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Who Should Die?: The Evolution of Capital Punishment in Pennsylvania, 1681-1794

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Who Should Die?:

The Evolution of Capital Punishment in Pennsylvania, 1681-1794

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Who Should Die?: The Evolution of Capital Punishment in Pennsylvania, 1681-1794

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Abstract

Scholars studying the application of capital punishment in the eighteenth century have focused on its different uses. Public executions often served as both a form of communal justice and a visible deterrent for the rest of the population. Thus, governments turned to these violent spectacles in order to curb criminal activities. This study argues that while eighteenth-century Pennsylvanians often employed the death penalty as a means of social control, it led to a number of contentious issues while they debated the justness of this sanction and who merited a death sentence. Over time, the application of the death penalty in Pennsylvania evolved, usually in response to specific events or ideological trends throughout the Atlantic world. This study examines the evolution of capital punishment throughout Pennsylvania from 1681 to 1794 with an emphasis on the developments after 1718. The Oyer and Terminer records, published archives, newspapers, and manuscript collections, which contain a wealth of evidence on the 384 individuals condemned to die between 1718 and 1794 as well as inconsistent application of the death penalty throughout this period as Pennsylvanians struggled to embrace this form of punishment.

Initially, William Penn limited the number of capital statutes in Pennsylvania because he sought to enact Quaker beliefs as the basis for the colony's legal code. However, fears of crime and the affirmation crisis led to an expansion of the capital statutes by 1718.

Quaker magistrates continued to share Penn's reluctance to carry out death sentences because they typically preferred to extend mercy to the offenders instead. As Quaker control of the colony waned, the Pennsylvania Assembly expanded the number of capital statutes and became increasingly unwilling to extend mercy throughout the middle

decades of the eighteenth century. Despite this harsh stance, officials often struggled to define who deserved to die because a range of factors such as local politics, developing economies, and the patronage of influential leaders allowed many individuals to escape the gallows. Pennsylvania officials generally refused to impose even more horrific punishments such as giving the condemned's body to the surgeons for dissection although this practice had gained acceptance in England. Finally, Pennsylvanians began to question the efficacy of capital punishment after the Revolutionary War, leading to the rise of the penitentiary movement. Even as state officials reduced the number of capital statutes, they continued to hang certain individuals who were deemed as unable to be rehabilitated and re-integrated into society.

Introduction:
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In the fall of 1765, Henry Halbert, a German indentured servant, reminisced on the events that landed him in prison in Philadelphia, as he awaited his execution. Upset with his status, Halbert had grown resentful and vented his frustrations by killing the son of Jacob Woolman. Despite admitting the role that discontent with his earthly condition played in leading to the murder, Halbert blamed the devil for his actions. Given time to reflect and the religious counsel of Reverend Carl Magnus Wrangel, Halbert assumed the role of a penitent criminal as he “desire[d] all young Men and Children to take Warning by my untimely End.” In addition, he wrote to Woolman to beg for his forgiveness in order to relieve his troubled conscience.¹ Indeed, his conversion was so complete that Halbert died as a penitent and even requested the Lutheran School Boys to sing a German hymn at his execution.

Although Halbert still lost his life despite his penitential stance, the decision to employ the death penalty remained a deeply contentious issue throughout the eighteenth century.² Proponents argued that public executions served as a deterrent against crime as well as a source of communal vengeance. However, the decision to pursue such violent instruments of justice contrasts with the Quaker emphasis on rehabilitation of sinners. William Penn initially attempted to codify Quaker beliefs and avoid the bloody code employed in England by making only murder and treason capital crimes. Over the course of the eighteenth century, the colony gradually expanded the penal code to punish more

¹ *Last Speech and Confession of Henry Halbert, Who was executed at PHILADELPHIA, October 19, 1765, for the inhuman Murder of the Son of Jacob Woolman* (Philadelphia: Anthony Armbruster, 1765).

² *Pennsylvania Gazette*, 24 October 1765.

² *Pennsylvania Gazette*, 24 October 1765.

crimes with executions. Even Quakers came to believe that crimes such as robbery, sodomy, and rape merited death first for African Americans and then the population as a whole, leading to an expansion of the capital statutes in 1718. As the Quaker control of the Assembly waned, the colonial government increased the number of capital statutes several times over the subsequent decades. These crimes remained capital until the state legislature reduced the number of capital offenses in 1786, allowing for hard labor and imprisonment for several crimes deemed less threatening.³ Finally, in 1794, the state decreed that only first-degree murder warranted the gallows.⁴ Largely because of these revisions, Pennsylvania issued at least 384 death sentences between 1718 and 1794, leading to the public execution of 221 men and 16 women in fourteen counties.⁵

Many of the studies focusing on public executions emphasize their role as instruments of social control. Michel Foucault contended that the scaffold in eighteenth-century France allowed the state to reassert its authority in response to crimes. Criminal acts not only violated the victim, but also served as a challenge to the sovereign because the law reflected the will of the sovereign. These efforts to stigmatize the criminal often

³ These penal reforms presented more options for juries and prosecutors. For example, G. S. Rowe concluded that after 1785, juries were more willing to convict women accused of infanticide largely because of the possibility of imprisonment rather than death. G. S. Rowe, "Infanticide, Its Judicial Resolution, and Criminal Code in Early Pennsylvania," *Proceedings of the American Philosophical Society* 135 (June 1991): 209-10.

⁴ *The Statutes at Large of Pennsylvania from 1682-1801* (hereafter referred to as *Statutes at Large*), compiled by James T. Mitchell and Henry Flanders (15 vols.; Harrisburg: Clarence M. Busch, 1896), 2:77-79, 233-36, 199-221; 5:247-48; 7:90-92, 350-53; 13:243-51; 14:128-39; 15:174-81; Harry Elmer Barnes, *The Evolution of Penology in Pennsylvania: A Study in American Social History* (Indianapolis: Bobbs-Merrill Company, 1927), 81, 108. Treason was a capital crime under federal law.

⁵ The number of condemned men may be higher. Samuel Dewees mentioned in his memoirs several executions of soldiers under General Anthony Wayne during the Revolution. However, for the purpose of this project, these sources were not included because of the length of time that transpired between the events and Dewees' account and the lack of corroborating sources. John Smith Hanna, comp., *A History of the Life and Service of Captain Samuel Dewees* (Baltimore: Robert Neilson, 1844).

proved unsuccessful because the crowd instead frequently identified with or romanticized the actions of the condemned individual.⁶ Similarly, Douglas Hay argued that eighteenth-century England lacked other forms of social control such as the police. Therefore, the gentry relied on the death penalty to protect their property.⁷ Because British officials also recognized the weakness of executions and the potential threat of the crowds, they granted pardons in order to maintain the delicate balance between force and mercy to reinforce what Hay referred to as a “ruling-class conspiracy.”⁸ Echoing this theme, Peter Linebaugh claimed that the public hangings reflected the emerging class conflict. In the wake of changing industrial discipline that outlawed many of the practices of the pre-industrial age, the working class was increasingly hanged in order to preserve the gentry's control of the city.⁹ Marcus Rediker described the carefully orchestrated executions of pirates in the early eighteenth century as an exercise by elites to protect property, punish offenders, and deter other potential pirates.¹⁰ Each of these scholars agreed that in the absence of other methods to control the population, the state resorted to inflicting violent and public deaths not only to punish the offender but also to deter the rest of the population from engaging in similar activities.

⁶ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd ed., trans. Alan Sheridan (New York: Vintage Books, 1995), 44-69.

⁷ Douglas Hay, “Property, Authority and the Criminal Law” in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow (New York: Pantheon Books, 1975), 17-18.

⁸ *Ibid.*, 52.

⁹ Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge: Cambridge University Press, 1992), 49-73.

¹⁰ Marcus Rediker, *Villains of all Nations: Atlantic Pirates in the Golden Age* (Boston: Beacon Press, 2001), 5; Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston: Beacon Press, 2000), 6. For an examination of public executions in the late eighteenth century through the abolition of these spectacles in 1868 in Great Britain see V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (New York: Oxford University Press, 1994).

Despite the abundance of scholarship on executions in England, public executions in British North America during the colonial and early republican eras have attracted considerably less attention. Even with the growing number of monographs on colonial crime and punishment, scholars often treat the scaffold as another form of punishment, thus ignoring its greater implications.¹¹ Scholars who have addressed the importance of capital punishment in colonial society often agreed with their counterparts who focused on the death penalty in Great Britain and Europe that the executions allowed the upper classes a means of social control over the lower classes. However, public executions in colonial America have presented additional areas of study. Several historians have noted the importance of the execution sermon in New England, which during the eighteenth century allowed the clergy to exhort their congregations to avoid the sins of the condemned and instead live godly lives. Daniel Cohen examined the development of execution literature. Although the execution sermon emerged in the seventeenth century to warn the community against such sinful behavior, by the nineteenth century the clergy no longer held uncontested authority in interpreting the executions. Rival forms of media such as sensational trial reports emerged and fed the public's insatiable interest in these morbid topics.¹² Ronald Bosco argued that the execution sermon remained popular in New England throughout the eighteenth century because the message continued to

¹¹ Douglas Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca: Cornell University Press, 1976); Dennis Sullivan, *The Punishment of Crime in Colonial New York: The Dutch Experience in Albany during the Seventeenth Century* (New York: Peter Lang, 1997); Eli Faber, "Puritan Criminals: The Economic, Social, and Intellectual Background to Crime in Seventeenth-Century Massachusetts," *Perspectives in American History* 11 (1977-1978): 81-144; Edwin Powers, *Crime and Punishment in Early Massachusetts, 1620-1690: A Documentary History* (Boston,: Beacon Press, 1966); Donna J. Spindel, *Crime and Society in North Carolina, 1663-1776* (Baton Rouge: Louisiana State University Press, 1989).

¹² Daniel A. Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860* (New York: Oxford University Press, 1993).

resonate with the population.¹³ Karen Halttunen traced the evolution of the portrayal of the condemned. Initially, execution sermons used the convicts as a warning for the congregation, claiming that any resident could commit similar crimes and end up on the gallows. By the nineteenth century, increasingly secular depictions transformed the condemned into a horrific villain who was isolated from the community.¹⁴ While these studies provide historians with a better understanding of New England society, they have limited application to the remainder of the colonies. The other colonies often lacked execution sermons, and the Puritans' emphasis on the sinfulness of mankind offered a sharp contrast to the Quaker belief that sinners could be rehabilitated and saved. Therefore, while New England offers an interesting contrast to Pennsylvania, the two regions possessed different attitudes to and justifications for capital punishment.

Despite the importance of this public punishment, the incomplete court records for Pennsylvania make it difficult to study crime and punishment for eighteenth-century Pennsylvania. Harry Elmer Barnes and Lawrence Henry Gipson authored two of the earliest studies on the topic, both of which heavily rely on the published records of colonial Pennsylvania. Capital punishment was only a minor aspect of their studies because they mentioned it only in regards to the expansion of capital crimes.¹⁵ Similarly, Herbert William Keith Fitzroy provided a brief overview of the criminal justice system in

¹³ Ronald A. Bosco, "Lectures at the Pillory: The Early American Execution Sermon," *American Quarterly* 30 (Summer 1978): 156-76.

¹⁴ Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge, Mass.: Harvard University Press, 1998).

¹⁵ Barnes, *The Evolution of Penology in Pennsylvania*; Lawrence H. Gipson, *Crime and its Punishment in Provincial Pennsylvania* (Bethlehem, Pa.: Lehigh University Publication, 1935).

colonial Pennsylvania, focusing on both capital and lesser offenses.¹⁶ Subsequent studies of capital punishment include Albert Post's analysis of the efforts of prominent Pennsylvanians such as Benjamin Rush to eliminate the death penalty in the late eighteenth through mid-nineteenth centuries.¹⁷ Several historians, including John M. Coleman, Henry Young, and Peter C. Messer, have focused on specific aspects of capital punishment in Pennsylvania. All three of these scholars examined the treason trials that occurred during the Revolutionary era when the state struggled to eliminate potential subversives.¹⁸ Louis P. Masur contended that middle class emphasis on self-control and order prompted many states, including Pennsylvania, to drastically reduce the number of capital offenses—although continuing the practice of public executions—and embrace the rehabilitative potential of the penitentiary.¹⁹ Nevertheless, none of these studies examined the significance of the executions in colonial society and the different reactions to them.

In the past decade, Michael Meranze and Gabriele Gottlieb have expanded on the study of public executions in Philadelphia in the latter half of the eighteenth century. Meranze reiterated Foucault's contention that public executions served as instruments of state terror to create a docile and obedient populace. For most eighteenth-century elites, only these public acts of terror could prevent the lower sorts from becoming

¹⁶ Herbert William Keith Fitzroy, "The Punishment of Crime in Provincial Pennsylvania," *Pennsylvania Magazine of History and Biography* (hereafter referred to as *PMHB*) 60 (July 1936): 242-69.

¹⁷ Albert Post, "Early Efforts to Abolish Capital Punishment in Pennsylvania," *PMHB* 68 (January 1944): 38-53.

¹⁸ John M. Coleman, "The Treason of Ralph Morden and Robert Land," *PMHB* 79 (1955): 439-51; Henry J. Young, "Treason and its Punishment in Revolutionary Pennsylvania," *PMHB* 90 (1966): 287-313; Peter C. Messer, "'A Species of Treason & Not the Least Dangerous Kind': The Treason Trials of Abraham Carlisle and John Roberts," *PMHB* 123 (October, 1999): 303-32.

¹⁹ Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1989), 3-8, 71-92.

insubordinate. Meranze also echoed several British historians, most notably Douglas Hay, in arguing that the primary purpose of the law was to protect property.²⁰ This analysis paralleled Gary Nash's assessment in *The Urban Crucible* that by the Revolution, the lower classes in Philadelphia increasingly resented the authority of the upper classes.²¹ If the Revolution did indeed unleash a wave of popular resentment of traditional authority, then city officials sought to reassert their power through the scaffold. Between 1776 and 1790, the city staged sixty-two executions, after hanging just forty-four individuals prior to 1776.²² Although Meranze's monograph significantly contributed to the examination of various forms of punishment in Pennsylvania, he presented public executions as another form of social control before moving on to other penal methods in the late eighteenth and early nineteenth centuries.

To provide a broader perspective of executions in colonial America, Gottlieb's dissertation compared public executions in Philadelphia with those in Charleston, South Carolina, and Boston, Massachusetts, between 1750 through 1800. Studying published pamphlets, court records, and newspaper accounts, Gottlieb concluded that the condemned in Philadelphia were overwhelmingly male, white, young, and lower class. Moreover, she agreed with Meranze that "capital punishment was an important tool of social control in early urban America" because property offenses accounted for 57

²⁰ Michael Meranze. *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill, N.C.: University of North Carolina Press, 1996), 26-29, 30-31; Hay, "Property, Authority and the Criminal Law," 17-63.

²¹ Gary B. Nash. *The Urban Crucible: Social Change, Political Consciousness, and the Origins of the American Revolution* (Cambridge, Mass.: Harvard University Press, 1979), 300-309.

²²Meranze.*Laboratories of Virtue*, 19-54.

percent of Philadelphia's executions in this period.²³ Gottlieb's work provided a wealth of information integral to understanding the identity of the individuals condemned in Philadelphia. Unfortunately, Gottlieb's research possessed several limitations, including relying primarily on the incomplete court records to identify the hanged. Moreover, she only mentioned opposition to the executions in the controversial case of Quaker loyalists John Roberts and Abraham Carlisle, who were executed in Philadelphia in 1778. Gottlieb cited the opposition of Friends such as Elizabeth Drinker, John Pemberton, and Hannah Griffiths to these executions, but she made few efforts to connect these views to her claim that executions served as a means of social control.²⁴ Because her analysis of Pennsylvania was limited to Philadelphia, she ignored the role of capital punishment throughout the colony/state. Indeed, she admitted that further study is necessary especially in regards to the issues of gender and comparing the rural and urban parts of the state.²⁵ These topics need to be addressed in order to understand the impact of capital punishment in eighteenth-century Pennsylvania.

Few scholars have contributed as much to our understanding of crime and punishment in eighteenth-century Pennsylvania as Jack D. Marietta and G. S. Rowe. Their individual and collaborative works have examined a range of criminal activities and outcomes throughout the region, often focusing on social and cultural aspects such as how race and gender factored into criminal proceedings. For example, Rowe has written several articles on infanticide, the treatment of African Americans and women in colonial

²³ Gabriele Gottlieb, "Theater of Death: Capital Punishment in Early America, 1750-1800" (PhD diss., University of Pittsburgh, 2005), iv, 104-109.

²⁴Ibid., 169-70.

²⁵Ibid., 235-37.

courts, and assault cases, but primarily focused on non-capital offenses.²⁶ *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800*, their most recent work, concluded that Pennsylvania was “a society troubled by crime and disorder” despite Penn’s noble intentions. Fear of changing demographics coupled with political pressure prompted colonial legislators to enact laws that defined more offenses as capital crimes. However, capital punishment is only one aspect of their study. Marietta and Rowe concentrated on how a variety of factors ranging from economic changes to political forces led to a rise of crime in Pennsylvania throughout the century and the inability of the legal and moral leaders to halt this growing problem. Much of their analysis focused on non-capital crimes in order to examine how ineffectively the state handled this problem. While Marietta and Rowe provide a firm basis for understanding the law and criminal cases in Pennsylvania, their analysis often ignored the importance and contentious nature of the gallows as the ultimate method of punishment.²⁷

Despite the lack of cohesiveness and deficiencies of existing research examining capital punishment in eighteenth-century Pennsylvania, the available literature suggests that the death penalty served a variety of purposes. Pennsylvania officials sought to deter criminals and also to punish the offenders and provide a source of communal vengeance against those who broke the social contract. However, nearly every aspect of the death

²⁶ Rowe, “Infanticide, Its Judicial Resolution, and Criminal Code in Early Pennsylvania,” 200-32; Rowe, “Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century,” *Journal of Social History* 22 (Summer 1989): 685-712; Rowe, “Femes Covert and Criminal Prosecution in Eighteenth-Century Pennsylvania,” *American Journal of Legal History* 32 (April 1988): 138-56; Rowe, “The Role of Courthouses in the Lives of Eighteenth-Century Pennsylvania Women,” *Western Pennsylvania Historical Magazine* 68 (1985): 5-23; Rowe, “Women’s Crime and Criminal Administration in Pennsylvania, 1763-1790,” *PMHB* 109 (1985): 335-68; Rowe and Jack D. Marietta, “Violent Crime, Victims, and Society in Pennsylvania, 1682-1800,” *Pennsylvania History* 66, no. 5 (1999): 24-54.

²⁷ Jack D. Marietta and G. S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia: University of Pennsylvania Press, 2006), 63-156, 263.

penalty was contested throughout the eighteenth century. The decision to expand the number of capital statutes and increase the use of the gallows represented a monumental shift in the interpretation of Friends' doctrines. Although Quakers could claim that the Privy Council in London forced this decision upon the colony, Quaker judges in the 1720s began to sentence more offenders to death. Thus, Quakers were torn between their traditional religious opposition to capital punishment and their desire to preserve order. Furthermore, determining who actually merited the gallows became increasingly difficult as both the laws and society changed. An increasingly diverse population and western expansion significantly contributed to the replacement of Quaker officials—who traditionally expressed reluctance to impose the death penalty—with officials who failed to share the Quaker disdain for capital punishment.²⁸ Many of their replacements were Presbyterians whose Calvinist beliefs stressed human sinfulness and the need for punishment in order to deter criminal behavior.²⁹ In addition, the French and Indian War and American Revolution fueled domestic unrest while the colony faced the threat of foreign invasion and potential subversion from within. The gallows were increasingly used in the latter half of the century because officials feared the growing threat of

²⁸ For more information on Quaker opposition to the death penalty see Masur, *Rites of Execution*, 74-76; Christopher Adamson, "Evangelical Quakerism and the Early American Penitentiary Revisited: The Contributions of Thomas Eddy, Roberts Vaux, John Griscom, Stephen Grellet, Elisha Bates and Isaac Hopper," *Quaker History* 90 (Fall 2001): 35-58; Paul Cromwell, "The 'Holy Experiment': An Examination of the Influence of the Society of Friends upon the development and evolution of American Correctional Philosophy" (PhD diss., Florida State University, 1986), 49-55, 72-79.

²⁹ Masur, *Rites of Execution*, 68-69. According to Alan Tully, the antagonism between the Quakers and the other religious denominations in Pennsylvania did not emerge until the 1750s over the issue of frontier defense. He characterized the years between 1726 and 1755 as an era of "cooperation and conciliation." Nevertheless, the course of the French and Indian War prompted resignations of most of the Quaker members of the Assembly. Alan Tully, *William Penn's Legacy: Politics and Social Structure in Provincial Pennsylvania, 1726-1755* (Baltimore: Johns Hopkins University Press, 1977), 90; Ralph L. Ketcham, "Conscience, War, and Politics in Pennsylvania, 1755-1757" *William and Mary Quarterly* 20 (July 1963): 431-37.

anarchy and an assault on property. Consequently, magistrates strove to define the condemned as inherently depraved and most worthy of death. Criminals and their supporters also used this same period to try to sway public opinion in their favor. Through petitions on their behalf, many offenders sought to recast their image by emphasizing their numerous positive qualities in hopes of escaping the gallows. In the midst of such a heated debate, no consensus could be reached on defining the condemned. Even following an execution, Pennsylvania officials possessed the power to impose additional sanctions on the condemned. The colony opted to deliver the bodies of some of the condemned to local surgeons for their anatomical research. Many Philadelphians often voiced their dissent with this decision, and even the surgeons became targets of popular unrest. Finally, the end of the eighteenth century witnessed a renewed debate regarding capital punishment. In these tumultuous decades, reformers such as Benjamin Rush and Benjamin Franklin questioned its effectiveness and sought to reform the state's laws.

Because eighteenth-century Pennsylvanians failed to reach a consensus on any of these subjects, this study seeks to add to the scholarship on capital punishment by focusing on these ongoing debates regarding the application of the death penalty and the perception of the condemned over time. Numerous sources contain evidence containing information on both capital offenders and executions throughout this period.

Pennsylvania newspapers and the sparse court records provide much of the basis for this study. The published *Pennsylvania Archives* also offer insight into those individuals designated to receive this ignominious punishment. Information on the death penalty appears in numerous manuscript collections, most notably in the Pennsylvania State

Archives and the Historical Society of Pennsylvania. These myriad sources reveal the inconsistent and often reluctant use of the gallows throughout this time. As many historians have pointed out, it is difficult to calculate crime rates to definitively show a rise in crime especially in poorly documented eras such as the eighteenth century. Even court records and indictments are insufficient because they fail to include unreported crimes.³⁰ Nevertheless, Pennsylvanians regularly claimed that the crime rate increased throughout the eighteenth century, prompting the debate about how to handle this growing threat. Individuals throughout eighteenth-century Pennsylvania questioned the need for the gallows, often paralleling modern-day debates about capital punishment. Proponents advocated a more regular use of the death penalty in order to deter crime. The decision to use the gallows often fractured society as Pennsylvanians grappled with the implications of these harsh sanctions.

Chapter one examines the development of Pennsylvania’s capital statutes from Penn’s initial plan for the colony through 1739. During this period of Quaker ascendancy, magistrates first had to accept the need to revise the laws and allow a greater number of capital offenses for the colony. Table Intro.1 contains a complete list of Pennsylvania’s capital crimes beginning with original laws of 1664 through 1794.

Table Intro.1, Pennsylvania’s Capital Crimes, 1664 - 1794

Year	Capital crimes
1664	Murder (including poisoning, lying in wait, conspiring to commit murder, or killing an unarmed individual), bestiality, sodomy, kidnapping, false witness in capital cases, treason, invading territory governed by this laws, child murdering his/her parent, burglary (third offense), and arson (offenders received either death or had to make restitution based on the court’s decision) (Duke of York’s laws)

³⁰ J. A. Sharpe, *Crime in early modern England, 1550-1750* (New York: Longman, 1984), 41-72.

1682	Murder and treason were the only capital crimes
1700	Murder, manslaughter, buggery, burglary, rape, and attempted rape (only for African Americans and enacted again in 1705-6 after the Privy Council repealed these laws)
1718	High treason, misprision of treason, murder (including petit treason), manslaughter, sodomy, buggery, rape, robbery, infanticide (including concealing the death of an infant or encouraging the mother to do so), maiming (including accessories), witchcraft, burglary, arson (house, barn, stable, or outhouse)
1756	Counterfeiting (printing or passing counterfeit bills) (added)
1767	Arson (no benefit of the clergy), counterfeiting gold or silver coins (added)
1768	Refusal to vacate Native American lands (added)
1770	Armed robbery or arson by disguised individuals (Black Boys law) (added)
1771	Refusing to disperse in a riot or preventing a proclamation ordering rioters to disperse from being read (added)
1772	Arson (now included the state house churches, schoolhouses, and libraries) (added)
1777	High treason (aiding Great Britain) (added)
1782	Attempting to create a new state within Pennsylvania's borders (added)
1783	Serving as an accessory to outlaws (added)
1786	Removed: Robbery, burglary, sodomy, buggery, and concealing the death of a bastard child. The laws do not mention it, but the capital statues passed during the Revolutionary war appear to have been dropped as well. Remaining capital crimes: Treason, murder, manslaughter, maiming, witchcraft, counterfeiting, arson
1789	Re-committing a previously capital crime after being pardoned, escaping from prison, or completing one's sentence (added)
1794	First-degree murder, treason (federal crime) (only remaining capital crimes)

Sources: *Statutes at Large*

Philadelphia Yearly Meeting initially advocated that Quakers should avoid positions that forced them to take the lives of criminals. Although the Yearly Meeting did not deny the necessity for capital punishment, it argued that non-Quaker officials should carry out

executions.³¹ By 1718, however, Friends viewed capital punishment as a lesser evil than swearing oaths based on their willingness to accept English criminal codes. Indeed, over the subsequent decades, many Quaker officials relied on the gallows to preserve order, representing a firm shift from the earliest laws for the region. By the final years of Quaker domination of the Assembly in the mid 1750s, the courts regularly imposed death penalties, including for a growing number of property crimes. Quakers viewed these offenders as offering worthwhile lessons for their members. Quaker leaders identified the worst traits that plagued their religious community through the use of published confessions and the annual epistles of the Yearly Meeting. Even minor offenses such as breaking the Sabbath potentially represented the precursors of future lawbreaking. Many of these early final confessions showed the slow but steady progression of sins that led the condemned astray and resulted in their untimely fate. Therefore, the epistles not only advised young Quakers to adhere to traditional beliefs but also provided a path for them to avoid the gallows. Quaker magistrates often took a selective approach to carrying out death sentences, hanging only the worst offenders while reserving mercy for those who were seen as more redeemable.

Chapter two focuses on the increased application of the death penalty after 1740, which prompted a new portrayal of the condemned. Between 1740 and 1769, Pennsylvania witnessed a much more prolific use of the gallows as the colony hanged seventy-five individuals (only twenty-three people had been executed prior to this time) while the Quaker influence in the colony faded. More significantly, the colony carried out

³¹ [Philadelphia Yearly Meeting?], *A Testimony and Caution to such as do make a Profession of Truth, who are in scorn called Quakers, and more especially such who profess to be Ministers of the Gospel of Peace, That they should not be concerned in Worldly Government* ([Philadelphia: n. p., 1693]).

83.3 percent of total death sentences, compared to only 43.5 percent between 1718 and 1739. These middle decades of the eighteenth century were characterized not only by rapid population growth, but the colony also dealt with several wars and tumultuous relations with the Native Americans on the frontier. Consequently, the colony expanded the capital statutes in the 1750s and 1760s to include counterfeiting, a broader definition of arson, and illegally settling on native lands. These years also witnessed a perceived rise of crime that produced no shortage of candidates for the gallows. In the midst of these changes, newspaper accounts and court records typically portrayed the condemned in highly negative terms. This approach represented a shift from the scant records before 1740 in which the condemned was presented as an example of moral depravity that anyone degenerate into. New crimes also appeared in the court dockets such as bestiality, which both intrigued and repulsed Pennsylvanians. Accounts of the condemned's life and misdeeds typically no longer portrayed them as a strong contrast to Quaker values. Instead, trial reports and pamphlets emphasized the irredeemable nature of the offender, essentially defining them as the other. Colonial officials struggled at times to determine who fell under this category. Several frontier incidents revealed the limitations of the colony in successfully labeling criminals as damnable. While colonial officials condemned the actions of Indian murderers such as Frederick Stump, the lack of cooperation from inhabitants of the western counties saved these offenders from the gallows. Therefore, Pennsylvanians disagreed on the definition of the other, which hindered the use of the death penalty at times over this thirty-year period.

The following chapter challenges the view that the condemned was inherently depraved and unable to be re-integrated into society. Throughout the eighteenth century,

criminals regularly petitioned various officials in hopes of obtaining a pardon. The lives of the condemned depended on their ability to convince the authorities that they could be reintegrated into society and overcome their past criminal behavior. From 1770 to 1794, the Pennsylvania government witnessed a flood of petitions, from both criminals and their supporters, seeking leniency. The condemned offered a variety of reasons ranging from youth to past service on behalf of the state to prove how deserving they were of a pardon. These decades also witnessed the first sustained criticism of the extensive use of the death penalty in Pennsylvania, which created a more sympathetic atmosphere for these petitioners as well. Consequently, the state often abandoned the image of the condemned as the other. Instead, officials typically endorsed the belief that the convicts could be redeemed and integrated into society. Criminals continued to struggle in casting themselves in a more positive light because other Pennsylvanians feared that pardons stripped the law of its power and placed too many unrepentant criminals back on the streets.

Even after the decision to execute a criminal, Pennsylvania witnessed an ongoing debate regarding the material culture and process of executions, namely the corpse, gallows, and hangman. Chapter four argues that Pennsylvania officials possessed the power to impose additional sanctions to dishonor the condemned, but they largely refused to inflict these extra punishments. Magistrates punished a few offenders, including suicide victims, beyond death by placing his or her corpse prominently on display. Medical practitioners also realized the importance of firsthand experience with cadavers by the mid-eighteenth century. In England, surgeons regularly received the bodies of

condemned criminals by this time.³² As prominent Philadelphians established first the Pennsylvania Hospital and then early medical schools by the 1760s, they too realized that future surgeons needed this experience. The anatomical school under Dr. William Shippen, Jr., soon attracted the most public ire when the colony began to provide cadavers for his lessons. Rumors of grave robbing proliferated in Philadelphia throughout the 1760s and 1770s, leading to multiple attacks on Shippen. Nevertheless, no similar opposition emerged in regards to the ownership of the condemned. Therefore, this silence reflected the predominant belief that a capital conviction forfeited not only the right to one's life but even the right to a proper burial after death. Yet, Pennsylvanians rarely exercised this authority, and the only two condemned criminals listed as given to Shippen both came from out of the state. Similarly, the gallows with the attendant hangman served as a visible reminder of the state's authority.³³ The location of the gallows and the identity of the executioner also remained a contested issue throughout this period. Such measures were often left up to interpretation because no consensus emerged on how to view these various apparatuses of the execution.

Following the Revolutionary upheaval of the 1770s, numerous Pennsylvanians began to question the use of the gallows. The final chapter contends that these debates resulted in a reduction in capital statutes between 1786 and 1794, but state officials refused to completely abandon the death penalty. Many elite Pennsylvanians, moving far beyond simply the Quakers who earlier had opposed the death penalty, began to embrace

³² Andrea McKenzie, *Tyburn's Martyrs: Execution in England, 1675-1775* (London: Hambledon Continuum, 2007), 17-21.

³³ Douglas Greenberg discussed how the gallows were attacked during periods when colonists questioned the legitimacy of the government in New York. Douglas Greenberg, "The Effectiveness of Law Enforcement in Eighteenth-Century New York," *American Journal of Legal History* 19 (July 1975): 187-88.

the enlightened ideals of European philosophes that capital punishment failed to eradicate the root causes of crime. These critics believed that the executions served to harden criminals and make it even more difficult to eliminate these corruptive elements. The subsequent penitentiary movement advocated a combination of confinement and labor in order to rehabilitate the offenders. Reformers contended that these more humane methods would more effectively deter crime while also creating a virtuous citizenry. By 1786, the state embraced a wave of reform that led to the gradual reduction of capital charges, culminating with the elimination of all capital crimes except first-degree murder and treason by 1794. These changes led to a drastic change in the perception of some crimes such as infanticide. After the execution of Elizabeth Wilson in 1785, the state refused to hang another woman for this offense for the remainder of the eighteenth century. Not all citizens agreed that these more compassionate methods would truly eradicate crime. Instead, proponents argued that the gallows served as a means of communal justice and deterrence, which was threatened by this wave of reform. From 1786 to 1794, the state still employed the gallows, albeit on a much more limited level. Nevertheless, this continued use revealed how state officials continued to believe that the populace would benefit from these public examples even in this enlightened age.

