

## "Such a Banditti": Irish Convicts in Newfoundland, 1789 Part II

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Volume 13, numéro 2, fall 1997

URI : [https://id.erudit.org/iderudit/nflds13\\_2art01](https://id.erudit.org/iderudit/nflds13_2art01)

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Éditeur(s)

Faculty of Arts, Memorial University

ISSN

1198-8614 (imprimé)

1715-1430 (numérique)

[Découvrir la revue](#)

Citer cet article

Reece, B. (1997). "Such a Banditti": Irish Convicts in Newfoundland, 1789 Part II. *Newfoundland Studies*, 13(2), 127-141.

## “Such a Banditti”: Irish Convicts in Newfoundland, 1789. Part II

BOB REECE

IT WAS THE RETURN of the Irish convicts from Newfoundland to England in late 1789 which set the final seal on Irish transportation to North America and the West Indies. In the correspondence between London officials and Dublin Castle which ensued from Governor Milbanke's action, we can trace the extraordinary course of events which brought about the final abandonment of Ireland's trans-Atlantic convict trade.

On 17 November 1789, the badly-leaking *Elizabeth and Clare* made Spithead with seventy-nine convicts on board. As it was already very late in the season, the voyage had almost certainly been a rough one and many of the convicts were in an appalling condition. Nor was there to be relief for very long in the thought that they were now close to home: legal and political problems meant that it was another two months before they were to see Anna Liffey again.

Carrying out Milbanke's instructions, Captain Coyshe informed Home Secretary Grenville of the ship's arrival, sending on to him a packet containing the Admiral's official dispatch with its various enclosures relating to the convicts. However, Milbanke himself had arrived at Portsmouth two days earlier and a set of the documents was already with the Home Secretary. When Grenville passed these on to Lord Chancellor Edward Thurlow for his opinion on 17 November<sup>1</sup>, the latter advised him the same day that the convicts should be returned to Ireland forthwith. In his view, they ought to be dealt with there "according to their law, as their sentence seems not to have been executed."<sup>2</sup> He enclosed a draft warrant which he suggested could be sent with them to Dublin.

Not entirely satisfied with this advice, Grenville returned the warrant to Thurlow with some suggested alterations to the wording. He told him that there was no point in referring to the convicts as needing to be tried in Ireland when it was clear from their own testimony that they had already been convicted and

sentenced there. Emphasizing the “novelty and peculiarity of this case,” he thought that an order of the Privy Council would be more appropriate than a warrant in his name and he sought a meeting to discuss the matter.<sup>3</sup>

“As to the Council,” Thurlow replied, “I don’t think it a subject to discuss.” If Grenville still wanted a meeting, however, he thought that it should be a small one with only half a dozen Councillors, mostly the lawyers, present. Anything more “would elevate the thing too much to make it the subject of *éclat*.”<sup>4</sup> Indeed, after interrogating Milbanke, d’Ewes Coke and Robinson on 24 November, Prime Minister William Pitt and the other Councillors accepted Thurlow’s advice that the convicts should simply be sent back to Ireland with a warrant from the Home Secretary.<sup>5</sup>

In an undated letter which was probably written before the meeting, Thurlow told Grenville that the “short method” they had first discussed — of ordering Coyshe to proceed to Ireland — “might have been sufficient.” However, the leaking condition of the *Elizabeth and Clare* posed a problem and there was also the question of American sensitivities: “if the sending [of] transports to the American States be a point upon which that country takes an obstinate turn, it may be proper, on that account also, to observe more form.” He concluded:

Something must be hazarded at last; because it is of course impossible to manifest their true condition by the best evidence, the record of their conviction, and proof of personal identity. But considering that examinations have been taken in the island from some of them, who have confessed their situation, and that other grounds to establish the belief may be deposed by Admiral Milbank [sic] ... there will be ground enough for the usual warrant, founded on suspicion, to send them over.<sup>6</sup>

As the Lords Justices of Ireland constituted the executive in Dublin until the new Lord Lieutenant, the Earl of Westmorland, was installed at Dublin Castle in January, it was to them that Grenville wrote on 25 November saying that he had signed a warrant for the convicts’ return to Dublin. A transport lying at Portsmouth, the *Deptford*, had been commissioned to take them there, accompanied by a sloop of war, the *Drake*.<sup>7</sup> This precaution suggests that Grenville was still concerned that their return to Ireland might not be a straightforward matter. Indeed, in his private letter of the same day to the new Irish Government Secretary, Major Robert Hobart, informing him of his action, Grenville wrote:

Although our lawyers here are all agreed that the proceeding thus far is perfectly legal and regular, there seems to be more doubt with respect to that which is to take place in Ireland on the arrival of these convicts in Dublin.<sup>8</sup>

