OBP, 17 February 1796 (t17960217-49).

¹⁰⁵ LL, “Criminal Registers” (NAHOCR700020117).

¹⁰⁶ TNA, “Home Office: Convict Prison Hulks: Registers and Letter Books,” HO 9/8.

¹⁰⁷ OBP, 31 October 1792 (t17921031-53).

¹⁰⁸ BCTR (record number 21131977790002061).

Powell, a twenty-two-year-old, five foot five inch tall labourer and pickpocket from London, and William Croaker, somewhere between 23 and 39 years old and relatively statuesque at five foot eight inches tall, a thief and plasterer, were convicted at the same session and never transported.¹⁰⁹ All four men were sentenced to seven years' transportation on the same day. All were relatively young property offenders. There was no discernible difference in the quality or utility of their trades, or physical stature. Nor records of illness. The only difference seems to be that while Poore and Harrison were held in Woolwich, Croaker and Powell were held on the Lion hulk at Portsmouth.¹¹⁰

While there is every chance that post-sentencing selection of convicts for sail did consider youth, utility and health, it seems that a large proportion of those convicted and sentenced to transportation already met this criteria, leaving a surfeit of male convicts to select from. In these cases perhaps hulks were picked depending on where a convict vessel docked or on a rotational basis drawing men from particular hulks at particular times.

Finally, linking the coroners' inquests database allows us to discover sixty-three (14.1 per cent of traced alternate outcomes, 3.6 per cent of those sentenced) of those left behind in England died before it was possible for their sentence to be implemented. In the cramped and insanitary conditions of eighteenth-century prisons, fever was rife and infection could spread quickly. Coroners would regularly record a death with little details listing simply "fever", "decline", "despondency" or "natural causes."

Thomas Kennedy was found guilty of the theft of a silver watch in 1797 and detained in Newgate waiting to be transported.¹¹¹ Thomas spent the next eighteen months in the gaol, too

¹⁰⁹ OBP, 31 October 1792 (t17921031-26, t17921031-29).

¹¹⁰ LL, "Criminal Registers" (NAHOCR700060025, NAHOCR700060029).

¹¹¹ OBP, 12 July 1797 (t17970712-41).

unwell to be transferred. William Clark, a fellow prisoner described Kennedy as “an elderly man of near sixty years of age and very much emaciated and decayed”.¹¹² We can perhaps infer from the report of Kennedy’s “bad leg” that he was suffering from open ulcers or other wounds which had become infected. At the beginning of April 1799 Thomas began to suffer from fever and fits which continued for a fortnight. Despite his wife administering a remedy of a pint of porter with an ounce of tobacco soaked into it, a particularly bad fit and episode of vomiting seized Thomas and he died.¹¹³ Most of those who died were, like Thomas, the elderly (at least in transportation terms).

The generic fevers, fits and “decline” listed as causes of death for those in Newgate could be a myriad of infections such as typhus, typhoid, dysentery, pneumonia, tuberculosis which spread quickly and fatally throughout London. Those without strong immunity -- the elderly or very young -- were especially at risk. Convicts also died as a result of pre-existing conditions such as venereal disease, heart problems and jaundice. The rate of death amongst prisoners awaiting transportation will have been considerably higher than suggested by the small number of coroners’ records available. Elizabeth (or Edith) Lany, for example, was a thirty-eight-year-old widow from Durham, sentenced to seven years’ transportation at the Old Bailey in 1793.¹¹⁴ She died three months after sentencing. There is no coroner’s record for Lany, and although a note of her death was made by the common serjeant of the prison no details of what happened to her, or where she was when she died, are apparent.¹¹⁵ Those who died in other prisons or on the hulks, and die they did, left very little trace. It remains unlikely that a comprehensive study of all

¹¹² LL, “Coroners’ Inquests” (LMCLIC650120192).

¹¹³ Ibid.

¹¹⁴ OBP, 20 February 1793 (t17930220-4).