Similar to current debates, capital punishment in eighteenth-century Pennsylvania proved to be an extremely divisive issue as officials struggled to exert an effective means of social control and state building. Even as Pennsylvania's leadership and acceptance of the death penalty evolved over this period, Pennsylvanians as a whole expressed an uneasiness about the death penalty. The period of the greatest number of death sentences witnessed a concerted effort to recast the condemned and save them from the gallows.

Juries periodically reduced charges and opted to convict offenders of lesser crimes such as larceny or manslaughter to spare them from the gallows. Pennsylvania officials also regularly wavered on the decision to carry out death sentences throughout the eighteenth century. Even the era between 1740 and 1769, which witnessed the highest percentage of executed death sentences, colonial officials often stopped short of imposing the full brunt of the law upon the offender. Meanwhile, other Pennsylvanians believed the gallows offered perhaps the best means of restoring order and stability to the region. Between 1718 and 1794, public executions failed to gain universal acceptance and eradicate crime, despite the claims of proponents. Instead, the selective application of the death penalty sought to appease both supporters and detractors. In the midst of this periodic debate, the gallows continued to serve an important role even when reformers throughout the state strove to abandon the death penalty as a reminder of a barbaric and antiquated past.

Chapter 1 Struggling to Rule: Quakers and the Death Penalty, 1681-1739

After William Penn founded the colony of Pennsylvania, he and the Society of Friends faced an interesting dilemma. They had long been a suppressed minority in England but now had the challenge of governing the colony. Bestowed with broad powers to govern, Penn and his fellow Quakers sought to create a government that did not have to rely upon England's bloody penal code. Even in the late seventeenth century, England already had fifty capital crimes.¹ English jurists of the period claimed that the community had instilled the power to punish criminals in the magistrate who wielded the "sword of justice." Although William Blackstone, the prominent eighteenth-century English jurist, contended that use of the gallows needed to be proportionate to the severity of the offense, individuals on both sides of the Atlantic believed that the death penalty served as a just punishment for even property crimes.² Public executions served not only as a source of punishment and communal justice but also to deter other potential wrongdoers through this violent demonstration of state authority. Moreover, religious denominations such as the Anglicans emphasized the inherent sinful nature of man, and supported the state's right to take individual lives for violating the law.³ The stipulation of death for many property crimes convinced many individuals on both sides of the Atlantic that the punishments were far too severe when considering the magnitude of the crime.

¹ J. M. Beattie, "The Pattern of Crime in England, 1660-1800," *Past and Present* 62 (February 1974): 48.

² William Blackstone, *Commentaries on the Laws of England*, 12th ed. (London: A. Strahan, 1795), 4:7, 11-12; Hay, "Property, Authority and the Criminal Law," 17-26; Cohen, "In Defense of the Gallows," 148-60.

³ McKenzie, *Tyburn's Martyrs*, 25-26.

Pennsylvania provided Quakers the opportunity to codify their beliefs and alter the broad use of the death penalty, but changing demographics and a perceived rise in crime actually led to the expansion of Pennsylvania's capital statutes in 1718. Even devout Quakers realized the problems in maintaining Penn's "holy experiment." Almost immediately after the establishment of the colony, Quakers began to debate the most effective means to eliminate the criminals who seemingly threatened the colony. In the years leading up to the full-scale changes of 1718, the Pennsylvania Assembly periodically revised the criminal statutes to mandate more severe punishments, including additional capital crimes for African Americans. The colony finally publicly broke with the ideals of Penn and other early Quakers by mandating death sentences for property offenses and other serious crimes. Despite their initial reluctance to enforce the death penalty, Quaker judges and magistrates increasingly accepted the need for the gallows in order to preserve the colony. This chapter contends that this decision posed a moral dilemma for many Quakers who sought to confirm traditional beliefs while providing civil leadership against a perceived crime surge. Quakers sought to overcome this dilemma by offering a public confirmation of their traditional beliefs while simultaneously allowing a wider use of the death penalty. They even tempered this with a liberal application of pardons to mitigate the harsher aspects of the penal code. Quakers authored numerous religious publications throughout the 1720s and 1730s that offered a stark contrast to the behaviors of the condemned through the end of the 1730s. Pennsylvania Quakers believed that any individual could also be led down a similar path of self-destructive behaviors and end up on the gallows, so the executions offered valuable examples for the rest of the population. Colonial officials executed only

executed 43.5 percent of the condemned between 1718 and 1739 because they frequently granted pardons, especially those individuals who committed property crimes. Over time, the Quaker magistrates realized that new problems such as western expansion and conflict with the Native Americans made it impossible to avoid imposing the death penalty as the colony shifted away from Penn's initial ideals by the end of the 1730s.

Historians have struggled to understand this cultural shift especially since Quakers largely stayed quiet on the topic of capital punishment. While Philadelphia Yearly Meeting regularly dealt with a wide range of religious and secular matters, the Meeting rarely touched on the legal codes. Isaac Sharpless contended that Quakers believed that such a shift was acceptable because "taking of life judicially was not at that time an iniquity."⁴ Susan V. Hartshorne argued that the early progressive laws failed due to a combination of factors including the lack of sufficient prisons, a weak judiciary system, demands for reform both from home and abroad, and an increasingly diverse population.⁵ Herbert Fitzroy contended that Quakers expressed few qualms about imposing death sentences in murder cases. Nevertheless, he incorrectly claimed the governor and the provincial council ameliorated the expansion of the death penalty by pardoning all the individuals condemned for property crimes until 1736.⁶ According to Paul Cromwell, Quakers accepted the increased use of the death penalty because they had become part of the establishment and sought to minimize the conflicts with the English government. Cromwell's analysis fails to explain the sporadic use the death penalty

⁴ Isaac Sharpless, *A Quaker Experiment in Government* (Philadelphia: Ferris & Leach, 1902), 151.

⁵ Susan V. Hartshorne, "Quaker Justice in Seventeenth-Century Pennsylvania," *The Friends' Quarterly* 27 (1993): 355-61.

⁶Fitzroy, "The Punishment of Crime in Provincial Pennsylvania," 253-56.

following the expansion of the capital statutes.⁷ In contrast, Gabriele Gottlieb offered a different explanation, arguing that the shift reflected a loss of Quaker influence in Pennsylvania politics.⁸ Similarly, Marietta and Rowe contended that after 1710, the Quakers increasingly abandoned efforts to codify their moral beliefs as they composed a declining percentage of the population and because of their problems dealing with Anglicans.⁹ Joseph J. Kelley, Jr. argued that the Assembly supported this change following the adroit manipulation of William Keith. Indeed, Kelley downplayed the change altogether because the law had already abandoned some of Penn's more benign policies especially in the treatment of African Americans.¹⁰ Finally, Gary Nash's analysis of the period as a whole concluded that Quakers were forced to move beyond their early idealism to make changes as they grappled with the reality of ruling.¹¹ None of these historians examined how Quakers sought to maintain their traditional beliefs while also expanding the number of capital statutes in Pennsylvania. These early decades offer an insight into Quaker leaders and the mentalities of early Pennsylvanians while they struggled to find an effective means to eliminate crime while attempting to abandon the "bloody code" of Britain.

With the development of new religious groups such as the Levellers and Quakers during the English Civil War, the inter-regnum periods witnessed the emergence of critics of capital punishment for the first time in England. Unlike many other denominations, Quaker opposition to violence prompted many of their leaders to launch a

⁷ Cromwell, "The 'Holy Experiment'," 83.

⁸ Gottlieb, "Theater of Death," 84-85.

⁹ Marietta and Rowe, *Troubled Experiment*, 42.

¹⁰ Kelley, Jr., *Pennsylvania*, 145-47.

¹¹ Gary B. Nash, *Quakers and Politics: Pennsylvania, 1681-1726* (Princeton: Princeton University Press, 1968), 339-43.

scathing critique of the system that allowed the death penalty for mere property crimes.¹² George Fox, founder of the Quakers, argued, “hath not all this hanging men for cattle, and for money, and the creatures, when they should have been restored, or been sold for their theft, been set up since the days of the apostles, when they should have let them live to restore, or been sold for their theft, that they might have labored in the thing that is good.”¹³ This more lenient stance would allow “thieves, and lustful ones, and covetous ones” to avoid eternal damnation—a far more severe penalty than a simple hanging—if they used this additional time to repent.¹⁴ Instead, Fox contended restitution was a more appropriate way to settle the crimes because it also forced criminals to repent their crime and think about their misdeeds. Similarly, Edward Billing, Fox’s fellow Quaker, disagreed with the use of death as a deterrent for property crimes. Instead, offenders should be “forced to labour with their own hands” until the individuals could make restitution, several times the value of the stolen items, to the victim.¹⁵ These reformers sought to convince others in England of the overuse of the death penalty especially for relatively minor offenses.

As an often persecuted minority, English Friends had little opportunity to bring about real change. Although they found a sympathetic ear in Oliver Cromwell, the restoration of the monarchy squelched these attempts to revise the penal code. Instead, English Quakers increasingly disassociated themselves from the Stuart government, and England instead witnessed a rapid growth of capital crimes. Legislative changes in

¹² Robert Zaller, “The Debate on Capital Punishment during the English Revolution,” *American Journal of Legal History* 31 (April 1987): 128-44.

¹³ T.H.S. Wallace, ed., *The Works of George Fox*, vol. 1, *The Journal* (1831; reprint, State College, Pa.: New Foundation Publication, 1990), 4:183.

¹⁴ *Ibid.*, 4:32.

¹⁵ Edward Billing, *A Mite of Affection Manifested in 31 Proposals* (London: Giles Calvert, 1659), 3.

England along with their refusal to swear oaths also served to exclude Quakers from participating in public life by the end of the seventeenth century.¹⁶ Pennsylvania offered Quakers a fresh canvas on which to impose their beliefs. Moving away from the bloody code of England and the capital laws initially in effect for Pennsylvania under the Duke of York, Penn sought to institutionalize Quaker beliefs in the laws of his colony. Penn's charter allowed him to enact laws as long as they did not contradict existing English statutes. Consequently, he gained a great deal of flexibility in defining penalties for property crimes, which was the area most criticized by the English Quakers.¹⁷ Penn also solicited the advice of Quaker leaders when writing the legal code between 1681 and 1682. Their influence and Penn's own beliefs led Pennsylvania's laws to reflect the Quaker emphasis on the rehabilitation of offenders.¹⁸ To further create his "holy experiment," Penn also stressed the need to attract the right type of settlers: hard working Christians who exemplified the values that Quakers embodied. He, like many on both sides of the Atlantic, believed that an emphasis on these values would also help one avoid the path to the gallows.¹⁹

Even prior to creating his colony, Penn had long professed a belief that individuals could reform sinful behaviors and become valuable members of society. He proclaimed in 1668 that "*Forgiveness*, the hardest Lesson to Man, that of all other

¹⁶ Zaller, "The Debate on Capital Punishment during the English Revolution," 144; Meredith Baldwin Weddle, *Walking in the Way of Peace: Quaker Pacifism in the Seventeenth Century* (Oxford: Oxford University Press, 2001), 28.

¹⁷ Jean R. Soderlund, ed., *William Penn and the Founding of Pennsylvania, 1680-1684* (Philadelphia: University of Pennsylvania Press, 1983), 43-44.

¹⁸ Post, "Early Efforts to Abolish Capital Punishment in Pennsylvania," 39.

¹⁹ J. William Frost, "William Penn's Experiment in the Wilderness: Promise and Legend," *PMHB* 107 (October 1983): 580-96; Edwin B. Bronner, *William Penn's "Holy Experiment": The Founding of Pennsylvania, 1681-1701* (New York: Temple University Publications, 1962), 35-39.

Creatures most needs it.” When faced with an individual who erred in some manner, whether a misbehaving child or a criminal, one should “Punish them more by their understandings than the Rod, and shew them the Folly, Shame and Undutifulness of their faults.”²⁰ Penn’s argument offered a startling contrast to the predominant English attitudes toward the death penalty in the late seventeenth century. English officials viewed the gallows as the ultimate means to control the lower classes through deterrence and the spectacle of the execution, especially in light of the nation’s growing population. Penn broke with this generally accepted belief by proposing the possibility of forgiving the offenders and reintegrating them into society. The concept of rehabilitating criminals fitted nicely with other Quaker beliefs that emphasized the redemption of the individual. Quakers regularly advised young people about the benefits of industry, piety, and thrift in order to better follow the word of God.²¹ Consequently, the inculcation of these values could also allow individuals, including non-Quakers, to overcome their sinful ways and emerge as worthwhile members of the community. Similarly, Quakers strove to avoid the penal system in resolving disputes. Historian William Offutt has argued that the Quakers employed the local monthly meetings to mediate these disagreements in order to maintain harmonious relations.²² Although these ideals failed to gain much acceptance in England, Pennsylvania presented Penn and his fellow Quakers an unprecedented opportunity to implement this vision.

²⁰ William Penn, *Fruits of a Father’s Love; Being the Advice of William Penn to his Children, Relating to their Civil and Religious Conduct* (Philadelphia: Joseph Crukshank, 1776), 22, 28.

²¹ J. William Frost, *The Quaker Family in Colonial America: A Portrait of the Society of Friends* (New York: St. Martin’s Press, 1973), 197-98.

²² William M. Offutt, *Of ‘Good Laws’ and ‘Good Men’: Law and Society in the Delaware Valley, 1680-1710* (Urbana, Ill.: University of Illinois Press, 1995), 150-52.

As Penn prepared criminal statutes for his new colony, he struggled to incorporate Quaker beliefs, both in regards to reducing the number of capital crimes as well as curbing immoral activity. In the 1681 Fundamental Constitution for Pennsylvania, Penn and his collaborators began to devise a code of laws to govern the new colony. This document expressed the Quaker opposition to capital punishment because, “to Shed mans blood and take away his life for Worldly goods, is a very hard thing: especially considering the tenderness of the holy mercifull Christian Law.”²³ Penn instead professed that authorities should acknowledge “the little reformation this severity brings.” These sanctions simply exacerbated criminal problems because “it tempts the theif to be a murderer, when the Punishment is the same, to kill whom he robbes that so he may not discover or Prosecute him that Robbs him.” To avoid such issues, the Fundamental Constitution called for a gradated series of restitution based on the number of offenses. Even if the offender committed the same crime three times, Penn still remained unwilling to take his or her life. Instead, he ordered a sentence of a lifetime of servitude, “which is more terrible to Idle and highminded Persons, then Death it selfe and therefore better to Prevent the evill.”²⁴ The victim controlled the newly enslaved criminal to further promote justice. Although subsequent drafts revised some of Penn’s initial ideals, the final frame of the government incorporated these Quaker ideals of forgiveness and rehabilitation. Indeed, for his new colony, Penn ordered all the prisons to serve as workhouses, rather than simply hold the prisoners while awaiting a trial or the execution of a sentence, in order to reform the various offenders. Despite the need for a strong government to curb

²³Richard S. and Mary Maples Dunn et al, eds., *The Papers of William Penn* (henceforth referred to as *PWP*) (Philadelphia: University of Pennsylvania Press, 1981), 2:148-49.

²⁴*Ibid.*, 2:149.

the worst excesses of humanity, Penn deemed the death penalty as the “coarsest” aspect in administering his new colony. Nevertheless, he tacitly admitted that not all Pennsylvanians would conform to his expectations and instead chose to rely on the government to actively promote a godly society.²⁵

Pennsylvania’s penal code offered a stark contrast to the harsh statutes of England. Among the numerous crimes listed, the 1682 Pennsylvania code identified only pre-meditated murder and treason as capital offenses.²⁶ Jack D. Marietta and G. S. Rowe have argued that Quaker officials “showed no disposition to apply capital punishment in order to deter potential miscreants” especially in property crimes.²⁷ Consequently, crimes such as rape, burglary, and arson, which later became capital offenses, mandated less severe penalties at this time. Rapists lost one-third of their estate, were whipped and spent one year in the house of correction. Second offenses mandated life imprisonment rather than execution. Arsonists were required to make restitution of the lost property at double the value as well as suffer one year incarcerated in the house of correction and any corporal punishment that the court determined was necessary. Thieves were required to make restitution at four times the value of the stolen goods in addition to serving time in the house of correction. If unable to make restitution, the criminal could then receive seven years in the house of correction. In addition, Quakers relied on humiliation to deter criminals. Thieves could be forced to wear the letter ‘T’ prominently on their clothing in order to announce their misdeed to everyone they encountered. Otherwise, the criminal

²⁵ *Colonial Records of Pennsylvania*. (hereafter referred to as *CR*) (Philadelphia: Joseph Severns & Company, 1852-1853), 1:xxii, xxxi.

²⁶ *CR*, 1:xxxii.

²⁷ Marietta and Rowe, *Troubled Experiment*, 35.

codes focused a great deal on moral crimes such as drunkenness, bigamy, fornication, gaming, sports, lotteries, and the theater. Pennsylvania's penal system also pursued less strict penalties such as labor in the house of corrections for offenders through the end of the seventeenth century. This carefully designed balance sought to ensure Penn's plan of creating a godly society in which "a Magistracy is a terror to the evill doer & a praise to him that does well, all must goe well."²⁸ Through a series of fines or brief jail sentences, the courts hoped to regulate the behavior of the population and truly create a godly community consistent with their beliefs.²⁹ Even the prisons were meant to be a dramatically different experience than their English counterparts. English prisons compelled inmates to pay a variety of fees for their upkeep, which the vast majority of lower class prisoners struggled to meet. Consequently, they suffered in often squalid circumstances until they could gain release. In Pennsylvania, jails served as workhouses not only for criminals but for vagrants as well. Although the prisoners were meant to work during their stay, they were not required to pay fees for food and lodging.³⁰ Thus, Pennsylvania's earliest penal code displayed both the Quaker emphasis on industry and compassion.

Because the new laws represented a sharp contrast with English penal practices, Quaker leaders reminded other Friends to adhere to these views on criminal justice prior to 1700. In 1693, Philadelphia Yearly Meeting's epistle urged Quaker magistrates to avoid employing "any Corporal Punishment." Furthermore, Quakers should avoid positions that forced them to enforce capital statutes "Because Christ hath expressly

²⁸ *PWP*, 3:94.

²⁹ *Statutes at Large*, 1:128-35.

³⁰ *CR*, 1:xxxii.

forbid it to his Followers, To take an Eye for an Eye, or a Tooth for a Tooth, nor to resist Evil; for the same Reason, not to take Life for Life, or Limb for Limb.”³¹ Although some rare cases did call for corporal penalties, Yearly Meeting reminded its members that “it [is] altogether improper for any who are sincere to their Profession, (who are in scorn called *Quakers*) to be any manner of way concerned in any part of Office-bearing in worldly Government or Execution of Justice, that toucheth the Body or Life of Man.”³² Rather than risk contradicting their beliefs as well as jeopardizing their preeminent position in the colony, Quakers should instead allow non-Friends to carry out these loathsome duties. Nevertheless, Quakers held numerous positions of power throughout the colony in these early days, which forced them to mediate a path between their religious beliefs and the need to preserve the peace.

Despite the lofty ideals of the Quaker founders, a perceived rise in crime soon prompted the assembly to amend the laws. Before the end of the 1680s, signs emerged that the “holy experiment” was in danger.³³ In 1684, Nicholas More, one of the judges whom Penn commissioned for the Provincial Court, reported “There {is} here Mutch robbery in City and Countrey Breaking of houses, and stealing of Hoggs.” Perhaps in response to the lax criminal prosecution by Quaker officials, More bemoaned that “Many persons do Murmure for want of Justice.”³⁴ Robert Turner, a wealthy Quaker merchant and friend of Penn, informed the proprietor that no other society exceeded the “growing debauchery that’s Rooted here.” Turner subsequently notified Penn that “wickedness

³¹[Philadelphia Yearly Meeting?], *A Testimony and Caution to such as do make a Profession of Truth*, 2.

³² Ibid.

³³ Nash, *Quakers and Politic*, 46-47.

³⁴ *PWP*, 2:608.

grows & Vice so much Raignes in the grocest manner to the sorrow and Reproach of gods people & is a stumbling block in the way of many.”³⁵ From across the Atlantic, Penn shared these fears that the lenient laws failed to produce the godly population he envisioned for his colony.³⁶ In response to letters from Pennsylvania Quakers, Penn wrote, “there is no place more overrun with wickedness. sins so very Scandalous, openly Committed in defiance of law & virtue. facts so foul, I am forbid my Common modesty to relate them I do therefore desire & charge you, the Govr & Council for the time being, to issue forth some act or acts of State, forth with to suppress. . . the Growth of vice & loosness And that you take care that Justice be Impartially done upon Transgressors, that the wrath & vengeance of God fall not upon you, to Blast your so very Flowrishing begining.”³⁷ Many early settlers feared that the licentious behavior promoted even more dire criminal activities. Consequently, Quaker authorities believed it was necessary to address the myriad new problems that now plagued the colony.

In the final decades of the seventeenth century, criminal activity did appear to rise in Penn’s colony although it usually was not the more serious crime that demanded a subsequent increase in public executions. The lack of court records makes it difficult to assess the spread of crime for most of this early period because complete dockets only date from the 1760s. William Offutt’s examination of criminal behavior in early Pennsylvania found violent crimes peaked in the final years of the 1690s.³⁸ Minor offenses dominated the dockets in Chester and Bucks counties in the 1680s and 1690s as

³⁵ PWP, 3:511, 533.

³⁶ Gipson, *Crime and its Punishment in Provincial Pennsylvania*, 6.

³⁷ PWP, 3:518.

³⁸ Offutt, *Of “Good Laws” and “Good Men”*, 198.

magistrates primarily dealt with cases of drunkenness, minor theft, morality crimes, and assault. Indeed, the rise in immoral activities in Philadelphia prompted the grand jury in 1695 to recommend the need for the construction of stocks and a cage for local drunkards “for the Suppressing of Vice.”³⁹ Offenders such as Martha Rowland who engaged in a “Loose and Idle Life” often faced the choice of obtaining gainful employment or banishment.⁴⁰ Either alternative helped to fulfill Penn’s dream by either creating a solid citizenry or relieving the colony of a reviled deviant.

Perhaps reflecting the Quaker emphasis on mediation, the colony rarely used the gallows prior to the 1718 revisions. The colony executed only two individuals for murder prior to 1718, both in the seventeenth century. Judith Roe of Kent County, one of the Lower Counties currently in Delaware, was the first individual hanged under Penn’s laws. Her four children testified that she murdered an unknown boarder with an ax before robbing him and disposing of his body in a nearby body of water. Roe evidently had such an imposing reputation that when her husband returned and learned about the murder, he opted not to pursue any inquiry because “his Wife was a Furious Woman and he was affraide.” Derrick Jonson, a Swedish settler, in Bucks County received a death sentence for murder. His wife and sister also initially faced charges as his accessories although they both gained acquittals.⁴¹

Colonial officials typically sought to find other solutions, including relying on the Quaker emphasis on mediation, which could prove frustrating to non-Quakers. One early

³⁹ Edwin B. Bronner, “Philadelphia County Court of Quarter Sessions and Common Pleas, 1695,” *PMHB* 77 (October 1953): 468.

⁴⁰ *Ibid.*, 471.

⁴¹ *CR*, 1:227, 252-53, 379; *PWP*, 3:191; G. S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and the Forging of a Democratic Society, 1684-1809* (Newark: University of Delaware Press, 1994), 41-42.

incident of rape in Philadelphia ended with the victim, Elizabeth Henbury, marrying her rapist, William Smith, in order “to save ye man’s life.”⁴² If they were to marry, then it was believed that she could no longer testify against Smith. Rape still was not a capital offense at this time and the arrangement suggests a great deal of familiarity between the two prior to marriage, but Henbury’s decision to quickly enter into this union—even if she was pressured into doing so—reveals the pervasive opposition to harsh physical sanctions, including death. When Governor Benjamin Fletcher attempted to increase the number of capital crimes in the 1690s, he faced stiff opposition from Quaker leaders such as David Lloyd. Even before Robert Turner’s claims of lawlessness plaguing the colony in 1697, the Assembly assured Fletcher that prior to his arrival “the Courts of Justice wer[e] open in all the Counties of this governmt and Justice duely executed, from the highest crimes of Treason & murder to the determining the Lowest difference about propertie...”⁴³ Fletcher disagreed and contended that the laws needed to be reformed since “manie of ym are repugnant to the Laws of England.” He complained that Penn incorrectly received the “power of Life & death” because this was the sole “Regalia of the Crown.” The colony also lagged behind in carrying out justice because “some Criminalls have Lain years in prison for want of execution.”⁴⁴

Fletcher’s complaints were only the first salvo as Quaker officials soon faced a deluge of challenges while they attempted to use their religious beliefs to create an orderly society. Changing demographics in the first decades of the eighteenth century

⁴² CR, 2:11.

⁴³ CR, 1:376.

⁴⁴ Samuel Hazard, ed., *Pennsylvania Archives* (hereafter referred to as *Pennsylvania Archives* with the appropriate series number), 4th series (Philadelphia: Joseph Severns, 1852), 1:158, 159; CR, 1:377.

alarmed many residents, especially the increase in African Americans. Although Quakers emerged as some of the first abolitionists in the late seventeenth century, the majority failed to condemn slavery.⁴⁵ By the early decades of the eighteenth century, slaves composed approximately seventeen percent of Philadelphia's population. Even as this percentage declined over later years, enslaved African Americans remained a potentially divisive group within the colony's borders.⁴⁶ Therefore, the Assembly followed the example of colonies like Virginia by enacting various laws to keep whites and blacks from interacting socially and also to prevent African Americans from becoming disorderly. In 1698, the Chester County Quarter Sessions tried Robbin, an African American man, and Eurphaim Chattle, a white woman, for bastardy. During the trial, both defendants admitted that Chattle seduced Robbin with the promise of marriage. Consequently, the court ordered her to receive twenty-one lashes. The court also ordered Robbin "never more to meddle with any white woman more upon the pains of his life."⁴⁷ In this case, he escaped with no immediate punishment, but any subsequent transaction would produce a much more severe penalty. More deadly examples of the interaction between whites and blacks appeared sporadically throughout these early years. In 1700, Jack, an African American, fatally shot a young white man.⁴⁸ Although the final verdict is unknown, in a society that employed slave labor, such an attack could easily be viewed as a threat to the social order. Pennsylvania's laws went beyond forming a slave code

⁴⁵ Jean R. Soderlund, *Quakers & Slavery: A Divided Spirit* (Princeton: Princeton University Press, 1985), 4-5.

⁴⁶ Gary B. Nash and Jean R. Soderlund, *Freedom by Degrees: Emancipation in Pennsylvania and Its Aftermath* (New York: Oxford University Press, 1991), 15-16.

⁴⁷ December 1698, *Records of the Court of Chester County* (Danboro, Pa.: Richard T. and Mildred C. Williams, 1972), 28.

⁴⁸ *CR*, 2:11, 18.

because all African Americans, including free blacks, were treated differently by these new statutes because the Assembly used race rather than status as the primary factor in determining one's standing before the law.

The Assembly opted to revise the penal code to address the perceived threat of criminal actions by African Americans, including free blacks, beginning in 1693.

Initially, the Council authorized Philadelphia constables to arrest any African American traveling without a pass on Sunday. The African American offender would receive thirty-nine lashes the next day in hopes that this would “prevent further mischeifs that might ensue upon such disorders of negroes.”⁴⁹ A few years later, the law began to treat African Americans much more severely than their white counterparts because the colony made it a capital crime for any African American to rape a white woman.⁵⁰ Historian A. Leon Higginbotham persuasively argued that Pennsylvania's laws sought to bestow lesser status upon African American offenders. For example, the new statutes of 1697 mandated castration for any African American man, including free black men, who attempted to rape a white woman. Denied the right of a trial by their peers, they instead suffered trials under special courts, consisting of two justices of the peace and six local freeholders.⁵¹ Meanwhile, the regular courts tried white rapists who received thirty-one lashes and seven years of hard labor for a first offense. Repeat offenders would suffer castration, as

⁴⁹ *CR*, 1:381.

⁵⁰ *Statutes at Large*, 1:225.

⁵¹ This was again passed in 1700, but rejected by the Queen in Council in 1706 because it violated English law. Castration was not unique to Pennsylvania as Virginia and North Carolina both passed laws allowing it for punishment in cases of rapes by enslaved African Americans during the eighteenth century. A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (New York: Oxford University Press, 1978), 281-82; Rowe, “Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century,” 685-87; Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill, N.C.: University of North Carolina Press, 1996), 305.

well as the additional stigma of having the letter “R” branded on their foreheads. Higginbotham contended that the laws provided no protection to black women thus further defining them as inherently different than white women who were worthy of the law’s protection.⁵² After the Privy Council of England rejected these new laws, the Assembly enacted another statute in 1700, which mandated death for any African American who committed murder, buggery, burglary, or rape of a white woman. The Privy Council again disallowed these new laws, but the Assembly remained undeterred and passed a new law in 1706 that again mandated special trials for all African American accused of the same four capital crimes. The Assembly did enact harsher penalties for African Americans convicted of attempting to rape a white woman. They now would suffer thirty-nine lashes, the branding of the letter “R” on the forehead and banishment from the colony rather than castration to mitigate some of the harsher elements of the earlier code. Theft of goods worth more than £5 would result in a similar punishment except with the thief marked with a “T.” Any African American who stole goods worth less than £5 would receive up to thirty-nine lashes. If the criminal was a slave, then his or her master would be expected to compensate the aggrieved party.⁵³ The colonial legislators drew a distinction in this regard between burglary and robbery, possibly fearing that slaves were more likely to break homes than commit these crimes on the roads.⁵⁴ These laws revealed how the Assembly began to shift away from the Quaker

⁵² Higginbotham, *In the Matter of Color*, 282; *Statutes at Large*, 2:7.

⁵³ This law remained in effect until 1780 when the state passed “An Act for the Gradual Abolition of Slavery,” which stipulated that all African American criminals would be tried and punished “in like manner” as the rest of the population. *Statutes at Large*, 2:77-79, 233-36; 10:70.

⁵⁴ The 1700 statutes made little differentiation between these crimes for white offenders. Those who committed burglary or robbery received twenty-one lashes and had to pay similar amounts in restitution. The most notable difference was between burglaries committed during the day and night. Day-time

ideals of forgiveness and rehabilitation. After committing a crime, African Americans faced sale out of the province because masters lost trust in them. Consequently, the threat of banishment sought to permanently remove even trivial black offenders from Pennsylvania society.⁵⁵

Despite the newly written legal sanctions of 1700 against African Americans, the Quaker-dominated government remained reluctant to inflict these penalties. Following the death sentences of two slaves for burglary in 1707, both men eventually had their sentences commuted to transportation due to the intercessions of their masters. Rather than acting out of compassion for the condemned, the Council agreed that their execution would “be of very great Damage to the Petitr.” The slave owners promised to first “inflict on ym. such Corporal Punishmt. as may be requisite, for a Terror to others of their Colour.”⁵⁶ In order to deter other slaves and free blacks from committing similar offenses, the offenders were paraded through the streets behind a cart and whipped before the city’s residents on three consecutive market days. During the evenings, they were housed in irons and kept in jail until their sentence had been fulfilled. Finally, their masters had arranged to transport the two men out of the colony.⁵⁷ Even as Quaker officials resisted expanding the number of capital statutes over the next decade, they made no effort to revise the legal treatment of African Americans.

offenses called for six months of hard labor while night-time burglars received one year of labor. Robbers only had to wear a “T” to signify their offense for six months. Colonial authorities did recognize burglaries as perhaps a more significant threat as a second offense resulted in imprisonment for life. *Statutes at Large*, 2:9-12.

⁵⁵ Much of this analysis closely follows the views of Philip J. Schwarz’s study of eighteenth-century criminal codes regarding slaves. Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Codes of Virginia, 1705-1865* ([Baton Rouge]: Louisiana State University Press, 1988), 66-91, 114-64.