While acknowledging that the Irish decision rested with the Court of King’s Bench and not with the executive, Grenville thought that “any delay or difference

of opinion may lead to some awkwardness.” He suggested to Hobart that it would be “highly expedient” for him to talk to Lord Chancellor Fitzgibbon and perhaps to Lord Chief Justice Clonmel. The solution he hoped for was that the Court of King’s Bench would remand the convicts to the prisons of the courts where they had been tried until the Irish Parliament could amend its legislation to authorize their transportation to New South Wales. To this end, Grenville advised Hobart that if the King authorised the reception of Irish prisoners into the new settlement, the cost of their passage would be £17 per head, together with provisions for their passage and for a year after their arrival. The Irish government would also have to make a contribution towards the garrison which would be needed to guard them — perhaps in the form of an Irish company to be added to the recently-formed New South Wales Corps in the same way that Irish troops had been helping to protect the West Indian colonies. This was the most positive response that the Irish government had yet received to its continued requests since October 1786 to participate in the Botany Bay scheme, although it was still hedged with the formality of obtaining the King’s permission — a device which allowed Grenville to stop short of committing himself completely.

At the same time, the Home Secretary had some sharp things to say about the Irish authorities’ continued recourse to transportation to North America and the West Indies:

The awkwardness, inconvenience, and expence [sic] of the whole business is so very great, that I must earnestly request of you to consider again with the Lord Chancellor as to the means of preventing any repetition of it. The landing [of] convicts in the territories of the United States (even if the masters of the ships perform their contracts in so doing) is an act highly offensive to a country now foreign and independent; and as such, very improper for the Government to authorize. And it is besides an act of great cruelty to the convicts, who, being turned on shore without the necessities of life, are either left to starve, or (as sometimes has been the case) are massacred by the inhabitants. And as to transporting to the King’s American colonies, you may depend on it, that after the example set them by Admiral Millbanke [sic], none of our Governors will suffer any of these people to be landed in their governments; and that, if landed by stealth, they will send them back at very heavy expense [sic] which must fall upon the Irish government.<sup>9</sup>

### “SCURVY AND THE FLUX”

In the second week of December, the Newfoundland convicts were transferred from the *Elizabeth and Clare* to the *Deptford* which then sailed for Dublin accompanied by the *Drake*. However, stormy weather forced the two vessels to shelter at Cowes and it was then that the deplorable physical condition of the convicts was brought to the attention of the naval authorities and ultimately the Admiralty and the Home

Office. From Cowes, Captain Countess of the *Deptford* wrote to Captain Onslow of H.M.S. *Magnificent* at Portsmouth that they were “seiz’d with a Fever, that many of them are very bad with the Scurvy and the Flux, with great black blotches breaking out on them, tending to putrefaction.”<sup>10</sup> Instructions were promptly given by Onslow for them to be examined by surgeons from the *Magnificent* and the *Edgar* who reported on 21 December that while there were no signs of fever for the time being, an outbreak of serious infection was highly likely:

The Convicts are now from want of Clothing, Bedding and every necessary in a small vessel [and] in an inclement Season are obliged to sleep on the bare Deck, which with the want of proper Provisions (their Diet consisting altogether of salted Meat) has produced the Scurvy among some of the number to the most inveterate degree. As this is the case there is reason to apprehend from what they have suffered since the first embarkation that the Disease in a few days if not counteracted may become general and fatal ...<sup>11</sup>

Accordingly, they were declared unfit to proceed to Ireland until they had been “cleansed and clothed”; the *Deptford* was ordered to take shelter in Stoke’s Bay for that purpose. A sergeant’s party of marines also had to be put on board to guard against their escape.<sup>12</sup> The Home Office paid for the services of the two naval surgeons and authorised the issue of “the requisite necessaries and Remedies,” including fresh provisions, while the good citizens of Portsmouth raised enough money through public subscription to provide the convicts with badly-needed warm clothing. According to the Portsmouth correspondent of the *Hampshire Chronicle*, “nine out of ten had arrived with no other covering than a biscuit bag. They sold their jackets and trowsers [sic] at Newfoundland.”<sup>13</sup> By 6 January they had been reported by the surgeons as fit to travel and the Treasury officer sent down from London to supervise arrangements had received instructions that they were to sail immediately from Cowes. The *Hampshire Chronicle* observed that the behaviour of the men was “very orderly” but that the five women “are said to give more trouble than 40 men.”<sup>14</sup> One of the women embarked at St. John’s had evidently died on the voyage to Spithead.