¹¹⁵ LL, “Criminal Registers” (NAHOOCR700060101).

those who died while awaiting transportation will ever be possible. Beatrice and Sydney Webb commented in 1922, “of all the places of confinement that British history records the Hulks were apparently the most brutalizing, the most demoralizing, and the most horrible. The death rate was appalling, even for the prisons of the period.”¹¹⁶ Thomas Forbes suggested “reports have made it clear that convict hulks could be dreadful and deadly places of confinement.”¹¹⁷ Forbes estimated that on board the first hulk of the Australian convict period, almost 20 per cent of inmates died before transportation.¹¹⁸

Long term, serious and chronic illness also prevented inmates from travelling to Australia. If removed to a hospital (or elsewhere but not formally pardoned) inmates were effectively removed from the process of selection, but left very few records for us to find. At present, we are unable to explore those not selected for transportation due to ill health, who must surely number significantly among the more than one in three convicts between 1790-1799 who did not have their sentences implemented.

While post-sentencing selection for sail may have relied on the criteria of youth, health and utility, it can only have done so after death, illness and discharge removed a sizeable proportion of the aged and frail population, and conditional pardons removed men that were considered of better use elsewhere. To date, not enough attention has been paid to the possibility that the numbers of young and healthy men and women arriving in Australia was due not to positive selection, but a level of negative “natural” selection in which the elderly, very young

¹¹⁶ S. Webb, English Prisons under Local Government (Longman: London, 1922), 45-6.

¹¹⁷ T. Forbes, “Coroners’ Inquisitions on the deaths of Prisoners in the Hulks at Portsmouth England in 1817-1827,” Journal of the History of Medicine and Allied Sciences 33 (1978): 366.

¹¹⁸ Ibid, 358.

and frail died or became incapacitated before secondary selection could take place. Such occurrences may have left a disproportionately young and healthy population of convicts for those responsible for voyage selection to pick from.

Of course, we need a fuller picture of the true proportion of those that stayed behind, where they were placed, and their characteristics to compare with their transported peers. Until such a time as this exists the idea that a range of factors, from the socio-political, to the practical availability of inmates at any given time, and their personal circumstances, contributed to sentence implementation is just one more piece of a poorly developed puzzle. There may be a number of undocumented factors which were used in post-sentencing selection. An offender's character, their physique and their temperament may all have carried weight in the decision-making of officials when it came to the ultimate disposal of convicts. With a greater understanding of the impact that documented factors played in penal outcomes, we will, at least, be able to assess how much decision-making was left for undocumented factors to control.

Our efforts at record linkage are still developing, and while the Digital Panopticon data and search capabilities are of high quality, they are not yet complete. Errors in transcription and tagging, and in the original records, mean that offenders can appear where they should not, and that their details can sometimes be wrong. Edward Burne's entry in our database suggests he was sentenced to be transported for stealing hay. On closer inspection, Edward's sentence summary in the Proceedings subsequently reveals that it was an unrelated Charles Burne from the same session sentenced to seven years' transportation, and that two separate Edward Burnes were also tried on the same occasion. One was sentenced to be imprisoned for one week and to be publicly whipped, the other was sentenced to serve one month's imprisonment.¹¹⁹ The relevant Edward Burne's criminal register again amalgamates these cases suggesting Edward was punished with

¹¹⁹ OBP, 31 October 1792 (s17921031-1).

one month's imprisonment and a whipping.¹²⁰ Though it must be noted that these kind of entries are a very small minority in a database with hundreds of thousands of records and links.

