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Abstract

This article focuses on the tale of two sisters, Margaret and Judith Byrne, who were arrested in Dundalk for the larceny of a pair of shoes, transferred to Grange Gorman Lane, transportation depot, and disposed of on the *Phoebe* in 1845 to Van Diemen’s Land. This article examines the case as it was presented to the courts including the petitions put forward on behalf of the sisters. Their journey from Dundalk to Hobart will be considered and documentary analysis will uncover how the sisters fared once they stepped foot on Vandemonian soil.

Key words
Convict transportation, Convict women, Grange Gorman, Penal Reform, Victorian Ideology, Van Diemen’s Land, Female Factories, Feminist Historiography.
“...I sought information as to their character I did not obtain any and believing from the number of thefts committed by them on one day, that they were practical offenders...”

Feminist approaches to writing biography have transformed the historical technique of biography. In writing unknown women back into history, extricating the lives of women who have been hidden, allowing their voices to be heard, how women’s history can and does greatly change the nature of history is demonstrated. When feminist researchers began to approach history from diverse theoretical perspectives, sifting through the layers of primary and secondary material, they positioned women differently, giving them a larger and more purposeful role, allowing people to hear an alternative narrative from a changed perspective, and therefore a new story, or perhaps a new version of an old story. By examining the social, cultural, political and economic contexts which women’s lives were influenced and informed by, a newer and more balanced historical narrative is revealed, one that acknowledges that gender, class, religion, and race are social constructions in a society that did not necessarily perceive all women’s interests or achievements as pivotal.

This research focuses on the tale of two sisters, long forgotten and to mainstream history insignificant. Yet it is precisely this kind of story that is part of Irish women’s history and as a consequence of their existence and actions, their story also forms a section of the convict history of Van Diemen’s Land specifically and the history of Empire and Australia more generally. Margaret and Judith Byrne were arrested in Dundalk for the larceny of a pair of shoes, transferred to Grange Gorman Lane, transportation depot, and disposed of on the Phoebe in 1845 to Van Diemen’s Land. This research will examine the case as it was presented to the courts including the petitions put forward on their behalf. It will discuss the penal system which was being revolutionised at the time, both here and in Australia. Their journey from Dundalk to Hobart will be considered and documentary analysis will uncover how the sisters fared once they stepped foot on Vandemonian soil.

Transportation as a policy, has always been connected to colonisation combining two notions of primitive justice. A society could rid itself of its more difficult elements who would perform laborious, menial tasks for the mother country.
As early as the fifteenth and sixteenth century France, Portugal and Spain had been sending criminals and vagrants to their colonies. This was regularly enforced in political contexts to destabilise the influence one group exerted within the wider society. Notably it was perceived to be a politically stabilising calculation to transport Irish Catholics to the West Indies during Cromwellian times in addition to its penal merits.

By the eighteenth and nineteenth centuries however, only a minority of offenders were actually punished by incarceration within gaol walls. Until 1775 and the America War of Independence, the majority of convicted felons were transported to America, executed, fined or subjected to some other method of corporal punishment. Following the Treaty of Paris (1783), the United States was declared sovereign, and as such the American colonies as sites of penal servitude for British and Irish criminals were suddenly cut off. The first Act allowing for transportation from Britain to New South Wales was passed in 1784. Two years later an equivalent Act was passed in Dublin by Grattan’s Parliament. Transportation from Britain to New South Wales commenced in 1787, whereas the first ship to leave from Ireland embarked from Cork to Botany Bay in 1791. As legislation was being written for transportation, there was a significant prison reform movement sweeping through Great Britain and Ireland. This new reformative zeal was partly philanthropic in spirit and intention, and also funded by state initiative. Campaigners such as John Howard, Elizabeth Fry, Sir Jeremiah Fitzpatrick and Jeremy Bentham were the spearheads of lobbying groups protesting against the mismanagement of, and the corrupt and cruel conditions within prisons. Penal reform had its inception in Britain in the 1770s. Following four years of investigation, John Howard who was county sheriff of Bedfordshire published The State of the Prisons in 1777, which

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3 Ibid, p. 25.

B. Nolan

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documented the appalling condition of Britain’s gaols. “The pre-reform prison,... was a riotous and filthy place where prisoners were exploited by their gaolers and where they were in grave danger of falling victim to typhus (‘gaol fever’) or other diseases which flourished in the unhygienic conditions”5.

An Act of Parliament was passed in 1836 that transferred Grange Gorman Lane also known as the Richmond Penitentiary as a national penitentiary for female convicts to be transported to Van Diemen’s Land and as a city gaol for female offenders from the City of Dublin to serve a period of incarceration. It was the first of its kind in Ireland and Britain; an exclusively female penitentiary, with an almost exclusively female staff. The Convict Department funded the upkeep of the women from all over the country in Grange Gorman, and on the ships, whereas the City of Dublin’s Grand Jury paid for the maintenance of the female prisoners arrested in Dublin who were not to be transported6.