⁵⁶ *CR*, 2:405.

⁵⁷ *CR*, 2:405-406.

Although only African Americans faced a greater number of capital crimes in the early decades of the eighteenth century, fears about the pervasiveness of crime prompted the legislature to revise the penal code in 1700, but still without expanding the number of capital statutes. Instead, the Assembly relied on mutilation, branding, and longer jail sentences to curtail criminal activities. These harsher penalties have been described by one historian as “so draconian that the Privy Council in 1705 disallowed many statutes for being unusually cruel and repugnant to the laws of England.”⁵⁸ The Assembly did eventually pass new laws mitigating some of the harsher aspects of the 1700 laws. The omission of penalties such as castration prompted the government in London to approve the new statutes. Nevertheless, the Assembly refused to expand the use of the death penalty because many Quakers refused to accept the need for an increased use of the gallows. In 1710, Yearly Meeting echoed Penn’s calls for action when it asserted “The Laws of Men may Curb & Punish the wrong & injustice.” Although the Meeting members ostensibly dealt with the rise of political factions, they expressed their “Just Abhorrence of” those who would “Sacrifice the Peace of a Province.” This condemnation included those who violated God’s wishes by refusing to pursue “Lawful & honest Employments.”⁵⁹ It took a controversy over the practice of affirmation to finally convince the Quaker legislature to revise the penal code to include more capital statutes.

Opposition to capital punishment was only one example of how Penn split with the predominant view in England. He, and other Quakers, also championed the practice of affirmation rather than swearing oaths. Based on their interpretation of scripture, the

⁵⁸Offutt, *Of “Good Laws” and “Good Men”*, 198.

⁵⁹ Philadelphia Yearly Meeting, 19 September 1710, Quaker Collection, Magill Library, Haverford College, Haverford, Pa. (hereafter referred to as Quaker Collection).

Quakers had vehemently opposed the practice of swearing oaths in England and often faced harsh consequences as a result.⁶⁰ In seventeenth-century England, failure to swear the Oath of Supremacy could result in forfeiture of all goods and life in jail or until the king elected to release the offender. In order to prevent the dissenters from holding office, the Restoration government passed several acts requiring office holders to swear oaths.⁶¹ The colony's initial laws did not require any oaths and instead allowed individuals the option to affirm their veracity. After disputing this matter with Governor Fletcher, the 1696 laws allowed office holders and jurors to attest rather than swear oaths upon performing their civic duties.⁶² The Privy Council granted Pennsylvanians the option to affirm or swear in 1703. Penn and his fellow Quakers vehemently protested the decision to allow both practices because it would force Quaker officials to administer the hated oaths, even if they did not take them themselves.⁶³ Some Quakers even pushed for a more radical form of affirmation, which left out God's name in order to avoid too closely resembling an oath. The Quaker-dominated Assembly passed two affirmation bills between 1700 and 1705, which were both rejected by the Privy Council.⁶⁴

⁶⁰ Marietta and Rowe, *Troubled Experiment*, 28-30; J. William Frost, "The Affirmation Controversy and Religious Liberty," in *The World of William Penn*, ed. Richard S. Dunn and Mary Maples Dunn (Philadelphia: University of Pennsylvania Press, 1986), 304-10. Quakers in England often were able to find ways around the practice of swearing oaths especially with the cooperation of sympathetic neighbors prior to the Affirmation Act of 1697. Adrian Davies, *The Quakers in English Society, 1655-1725* (Oxford: Clarendon Press, 2000), 192-95.

⁶¹ Craig W. Horle, *The Quakers and the English Legal System, 1660-1688* (Philadelphia: University of Pennsylvania Press, 1988), 49-51.

⁶² *Statutes at Large*, 1:123, 213; J. William Frost, "Religious Liberty in Early Pennsylvania," *PMHB* 105 (October 1981): 437-38.

⁶³ Winfred Trexler Root, *The Relations of Pennsylvania with the British Government, 1696-1765* (New York: J. F. Tapley Co., 1912), 239-41.

⁶⁴ Craig W. Horle, et al, ed., *Lawmaking and Legislators in Pennsylvania: A Biographical Dictionary* (Philadelphia: University of Pennsylvania Press, 1997), 2:30.

The debate surrounding affirmation grew heated in the 1710s due to a growing Anglican population in Pennsylvania as well as efforts in England to undo the Test Act, and no longer allow Quakers to continue the practice of affirmation.⁶⁵ This steadfast commitment to the right of affirmation often provoked condemnation from the Anglicans. John Talbot, an Anglican minister, condemned the Quakers as “worse than Infidels” and saw them only looking out for their own interests.⁶⁶ Similarly, George Ross, an Anglican clergyman, in Chester, wrote that “Quakerism is generally professed in Pensilvania, and in no County of that province does the haughty Tribe of that persuasion appear more rampant than where I belong.” Another critic denounced the Quakers as “those pests.”⁶⁷ Finally, Anglicans often claimed the Quakers were unable to uphold positions of authority in the colony because of their opposition to the death penalty. With the growing Anglican population by the late seventeenth century, this became a bitter issue between the two sides who frequently clashed over the appointment of Quaker justices.⁶⁸

Pennsylvania Anglicans exploited the affirmation question to assert that Quaker officials would not effectively carry out the law, especially in regards to death sentences. Similarly, Anglicans seized this issue to claim that the Quaker dominated government was illegitimate. In 1711, several Anglican justices of the peace refused to serve in their office since “they don’t think themselves safe” in allowing Quakers to affirm rather than

⁶⁵ Lieutenant Governor Charles Gookin repeatedly came into conflict with numerous Quakers throughout his tenure over a myriad of issues including affirmation. For a more thorough analysis of Gookin’s conflicts with the Assembly, please see Nash, *Quakers and Politics*, 312-19.

⁶⁶ Quoted in Deborah Mathias Gough, *Christ Church, Philadelphia: The Nation’s Church in a Changing City* (Philadelphia: University of Pennsylvania Press, 1995), 15.

⁶⁷ George Ross to the Secretary, 30 December 1712; John Humphreys to the Secretary, 12 October 1714, *Historical Collections relating to the American Colonial Church*, ed. William Stevens Perry (Hartford, Conn.: Church Press, 1871), 2:69, 77.

⁶⁸ Rowe, *Embattled Bench*, 39-45.

swear.⁶⁹ Lieutenant Governor Charles Gookin informed the Assembly in 1716 that he would only accept a limited use of affirmation. Even those who affirmed had to use the name of God. Gookin also claimed that the practice was unacceptable for “jurors and witnesses in criminal trials.” He finally threatened to remove Quakers from office by not allowing them to affirm in order to hold office.⁷⁰ Even in the face of such fervent opposition, Pennsylvania Quakers remained committed to the practice of affirmation. In 1710, Philadelphia Yearly Meeting informed the various meetings throughout the region “that many Friends are under great Dissatisfaction, concerning the affirmation, desiring that some Expedient may be sought in the Wisdom of Truth for Relief therein.”⁷¹

However, it was the case of an untried murder that created an irreparable conflict between the Assembly and Lieutenant Governor Charles Gookin. In 1715, Hugh Pugh and several accomplices murdered John Hayes, a Chester County justice of the peace. James Logan described Hayes as “a young man of good Credit” compared to Pugh who displayed “ill Character.” Logan argued that Hayes only sought to stop a fight, rather than instigate the skirmish. As he moved in amidst the crowd, the vindictive Pugh attacked Hayes with a club to settle a prior grudge.⁷² According to historian Joseph J. Kelley Jr., this band of marauders “continued to terrorize the area, defiantly claiming it was not in the power of the government to punish any capital crime.”⁷³ Colonial officials viewed support for the murderers as a direct challenge to their authority. The Chester County

⁶⁹ CR, 2:531.

⁷⁰ Horle, ed., *Lawmaking and Legislators in Pennsylvania*, 2:31.

⁷¹ Philadelphia Yearly Meeting, 19 September 1710, Collection 976, Roll 7, Quaker Collection.

⁷² James Logan to Henry Goldney, 21 July 1718, Logan Papers, 1717-28, 30, Historical Society of Pennsylvania (hereafter referred to as HSP), Philadelphia, Pa.

⁷³ Joseph J. Kelley, Jr., *Pennsylvania: The Colonial Years, 1681-1776* (Garden City, N.Y.: Doubleday & Company, 1980), 141.

Quarter Sessions fined three men who refused to assist the constable in the apprehension of Pugh and Lazarus Thomas, his chief accomplice.⁷⁴ The Quarter Sessions court forced both Aubrey Thomas, possibly a relative of Lazarus, and John Moore to apologize for their actions. Moore “Acknowledge[d] my Foolishness” in disparaging the testimony of Joseph Jones, a witness against Thomas. Rather than repeat this attack on the legitimate authority in the colony, both individuals promised to behave more appropriately in the future.⁷⁵ Unfortunately, the court dockets remain silent on what exactly they did to earn this official reprimand. Nevertheless, Pennsylvanians remained divided over this murder, which led to increased calls for a final resolution through a public execution in order to restore order.

The divisive nature of the case soon paralyzed the Chester County Court of Oyer and Terminer. By June 1716, the court still had taken no action despite Pugh’s petition begging to be tried for his crime.⁷⁶ Pugh, Thomas, and their supporters challenged the court’s ability to punish them because the jurors and judges were not required to swear oaths. The Oyer and Terminer justices hesitated to resolve this case, citing the ambiguity of the law regarding the practice of affirmation.⁷⁷ Consequently, the case remained unresolved for the next several years as the Assembly, judges, and Lieutenant Governor Charles Gookin debated the justness of trying Pugh and Thomas while allowing the

⁷⁴June 1715, Chester County Quarter Sessions Papers (henceforth referred to as CCQSP), Chester County Archives, West Chester, Pa.

⁷⁵May 1718, CCQSP. Logan did identify a John Moore who was the “old Antagonist” of the Quakers as the prosecutor in the case. It is unlikely that he was the same individual who was also chastised by the court, suggesting that he was an Anglican. James Logan to Henry Goldney, 30 May 1718, Logan Papers, 1717-28, 20, HSP.

⁷⁶CR, 2:613.

⁷⁷Ibid., 2:615.

practice of affirmation.⁷⁸ When the court finally sentenced the two men to death in 1718, they immediately appealed over the issue of affirmation. Because the current act allowing affirmation was passed after the murder took place, Pugh and Thomas contended the decision was “Repugnant & Contrary to the Laws, Statutes & Rights of your Majestie’s Kingdom.”⁷⁹ Their impassioned plea convinced at least one member of the council to urge the colonial government to grant a temporary reprieve, so they could receive advice from London on how to proceed. Other political leaders such as Gookin’s replacement, William Keith, and David Lloyd, countered their claims because of

the indolence of a Former administration, which unhappily neglected to bring the Criminals sooner to Justice, they were so hardened & became so audacious as still to continue in their publick Rioting, Caballing & Fighting , to the insupportable burthen , evill Example & manifest Prejudice of the whole people of this Province, & that even they spared not Impudently to Boast that they well knew it was not in the power of the Government to try any Capital Crime according to the Common & Statute Laws of England, which they would claim as their right.⁸⁰

This troublesome case threatened to undermine the colony’s ability to punish offenders as well as the hard-fought right of affirmation for Quakers.

Quaker officials could ill afford any additional delays while they contended with numerous challenges to their authority. They needed to actively defend the right of affirmation or risk losing it. The Assembly appealed to George I and claimed that their legal system conformed “as near as possible...to the Constitution and Practice of the Laws of England.” The members argued that the practice of affirmation was consistent with English law as they mounted a fervent defense of their religious beliefs. If the king

⁷⁸ Rowe, *Embattled Bench*, 59-62.

⁷⁹ *CR*, 3:41.

⁸⁰ *Ibid.*, 3:42.

refused their appeal, then Pennsylvania would be unable to punish the “loose vagrant People” who “oppose and break through the known Laws of Society and Humanity.”⁸¹ In the aftermath of the uproar over the execution of Pugh and Lazarus, Philadelphia Yearly Meeting asserted in 1724 that the first Quakers had migrated to Pennsylvania with the expectation of possessing the same “Rights and Priviledges” as their English counterparts.⁸² Thus, Pennsylvania Quakers claimed they only wanted the rights that were guaranteed to them under Penn’s initial charter.

Quakers typically dismissed the opposition to the execution of Pugh and Thomas as the work of Anglican obstructionists who sought to undermine the government. James Logan contended that any attacks upon affirmation “would have unhinged our whole Govmt.”⁸³ He also pointed out that two justices were Anglicans, including John Moore “our old Antagonist” who raised few objections during the trial.⁸⁴ Logan further asserted the legitimacy of the death sentence because it was “to ye Satisfaction of almost all of ye honest part of ye Countrey.”⁸⁵ Logan instead attributed the uproar to the work of a few Anglicans, most notably John Talbot, the rector of St. Mary’s church in Burlington, New Jersey, and a prominent missionary. Talbot consistently antagonized Quakers, even asserting he emigrated to the colonies in order to aid “those poor people, who lived in Darkness” because of “Heathenism, Atheism, and Quakerism.”⁸⁶ Although Talbot did not

⁸¹ *Pennsylvania Archives*, 8th series, 2:1261.

⁸² *The Case of the People called Quakers in the Province of Pennsylvania* (Philadelphia: Andrew Bradford, 1724), 2.

⁸³ James Logan to Henry Goldney, 2 May 1718, Logan Papers, 1717-28, 17, HSP.

⁸⁴ *Ibid.*, 30 May 1718, 20, HSP.

⁸⁵ *Ibid.*, 21 July 1718, 30, HSP.

⁸⁶ George Morgan Hills, “John Talbot, the First Bishop in North America,” *PMHB* 3 (1879): 32-55; John Talbot to the Secretary of the Society of the Propagation of the Gospel, 28 October 1714 in *Collections of the Protestant Episcopal Historical Society for the year 1851* (New York: Stanford & Swords, 1851), 67.

serve as a juror in the case, he riled the opposition against the decision, and Quakers in general, especially among “some persons of ye lower rank.”⁸⁷ Quaker detractors such as Talbot even alleged that an Anglican “cannot knock a Quaker on ye head without being hang’d for it.”⁸⁸ As the debate surrounding religious differences grew increasingly heated, the practice of affirmation came under additional scrutiny.

It took the appointment of Sir William Keith as governor and the willingness of moderate Anglicans and Quakers to compromise to finally settle this contentious issue.⁸⁹ The new governor quickly sought to assure the Quaker population that the royal family held them in good regard and to confirm his own support for the verdict in the Pugh and Thomas case. He summed up the justness of their sentence and cast the perpetrators in a negative light,

With what a confus’d Mixture of Pity & horreur will not his Mind be fill’d, when it comes to be set forth how that in cold Blood this poor unhappy Object by the Instigation of the Devil did willfully and most inhumanly murder his innocent Neighbour?

Will not every by Stander be ready to start and shrink at the monstrous appearance of a Man thus represented in the Shape of a Devil?⁹⁰

Keith also advised the Quakers in the Assembly to revise the legal code in order “to make such alterations and Additions as shall be found necessary for Perfecting the Constitution and good order of Government.”⁹¹ The Assembly agreed that the disqualification of Quakers over the simple fact of swearing oaths would present “too great a burden” for the

⁸⁷James Logan to Henry Goldney, 30 May 1718, Logan Papers, 1717-28, 19, HSP.

⁸⁸Ibid., 21 July 1718, 30.

⁸⁹Nash, *Quakers and Politics*, 331.

⁹⁰William Keith, [1718?], Pennsylvania MSS, Assembly & Provincial, Large Folio Collection, HSP.

⁹¹CR, 3:26.

rest of the colonists.⁹² Indeed, Quakers played an active role in drawing up these new laws. David Lloyd of Chester County, a leader of the Assembly and sometimes representative to Philadelphia Yearly Meeting, helped push through a bill to “put in Practice here, such Statutes of England as the Circumstances of this Place hath Occasion for.”⁹³ Although Quakers composed a shrinking portion of Pennsylvania’s population, they dominated the Assembly in these early decades. Friends composed approximately 85 percent of the Assembly in 1718. Many of the leaders of Yearly Meeting served in the Assembly as well.⁹⁴ Rather than use their influence to squelch these proposed changes, Quakers largely endorsed the new codes. In return for the right of affirmation, Quakers approved the death penalty for individuals in Pennsylvania found guilty of murder, treason, manslaughter, serious maiming, highway robbery, burglary, arson, sodomy, buggery, rape, infanticide (murdering the infant, hiding a stillborn child, or advising someone to commit infanticide), and witchcraft. According to Roger Lane, these changes along with several later revisions left Pennsylvania with the most capital offenses of any colony in British North America—a far cry from Penn’s earlier vision.⁹⁵

The Assembly did mitigate some of the laws harsher effects through the medieval practice of benefit of the clergy. This exception originally allowed the clergy to avoid the gallows by reading Psalm 51 as proof of their literacy.⁹⁶ Eighteenth-century Pennsylvanians waived the literacy requirement and instead allowed convicted felons to invoke it for a variety of offenses. Manslaughter, technically a capital crime, allowed the

⁹² *Statutes at Large*, 3:200.

⁹³ *Pennsylvania Archives*, 8th series, 2:1258.

⁹⁴ Horle, ed., *Lawmaking and Legislators in Pennsylvania*, 2:133.

⁹⁵ *Statutes at Large*, 3:199-214; Roger Lane, *Murder in America: A History* (Columbus: Ohio State University Press, 1997), 60.

⁹⁶ Linebaugh, *The London Hanged*, 53.

guilty party simply to plead benefit of the clergy and be branded rather than hanged.⁹⁷

However, the new laws excluded certain crimes such as burglary from this exception. In addition, individuals only received this mercy once as subsequent capital convictions would result in the loss of their lives.⁹⁸

Many contemporary observers believed that these revisions were justified especially in the wake of an influx of non-Quaker immigrants by 1720 who were blamed for the perceived rise of crime. From the earliest days of founding Pennsylvania, Penn heavily marketed the colony with the hopes of attracting more settlers. Promises of economic success and religious liberty made Philadelphia a major port of entry for European immigrants. In addition to English immigrants, German and Scots-Irish settlers soon began to flood the colony and moved into the frontier regions. As early as the 1720s, Quakers composed only an estimated one-third of the colony's population.⁹⁹ The newcomers settled the backcountry, leading James Logan to complain that "the Palatines crowd in upon us and the Irish yet faster."¹⁰⁰ The Transportation Act of 1718 allowed England to exile convicted criminals overseas, which added to this wave of immigration. Pennsylvania became one of the primary destinations of these criminals, further fueling the fears of the local population.¹⁰¹ In his journeys in the mid-eighteenth century, Gottlieb Mittelberger claimed many "gallows' birds and wheel candidates" relocated to

⁹⁷Fitzroy, "The Punishment of Crime in Provincial Pennsylvania," 257-58.

⁹⁸ *Statutes at Large*, 3:203-204, 206-207, 208.

⁹⁹ Tully, *William Penn's Legacy*, 54-55.

¹⁰⁰ James Logan to John Penn, 11 September 1728; Logan to James Steel, 18 November 1729, Logan Official Papers, HSP.

¹⁰¹ A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Oxford: Clarendon Press, 1987), 1-2, 114-15; Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1776* (1947; reprint, New York: W. W. Norton & Company, 1971), 118-19, 129-30, 226-27.

Pennsylvania because “nothing would be put in [the criminal’s] way” even if “the rope [was] still dangling around his neck, or if he had left both his ears in Europe.”¹⁰² Only a few years after the act, an editorial in the *American Weekly Mercury* denounced the trade in convicts because “absolute Villains and loose Women, as these are proved to be by their wretched Lives and criminal Actions.”¹⁰³ Consequently, the colony in 1722 imposed a £5 duty on each imported convict as well as a £50 surety for the criminal’s good behavior. The English government repealed the tax by the end of the decade, which did little to pacify fears throughout the colony.¹⁰⁴ Prominent Quaker Isaac Norris bemoaned the current state of Pennsylvania affairs because “Roberies, housebrakeing Rapes & other crimes are become Common” unlike the colony’s earlier years when “we could Safely go to bed wth our door open.”¹⁰⁵ In 1728, Governor Patrick Gordon, Keith’s successor, informed the Assembly that it may be necessary to “prevent the Importation of Irish Papists & Convicts, of whom some of the most notorious, I am credibly informed, have of late been landed in this River.”¹⁰⁶ More established Pennsylvanians warned against receiving “this sort of Vermin, from whom nothing that is good can be expected, when once they have escaped the Gallows.”¹⁰⁷

¹⁰²Mittelberger’s *Journey to Pennsylvania in the year 1750*, 45.

¹⁰³ *American Weekly Mercury*, 14 February 1721.

¹⁰⁴ *Statutes at Large*, 3:264-69. The Board of Trade also acted against Virginia regulations that sought to curb the importation of convicts into their colony as the British government fought any efforts to end this option. J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton: Princeton University Press, 1986), 505-506. In his study of American attitudes towards the convict trade, Kenneth Morgan contended that some colonists supported the trade primarily for the potential profit they could earn from the sales of the laborers. While ship captains to Philadelphia surely shared these sentiments, newspaper comments generally condemned the trade as a potential threat to Pennsylvania society. Kenneth Morgan, “English and American Attitudes towards Convict Transportation 1718-1775,” *History* 72 (October 1987): 424-30.

¹⁰⁵ Isaac Norris to Joseph Pike, 28 April 1728, Isaac Norris Letterbook, 1716-30, 515, HSP.

¹⁰⁶ *CR*, 3:342.

¹⁰⁷ *American Weekly Mercury*, 7 July, 1737.

Some newcomers partook in criminal enterprises that stretched throughout the colonies or even across the Atlantic world. While crimes such as murder and burglary were much more likely to be localized, counterfeiting often became an international crime. Each colony often contracted independent printers to produce the paper currency. Not only did this lead to variation and questions about exchange rates, but it also allowed for the easier proliferation of counterfeit coins and notes because many Pennsylvanians were unacquainted with all the nuances of the foreign currencies. Even goldsmiths could struggle at times to determine the validity of the coins that passed through the colony.¹⁰⁸ This practice became increasingly prevalent by the 1740s when the colonists struggled with the lack of hard currency.¹⁰⁹ Counterfeiters could send paper money abroad in order to create plates necessary to replicate colonial currency. Colonial officials detested these actions because it required them to replace the current currency while constantly fearing that new forgeries could emerge. The threat often came from abroad as foreign counterfeiters proved to be a plague upon colonial society. In 1727, Governor Patrick Gordon labeled attempts to counterfeit Pennsylvania bills of credit as “the blackest & most detestable practice,” which threatened “the lives of the innocent.” Perhaps equally alarming, he claimed that the counterfeiters planned to import forged currency from Ireland. In a 1734 trial in New Castle, Delaware, Robert Conway of New Jersey confessed to importing counterfeit bills from Ireland. Many of these false bills ended up

¹⁰⁸ Kenneth Scott, *Counterfeiting in Colonial America* (Philadelphia: University of Pennsylvania Press, 2000), 9.

¹⁰⁹ T. H. Breen, *The Marketplace of Revolution: How Consumer Politics shaped American Independence* (New York: Oxford University Press, 2004), 187.

in Pennsylvania further weakening the local economy.¹¹⁰ As a result, Quakers and their fellow Pennsylvanians had yet another reason to detest the Irish for corrupting the colony.

The tangled webs connecting counterfeiters throughout the colonies and across the Atlantic often made this a difficult crime to prosecute. In 1737, local authorities arrested William Neal on the charge of altering counterfeit bills to pass them off as Pennsylvania bills of credit. Neal, a recent Irish immigrant, denied his involvement and claimed to have received the bills from Benjamin Ellard in Connecticut. Further investigation confirmed that Ellard had issued the bills to Neal, but only after receiving them from a Massachusetts merchant. The Provincial Council continued their investigation by asking Governor Belcher of Massachusetts “to discover the source of this Villany, & to prevent the further ill Effects of so pernicious an Attempt” to defraud the people of Pennsylvania. Belcher claimed that a woman who had already been convicted “of several gross Impositions” had initially distributed the fake bills in New England. Unfortunately, she had already returned to England, making it impossible for Pennsylvania authorities to prosecute her.¹¹¹

Local authorities contemplated altering the penalties for counterfeiting in an attempt to eliminate this illegal activity, but refused to overtly make it a capital crime during this period. Shortly after the expansion of the penal codes in 1718, the Philadelphia Oyer and Terminer sentenced Edward Hunt to death for counterfeiting. Because counterfeiting was not listed as a capital crime, the colonial court instead

¹¹⁰ *Pennsylvania Archives*, 4th series, 1:430; *Pennsylvania Archives*, 8th series, 3:2254-55.

¹¹¹ *Pennsylvania Gazette*, 16 June 1737; *CR*, 4:225-26, 241-42.

charged Hunt with high treason.¹¹² Gordon's prodding convinced speaker David Lloyd, a Quaker, to express a desire to make "the detestable Crime of falsifying or counterfeiting our Bills of Credit more penal than it was by the former Acts."¹¹³ The Assembly debated making counterfeiting a capital crime without benefit of clergy, thus ensuring that offenders would be executed. Nevertheless, the Assembly ultimately refused to make counterfeiting a capital statute. Perhaps this reflected the continued influence of the Quakers, despite the support of some members like Lloyd, who remained reluctant to increase the number of capital crimes. Although prominent Quaker merchants risked financial losses because of counterfeiting, they still could not justify a further revision of the criminal statutes that contradicted their beliefs.¹¹⁴ Quaker opposition to expanding the capital statutes to include counterfeiting was tested as accounts of counterfeiters continued to plague the colony throughout these early decades.

The lack of regulation for paper money and the ease with which counterfeit could travel throughout the colonies by these informal criminal networks alarmed Pennsylvania authorities. In the aftermath of the Assembly's refusal to add counterfeiting to the list of capital crimes, Pennsylvanians regularly read about the work of counterfeiters bringing their illegal wares into the colony and potentially disrupting the economy.¹¹⁵ The proprietors deemed counterfeiting to be "a Very Vile Design" upon learning of counterfeiting rings operating in nearby colonies. Alarmed at the possible fate of the

¹¹² Under English law, counterfeiting was deemed "an inferior sort of Treason." *Conductor Generalis, or The Office, Duty and Authority of Justices of the Peace, High-Sheriffs, Under-Sheriffs, Goalers, Coroners, Constables, Jury Men, Over-seers of the Poor, and also The Office of Clerks of Assize and of Peace, &c.* (Philadelphia: Andrew Bradford, 1722), 141.

¹¹³ *Pennsylvania Archives*, 8th series, 3:1809.

¹¹⁴ *Ibid.*, 8th series, 3:1807, 1809, 1810, 1812.

¹¹⁵ *Pennsylvania Gazette*, 17 June 1742; 2 February 1743; 12 July, 1744; 6 August 1747; 20 August 1747; 21 September 1749.

colony, John Penn advised the governor to “fall on Some method to Prevent the Like for the Future, or your Money will be absolutely Ruin’d.”¹¹⁶ John and Richard Penn celebrated the capture of a counterfeiter with “hope[s that] he is Long Since hanged.”¹¹⁷ Despite serving as proprietors, the Penns revealed their ignorance of Pennsylvania’s laws by assuming that counterfeiting was a capital crime similar to English law. Nevertheless, opposition to making counterfeiting a capital offense began to wane because many prominent individuals viewed this crime as a growing threat. In the interim, the colony relied strictly on public punishments such as the pillory in an attempt to end this illicit trade. Moreover, colonial officials sought the cooperation of the local residents to eliminate counterfeiting. Anthony Newhouse, the paper-maker who supplied the colony with paper used to print currency, received a £10 reward for reporting an offer from counterfeiters to purchase the paper.¹¹⁸ However, such means probably did little to deter others from uttering and passing the counterfeits. Consequently, colonial officials felt compelled to revisit this issue in the 1750s and 1760s with drastically different results.

Numerous crimes also plagued the colony in these early decades, prompting legislators to debate if even the revised laws of 1718 were still too lenient. Unlike other colonies, Pennsylvania never made horse theft a capital crime. Benjamin Franklin’s *Pennsylvania Gazette* reported in 1729 that “a Company of Irish Robbers,” perhaps emboldened by Pennsylvania’s refusal to make horse theft a capital crime, “beggin to

¹¹⁶ John Penn to George Thomas, 15 March 1740, Thomas Penn Papers, Roll 1.

¹¹⁷ John and Richard Penn to Thomas Penn, 26 November 1740, Thomas Penn Papers, Roll 1. The Penns did claim that the governor notified Ferdinando John Paris that the man was condemned for his actions. It is unclear why he would have made such a statement unless the court opted to try him for treason similar to Edward Hunt, the first man in Pennsylvania executed for counterfeiting. Nevertheless, no evidence suggests that anyone was executed for counterfeiting—or treason—at this time.

¹¹⁸ *Pennsylvania Archives*, 8th series, 4:3163-64, 3210.

grow more numerous, and have a Place of Rendezvous, where they meet to consult how to perpetrate their Rogueries, and to entertain all like themselves.” Several years later, rumors again proliferated throughout the colony of the dastardly exploits of horse thieves. The recent rash of thefts convinced observers that “There has of late been the greatest Complaints of Horse-Stealers that was ever known in this Province.” As the current methods to deter criminals had failed, the *American Weekly Mercury* recommended, “that such Means might be found out, and Courses taken, as would prevent the like Grievances for the future.”¹¹⁹ The existing laws proved ineffective as one advertisement noted the work of a “noted Horse Thief” who continued his illegal trade despite an earlier conviction.¹²⁰ Although the Provincial Council apparently upheld capital convictions for horse thefts in Delaware, no evidence suggested that Pennsylvania thieves were executed solely for this crime.¹²¹ Unlike counterfeiting, Pennsylvania legislators never even proposed making this a capital crime. Horses were far more abundant in Pennsylvania than in Britain, thus minimizing any impetus to punish this offense with death. Quakers in the Assembly may have been reluctant even to initiate this debate because of the potential problems in proving horse theft. Advertisements were often vague about whether a theft had even occurred, listing the horse as either strayed or stolen. If strayed and recovered, the courts risked executing an individual who simply chanced upon the horse. Although still a criminal act, such a strict interpretation of the penal code would have conflicted with their beliefs as Quakers.

¹¹⁹ *Pennsylvania Gazette*, 5 June 1729; *American Weekly Mercury*, 2 September 1736.

¹²⁰ *American Weekly Mercury*, 10 November 1743.

¹²¹ *CR*, 7:172; Negley K. Teeters, *Scaffold and Chair: A Compilation of their Use in Pennsylvania, 1682-1962* (Philadelphia: Pennsylvania Prison Society, 1963), 23-24. The only capital convictions for horse theft in Pennsylvania came during the Revolution, but these men were also convicted of spying for the British. *Pennsylvania Gazette*, 21 March 1778.

Despite the refusal to add horse theft to the list of capital crimes, other offenses committed by Irish criminals promoted the belief that they could never be fully accepted into Pennsylvania society. In 1729, an Irishman was arrested for raping a six-year-old child. The following year had a case in which an Irish laborer identified only as Bourk murdered one of his compatriots after failing in a previous attempt to slay him with a sickle. Rather than express their outrage over this incident, many Irish settlers instead resented the government's intrusion into this affair. The Pennsylvania Gazette reported that rumors of Bourk's eventual fate led, "some of the more ignorant Sort, [to] have been so indiscreet as to give out threatenng Words against Authority, of what they would do in case any Irishman should be executed in this County." Although local officials quickly squelched this threat to civil authority, these wild rumors may have also played a role in the court's decision to convict Bourk only of manslaughter rather than execute him for murder. Although technically a capital crime, Pennsylvania never executed any individuals for manslaughter because convicts could instead escape with only a branded hand after pleading the benefit of the clergy.¹²² The Irish reaction convinced many that they could never be seen as law-abiding and godly residents. Irish settlers in the backcountry were also blamed for promoting conflicts with both Native Americans and Maryland as the boundary between the colonies remained unsettled throughout the 1730s.¹²³ In 1732, Civility, a Conestoga negotiator, blamed the Irish settlers for

¹²² *Pennsylvania Gazette*, 17 November 1729; 23 July, 1730; 30 July, 1730; 3 December 1730.