Yet, even where records have been connected with ease and accuracy, the contemporary recording of the fate of those awaiting transportation can still be fallible. Mary Yarrow, sentenced to seven years' transportation for breaking and entering the house of Sophia Linney in 1793, was transferred to the convict ship Indispensable in April 1796.¹²¹ If we search for Mary, her convict indent, created as the ship was loaded, would allow us to count her amongst the transported. We know, however, that Mary was subsequently unloaded from the ship and given a full pardon in September 1797, passing to the care of her parish.¹²² Mary was both selected for transportation and pardoned before she could sail to Australia. Likewise, Mary Davis was sentenced to transportation in September 1793.¹²³ She was loaded onto the convict vessel Surprize in 1794, but then removed in April of that year, due to a case of "lockjaw" rendering her unfit for voyage: she was transferred back to Newgate where she served the remainder of her sentence.¹²⁴

We must acknowledge that our records are incomplete, both for those sent to Australia and those left behind. While the British Convict Transportation Registers offer an invaluable view of those sent to Australia, not every record has been preserved. Sarah Gower was convicted of stealing in 1792. She was sentenced to seven years' transportation.¹²⁵ The criminal registers

¹²⁰ LL, "Criminal Registers" (NAHOOCR700060043).

¹²¹ OBP, 4 December 1793 (t17931204-60).

¹²² LL, "Criminal Registers" (NAHOOCR700030198).

¹²³ OBP, 11 September 1793 (t17930911-31).

¹²⁴ LL, "Criminal Registers" (NAHOOCR700070133).

¹²⁵ OBP, 31 October 1792 (t17921031-38).

state that she was “removed on board the Surprize . . . 10 February 1794”.¹²⁶ Yet no record of her voyage, or arrival in Australia can be found. We must accept that individual transportation records, and even whole ship’s worth of records have been lost. Accounting for at least some of the 458 (25.9 per cent) individuals whose penal outcomes we could not trace in the above records.

With each new record collection added to the Panopticon’s database -- more pardons and death data, alternate registers of transportation, more detailed hulk documents -- the clarity of our analysis will be improved. Each additional link created between datasets and in life archives further refines, by process of elimination, the conclusions we draw.

[A] Conclusions

In the case of both capital sentences and those of transportation, it was not inevitable that the punishment pronounced in court would determine what happened to a convict. By reconstructing the penal journeys of the Old Bailey condemned it becomes evident that, in the 1790s at least, hanging was by no means an inevitable outcome for those sentenced to death. Less than a quarter of those sentenced to death during this period would hang. Yet nor was transportation used as a blanket alternative for those granted mercy. Even with the resumption of mass transportation after 1787, the Old Bailey reprieved continued to follow a number of other penal routes. Slightly over one quarter more would find themselves shipped to Australia, the rest might be pardoned to undertake military service, imprisoned or die from natural causes whilst awaiting sentence. The shape of a capital convict’s eventual penal outcome could be influenced by the identity of the offender, the nature of their crime and by such external pressures as wartime recruitment.

¹²⁶ LL, “Criminal Registers” (NAHOOCR700070016).

In the case of penal transportation too, there was more to a pronouncement of sentence than simple implementation. Although the historiography has often suggested that the young, healthy and skilled would be taken to Australia while others were left behind, the picture for the early years of transportation is considerably more complex. It was rare for the aged and sickly to arrive in the colonies. However, whether this was due to “positive” selection of the healthy, or the demise, incapacitation and pardoning of the less desirable is unclear. Nor were all the young, healthy and skilled automatically bound for Botany Bay. Convicts characteristically indistinguishable from those that sailed beyond the seas might be pardoned and set to military service, or left to stagnate on the hulks. A full understanding of post-sentencing selection for transportation will only be achieved when we know as much, in aggregate, about the characteristics of those left behind in England and their penal journeys, as we do about those who arrived in Australia.

The picture for the 1790s shows, with reference both to capital convicts and transportees, that outcomes could be diverse. The criteria that determined such journeys was not static, but ever-developing, changeable and responsive to a range of personal, social and political matters. Undoubtedly, more work, both qualitative and quantitative, remains to be done. For example, pardoning petitions and reports which have been used extensively to study the outcomes in capital cases, are still to be consulted in any systematic way for those originally sentenced to penal transportation. The picture we draw here serves mainly to bring a range of penal journeys into view so that in future they might be more fully explored and understood.