Elizabeth Fry enjoyed a fame, reputation, and an extraordinary public status. She was a highly prominent woman in British public life and a legendary figure7. Having campaigned for better conditions for female transportees on board ships and already introduced major reforms in the female section of London’s Newgate prison, during her visit to Ireland in 1823, Fry is said to have greatly influenced the Chief Secretary, Henry Goulburn (1821-1827), with her proposal for an exclusively female institution staffed by female officers. She personally selected the first head matron Marian Rawlins. Thus, Grange Gorman as the first female prison in the British Isles was born, although its origins date back to 1819. After much decision-making and counter decision-making, the Richmond General Penitentiary was to be named Grange Gorman prison, and was to hold all convicted females for prison terms and transportation. Lohan contends that despite Fry’s philanthropic intentions, the birth of Grange Gorman came about essentially because it was simply convenient. It could


be reasonably counter-argued that the establishment of Grange Gorman as an exclusively female penitentiary was quite an accomplishment for the Irish criminal justice system. The first Inspectors Report was in 1823, in which was clearly stated that the Richmond Penitentiary was not being utilised efficiently as a penitentiary. Thirteen years, an Act of Parliament, and a liberal sum of money from the Grand Jury (notoriously reluctant to spend) later might appear to most as the polar opposite of convenient.

Sources vary as to the precise numbers transported from Britain and Ireland to the new colony, therefore, the following figures although not completely accurate are a good approximation. Between the years 1787-1868, all of Australia received 162,119 convicts from the British Isles. A national and gendered breakdown is as follows. 24,568 were women. The most concentrated of the transportation years to Van Diemen’s Land were between 1820 and 1853. During this time approximately 13,000 convicts were sent there\(^8\). Of this number 3,196 were held in Grange Gorman and transported from Dublin to Hobart.

Judith and Margaret Byrne were two of this number. That a disproportionately high number of Irish females were transported relative to the rest of the British Isles is particularly evident during the years of the famine and at times exceeded that of male transportation, although it should be noted that male transportation was suspended for two years between 1846 and 1848 and during the worst of the famine years. This two year suspension was advised by Earl Grey, Colonial Secretary (1846-1852) and was due to a colonial depression in Van Diemen’s Land resulting in widespread unemployment amongst the convict population\(^9\). Victorian attitudes towards Irish convicts in general, and convict women specifically engendered varying reactions, from paternalistic feelings on the one hand, to the most negative of visceral responses on the other. Historians such as L.L. Robson, who devised his sample by studying one in every twenty of the Australian indent records of British and Irish female transportees, and later A.G.L. Shaw (who used


Robson’s sample) have described Irish convicts as ‘village Hampdens’\textsuperscript{10}, meaning a rural and naive victim of political or economic circumstances and concluded that “Irish rural prisoners were not so disposed to crime as were the English and Scots”\textsuperscript{11}. Their suggestion is that female convicts transported from rural Ireland were not hardened criminals but rebelling against an unjust social system or left with no other alternative but to commit the crime in the face of poverty and destitution. Holtzendorff, Luddy, McLoughlin and others would contend that the geographical mobility of women was a contributing factor in the over-representation of Irish women in transportation figures deriving from enforced destitution because of the migratory patterns of their husbands to find work in the nearest city or even England. This forms in fact part of the defence put forward by the elder of the Dundalk sisters.

Furthermore, the word ‘convict’, as applied to females, has “damned them to their contemporaries and subsequently to posterity”\textsuperscript{12}. Indeed the extent of the vitriolic language used to describe convict women by those responsible for maintaining them is discomforting and shocking even now. It is regrettable to say the least that female convicts were assumed to be part of a homogenous class who continued their criminal lifestyles in New South Wales or Van Diemen’s Land without making any allowances for individual backgrounds and individual experiences.

Drunks, whores, pickpockets, burglars, paupers, misfits. Genetic criminals. Moral degenerates? Survivors or victims? The opinion of Australia’s women has veered from criminal whore to help-less victim. They have been used to make a case in black and white – damn the women and up-hold the Establishment. Damn the Establishment and uphold the women. They have been vilified, lionised, statisticised and generalised, but no one has yet asked: What were they like as human beings? \textsuperscript{13}


So what *were* they like as human beings? On February 22nd 1844, the conviction and physical details of Judith and Margaret Byrne, along with seven other women, were entered into the Grange Gorman transportation register. Judith Byrne was 23, stood at 5 ft 1½ inches, had brown hair and a fair complexion. Margaret Byrne was 22, 5 ft 1 inch with sandy hair and also of fair complexion. Judith stated she was married and her ten month old son Michael was with her, Margaret was single. Judith was illiterate, however her sister could read. They were both Catholic, gave ‘none’ as occupation and had never been convicted before. On January 3rd, the preceding month, they were convicted of larceny and sentenced to seven years transportation. This type of official documentation is the only evidence there is of the existence of these two women and child. Further details about their family life and the circumstances surrounding the theft can be found in Convict Reference Files held in the National Archives, and the specific convict reference file pertaining to the case of Judith and Margaret Byrne is filed under CRF 1844 B1 and B2. The information in these documents describes the case from various points of view. Petitioning the Lord Lieutenant was a strategy utilised by convicts sentenced to transportation, although it would seem that Irish women petitioned the Lord Lieutenant only half as often as Irish men. Between 1791 and 1853, circa 7,500 petitions were received from men, whereas under 1,000 were received from women. Perhaps due to more impoverished circumstances the convicted women were unable to procure the services of a legal clerk to write a petition on their behalf. Lohan (1989) refers to 103 petitions submitted by women from 1845 to 1853, of these 49 were successful\(^{14}\). Old age, chronic ill health, insanity, and large families were commonly given as grounds for a commutation of sentence, although the latter was rarely successful. Other reasons put forward by those who petitioned on behalf of the women were the lack of a male protector, be that father, husband, or brother, and also that she may have fallen in with ‘the wrong crowd’. Having read many of these petitions a standard formula begins to emerge. A certain amount of hyperbole is expected in most official correspondence, such as pleas for clemency, and the following including its original capitalisation and underlining to the newly appointed Lord Heysbury as Lord Lieutenant of Ireland, is an excellent example of such;