¹²³ Marietta and Rowe, *Troubled Experiment*, 63-106; Sally Schwartz, "A Mixed Multitude": *The Struggle for Toleration in colonial Pennsylvania* (New York: New York University Press, 1988), 66-80, 85-88.

murdering three Iroquois Indians in Sohataroe. Logan privately agreed with Civility's assessment, reflecting the derision many Quakers felt toward the Irish.¹²⁴

As Quakers were caught up in these fears of international and intercolonial crime, they admitted the need for additional capital statutes, but still struggled to adhere to their traditional beliefs. The 1718 Philadelphia Yearly Meeting still admonished the Quarterly and Monthly Meetings to warn all Friends "to be very Careful that they stand clear in all Cases as well against administering as taking of Oaths."¹²⁵ The Atlantic fight for affirmation continued until 1722 when Parliament finally granted the right to avoid oath taking.¹²⁶ Even after these changes, London Yearly Meeting reminded Quakers throughout the Atlantic world that those who failed to affirm would "become guilty, they will thereby contract themselves perpetual Infamy, and to the Body whereof they may pretend to be Members, very great Scandal and Reproach."¹²⁷ Instead, they needed to be mindful of the constant obligation to be truthful especially when affirming their decision. Otherwise, they opened themselves to criticism of being a hypocrite and possibly prompting the English government to do away with the practice altogether. James Logan reminded Pennsylvanians that "Compacts; and coercive and penal Laws were ordained, for the Punishment of those, who should dare to act in contravention of what was agreed on."¹²⁸ Magistrates needed to act in order to curb those who committed the worst

¹²⁴ James Logan to John Wright and Samuel Blumston, 2 September 1730, Logan Official Papers, HSP.

¹²⁵ Philadelphia Yearly Meeting, 20-24 September 1718, Collection 976, Roll 7, Quaker Collection.

¹²⁶ Frost, "The Affirmation Controversy and Religious Liberty," 317.

¹²⁷ London Yearly Meeting, *An Epistle of Caution to Friends in General Relating to the AFFIRMATION* ([Philadelphia]: n.p., [1722]), 2.

¹²⁸ William Armistead, *Memoirs of James Logan, a distinguished scholar and Christian legislator, founder of the Loganian Library at Philadelphia, secretary of the province of Pennsylvania; chief justice ... including several of his letters and those of his correspondents, many of which are now first printed from the original mss. collated and arranged for the purpose* (London: C. Gilpin, 1851), 130.

excesses. Similar to a farmer who weeded his field to ensure a more bountiful crop, officials needed to remove those individuals who threatened to make the new colony “odiously black as the hellish Source it springs from.” Furthermore, Yearly Meeting expressed its gratitude to the king in the 1720 epistle to London for allowing them to continue the practice of affirmation.¹²⁹ Possibly caught up in their joy over this concession, the Meeting did not even mention the expansion of the number of capital offenses Pennsylvanians were forced to accept.

Despite their public acceptance of the increased number of capital statutes, Quakers sought to simultaneously reassert their religious identity, which was threatened by this shift from their traditional beliefs.¹³⁰ Throughout the 1720s, Philadelphia Yearly Meeting produced a stream of publications to renew the devotion of Friends and reassert traditional religious doctrine. The epistles were often published and meant for a wide ranging audience in the Delaware Valley and beyond. Yearly Meeting typically sent copies to Quaker meetings in other colonies and London. In addition, the decision to publish the epistles meant that even non-Quakers could read them and assess if Quakers managed to live up to their professed beliefs.¹³¹ Although Quakers adopted a harsher public stance against various crimes and displayed a greater reliance on capital punishment, they still continued to profess their traditional beliefs and used these letters to define themselves as a people set apart. These works took on additional importance as Pennsylvania’s courts increasingly employed the gallows through these early decades.

¹²⁹ Philadelphia Yearly Meeting, 17-20 September 1720, Collection 976, Roll 7, Quaker Collection.

¹³⁰ *An Epistle from our Yearly Meeting in Burlington...1722.*

¹³¹ The epistles should not be viewed as binding documents. Despite the efforts to enforce discipline among the various meetings, Quakers often professed divergent views. See for example, Barry Levy, *Quakers and the American Family: British Settlement in the Delaware Valley* (New York: Oxford University Press, 1988); and Soderlund, *Quakers and Slavery.*

Adherence to these instructions could also serve to inculcate the values needed to become a godly member of the population and avoid a fate like the worst criminals.

The epistles strove to maintain internal discipline in the wake of the colony's changing demographics and a host of problems that threatened Penn's holy experiment. Quakers needed to be mindful of their conduct because "the great Enemy of Souls will oppose and strive to hinder" their holy experiment "by drawing some into an undo Liberty to gratify a carnal Mind in sinful Pleasures."¹³² Consequently, the authors sought to reassure Quakers throughout the Atlantic world that the discipline generally remained strong despite the changes confronting the colony. The 1722 epistle stated "Love and Unity is preserved amongst Friends...and the Discipline in good Measure practiced." Reiterating many of the same views, Yearly Meeting assured readers several years later that "the Affairs of the Church were carried on with a good Degree of Unanimity, and in much Love and Condescension to one another."¹³³ Despite these assurances, Pennsylvania Friends realized that many often failed to live up to the standards established by the Quaker meeting. Their actions could easily reflect poorly not only on themselves, but on all Pennsylvania Quakers, especially after they accepted the compromise in regards to the death penalty. The bulk of the epistles sought to inculcate traditional Quaker beliefs and practices that were necessary to create a godly population.

Many of the admonishments were aimed at parents and guardians who possessed the responsibility to ensure that their children and young wards did not deviate from

¹³² *An Epistle from our Yearly Meeting in Burlington; For the Jerseys and Pennsylvania, &c. Held by Adjournments from the 15th to the 19th Day of the Seventh Month, 1722* ([Philadelphia]: [Andrew Bradford], [1722]).

¹³³ *Ibid.*; *An Epistle from the Yearly Meeting of Friends, held at Burlington the Seventeenth, to the Twenty First of the Seventh Month, 1726* (Philadelphia: Andrew Bradford, 1727).

accepted beliefs. Because of the intrusion of worldly temptations into Pennsylvania, the epistles frequently advised parents and guardians to diligently educate their young charges. Quakers had long been concerned with the education of children. Penn used one of his lengthy publications to instruct not only his children, but to offer suggestions to all Quakers on the proper ways parents should act. In all their dealings, Quakers should “Return no Answer to *Anger*, unless with much Meekness, which often turns it away: But rarely make Replies, less Rejoinders; for that adds Fuel to the Fire.” Such poor decisions could easily instill the wrong values in their children, thus making them more likely to act out of anger. Therefore, they must “Never strike in Passion, and suit the Correction to their Age as well as Fault. Convince them of their Error before you chastise them.”¹³⁴ Similarly, Thomas Chalkley advised parents that they needed to play an important role in the formative years of a child. By sheltering their children from the evils of the world, they could better ensure that their children would be able to grow within the faith.¹³⁵ Chalkley’s contention largely preceded later opponents of capital punishment who believed education at an early age “prevents more crimes than the severity of the criminal code.”¹³⁶ The best efforts of Quakers to educate their youth accomplished little if the children failed to cooperate. Therefore, the youth needed to respect the wisdom of their elders, leading Yearly Meeting to remind them that “Disobedience to Parents was Death by Gods Law.”¹³⁷ The epistles of the 1720s also emphasized the importance of instilling proper values in Quaker youth from an early age. Children should learn to avoid activities

¹³⁴ Penn, *Fruits of a Father’s Love*, 17, 28

¹³⁵ Frost, *The Quaker Family in Colonial America*, 74-75.

¹³⁶ William Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania* (Philadelphia: T. Dobson, 1793), 45.

¹³⁷ Philadelphia Yearly Meeting, Minutes, 16 to 19 September 1694, Collection 976, Roll 7, Quaker Collection.

such as gambling, indecent behavior, or succumbing to the fashions and vanities of the world. Consequently, youth should regularly attend the meetings with their parents and learn all modes of proper behavior, including simple dress and plain speech.¹³⁸ Parents needed to encourage their children to avoid “Idleness” since it was the “Nurse of many Evils.” Instead, they should make good use of their time through gainful employment or worthwhile pursuits such as learning.¹³⁹

Young Quakers received regular reminders both from the Yearly Meeting and local newspapers to be mindful of the company that they kept. Parents were expected to teach their children to avoid “Evil, Vain and Loose Company, which greatly tends to corrupt them.”¹⁴⁰ Rather than spending it with those who wasted away this earthly respite, the young should seek like-minded individuals who focused on more spiritual matters. Crime reports in the *American Weekly Mercury* and the *Pennsylvania Gazette* offered further proof of the need to choose one’s companions wisely. In 1729, Joseph Prouse admitted the justness of his death sentence for burglary because he had fallen under “the evil Insinuations of wicked People” upon his arrival in Philadelphia from England. Although he had no intention of committing a crime, Prouse’s friendship with John Greyer led him to engage in some petty theft. Similarly, his cohort James Mitchel also ended up in this unfortunate circumstance because he was “led into bad Company.”¹⁴¹ Mitchel agreed to accompany Prouse one evening and spent the evening drinking with Prouse and Greyer. The following morning, Mitchel was arrested for

¹³⁸ *An Epistle from our Yearly Meeting in Burlington; For Pennsylvania and the Jerseys, &c. From the Fourteenth to the Eighteenth Day of the Seventh Month, 1723* (Philadelphia: Andrew Bradford, 1723).

¹³⁹ *An Epistle from our Yearly Meeting in Philadelphia; For Pennsylvania and the Jerseys, &c. From the 20th to the 24th of the 7th Month, 1729* (Philadelphia: Andrew Bradford, 1729).

¹⁴⁰ *An Epistle from our Yearly Meeting in Burlington...1722.*

¹⁴¹ *American Weekly Mercury*, 27 January 1730.

possession of stolen goods while trying to exchange a fifteen shilling bill for Prouse in Philadelphia. Condemned to death for this seemingly innocent role, even Prouse attested that Mitchel was blameless, this unfortunate incident revealed the potential pitfalls in associating with the wrong types of people. Therefore, Quaker youths needed to remain ever vigilant to avoid such an unnecessary risk.

The epistles regularly instructed the young people to avoid apparently minor transgressions such as not observing the Sabbath and failing to attend meetings, which could have dire consequences. Parents needed to realize that “one Step of Degeneracy has given Birth to another,” often with devastating effects.¹⁴² Candidates for the gallows at times proved how such leniency could threaten society as a whole. In his dying speech before being executed for murder in Chester County in 1734, Terence Rogers attributed his downfall largely to his “indulgent Parents.”¹⁴³ Despite his many opportunities, Rogers squandered his youth by “Drinking, Whoring, and swearing to a great Degree.” His intemperate lifestyle left him deeply in debt, so Rogers married a widow for financial relief. He soon learned that he overestimated her financial standing and was continually besieged by his creditors, so Rogers opted to emigrate to the colonies, abandoning his wife and two young children. Upon his arrival, he resumed his wayward ways as “one Sin leading into another, I was at length moved by the Instigation of the Devil to murder the poor Soul.” Observers were shocked by this murder, committed while Edward Swainey enjoyed his breakfast. Rogers attributed it to a temporary loss of his senses,

¹⁴² *An Epistle from our Yearly Meeting held in Philadelphia.....1729.*

¹⁴³ *Pennsylvania Gazette*, 28 March 1734.

perhaps realizing that insanity was a valid excuse.¹⁴⁴ Others agreed that only a “Mad-man” could commit such a “horrid and barbarous a Murder.”¹⁴⁵ The heinousness of his misdeeds prompted the courts to condemn him. Rogers apparently repented and used his final moments to warn all to heed “the Advice of Parents and Friends, which would through God have preserved me from this miserable Death.” Thus, the published confession echoed the admonishments that frequently appeared in Quaker publications.¹⁴⁶ Although he sought to reach a much larger audience than just Philadelphia Yearly Meeting, local Quakers could not help but draw a connection between Rogers’ failings and his untimely fate.

Alcohol fueled numerous crimes, which was another topic that attracted the Quakers’ condemnation. The 1721 epistle contained the evils caused by excessive drinking and warned its readers that,

it is hoped that a due Care and watchfulness against the intemperate use of Drams and other strong Liquors will in a good measure prevent the Depravity, as also an impudent noisy, and indecent behaviour in Markets and other publick places, which we earnestly advise and caution Friends to beware of, for it is degrading to us, as men of Civility and greatly unbecoming the professors of Christianity, the awful, prudent, and watchful Conduct of our Friends in early days did, and such always will preach loudly and extend silently to the notice of many.¹⁴⁷

In this warning, Yearly Meeting not only attacked the unhealthy aspects of alcohol, but also bemoaned the effects that resulted from drinking. From the earliest days, Penn hoped to avoid many of the worst excesses of taverns as his initial laws forbade drunkenness. In

¹⁴⁴ Dana Rabin argued that popular legal knowledge in eighteenth-century England led to criminals offering a variety of excuses for their actions. Many of these stopped short of arguing for actual insanity, but they were willing to claim temporary insanity or other factors such as drunkenness that momentarily impaired their reasoning skills. Dana Y. Rabin, “Searching for the Self in Eighteenth-Century English Criminal Trials, 1730-1800,” *Eighteenth-Century Life* 27 (Winter 2003): 85-106.

¹⁴⁵ *American Weekly Mercury*, 5 March 1733-4.

¹⁴⁶ *Pennsylvania Gazette*, 28 March 1734.

¹⁴⁷ Philadelphia Yearly Meeting, Minutes, 1721.

addition, he sought to closely regulate the operation of taverns, which often proved to be a failed endeavor. While problems associated with taverns primarily plagued the cities, the threats of excessive drinking soon proved at times to be colony-wide because of the prevalence of alcohol.¹⁴⁸ Consequently, the meeting warned against drinking too much at a variety of venues including funerals and weddings. Although Quakers did not address all the evils associated with alcohol, immoderate drinking could result in fatal violence. In Bucks County, alcohol fueled a conflict between Nicholas Hentwerk and Patrick Quire in 1740. Their drinking degenerated into a quarrel, which prompted the tavernkeeper to eject them. Undeterred, Hentwerk and Quire resumed their disagreement outside, resulting in Hentwerk strangling Quire with his handkerchief.¹⁴⁹ Possibly to avoid these worst excesses, the colonial government sought to regulate the tavern trade, hoping to grant licenses only to individuals possessing “sober character.” Although the number of licensed taverns grew in proportion to Philadelphia’s population, others illegally sold alcohol throughout the colony.¹⁵⁰ These temptations prompted many Quakers to emphasize a more temperate lifestyle. Those familiar with the criminal proceedings of the period could view the call for temperance as helping to avoid this bloodshed and the need for the gallows even among non-Quakers.

Yearly Meeting also encouraged Friends to embody “Uprightness and Honesty” in their financial matters, which also affected other areas of their lives.¹⁵¹ Although such

¹⁴⁸ Sharon V. Salinger, *Taverns and Drinking in Early America* (Baltimore: Johns Hopkins University Press, 2002), 115-18, 144-48.

¹⁴⁹ *American Weekly Mercury*, 10 April 1740.

¹⁵⁰ Peter Thompson, *Rum Punch & Revolution: Taverngoing & Public Life in Eighteenth-Century Philadelphia* (Philadelphia: University of Pennsylvania Press, 1999), 21-51, quote on p. 35.

¹⁵¹ *An Epistle from our Yearly Meeting held at Burlington; For New-Jersey and Pennsylvania, &c. from the 14th to the 18th of the 7th Month, inclusive, 1734* (Philadelphia: Andrew Bradford, 1734).

an appeal easily affected the mercantile community among the Quakers, it also offered an admonishment to avoid committing property crimes. Avarice, a trait that the Quakers condemned, often motivated the thieves who plagued the young colony.¹⁵² Penn wrote that one should “be Content with such things as you have, for God hath said, I will never leave thee, nor forsake thee.”¹⁵³ He further reminded Friends to “Covet no Man’s Property in any sort” and to remember “Ahab’s unjust Covetousness and Murder of Naboth, to provoke your Abhorrence of Injustice.”¹⁵⁴ Similarly, Robert Barclay advised Friends “to be *content*... and not to covet more.” Quakers should not “covet or expect any Man’s Silver or Gold.” Rather one should rely on their hard work “for an honest Livelihood,” thus imitating the lifestyles of the early apostles.¹⁵⁵ Failure to follow such admonishments could result in one hanging from the gallows. In 1722, William Battin, a young servant from England who was condemned for arson and murder, offered a well placed example for the Quaker authorities. He admitted to having forsaken the opportunities his family provided him and instead “gave up [him] self to serve the Devil, and to obey his Voice by yielding to his Temptations; which were *Lying and picking and stealing other Mens Goods*.” During his teenage years, Battin regularly pursued a number of illegal trades, even admitting, “It’s too tedious to mention every Thing I stole.” His father sold him as a servant to a Pennsylvania colonist in the hopes that this would serve

¹⁵² Frederick Tolles, *Meeting House and Counting House: The Quaker Merchants of Colonial Philadelphia, 1682-1763* (New York: W. W. Norton, 1948), 80-84.

¹⁵³ William Penn, *No Cross, No Crown: A discourse shewing the nature and discipline of the holy cross of Christ; and that the denial of self, and daily bearing of Christ’s cross, is the alone Way to the Rest and Kingdom of God*, 11th ed. (London: Mary Hinde, 1771), 199-200.

¹⁵⁴ Penn, *Fruits of a Father’s Love*, 44.

¹⁵⁵ Robert Barclay, *An Apology for the True Christian Divinity Being an Explanation and Vindication of the Principles and Doctrines of the People Called Quakers*, 2nd ed. (Newport, R.I.: James Franklin, 1729), 333.

as a wake-up call to his misbehaving son. Nevertheless, Battin resumed his life of crime upon arriving on the shores of the New World. While working for Joseph Pyle of Chester County, Battin took advantage of his master's absence to burn down the house and escape after being presumed to have perished in the flames. However, Battin lit the fire with the couple's three sons sleeping inside, which left him filled with remorse so he tried to extinguish the flame. After failing, Battin "thought of taking the Children out of the House, but the Devil put it into my Mind to leave them to be burnt, I need not care whether they were saved or no." He abandoned the children who died in the fire and instead proceeded to a nearby home to notify the Pyles. Despite these atrocities, Battin was not yet willing to renounce his life of sin as he committed an act of bestiality before his arrest. His time in prison led Battin to reflect on his misdeeds and admit his guilt. He also employed his final moments to admonish other young people to avoid a similar downfall. Claiming that the devil led him astray, as chronicled through his long list of misdeeds, all people needed to be mindful of the temptation to deviate from God's path and possibly even end their lives swinging from the gallows.¹⁵⁶ For young Quakers, the admonishments contained in these regular epistles offered guidance and helped them to avoid the path of sins that culminated in Battin's execution.

Questions about how to employ the death penalty grew in importance for Quakers as the courts imposed a greater number of death sentences after the revision of 1718. During the 1710s, Pennsylvania courts condemned three individuals, of whom two were hanged. In the 1720s and 1730s, over 50 percent of the condemned received pardons. Pennsylvania never exceeded that rate for the remainder of the eighteenth century (Tables

¹⁵⁶ *American Weekly Mercury*, 16 August 1722.

1.1, 1.2, and 1.3). Nevertheless, Marietta and Rowe calculated that Pennsylvania's rate of execution during these decades in proportion to the population reached a level not equaled until the 1770s.¹⁵⁷ The sheer statistical analysis does not always reveal the true exercise of the state's authority. For example, the Revolutionary government declared twenty men to be outlaws in the 1780s, carried an automatic death sentence. Although Pennsylvania courts issued 382 death sentences between 1718 and 1794, fourteen cases were never resolved as individuals either escaped from prison, were killed in pursuit, or disappeared from the historic record. Despite these shortcomings, the above tables do illustrate an increased willingness of colonial officials to impose and carry out death sentences to combat the various ills plaguing the colony.

¹⁵⁷ Marietta and Rowe, *Troubled Experiment*, 75.

Table 1.1
Number of condemned criminals, by crime 1710 - 1794

	1710s	1720s	1730s	1740s	1750s	1760s	1770s	1780s	1790-4	Total	Percent of Crimes
Murder	3	5	5	6	16	17	21	25	9	107	27.9%
Arson	0	1	2	0	0	1	0	5	0	9	2.3%
Counterfeit	0	1	0	0	2	0	9	6	0	18	4.7%
Sex Crimes	0	0	1	0	1	1	4	10	3	20	5.2%
Property Crimes	0	6	17	6	14	22	40	80	0	185	48.2%
Treason	0	0	0	0	0	0	13	8	0	21	5.5%
Desertion	0	0	0	0	2	2	9	0	0	13	3.4%
Piracy	0	0	5	0	0	0	0	4	0	9	2.3%
Misc.	0	0	0	0	0	0	0	2	0	2	0.5%
Totals	3	13	30	12	35	43	96	140	12	384	

Table 1.2 Number of executed criminals by crime, 1710 - 1794												
	1710s	1720s	1730s	1740s	1750s	1760s	1770s	1780s	1790-4	Total	Percent of Executions	
Murder	2	4	3	6	13	16	17	22	4	87	36.7%	
Arson	0	1	1	0	0	0	0	1	0	3	1.3%	
Counterfeit	0	1	0	0	2	0	7	3	0	13	5.5%	
Sex Crimes	0	0	1	0	1	1	1	5	3	12	5.1%	
Property Crimes	0	1	6	5	11	16	23	40	0	102	43.0%	
Treason	0	0	0	0	0	0	8	3	0	11	4.6%	
Desertion	0	0	0	0	2	2	4	0	0	8	3.4%	
Piracy	0	0	0	0	0	0	0	1	0	1	0.4%	
Misc.	0	0	0	0	0	0	0	0	0	0	0.0%	
Totals	2	7	11	11	29	35	60	75	7	237		

Table 1.3
Number of pardoned criminals by crime, 1710 - 1794

	1710s	1720s	1730s	1740s	1750s	1760s	1770s	1780s	1790-4	Total	Percent of Pardons
Murder	1	1	2	0	3	1	4	3	5	20	15.0%
Arson	0	0	1	0	0	1	0	4	0	6	4.5%
Counterfeit	0	0	0	0	0	0	2	3	0	5	3.8%
Sex Crimes	0	0	0	0	0	0	3	5	0	8	6.0%
Property Crimes	0	5	11	1	3	6	17	27	0	70	52.6%
Treason	0	0	0	0	0	0	5	5	0	10	7.5%
Desertion	0	0	0	0	0	0	5	0	0	5	3.8%
Piracy	0	0	4	0	0	0	0	3	0	7	5.3%
Misc.	0	0	0	0	0	0	0	2	0	2	1.5%
Totals	1	6	18	1	6	8	36	52	5	133	

Sources: *CR*, *Pennsylvania Archives*, *Pennsylvania Gazette*; *American Weekly Mercury*; Pennsylvania Oyer and Terminer Records, Pennsylvania Admiralty Court Records, *Journal of Henry Muhlenberg*, *History of Delaware County*, Bucks County Historical Society, and Chester County Historical Society. Three individuals (Catherine Connor, Robert Elliot, and Jacob Dryer) received death sentences on two different occasions and Dryer received a pardon twice. The tables are based on the number of death sentences rather than the simply the number of condemned, so only 381 individuals received death sentences between 1718 and 1794.

Although Quakers forced themselves to accept the death penalty and advised their members on the path to avoid such a fate, prominent Quakers remained reluctant to execute except in unique cases. Both Anglicans and Quakers served on the colony's Supreme Court, but all four chief justices in this period (David Lloyd, Jeremiah Langhorne, James Logan, and John Kinsey) were Quakers. Despite their periodic issues with Yearly Meeting, these men struggled to mediate traditional Quaker opposition to the death penalty with the calls by many Anglicans for harsh punishments. For example, Lloyd recommended mercy Martha Underdown who was condemned for infanticide in 1718.¹⁵⁸ Quakers who served on the Provincial Council also proved reluctant to carry out death sentences for property crimes. Between 1718 and 1733, Pennsylvania courts condemned just nine individuals for property crimes as seen in Table 1.1. More significantly, the colony hanged just one man for this offense. In 1721, an unidentified African American was hanged after burglarizing a home in Philadelphia and confessing his guilt. It was not until 1734 that Pennsylvania carried out another death sentence for a property crime when an unnamed woman was condemned for burglary in Chester County.¹⁵⁹ Unlike later decades, individuals even proved hesitant to accuse others of committing a crime. In 1734, Richard Smith advertised for a lost watch following the hasty evacuation of his home in Philadelphia because of a fire. The next month witnessed

¹⁵⁸ Roy N. Lokken, *David Lloyd: Colonial Lawmaker* (Seattle: University of Washington Press, 1959), 197-99; *CR*, 3:45.

¹⁵⁹ *American Weekly Mercury*, 13 July 1721; *Pennsylvania Gazette*, 24 October 1734, 28 November 1734.

the arrest of a woman who attempted to sell the watch's casing. The new report dropped the description of a lost watch and now identified it as "stolen."¹⁶⁰

Even more severe than mere property crimes, Quaker merchants feared the effects of piracy as they traded throughout the British Atlantic world, especially in the West Indies. The trade of Pennsylvania foodstuffs allowed them to pursue other financial opportunities and enjoy lavish lifestyles.¹⁶¹ The first few decades of the eighteenth century witnessed regular pirate activity in the Delaware River, which fueled fears about the safety of the local waterways.¹⁶² In 1699, the colony arrested four men believed to serve under the notorious pirate Captain Kidd.¹⁶³ The Assembly enacted several statutes to prevent pirates from moving around freely in society and keeping others from collaborating with them.¹⁶⁴ Nevertheless, piracy continued to be a major concern for many merchants in the early 1700s. William Keith felt compelled to issue a warrant for the arrest of the notorious Blackbeard for his attacks on shipping.¹⁶⁵ In 1721, Isaac Norris still listed the "Hazard of pyratts" as one of the major problems confronting ship owners. Because he had already suffered a substantial loss to these seafaring marauders, it is not surprising that Norris viewed them as such an insidious threat.¹⁶⁶ Encounters with pirates not only threatened the merchants' property, but the lives of all those on board. One episode witnessed the crew of a merchant ship stage a fierce resistance to a pirate attack.

¹⁶⁰*Pennsylvania Gazette*, 16 May 1734, 6 June 1734.

¹⁶¹Tolles, *Meeting House and Counting House*, 85-100, 109-43.

¹⁶² Pirate activities were so bad that they forced the cessation of seagoing trade for Philadelphia for one week in July 1722. William M. Mervine, "Pirates and Privateers in the Delaware Bay and River," *PMHB* 32, no. 4 (1908): 459-64; Rediker, *Villains of all Nations*, 32.

¹⁶³Isaac Norris to Jonathan Dickinson, 9 June 1699, Isaac Norris Letterbook, 4, HSP.

¹⁶⁴*Statutes at Large*, 2:101, 239-40.

¹⁶⁵*Pennsylvania Archives*, 4th series, 1:349-52.

¹⁶⁶ Isaac Norris to John Askew, 28 August 1718; Norris to Jonathan Scarth, 25 October 1718; Norris to James Millington, 11 November 1721, Isaac Norris Letterbook, 154, 159, 277, HSP.

After several hours, the pirates finally seized the ship, but were “Inraged” at the loss of several of their crew. Consequently, the pirates proceeded to hang sixteen members of the merchant ship’s crew and force others to serve on the pirate ship.¹⁶⁷ Although piracy typically involved robbery, it was viewed as far worse than any ordinary property crime. During the reign of Elizabeth I, the English government branded pirates who raided the ships of their countrymen as “*hostis humani generis*” or enemies of the human race.¹⁶⁸ In the face of such harsh condemnation of their treasonous actions, Quakers offered little opposition to the decision to execute the convicted pirates.

In the first half of the eighteenth century, Pennsylvania had only one incident of piracy brought before the courts.¹⁶⁹ English sailors serving on a Portuguese vessel seized the ship in the West Indies and sailed north towards Pennsylvania in 1730. John MacFerson, the ringleader, claimed they enlisted onboard the vessel in expectation of serving under an English captain. Much to their chagrin, they soon discovered that the captain was Portuguese. This created a new issue for the English crew members because they risked the death penalty if the ship attacked an English vessel. MacFerson maintained that the abuse the English sailors endured under the Portuguese sailors prompted them to act. Others provided a less benign interpretation of the mutinous crew’s actions. Even one of his conspirators described the newly minted pirate captain as

¹⁶⁷ *American Weekly Mercury*, 24 August 1721.

¹⁶⁸ Edward Coke, *The Third Part of the Institutes of the Laws of England: Concerning High Treason, and other Pleas of the Crown, and Criminal Causes* (London: W. Clarke, and Sons, 1809), 113.

¹⁶⁹ One other trial for mutiny occurred in this period. In 1720, the admiralty court convicted four men for forcing the ship owner and several crew men off the ship and into a smaller vessel. The court ruled deemed this insufficient to be piracy although “it was committed with such Excess of Cruelty, and was a Fact of so horrid and black a Nature, as would justify the greatest Severity which could be us’d upon them.” The four all received harsh punishments as they each endured two hours at the pillory, the loss of their ears, and 21 lashes spread throughout the city. *American Weekly Mercury*, 10 November 1720.

“wickedly Bent.”¹⁷⁰ Although they escaped with little opposition, they soon encountered difficulties to sell off their stolen bounty and were forced to flee after the Dutch governor at St. Eustastia recognized the cargo. Fears of the English navy in the Caribbean prompted the crew to head north. They eventually met up with another ship and elected to combine their crews and cargo in order to better escape detection.¹⁷¹ Nevertheless, this new venture faced opposition as several members of the crew on the new ship informed their captain “they would not run the Risque of their Necks for this Folly, and asked the said [Captain] *Williams* how he could think to keep the thing a Secret, when all his Men were acquainted with it.”¹⁷² Captain *Williams* offered each of the men £20 in hopes of alleviating their fears and allowed some of the pirates to disembark en route to Philadelphia. However, *Williams* proceeded promptly to turn *MacFerson* and the other pirates over to the authorities upon their arrival in Philadelphia. The five arrested pirates were soon convicted as the court felt compelled to issue this death sentence in order to preserve peaceful relations with Portugal and deter future pirates from preying on shipping.¹⁷³

The Provincial Council and lieutenant governor proved hesitant to carry out this sentence even if the crime exceeded the worst elements of a typical property crime. They opted to present the case to the proprietors in England before executing the convicted pirates. In the meantime, *MacFerson* escaped from the prison cell, which suggested he was guilty of the crime. Pennsylvania justices apparently never apprehended *MacFerson*,

¹⁷⁰ *American Weekly Mercury*, 4 November 1731.

¹⁷¹ *Ibid.*, 28 October 1731.

¹⁷² *Ibid.*, 4 November 1731.

¹⁷³ *Ibid.*, 21 October 1731, 4 November 1731.

leaving his four accomplices to await their fate. Finally, John, Thomas, and Richard Penn wrote to Gordon that “Reprieving those Five Persons Seized and Condemned for Piracy was very much to our Satisfaction.”¹⁷⁴ Throughout this convoluted ordeal, the colony remained very reluctant to carry out this final sentence. Instead, they postponed it and possibly used the escape of MacFerson, their captain, to pardon the other criminals. His abandonment of his cohorts suggested a greater degree of guilt and allowed their actions to be seen as excusable as they followed orders.

Other cases further illustrated the Quaker colony’s reluctance to actually carry out death sentences, especially for women. In 1738, the Provincial Council pardoned Martha Cash (in addition to Margaret Ingram) for a burglary committed in Philadelphia because of either Cash’s penitential stance or advanced age on the condition of banishment from Pennsylvania.¹⁷⁵ Prior to this incident, a Margaret Cash appeared multiple times in the incomplete court records of the 1730s. The Mayor’s Court mandated that she receive twenty-one lashes and banishment for theft in 1730. Four years later, her name again appeared as Cash now received forty lashes for her theft as officials recognized the repetitive nature of her crime and her decision to ignore the earlier order to leave the city. Cash later received physical punishment in nearby Burlington, New Jersey, just prior to her death sentence in Philadelphia.¹⁷⁶ Pennsylvania’s spotty early records make it impossible to assess if the same woman was actually guilty of all these offenses. Nevertheless, the repeated occurrences of her name suggest that Martha Cash frequently

¹⁷⁴ *Pennsylvania Gazette*, 23 March 1732; *American Weekly Mercury*, 14 September 1732, John, Thomas, and Richard Penn to Gordon, 30 January 1731-2, Thomas Penn Papers, Roll 1.