The digital record-linkage from the [Digital Panopticon](#) has enabled us to begin systematically connecting huge numbers of offenders from the courtroom to the next judicial stage. Our “life archives” allow us, at the click of the button, to see the disparity between sentencing and sentence implementation. Our tools enable us analyse the diverse range of outcomes a group of same-sentence convicts might experience, and, as demonstrated here, to

look more closely at the details and diversity of under-researched penal processes. We continue to develop and refine our digital technologies and methodologies. Before the website's launch a large collection of additional datasets will be added and linked to the life archives of Old Bailey convicts. The complete collection will offer social, criminal and personal data on not only the condemned and transported, but the imprisoned too, for almost 150 years of British history. Criminal registers, prison records and huge civil datasets like the census will connect together enabling us to answer questions about the rates of recidivism and effectiveness of penal regimes. We will be able to measure "criminal characteristics" from age and occupation, to biometric data, in order to form conclusions about who was drawn into the criminal justice system, why, and how penal outcomes affected offenders and their descendants. When complete, the Digital Panopticon life archives, and the tools to search, analyse, and visualise these will allow researchers to interrogate questions and data relating to the lives, crimes and pathways of offenders on an unprecedented scale. This article has already shown, with thousands of Old Bailey offenders already linked to further records of death, transportation, pardons and confinement, that we can begin to consider questions of sentencing, implementation and outcome at both the broad collective, and detailed individual, level. Whether we wish to count or clarify the nature of crime and punishment, our online archives make possible the kind of research that has previously been too time-consuming, laborious, or simply impossible. As such, we have the opportunity to start exploring new perspectives and approaches to well-known areas in the history of law and crime.

While our study has considered only a small sample of all the capital and transported convicts to pass through the Old Bailey between 1787 and 1925, in time it will be possible to produce a comprehensive picture of the patterns and processes of sentencing and implementation from the eighteenth to the twentieth century. The range and scale of documents drawn into the Digital Panopticon and effective automated record-linkage between them will allow researchers

to quantify and qualify not only the number of convicts who were sentenced to one punishment only to experience another outcome, but also the nature and details of those alternate experiences. More importantly, we will be able to consider more holistically the characteristics of those drawn into the criminal justice system, and the impact that factors such as sex, age, occupation and crime played in judicial and penal decision making.

Table 1: Post-sentencing outcomes of Old Bailey convicts sentenced to death, 1790-1799

	<u>Males</u>		<u>Females</u>		<u>Total</u>	
	No.	%	No.	%	No.	%
Executed	198	30.0%	8	9.2%	206	27.5%
<u>Conditionally Pardoned:</u>						
Transported	229	34.6%	53	60.9%	282	37.7%
Ordered to be Transported	66	10.0%	0	0.0%	66	8.8%
Army/Navy	76	11.5%	0	0.0%	76	10.2%
Imprisonment	24	3.6%	15	17.2%	39	5.2%
Other	10	1.5%	2	2.3%	12	1.6%
Free Pardoned	25	3.8%	6	6.9%	31	4.1%
Died in gaol	16	2.4%	2	2.3%	18	2.4%
Unknown	17	2.6%	1	1.1%	18	2.4%
Total	661	100.0%	87	100.0%	748	100.0%

Figure 1: Major post-sentencing outcomes of Old Bailey convicts sentenced to death, by age group, 1790-1799