#### “FOR TIME IMMEMORIAL”

In the meantime, Lords Justices Fitzgibbon and Foster had been informed of the intended repatriation of the convicts by Nepean’s despatch to them of 23 November.<sup>15</sup> While they were preparing their response, Fitzgibbon, who had become Lord Chancellor in June, wrote privately to Grenville on 28 November complaining of his action and warning him of the problems that it created:

we have now, for time immemorial, been in the habit of sending our convicts to the British colonies in America without objection on the part of the colonies, till very lately. And if an objection had been stated whilst our Parliament was sitting, certainly we would have been bound to make some provision for the disposal of our convicts, which could not be deemed injurious to Great Britain or her colonies.<sup>16</sup>

He pointed out that if transported convicts were found at large in Ireland, they could be indicted and capitally punished under Irish law. However, if they were sent back under order of the British government there was no law which would allow Irish magistrates to detain them. Entreating Grenville to postpone repatriation until some means had been found of dealing with them, he was nevertheless pessimistic that this was possible. "I am free to acknowledge" he concluded, "that, at the moment, it does not occur to me that we can in any way get out of the difficulty, if they are returned to us by an act of Government."<sup>17</sup>

In their official reply of 1 December, Fitzgibbon and Foster informed Grenville of Lord Chief Justice Clonmel's view that under Irish law he could not commit the convicts to custody under their former sentences. Nor, under the circumstances, did he think that it would be just to commit them under the Irish statute of 1722 for returning from transportation. However, they emphasized that the same law could be applied to the Home Office messenger and the captain of the ship responsible for their return. Indeed, "any Magistrate of the City of Dublin would be satisfied in committing both the Messenger and the Captain for a Capital Felony." Accordingly, they had taken the precaution of sending out a revenue cruiser to intercept the transport carrying the convicts and warn the captain not to enter Dublin port but to take shelter at one of the neighbouring English ports "till a Determination can be made in what Manner these Convicts can be disposed of."<sup>18</sup>

Fitzgibbon and Foster remarked finally on the need to repeal Ireland's Police Act of 1786 and to make provision for "disposing of ... [felons] in such Manner as may suit the Interest of Great Britain and Her Colonies ...." It was their view that the Act explicitly authorised transportation only to His Majesty's plantations in America. In fact, as Fitzgibbon must have known very well since he had introduced the legislation in the Irish Parliament, it also provided for transportation "to such other place out of Europe as shall be expressed in such sentence rule, or order ...." To admit this, however, would have weakened his political argument that the Irish authorities had no choice but to send their convicts to North America and the Caribbean.

#### "A NATIONAL INDIGNITY"

There was an important political dimension to the whole affair. As Hobart advised Grenville in a private letter from Dublin of 1 December, any attempt by the British

government to support Milbanke's expulsion of the Newfoundland convicts would be bitterly resisted by the hyper-sensitive Irish Parliament as "a national indignity." Although he had not seen the official response prepared by Fitzgibbon and Foster after their consultations with Lord Carleton and the Attorney-General as well as with Lord Clonmel, he felt obliged to warn Grenville that

unless the greatest caution is used in the further progress of this business, one of the most angry and unpleasant questions is likely to arise in Parliament here that has been agitated for many years.<sup>19</sup>

At the same time, he candidly revealed that the revenue cruiser had been despatched to "bribe the Captain of the ship to delay until he received directions from England."<sup>20</sup>

The principal reason for this heightened sensitivity was that the Irish Parliament had taken serious umbrage at not being properly consulted during the so-called "Regency Crisis."<sup>21</sup> When the continued illness of King George III led to the proposal of a limited regency in late 1788, the Protestant nationalist members of the Irish Parliament (popularly known as the "Patriots") were filled with the expectation that the known Whig sympathies of the Prince of Wales would make him more responsive to their call for further parliamentary reforms than his father had been. Accordingly, it was agreed on 11 February to send an address to the Prince urging him to assume unrestricted royal powers. When Lord Lieutenant Buckingham refused to forward the document, a deputation of six members from both houses was then despatched to London to wait on the Prince, only to learn on their arrival at Holyhead that the King had fully recovered his health. In the outcome, the disappointed Patriots complained that the dignity of the Irish Parliament had been injured by the lack of consultation. Indeed, there were bitter reactions in both houses and in Dublin's more radical newspapers.