¹⁷⁵ It is unclear which reason was offered for which woman.

¹⁷⁶ *CR*, 4:329-30; *American Weekly Mercury*, 5 November 1730, 15 January 1734; *Pennsylvania Gazette*, 25 June 1738.

engaged in crime and could make her a less likely recipient for a pardon. Therefore, little evidence suggests that the Provincial Council would have been swayed by any promises to reform in the future. Instead, the decision to extend mercy to her in this case reflected their hesitancy to take her life especially in light of her sex. Between 1718 and 1739, the colonial courts issued ten death sentences for female criminals, but only executed three women.¹⁷⁷

Colonial officials opted to exercise leniency even in more brutal situations. The courts offered a somewhat inconsistent definition of murder even after instituting the 1718 penal code. Between 1721 and 1739, the Pennsylvania courts sentenced ten individuals to death for murder. Meanwhile, eight others had their crime downgraded to manslaughter. Individuals convicted of manslaughter could plead the benefit of the clergy and suffer only a branding rather than death because this crime took place in “the Heat of Blood” unlike murder. Therefore, the perpetrator had no prior intent to murder the victim, but still was responsible for the death.¹⁷⁸ Juries often liberally interpreted this provision. In 1730, a Bucks County jury convicted Elizabeth Thomas only of manslaughter after the death of her eighteen-month-old child. Thomas’s young age—she was only thirteen at the time—may have convinced the jury that she deserved the lesser sentence.¹⁷⁹ Other domestic disputes also were often downgraded to simply manslaughter, such as an unidentified married couple in 1734 in Philadelphia who badly mistreated their daughter [the wife’s step-daughter]. The various depravities she was forced to endure included being fed “her own Excrements to eat.” Nevertheless, they escaped the gallows because

¹⁷⁷ Catherine Conner was executed in 1737 after receiving a pardon the previous year.

¹⁷⁸ *Conductor Generalis*, 130.

¹⁷⁹ *Pennsylvania Gazette*, 19 November 1730.

medical examiners testified that the young girl would have died anyway because of other health problems.¹⁸⁰ Each of these cases revealed the reluctance of colonial officials to intercede in domestic affairs. Instead, they used the penalty for manslaughter rather than take the lives of the offenders.

Other cases of manslaughter provoked cries of outrage for their perceived leniency in the face of the crime. In February 1738, Evan Jones and John Remington were convicted for manslaughter for their parts in a charade to induct Daniel Rees, a young apprentice, into the Free-Masons. Their hoax proved fatal as Jones doused Rees with a basin of blazing liquids, which cost Rees his life. Prior to Rees's untimely death, the charlatans forced him to commit a variety of demeaning tasks including kissing "the bare Posteriors of one of their Company," as well as taking a blasphemous oath as part of this farce.¹⁸¹ By the 1730s, Free-Masonry had gained a hold in Philadelphia, similar to many other parts of the English world in the eighteenth century. Steven Bullock has argued Masonry played an important role in the colonies with the breakdown of the guild system coupled with the rise of new elites. Induction into the Masons allowed initiates a path to acceptance and gentility that otherwise was denied to them. Because colonial elites such as Governors William Keith and Patrick Gordon, his successor, both belonged to the Masons, up and coming young men such as Benjamin Franklin easily could view the Masons as a path to social respectability as well as a means of fostering useful connections to improve their lot in life.¹⁸² The organization remained shrouded in

¹⁸⁰ *Pennsylvania Gazette*, 24 October 1734.

¹⁸¹ *American Weekly Mercury*, 7 February 1738.

¹⁸² Steven C. Bullock, *Revolutionary Brotherhood: Freemasonry and the Transformation of the American Social Order, 1730-1840* (Chapel Hill: University of North Carolina Press, 1996), 1-5, 50-82; Henry S.

mystery for many Pennsylvanians who did not have a connection with the Masons.¹⁸³ Consequently, a young man such as Rees may have viewed this organization as a pathway to moving beyond his lowly status. As news of the murder spread, many Pennsylvanians, including authentic Masons, expressed their horror at the act. The grand wardens of Philadelphia's St. John's lodge disavowed any participation in this "Purging, Vomiting, Burning, and the Terror of certain horrid and diabolical Rites."¹⁸⁴ Jones recognized the Masons' desire to disassociate themselves from him, so he challenged the inclusion of any Masons in his jury. Although the jurors agreed that Jones flung the burning alcohol on Rees, they were unable to prove he did so out of "premeditated Malice," thus reducing the sentence to manslaughter with the penalty of branding.

This decision soon provoked heated arguments regarding the justness of sparing Jones's life. Critics contended that Jones received far too light a sentence and should have been punished much more harshly for his transgression. Indeed, the prosecution argued that committing such a dangerous act, even without intent, should be deemed "Guilty of MURDER." Therefore, the jury would be better served returning a conviction for murder rather than downgrading the offense to simple manslaughter in such a case.¹⁸⁵ Indeed, one commentator bemoaned the decision as he noted "That no Government could subsist nor could any thinking Man believe he had any reasonable security for his life, where such cool Villany should be perpetrated with Impunity."¹⁸⁶ Jones's supporters raised doubts about the justness of his conviction even for manslaughter. One observer

Borneman, *Early Freemasonry in Pennsylvania* (Philadelphia: Grand Lodge of Free and Accepted Masons of Pennsylvania, 1931), 49-51.

¹⁸³ *Pennsylvania Gazette*, 13 May 1731.

¹⁸⁴ *Ibid.*, 16 June 1737.

¹⁸⁵ *Ibid.*, 7 February 1738; 15 February 1738.

¹⁸⁶ *Ibid.*, 7 February 1738.

noted that the conviction was primarily based on the testimony of John Tackerbury. An unidentified witness allegedly claimed that Tackerbury actually jostled Jones's elbow, which caused him to throw the spirits on the unfortunate Rees. Tackerbury immediately fled the scene, but when interrogated, he blamed Jones for this unfortunate incident. When pressed on the issue, Tackerbury confessed he falsely implicated Jones out of fear, stating, "What will not one Swear to save his own Neck?" The anonymous author criticized those individuals who called for a stricter punishment as it would push the law to become "arbitrary and barbarous."¹⁸⁷ John Remington, Jones's accomplice, claimed that he only attended the charade after Jones lured him there under false pretenses. Moreover, Remington asserted that he did not play a role in the murder.¹⁸⁸ Because of the conflicting reports, colonial officials, including Quaker leaders, imposed a lesser sentence on Jones. Consequently, they could be seen as simultaneously embracing Quaker views of compassion and the desire to rehabilitate an offender while still punishing deviant residents.

Partially because of this reluctance to execute criminals, the condemned often successfully hoped for pardons throughout the 1720s and 1730s. Following their condemnation for burglary in Philadelphia in 1729, Joseph Prouse employed his final confession at the gallows to exonerate his cohort James Mitchel. Prouse accepted his death sentence as just, but he asserted Mitchel's innocence, which made him a deserving object of mercy.¹⁸⁹ Although colonial officials worried about a perceived rise in crime and the need to make useful examples of the offenders, the Provincial Council opted to

¹⁸⁷ *American Weekly Mercury*, 14 February 1738.

¹⁸⁸ *CR*, 4:276-77.

¹⁸⁹ *American Weekly Mercury*, 27 January 1730.

pardon Mitchel and Prouse, primarily because of their youth and their acceptance of Mitchel's innocence.¹⁹⁰ Prouse also presented himself as a redeemable figure with his confession, in which he took responsibility for his actions and used his final moments to try to help another. Consequently, both men received pardons in 1730. Later that year, Thomas Soames received a pardon from the Provincial Council after being condemned for burglary in Philadelphia because of his young age and a glowing recommendation from his master.¹⁹¹ These cases reveal how Quaker magistrates believed that the fear of the gallows would have a lasting effect upon the pardoned individual in addition to sparing Quaker leaders the dilemma of choosing between their faith and the need to maintain order in the colony.

However, even Quaker officials recognized the need to carry out additional death sentences throughout these early decades. Following the contested murder case of Pugh and Lazarus, the Philadelphia Oyer and Terminer faced a new challenge with the case of Edward Hunt, the first man condemned under the expanded penal statutes. Hunt refused to play the role of the repentant sinner as he obscured his confession by stating, "I hope God will pardon me since he knows that I did not do it with any Design to cheat or defraud any one, or to make a Practice of Coining; but being ignorant of the Breach of any Laws of God or Man, I thought I might cut those Impressions as innocently as any other, or the Stamps that the Gentlemen of this place employ'd me about to make Farthings." Further denying the legitimacy of the courts that tried him, Hunt claimed "I am an *English* Subject, and desired to have the Privilege of the Laws of *England*; but it

¹⁹⁰*Pennsylvania Gazette*, 20 January 1730.

¹⁹¹*American Weekly Mercury*, 12 November 1730; *CR*, 3:390.

was not granted in any Point, except in Condemning me.”¹⁹² This execution also proved momentous because Pennsylvania had yet to execute anyone for a crime other than murder. After examining the case and Hunt’s reputation, the Provincial Council approved court’s decision to execute Hunt in order to create an example to deter others. Moreover, the Council expressed a view that Hunt was irredeemable, so a pardon would have scarce effect on his character.¹⁹³

Besides questions about the character of the offender, Quaker magistrates were willing to put aside their qualms regarding the death penalty in order to preserve peace when necessary. In the hopes of standardizing the new colony’s legal code as well as minimizing the threat of an Indian war, the initial laws stipulated that all perpetrators should be punished the same regardless of the ethnicity of the criminal and the victim with the notable exception of African Americans who faced trials by the colony’s special courts.¹⁹⁴ However, implementation of this policy often proved to be difficult. After a group of young Senecas and Shawnees murdered a white man in 1711, Lieutenant Governor Charles Gookin granted them mercy because of unspecified mitigating circumstances and the amount of time that had passed since the murder. Similarly, a drunken gathering turned fatal when several Munsee Indians murdered Thomas Wright in 1727 in Snaketown following an argument. The Provincial Council ruled that John Burt, a trader, had provoked the Native Americans, but they needed to become aware “of the Outrageousness of the Action, & to oblige them to make such Satisfaction as the nature

¹⁹²*American Weekly Mercury*, 24 November 1720.

¹⁹³*CR*, 3:109-10.

¹⁹⁴*CR*, 1:xx.

of the Case will admit of.”¹⁹⁵ Neither case witnessed the execution of any Native Americans as Pennsylvania authorities wished to maintain good relations with the tribes throughout the colony. These decisions surely proved unpopular with the growing number of inhabitants in Chester and Lancaster counties.¹⁹⁶ The lack of firm sanctions against the Native Americans in these cases possibly encouraged even greater assaults, leaving these colonists to suffer a precarious existence. Left unchecked, inhabitants of Pennsylvania’s frontiers began to take matters into their own hands, which threatened to further deteriorate relations with the Native Americans. Therefore, colonial officials recognized the need to make firm examples out of potential offenders such as John and Walter Winter, two brothers who were executed for murdering several Delawares in the Schuylkill Valley in rural Chester County in the spring of 1728.

The Winters’ incident required a harsh judgment because it came soon after an earlier attack by colonists on friendly Native Americans. In 1722, a trading expedition under brothers John and Edmond Cartlidge met with the Seneca warrior Sawantaeny and his wife Weynepreeueyta, the cousin of a Shawnee chief, at Monocacy Creek, a three day ride west from Conestoga.¹⁹⁷ The brothers used alcohol to ply Sawantaeny the evening they arrived, but refused to serve him any more liquor the next morning. Several native witnesses testified that John grew irate with Sawantaeny’s persistent demands, leading him to attack the native. Following this physical assault, Sawantaeny returned to his cabin to retrieve his gun despite his wife’s pleas to desist. Before he could seek to exact

¹⁹⁵ CR, 2:533-34; 3:286.

¹⁹⁶ Kevin Kenny, *Peaceable Kingdom Lost: The Paxton Boys and the Destruction of William Penn’s Holy Experiment* (New York: Oxford University Press, 2009), 20-21, 23-40.

¹⁹⁷ James H. Merrell, *Into the American Woods: Negotiators on the Pennsylvania Frontier* (New York: W. W. Norton & Company, 1999), 115.

his revenge upon John Cartlidge, William Wilkins, a servant for the Cartlidges, attempted to wrest the gun away from Sawantaeny. The two brothers soon joined in and their combined assault left Sawantaeny mortally wounded.¹⁹⁸

Colonial officials placed blame on both parties for this murder, but moved to find a mutually agreeable solution. Throughout the 1720s, traders such as the Cartlidges often traveled hundreds of miles into Indian country. Pennsylvania officials and merchants relied on them to serve as intermediaries with Native Americans to conduct political and business negotiations. John Cartlidge has even been described as “the most important white Pennsylvanian resident on the Susquehanna.”¹⁹⁹ However, these traders also existed outside of white society, prompting large portions of the population to distrust them. Colonial officials also could not ignore the Senecas who were arguably the most powerful group of the Iroquois.²⁰⁰ Colonial officials employed gifts and prompt negotiations to placate the Senecas. Similar to the Winters’ episode at the end of the decade, negotiators promised to try the Cartlidges “for their Lives according to our Laws, in the same manner as if they had Killed an Englishman.” Historian James Merrell has argued that the Cartlidges possessed far too many influential supporters, in both white and Indian societies, to be executed. Therefore, neither side believed that the case really mandated the use of the gallows. Indeed, colonial leaders even painted this murder as an unfortunate incident in which the brothers simply acted out of self-defense because the irate Sawantaeny “took his Gun to Kill the Englishmen.”²⁰¹ The Iroquois agreed and even

¹⁹⁸ CR, 3:150-52.

¹⁹⁹ Francis Paul Jennings, “Miquon’s Passing: Indian-European relations in colonial Pennsylvania” (PhD diss., University of Pennsylvania, 1965), 200.

²⁰⁰ Merrell, *Into the American Woods*, 56-105; Jennings, “Miquon’s Passing,” 200

²⁰¹ CR, 3:194.

pleaded for John Cartlidge's life. Governor Keith promptly agreed to this request in order to avoid punishing the Cartlidges—and risk angering their supporters—as well as re-establishing friendly relations between the Iroquois and the Pennsylvanians.²⁰² Such a decision appeased both sides because it preserved trade relations and defused the risk of additional violence staining the frontiers.²⁰³ The gallows served as a symbol to promote negotiations in this instance rather than an actual threat to take the lives of the Cartlidges.

Nevertheless, tensions remained on in the western counties by the late 1720s, which made it more likely that colonial officials would need to employ the gallows to help restore order. Rampant fears of a possible Indian war on the frontier prompted numerous observers to beseech the government in the east to address their problems. John Wright reported to James Logan that a band of Conestoga Indians was marching throughout the country following two murders committed by the Shawnees and that the governor needed to head west to personally handle this issue. The mounting tension led the residents of Colebrookdale in modern-day Berks County to petition Governor Patrick Gordon for aid in the face of the native threat as their “Lives Lies At Stake With us and our poor Wives & Children that is more to us than Life.” Finally, George Boone, a mill owner in the Schuylkill Valley, begged the governor to negotiate a settlement with the Native Americans, and provide weapons and ammunition for the settlers, because he scarcely had enough men to defend his mill. Despite the odds against them, he refused to

²⁰²CR, 3:189-90, 198, 201.

²⁰³ Jane T. Merritt, *At the Crossroads: Indians and Empires on a Mid-Atlantic Frontier, 1700-1763* (Chapel Hill, N.C.: University of North Carolina Press, 2003), 61-63, 67-69; Merrell, *Into the American Woods*, 115-21; John Smolenski, “The Death of Sawantaeny and the Problem of Justice on the Frontier,” in *Friends and Enemies in Penn's Woods: Indians, Colonists, and the Racial Construction of Pennsylvania*, ed. William A. Pencak and Daniel K. Richter (University Park, Pa.: Pennsylvania State University Press, 2004), 112-22.

flee as they were “resolved to defend ourselves to ye last Extremity.”²⁰⁴ In such an unsettled time, a minor incident could easily initiate a major crisis. However, the colony wished to maintain peace on the frontier not only for the safety of the settlers, but also to foster better relations with the Delawares to facilitate future land purchases.²⁰⁵

This tense relationship required only a spark to ignite it, which the Winters provided in the spring of 1728. John Roberts, one of the petitioners to Gordon from Colebrookdale, returned home to find several Native Americans near his house. Historian James Merrell stated that the group ostensibly did not represent a threat because it included a pregnant woman, an elderly woman, two girls, and a boy. However, Roberts immediately feared the worst.²⁰⁶ Upon learning of Roberts’ predicament, brothers John and Walter Winters and Morgan Herbert, Walter’s father-in-law, set out at once to aid their neighbor. As the three men neared Roberts’ home, they saw him standing at the door with several natives in close proximity. Walter claimed that Tacocolie, the male warrior, notched an arrow as the white men approached, which led the Winters and Herbert to attack the Native Americans. Walter first shot Tacocolie, while John mortally wounded one of the Indian women and “knocked another Indian Woman's Brains out” with the butt of his rifle.²⁰⁷ Walter also struck a fleeing girl with an arrow, and the men left to apprehend the other native woman the following morning. The Winters and Herbert left Roberts’ home with two captives and covered the two dead Indian women with leaves by the side of the road, leaving them with this ignominious burial.²⁰⁸

²⁰⁴ *Pennsylvania Archives*, 1st series, 1:213-14, 217-18.

²⁰⁵ Merritt, *At the Crossroads*, 41-44.

²⁰⁶ Merrell, *Into the American Woods*, 161.

²⁰⁷ *Pennsylvania Archives*, 1st series, 1:219.

²⁰⁸ *Ibid.*, 1:218-19.

This frontier incident attracted a great deal of attention from the eastern Pennsylvania government because it threatened to further destabilize the fragile peace between the settlers and the Native Americans. Logan informed the proprietors that “there is more danger of a misunderstanding with our Indians than I have never known since I came into ye place.”²⁰⁹ This “Piece of Barbarity” led John Penn expressed his desire that “you have made Examples of those Vile Fellows that Committed the Murder.”²¹⁰ Gordon sought to pacify the concerns of the native people by arresting the Winters and Herbert as well as burying the victims. He immediately expressed his “horror” and characterized the Winters and Herbert as “villains.”²¹¹ Gordon engaged in ritualistic gift giving and careful exploitation of traditional ceremonies to assuage these damaged relations at a conference in Conestoga. He reminded the native leaders that the descendents of Penn were “good People.” However, these perpetrators were “loose & idle” who violated the trust between these people. The Winters’ connections made it nearly inevitable that gift giving and other gestures would fail to fully quell these tensions. Gordon stated the offenders would be tried shortly and punished “as if they had Killed any of [the king’s] Subjects” to further appease the natives²¹² Gordon recognized the need to execute the Winters in order to repair these frayed relations. Rather than serve only as a form of social control, their public deaths allowed colonial leaders, including their Quaker supporters, to preserve this fragile peace on the frontier.

²⁰⁹James Logan to [John Penn], 15 May 1728, Logan Papers, 1716-1743, 172, HSP.

²¹⁰CR, 3:304; John Penn to James Logan, 15 August 1728, Logan Official Papers, HSP.

²¹¹*Pennsylvania Archives*, 1st series, 1:222.

²¹²CR, 3:317.

Nevertheless, Gordon refused to execute the men without taking advantage of the incident to harangue the Native Americans for their behavior as well. Perhaps to appease the backcountry settlers, he also partially blamed the Native Americans for creating the situation that led to this “unhappy Accident.”²¹³ The previous year had witnessed a white man beaten to death by a band of Indians following a disagreement.²¹⁴ Gordon described the frontier as plagued by hysteria as rumors of hostile Indians moving throughout the countryside spread rapidly among the population. These reports prompted numerous Pennsylvanians to exaggerate the size of the native forces and required them to defend themselves in wake of this imminent threat. Rumors of painted warriors traveling in the backcountry arrived in Philadelphia before news of the Winters’ atrocity. Just prior to this incident, “some strange Indians” roaming throughout the region had violently assaulted several white settlers.²¹⁵ Gordon preached restraint as “the Chain might be kept bright & clean, & every Spott be wiped away” regardless of the ethnicity of the offender.²¹⁶ Consequently, both sides bore the responsibility for preserving peaceful relations. Gordon claimed that the Native Americans must be aware that if “any Mischeif be done, you must take Care that the Indian be punish’d for it, that we may have the same Justice as if a Christian had done the wrong.”²¹⁷ Gordon, like many Pennsylvanians, realized the need to harshly punish such malcontents in order to avoid any future breakdowns. In this case, colonial officials believed the use of the gallows for both white and Native American offenders could help to preserve the peace.

²¹³ *CR*, 3:317.

²¹⁴ *Ibid.*, 3:285-91.

²¹⁵ *Pennsylvania Archives*, 1st series, 1:222.

²¹⁶ *CR*, 3:326.

²¹⁷ *Ibid.*, 3:337.

Even after they received their death sentences, the Winters professed their innocence until dying on the gallows, which further fueled tensions on the frontier. Although Walter admitted he deserved his fate since he killed the male Indian, the remainder of his statement sought to create doubt that he truly did deserve such an ignominious fate. Walter Winter claimed that for several weeks prior to the murder, the settlers heard a number of rumors about Indian attacks as well as tales of an upcoming strike against the white settlers. He asserted that these “strange Indians” threatened not only to attack the settlers, but also to destroy their corn, which was the lifeblood of their settlement. Walter claimed that “we had a strong Report among us, that there were Wars between the *English* and *Indians*, and that was the only Means that brought me to commit the wicked Murder upon that innocent *Indian*.” Even when they rushed to Roberts’ aid, John claimed that “if we saw any *Indians*, we would not kill them, but bind them, and carry them to Justice *Boon*’s House, to know the Reason why they carried such Arrows and Weapons” rather than seeking out vengeance. Both brothers claimed Walter only shot Tacocolie out of self-defense, emphasizing the contrast with pre-meditated murder. Walter further claimed that he never intended to injure the fleeing girl, which led to his use of a blunted arrow. John also admitted his role in the massacre, but he sought to spread the blame a bit more. He claimed that John Roberts lied in his testimony in order to escape any prosecution. John Winter asserted that, far from being an innocent bystander, Roberts drove his ax into the head of another woman. Even after this brutal treatment, the woman was still alive the next day, so Roberts once again smashed her head with the ax, and this time succeeding in killing her. The colony opted to ignore

these events and instead accepted Roberts's "false Evidence" in carrying out the death sentences of the Winters.²¹⁸

Because the Winters lacked the influential connections of the Cartlidges and these new murders posed a threat to the precarious relations in the colony's western counties, the Assembly had few qualms about executing the Winters to maintain peace. Accounts of the brothers' prior misdeeds may have helped to justify their death sentences. At the conclusion of his confession, John proclaimed, "I was by no Ways or Means whatsoever guilty of my Mother's Death; GOD, who is my Judge, knows that I am innocent of it."²¹⁹ Unfortunately, no record remains to illustrate the alleged mysterious circumstances surrounding the death of Winter's mother. However, John's decision to address these rumors in his final speech suggests suspicions had spread throughout Chester County about his other misdeeds. Local Quakers, as well as other Pennsylvanian legislators, may have viewed this gossip as proof that the Winters deserved their fate and served as suitable examples to the rest of the community. In addition to these circumstances, the desire to acquire even more land from the Delaware Indians may have contributed to the decision to execute the Winters. For example, James Logan was already heavily involved in the acquisition of land for his own purposes. Recognizing the tenuous nature of obtaining the land, any perceived slight could easily risk jeopardizing these acquisitions. The decision to push for more land as well as maintaining a careful balance of power on the frontiers may have prompted even the Quaker authorities to justify the use of the scaffold with the Winters despite the fact that the victims were Native Americans.

²¹⁸ *American Weekly Mercury*, 11 July 1728.

²¹⁹ *Ibid.*

Gordon regularly used this incident over the next few years in order to force the Native Americans to adhere to Pennsylvania's laws.²²⁰

The execution of the Winters also revealed the Quaker-dominated Assembly's belief that only the colonial government possessed the authority to decide who died on the gallows despite their reluctance to use capital punishment. Following reports that a servant to a trader was hanged by the Shawnees shortly after the Winters' execution, Gordon deemed this an "Outrage" and an act of "Insolence."²²¹ The Provincial Council still opted to extend mercy when possible even in the Winters' case. The three supreme court justices successfully petitioned the governor on behalf of Morgan Herbert, the brothers' convicted accomplice, because "tho' in Strictness of Law his offence may be adjudged murder yet It appears to us That he was not active in perpetrating thereof but unhappily fell into ye Company of those that committed it."²²² The decision to pardon Herbert may have also contributed to the question of who controlled the gallows as tensions continued to plague the frontier even in the early 1740s. After a near fatal attack by a Mohican Indian upon a white settler, colonial authorities demanded that the native leaders turn the offender over to face a trial. The magistrates used the example of the Winters to contend that they simply sought to bring about justice, regardless of the race or ethnicity of the criminal. This assertion prompted the native intermediaries to claim

²²⁰ Steven Craig Harper, *Promised Land: Penn's Holy Experiment, the Walking Purchase, and the Dispossession of Delawares, 1600-1763* (Bethlehem: Lehigh University Press, 2006), 46-51; Smolenski, "The Death of Sawantaeny and the Problem of Justice on the Frontier," 123-24.

²²¹ CR, 3:330. The Winters' episode remained paramount to negotiations with Native Americans even in the early 1740s. After a Native American had "cruelly wounded" a white colonist in May 1740, colonial officials called for a strict punishment of the perpetrator, similar to the Pennsylvania government's response to the Winter case. Nevertheless, the Native Americans retorted, "We have often heard of your hanging up those two persons, but as none of Our Indians saw the Men Dye, many believe they were not hanged but transported to some other Colony." CR, 4:413, 574.

²²² Petition to Patrick Gordon, 6 August 1728, Gratz Collection, Supreme Court of Pennsylvania, Case 2, Box 11, Folder Richard Hill, HSP; CR, 3:326-27.

“We have often heard of your hanging up those two persons, but as none of Our Indians saw the Men Dye, many believe they were not hanged but transported to some other Colony.”²²³ Thus, the Native Americans used this dubious distinction to challenge the authority of the white officials to punish the attackers.

While the Assembly sought to preserve peaceful relations with the Senecas and Delawares in the late 1720s, the colonial government realized how easily the fragile peace on the frontier could disintegrate. This presented a significant dilemma for Quaker representatives in the Assembly because of the close relationship between politics and their faith. Over 30 percent of the Assemblymen during the Winters’ incident were either current or former representatives to the Yearly Meeting. Consequently, Yearly Meeting leaders sought to eradicate this type of behavior in the future. Earlier statements from Yearly Meeting also denounced the sale of alcohol among the Native Americans. In 1687, the Yearly Meeting advised the Quarterly Meetings on “the great Evil & bad Effects that has appear’d by Selling the Indians Rum or other Strong Liquors.” Because of the numerous problems that this sale caused, they encouraged all Friends to avoid selling liquor to Native Americans or using it as a trade item.²²⁴ In the wake of the problem with the Cartlidges, Yearly Meeting again reminded Quaker merchants of this previous prohibition on selling alcohol. Indeed, “some People, preferring their filthy Lucre before the Common Good, continued in this Evil Practice.” This harsh statement failed to distinguish if the offenders were Quakers, but expressed their view that supplying Native Americans with alcohol would only lead to problems since it was “a

²²³ CR, 4:574.

²²⁴ Philadelphia Yearly Meeting, Minutes, 7 September 1687, Collection 976, Roll 7, Quaker Collection.

*Thing displeasing to the Lord, A 'Dishonour to Truth, and a Grief to all People.'*²²⁵ This public statement not only reasserted the traditional doctrines of the Quaker faith, but placed the blame for the incident on the avarice of the traders.²²⁶

Quaker civil authorities regularly struggled to find a balance between adhering to their traditional beliefs and accepting the desire to carry out more public executions. Consequently, they became increasingly stringent throughout the eighteenth century in enforcing their discipline. By the second half of the century, the Monthly Meetings were much more likely to disown individuals for a variety of offenses as prominent Friends sought to shape how outsiders viewed them and their faith.²²⁷ Not surprisingly, any who moved into criminal activities could be disowned. In 1750, Stephen Jackson and Christopher Marshall, two Quakers, were accused of counterfeiting in Philadelphia. Their transgressions threatened to shame the entire congregation. Jackson soon acknowledged his guilt, and the Friends assigned to handle his case reported "he seems sensible he has by his Scandalous Conduct justly incurr'd the Censure of Friends."²²⁸ Nevertheless, the meeting felt obligated to disown Jackson and continued its investigation of Marshall. At

²²⁵ *An Epistle from our Yearly Meeting in Burlington...1722*, 4.

²²⁶ The Quakers were far from alone in calling for an end to this sale. In 1731, the Pennsylvania Assembly complied with a request from the Delawares and Iroquois to ban the sale of alcohol to the Indian villages to prevent bloodshed. Peter C. Mancall, "The Bewitching Tyranny of Custom: The Social Costs of Indian Drinking in Colonial America," in *American Encounters: Native and Newcomers from European Contact to Indian Removal, 1500-1850*, ed. Peter C. Mancall and James H. Merrell (New York: Routledge, 2000), 207, 214n. Many continued to cite the effects of alcohol to explain future problems as well. In 1763, the defense for Renuatus, a Native American accused of murder, rested on the fact that "the Drinking of Ind: very often they are tempted by white People to taste the first dram ... are easily fuddled." Defense notes for Renuatus, [October, 1763], Box 124, Folder 6, Item 11, Moravian mission records among the North American Indians.

²²⁷ Jack Marietta's analysis of the Monthly Meeting records has shown that the number of offenses began to rise in the 1720s and steadily increased through the 1740s before exploding in the latter half of the century. Jack D. Marietta, *The Reformation of American Quakerism, 1748-1783* (Philadelphia: University of Pennsylvania Press, 1984), 46-72.

²²⁸ Philadelphia Monthly Meeting minutes, 29 March 1751, Film 3, 169, Quaker Collection.

the subsequent meeting, Marshall presented a paper in hopes of gaining the forgiveness of the meeting. The Monthly Meeting ruled that Marshall “doth not appear to us to be guilty of the groser parts of their Accusation, yet as by his Conduct he hath given occasion, of much reproach to be cast on our holy Profession” and ejected him as well.²²⁹ The meeting was possibly more upset with his efforts at alchemy than the association with counterfeiting. The 1718 laws made witchcraft a capital crime, although Pennsylvania witnessed no prosecutions for witchcraft after this time.²³⁰ However, five years after the revision of the penal statutes, the annual epistle expressed “a just abhorrence” of those who falsely claimed the ability to divine information that otherwise was unknown.²³¹ The disownment chastised Marshall not only for keeping loose company, but also for his experiments in the “Transmutation of Metals.”²³² In the years following the execution of Edward Hunt, Quakers may have been very concerned that their members could easily fall victim to the temptations of vile practices such as counterfeiting. Therefore, they needed to be vigilant in policing their own members in order to avoid suffering a similar fate as Hunt.

The early days of Pennsylvania proved to be trying times for many Quakers as they grappled with the need to provide a government for their colony. Quaker leaders often relied on epistles and final confessions to both reassert their traditional views and to justify their exercise of power to the masses, especially in the aftermath of the revisions

²²⁹Ibid., 26 April 1751, 177.

²³⁰The only recorded case of witchcraft in eighteenth century Pennsylvania was in 1701 when Joseph and Ann Richards were accused of bewitching a woman who fell ill. The case was later dismissed and they never faced further sanctions. *CR*, 2:20.