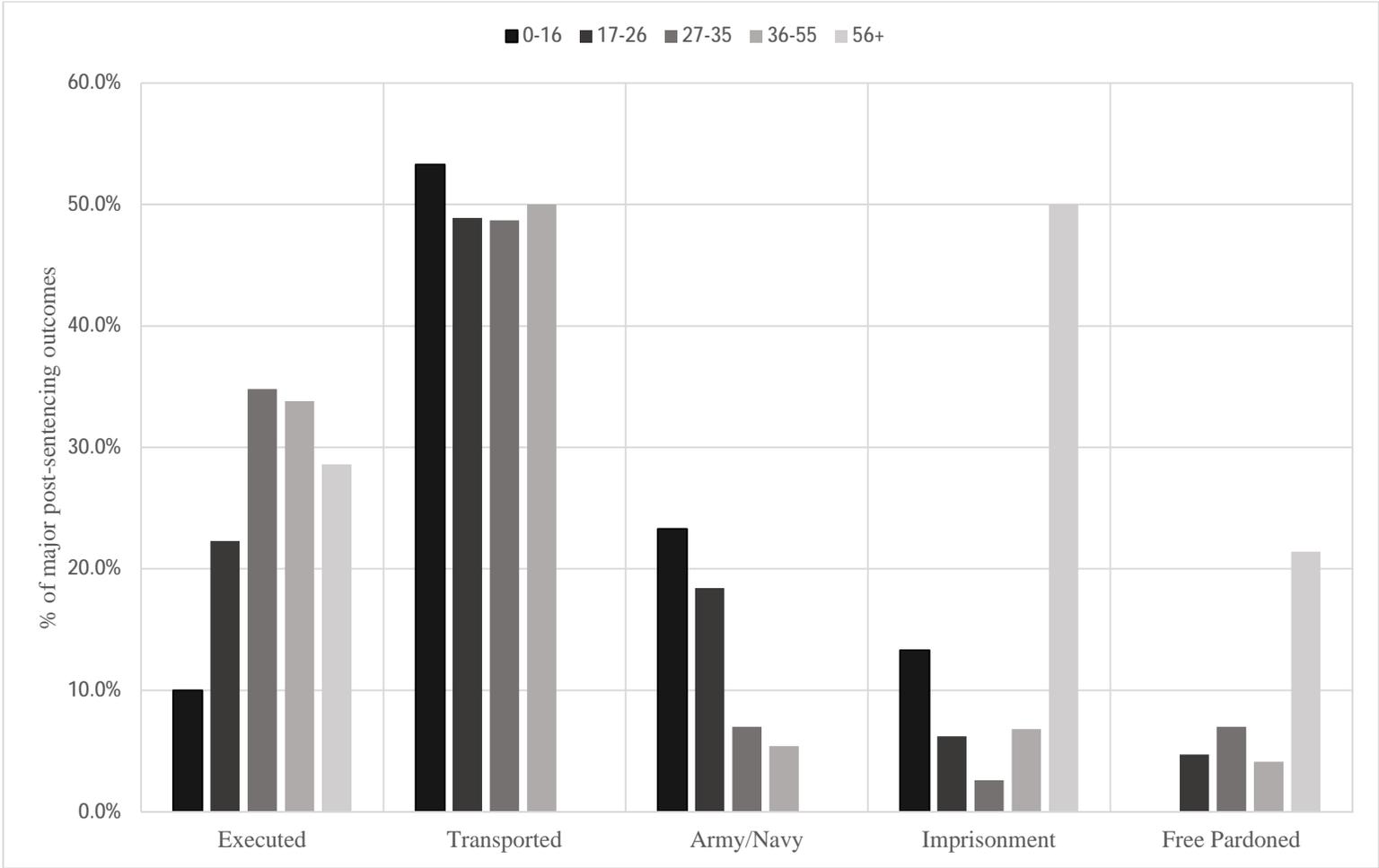


Figure 2: Major post-sentencing outcomes of male Old Bailey convicts sentenced to death for burglary or housebreaking, by age group, 1790-1799