The tide of Irish Protestant nationalism had been running high since the establishment of a significant measure of Irish legislative autonomy through the constitutional changes of May 1782 and the launching of what became known as "Grattan's Parliament." It was further encouraged when the British Parliament passed the "Renunciation Act" in 1783, explicitly giving up any claim to control Ireland's internal affairs. Designed by Grenville himself during his time as Irish Secretary under the earlier lord lieutenantancy of his brother, the Marquis of Buckingham, this marked a high point in the Patriots' campaign for full Irish autonomy.<sup>22</sup> Although they had provided only a lack-lustre opposition between 1786 and 1788, the Regency Crisis gave them a shot in the arm.<sup>23</sup>

Furthermore, there was one key member of the interregnum Irish executive who had been sympathetic to the Patriot cause at one point. "Copper-faced Jack," as the obdurate Lord Clonmel was popularly known, had himself been dismissed from his position as Attorney-General by Lord Lieutenant Northington in 1782

when he denied that England had any right to bind Ireland by its Acts of Parliament.<sup>24</sup> Consequently Fitzgibbon, as leader of the Parliamentary faction loyal to the Castle, would have been anxious to avoid any issue which might antagonize Clonmel and hand the Patriots the initiative in the forthcoming session of Parliament.

While the official purpose of sending out the revenue cruiser was to prevent the landing of the convicts at Dublin until their precise legal status could be established, the political overtones of the Irish Lords Justices' extraordinary action could hardly be missed. "As the matter now stands," Hobart told Grenville in his letter to him of 1 December, "Admiral Millbanke [sic] has superseded an Irish Act of Parliament, and you may well imagine what a ferment that will create in the Irish House of Commons." Pointing out that the Lord Lieutenant had acted entirely in conformity with the Police Act of 1786 in authorising the despatch of the convicts, he added sarcastically that "it is presumed [this Act] was considered by His Majesty's Ministers in England previous to the Great Seal being put to it ...."<sup>25</sup> Nor did there appear to be any ready means of dealing with the convicts if they were sent back to Ireland. Lord Clonmel had advised that he could not commit them for wilfully returning from transportation, which meant that they would have to be identified by the gaolers of the various prisons from which they had been drawn. "I would submit to you," Hobart concluded hopefully, "whether it may not be right for the British government to send them back to some part of America, or to some place out of Europe."<sup>26</sup>

Fitzgibbon wrote privately to Grenville the next day, also emphasizing that the convicts had been shipped off in strict conformity with the Act of 1786. The added complication, however, was that the Act made it "utterly impossible" to commit the returnees to custody in the counties of Ireland where they had been convicted. "I entreat it of you," he pleaded, "if it is possible to devise any means of disposing of these wretched creatures, except by sending them here by act of the British Government, that it may be done."<sup>27</sup> Anticipating that Grenville was unlikely to co-operate, however, he found it expedient to shift the blame from His Majesty's ministers to the hapless Milbanke:

If he had even shipped them off directly for Ireland, and had them landed on our coast, we could easily have managed matters so as to prevent any difficulties with the Irish Government; but proceeding as he has done to send them to England with a regular invoice to the British Government, to be re-exported from that Government to us, I cannot but feel that he has done an act highly indiscreet at best. And I am very well satisfied that if he had acted in such a manner by any description of the King's English subjects, that he would hear of it very unpleasantly at Westminster Hall. And if we are driven to the necessity of defending their return upon us under all these circumstances, I freely own to you that it appears to me as difficult a task as could be assigned to the friends of Government in this country.<sup>28</sup>



Altogether, the Admiral provided an ideal scapegoat:

Let the act of returning them to us, if they must be sent here, be the act of Governor Milbank [sic]. Probably he never will come to Ireland, and I do not suppose that he will very much feel any comments that our worthy Whigs may make upon him.<sup>29</sup>

#### “THIS ILL-ADVISED STEP”

When Grenville received Fitzgibbon’s private letter of 28 November, he explained to him in measured tones the government’s decision and the legal advice on which it was based. Apparently unaware that three shipments of English convicts sent off to the Americas by the London contractor George Moore at the instigation of his predecessors, Lord North and Lord Sydney, between 1783 and 1785 had been officially destined for Nova Scotia, he added:

No convicts have been transported from this country to any of the British colonies in America since the last peace, and all the colonies have uniformly expressed a decided resolution not to receive them.<sup>30</sup>

When the official despatch from Fitzgibbon and Foster arrived, together with Hobart’s letter, on 5 December he could scarcely control his fury over the sending out of the revenue cruiser. “I cannot enough lament the precipitation of this ill-advised step,” he wrote immediately to Westmorland who was at that time preparing to depart for Dublin. He told him that he had sought a special meeting with Prime Minister William Pitt to discuss the consequences.<sup>31</sup> Conveying the same message to Hobart in a private letter to Dublin that day, he also took the opportunity to point out *à-propos* the 1786 Police Act that the King’s assent to an Irish Act of Parliament “neither gives it, nor was ever supposed to give it, the smallest force in any of the King’s colonies.” Indeed, it was “no more ... than the King’s assent to an Act of the States of Jersey would do.”<sup>32</sup> Consequently, the legality of Milbanke’s action had to be decided solely on the basis of his instructions and English laws.