That your memorialists beg leave to approach your Excellency with a hearty welcome and respect-fully congratulate you on your Excellency’s auspicious arrival in this kingdom as the representation of Our Most Gracious Queen, and while we offer your Excellency our devoted allegiances, as do Her Majesty, we crave from your Excellency Pardon for two unfortunate females, Judith and Margaret Byrne...\(^{15}\)

Another standard feature of the petitions is to in no way place fault on the legal system, and rarely do they plead innocence or an outright miscarriage of justice;

Your memorialists most humbly submit that seven years transportation is too severe a penalty and while we draw your Excellency’s attention and commiseration to this fact we do not insinuate or attach blame to the judge who tried, neither we cast censure on the jury, who found the prisoners guilty. For the conclusion was natural, and followed from the circumstances of the case; the theft being committed on Monday and the trial conducted on the following Friday.\(^{16}\)

When clemency is being sought using this strategy, absolute freedom is never asked, merely a commutation of sentence. If a death sentence has already been commuted to transportation for life, as it usually was by the mid-nineteenth century, then a shorter term of transportation was requested. When the sentence was the standard seven years, then reasons such as a large family, were given for beseeching the Lord Lieutenant to allow the convicted person to carry the sentence out at home in Ireland. Family circumstances are frequently mentioned in an attempt to gain the sympathies of the Lord Lieutenant, particularly if a family member is ill and may depend on the person who is being sent away. Another example as mentioned earlier, is that the woman was driven to the crime out of desperation, possibly because of abandonment by her husband. Former good reputations and a lack of any previous dealings with the law are also emphasised.

... Judith and Margaret Byrne, the daughters of an aged, feeble, heartbroken man, who thro life supported an unsullied and irreproachable reputation, as also did his daughters, up to a late period; when the elder, Judith, having been married to a man who instead of becoming her protector, deserted her in her youth, and being subjected to temptation incident to disappointment and distress, she (early in the month of January last) deprived some hawkers in the streets of Dundalk of some articles of apparel, amounting in all to about 7 shillings and her sister Margaret having in a few minutes afterwards been found in her company;

\(^{15}\) CRF 1844 B1

\(^{16}\) CRF 1844 B1
she was implicated as an accomplice of which your memorialists believe to be altogether innocent...\(^{17}\)

The ignorance of the ‘aged, feeble, heartbroken old man’ is also presented as a reason as to why the court case may have gone against them.

...the theft being committed on Monday and the trial conducted on the following Friday, thus the shortness of time, the poverty, ignorance and unacquaintance with such cases, of the sick and affiliated parent, there was not procured an advocate to defend nor a friend to give them a character. Your memorialists would peculiarly beseech your Excellency’s compassion on these unfortunate females, one of them the prop and support of [her] feeble declining sick father...\(^{18}\)

Whether the women were aware of, or in agreement with what was being said on their behalf is difficult to ascertain. Professional clerks were hired to write the petitions or respectable members of the community petitioned on their behalf. How the fees for such a service were paid and by whom, is again, unknown. The technique taken by the petitioners, in this case, the “Rev. P. Baron... John Clarke and a number of the most respectable landholders of this Parish...”\(^{19}\) is quite original. They take a multi pronged approach. First, they are respectable landowners in the Parish and one is a clergyman. Nineteenth century Ireland was a society that had deeply rooted class and religious prejudice which was known on many occasions to have developed into open animosity. Having the gentry of the area on side showed that the Byrne family was in good standing with the ‘right type’ of people. Also having the local Protestant clergy backing Catholic women was a strategic move. Second, as mentioned, the petitioners point out the usual positive characteristics as is common in these submissions. The sisters have never been in trouble before, their father is ill and needs help, and Judith’s husband has left her, possibly to find work. Third, they plead from an economically practical point of view;

Your Memorialists respectfully submit to your Excellency that the punishment very much exceeds the guilt, that seven years transportation is too severe for two larcenies, when the property stolen did not exceed eight shillings, and that now, as the law had been vindicated, and justice

\(^{17}\) CRF 1844 B1

\(^{18}\) CRF 1844 B1

\(^{19}\) CRF 1844 B1
had more than its due; reason and mercy require a commutation of the sentence.\textsuperscript{20}

The passage fare to Australia from the British Isles was about thirty pounds. This does not include the cost of keeping prisoners in county gaols, convict depots, feeding them on the ship, or the female factory or probation station when they disembarked. Therefore, it was logical of the petitioners to attempt to point out how little in monetary value the crime committed amounted to. Fourth, and most unusually, the petitioners suggested that the sisters not be transported to Australia as convicts, but that they travel there as free emigrants, and not only them;

They earnestly pray your Excellency to permit Margaret and Judith Byrne to proceed as per emigrants to Australia, with their parents, two sisters, a brother, together with the husband of Judith, and his sister all of who (except the parents – [are] young, strong, healthy, active and industrious) severally pledge themselves to accompany them.\textsuperscript{21}