²³¹*An Epistle from our Yearly Meeting in Burlington... 1723.*

²³²Philadelphia Monthly Meeting minutes, 26 April 1751, Film 3, 177, Quaker Collection. As a chemist, Marshall had a ready access to chemicals, so his possible ventures into alchemy could be interpreted as part of the intellectual climate of the period.

of the penal code in 1718. Furthermore, the constant admonishments in the annual epistles served as steady reminders to the Quakers of what types of activities they should avoid. By offering such startling contrasts, Quaker leaders presented an image of how people should live and strive to continue on the holy experiment. However, the unrepentant stance of many criminals led numerous Pennsylvanians, including Quakers, to view them not as much as objects of mercy, but in an increasingly negative light. Pennsylvania criminals at times also adopted such a stance. Observers noted at the executions of Henry Wildeman and Catherine Connor in 1737 that neither in prison nor on the scaffold had they “behav’d so concern’d as might have been expected from Persons in their Circumstances.” Connor only displayed any emotion at her trial following her sentence when she considered the fate of her child.²³³ Despite her duties as a mother, colonial officials still opted to execute Connor; thus increasing the likelihood that the colonial government would have to support her child. Connor’s unrepentant criminal ways may have convinced the council that she would continue to serve as a corruptive influence upon the child. The execution of these two unrepentant criminals removed two threats from society as well as ensuring that the unborn child could never plague the region. Furthermore, the final actions of Connor and Wildeman convinced many Pennsylvanians that they were truly inhuman and irredeemable. Thus, they deserved no other fate than death. Over the course of the next three decades, the need to enforce the law and maintain order often clashed with Quaker religious beliefs, especially for those Quakers who served in the government or sat on the Oyer and Terminer. Consequently, Yearly Meeting used their epistles to reassert traditional Quaker beliefs

²³³ *American Weekly Mercury*, 19 May 1737; 7 July 1737.

through the 1740s while Quaker justices and magistrates simultaneously embraced the need for capital punishment. Chapter 2 will discuss how Quakers began to play a less prominent role in the colonial government by the mid-eighteenth century, which allowed for the emergence of other religious groups such as the Presbyterians.²³⁴ These new leaders moved beyond Penn's initial plans and instead embraced the need for more executions. Over the next few decades, the gallows would be an increasingly accepted form of punishment rather than abating over time. This precarious situation left leading Pennsylvanians to further assess who was a worthy candidate to hang.

²³⁴ Marietta, *The Reformation of American Quakerism*, 32-45, 131-68.

Chapter 2 **Executing the Other:** **A growing reliance on capital punishment, 1740-1769**

In 1741, Philadelphia officials executed Lawrence Callaghan for the murder and robbery of William Bunting. Callaghan and Philip Cane, his accomplice, knocked on Bunting's door and immediately burst into the home after Bunting opened the door. Callaghan and Cane clubbed Bunting, fracturing his skull in multiple places, and left him in such pitiful condition that he later died from the assault. The robbers then bound Bunting and his young nephew before proceeding to rob the house. They later denied committing the crime, but the authorities discovered some of Bunting's stolen goods and the bloodstains on their clothing to convict the two men.¹ This was not the first time that the two men had plagued the Philadelphia region. The previous year, they along with another accomplice were arrested in Chester County for another robbery in Philadelphia. The men had used the same methods as they "Blacked all their faces" and broke into the home of Morgan Davies. The robbers demanded that Davies and his wife hand over their money and even threatened to "knock her branes out" if the wife attempted to flee the home.² These violent assaults, both on the physical bodies of Pennsylvanians and their possessions, helped to trigger a transformation in the attitudes of many Pennsylvanians in regards to capital punishment.³

Between 1740 and 1769, Pennsylvanian authorities executed seventy-five individuals. This number by itself possesses little significance as later decades witnessed

¹*Pennsylvania Gazette*, 26 March 1741.

²Examination of Lawrence Callaghan, 6 June 1740, CCQSP.

³ Cane committed suicide in prison, which spared him from dying on the gallows as well. *Pennsylvania Gazette*, 2 April 1741.

far more executions. Nonetheless, these decades proved noteworthy as a transition period in that only 16.7 percent of the condemned received pardons, after 55.6 percent of the condemned, excluding the escaped pirate, who received mercy between 1718 and 1739. This proved to be the most severe use of the gallows in Pennsylvania's history as the colony struggled to eliminate a number of threats—both real and perceived. Reflecting the entrenchment of non-Quakers in positions of authority and the harsher penal codes for Pennsylvania, colonial officials became more willing to employ the death penalty, especially for property crimes, which accounted for 42.7 percent of the executions in the middle decades. The Pennsylvania Assembly also expanded the number of capital statutes several times in order to address problems such as counterfeiting and the mounting tensions in the western parts of the colony.

In the wake of increased use of the gallows, newspaper reports, published pamphlets, and trial accounts often emphasized the grisly aspects of the various criminal acts. Rather than simply seek to feed the morbid curiosity of the populace, these accounts emphasized the evil nature of the condemned and the need for the regular use of the gallows in order to “ensure Safety to the People, by deterring the Wicked from the Perpetration of the like heinous Offences.”⁴ Unlike earlier magistrates who emphasized the need to forgive the condemned or use them as object lessons, Pennsylvanians now defined the offender as irredeemable and worthy only to be hanged. Because the condemned was so inherently different from the rest of the population, colonial officials contended that the death penalty would both eradicate the threat to society and help impose order. No single criterion determined who was the other or this individual who

⁴ *Pennsylvania Gazette*, 11 February 1768.

typical Pennsylvanians could no longer identify with. The courts, governors, and the Provincial Council used a range of factors, including types of crime, ethnicity, and gender, to determine which individuals were most offensive and deserving of the penalty of death. However, many Pennsylvanians could easily disagree about who truly deserved to be hanged. In the 1760s, the colony struggled to gain popular acceptance in defining criminals in this way especially as residents in the newly settled western counties disagreed with the characterizations offered by the eastern elites. Therefore, the definition of the other remained a deeply debated subject throughout this period even as many throughout the colony embraced the need for increased use of the death penalty.

The decision to reserve public executions for the most irredeemable figures had a long history on both sides of the Atlantic. Michel Foucault defined the criminal as “nothing less than a traitor, a ‘monster’,” for violating the social contract when committing a crime.⁵ Other historians have agreed with Foucault that these offenders often deviated from the ideals embraced by the rest of society. V. A. C. Gatrell contended that the social distance in England often led the more respectable upper and middle classes to view lower-class criminals as social deviants. Consequently, the upper classes expressed little sympathy for the lower-class criminals who ended up on the gallows.⁶ Similarly, Daniel A. Cohen’s examination of the New England crime literature found that by the mid-eighteenth century the condemned were largely recent immigrants or native-born members of the criminal underworld. Either category made the condemned appear

⁵ Foucault, *Discipline and Punish*, 90.

⁶ Gatrell, *The Hanging Tree*, 280-97.

inherently different from the rest of the community.⁷ Reflecting these changes, respectable individuals throughout the colonies often depicted the condemned in much harsher tones after 1750. The condemned were viewed as so deviant from the mores of polite society that they deserved no other fate. The Puritan clergy of New England routinely gave execution sermons in the seventeenth and eighteenth centuries. These jeremiads sought to remind the on-looking crowd that the condemned deserved their fate for breaking with God's will.⁸ However, these texts evolved over time. Karen Halttunen convincingly argued that these sermons initially allowed the community to identify with the offender's misdeeds. After the mid-eighteenth century, the literature no longer viewed the condemned as possessing similar traits with the rest of the population, but instead portrayed him or her as a "moral alien."⁹ Criminals also often began to deviate from their expected role in the gallows theater. Criminals often refused to comply with the state's wishes and die as penitents. Instead, they were regularly hanged without expressing any remorse.¹⁰ Such attitudes further alienated the condemned in the eyes of many because of their refusal to seek forgiveness even in the face of death. Although Pennsylvania lacked the execution sermons found in New England, portrayals of the condemned reflected these trends after mid-century. No longer simply viewing the offenders as public examples of an individual's downfall like the Quakers, court records, newspaper accounts, and published pamphlets in Pennsylvania typically depicted the condemned as

⁷ Cohen, *Pillars of Salt, Monuments of Grace*, 23.

⁸ Bosco, "Lectures at the Pillory," 172-75.

⁹ Halttunen, *Murder Most Foul*, 35.

¹⁰ Daniel E. Williams, "Rogues, Rascals and Scoundrels: The Underworld Literature of Early America," *American Studies* 24 (Fall, 1983): 5-19.

extremely alien compared to the rest of the population after 1740, thus fully deserving of the gallows.¹¹

The colony underwent a significant cultural and political transformations, which left colonial officials more willing to carry out death penalties. Although the Quakers remained the largest religious group in the Assembly through the Revolution, their domination of the Assembly waned over time. Quakers composed over 80 percent of the Assembly members in the 1740s, but dropped to roughly 50 percent of the members in 1755. Ten Friends also withdrew from the Assembly in 1756, when the colonial legislature began to move away from Quaker pacifist beliefs.¹² Quaker domination of the office of the chief justice came to an end by 1750 when William Allen, a Presbyterian, assumed the post, which he held until 1774. Anglicans also regularly served on the Supreme Court as well as the Provincial Council, which determined whether to recommend leniency for the condemned. These new leaders proved much less reluctant to impose the death penalty. Even the Quakers who remained in office often expressed few qualms about the increased use of the gallows in the middle decades of the eighteenth century. Many Quaker merchants prospered by the mid-eighteenth century,

¹¹ Execution sermons did not appear to be prevalent in eighteenth-century Pennsylvania as no published accounts remain. Henry Muhlenberg delivered one of the rare sermons following the 1764 execution of William Autenreith for burglary in Philadelphia. He recorded that he “impressed upon them [his congregation] the example of the German who was executed yesterday, which caused a great stir among the hearers.” Muhlenberg probably stressed Autenreith’s eventual repentance as this was a major theme throughout his multiple visits with the condemned man in prison. However, Muhlenberg may have also contrasted Autenreith’s sinful past with the more godly behaviors of his congregation. Theodore G. Tappert and John W. Doberstein, trans., *The Journals of Henry Melchior Muhlenberg* (Philadelphia: Evangelical Lutheran Ministerium of Pennsylvania and Adjacent States, 1942-1958), 2:77.

¹² Horle, *Lawmaking and Legislators in Pennsylvania*, 2:132-34.

which also possibly made them more willing to pursue harsh penalties against criminals.¹³

Even prior to these changes, eighteenth-century observers could not help but notice how much the colony had changed by the mid-eighteenth century. William Moraley, an indentured servant in Pennsylvania, claimed that the penal codes promoted by the Quaker-dominated Assembly “destroys the Liberty of the Subject; nothing being more common than to see Men committed to Prisons without legal Warrant, by the arbitrary Authority of the Magistrates” rather than allow “the more speedy Execution of Justice.”¹⁴ Although Moraley’s assertions may have been influenced by his two stints in prison, his criticisms reflected at least some elements of society at this time. Upon his visit to Pennsylvania, Gottlieb Mittelberger also expressed his surprise at the harsh penalty for larceny as offenders received a public lashing in the market place.¹⁵ The lack of complete court records in the 1740s make it impossible to fully assess the conviction rate for capital crimes.

The increased emphasis on capital punishment coincided with the growth of the colony. By the mid-eighteenth century, Philadelphia was beginning to emerge from a small backwater town into one of the larger metropolises in the English world. During his visit in 1744, Dr. Alexander Hamilton contrasted the current humble state of the Quaker

¹³Tolles, *Meeting House and Counting House*, 109-43, 233-34.

¹⁴ William Moraley, *The Infortunate: The Voyage and Adventures of William Moraley, an Indentured Servant*, 2nd ed., ed. Susan E. Klepp and Billy G. Smith (University Park, Pa.: Pennsylvania State University Press, 1992), 68.

¹⁵ Mittelberger’s reflections may not be the most accurate. He also named horse theft as a capital crime in Pennsylvania. Quarter session courts generally handled this offense suggesting its non-capital nature. The only recorded Pennsylvania executions for horse theft occurred during the Revolutionary War and even then the accused were also alleged to be British agents. This will be discussed in more detail in the next chapter. Gottlieb Mittelberger, *Gottlieb Mittelberger’s Journey to Pennsylvania in the year 1750 and Return to Germany in the year 1754* trans. Carl Theo. Eben (Philadelphia: Joseph Y. Jeanes, 1898), 96.

city with his belief that within “a few years hence it will be a great and a flourishing place and the chief city in North America.”¹⁶ The city had numbered only 4,883 residents in 1720, but had grown nearly three times, as it reached nearly 14,000 in 1750. The colony witnessed similar growth as the population reached 108,000 by mid-century.¹⁷ Reports that “Pennsylvania is a healthy land” enticed immigrants to settle farther and farther to the west.¹⁸ These rural farmers took part in the flourishing trade with both the West Indies and southern Europe and possessed a higher standard of living than their counterparts in the south.¹⁹ Further underscoring the colony’s dramatic transformation, local elites in Philadelphia began to develop the intellectual and cultural life of the colony with the establishment of the American Philosophical Society, Library Company, College of Philadelphia, and Pennsylvania Hospital. By all accounts, the colony had successfully surpassed many older cities such as Boston to assume a preeminent place in colonial British North America.

Many contemporary Pennsylvanians believed that this immigration further exacerbated the threat of crime and disorder within the region. In 1741, colonial officials, driven by fears that Rogues, “Vagabonds, and other idle and disorderly Persons” were hiding in the colony, required the indigent to produce proof of residence or be sent to the workhouse.²⁰ By mid-century, Benjamin Franklin attacked Parliament for continuously imposing England’s unwanted population on the colonies. Historian David Waldstreicher

¹⁶ Carl Bridenbaugh, ed., *Gentleman’s Progress: The Itinerarium of Dr. Alexander Hamilton, 1744*(Chapel Hill, N.C.: University of North Carolina Press, 1948), 193.

¹⁷ Susan E. Klepp, “Demography in Early Philadelphia, 1690-1860,” *Proceedings of the American Philosophical Society* 133(June 1989): 95.

¹⁸ Mittelberger, *Gottlieb Mittelberger’s Journey to Pennsylvania in the year 1750*, 56.

¹⁹ James T. Lemon, *The Best Poor Man’s County: A Geographical Study of Early Southeastern Pennsylvania* (Baltimore: Johns Hopkins University Press, 1972), 125-27.

²⁰ *Pennsylvania Gazette*, 29 October 1741.

has claimed that Franklin often cast criminals as “outsiders by nature” in the *Pennsylvania Gazette*.²¹ Unlike the Quakers who offered them as examples of an individual’s downfall, Franklin’s portrayals depicted the offenders as inherently debauched and irredeemable. Consequently, Franklin contended that,

It has been said, that these Thieves and Villains introduc’d among us, spoil the Morals of Youth in the Neighbourhoods that entertain them, and perpetrate many horrid Crimes; But let not *private Interests* obstruct *publick Utility*. Our *Mother* knows what is best for us. What is a little *Housebreaking*, *Shoplifting*, or *Highway Robbing*; what is a *Son* now and then *corrupted* and *hang’d*, a *Daughter debauch’d* and *pox’d*, a *Wife stabb’d*, a *Husband’s Throat cut*, or a *Child’s Brains beat out* with an *Axe*, compar’d with this “IMPROVEMENT and WELL PEOPLING of the Colonies!”²²

Although historian Roger Ekirch has contended that these fears of transported convicts resuming their criminal activities were overblown, there was some validity to them. Before his execution in Chester County for arson and counterfeiting in 1737, Joseph Bevan admitted to resuming a life of crime that resulted in his transportation to Maryland. On the same day, Catherine Connor was executed in Philadelphia for burglary after being deported from Ireland to Virginia. The *Pennsylvania Gazette* warned its readers in 1751 that a convict servant had fled to Philadelphia from Maryland. Before leaving, the man had entertained thoughts of murdering his mistress. Although he managed to avoid committing that nefarious deed, he was now working the streets as a beggar, a profession that could easily lead to a return of criminal tendencies. This final account, published just a month prior to Franklin’s condemnation of the transportation of convicts, surely helped to alarm much of the populace. Each of these individuals

²¹ David Waldstreicher, *Runaway America: Benjamin Franklin, Slavery, and the American Revolution* (New York: Hill and Wang, 2004), 95.

²² *Pennsylvania Gazette*, 9 May 1751.

eventually migrated north to Pennsylvania, thus revealing just how mobile and potentially dangerous these offenders could be.²³

Philadelphia's burgeoning consumer culture coupled with the increased anonymity helped spur a rise in both property and violent crimes by the mid-eighteenth century, which were seen as a threat to the social order.²⁴ Although Pennsylvanians adopted a more lenient stance toward property crimes prior to 1740, changing demographics and fears for their safety changed the attitudes of many by the mid-century. Nocturnal excursions proved especially dangerous as thieves and murderers routinely preyed upon victims throughout the metropolitan region. For example, Philadelphia witnessed a crime wave in 1749 as thieves pilfered a variety of household items from several homes. Instances of armed and violent robberies even occurred as criminals sought out those travelling alone as likely prey.²⁵ Recognizing the threat posed by many young people, the colony held parents and guardians responsible for the actions of their charges in hopes of eliminating some of the criminals roaming the area.²⁶ Others lurked behind false identities and traveled throughout the region committing various crimes. In 1742, an unidentified African American was fished out of the Delaware River in Philadelphia. Her hands had been bound and her stomach had been gashed open. The coroner ruled that she had been "barbarously Murdered by some Person or Persons to

²³ Ekirch, *Bound for America*, 167-221; *American Weekly Mercury*, 16 August 1722; 7 July 1737; *Pennsylvania Gazette*, 7 July 1737, 11 April 1751.

²⁴ Jack D. Marietta and G. S. Rowe, "Personal Violence in a 'Peaceable Kingdom': Pennsylvania, 1682-1801" in *Over the Threshold: Intimate Violence in Early America*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 1999), 22-44; Thomas P. Slaughter, "Interpersonal Violence in a Rural Setting: Lancaster County in the Eighteenth Century," *Pennsylvania History* 58 (April 1991): 98-123; Breen, *The Marketplace of Revolution*, 104-11; Fitzroy, "The Punishment of Crime in Provincial Pennsylvania," 254-55.

²⁵ *Pennsylvania Gazette*, 31 August 1749; 14 September 1749; 28 September 1749; 5 October 1749.

²⁶ *Statutes at Large*, 5:241-42.

them unknown.”²⁷ Even supposedly friendly encounters could turn deadly. While traveling in Chester County in 1751, William Wilson encountered an unknown man who engaged him “in a civil Manner” before striking and robbing Wilson. The blow knocked Wilson off his horse and led to his death.²⁸ Consequently, much of the restraint displayed in utilizing the gallows prior to 1740 began to erode as the colony appeared overrun with lawbreakers. Jack D. Marietta and G. S. Rowe concluded that Pennsylvania’s murder rate in the latter half of the eighteenth century doubled that of London.²⁹ Pennsylvania expanded the number of capital statutes in the 1750s and 1760s in order to allow the colony to better handle this rising criminal population.³⁰

Few groups represented a more visible manifestation of otherness than enslaved African Americans. Distinguished by their skin color and physical appearance as well as status as servants, even Quaker leaders feared the potential dangers in controlling this population.³¹ As a result, the colony mandated harsher punishments for all black offenders as early as the late seventeenth century. By 1726 the Assembly feared that many slave owners hid the crimes of their slaves rather than risk losing their investment.³² Consequently, Pennsylvania passed “An Act for the better regulation of Negroes,” which provided compensation for slave owners whose slaves committed

²⁷ *Pennsylvania Gazette*, 20 May 1742; *American Weekly Mercury*, 20 May 1742.

²⁸ *Pennsylvania Gazette*, 31 October 1751.

²⁹ Marietta and Rowe, “Personal Violence in a ‘Peaceable Kingdom’,” 23-24.

³⁰ Barnes, *The Evolution of Penology in Pennsylvania*, 38-39; Lawrence Henry Gipson, “The Criminal Codes of Pennsylvania,” *Journal of the American Institute of Criminal Law and Criminology* 6 (September 1915): 339-40. Previously as in the trial of Edward Hunt in 1720, colonial officials could make counterfeiting a capital crime by listing it as treason.

³¹ Winthrop D. Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812* (Baltimore: Penguin Books, 1968), 196.

³² Prosecutions of slaves varied. In the south, some slave owners occasionally used the law to punish their misbehaving slaves. However, they generally avoided this except in capital cases. This may have been partly because slave owners were often seen as responsible for the criminal behaviors of their slaves, thus seeking to mitigate any liability that they held. Morris, *Southern Slavery and the Law*, 249-61.

capital crimes. Prior to their execution, the justices would appraise the value of the slave and then compensate the owner.³³ The lack of court records makes it impossible to assess the number of African Americans who were executed in Pennsylvania prior to 1780. This limitation forced the two studies focusing on African American criminals in Pennsylvania both to concentrate on the late eighteenth or early nineteenth centuries. G. S. Rowe concluded that the state prosecuted black offenders in the 1790s primarily to protect property rather than acting out of racist beliefs. Leslie Patrick-Stamp contended that poverty often drove African Americans to theft as there were few cases of violent crimes committed by African American offenders.³⁴ Pennsylvania's early court records are already sparse, but even fewer accounts remain for the special trials for African Americans throughout the colonial period. The official records often remain silent on the ethnicity of the offender, but at least twenty-nine African Americans received death sentences prior to 1794, with twelve of these individuals escaping the gallows through pardons. The overall percentage of 41.4 percent exceeds the pardon rate of white offenders (nearly 33 percent). The sparse records commonly identified African American offenders as slaves, which may have explained the hesitancy of many colonial officials to order the death of valuable property. However, such leniency generally was not displayed between 1740 and 1769 as the colony pardoned just one out of seven condemned African American criminals (14.3 percent), making this the only period in which white offenders were more likely to receive mercy (17.1 percent).

³³ *Statutes at Large*, 4:59-60.

³⁴ Rowe, "Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century," 685-712; Leslie Patrick-Stamp, "Numbers that Are Not New: African Americans in the Country's First Prison, 1790-1835," *PMHB* 99 (January/April 1995): 116-28.

Table 2.1**Death sentences and pardons by race, 1700-1794**

	African Americans		Whites			Native Americans	
	Condemned	Pardoned	Condemned	Pardoned	Other	Condemned	Pardoned
1718 - 1739	6	3 (50.0%)	42	24 (57.1%)	1	0	0
1740 - 1769	7	1 (14.3%)	82	14 (17.1%)	0	1	0 (0%)
1770 - 1794	16	8 (50.0%)	231	85 (36.8%)	13	1	0 (0%)
Totals	29	12 (41.4%)	355	115 (32.9%)	14	2	0 (0%)

Sources: MPC, *Pennsylvania Archives*, *Pennsylvania Gazette*; *American Weekly Mercury*; Pennsylvania Oyer and Terminer Records, *Journals of Henry Melchior Muhlenberg*, Bucks County Historical Society, and Chester County Historical Society.

Christmas, the lone recipient of a pardon, still was banished from the colony. As a recently imported slave in Bucks County, the Provincial Council agreed that Christmas's unfamiliarity with the language prevented him from mounting an effective defense. Moreover, Christmas stole only three items of clothing with a total value of eleven shillings, which also convinced the Council "that he was a proper Object of the Governor's Mercy." Nevertheless, his master still had to guarantee Christmas's removal from the colony. Only two out of twenty-two white offenders were given similar conditional pardons as the majority appeared allowed to remain within Pennsylvania society.³⁵ Therefore, colonial officials never fully trusted African American offenders even after extending mercy.

The lack of mercy toward African American offenders suggests that many colonists viewed them as truly different from other criminal offenders. As opposed to

³⁵ Two other white offenders enlisted in the military after receiving pardons although it is unclear if this was a condition for their reprieve. CR, 5:163, 210-211; 8:58; 9:699; 10:93-94; 12:102.

indentured servants who also eventually gained their freedom, the Assembly concluded that “free negroes are an idle, slothful people and often prove burdensome to the neighborhood” to justify a series of new laws regarding the status of African Americans in 1726. White masters who freed their slaves were forced to provide a security to insure the good behavior of the free blacks. If local magistrates deemed a free black to be unemployed, then they could temporarily enslave the African American. The laws sought to heighten the distinctions between white and African American residents by outlawing intermarriage.³⁶ Historians have argued that these laws created a “full-fledged black code” as the Assembly “formalized a caste system on the basis of skin shade.”³⁷ Relations between the races remained strained through the mid-eighteenth century. In 1751, a letter to the *Pennsylvania Gazette* complained that growing numbers of African Americans, both free men and slaves, were moving into Philadelphia. Indeed, the increasing number of advertisements for runaway slaves in the *Pennsylvania Gazette* between 1740 and 1769 suggest that these fears possessed at least some validity.³⁸ According to the editors, the former slaves soon became “idle and vagrant Persons” who “are entertained, corrupted and encouraged to commit Felonious, and other, mischievous Offences, to the great Annoyance and Danger of the Neighbours.” Thus, the editorial drew a firm distinction between the African American inhabitants of Philadelphia and the “honest Inhabitants of the City.”³⁹ The newspaper re-published the 1726 laws to further remind Philadelphians of the inferior status of African Americans. The Assembly also passed

³⁶ *Statutes at Large*, 4:59-64.

³⁷ Nash and Soderlund, *Freedom by Degrees*, 12.

³⁸ Billy G. Smith and Richard Wojtowicz, eds., “The Precarious Freedom of Blacks in the Mid-Atlantic Region: Excerpts from the *Pennsylvania Gazette*, 1728-1776,” *PMHB* 113 (April 1989), 238.

³⁹ *Pennsylvania Gazette*, 5 March 1751.

new laws that year stipulating punishments for illegal horse racing and shooting matches. African American offenders received corporal penalties while white criminals simply had to pay a fine. A similar breakdown also befell vandals as the law again stipulated physical punishment for African Americans.⁴⁰ Reverend Henry Muhlenberg concluded that “nobody in this country has much regard for the black slaves.” Muhlenberg went on to describe them as “abominable, beastly,” and “heathen[s],” thus doing little to instill support for them among the rest of the population. He further provided an anecdote of a Swedish settler who became outraged when he learned that his slave was attempting to learn Swedish. The master deemed Swedish to be “too good and sacred for a blind and unclean heathen to be permitted to learn and speak it.”⁴¹ Based on these attitudes, white Pennsylvanians could easily view African Americans as a real threat to the well-being of the colony and a group who could never truly be integrated into Pennsylvania society.

Despite these attitudes, Pennsylvania’s African American population steadily increased throughout the eighteenth century, which further exacerbated fears throughout the colony. Imperial wars interrupted the immigration of young men from the German states, prompting colonists to rely on slave labor in the 1750s and 1760s.⁴² Factors such as material want or dissatisfaction with their status could encourage a slave to turn to a life of crime in hopes of improving his or her overall condition. Historian Susan Klepp has argued that slaves often suffered from a poor diet, which drove them to commit

⁴⁰ African Americans were not the sole group identified in either law. Native American offenders received the same punishment as African Americans for horse racing and shooting matches. Servants suffered the same penalties for vandalism. *Statutes at Large*, 5:109-110, 126-27.

⁴¹ Tappert and Doberstein, *The Journals of Henry Melchior Muhlenberg*, 2:11, 12, 372.

⁴² Marianne S. Wokeck, *Trade in Strangers: The Beginnings of Mass Migration to North America* (University Park, Penn.: Pennsylvania State University Press, 1999), 39-44; Nash and Soderlund, *Freedom by Degrees*, 5.

crimes.⁴³ Property crimes composed 57 percent of the condemnations for African American offenders between 1740 and 1769. Consequently, colonial officials felt compelled to make examples out of disobedient slaves even when the executions proved costly to their masters. In 1762, the colony executed two slaves for burglary despite three separate petitions on their behalf.⁴⁴ Instead, the Provincial Council decided to uphold the 1726 statute, which argued that failure to punish the offenders would serve “to the ill example of others [African Americans] to commit the like offense.”⁴⁵ Based on their close proximity to whites as well as resentments because of their subservient status, African Americans always posed a potential threat. Pennsylvanians could regularly read about slave revolts elsewhere.⁴⁶ Other colonies such as New York crafted their criminal justice system to quickly and effectively address cases of rebellious slaves before they could potentially threaten the colony as a whole.⁴⁷

Violent acts committed by African Americans were harshly punished between 1740 and 1769. Colonial officials condemned three African Americans to death for murder, and none received a pardon.⁴⁸ In his assessment of the late eighteenth century, Rowe concluded that the state rarely viewed murders committed by African Americans to

⁴³ Susan E. Klepp, “Seasoning and Society: Racial Differences in Mortality in Eighteenth-Century Philadelphia,” *William and Mary Quarterly* 51 (July 1994): 481-86.

⁴⁴ *CR*, 9:5-6.

⁴⁵ *Statutes at Large*, 4:59.

⁴⁶ For examples of eighteenth-century slave revolts, please see Jill Lepore, *New York Burning: Liberty, Slavery, and Conspiracy in Eighteenth-Century Manhattan* (New York: Knopf, 2005); Michael Craton, *Testing the Chains: Resistance to Slavery in the British West Indies* (Ithaca, N.Y.: Cornell University Press, 1982); Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: W. W. Norton & Company, 1974), 218-38, 271-326.

⁴⁷ Greenberg, “The Effectiveness of Law Enforcement in Eighteenth-Century New York,” 199-200.

⁴⁸ This statistic includes Mulatto Elizabeth who committed infanticide in Philadelphia in 1774. *CR*, 10:172; *Pennsylvania Gazette*, 24 May 1774.

be a real threat because they typically murdered other African Americans.⁴⁹ However, murders committed by African Americans could promote even more outrage than other offenses especially when they attacked white victims. In 1761, “foolish Henry” Xander fatally stabbed another man and chopped off his head. He then proceeded to flee from the authorities, forcing them to chase him for several hours. Yet a murder committed by Charles Holly, a runaway slave from Maryland, in the same year was designated “as Malancholly an account as Lancaster Ever Saw.” Charles and his wife Margaret Shuyler had fled from Maryland and sought to vanish in the Pennsylvania countryside or perhaps even reach Philadelphia and take advantage of the city’s black population to avoid detection.⁵⁰ Consequently, they took care to avoid any individuals who might be pursuing them and to escape notice. Darby Loobey continued his pursuit until he finally confronted the elusive couple. Loobey’s attempt to capture a runaway slave posed a number of risks as multiple accounts mentioned how slaves murdered or violently assaulted their overseers who attempted to apprehend them.⁵¹ Holly also chose to resist and in the subsequent scuffle he killed Loobey. Margaret claimed to have not witnessed the fight, and that Holly threatened her when she questioned him about the outcome of the skirmish. They traveled for nearly a week through the woods with few provisions, before Shuyler decided to again ask her husband about his encounter with Loobey. Holly again denied murdering him, but also appeared to lose his temper as he warned his wife, “to hold her Tongue, for that he wou’d kill him if she ever mentioned it, if he cou’d get an

⁴⁹Rowe, “Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century,” 689-90.

⁵⁰ Nash and Soderlund, *Freedom by Degrees*, 31-32.

⁵¹ Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill, N.C.: University of North Carolina Press, 1998), 329-30.

opportunity.” The two continued their way north along the Susquehanna River until several soldiers arrested them near Fort Augusta, and Holly was subsequently sentenced to death. The same court convicted Xander of manslaughter, which simply resulted in his hand being branded.⁵² These different interpretations of the crimes reveal how Holly was seen as a true threat to society who could never safely be re-integrated. Because he typified the other, colonial officials deemed death as the only suitable punishment as they sought to re-establish order in the colony.

In addition to skin color, Pennsylvanians viewed the type of crime as a key element in determining how the offender differed from the rest of the population and deserved only death. Property crimes remained a constant plague on the colony throughout these middle decades, prompting officials to take an even tougher stance against thieves. Historian Douglas Hay argued that eighteenth-century Britons “deified” property, leading them to enact severe sanctions in order to protect it.⁵³ Matthew Hale, a prominent English jurist, stated that “every man by the law hath a special protection in reference to his house and dwelling.”⁵⁴ Pennsylvanians also adopted these reverential tones when discussing property as they equated the ability to own it with life and liberty. An anonymous letter writer to the *Pennsylvania Gazette* rhetorically asked if property was not “rendered precious” and should be protected at all costs as hostilities with the French began in 1754. A similar essay penned at the start of the imperial conflict with England stated, “We are now pleasing ourselves with the agreeable Hopes of being

⁵² There is no record if Shuyler was convicted as well although she was listed as Holly’s accomplice. Oyer and Terminer papers, Lancaster County, Box 3, 1761, RG-33; *Pennsylvania Gazette*, 12 November 1761.

⁵³ Hay, “Property, Authority and the Criminal Law,” 19.