Admitting that while the point was “so unquestionable” it was desirable to avoid making it the subject of discussion in the Irish Parliament, Grenville nevertheless believed that this was a risk that had to be accepted:

But when the case has arisen we have no other mode of acting; as the proposal of our sending them to any place out of England, except Ireland, would, if acceded to, put us in the situation of doing an illegal act because the judges in Ireland feel an unwillingness to do what all our lawyers consider as a legal act.<sup>33</sup>

When it came to the political fall-out, the Home Secretary was not too concerned about the storm that might be aroused in the Irish Parliament by the return of the convicts.<sup>34</sup> His own experience with the administration in Ireland in 1783 disposed him to call the Patriots' bluff.

#### “NEITHER COLONY NOR PLANTATION”

The technical weakness of the Irish Lords Justices' position was that the island of Newfoundland was, strictly speaking, neither a colony nor a plantation under His Majesty's dominion as required by the amended Police Act of 1786 which now provided the sole legal basis of Irish transportation. Legally, Newfoundland was a “fishery” with no formally established civil government and only an ad hoc Vice-Admiralty Court where, as we have seen, British naval captains posted to the Newfoundland Station acted as surrogate judges. Governor Milbanke had thus been entitled in law not to accept the convicts who had been dumped on the Newfoundland coast, although he may have gone too far in detaining them until they could be repatriated.

As Grenville had told Fitzgibbon in his reply of 2 December to the latter's private letter of 28 November, “Newfoundland is in no respect a British colony, and is never so considered in our laws.”<sup>35</sup> As a fishery, it had been official British policy since the seventeenth century to curtail its permanent settlement even by British subjects, although this had never been seriously enforced and the “wintering” or resident population had been allowed to increase to almost 20,000 by 1789. Nevertheless, the legal formula that it was neither colony nor plantation was to serve a useful purpose on this occasion, enabling Grenville to conclude that the convicts “must be considered as standing in the same situation as if their sentences had never been attempted to be carried into execution.”<sup>36</sup>

Responding to the stern tone of Grenville's letter, Fitzgibbon immediately gave orders for the recall of the revenue cruiser. Together with Lord Clonmel, he was disposed to accept the point that Newfoundland was not a British colony and that the best course of action was to commit the convicts on arrival “upon the ground of their sentences never having been carried out.” Always anxious to curry favour with the ministers and high officials in London whose control of patronage in Ireland ensured the dominance of the Ascendancy interest that he headed, he now (somewhat disingenuously it has to be said) represented himself as performing a valuable service in facilitating the return of the convicts. At the same time, he could not resist a little sarcasm at their expense:

I trust it is unnecessary for me to assure you that I am truly anxious to relieve the British Government from embarrassment in this business. The Speaker and I, acting under very particular instructions from Lord Westmorland, thought it our indispen-

sable duty to state to him and you the difficulties which are likely to occur in this country, upon the return of these convicts to us in custody by your warrant; and to give the opportunity to the King's Ministers to weigh the difficulties on all sides before the measure of retaining them was put into final execution. But if they do come back, you may be assured, whenever the matter may become the subject of public discussion, I shall be very anxious to prove their return to us to be a mark of high respect on your part to the people of Ireland ...<sup>37</sup>

Once he was satisfied that Milbanke was within his rights in sending the convicts back to England, he would take the offensive by calling on the Lord Mayor of Dublin "to account for his breach of contract."<sup>38</sup>

In the meantime, Grenville had written again to Fitzgibbon in response to his letter of 2 December to defend Milbanke and emphasize that the British government did not have the power to override his actions. Furthermore, he pointed out, as the convicts had committed no crimes and incurred no sentences in Britain, the British authorities had no jurisdiction of any kind over them:

It is equally impossible to detain them in custody in any prison in England, or on board any transport or prison ship. Because, if they were once within the body of any country in England, they might claim their Habeas Corpus ...<sup>39</sup>

Consequently, all that could be done was to send them to Ireland. Repeating the earlier point that the convicts' transportation to Newfoundland could not be seen as constituting an execution of their sentence, Grenville also had some sharp things to say about the actual mode of their treatment:

Another doubt may be started; whether setting the wretches on shore without provisions, tools, or clothing in a place where they must have perished but for the humanity of the inhabitants, is a mode of transporting them that falls within the purview of the laws for transportation, or within the contract which the master of the vessel makes with the Irish Government ...<sup>40</sup>

As for the possible prosecution of the Home Office messenger and the ship's captain for returning the convicts from transportation, Grenville confessed that he had no knowledge of the relevant statute but properly dismissed the whole idea as ridiculous:

if any magistrate in Dublin was so absurd as to commit them for this offence, the Government could have no difficulty in offering, nor the King's Bench in receiving bail; and the King's pardon must of course be granted, if it should be thought necessary ... I have great difficulty in believing that any words [in the statute] could make it criminal in the messenger or captain to land these men under circumstances in which the men themselves who are landed will clearly incur no guilt.<sup>41</sup>

