De los controles disciplinarios a los controles securitarios

Pedro Oliver Olmo
M.ª Carmen Cubero Izquierdo
(coords.)

Ediciones de la Universidad
de Castilla-La Mancha

De los controles disciplinarios a los controles securitarios. Actas del II Congreso Internacional sobre la Historia de la Prisión y las Instituciones Punitivas

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"To hold until satisfaction". Imprisonment for debt and carceral discipline in eighteenth century England

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ABSTRACT

Since Foucault, the majority of critical research into prisons, whether historical and contemporary, has focused on the incarceration of criminals, and to a lesser extent on the confinement of the disorderly 'othered': vagrants, juveniles, lunatics.

Yet in England, before the interruption of transportation by the American Revolution, the majority of prisoners were debtors. Thousands of people, unable or unwilling to pay their debts, were incarcerated in an extensive network of over 200 prisons right across the country.

This paper presents new data on the extent of imprisonment for debt, drawn from the relief lists published in the London gazette. It then focuses on the disciplinary crisis of the late eighteenth century: the temporary end of transportation and the destruction of London's prisons in the Gordon Riots. It argues that imprisonment for debt was not a forerunner of modern prison discipline, but a separate punitive system, that could not be easily converted to criminal detention. The attempt to do that created a fundamental contradiction that undermined its own ambitions. Only with the supposed abolition of imprisonment for debt in 1869, and its conversion from a civil offence into a criminal offence, was this contradiction removed.

1. INTRODUCTION

Imprisonment for debt has rarely featured in the modern critical study of incarceration inaugurated by Foucault. In the founding works of 'Discipline and Punish' and 'The History of Madness', he makes only occasional references to debtors, and never substantive; and aside from Ignatieff's 'A Just Measure of Pain', they make few appearances in the post-Foucauldian literature. (FOUCAULT, 1977; FOUCAULT, 2013; IGNATIEFF, 1989). Gibson's recent summary of global perspectives on 'the birth of the prison' has just a couple of passing comments on debt, and none of the works she discusses focusses on the subject. (GIBSON, 2011).

What accounts for this absence? Firstly, and quite simply, there has been very little work on either imprisonment for debt or the debtors imprisoned, either in the sphere of carceral studies

or in early modern English history. One reason for this is a lack of easily available statistics. Hitherto, there have not been any reliable numbers for the rate of incarceration of debtors for the period before John Howard's surveys; and those were conducted at the very time that the prison system began to take in large numbers of criminals. The first state compiled statistics appear in the 1790s, and are ad hoc and incomplete until 1834. (HAMMICK, 1867: 375). Similarly, Howard marks the first comprehensive survey of prisons in England; counting gaols before his work requires painstaking compilation from many, fragmented archives.

Secondly, imprisonment for debt was practiced on a much wider scale in England than anywhere in continental Europe, and similarly across the British Empire than anywhere else in the world. England and the empire allowed creditors to initiate civil prosecutions with penal sanctions to a greater extent than elsewhere. A study of any country or colonised area outside the english sphere will not see imprisonment for debt having such a central role. For example, the French 1667 Ordonnance severely restricted its use. (KOLISH, 1987). Foucault's passing references may indicate its existence, but also its peripheral existence in France.

Thirdly, carceral studies has concentrated upon two particular aspects of the economic, namely the meaning of work, and the organization of production. For the first, this has studied how prisoners were disciplined through labour, whether productive and useful or non-productive and purely punitive. The second is the transmission of architectural and spatial organization and surveillance, from factory to prison and back again, taking in many other institutions, such as barracks and workhouses. This is epitomised by the panopticon, the factory in Saint Petersburg physically realized by Samuel Bentham and then theorised by his brother Jeremy. (STEADMAN, 2012).

Yet, for Britain and its empire, the use of prison to enforce economic contract, an essential part of capitalist life for local exchange as much as for international trade, was widespread, actively exported around the world, and as vigorously defended as it was attacked. The debtor prison population numbered in the thousands in England and Wales, in a network of hundreds of prisons. And because of the doctrine of 'capias ad satisfaciendum', to hold until satisfaction, the debtors were held on indeterminate sentences, until they had paid off the debt owed. Given that imprisonment inhibited the ability of the debtors to satisfy their creditors, both in preventing them from earning money and in charging them fees for their confinement, without outside aid they could lie in jail for years. The logical contradiction was manifested in the tendency of the prison population to continually expand. This led to the regular passing of acts 'for the relief of the insolvent debtor', and it is the documentation produced by them that allows an enumeration of prisons and prisoners below.