Miraculously the ‘aged, feeble heartbroken old man...’ who needs one of his daughters as a “prop and support”\textsuperscript{22} is strong enough to make a three to four month journey that a younger man in the prime of his life might find difficult. Also, Judith’s husband has returned. In another part of the same CRF the memorialists claim;

Excellency that the parents, though Anne’s at the age of fifty five, are still able and active, that the husband of Judith is a blacksmith, a handy and skilful workman and that all have borne and still bear an excellent character. As Byrne and his family wish to be with some of their neighbours who intend to leave this May for Australia...\textsuperscript{24}

Ignoring the sudden reappearance of Judith’s husband, and the recovery of her father, the petitioners are obviously aware that the government wants to populate a new colony. By emphasising the youth, activity, industriousness of most of the family, and specifically the skill level of Judith’s husband, a blacksmith, who would have been a very sought after skilled worker in Van Diemen’s Land, they are tactfully suggesting that sending the whole family to Australia would be of benefit to the new

\textsuperscript{20} CRF 1844 B2
\textsuperscript{21} CRF 1844 B2
\textsuperscript{22} CRF 1844 B1
\textsuperscript{23} CRF 1844 B1
\textsuperscript{24} CRF 1844 B1
colony. (It may also be worth questioning why the local respectable landholders and clergy were so enthusiastic for these families to leave.)

The final instalment in the CRF sheds a clearer light on the events of that day at the market in Dundalk. The judge’s letter dated January 25th 1844 was sent to the Lord Lieutenant from 6 Lower Gardiner Street and it stated;

...the Particulars are as follows – John Hughes deposed that he was selling shoes in the open market place at Dundalk – that he had 13 pairs. Both prisoners came up to him as if to buy – they shuffled thro them and went away. Suspecting something he counted them and found he had but 12 pairs. They returned again – Judith had a bundle which he examined and found his pair of shoes in it.... The bundle contained other articles belonging to three different persons who identified them as their property....I sought information as to their character I did not obtain any and believing from the number of thefts committed by them on one day, that they were practical offenders....if the circumstances contained in the memorial were made known to the court the punishment would not have been so severe, particularly in the case of Margaret Byrne...

What does this series of legal documents reveal about the two individuals Margaret and Judith Byrne? They come from what would have been at the time, an average sized family. Their parents are alive, they have two other sisters and a brother (although the Australian Convict Indent records suggest they have two brothers). Judith does not seem to be as estranged from her husband as part of the petition would allege. If the testimony of John Hughes, the accuser is to be believed, then the women seemed to know what they were doing and perhaps the initial finding of the judge was correct, and they were indeed “practical offenders”. It is ambiguous whether they were driven to theft because of desperate circumstances, especially as other articles were present in their bundle when they were searched. Did they have a propensity for larceny? However, as the judge admitted that he did not have all the information at the time of the trial, why then did the Lord Lieutenant transport them anyway? It is possible, that in his newly appointed position he wanted an immediate message to be sent that he was not over lenient, because on September 24th 1844 Judith and Margaret Byrne along with 126 other women, and

25 CRF 1844 B1
26 CRF 1844 B1
24 children, did sail on the Phoebe convict transport to Hobart in Van Diemen’s Land.

But prior to the voyage to Van Diemen’s Land, the sisters first had to travel from Louth to Dublin. What might that journey have been like? Following their arrest, they would have been confined in a local or county gaol. Prisoners would have remained there until the next assizes or quarter sessions in the county or in the recorder’s court in a big city. After 1842, female convict ships left from Kingstown. Prior to this, female convicts from the north were held in Dublin before being brought to Cork for embarkation, whereas those from the south were held in Cork. Overcrowding in prisons was a constant problem both on the British Isles and in Australia, and convicts had to wait in county gaols and transportation depots for months at a time.\textsuperscript{27} The conditions in these sites of incarceration were notorious. They were renowned for extortion and corruption. Grange Gorman was funded by a mixture of Government and Grand Jury monies. “Local prisons, on the other hand, were under the direct management of the grand juries, were funded from the local rates, and were subject only to government inspection, not control”\textsuperscript{28}. The grand jury constituted administrative authority in county government. They were infamously inefficient and spending money on prisons was not prioritised. Constant efforts were made to simply clear out the local gaols, hence passing the problem and expense onto the next institution in the penal process i.e. Grange Gorman. Because of this transportees’ health had suffered by the time they arrived in the transportation depot. The following passage describes how Judith and Margaret Byrne travelled to Grange Gorman:

In February, 1844 nine females and two children arrived at Grange Gorman from Drogheda complaining that the previous night they had reached Drogheda from the north, having travelled from Dundalk in rain and snow. When they arrived at Drogheda they were all placed in a cell on a stone floor. They were given straw to sleep on but ‘without fire or any covering whatever from the effect of which they had suffered severely’...\textsuperscript{29}

\textsuperscript{27} Lohan, Rena. ”The Treatment of Women Sentenced to Transportation and Penal Servitude 1790-1898.” Dublin: Trinity College Dublin, 1990, p.22.

\textsuperscript{28} Ibid, p.xviii.