Hobart responded more stiffly to Grenville's criticism and to his determination to press ahead with the convicts' repatriation:

If, notwithstanding the representations made from hence, you persevere in your intention of sending the convicts, they will of course be received; and we must get out of the scrape as well as we can.<sup>42</sup>

He had discussed the matter once more with Fitzgibbon and Clonmel and it now appeared that the latter would remand the convicts "to their several prisons" on the basis that their sentences had not been executed. Still dubious about this, however, Hobart was anxious to defend the shipment to Newfoundland on the basis of principle:

Permit me to say that I have never conceived that the King's assent to an Irish Act of Parliament could give it force in the King's colonies; but that His Majesty having given his assent, and thereby authorised his Lord Lieutenant of Ireland to transport convicts to the colonies, it was a justifiable presumption that the English law enabled the Governors of the British colonies to receive them, and that his Majesty's instructions ordered them to do so.<sup>43</sup>

### "A LOOP HOLE"

The solution to the thorny problem of what do with the Newfoundland returnees in Ireland had nevertheless been found by the British government's legal advisers. They pointed out to Grenville that as the convicts had not actually been transported according to Irish law to one of His Majesty's colonies or plantations, they were thus in the situation of not having had their sentences executed. The Irish government was consequently empowered to execute their sentences by transporting them to another destination.

"I am in great hopes, that you have given us a loop hole, which will get us out of the scrape ...," a relieved Hobart wrote at last to Grenville on 22 January 1790.<sup>44</sup> The convicts had been landed from the *Deptford* the previous day at Poolbeg Fort in Dublin Bay where they were to be identified and placed in the custody of the city sheriffs. Nine days later they were once again committed to Newgate under an order issued by Clonmel.<sup>45</sup> There had been no outcry in the radical press and the affair had not been raised by the Patriot opposition in the Irish Parliament at the opening of the new session on 21 January as Hobart and Fitzgibbon had feared.

The tense and sometimes sharply-worded exchanges between Dublin and London over the Newfoundland convicts had little to do with the convicts themselves but everything to do with the respective jurisdictions of the two governments and the problematic new relationship created by the constitutional changes of 1782.

As Fitzgibbon's political biographer, Ann Kavanaugh, has pointed out, Grenville and Thurlow had "acted out of broad imperial interests," but in the process "rode roughshod over the fears and sensibilities of their Irish servants." While she goes too far in concluding that "the business of the convict transports prefigured the far larger conflict over Catholic emancipation"<sup>46</sup>, it can certainly be said that it highlighted the hard realities of the power relationship between London and Dublin which were to be formalized in the Act of Union of 1800.

### "THIS DESPERATE PHALANX"

The first report in the Dublin newspapers in mid-November 1789 of what had transpired in Newfoundland was copied from the London press, whose sympathies were entirely with the respectable colonists. According to this account, "the appearance of these gigantic ruffians threw the inhabitants of St. John's into unspeakable consternation — for they neither could infer whence they came, or how they got there."<sup>47</sup> It was believed that the master of the vessel who had put them ashore would be "severely proceeded against" for breaking his contract to take them to the United States.<sup>48</sup> As the report stood, it implied that "this desperate phalanx" of eighty convicts now on their way to England were all who had survived from the original shipment.

A few weeks later when more was known about the circumstances, the *Freeman's Journal* took a far more sympathetic line toward the returnees:

As the unfortunate wretches were put on shore, on that island, without their consent, and experienced considerable hardships before relieved by the inhabitants, it may not, perhaps, be an abuse of the clemency of Government, if on their remittance to this country, some mode of employing them on public works, at home, was tried, as probably the sufferings they have undergone on their passage to the place of their intended destination, may have taught them such a lesson, as to lay a strong foundation for their future good behaviour, and reformation of their lives.<sup>49</sup>

The newspaper was also critical of Captain Richard Harrison's treatment of the convicts and of his "open and notorious abuse of justice" in liberating Patrick Fay.<sup>50</sup>

Just how the Newfoundland veterans were to be disposed of was very much a matter of conjecture once it became known that they had been returned to Ireland. Dublin's *Morning Post* of 30 January 1790, for example, reported the popular belief that they would be sent to "recruit" (reinforce) Britain's military garrisons in Senegamba and Guinea in west Africa, which it thought would be "a much better provision for those who survive the change of climate, than from their vicious and abandoned profligacy they had reason to expect."<sup>51</sup> Apart from the *Freeman's Journal*, little sympathy was expressed for them in their extraordinary misadven-

tures. Indeed, there was far more interest in the saga of Patrick Fay from the time he parted company with the *Duke of Leinster*.<sup>52</sup>