The publication in the state journal, the London Gazette, of the names and details of prisoners were a requirement of the parliamentary acts passed over a century from 1711 to 1813. These relief acts were an innovation of the commonwealth parliament, that passed the first in 1649. After the restoration, similar legislation was passed on an occasional basis, just five such acts between 1670 and 1702. It was not until the early eighteenth century that these acts became both semi-regular and the names of applicants circulated nationally. Sixteen acts from 1711 to 1781, with the 1770s seeing one passed every two years. Surprisingly, given the pressure on the prison system with the end of transportation, none were passed for the next decade, until 1793, whereupon a further eight such laws were passed, the last in 1813, when this procedure was replaced by a rolling system by which prisoners could apply for relief at any time.

These acts offered release from prison on condition that the debtor declared and surrendered his or her property, minus a modest amount for their own support. Having done so, they could not be retaken and sent to prison for those debts.

Some of the relief acts offered other categories of debtors a chance to settle their accounts and avoid imprisonment. From 1729 to 1778 provision was made for fugitives, who had gone overseas to escape their debts, to return and pay what they could without further penalty. Some 12,000 people took up this opportunity. Additionally, an act of 1723 offered similar terms to the 'Minters', debtors who had set up a sanctuary in Southwark Mint, communally and physically resisting attempts by bailiffs to arrest any of their number. A little under 6,000 people applied for this. Whilst these numbers are not included in the statistics below, they indicate that the scale of non-repayment was a greater and more widespread socio-economic problem than even the significant numbers of the imprisoned do, not to mention the lengths debtors would go to avoid incarceration.

From 1711 on, thousands of notices applying for relief are published in the Gazette. Over the course of the century, they give more, and more precise and standardized, detail. Each entry gives a name, a place of residence, and the prison the debtor is being held in. From 1720, a trade or occupation is required; many women giving a (non) marital status: spinster or widow.[1] In all, over sixty thousand declarations from imprisoned debtors were published across the century 1711 to 1813. These are the raw materials for the following investigations.

2. THE DEBTOR PRISONERS

To have a comprehensive count of the number of people imprisoned for debt, it would be desirable to have at least two measures: the number of committals, that is, how many people were actually sent to prison, and the length of their incarceration, how long they were held in prison.[2] The number of committals is the most useful and important of these figures, but it is not until 1798 that any centrally-compiled figures are available, and even then they are incomplete. The length of time spent in prison is also unknown, as no sentence was set for debt, confinement being open ended until the creditor was satisfied. However, the relief lists can be used to give a minimum figure for the prison population in certain years, and allow some extrapolation to identify long term trends.

Year	Statute	Applicants
1711	10 Anne c. 20 / 29	4133
1719	6 George 1 c. 22	2248
1724	11 George 1 c. 21	3755
1728	2 George 2 c. 20	5382
1736	10 George 2 c. 26	3317
1742	16 George 2 c. 17	3392
1747	21 George 2 c. 31	2422
1755	28 George 2 c. 13	1906
1760	1 George 3 c. 17	1597
1765	5 George 3 c. 41	1128
1769	9 George 3 c. 26	1764

1 This is due to the legal doctrine of feme covert, whereby married women were subsumed into the person of her husband. This included both property and debts. Women made up around 8% to 10% of the prison population between 1711 and 1729; Howard's figures have them at 5.7% in 1779 and 6.3% in 1782. HOWARD, 1792.

2 The amounts each debtor owed is another important measure, as is the numbers of their creditors, but as they do not describe the numbers incarcerated they are left aside here.

Year	Statute	Applicants
1772	12 George 3 c. 23	1380
1774	14 George 3 c. 77	2213
1776	16 George 3 c. 38	2045
1778	18 George 3 c. 52	1715
1781	21 George 3 c. 63	765
1794	34 George 3 c. 69	1467
1797	37 George 3 c. 112	770
1801	41 George 3 c. 70	2108
1804	44 George 3 c. 108	906
1806	46 George 3 c. 108	1224
1809	49 George 3 c. 115	1588
1811	51 George 3 c. 125	2290
1812	52 George 3 c. 165	2207
1813	54 George 3 c. 28	2675

Table 1. Adjusted number of applicants per relief act.