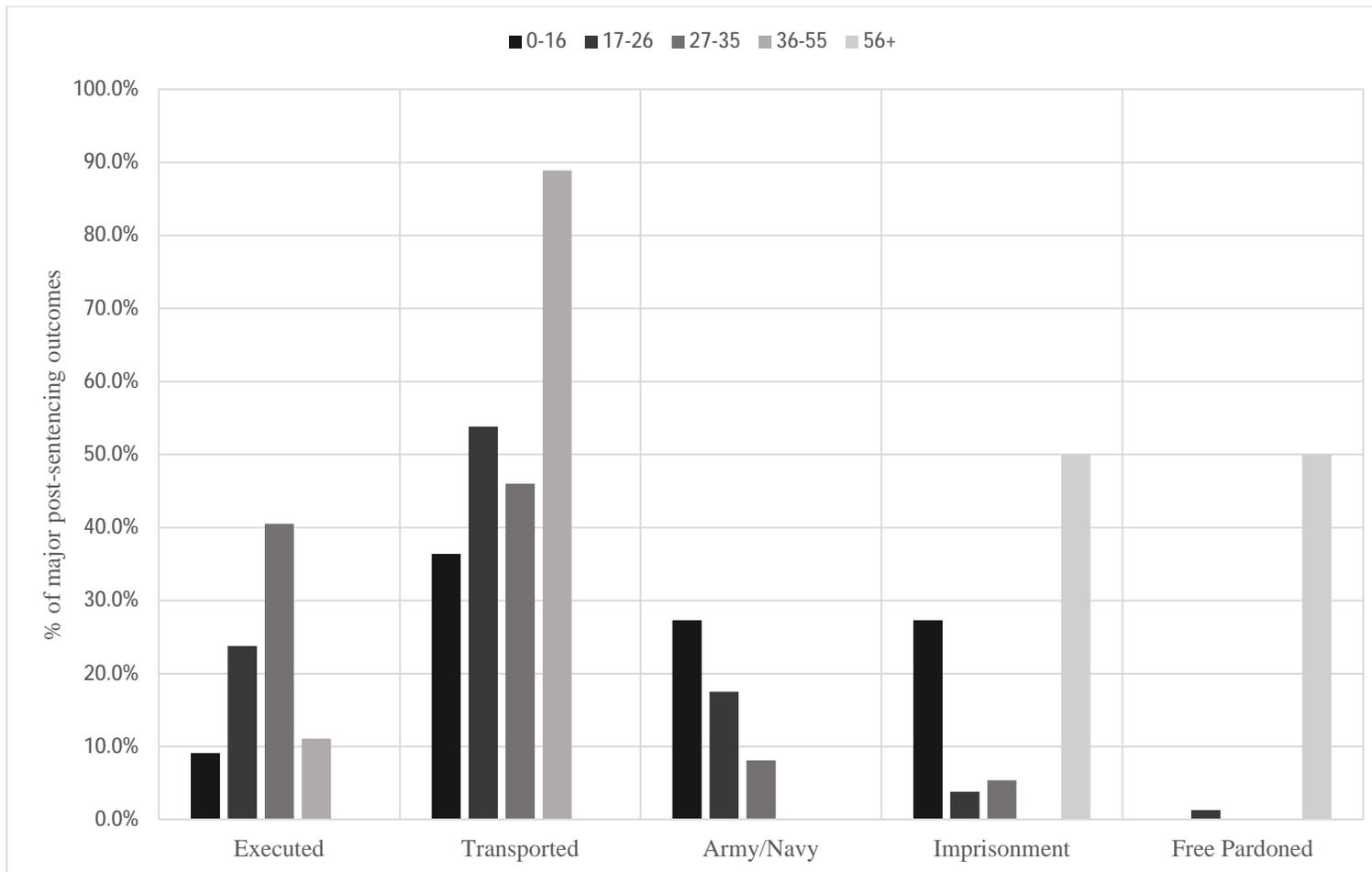


Figure 3: Major post-sentencing outcomes of male Old Bailey convicts sentenced to death, by year, 1790-1799