News of the Newfoundland convicts' return had spread through Dublin's under-classes and there was a crowd of curious onlookers when they were landed at North Wall on 1 February and put into six prison carts to be conveyed to Newgate. Handcuffed in pairs, they were wearing the new blue jackets and worsted nightcaps donated by the good citizens of Portsmouth. The *Dublin Chronicle* remarked that they "looked in general, far better than when they left this kingdom."<sup>53</sup> However, the *Morning Post* hoped that "much more care will be taken in future to prevent such unfortunate wretches from being left a prey to famine and misery, than has been of late years the case."<sup>54</sup>

Indeed, it had been reported by the Dublin newspapers in December before the convicts' return that at the forthcoming session of the Irish Parliament, legislation would be introduced to make it a felony for any master of a convict transport not to fulfil the terms of his engagement to land his passengers at a specified port.<sup>55</sup> Nothing of the kind eventuated. Nor was the return of the Newfoundland convicts to Ireland represented by the Patriot opposition and its sympathetic newspapers as an affront to the authority of the Irish Parliament in the way that Hobart and Fitzgibbon had obviously believed would happen.

It was not long, however, before the convicts expressed their own feelings about the sorry affair. When the prisoners at Newgate staged an unprecedented riot and attempted mass break-out on 6 July, the Newfoundland veterans played a leading part. Newspaper reports of this extraordinary event reflected the critical situation in the prison resulting from their return and from further delays by the Home Office in arrangements to send Irish convicts to New South Wales.<sup>56</sup> Six months after their return, there were still no indications of when and where they were to be sent; furthermore, in accordance with Irish transportation law they had not yet served any part of their original sentences.<sup>57</sup> This grievance no doubt helps to explain their intimate involvement in the riot.

When the Dublin Castle authorities were finally notified by the Home Office in December 1790 that the *Queen* transport would shortly be despatched to Cork to embark 200 convicts for New South Wales<sup>58</sup>, their first priority was to relieve the pressure on Newgate. Accordingly, the chaplain and gaol inspectors were called in to decide on those prisoners who might be reclaimed through hard labour and those, according to the *Morning Post*, "of an incorrigible description (which are very numerous) ... allotted to Botany Bay ...."<sup>59</sup> Regardless of what had been said by the *Freeman's Journal* a few years earlier (and by some Australian historians in more recent times) about the worthy character of the first Irish settlers of New South Wales, there can be no doubt that many of those despatched on the *Queen* were considered by the Newgate authorities to be hardened and irredeemable offenders. At least twelve and probably a few more were from the group of Newfoundland returnees held responsible for the July riot. Indeed, their selection

could be interpreted as confirming this. In addition, there were at least two illegal returnees from earlier trans-Atlantic shipments who had been convicted after committing further offences in Ireland.

Thus it was that on 19 February 1791 when the prisoners from Newgate “allotted to Botany Bay” were conveyed to North Wall and put aboard the two tenders commissioned to take them to Cork for embarkation on the *Queen*, their number included Matthew Dempsey, who had been interrogated by the magistrates at St. John’s about how he and his companions had come to Newfoundland, and Patrick Leonard whose criminal “cruise” of the town “had done no Good ....” By 1800, Dempsey was dead but Leonard was an independent farmer at Sydney’s romantically-named Kissing Point. Altogether, New South Wales was to prove a far more hospitable destination for Irish convicts than Nova Scotia or Newfoundland.

## Notes

<sup>1</sup>Grenville to Thurlow, 17 November 1789, *Historical Manuscripts Commission. Thirteenth Report, Part III. The Dropmore Papers*, 539-40.

<sup>2</sup>Thurlow to Grenville, 17 November 1789, *ibid.*, 540.

<sup>3</sup>Grenville to Thurlow, 18 November 1789, *ibid.*

<sup>4</sup>Thurlow to Grenville, 18 November 1789, *ibid.*, 540-1. (Original emphasis.)

<sup>5</sup>PRO, Privy Council Registers, 2/134, 2 May 1789 to 31 March 1790, ff. 301-5.

<sup>6</sup>Thurlow to Grenville, [?] November 1789, *ibid.*, 542.

<sup>7</sup>Home Office to Lords of the Admiralty, 23 November 1789, PRO HO 28/6, f. 376.

<sup>8</sup>Grenville to Hobart, 25 November 1789, *Dropmore Papers*, 542.

<sup>9</sup>*Ibid.*, 543.

<sup>10</sup>Onslow to Home Office, 20 December 1789, PRO HO 28/6.