\textsuperscript{29} Ibid, p. 24
This sounds like a fairly standard scenario for local gaols. Prisoners had to pay for their cramped accommodation in prison, which usually comprised the salary of the guards. In some cases this could be as much as a shilling a night. Those who did not pay were exposed to physical abuse or their clothes were withheld from them.  

Men and women were confined together, and petty offenders and abandoned criminals were not separated. No proper attention was paid to the sick. Favoured prisoners were allowed to monopolize the day rooms for ‘tennis and other diversions’; some were even permitted to act as turnkeys.

With regards to articles of clothing, which was the responsibility of the Grand Jury to provide; a jacket, petticoats, stockings and shoes, frequently they declined to do so. Two female convicts arrived in Grange Gorman the following month from Roscommon gaol “dressed in a most scandalous way with a sort of man’s jacket on over a flannel petticoat and no cloak, and also without a warrant or any returns whatever being sent with them from the gaol”. It was envisaged that the women to be transported would spend three months or so in the depot before embarkation. The Byrne sisters were incarcerated within its walls from February to September, eight months, and Judith’s son, Michael, passed away in July. The training and instruction in line with new penal reforms was considered crucial to the moral reformation of the women and in 1847 the inspector general claimed;

...he had known some [of the] most abandoned and depraved women who, having spent time in the prison, boarded the ship reformed to such an extent that they had been employed as ship matrons. He also claimed to have received many letters from surgeons after their arrival in the colony claiming that the ‘characters’ these women received when departing had been fully sustained during the voyage, as a result of which they had obtained good situations on arrival. All this, he believed, was a result of the management and discipline of ‘this experimental exclusive female prison’.

33 Ibid. P, 43-44
Judith and Margaret Byrne would have been taught some type of needle or weaving skill. They would also have attended the prison’s school, church services and have been present for Bible readings. Later than expected but by September 1844 the Phoebe was ready for its voyage to Van Diemen’s Land. The most important man on the ship in the eyes of the women was the surgeon superintendent. He was the only man who had free access to the women and was in constant discourse with them. Many sources describe a paternalistic relationship between him and the women however, this relationship was often prone to exploitation and manipulated from both parties involved. Before the voyage, he was the person who decided who could sail and who could not. A letter from the Home Office was sent to the Convict Department enclosing the names of ten women who were on board the Greenlaw and the Phoebe and who were reported that “upon arrival in the colony as unfit to earn a livelihood”34. “As most of the convicts, sickened by their imprisonment in the crowded and unhealthy gaols...,were only too eager to get away they concealed their disabilities and cheerfully lied about the state of their health.”35

The belief was that preference was given to young healthy women when the final selection was being made. The average age of a female transportee was twenty six. Oxley (1996) maintains the convicts were at their physical peak, and capable of adjusting to the environmental and social setting36. “Around twenty seven years, the average age of the convict women...old enough to have acquired skills yet young enough to have a long working life in front of them”37. When a home office official was asked if women over the age of forty two were not selected because they were past child bearing years he responded “it was with a view to the service of the country generally, but generally speaking, they are very young that go out”38. In 1835, instructions were given by the Chief Secretary that all were to be sent apart from

34 Ibid. p.59
“those who may appear to labour under diseases, which would likely to be aggravated by the voyage or produce contagion, or those who from infirmity or old age might not be able to endure the voyage”\textsuperscript{39}. It has been contested many times that the productive and reproductive labour of women in prisons on the British Isles was vital for a new colony that lacked a (white) population in general, and had a particularly high male to female ratio. The aforementioned statements would support this view. Judith and Margaret Byrne were therefore younger than the average female convict and set out on board the \textit{Phoebe} to their new home. The \textit{Phoebe} was built in Sunderland in 1842. Almost all the newer vessels after 1841, had a more modern design, and were fast and seaworthy, making conditions for the prisoners far more pleasant than earlier vessels. Issued with clothes supplied by the admiralty, these garments were sent straight to the depot so as to avoid fitting the convicts at the port and therefore avoid time wasting. The clothes would have been simple and similar to what the grand juries were supposed to have supplied the prisoners with. The diet on board was adequate, including fresh meat, vegetables, oatmeal, tea, sugar, and in some cases chocolate, and aboard both male and female convict ships a few delicacies were provided for the sick\textsuperscript{40}. It is hard to imagine what the circumstances of the voyage were like. At certain parts of the day the women would have been locked below where light and adequate ventilation would have been limited. They were allowed up on deck for air, although how often and for how long would have depended on the Captain. Bateson quotes Clarke, surgeon of the \textit{Kains} in 1830-31 as follows; “...if ever there was a hell afloat it must have been in the shape of a female convict ship – quarrelling, fighting, thieving, destroying in private each other’s property from a mere spirit of devilishness, conversation, with each other most abandoned, without feeling or shame...”\textsuperscript{41}

On earlier transports, and perhaps into the 1840s and final years of transportation, prostitution between the women and the crew was infamous, although classist definitions of what a prostitute was are responsible for much confusion regarding this matter and one that will be returned to. Despite the stories

\textsuperscript{39} Ibid. p. 52

\textsuperscript{40} Bateson, Charles. \textit{The Convict Ships}. Glasgow: Brown, Son & Ferguson, 1969, p.67.