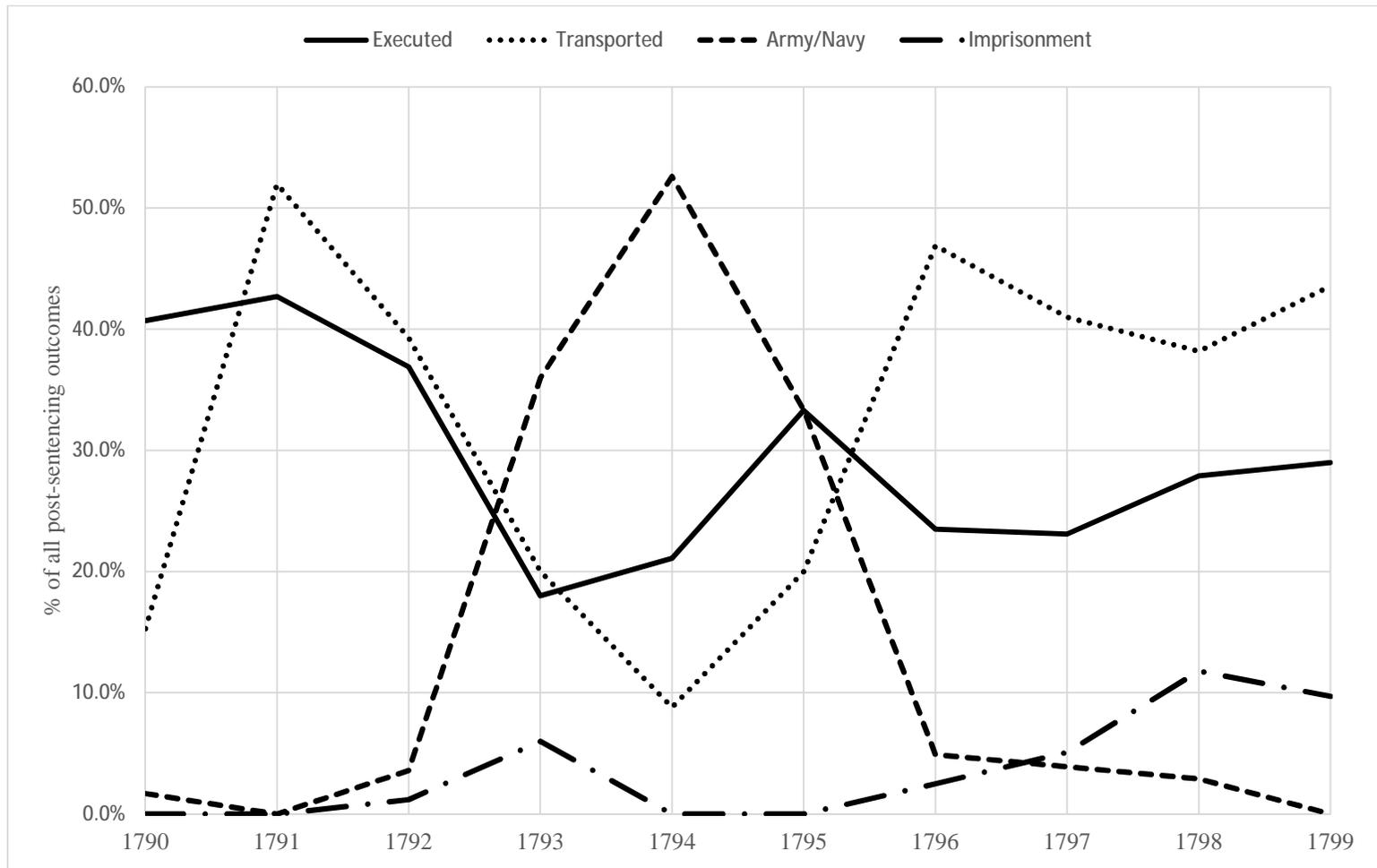


Figure 4: Conditions of pardons for all Old Bailey convicts sentenced to death, by age group, 1790-1799