The figures have been adjusted due to the number of double entries in the pages of the Gazette, the raw count being reduced by 10%. Two exceptions: the names for 1720 have been hand checked, and duplicates removed; for 1711, the count was reduced by 2154, before subtracting 10%, on account of the widespread fraud carried out at three London prisons that year.[3]

What these figures give are the number of applicants for relief, held in prison at a particular point of time. As such, it is not the total number of debtors sent to prison, nor even the number in prison at a specific moment. It measures only those imprisoned debtors that sought advantage of an act, and functions as a 'spot-check' of a proportion of the prison population. That the criteria for application was more or less equivalent across the century, that the acts were generally passed on a regular basis, and that allowances can be made for the uncounted population, means that these figures offer a consistent base line for the prison population across sixty five years before the first prison surveys of John Howard.

As a 'spot-check', rather than a census, certain categories of prisoners are not included. There were those who died in prison, those who paid their debts and were released, those who had their debts paid for them, and those incarcerated but did not apply for relief.

For the first, there are few numbers available, but they point to a significant death rate. Prisons were unhealthy places to the point that 'gaol fever' was a recognised medical phenomena. Indeed, it was precisely because prison was a threat to life that the church considered that the right of sanctuary encompassed debtors. The 1792 report gives a figure of 442 deaths in prison from 1780 to 1791, around 40 a year, with the caveat that "the Accounts received on that head are very deficient."(GREAT BRITAIN PARLIAMENT, 1792.) For the King's Bench prison alone, there were 158 inquests between 1825 and April 1832; over 20 a year. (SIM & WARD, 1994: 247).

The numbers paying off their debts were probably very considerable. The fulfilment of contracts was the intended outcome of this legal practice after all. The work of Alex Wakelam has found that for Wood Street and Giltspur Street Compters between 1738 and 1815, over 72%

3 The Clink, Surrey (Southwark) Compter and Whitechapel. The Clink alone contributed over a thousand names, an impossible number for its size.

settled with their creditors and just 4.24% were released by the relief acts. (WAKELAM, 2017: 125). This needs to take into account that there were substantial periods when no acts were passed, especially the twelve years between 1781 and 1794, but nevertheless points to a far larger number of committals than any number of prisoners at any specific point in time.

There was considerable ad hoc charitable support for debtor prisoners, but it was not until the foundation of the Thatched House Society in 1772 that this was put on a more organised and campaigning footing. Over a period of 37 years they secured the release of over twenty four thousand prisoners for a cost of just over sixty six thousand pounds, concentrating on the poorest with the smallest debts and stipulating that they would not pay the full sum but negotiate a lower one with the creditor. (NEILD, 1808: 595-6). This was a better deal for the debtor than offered by the relief acts, and would reduce the number of applicants for relief.

The preceding three categories do not necessarily alter the number of debtor prisoners actually held at any particular point in time. They can be regarded as part of the churn, that would maintain levels of incarceration between acts. The final category, prisoners who did not apply for relief, could affect the ratio between the relief list totals and the actual prison population. They fell into two categories: those eligible but for whatever reason chose not to apply, and those who were ineligible. Numbers are elusive by virtue of not being part of this documentary system. But for the eligible, if the number of debtors compulsorily summonsed can be taken as a measure, it would not add more than one or two hundred people. Just 600 prisoners were obliged to take relief by their creditors between 1736 and 1755; in 1760, due to loose wording, some three thousand unincarcerated debtors turned it to their own ends, and the clause was quickly repealed, never to be repeated in a relief act again. Against this, Wakelam has found that in 1724, for Poultry and Wood Street compters in London, just 46% and 40% respectively of the prisoners took the act. (WAKELAM, 2019: 254). If these figures were true across all the prisons of England and Wales, the actual prison population on a specific day would be more than doubled.

For the ineligible, some would be those who owed more to any one creditor than the limits prescribed by the acts. Although low at first, the limits became more and more generous. From 1711 to 1720 this was £50, rising to £100 for 1724, then £500 for 1729 to 1747, then further to £1,000 until 1794. Consequently, save for the earlier acts, it is unlikely that considerable numbers were barred from applying for relief. Others were ineligible because their debts were to the government, or they had taken relief in an earlier act; there are an unknown quantity.

Nevertheless, as a measure of applicants for relief, these figures offer a consistent series from a near-uniform source, and indicate a minimum level of imprisonment for debt over a century.