⁵⁴ Matthew Hale, *Historia Placitorum Coronae* (London: E. Rider, 1800), 1:547.

confirmed in the Possession of our invaluable Liberties, and secured Property.”⁵⁵

Newspapers typically contained both reports of crimes committed throughout the colony and advertisements listing stolen property, further revealing the problems plaguing the colony. Prior to 1740, Pennsylvania magistrates often took a sympathetic view in property crimes, opting to pardon the majority of offenders. However, attitudes began to change as individuals complained that numerous robberies inflicted a “great Terror” on ordinary Pennsylvanians.⁵⁶ After pardoning nearly 70 percent of the condemned robbers between 1718 and 1739, that percentage plummeted to under 24 percent from 1740 to 1769. Approximately 43 percent of the executed criminals between 1740 and 1769 were condemned for burglary or robbery, a notable increase from the earlier period.⁵⁷ Although this increased willingness to carry out death sentences reflected the changing demographics of the colony and a desire to protect private property, it also required the colony to rebrand criminals as “Villains” and “Rogues” who represented a threat to the social order and could their incorrigible nature ensured that they could never be trusted to live peacefully with the rest of society.⁵⁸

Few thieves personified the threat to Pennsylvanians’ property as much as John Morrison and his gang whose two-day crime spree resulted in seventeen robberies. Morrison’s story differed from the other crime pamphlets published in Pennsylvania, as this was the only one that discussed the exploits of a thief.⁵⁹ Morrison, an Irish-born former servant, sold produce door to door in order to observe home security. He then

⁵⁵ *Pennsylvania Gazette*, 26 September 1754, 8 May 1766.

⁵⁶ *CR*, 9:173.

⁵⁷ Between 1718 and 1739, thieves accounted for 35 percent of the executions.

⁵⁸ *Pennsylvania Gazette*, 31 July 1766.

⁵⁹ Few pamphlets appeared in this period. Besides the account on Morrison, the only two remaining pamphlets from 1740 to 1769 both dealt with murderers.

used this knowledge to plan his robberies and recruited others to assist him in these illicit activities. Joseph Cooper, one of Morrison's accomplices, recounted how Morrison and his cohorts slowly seduced him into a life of crime. Beginning with minor crimes such as stealing turkeys, they finally convinced Cooper to assist them in robbing the home of Abigail Pederow, a shopkeeper. John Crow, another accomplice, implicated Morrison after his own arrest, leading to a city-wide search for the missing robber. After his capture, Morrison confessed to a whole host of crimes. Even an earlier stint in a Lancaster County jail failed to reform Morrison as he quickly resumed his life of crime. Despite his confession in Philadelphia, Morrison still refused to fully cooperate with the authorities and unsuccessfully attempted to escape from the prison. He then claimed to be a Quaker in hopes that the leading Friends would present his cause so that "he might find Favour" and be "sav'd in this World [rather] than in the next."⁶⁰ Morrison, Francis McCoy, and Elizabeth Robinson eventually hanged for their offenses while Crow received a pardon for cooperating with the authorities. Although colonial officials hoped for a poignant scene in which the condemned begged forgiveness and warned the crowd to avoid a similar fate, Morrison and his cohorts appear to have remained silent. The unidentified author instead had to hope the condemned "were truly Penitent, sensible of the heinousness of their Crimes, and sorry from their Hearts that they had lived so long in a Course of Wickedness."⁶¹ Nevertheless, with the exception of Crow—who resumed a

⁶⁰ *An Account of the Robberies Committed by John Morrison, and his Accomplices, in and near Philadelphia, 1750* (Philadelphia: n.p. 1750-1), 9.

⁶¹ *Ibid.*, 11. The pamphlet did contain a final confession from the four condemned criminals warning the youth of Pennsylvania to heed their parents and avoid a similar outcome. However, their failure to display this remorse on the gallows suggests that the unknown author added this section in order to advocate his point while also improving the marketability of his work. *The Lamentation and Confession of the Poor condemn'd Criminals, in the Dungeon* ([Philadelphia], n.p. [1750-1]), 1, 2, 4.

life of crime despite his claims of repentance—Morrison, McCoy, and Robinson deserved death because of their blatant disregard for property rights and the corruption of others. Thus, the Philadelphia Oyer and Terminer defined these offenders as irredeemable and inherently different from the rest of the population.

The apparent rise in property crimes and the notorious exploits of career thieves in the middle decades of the eighteenth century left colonial officials unwilling to extend the same leniency in theft cases shown before 1740. In 1759, John Jones was finally hanged for burglary in Lancaster County following a long criminal career throughout the 1750s. Seen as a “notorious Thief” who possessed “a very bad Character,” “Jockey” Jones plagued the region for years, stealing various items, ranging from clothing to horses to jewelry.⁶² The Lancaster court also condemned William Dobbins and Thomas Hammond in 1768 for stealing approximately £200 worth of merchandise from Wendal Horning’s store. Thomas Mulvennon, an accused accomplice who managed to avoid a conviction, claimed that Dobbins enticed him to join the plot with alcohol and promises of a huge windfall.⁶³ Furthermore, some thefts could turn fatal. The region witnessed several other cases of fatal robberies, which further cemented the link between theft and the perils that it represented to society. The prevalence of firearms throughout the colony made even brief encounters potentially dangerous. Indeed, reports regularly chronicled the exploits of armed robbers roaming throughout Pennsylvania’s urban and rural landscapes. A gang of robbers plagued Philadelphia in 1749, and rumors spread that they sought to expand their arsenal by purchasing even more weapons from a local

⁶²CR, 8:336; *Pennsylvania Gazette*, 1 July 1756; 3 May 1759; 24 May 1759; 7 June 1759.

⁶³Oyer and Terminer papers, Lancaster County, Box 3, 1768, RG-33.

gunsmith.⁶⁴ During the fall of 1753, Thomas Ruth broke into a home in Philadelphia and fatally crushed the head of Charles Quigg when the teenager awoke during the botched robbery. Ruth hid the body before fleeing with the loot. Quigg's sister returned the next day and found the bloody scene and her brother's mangled body. As the authorities began to search for the perpetrator, Ruth sought to flee by ship, but the captain thwarted his efforts as he refused to allow Ruth to board. Turned away as a suspected runaway servant, he was soon arrested for the murder. The colony sent the repentant Ruth to the gallows for his sordid crimes in order to make an example out of this malcontent servant.⁶⁵ This case could easily alarm Pennsylvanians and instill fears that only the death penalty could save the colony from similar attacks in the future.

Economic status also played a crucial factor in defining these individuals as other. The works of Marietta and Rowe and Gottlieb have both concluded that many of Pennsylvania's offenders were "civilly nonpersons," as they often failed to appear in the various tax lists. Instead, they typically held positions characterized by their mobility or lack of a steady income.⁶⁶ Many of the above cases further illustrate this as individuals such as Morrison, Crow, Ruth, and Jones were listed as servants or laborers. Further evidence reveals the prevalence of this trend. Between 1740 and 1769, the available records list professions for forty-nine of the condemned individuals. Over 59 percent of these individuals worked as laborers, servants, or slaves.⁶⁷ Sailors and soldiers—two

⁶⁴ *Pennsylvania Gazette*, 31 August 1749.

⁶⁵ *Ibid.*, 4 October 1753; 25 October 1753; *CR*, 5:662.

⁶⁶ Marietta and Rowe, *Troubled Experiment*, 90; Gottlieb, "Theater of Death," 110-13.

⁶⁷ These records often generalized the individual's profession. By the end of the 1760s, it became common to simply list the accused as a laborer, which may have skewed these statistics. The complete breakdown is as follows: fourteen laborers, nine servants, six slaves, five soldiers, four yeoman, three sailors, one cooper, one tailor, one jockey, one jeweler, one trader, one surgeon, one butcher, and one apothecary.

other occupations characterized by their transience—accounted for 16.3 percent of the condemned. Even the few artisans generally earned little based on their type of employment.⁶⁸ Only five individuals (10.6 percent) were listed with professions that possessed status in colonial Philadelphia. Charles Jegler, an apothecary, poisoned his servant.⁶⁹ Four other men were listed as yeoman, which generally implied property ownership, which represented an important distinction from landless laborers.⁷⁰ For the rest of the condemned, their status, low wages, and material want could easily lead to a life of crime. Consequently, Pennsylvanians typically associated crime with the lower classes. Viewed as unable to care for themselves or control these passions, the laboring poor again fit the category of the other who jeopardized the colony's well-being.⁷¹

Henry Smith and Mary Kennedy, two immigrant runaway servants, committed one of the more shocking crimes in York County when they robbed and murdered Baltzer Klotzer in 1768. The two former servants encountered Klotzer, a traveling peddler, and purchased a few small items from him. After taking their leave, the two former servants displayed a heartlessness that would make respectable Pennsylvanians shudder. Smith voiced his desire to rob the peddler, and Kennedy replied that “she did not care.” She later repeated this statement, which further revealed her apathy for the state of the victim. Although she left Smith during the robbery, she complied with his calls for a razor, which Smith subsequently used to slit Klotzer's throat. Although Kennedy attempted to

⁶⁸ Jackson Turner Main, *The Social Structure of Revolutionary America* (Princeton: Princeton University Press, 1965), 274-75.

⁶⁹ Jegler perhaps used his knowledge of various drugs to kill her. However, unlike the other four yeomen, he received a pardon from the Provincial Council. *CR*, 7:388-89.

⁷⁰ Main, *The Social Structure of Revolutionary America*, 72-73, 218.

⁷¹ John K. Alexander, *Render them Submissive: Responses to Poverty in Philadelphia, 1760-1800* (Amherst, Mass.: University of Massachusetts Press, 1980), 61-85.

downplay her actions in order to avoid a murder conviction—claiming that she only provided the razor for Smith and played no part in the murder—the jurors found both to be accountable and sentenced them to death for their heinous actions.⁷² The brutal nature of the murder justified the death sentences for Smith and Kennedy, but their prior offenses further cemented their status as others within Pennsylvania. Smith proved to be a problematic servant as he had run away at least three times since 1765, even making it as far as Reading and enlisting as a soldier.⁷³ Kennedy, an Irish immigrant, revealed her identity every time she spoke, as her speech was characterized by a thick brogue.⁷⁴ The Irish represented a growing portion of Pennsylvania’s population as Irish immigration to the Delaware Valley took off after the French and Indian War. Between 1765 and 1770, the region annually received an average of 1,835 Irish immigrants with an increasing percentage of indentured servants.⁷⁵ Farley Grubb has determined that Irish women composed nearly 31 percent of the imported servants from 1771 to 1773.⁷⁶ With this growing servant population, the potential for conflict loomed large for colonial officials.

Other lower class criminals received a death sentence because of their brutal attacks that shocked more sensible Pennsylvanians. Hance Ulrich Seiler murdered the wife of his master “because she was cross to him.” Seiler crept into her bedroom while her husband was away and stabbed her in the throat. Mrs. Schultz attempted to run for help, but ended up collapsing because of the loss of blood, and fell down the stairs. For

⁷²Oyer and Terminer papers, York County, Box 6, 1768, RG-33; Trial notes on King v. Henry Smith, Yeates Papers, Box1, folder 4, HSP; CR, 9:549.

⁷³ CR, 9, 549; *Pennsylvania Gazette*, 8 August 1765; 15 May 1766; 14 June 1766; 21 July 1768.

⁷⁴ *Pennsylvania Gazette*, 7 July 1768.

⁷⁵ Wokeck, *Trade in Strangers*, 172-83.

⁷⁶ Farley Grubb, “Servant Auction Records and Immigration into the Delaware Valley, 1745-1831: The Proportion of Females among Immigrant Servants,” *Proceedings of the American Philosophical Society* 133 (June 1989): 164.

this heinous disruption of the hierarchical society, Seiler suffered the gallows as well.⁷⁷ Such crimes were not confined simply to Philadelphia. In 1752, Thomas Kelley, John Rice, and Bryan Doran murdered Eleanor Davis and John Thomas in Chester County. The three men, listed as laborers and servants, had previously jointly committed a robbery in Maryland, and they heard rumors that an elderly woman possessed huge sums of money in her home in Chester County. To carry out their plot, Doran sought lodging while the other two men lurked in the background with blackened faces. After Doran gained entry, the other two men moved in to rob the elderly couple. They murdered the residents in a “barbarous and cruel manner” in order to prevent them from fleeing. Rice claimed that Kelley stuffed a handkerchief into the woman’s mouth and proceeded to hit her repeatedly in the head. Other witnesses testified that Doran had previously committed a murder even before this robbery. They fled the scene, but were eventually apprehended and brought to justice. Even then, Rice attempted to flee in irons although the justices soon recaptured him.⁷⁸

As evident with the five cases listed above, these executions revealed how the lower sorts were often viewed as a threat in Pennsylvania. Although far from complete, the available records between 1740 and 1769 suggest that the bulk of the condemned came from the lower ranks, especially in Philadelphia.⁷⁹ Even with various institutions such as the Bettering House, the laboring poor remained prone to suffer from economic crises that resonated throughout the Atlantic world.⁸⁰ Indeed, Marietta and Rowe

⁷⁷ *Pennsylvania Gazette*, 25 October 1750, 15 November 1750.

⁷⁸ *Ibid.*, 12 October 1752; 30 November 1752; 7 December 1752; *CR*, 5:603-604.

⁷⁹ Marietta and Rowe, *Troubled Experiment*, 90-106; Gottlieb, “Theater of Death,” 108-10.

⁸⁰ Nash, *Urban Crucible*, 318-25.

calculated that the homicide rate peaked between 1765 and 1775.⁸¹ Many lower-class individuals turned to crimes that often resulted in death sentences. For example, sailors composed nearly 20 percent of Philadelphia's population prior to the Revolution, but often endured a tenuous existence. Their incomes often directly corresponded to states of war and peace, which made it difficult to survive during the latter. Few sailors possessed any property in the decades leading up to the Revolution. Throughout the mid-eighteenth century, sailors frequently became increasingly active, taking part in riots on both sides of the Atlantic.⁸² Consequently, sailors often had an unsavory reputation leading many parents to encourage their children to avoid a life at sea. Indeed, Benjamin Franklin's father grew alarmed when he learned that his son had run away to enlist on an outgoing vessel.⁸³ Moreover, other sailors opted to abandon an honest livelihood and pursue piracy instead. The Philadelphia Admiralty court sentenced five sailors to death for piracy as early as 1731.⁸⁴ Sailors remained a regular feature among the early court dockets although few actually received death sentences. Nevertheless, they often turned to prowling the roads around Philadelphia in search of prey especially when they struggled to find employment. In 1749, two sailors received death sentences for highway robbery in Philadelphia. Both men were members of a gang of robbers who plagued the Philadelphia

⁸¹ Marietta and Rowe, *Troubled Experiment*, 206.

⁸² Gary B. Nash, "Poverty and Poor Relief in Pre-Revolutionary Philadelphia," *William and Mary Quarterly* 33 (January 1976): 8-30; Billy G. Smith, *The 'Lower Sort': Philadelphia's Laboring People, 1750-1800* (Ithaca, N.Y.: Cornell University Press, 1990), 4, 112-15, 214-15; Main, *The Social Structure of Revolutionary America*, 74; Linebaugh and Rediker, *The Many-Headed Hydra*, 212-47; Michael Bradley McCoy, "Absconding Servants, Anxious Germans, and Angry Sailors; Working People and the Making of the Philadelphia Election Riot of 1742," *Pennsylvania History* 74 (Autumn 2007): 440-44.

⁸³ Jesse Lemisch, "Jack Tar in the Streets: Merchant Seamen in the Politics of Revolutionary America," *William and Mary Quarterly* 25, no. 3 (1968): 371-407.

⁸⁴ Linebaugh and Rediker, *The Many-Headed Hydra*, 145-73; Rediker, *Villains of all Nations*, 43-59; *Pennsylvania Gazette*, 21 October 1731, 23 March 1732; *American Weekly Mercury*, 16 March 1732, 14 September 1732.

region in that late summer. The rest of the gang had managed to avoid capture, which made it more pressing to execute them. The sailors proved problematic even after their arrests as the condemned men attempted to escape from prison and then refused to name any of their accomplices.⁸⁵

Soldiers also posed an interesting dilemma for Pennsylvanians in the latter half of the eighteenth century. Pennsylvanians, like most Britons, feared a standing army especially during peacetime.⁸⁶ Initially, Quakers sought to avoid having troops stationed in the colony because of their pacifist beliefs. However, as Pennsylvania became a theater in the wars of empire, soldiers became a more visible feature of the colonial landscape. During the French and Indian War, the recruitment of soldiers often provoked conflicts with Pennsylvanians especially since recruiters often turned to the lower sorts, namely servants, slaves, and criminals.⁸⁷ Throughout the war, Pennsylvania's forces gained a reputation of being undisciplined and problematic as the soldiers regularly committed a variety of offenses ranging from drunkenness to desertion.⁸⁸ Indeed, county jails began to frequently hold indentured servants who committed no other crime except for running away to enlist in the military. The colony initially proved hesitant to allow servants to enlist in the military until the spring of 1757, when William Pitt began to compensate masters who had servants in the army. To further entice them, masters even received half

⁸⁵ *Pennsylvania Gazette*, 31 August 1749, 28 September 1749, 12 October 1749, 26 October 1749; *CR*, 5:413-14.

⁸⁶ Charles Royster, *A Revolutionary People at War: The Continental Army & American Character, 1775-1783* (Chapel Hill, N.C.: University of North Carolina Press, 1979), 35-39.

⁸⁷ Many colonies often turned to the "lower sort" to fill out the ranks during military expeditions throughout the eighteenth century. John Shy, *A People Numerous and Armed: Reflections on the Military Struggle for American Independence*, rev. ed. (1976; reprint, Ann Arbor: University of Michigan Press, 1990), 37-39.

⁸⁸ Matthew C. Ward, *Breaking the Backcountry: The Seven Years' War in Virginia and Pennsylvania, 1754-1765* (Pittsburgh: University of Pittsburgh Press, 2003), 107-13.

of the servant's army pay.⁸⁹ The end of the French and Indian War excited fears regarding the potential dangers that these now rootless young men posed for Pennsylvania society as a whole.

Thomas Fowler, who was executed for robbing the home of Sarah Drury in Reading, represented some of the worst potential dangers of these roving young men who threatened the stability of the colony. Fowler had already committed numerous offenses in the early 1760s as he drifted, nearly aimlessly, on the frontier regions of the colony. As a servant, he like many others in the mid-Atlantic region was seduced by the enticements of recruiting sergeants and prompted to enlist. Sharon Salinger estimated that Irish servants composed the bulk of the runaway servants in eighteenth-century Pennsylvania because of the abuse that they often endured from their masters.⁹⁰ As an Irish immigrant, Fowler longed for a better life and saw the army as the means of obtaining this dream.⁹¹ Nevertheless, the rest of the colony never fully trusted the military. Pennsylvania inherited the British hatred of standing armies coupled with the Quaker peace testimony. Throughout the course of the French and Indian War, the colony reluctantly conceded the need for arming themselves, but wanted to ensure that the soldiers would not represent a threat to civil society. In a sermon addressed to the First battalion of the Royal American Regiment after the execution of two soldiers for desertion, the Reverend William Smith of Christ Church, Philadelphia, exhorted the soldiers to carry out their Christian duty.

⁸⁹ Thomas Agostini, "'Cousins in Arms': Experience and the formation of a British-American Identity among Regular and Provincial Soldiers during the Seven Years' War" (PhD diss., Lehigh University, 2002), 73-141; Ward, *Breaking the Backcountry*, 98-100.

⁹⁰ Sharon V. Salinger. *"To serve well and faithfully": Labor and Indentured Servants in Pennsylvania, 1682-1800* (Bowie, Md.: Heritage Books, 2000), 112.

⁹¹ A Thomas Fowler ran away from George Ross on November 9, 1761. He was listed as previously serving under Ingram in Bucks County and as Irish. More than likely, this is the same Thomas Fowler who was later executed in Berks County. *Pennsylvania Gazette*, 19 November 1761.

Consequently, they needed to avoid acts of violence such as mutiny, which Smith claimed merited “the DEATH of the offender.”⁹² Overall, Smith reminded the assembled troops that the duties of a Christian soldier included,

Obedience to those how are appointed in command them ; a respectful inoffensive behaviour to those who support and maintain them; strict *Honor* and unshaken *Veracity* towards one another; Temperance, Sobriety, Cleanliness and Contentment in their private character; and a steady, bold and chearful discharge of whatever service their King and Country may require of them.⁹³

Other Pennsylvanians also painted soldiers in a less than flattering picture. Henry Bouquet complained that many of the “new recruits are getting debauched in the taverns.”⁹⁴ Furthermore, many communities feared the effects of returning veterans. Indeed, in 1761, two deserters were suspected of murdering a woman in Shippensburg.⁹⁵ Several historians have examined the impact of demilitarization on crime in eighteenth century England and found evidence that crime increased with peace.⁹⁶ Even in Pennsylvania, the return of peace could easily create fears “that many of the soldiers would infest the roads” leading to a rise of crime throughout the region.⁹⁷ In England, the French and Indian War presented a dilemma. The soldiers had served bravely and should

⁹² William Smith, *The Christian Soldier's Duty* (Philadelphia: Chattin, 1757), 7.

⁹³ *Ibid.*, 20-21.

⁹⁴ Henry Bouquet to John Forbes, 25 May 1758; George Stevenson to Henry Bouquet, 31 May 1758 in *The Papers of Henry Bouquet*, ed. S. K. Stevens, et al (Harrisburg: Pennsylvania Historical and Museum Commission, 1972-1994), 1:362, 399.

⁹⁵ *Pennsylvania Gazette*, 22 October 1761.

⁹⁶ Beattie, “The Pattern of Crime in England, 1660-1800,” 47-95; Beattie, *Crime and the Courts in England*, 213-35; Douglas Hay, “War, Death, and Theft in the Eighteenth Century: The Record of the English Courts,” *Past and Present* 95 (1982): 117-60; Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (New York: Routledge, 1989), 320-40.

⁹⁷ Charles Biddle, *Autobiography of Charles Biddle: Vice-President of the Supreme Executive Council of Pennsylvania, 1745-1821* (Philadelphia: E. Claxton and Company, 1883), 193.

be able to avoid an ignominious end. However, their actions could easily attract the ire of the public and encourage the state to respond through the use of the gallows.⁹⁸

In addition to their profession, other condemned individuals committed crimes in order to suffer death, which represented a truly alien desire to many Pennsylvanians. Eighteenth-century jurists typically defined suicide as self-murder. Furthermore, both men who fell into this category compounded their own faults by taking the life of an innocent victim. John Bruleman murdered Robert Scull in hopes of being executed in 1760 after lacking the nerve to carry out a previous suicide attempt. Although described as “a genteel looking man” who appeared “very pleasant and agreeable” before the murder, Bruleman had become a “Broken Officer” who was forced out the British army for his possible involvement with counterfeiters. He apparently resumed his career as a jeweler in Philadelphia, but Charles Biddle found him “to be a little deranged.” Perhaps this disgrace, coupled with the loss of his senses, drove Bruleman to shoot the shocked Scull. Various factors such as the politeness of the unsuspected prey or the lack of witnesses deterred Bruleman from murdering several potential victims until he arrived in a local tavern in Philadelphia where Scull was playing billiards. Bruleman responded to Scull’s play by proclaiming, “I will show you how to make a stroke” and proceeded to shoot Scull. Bruleman subsequently informed Scull as he laid dying on the floor, “Sir, I had no malice or ill-will against you—for I never saw you before; but I was determined to kill somebody that I might be hanged, and you happened to be the man... I am sorry for

⁹⁸ Stephen Brumwell, *Redcoats: The British Soldier and War in the Americas, 1755-1763* (New York: Cambridge University Press, 2002), 290-94.

your misfortune.”⁹⁹ Bruleman then calmly waited until the authorities arrived and suffered death as a result of his actions.¹⁰⁰ Despite the possible excuse of temporary insanity, news of the murder stunned many Pennsylvanians. Hannah Callender Sansom recorded in her diary that the murder “was a great shock to me.”¹⁰¹ Many Pennsylvanians shared her sentiments and judged Bruleman’s actions as destructive as he deprived Scull of his life simply to lose his own. Consequently, they believed that Bruleman could never be re-integrated into normal society, and they instead opted to honor his wishes and grant him death in order to remove this stain from the colony.

Perhaps even worse than these destructive acts, some of the offenders refused to or only begrudgingly assumed the role of a penitent sinner upon the gallows, which further defining themselves as morally irredeemable. Historian Louis Masur has argued that local authorities used a variety of means to try to make the condemned admit his/her guilt upon the gallows and display “their unhappy Circumstances.” Ideally, the condemned would also issue a warning to the expectant crowd to avoid a similar fate.¹⁰² Following his arrest for burglary in Philadelphia, William Autenreith refused to confess to his crimes and initially repeatedly professed his innocence despite the intercessions of Henry Muhlenberg. Autenreith and John Brinklow, his alleged accomplice, had already been transported to Virginia as criminals who then travelled to Philadelphia and were responsible for the “great Terror” that plagued the city as they committed multiple

⁹⁹ Biddle, *Autobiography of Charles Biddle*, 387; *Pennsylvania Gazette*, 4 September 1769; Susan E. Klepp and Karin Wulf, ed., *The Diary of Hannah Callender Sansom: Sense and Sensibility in the Age of the American Revolution* (Ithaca, N.Y.: Cornell University Press, 2010), 141.

¹⁰⁰ *Pennsylvania Gazette*, 9 October 1760.

¹⁰¹ Klepp and Wulf, *The Diary of Hannah Callender Sansom*, 141.

¹⁰² Masur, *Rites of Execution*, 41-45; *Pennsylvania Gazette*, 17 May 1764.

robberies.¹⁰³ Autenreith denied any guilt and instead claimed Brinklow was the sole perpetrator. Even after receiving the court's verdict, Autenreith acted "very wild and unruly" as he protested this decision.¹⁰⁴ Indeed, his vehement assertions of innocence may have influenced Henry Muhlenberg's congregation, which split over Autenreith's fate. Because capital punishment was such a divisive issue, many parishioners wanted to petition the governor for mercy while others claimed that these efforts may inadvertently "cast more dishonor upon our German nation, as he is said to have been pardoned once before in England and relegated to America as a condemned criminal." Muhlenberg agreed that Autenreith's "circumstances are altogether too black" and their wholehearted support could easily make the congregation "accomplices in injustice" if they backed a guilty man. He concluded that "his [Autenreith's] heart that was sunk in the slime of sin" led him to become a "temple of Satan." Although Autenreith would be better served to prepare for death, Muhlenberg found that the condemned man made "it a *point d'honneur* to rebel against the manner of execution, namely the gallows."¹⁰⁵ Thus, Muhlenberg devoted his time not to winning a pardon for Autenreith's earthly body, but instead worked to save his eternal soul, which was seen as entirely more redeemable. Muhlenberg's repeated intercessions finally convinced Autenreith to repent and even exonerate Brinklow in his final confession, which led to the latter's pardon.¹⁰⁶ Nevertheless, Autenreith's crimes coupled with his largely unrepentant attitude cast him as a morally irresponsible and despicable individual who deserved the gallows.

¹⁰³ *Pennsylvania Gazette*, 9 February 1764, 1 March 1764, 15 March 1764; *CR*, 9:173.

¹⁰⁴ Tappert and Doberstein, *The Journals of Henry Melchior Muhlenberg*, 2:43, 68.

¹⁰⁵ *Ibid.*, 2:66, 67, 68.

¹⁰⁶ *Pennsylvania Journal*, 24 October 1765.

Autenreith showed how some offenders could be convinced over time to adopt the appropriate role, but others refused to play the penitent even in the face of death. In 1753, observers were shocked with John Swales's behavior on the gallows following his conviction for murder in York County. They noted that Swales "behaved with surprizing Stupidity, and, to all Appearance, died hardened, impenitent, and dissatisfied with all concerned about his Trial." Rather than provide any closure at this trial or allow the colonial officials to legitimize the case against him, Swales "made no Confession at the Gallows of any Crimes he might have perpetrated in the Course of his Life, save such as were publickly known before; nor could he be prevailed upon at the Gallows so much as to say the Lord Prayer."¹⁰⁷ Although newspaper reports rarely mentioned such uncooperative individuals, their poor behavior further convinced colonial officials and other Pennsylvanians that they deserved only the gallows.

Other murder cases attracted both the interest of the public while also shocking their sentiments. Spousal abuse occurred somewhat regularly with few penalties during the eighteenth century. Similar to other forms of assault, domestic abuse generally resulted only in a minor fine.¹⁰⁸ Excluding infanticide, Pennsylvania witnessed at least thirty-one cases where family members were charged with either murder or manslaughter between 1718 and 1794.¹⁰⁹ Prior to 1741, the colony failed to use the death penalty for any individuals who murdered their family members. Instead, the only two cases both saw the offenders given manslaughter convictions. Pennsylvanians expressed less

¹⁰⁷ *Pennsylvania Gazette*, 7 Jun, 1753.

¹⁰⁸ Ruth H. Bloch, "The American Revolution, Wife Beating, and the Emergent Value of Privacy," *Early American Studies* 5(Fall 2007): 230-34.

¹⁰⁹ The victims included twenty-one spouses, three children, two siblings, two fathers, one son-in-law, and one mother-in-law. John Adam Berger also killed Regina Magdalen Berger, presumably his wife, but because the exact nature of their relationship is unknown, it was not included in this list. *CR*, 9:601.

lenient attitudes towards “*Family Murders!*” after 1740.¹¹⁰ Although the numbers were relatively small—the colony only witnessed ten cases of family members killing each other between 1740 and 1769—the colonial courts condemned 70 percent of the tried offenders.¹¹¹ Chester County witnessed several cases of deadly domestic violence in the mid-eighteenth century, which attracted a great deal of interest from the community. Anonymous authors penned pamphlets about these violent crimes, which both fascinated and repulsed many Pennsylvanians throughout the colony. Therefore, many contemporaries believed that the gallows were the appropriate punishment for such an offender.

Even more than the murder of other family members, uxoricide, or spousal murder, provoked a great deal of outrage by the mid-eighteenth century. Eighteenth-century Philadelphians viewed marriage as a loving partnership between a husband and wife, so any acts of violence sparked harsh condemnations.¹¹² Although the courts initially appeared reluctant to intervene in many cases of domestic abuse, the justices could not ignore these “most horrid Murder[s].”¹¹³ Consequently, the perpetrators were often depicted as the rare exceptions who most deserved the gallows unlike the rest of polite society. For example, the Oyer and Terminer judges found that Andrew Lutuk “most Cruel[ly] and barbarous[ly] Murder[ed]” his wife in York County and thus was

¹¹⁰ *Pennsylvania Gazette*, 3 December 1747.

¹¹¹ James Hedges escaped justice after murdering his wife as he fled the area. However, local authorities “hoped all well-disposed Persons will lend their Assistance in bringing the Villain to Justice,” making it likely that a jury would not had treated him leniently. *Pennsylvania Gazette*, 12 October 1769.

¹¹² Jacquelyn C. Miller, “Governing the Passions: The Eighteenth-Century Quest for Domestic Harmony in Philadelphia’s Middle-Class Households,” in *Over the Threshold: Intimate Violence in Early America*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 1999), 45-62.

¹¹³ *American Weekly Mercury*, 14 May 1741. However, Merril D. Smith has convincingly argued that many cases of spousal abuse were often overlooked as private matters unless the wife was severely beaten and required outside assistance. Merril D. Smith, *Breaking the Bonds: Marital Discord in Pennsylvania, 1730-1830* (New York: New York University Press, 1991), 105-115, 120.

undeserving of the colony's mercy.¹¹⁴ Two other men who murdered their wives attracted a great deal of morbid fascination.¹¹⁵ John Myrack went on a killing spree in East Caln, Chester County, murdering his wife, his two children and a neighbor's child "in a most barbarous Manner." Myrack even sought to strip his family of their identity when he bashed his children's heads with a rock. Moreover, Myrack scorched his wife's face to render her unrecognizable and attempted to flee. Only the neighbor's child appeared to be spared such brutal treatment as he abandoned the body in the nearby woods. After his capture, Myrack confessed to this "horrid Fact," which quickly led to the loss of his own life.¹¹⁶

Only five years later, Chester County witnessed another shocking case of familicide as John Lewis transformed from a good husband to "more like a Devil than a Man." Lewis's erroneous interpretations of the scripture led him to become consumed with the notion of murdering his wife. He finally strangled his pregnant wife and killed his unborn child as well.¹¹⁷ Lewis also contemplated murdering his other children as well. He then rearranged her body to make it appear to be a natural death and sought assistance claiming that his wife was dying as he adopted the guise of a concerned husband. Because of the lack of evidence, local authorities did not charge Lewis with the crime, which allowed him to resume his daily life. Nevertheless, Lewis soon became conscience-stricken and believed that he heard his wife's voice. Driven by this

¹¹⁴ CR, 8:337.