\textsuperscript{41} Ibid. p.78
of ‘Coffin ships’ setting sail for America during the famine years and the high mortality rates aboard, the same cannot be said for the convict transports. The reason is simple. Payment in full was withheld from the Captain, Wm. Dale, and Surgeon Superintendent, Alex. C. Macleroy of the Phoebe, if the human cargo was not delivered alive and well. A letter was issued from the Department of Physician General to the Admiralty, dated November 1st 1836, and signed W. Burnett, Physician General. In it he clearly states that all Surgeons Superintendents are required to keep a regular sick book, journal and provide a nosological synopsis of the voyage in scientific form, as well as certified instruments. Failure to follow any of these measures would result in ‘pay and allowances’ being withheld. The Phoebe set out from Kingstown on September 25th 1844 and landed in Hobart on January 2nd 1845, taking ninety nine days. 128 women and 24 children embarked on the voyage. One woman, Honora Regan, a 22 year old Cork woman, died on board. The cargo of convict women, despised as they were by many in authority, was a valuable one.

Convicts in Australia were perhaps the most fully documented individuals in the British Empire. The creation of increasingly detailed records in the colony was part of the evolution and closer regulation of the convict system... At the shipboard muster clerks recorded each convict’s name, age, literacy, religion, marital status, number of children, place of birth, occupation, previous occupations and physical descriptions including moles, scars, and tattoos.

Before the early 1840s convicts were put directly into the service of free settlers’ (emigrants), or emancipists’ (ex-convicts’ who had served out their terms of sentence) homes under a system known as the “Assignment System”. Convicts were assigned as free labour and their masters had only to supply bed, board, and clothes. The system was not without its detractors not least because for some punishment was minimal, whereas for others it was tantamount to slavery and very much dependent on the temperament of the master. The treatment of assigned servants was not subject to inspection and therefore went largely unchecked.

42 AOT, Adm 101/6, Reel 3189


In Van Diemen’s Land, Colonel George Arthur had used it as the cornerstone of his comprehensive penal policy and, despite colonial opposition to Arthur himself, the practice of assignment continued to be regarded, in the colony, as the most effective (and profitable) use of convicts’ labour and the one most likely to reform transported offenders.\(^{45}\) It is unclear how women fared under this system. Female convicts had little choice in who selected them and could not refuse. As men were the preferred gender for domestic help, women were selected by “...the lower description of settlers, by whom, it is notorious, that they are not uncommonly employed as public prostitutes. Otherwise it seems they had to prostitute themselves to the male convicts in service in order to obtain protectors.”\(^{46}\)

This system lasted until 1844 when a former naval ship the *Anson* was docked in Hobart and converted into a probation station, introducing convict women to the new ‘Probation System’, although it was never fully utilised on convict women. When the *Phoebe* arrived in Van Diemen’s Land, it was to the *Anson* Margaret and Judith Byrne would have been initially brought. The Probation System had many guises, and although based on high principles, the reality of actually operating the system was a different matter. Male and female convicts were to serve an initial sentence in the country where the crime was committed, such as the months spent in Grange Gorman, where religious instruction and education were the focus of moral reformation. Upon reaching the colony, the male convicts would serve in a probation gang, carrying out public works for a specific amount of time commensurate to his sentence. When this time was served, he would become a probation pass holder or ticket-of-leave holder, again for a stated amount of time. Progressing from one stage to another was dependent on good behaviour and could be revoked if the convict broke regulations. As a pass holder or ticket-of-leave holder, the convict could in effect work for himself, for private wages. Following a stated amount of time and assuming his behaviour was satisfactory, he would receive a conditional pardon, followed by a certificate of freedom.

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The process was somewhat more complicated for the women. Female convicts were never totally under the Probation System, and at best, it was a combination of elements of the Assignment System, and the Probation System. After 1829 and prior to the arrival of the Anson, all newly arrived female convicts were brought to Cascades Female Factory, at the foot of Mount Wellington, a few miles outside Hobart Town. These were ‘houses of correction’ that emphasised hard labour as part of its punishment regime, hence they became known as female factories. The women in the female factory in Parramatta in Sydney were put to work at activities largely connected to the wool industry. In Hobart, the Cascades Female Factory carried out industrial amounts of laundry for the city.

Upon arrival they were classified according to their behaviour. Elizabeth Fry was a keen advocate of a transparent classification system with rewards, privileges and if necessary, punishments. At the lower end of the scale was the third of Crime Class women. This comprised of two types of convicts; women who had broken a rule (usually minor) or the law, and who were sent to the factory by their master for punishment. The other was a woman who had become pregnant and was unmarried.

Perhaps the worst crime committed against women in history has been to degrade those who became pregnant whilst unmarried, or who through poverty asked a living by prostitution, whilst ignoring the most basic fact that procreation requires both a man and a woman. In the case of convict women, it must be further remembered that she was almost wholly at the mercy of her master, and that the subtle pressure of knowing that her future depended largely on him would be sufficient inducement for her to become involved in a sexual liaison...Not only were pressures encouraging her to begin such a liaison quite strong but it would have been a sure way to reduce their sentence from grinding near slavery to one of reasonable comfort.47

In the third crime class, the women’s heads were shaved, a punishment said to more upsetting to them than any other, their diet was poorer, and they had to wear ill-fitting coarse plain clothes with a large yellow ‘C’. Within this class the women might work as task mistresses, at spinning, carding wool, picking hemp, ironing, or worst of all at the wash tub. Here, the women had to spend between eight and twelve hours a day depending on the time of the year with their hands and arms in soapy water.