Taken as a series, these numbers offer a chronology of imprisonment for debt. From a little over 4,000 prisoners applying for relief in 1711, there is a dip in 1720, a return to previous levels in 1725, a peak of approximately five and a half thousand in 1729, then back down to around 3,300 in 1736 and 1742. After that, falls of 500 or a thousand until a low of 1250 in 1765. Then, one and a half to two and a half thousand every two or three years through the from 1769 to 1778, a decade that saw the most relief acts passed, one every two years. Notwithstanding the exceptional low of 1781, Howard's figures of 2078 for 1779 and 2197 for 1782 shows those levels of prison population being maintained. (HOWARD, 1792, p. 492.). It should be noted, however, that the number of acts in the 1770s implies a larger turnover of prisoners; those listed were applying for release from prison and the majority were successful; the stable population suggests that they were replaced by others.

Then, after a decade without any relief acts, the numbers are at a lower level for 1794, 1630. Three years later, the number is half that, a historic low, but in 1801 the numbers triple.

After another dramatic fall, there is a constant rise, until the last relief act of 1813 has nearly 3,000 applicants. In 1818 the first government-solicited figures for committals are created, and although they are based on incomplete returns, show a continual increase over two decades until a high of over 9,000 committals in 1817.(DUFFY, 2017: 372.).

The figures suggest that there are two periods of increased incarceration, the first half of the eighteenth century and the early nineteenth century, when imprisonment for debt is at its most intense. And in between, a more constant level, of around 2,000 prisoners at any one time, for the mid to late eighteenth century.

Specific events relate to some of the totals. The low of 1720 and the rise of 1724 can be explained by their being an alternative to prison, the sanctuary in Southwark Mint where debtors claimed immunity from civil arrest and physically defended themselves from the bailiffs. 1720 is a measure of their success: they halved the number of prisoners. With its dissolution in 1723, the following years' rise is a measure of what was lost. The act of 1729 came as a result of Oglethorpe's exposure of the abuses committed by gaol keepers and the consequent parliamentary investigations and criminal trials. If his campaign doesn't explain the all time high in incarceration, it does suggest that the consequent enforcement of prison regulations started a long term decline in incarceration, to 'normal' levels of around two thousand.

The 'Lords Act' of 1758, that obliged creditors to support the debtors imprisoned at their suit, may also explain some of the fall in numbers through the 1760s. That said, numbers were falling previous to its passing, grew again at the end of the 1760s even though it was still in force, and according to the testimonies gathered by John Howard in the mid 1770s, was not vigorously enforced.

The suspension of transportation in 1775/6 may have given some impetus to the passing of relief acts in 1776 and 1778, but their becoming biannual predated this problem of criminal imprisonment, and the surprising lack of acts in the 1780s makes it look like a weak effect.

The very low total of 850 of 1781 is an outlier, explained by the Gordon Riots, discussed below; the figure can be supplemented by the near 800 escaped debtors, released by the rioters, allowed to take advantage of the act's provisions.

3. THE DEBTOR PRISONS

This same source also allows the prison system to be mapped. Every prison returning a list can be considered active and in use; using the lists for 1711 to 1729 we can map change over time, and assign levels of endurance or impermanence to each of them.

In all, 222 prisons submitted lists of debtors between 1711 and 1729. Every county in England (39) and Wales (13) had at least one prison, and every county had an official prison designated for the county, except for Middlesex, although Newgate in the City of London took on this role. Kent had two county gaols, one each for its eastern and western divisions, as did Essex, in Chelmsford and Colchester. Wales had far fewer compared to England, 21 to 201.

By county, Yorkshire, by far the largest in England, had the most active prisons, with no 20. Kent had 14, Norfolk 11, Cornwall and Devon 10 each. Rutland and Huntingdonshire, the smallest counties in England, had but one a piece, as did most of the Welsh counties. The physical size of the county had some bearing on the number of prisons, in that the larger the county the more likely there would be other jurisdictions with a right to a court and a prison. County prisons made up less than a quarter of the total; the majority of the others were for cities, towns and boroughs. The distance from the economic and political heartland of London does not dictate the distribution. Although to the north, Durham had 1, Cumberland had 2, Westmoreland and

Northumberland had 3 prisons each, the distribution isn't the same in the south west. There, Cornwall and Devon had 10 prisons, although Somerset and Devon but 2 apiece.

Nevertheless, London itself, through hosting the highest courts and its economic importance, was a centre of the prison network. The actual City had 5 prisons, for Londoners, and the liberties of St Martins Le Grand and the Tower one each. Newgate also functioned as the county prison for Middlesex, but more for criminals than for debtors, and the Fleet had a national role as the prison of the Court of Chancery. But in the larger urban expanse, so including Westminster, Middlesex and Southwark, there were a further 9 prisons, bringing the total to 16. In Southwark, this included the two largest debtor prisons in the country, the King's Bench and the Marshalsea, both connected to the courts of the same names. The greater London area then had the highest density of prisons, as well as the most important, and populous, national prisons. Around half of the prisoners held for debt were held in the these prisons, of whom the majority were of the metropolitan area.