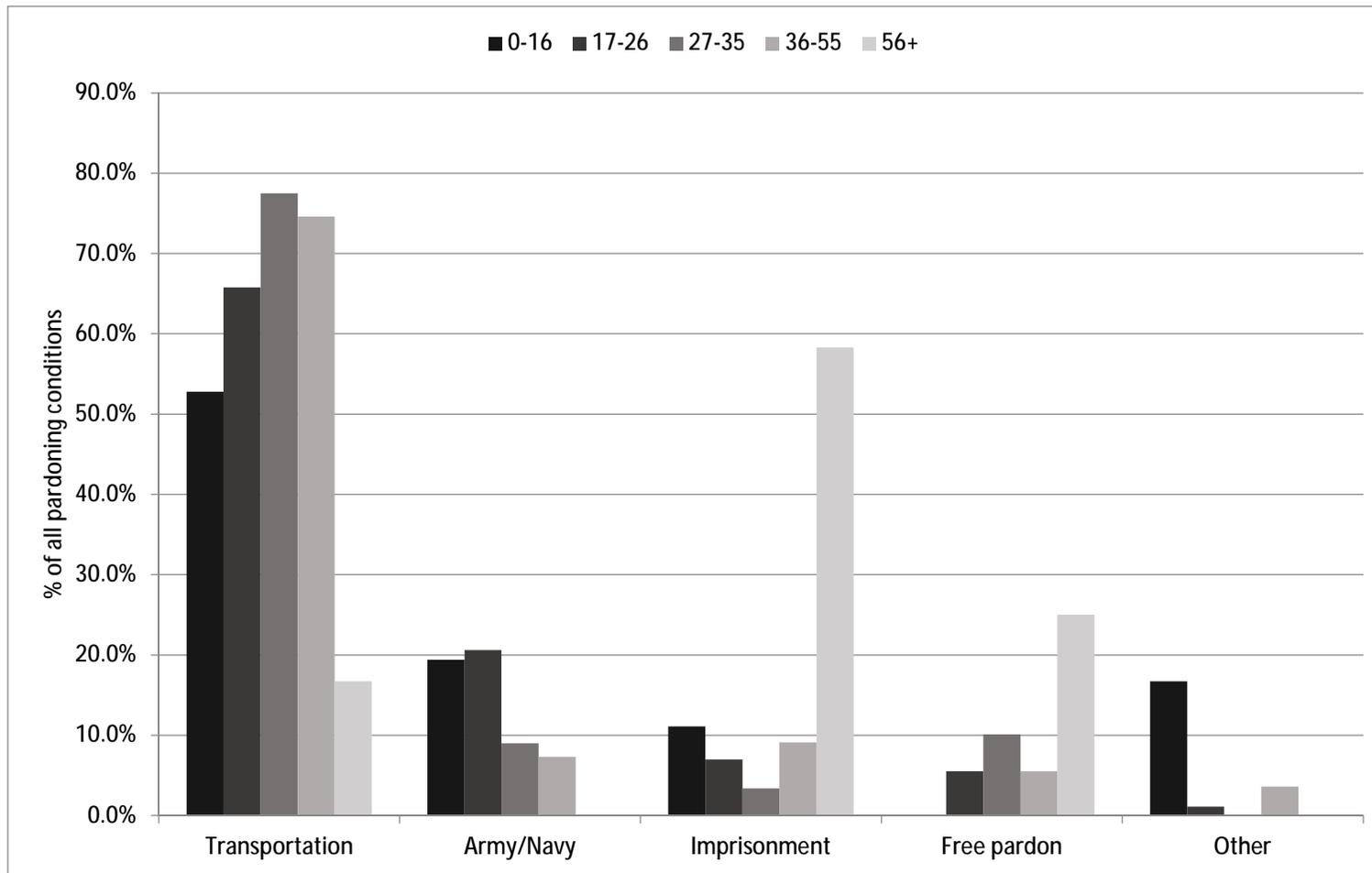


Table 2: Post-sentencing outcomes of Old Bailey convicts sentenced to transportation, 1790-1799

	<u>Males</u>		<u>Females</u>		<u>Total</u>	
	No.	%	No.	%	No.	%
Transported	580	41.3%	275	78.0%	855	48.6%
Pardoned/delivered to hulks	341	24.3%	42	11.9%	383	21.8%
Died in gaol	49	3.5%	14	4.0%	63	3.6%
Unknown*	436	31.0%	22	6.2%	458	25.9%
Total	1,406	100.0%	353	100.0%	1,759	100.0%

* A three-year sample of missing convicts (1790-1792) suggests that up to 43.8% of these individuals may be traceable in alternate records of transportation, and 11.6% in HO47 petitions for pardon.