A myriad of theories surrounding Jeremy Bentham’s Panopticon had greatly influenced the penal reform movement in Britain, and this new colony was the place where much experimentation was tried and tested (and for the most part found wanting). The term ‘separate system’, in the context of nineteenth century British penology, denotes the quartering of convicts in individual cells, for work as well as for eating and sleeping. This was the system observed by Crawford in Philadelphia (though, as he remarked, its origins were British), and the one adopted at Pentonville. 48

Women may also have been put to work in solitary working cells, where they sat all day within view of an overseer but without being able to see other inmates. This was one of the goals of the Panopticon. Prisoners would feel alone, would know they were being watched but were not able to see the watcher. This system provided convicts with much silence and time on their own to contemplate and reflect upon their misdoings, and allowing them time to realise how they could improve themselves. It was also aimed at breaking the individual down, peeling back his or her personality in an effort to render them docile and more amenable to social re-engineering resulting in their being a useful and valuable citizen. However, this was not the worst punishment. Solitary confinement was a more extreme version of the same, and worse again was the triple doored dark cell punishment. “Yet this punishment was prescribed for the most minor of offences – disobedience, neglect of work, abusive language or even disrespect”49.

Once they had served part or all of their sentences for these charges, they moved into the Second Class yard where food was better, and wearing the ‘C’ was no longer required. The First Class women were at the top of the hierarchy and therefore, received the best food, and did no or the least labour intensive work. They were there because they were waiting to be assigned. Some may have just arrived from the ships, or some may have been returned to the factories by masters through no fault of their own, or some had simply served their time and were waiting to

49 Ibid. p.23
receive tickets-of-leave and be sent into private employment where they could earn wages\textsuperscript{50}.

There was constantly an overcrowding problem at the Cascades female factory. The Anson was seen as a temporary solution, and a means of separating the women. There were two reasons for this. First, it would alleviate the overcrowding problem of Cascades, and provide a Probation station where women could receive a continuation of their moral instruction from the prison at home and the ship, as well as learn a craft or trade, in order that she be able to earn a living in the colony. Second, it was believed that;

The Cascades Female Factory is a scene of feasting, complex idleness and vicious indulgence...they are utterly insubordinate and lead most flagitious lives...plainly telling their masters that they infinitely prefer the depot – the scene of jollity and every evil communication.\textsuperscript{51}

The Factory did, however, offer some consolations. Despite its misery including poor and insufficient food, enforced silence and constant control and punishment, the women were amongst their own and found companionship therein.

To the authorities it was inexplicable that the lowest order of society preferred their own degraded and downtrodden kind rather than serving as a household drudges for ‘respectable’ families. For the officials it was part of the convicts lot to take on the morality and external appearance of respectability, but to nevertheless never be respectable. They were doomed to a lower world where they were expected to shun their fellows but nevertheless were in turn shunned themselves.\textsuperscript{52}

And it was for this reason that authorities felt that the Cascades was a breeding ground for corruption, and moral contamination. Therefore, by holding women on the Anson for the first six months in Van Diemen’s Land, it was believed that the newly arrived would be safe from the polluting forces of the wicked elements of the factory.


\textsuperscript{52} Ibid. p. 168-169.
Judith and Margaret were two of the “most fully documented individuals in the British Empire”\textsuperscript{53}. Apart from being recorded in the Grange Gorman transportation register, all convicts arriving in Australia were also documented in a Conduct Register, Indent, and Description list. Judith and Margaret can be found in CON41/1/5. Many of the features are the same as that noted on the transportation register, but some are different. Their physical descriptions are more detailed including shape of nose, forehead, face, and chin. Judith is recorded as having black hair, a sallow complexion, hazel/grey eyes, a cocked nose, a large dimple on her chin and is pockmarked and is now 24, for example. Margaret’s complexion is now ‘much freckled’, her hair is red, eyes grey, and under marks or scars, her arms are noted as much freckled and she has several scars or pockmarks on her cheeks. Interestingly, Margaret has shaved a couple of years off her age and stated that she was 20. In Grange Gorman in the previous year she was 22, so therefore was actually 23. Their gaol report was ‘very good’ and they are both marked down as being second class crime gang, therefore probation on the Anson for six months. The rest of the page of the Conduct Register is left for ‘Offences and Punishments’. In some cases these pages are full of dates of transgressions, and punishments in the female factory. The most common are absconding or drunk and disorderly. Proportionately very few were ever reconvicted for stealing again in the colony. Where the women did reoffend it was against public order and the convict discipline system that they were confined within. However, this was not the case with Margaret. The only remark made in this section is that she committed larceny of under £5, but beside this, it is recorded that she was discharged. Following this she was issued with her ticket-of-leave on July 11\textsuperscript{th} 1848 and her certificate of freedom on January 6\textsuperscript{th} 1857. Judith was a little less fortunate. She is recorded as being returned to the factory for being unfit for service due to pregnancy, and delivered an illegitimate child, named George on September 16\textsuperscript{th} 1846.

For Samuel Marsden, who arrived in the early years of the colony and wrote extensively about convicts for many decades, saving his most vitriolic prose for convict women, he saw convict women as “the embodiment of disease, representing

anarchy and social disintegration, to be both feared and controlled.”