Another way of analysing the prisons is by the number of times each one submitted a list of applicants for relief. Given that only active prisons are counted, each submitted at least one. But examining the number that submitted three or four gives an idea of which prisons were the most used, and to what extent there was a level of prisons only intermittently used for holding debtors.

Of the 222 prisons, 81 (36.4%) submitted 4 lists, 51 (23%) submitted 3, 30 (13.5%) submitted 2, and 60 (27%) just 1. If we take 3 and 4 returns as being signs of a 'strong', oft-used prison, and 1 or 2 as a more occasional resort, then the majority of English and Welsh prisons, over 59%, are in continual use. Fifty years later, John Howard's survey found 97 of these prisons still in use, and 32 of the others extant. (HOWARD, 1777.)

The other 42% are less stable, less continuous, yet fairly evenly distributed over the 1720s. 11, 12 and 15 prisons provided just a single list for the acts of 1720, 1724 and 1729 respectively. However, the 1712 act had considerably more: 23 from 'one-return' prisons. Dividing returns by year, and allowing for the fewer returns of 1720, there is a small reduction in the number of prisons. For 1712, 161 (72%) prisons returned lists. For 1720, just 129 (58%), then 155 (69.5%) and 152 (67.7%) for 1724 and 1729 respectively.

This was not the only carceral system in England at the time, nor was it purely for debtors. There were parallel networks of bridewells, houses of correction and workhouses, and lock-ups for temporary detention. The gaols held those charged with criminal offences before trial, and those sentenced to death after trial. But the use of imprisonment as punishment was rare until the 1770s; transportation to the American colonies was the preferred sentence. Statistics from the Old Bailey Online project show that from 1679 to 1775 there were never more than 5 people sentenced to prison in London and Middlesex in a year, and only in the 1720s did the total for a decade get into double figures.[4] Then, the numbers increased dramatically: 120

4 Old Bailey Online, Tabulating year where sentence category is imprisonment, between 1674 and 1818. Accessed May 28 2019: https://www.oldbaileyonline.org/stats.jsp?y=year&x=&countBy=&render=&_offences_offenceCategory_offenceSubcategory=&_verdicts_verdictCategory_verdictSubcategory=&_punishments_punishmentCategory_punishmentSubcategory=imprison&_defendantNames_defendantGender=&defendantAgeFrom=&defendantAgeTo=&_victimNames_victimGender=&victimAgeFrom=&victimAgeTo=&_divs_fulltext=&kwparse=and&fromMonth=&fromYear=1674&toMonth=&toYear=1818; Old Bailey Online, Tabulating decade where sentence category is imprisonment, between 1674 and 1818. Accessed May 28 2019: https://www.oldbaileyonline.org/stats.jsp?y=decade&x=&countBy=&render=&_offences_offenceCategory_offenceSubcategory=&_verdicts_verdictCategory_verdictSubcategory=&_punishments_punishmentCategory_punishmentSubcategory=imprison&_defendantNames_defendantGender=&defendantAgeFrom=&defendantAgeTo=&_victimNames_victimGender=&victimAgeFrom=&victimAgeTo=&_divs_fulltext=&kwparse=and&fromMonth=&fromYear=1674&toMonth=&toYear=1818.

criminal prison sentences in 1777, 329 for the whole decade, 611 for the 1780s. This was the result of the American Revolution forcing transportation to be suspended, and was followed by the Gordon Riots, which saw many of London's prisons demolished.

4. THE CRISES OF 1776-1781

If the American Revolution forced the suspension of transportation, the so called 'Hulks Act' (1776, 16 George 3 c. 43) making this law had also to find some alternative to it. Stating that transportation "depriv[ed] this kingdom of many subjects whose labour might be useful to the community, and who, by proper care and correction, might be reclaimed from their evil courses" it elected for forced work as an alternative punishment, rather specifically, in dredging the Thames.