<sup>11</sup>Report by R. Sheppard, M.D. and T. Trotter, M.D., 21 December 1789, *ibid.*

<sup>12</sup>*Faulkner’s Dublin Journal*, 14 January 1790.

<sup>13</sup>*Hampshire Chronicle*, 4 January 1790.

<sup>14</sup>*Hampshire Chronicle*, 11 January 1790.

<sup>15</sup>Nepean to Lords Justices of Ireland, 23 November 1790, PRO HO 100/27, f.287.

<sup>16</sup>Fitzgibbon to Grenville, 28 November 1789, *ibid.*, 544.

<sup>17</sup>*Ibid.*

<sup>18</sup>Lords Chief Justices to Grenville, 1 December 1789, PRO HO 100/27, ff. 293-4.

<sup>19</sup>Hobart to Grenville, 1 December 1789, *Dropmore Paper*, 545.

<sup>20</sup>*Ibid.*

<sup>21</sup>For Buckingham’s assessment of the strength of feeling on this issue, see his despatch to Sydney of 18 November 1788, PRO HO 100/23, ff. 380-1.

<sup>22</sup>Peter Jupp, *Lord Grenville 1759-1834* (Oxford: Clarendon Press, 1985), 21-9.

<sup>23</sup>I am grateful to Dr James Kelly of St. Patrick’s College, Drumcondra, Dublin, for making this point to me. Personal communication, 17 July 1995.

<sup>24</sup>*Dictionary of National Biography*, vol. xvii, 982. See also, H. Boylan, *A Dictionary of Irish Biography* (Dublin: Gill & Macmillan, 1978), 322.

<sup>25</sup>Hobart to Grenville, 1 December 1789, *Dropmore Papers*, 545.

<sup>26</sup>*Ibid.*

<sup>27</sup>Fitzgibbon to Grenville, 2 December 1789, *ibid.*, 548.

<sup>28</sup>*Ibid.*

<sup>29</sup>*Ibid.*

<sup>30</sup>Grenville to Fitzgibbon, 2 December 1789, *ibid.*

<sup>31</sup>Grenville to Westmorland, 5 December 1789, *ibid.*, 550.

<sup>32</sup>Grenville to Hobart, 5 December 1789, *ibid.*, 550.

<sup>33</sup>*Ibid.*, 551.

<sup>34</sup>Jupp, *Lord Grenville*, 91-2.

<sup>35</sup>Grenville to Fitzgibbon, 2 December 1789, *Dropmore Papers*, 549.

<sup>36</sup>*Ibid.*

<sup>37</sup>Fitzgibbon to Grenville, 14 December 1789, *ibid.*, 554.

<sup>38</sup>*Ibid.* This was no more than a bluff: John Rose who was responsible for the contract had since been replaced as Lord Mayor by John Exshaw.

<sup>39</sup>Grenville to Fitzgibbon, 9 December 1789, *ibid.*, 552.

<sup>40</sup>*Ibid.*

<sup>41</sup>*Ibid.*

<sup>42</sup>Hobart to Grenville, 9 December 1789, *ibid.*, 531.

<sup>43</sup>*Ibid.*

<sup>44</sup>Hobart to Grenville, 22 January 1790, *ibid.*, 560.

<sup>45</sup>Hobart to Barnard, 2 February 1790, PRO HO 100/29, f. 39.

<sup>46</sup>A. Kavanaugh, "John Fitzgibbon, Earl of Clare: A Study in Politics and Personality," PhD thesis, 2 vols., Trinity College, Dublin, 1992, II, 295.

<sup>47</sup>*Freeman's Journal*, 19-21 November 1789.

<sup>48</sup>*Ibid.*

<sup>49</sup>*Freeman's Journal*, 10-12 December 1789.

<sup>50</sup>*Ibid.*

<sup>51</sup>*Morning Post*, 30 January 1790.

<sup>52</sup>*Freeman's Journal*, 28-20 January 1790.

<sup>53</sup>*Dublin Chronicle*, 2 February 1790; *Freeman's Journal*, 30 January-2 February 1790.

<sup>54</sup>*Morning Post*, 2 February 1790.

<sup>55</sup>*Morning Post*, 15 December 1789; *Dublin Chronicle*, 12 December 1789; *Freeman's Journal*, 10-12 December 1789.

<sup>56</sup>*Dublin Chronicle*, 20 July 1790; *Morning Post*, 10 July 1790.

<sup>57</sup>This had also been the case for British convicts until new enabling legislation of 1784 (24 George III, c. 56).

<sup>58</sup>Nepean to Hobart, 5 January 1791, PRO HO 100/32.

<sup>59</sup>*Morning Post*, 8 February 1791. (Emphasis added.)