That the relative wickedness of the female convicts rested more on their transgressions due to open sensuality and sexuality, their smoking and drinking and importantly their refusal to capitulate in the face of restrictions within the convict system is far more indicative of the oppressive nature of middle class morality of the early Victorian ages, than it is of the true nature and character of the women.

The stereotype of women convicts, it seems, originated not simply in the women’s behaviour as most historians imply, nor as a conscious policy pursued by local and British authorities... It emerged instead from the discrepancy between working-class behaviour on the one hand, and middle-upper-class expectations on the other.55

From his earliest days in the colonies, Marsden, and he was not alone, advocated the need for convicts “to marry [and] procreate within marriage in order to eliminate the ‘vice, idleness and depravity’ amongst convict women.”56 Judith’s crime was that she had got pregnant out of wedlock. However, permission to marry records are kept in Tasmanian National Archives under CON52/2, and on reel number Z1420, on page 129, the marriage of William George, a free man, was approved on December 18th 1846. This was just three months after the birth of her son George, so it could be assumed that William George was her son’s father. The blacksmith in Ireland must have been a distant memory. She subsequently received her ticket-of-leave on July 11th 1848 and her certificate of freedom on January 4th 1857. That marriage was seen by Marsden, Arthur, Spode, Price and more as a reforming agent, points to the nature of the perception of the female convicts’ depravity, or what Sturma refers to as a discrepancy between working-class behaviour and Victorian expectations. The problem was with a sexual licentiousness based on elitist hypocrisy.

The authorities really only wanted the women legally married. To them a ticket-of-leave woman living an honest quiet life in a de facto relationship


with a good man was a horrible offence whilst a convict woman legally married but just one step ahead of the hangman was quite respectable.\footnote{Rayner, Tony. \textit{Female Factory. Female Convicts}. . Tasmania: Esperance Press, 2005, p.17.}

On the same microfilm roll on page 191, the marriage application of Margaret Byrne and William Hardinge, also a free man, was approved on September 5\textsuperscript{th} 1848. At no point in the Convict Reference Files on the Irish National Archives is it hinted at that Judith and Margaret Byrne committed the offence deliberately to get transported. This is the case in other women’s stories when they state clearly that committed the crime in order that they would be transported. However, by 1848, both sisters have their tickets-of-leave and are married, and Judith has a two year old son. We know they are both alive in 1857 to receive their certificates of freedom. It is difficult not to speculate if their family in Ireland are still alive in 1857, or would the sisters themselves have survived the famine and its attending diseases. For convicts transported to Australia, be it New South Wales or Van Diemen’s Land, if like the Byrne’s, the rules are abided by, or even if the rules are broken many times, eventually freedom can be won, and opportunities to earn a living, making a new life are possible. Some would argue that their lives were better than if they had stayed at home in Ireland. However, the most negative aspect that has survived is the attitude towards convict women in the new colony. And it is these attitudes that have been the most persistent through the years. Robinson’s seminal work \textit{The Hatch and Brood of Time} encapsulates it excellently when she says;

> The opinions on women convicts were influenced by preconceived expectations as to their behaviour and moral standards based very largely on their known characteristics of the convicted women felons who were transported to Botany Bay. First, they were convicted felons, guilty of major statutory offences for which punishment was usually death but sentences to a term of transportation with penal servitude. Second, as convicts they were not only criminally inclined but must necessarily be morally tainted so that wanton, degraded, dissolute and abandoned behaviour was expected from them. Third, as illiterates, unskilled girls and women from the lower orders of British Society, they formed the lower rank of social hierarchy.\footnote{Robinson, Portia. \textit{The Hatch and Brood of Time: A Study of the First Generation of Native-Born White Australians 1788-1828}. Melbourne: Oxford University Press, 1985, p.76.}

The Establishment in Van Diemen’s Land comprised of the English middle class. They had come to a new part of the Empire with hopes and dreams of
bettering their stations in life. With them they also brought the same Victorian philosophies and prejudices towards the lower classes. Oxley (1996) refers to the blind-spot in the historians’ and economists’ field of vision with regards to convict women and asks; “Who bore the children? Who suckled them and coddle them? Who worked the big and little houses? Who made the meals? Who worked the nurseries? Who spun the fibres? Who made the clothes? Who laundered them? Who battled the frontier?”

The answer? Judith and Margaret Byrne were two of the 3,196 women transported to Van Diemen’s Land from Grange Gorman Lane in Dublin who performed these life- and colony-saving tasks. They were the founding mothers and presumably grand-mothers of Australia. Transportation for the Byrne sisters “was not the fatal shore at all but a second chance.”

This research focused on the story of two sisters, who never would have been discussed in mainstream history. The systems of penal servitude and transportation can be viewed as apparatuses of oppression and exploitation. However, the women subjected to these oppressive systems were not always passive victims. It is difficult to discuss female transportees as a homogenous group, as there are as many stories as there are individuals. It is also redundant to view all of the women as active agents controlling their own destiny. Although, there is evidence that the women did resist the structures that oppressed them, it is important to remain objective. Given the restricted circumstances that the women were in, there was an ability to utilise survival strategies. Judith and Margaret Byrne, like so many Irish women who went before and who come after them, negotiated the apparatuses of power and survived them. Because of their survival, their story is part of Irish women’s history as well as Australian and Vandemonian history and also has its place in the history of the British Empire.


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