Although known as the 'Hulks Act', the 'Act to authorise …. the punishment by hard labour' didn't actually specify the use of the prison ships that started being used to hold criminal prisoners; that was a decision of the winner of the contract to oversee the prisoners' labour on the Thames. (HITCHCOCK & SHOEMAKER, 2015: 334). As an act born of urgent necessity and meant to be temporary (although the use of hulks did not end until 1857, even though transportation, to Australia, resumed in 1788), it was vague as to where prisoners would be held. It did require that Justices of the Peace in every county renovate the Houses of Correction in their jurisdictions to prepare them for these convicts, and also required that they be held separately from those committed for lesser offences. Because this shifted the burden from central government to local administration, this was not acted upon; as the numbers compiled by John Howard show, the practical result of the end of transportation was to place criminals in prisons alongside the debtors. 72 of the prisons he visited in 1779 held both types of inmate. (McCONVILLE, 1981: 106; HOWARD, 1780: 446-449). Similarly, the Penitentiary Act of 1779, 19 George 3 c. 74, although setting a state prison policy, did not directly result in the building of any new gaols.

The mixing of criminal and civil detainees severely restricted the governance of the prisons. The buildings themselves rarely had the capacity to segregate the two, and security could not be implemented that would illegally deprive the debtors of their rights to visits, to alcohol, and to goods from outside the prison. In 1813, Henry Hobhouse, solicitor to the Treasury, described the difficulties this presented in keeping Luddites separate from other prisoners in York Castle:

> The other Point I yesterday alluded to respecting the Gaol was the Facility of Communication between the Felons & the Debtors & all persons who enter the Castle for the purpose or under the pretence of visiting the Debtors, the Fact being that the Court, in which the Felons walk, is only separated from the Area of the Castle, in which the Felons what, by two sets of iron Railing a few Feet from each other, through which not only any Conversation may be held in a low Voice, but any Articles of small Bulk may be conveyed either in or out with the greatest Facility. (HOBHOUSE, 1813).

The Gordon Riots were related to the continuing American Revolutionary war, in that the ostensible and immediate cause of them, the 1778 act for the emancipation of the catholics, had as one motive the recruitment of catholics to the British armed forces. (JONES, 2013, pp.85-6) In their trajectory, from attacking places of worship to legal spaces, they can also be considered as responding to the "unprecedented penal crisis" provoked by the end of American transportation. (HITCHCOCK & SHOEMAKER, 2015: 334).

Little has been written of debtors in the Gordon Riots. Yet imprisonment for debt was central to the riots in four ways. Firstly, every debtor prison in London was attacked. The

largest and most important, the King's Bench in Southwark, was totally destroyed, as was Newgate. The Fleet was also fired, with the rioters giving the debtors a day's grace to remove their belongings in good order. Secondly, another part of the debt-enforcement system, the 'sponging houses', the private lock ups of the arresting bailiffs, was amongst the targets attacked. Thirdly, the vast majority of the prisoners released were debtors. Rude estimates the number released from the King's Bench and the Fleet at over 1,600; a pamphlet listing debtors 'surrendering' under the terms of the two acts 20 George 3 c. 64 and 21 George 3 c.1 gave around 2,400 names; and 700 applied for relief under the later act 21 George 3 c. 63. (RUDE, 1956: 104; BREWMAN: 1781).

Fourthly, the release of prisoners and the destruction of the prisons forced the government into a contradiction. It couldn't just let the debtors escape, but nor did it have the carceral capacity to hold them. For the debtors, their priority was to regularise their position and secure themselves from being arrested upon new charges of default or re-arrested for the old charges. Contrary to Rude's depiction of the released debtors as 'unfortunates' in 'pitiable straits', the two near identical petitions from the King's Bench and the Fleet submitted to the House of Lords make an appeal for relief, albeit couched in the standard petitioning language of supplication and humility, that would formalise their release and prevent any new or further detention. (HOUSE OF LORDS, 1783: 155-6). By granting this, the consequent legislation resolved the contradiction, but at the expense of a de facto amnesty.

5. CONCLUSION

These two crises marked a turning point in the history of imprisonment for debt. Before them, there had been an extensive prison system predominantly used for debtors as civil offenders. Afterwards, a pre-existing system had, urgently and by necessity, to be adapted for criminal detention, whilst still continuing its previous role. Whilst the end of transportation also led to the development of new penal regimes, and the building of new prisons expressly for criminals, the definitive separation of civil and criminal offender was never achieved. Imprisonment for debt became, after the suspension of transportation, a prehistory of criminal incarceration, but was also an extensive phenomena in its own right, both before the suspension and after, when debtors and criminals shared prison facilities.

The contradiction between civil and criminal imprisonment was only finally resolved with the conversion of imprisonment for debt from a civil offence to a criminal one in 1869. From then on, debtors were considered in contempt of court, and were subject to the same carceral regime as other criminals.

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