¹¹⁵ Karen Halttunen found that non-fiction pamphlets written after the mid-eighteenth century realistically portrayed the acts and murders. Consequently, this resulted in a shift away from the older execution sermons, which offered universal explanations for why a crime had occurred. Instead, these new accounts emphasized the unique nature of the criminal and his/her crime, thus allowing for the readers to view them as inherently different from themselves. Halttunen, *Murder Most Foul*, 38-49.

¹¹⁶ *Pennsylvania Gazette*, 21 August 1755, 28 August 1755.

¹¹⁷ Oyer and Terminer papers, Chester County, Box 2, 1760, RG-33.

overwhelming sense of guilt, Lewis finally admitted to committing this “black and horrid deed.” The court had no other evidence to convict Lewis, as even his advisors suggested he dispute the trial since the prosecutors only offered his confession against him. He acknowledged the justness of his death sentence as “a naked abandoned wicked Wretch, not fit any longer to breath[e] the common Air among mankind” and used his final moments to pray for his now orphaned children. Thus, Lewis displayed a concern for his family that had been absent in recent years.¹¹⁸ As seen in the cases of Lutuk, Myrack, and Lewis, colonial officials were appalled by their horrid acts. The gallows designated each of these men as truly debased and worthy of death. Unable to tolerate these offenders, colonial officials believed that only public hangings could remove such scourges from society.

Individuals also fostered society’s contempt by committing crimes deemed even more heinous than murder. The courts found bestiality (often referred to as buggery in the eighteenth century) to be “against the Order of Nature,” and declared that it ought “not to be named among Christians.” Offenders provoked “the great Displeasure of Almighty God [and] to the great Scandal of all human Kind.”¹¹⁹ Throughout the English world, Christians condemned bestiality as an “Abominable Uncleaness, which [cries] for Vengeance.”¹²⁰ As in many sex crimes, only men typically faced charges as penetration was deemed a necessary feature to prove consummation of the crime. Early English law

¹¹⁸ *A Narrative of the Life, together with the last Speech, Confession and solemn Declaration of John Lewis* (New Haven: James Parker and Company, 1762), 3, 7, 8; CR, 8:496; *Pennsylvania Gazette*, 25 September 1760.

¹¹⁹ Oyer and Terminer papers, Lancaster County, Box 3, 1761, RG-33; Oyer and Terminer papers, York County, Box 6, 1768, RG-33.

¹²⁰ [Samuel J. Danforth], *The Cry of Sodom enquired into; upon occasion of the Arraignment and Condemnation of Benjamin Goad, For his Prodigious Villany* (Cambridge: Marmaduke Johnson, 1674), 3.

often equated bestiality with homosexuality, as both crimes were seen as sexually deviant acts that called for harsh punishments.¹²¹ Historians have argued that fears of monstrous births may have prompted strict enforcement of the law especially in rural regions.¹²² Pennsylvania's revised statutes of 1718 made both buggery and sodomy capital crimes for the first time, following the English model in place since 1533. The secretive aspects of many sexual offenses made this crime difficult to prove at times and also enhanced the ability of the offender to avoid any punishment.

Because of the difficulties in proving the crime, officials only sporadically prosecuted offenders for bestiality throughout the eighteenth century. Available records show a total of just five men condemned for buggery—with two men receiving pardons—out of a total of fifteen recorded cases.¹²³ The majority of these occurrences took place in the rural counties such as Chester, Lancaster, Fayette, and Westmoreland. Even with the prevalence of horses in Philadelphia, the grand jury found the only recorded case of buggery in the city to be unfounded. As mentioned in chapter one,

¹²¹ Louis Crompton, "Homosexuals and the Death Penalty in Colonial America," *Journal of Homosexuality* 1, no. 3 (1976): 277-93.

¹²² John M. Murrin, "'Things fearful to name': Bestiality in Colonial America," *Pennsylvania History* 65, no. 5 (1998): 8-43; David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), 87-93; Erica Fudge, "Monstrous Acts: Bestiality in Early Modern England," *History Today* 50 (August 2000): 21-25; Robert F. Oaks, "'Things Fearful to Name': Sodomy and buggery in Seventeenth-Century New England," *Journal of Social History* 12 (Winter, 1978): 274-78. John Canup argued that New England Puritans especially abhorred this crime since it revealed just how corruptible man truly was as well as the potential corruptive influence of the wilderness on the English settlers. John Canup, "'The Cry of Sodom Enquired Into': Bestiality and the Wilderness of human nature in seventeenth-century New England," *Proceedings of the American Antiquarian Society* 98(1988): 120, 126-34.

¹²³ Not all of these cases did result in an actual execution. In 1772, the Lancaster County quarter sessions convicted William Kelly of bestiality, but only sentenced him to one hour in the pillory and twenty-one lashes. Indeed, he received fewer stripes than Henry Reighart who was convicted of a property crime at the same court session. Although the jurors may have actually convicted him only of attempted bestiality based on the testimony and the fact that this case was not heard by the Oyer and Terminer court, it only suggested that they were reluctant to take a life for such an offense even with the precedent of Nehemiah Armstrong who was previously executed for bestiality in Lancaster County. Lancaster County Quarter Sessions, May 1772, Docket book 1770-75, 95, Lancaster County Historical Society, Lancaster, Pa.

William Battin admitted in 1722 to committing “that vile and abominable Sin of Buggery with a Sow,” which surely further convinced residents of Chester County that he deserved the gallows for his crimes.¹²⁴ Nevertheless, the state only tried him for arson and opted not to pursue this charge. Over the subsequent decades, the colony rarely tried any individuals for either actual or attempted buggery despite potentially damning evidence against them. In 1749, Denis MacAneney faced charges of attempted buggery before the Chester County Quarter Sessions, a noteworthy distinction, which allowed it to be a non-capital crime. Robert Owen still testified that MacAneney had tied the horse to a fence and stood behind her holding her tail with his other hand grasping “his privits and thereupon put his Body in Mothion.” Fortunately for MacAneney, Owen prevented him from consummating by striking him with a stick. Once away from the horse, Owen noted that MacAneney’s “privits [were] Naked and Stiff.” Although the state had the option to seek the harsher sentence, they accepted Owen’s interpretation that it was an interrupted deed, which allowed them to spare his life.¹²⁵ Similarly, two young Lancaster County apprentices witnessed James [or William] Kelly, a servant, standing behind a mare and “making unseemly Motions with his Body.” Distance and shrubbery prevented them from confirming that Kelly had committed the act, but his motions and exposed genitalia convinced them that he at least had endeavored to commit this crime. Kelly grew silent in the wake of their accusations, but their claims left him stricken as he “look’d Condemnd

¹²⁴*American Weekly Mercury*, 16 August 1722.

¹²⁵Examination of Robert Owen, 5 September 1749, CCQSP.

like.”¹²⁶ Again, local authorities merely prosecuted Kelly for attempted buggery, but both cases revealed the vagaries in determining if bestiality had actually taken place.

When the Oyer and Terminer sessions did prosecute this crime, the justices, jurors, and witnesses often expressed their disgust at the act, thus weakening the desire to extend leniency. In 1761, Nehemiah Armstrong, a Lancaster County laborer, was convicted of “feloniously wickedly diabolically and against the Order of Nature” having carnal relations with a neighbor’s cow. Unlike some other cases, a witness testified that Armstrong stood “as if in the Act of Bugary” behind the cow. Indeed, the jury apparently accepted this testimony without questioning how the witness could so quickly identify a case of bestiality. Several years later, the Oyer and Terminer sessions in Cumberland and York Counties acquitted both Michael Brandon and Thomas Roughton for the same crime. In all three cases, the men came from rural regions and worked as laborers.¹²⁷ Therefore, rural regions such as Lancaster County may have witnessed several other instances of bestiality that were never prosecuted. Indeed, the lone possible execution for bestiality prior to Armstrong’s case also occurred in Lancaster County. Such reports surely unsettled the local citizens, prompting the jury to mandate a capital penalty for Armstrong in hopes of deterring others from committing a similar crime. In Armstrong’s case, the colony viewed him as a worthy candidate for the gallows and a strong enough example to deter others from emulating him in this horrid deed.

¹²⁶Examination of James DeFrance; examination of John Foster, 22 November 1771, Lancaster County Historical Society, Lancaster, Pa.

¹²⁷Oyer and Terminer papers, Lancaster County, Box 3, 1760, RG-33; Oyer and Terminer papers, Cumberland County, Box 3, 1771, RG-33; Oyer and Terminer papers, York County, Box 6, 1768, RG-33.

While officials could often use the type of crime or its barbaric nature as a means to define the other, other criteria such as gender offered a special challenge for the criminal justice system throughout the eighteenth century. Female criminals composed just nine percent of the condemned, even excluding military deserters, for which English officers could invoke the death penalty.¹²⁸ English and Pennsylvania laws allowed women to escape prosecution because of various mitigating circumstances. For example, the law stipulated that married women were not responsible for crimes they committed with their husbands. Although this was not always the case, G. S. Rowe has found that Pennsylvania juries were less likely to convict married women than their single counterparts. Similarly, the courts often blamed male accomplices when women were convicted of property crimes.¹²⁹ Furthermore, the law allowed female criminals to receive a stay of execution if they were pregnant.¹³⁰ Even with these restrictions, Pennsylvania sentenced eleven women to death between 1740 and 1769, which accounted for 32.4

¹²⁸ This includes Catherine Connor twice. She was initially condemned for burglary in 1736, but received mercy although the Supreme Court justices claimed that no capital offenders deserved a pardon. Undeterred, Connor was apparently arrested that fall in Bucks County although no record remains of the outcome of her case. The following year, Connor was again convicted of burglary and this time was not spared for her mistakes. The other problem area lies with Anne Huson and Ann Mitchell of Philadelphia. In 1720, Huson was listed as a single woman who was pardoned for burglary. Four years later, Mitchell's husband petitioned for her release from jail as she was pregnant. No records exist of Ann Mitchell's arrest for burglary. However, since there is no corroborating evidence that the two women were the same, they are treated as different individuals for the purpose of this study. *American Weekly Mercury*, 20 October 1720; *Pennsylvania Gazette*, 15 April 1736; 6 May 1736; 21 October 1736; 26 May 1737; 7 July 1737; *CR*, 3:240, 4:47, 209.

¹²⁹ Rowe, "Femes Covert and Criminal Prosecution in Eighteenth-Century Pennsylvania," 145-46; Marietta and Rowe, *Troubled Experiment*, 242-43.

¹³⁰ N. E. H. Hull, *Female Felons: Women and Serious Crime in colonial Massachusetts* (Urbana: University of Illinois Press, 1987), 23. Catherine Connor received a pardon in 1736 after pleading pregnancy although a subsequent investigation disputed her claims. *Pennsylvania Gazette*, 15 April 1736; 7 July 1737.

percent of the total death sentences granted to women in the period covered by this study (Table 2.2).¹³¹

Table 2.2

Death sentences and pardons by gender, 1718 - 1794

	Women		Condemned	Men		Other
	Condemned	Pardoned		Pardoned		
1718 - 1739	11	8 (72.7%)	35	17 (48.6%)	1	
1740 - 1769	11	2 (18.2%)	79	13 (16.5%)	0	
1770 - 1794	12	8 (66.7%)	236	85 (36.0%)	13	
Totals	34	18 (52.9%)	350	115 (32.9%)	14	

Sources: *CR, Pennsylvania Archives, Pennsylvania Gazette; American Weekly Mercury; Pennsylvania Oyer and Terminer Records, and Chester County Historical Society.*

Infanticide, which was solely a female crime, dominated the dockets between 1740 and 1769, as it accounted for 72.7 percent of the female condemnations. Sharon Ann Burnston contended that cases of infanticide were largely committed by lower-class women who did so in order to protect their economic livelihood. A bastard child meant not only financial penalties and possibly corporal punishment, but also the stigma of being an unwed mother.¹³² Pregnant servants risked having their length of servitude

¹³¹ Female criminals faced a number of charges, although generally for non-capital crimes. G. S. Rowe has argued that the number of indictments for women steadily increased after mid-century until the Revolution when it slowly declined. Thus, it is not surprising that the number of capital crimes also increased during this period. However, the percentage of all criminals who were female exceeded the percentage of condemned criminals who were female, which suggests the courts were still reluctant to impose the death penalty for female offenders. Rowe, "Women's Crime and Criminal Administration in Pennsylvania," 350-57.

¹³² Historians are divided over the validity of this argument for mid-eighteenth century Pennsylvania. Clare Lyons contended that changing attitudes towards bastardy and sex lessened any backlash. Sharon Ann Burnston, "Babies in the Well: An Underground Insight into Deviant Behavior in Eighteenth-Century Philadelphia," *PMHB* 106 (April 1982): 151-86; Clare A. Lyons, *Sex Among the Rabble: An Intimate History of Gender & Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill, N.C.: University of North Carolina Press, 2006), 95n.

extended to compensate their master for lying in time. Under the 1718 laws, simply concealing the death of a bastard child was sufficient to convict a woman of infanticide.¹³³ Eighteenth-century Pennsylvanians especially disapproved of infanticide and condemned the perpetrators as “cruel Mother[s].”¹³⁴ Laurel Thatcher Ulrich’s analysis of colonial New England concluded that residents defined the ideal mother as exhibiting “tenderness, self-denial, piety, and fruitfulness,” a far cry from a woman who would abandon her child or even worse one who would kill it in order to avoid discovery. R. W. Malcolmson claimed eighteenth-century Englishmen viewed infanticide “with a combination of fascination and horror” because of the deviance and depraved nature of these women.¹³⁵ Throughout the eighteenth century, Pennsylvanians frequently reported the discovery of abandoned children—both dead and alive. In 1766, a dead child was found in the city’s barracks and the inquest deemed it murder at the hands of a “barbarous Mother.” Consequently, all virtuous citizens were obligated to search for “the Perpetrator of such a horrid Act of Cruelty.” Several years later, the coroner’s inquest in Philadelphia determined that a child found in a sack perished following brutal treatment, presumably at the hands of his or her mother.¹³⁶ Even when Pennsylvanians were unable to determine if the child was born alive, the treatment of the body was seen as paramount to proving one’s worthiness as a good parent. Upon the discovery of an infant’s corpse in the harbor, observers speculated if the child was drowned “to conceal its Birth, or by Parents, void of

¹³³ *Statutes at Large*, 3:202-203.

¹³⁴ *Pennsylvania Gazette*, 13 June 1754.

¹³⁵ Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Alfred A. Knopf, 1982), 162. The attacks on women as unfit mothers may be found in Clare A. Lyons’ discussion of advertisements for runaway wives. Lyons, *Sex Among the Rabble*, 24-25; R. W. Malcolmson, “Infanticide in the Eighteenth Century” in *Crime in England, 1550-1800*, ed. J. S. Cockburn (Princeton: Princeton University Press, 1977), 189.

¹³⁶ *Pennsylvania Gazette*, 6 February 1766; 12 May 1768.

natural Affection, to save the Charge of a Burial.”¹³⁷ Instead, this “barbarous inhuman Deed” proved them to the antithesis of a loving and compassionate mother.¹³⁸

Despite this fascination with infanticide, Pennsylvania courts condemned just eight women for infanticide between 1740 and 1769. Although this number surpassed the total number of women condemned for the rest of the decade, various factors prevented many women from receiving death penalties. This discrepancy may have been partly due to the difficulties in determining if the mother had deliberately caused the death of her child. Juries largely refused to convict based on the concealment of a dead child. Instead, they examined a host of factors to determine if the death of the child was murder.¹³⁹ Pennsylvanians, like their English counterparts, often relied on the testimony of medical professionals. One popular experiment tested if a child’s lungs were able to float in a vat of water, which revealed if the child had ever breathed after birth. Even this test had its limitations as English law stipulated that the birth process was not complete until the infant’s body had completely left the mother. Therefore, it was possible for a child to momentarily take a breath before dying at the conclusion of the violent birthing process.¹⁴⁰ Coroners also focused on the child’s development as well as preparations made by the mother to determine if a murder had taken place. Frequently, prosecutors questioned whether mothers began to acquire or make clothing for the newborn infant.

¹³⁷*American Weekly Mercury*, 21 September 1738.

¹³⁸*Pennsylvania Gazette*, 13 June 1754.

¹³⁹ Laura T. Keenan examined a number of these different factors that the jury considered in her case study of Rachel Francisco who was tried for infanticide in Delaware in 1767. John Dickinson, her defense attorney, was a prominent Pennsylvania attorney who laid out numerous arguments that also appeared in Pennsylvania cases. Laura T. Keenan, “Reconstructing Rachel: A Case of Infanticide in the Eighteenth-Century Mid-Atlantic and the Vagaries of Historical Research,” *PMHB* 130 (October 2006): 362-72.

¹⁴⁰ Mark Jackson, *New-born Child Murder: Women, illegitimacy and the courts in eighteenth-century England* (New York: Manchester University Press, 1996), 93-100.

Failure to do so suggested a callous disregard for the child's welfare and possibly revealed the mother's plans to kill her child. Even in light of the testimony of the mothers and other witnesses, juries often accepted the various justifications offered by women to explain a dead birth. Anna Mertz claimed that a fall five weeks before she gave birth resulted in the stillborn delivery of her daughter in Berks County. Nevertheless, she apparently expressed little concern for her daughter who was left in a "Hog Pail" in the kitchen that her mother subsequently discovered.¹⁴¹ Perhaps swayed either by her testimony or her status as a married woman, the jury found Mertz not guilty.

Possibly because of these difficulties, colonial officials typically sought to apply the full force of the law against women convicted of infanticide. Only two women received a pardon (25 percent) for infanticide from 1740 to 1769. Women convicted of infanticide had a greater likelihood of receiving a pardon in the other two periods (57 percent).¹⁴² The few depictions of murdering mothers typically portray them in a very negative light. Catherine Kreps left her son covered only with stones and nails rather than bury him like a loving mother. After learning that the child's body had been discovered, Catherine hid her son again, this time in a well. Kreps responded to these accusations by insisting that he was born dead. Her callous disregard for the baby's body and the elaborate steps she took to hide the birth convinced many observers that she had

¹⁴¹Oyer and Terminer papers, Berks County, Box 1, 1769, RG-33.

¹⁴² Admittedly, the other two periods had a much smaller sample size as each only had three women condemned for infanticide. G. S. Rowe has shown that juries were more willing to convict mothers only after the state revised the statute to make it more difficult to prove infanticide. Therefore, this larger number of executions in this middle period suggests that Pennsylvania officials perceived infanticide and this deviant behavior by mothers to be a threat that needed to be addressed. Rowe, "Infanticide, Its Judicial Resolution, and Criminal Code Revision in Early Pennsylvania," 208-10.

“squeeze[d] choak[ed] strangle[d] and suffocate[d]” him with her bare hands.¹⁴³

Although the court records and newspaper accounts provided little information on the other women condemned for infanticide, many Pennsylvanians probably viewed them as no different than Kreps. Devoid of all maternal compassion, they deserved to end their lives upon the gallows.

The question of determining the other also varied based on economic changes, which brought about “evil-minded Persons” who threatened to undermine the colony.¹⁴⁴ The prosperity of Pennsylvania and especially Philadelphia allowed the escalation of illegal trades such as counterfeiting that jeopardized Pennsylvania’s economic well-being. Many Pennsylvanians who held positions of authority also had connections with the mercantile community, so counterfeiting potentially posed a glaring risk to their business interests. With the diminishment of Quaker authority in the Assembly, the colony finally made counterfeiting a capital crime in 1756. As discussed in chapter 1, this crime had long plagued the colony, although legislators often felt impotent to combat it without the use of the gallows. Perhaps reflecting the outrage of many Pennsylvanians, Gottlieb Mittelberger incorrectly asserted that counterfeiters would be “hanged without pardon.”¹⁴⁵ Pennsylvania newspapers also routinely contained notifications of counterfeit currency and tips to advise unsuspecting readers on how to quickly identify the false money, which became difficult at times. For example, the *Pennsylvania Gazette* warned readers in 1753 about counterfeit gold doubloons

¹⁴³ Oyer and Terminer papers, Berks County, Box 1, 1767, RG-33.

¹⁴⁴ *Pennsylvania Gazette*, 15 November 1753.

¹⁴⁵ Mittelberger may have made this assessment based on the *Pennsylvania Gazette*’s report that two German immigrants in Lancaster County received death sentences for counterfeiting in 1751. Mittelberger, *Gottlieb Mittelberger’s Journey to Pennsylvania in the year 1750*, 89.

proliferating in the colony. The gold plate allowed these false coins to “readily pass, with those that do not know good Dubloons well, for real Ones.” The only distinguishing mark was the thickness of the coins, but the average person scarcely had the time or expertise to assess the currency. Thus, the false coins could change hands multiple times, which made it difficult to discover the original counterfeiter.¹⁴⁶ Counterfeiters typically engraved their plates abroad and then imported them into the colonies in order to escape detection. For example, a 1753 warning claimed that counterfeit New Castle bills probably originated in Germany.¹⁴⁷

Pennsylvanians viewed counterfeiting as a more serious offense by the mid-eighteenth century, which changed how the colony dealt with the crime. Prior to 1750, the colony executed only one man for counterfeiting. Because it was not listed as a capital crime, the court instead tried Edward Hunt for treason in 1720 to emphasize the subversive nature of counterfeiting on the colonial economy.¹⁴⁸ The various courts of the Quarter Sessions handled the bulk of the counterfeiting cases primarily through corporal punishment. Despite their efforts, the state often appeared powerless to stop this scourge on society. In 1744, Philadelphia officials arrested at least seven individuals who were engaged in a counterfeiting ring that distributed money in Pennsylvania that was printed in New Jersey.¹⁴⁹ Five years later, several Germans were arrested for counterfeiting, but the ringleader managed to escape justice as a father and son received death in Lancaster County in 1751 for counterfeiting although it is impossible to determine if the sentence

¹⁴⁶*Pennsylvania Gazette*, 2 January 1753.

¹⁴⁷Scott, *Counterfeiting in Colonial America*, 70; *Pennsylvania Gazette*, 25 October 1753.

¹⁴⁸Thomas Bevan was executed in Chester County for arson and counterfeiting in 1737. However, since arson was already a capital crime, the court did not appear compelled to charge him with treason as well. *Pennsylvania Gazette*, 7 July 1737; CR, 4:209, 224.

¹⁴⁹*Pennsylvania Gazette*, 9 August 1744.

was actually carried out.¹⁵⁰ In the wake of these problems, the existing penalties for counterfeiting began to look far too weak to handle this threat. Consequently, the Assembly adopted a tougher stance against counterfeiting, especially with the need for additional funds with the French and Indian War. After first raising the issue in 1754, the Assembly included a provision in a bill to print paper currency that anyone convicted of counterfeiting a bill of credit or forging the name of a signer would “suffer death without benefit of the clergy” two years later. The colony still sought to ameliorate some of the harsher aspects of the law. Only those who made the forged bills risked death. Altering the value of a true bill or knowingly uttering a false one also resulted in harsh punishments that involved a mixture of public and corporal punishment and culminated with the loss of one’s ears, which were then nailed to the pillory.¹⁵¹ The second stipulation did grant colonial officials a great deal of leeway in determining how to apply this law as counterfeiters could deny that they made the fake currency. Both of these stipulations explicitly stated that these sentences pertained to both men and women. Although the records from the period rarely show women involved in counterfeiting cases, magistrates could see them as their husbands’ accomplices.¹⁵² To encourage local citizens to detect the counterfeiters, the law also stipulated a £50 reward for the informer—taken from a fine paid by the guilty counterfeiter. This appeal to self-interest allowed the state to define who was a legitimate member of the state and those who

¹⁵⁰ *Pennsylvania Gazette*, 17 October 1751.

¹⁵¹ *Pennsylvania Archives*, 8th series, 5:3647; *Statutes at Large*, 5:247-48; 7:91.

¹⁵² The first case of counterfeiting in colonial Pennsylvania resulted in the conviction of not only Edward Hunt, but his wife Martha as well. Although both were convicted, only Edward received the death penalty for treason. Instead, his wife was fined £500 and sentenced to life in prison. Even this proved temporary as she was pardoned in 1725. *American Weekly Mercury*, 20 October 1720; *CR*, 3:244.

existed outside of the laws. Indeed, perpetrators could be reduced to the status of servants for up to seven years if they failed to pay the fine.

Furthermore, colonial officials sought to define rural rabble-rousers as the other through the use of the death penalty throughout these middle decades. By the mid-eighteenth century, the population of Pennsylvania was rapidly growing with many new settlers populating the westernmost counties. James T. Lemon estimated that southeastern Pennsylvania grew from 8,800 residents in 1690 to 108,000 by 1750. Lancaster County grew so populous that the colony subdivided it into York, Cumberland, and Berks counties by the 1750s. The contested borders prompted Connecticut settlers to move into disputed territories, producing violent results at times.¹⁵³ The influx of settlers on the frontier further exacerbated tensions with Native Americans. Britain and France both claimed territory throughout North America, including western Pennsylvania. By mid-century, colonial officials attributed various “Robberies & Murders” to the growing French presence in the colony.¹⁵⁴ Many Native Americans also supported the French and inflicted a great deal of damage to the frontier residents. Following General Edward Braddock’s failed campaign to remove the French from Fort Duquesne, Native Americans used the road he carved out of the wilderness to launch raids on the frontier settlements.¹⁵⁵ Attacks and massacres exacerbated life on the frontier as many colonists stressed the need to find a more permanent Indian solution, regardless of its legality.

Settlers complained to Conrad Weiser, “Why must we be killed by the Inds and we not

¹⁵³ Lemon, *The Best Poor Man’s Country*, 23; Rodger C. Henderson, “Demographic Patterns and Family Structure in Eighteenth-Century Lancaster County, Pennsylvania,” *PMHB* 114 (July 1990): 352.

¹⁵⁴ Joseph Shippen to [blank], 21 March 1754, Joseph Shippen Papers, Library of Congress, 1727-83, Peter Force Series, 8D.

¹⁵⁵ Fred Anderson, *The War that Made America: A Short History of the French and Indian War* (New York: Viking, 2005), 64-73.

kill them: Why are our hands so tied.” Unwilling to be pacified, “They Cried out that so much for an Indian Scalp they would have be him friend or Enemy.”¹⁵⁶ Even those removed from the frontier such as William Allen, the chief justice of the Oyer and Terminer, noted the “Terror & Confusion” caused by “the Incursions of bloody Savages.”¹⁵⁷ These regular calls for blood failed to endear the backcountry settlers to the colonial leaders. During the French and Indian War, Henry Bouquet described the residents near Fort Pitt as “the Scum of the neighbouring Provinces.”¹⁵⁸ In the decades leading up to the Revolution, frontier residents failed to do little to alter this assessment. For the colonial government, the gallows served as a constant threat to maintain order although state officials were both reluctant to employ them and often unable to exert their authority throughout the colony.

The perceived rise in frontier violence by the mid-eighteenth century ,forced colonial leaders to seek a path between maintaining the fragile peace with Native Americans and appeasing the settlers. Occasionally, this approach resulted in harsh treatment of Native American criminals. In 1744, Mushemeelin, a Delaware, and possibly several other Native Americans, murdered John Armstrong, an Indian trader, and his two servants in Juniata.¹⁵⁹ Although Mushemeelin was hanged, his alleged accomplices escaped punishment as the Assembly sought “to avoid giving any Umbrage

¹⁵⁶Conrad Weiser to the Governor, 1 November 1755, Conrad Weiser Papers, HSP.

¹⁵⁷ William Allen to Ferdinando Paris, 25 November 1755; William Allen to William Beckford, 27 November 1755 in *Extracts from Chief Justice William Allen’s Letter Book*, ed. Lewis Burd Walker ([Pottsville, Pa.: Standard Publishing Company] 1897), 30, 31.

¹⁵⁸ Henry Bouquet to Robert Monckton, 20 March 1761, *The Papers of Henry Bouquet*, 5:355.

¹⁵⁹Mushemeelin also possibly engaged in ritualistic cannibalism with Armstrong’s body, which would further fuel animosity toward the Delawares among Pennsylvanians. David C. Hsiung, “Death on the Juniata: Delawares, Iroquois, and Pennsylvanians in a Colonial Whodunit,” *Pennsylvania History* 65 (Autumn, 1997), 447.

to the Indian nations.”¹⁶⁰ Nevertheless, colonial officials complained that Indian traders helped to create this situation as they routinely illegally plied Native Americans with alcohol in order to swindle them in business transactions and even “Debauch[ing]” their wives.¹⁶¹ The Delawares and Shawnees also distrusted the colonial government as the Iroquois ceded their Pennsylvania territory in 1748. Heated disputes soon broke out between Native Americans and frontier settlers as tensions steadily rose.¹⁶² These frayed relations resulting in numerous native attacks plaguing the frontier counties with the onset of the French and Indian War. Colonial leaders responded hesitantly because of Quaker pacifist ideals and fears of alienating the Delawares during the periodic wars between Britain and France.¹⁶³ The violent attacks during the French and Indian War left the settlers often unwilling to accept the weak reassurances of the colonial government and began to usurp the colony’s authority to pacify the borders. Consequently, eastern elites feared that the frontier could degenerate into a lawless region.¹⁶⁴ A growing divide soon engulfed the colony in regards to those who took action into their own hands. Eastern critics typically cast them as murderers and the darkest villains. Meanwhile, residents in the west typically viewed these actors as heroes in the wake of the Indian menace. The courts soon became embroiled in this debate as white residents murdered

¹⁶⁰CR, 4:679.

¹⁶¹*Pennsylvania Gazette*, 2 August 1744.

¹⁶²Matthew C. Ward, “The ‘Peaceable Kingdom’ Destroyed: The Seven Years’ War and the Transformation of the Pennsylvania Backcountry,” *Pennsylvania History* 74 (Summer 2007): 253-55.

¹⁶³ Paul A. W. Wallace, *Conrad Weiser: Friend of Colonist and Mohawk, 1696-1760* (Philadelphia: University of Pennsylvania Press, 1945), 175-83.

¹⁶⁴Michael Zuckerman, “Authority in Early America: The Decay of Deference on the Provincial Periphery,” *Early American Studies* 1 (Fall 2003): 12; Peter Silver, *Our Savage Neighbors: How Indian War transformed Early America* (New York: W. W. Norton, 2008), 158-59.

several Native Americans as well as white settlers, which provoked a great deal of differences in opinions.

The Paxton Boys of Lancaster County best exemplified many of the problems in controlling the frontier. Following the end of the French and Indian War, the western colonies soon became engulfed in Pontiac's War. Pontiac and his followers launched raids into western Pennsylvania. Raids reached as far east as Berks County, raising the ire of many western settlers. Meanwhile, the Assembly's apparent inertia in the wake of this crisis further shocked those living in the backcountry. United by their hatred of Native Americans and their disgust with the colonial government, these Scots-Irish settlers increasingly took matters into their own hands.¹⁶⁵ Under their leaders, including Lazarus Stewart who was described by historian Frank J. Cavailoli as "perhaps the most violent and notorious of the group," the Paxton Boys murdered several Conestogas in the countryside.¹⁶⁶ After other natives sought safety in Carlisle, a large contingent of armed men raided the workhouse and slaughtered the Native Americans housed there. The sheriff, coroner, and several others made token resistance against the rioters, but to no avail.¹⁶⁷ The Paxton Boys forced the colonial officials to grant some concessions to the frontier settlers such as bounties for Indian prisoners or scalps.¹⁶⁸ Nevertheless, questions remained about the frontier and the administration of justice. When the Paxton Boys rose up the following year and eventually marched on Philadelphia, printers soon produced a

¹⁶⁵ Kenny, *Peaceable Kingdom Lost*, 117-46.

¹⁶⁶ Frank J. Cavailoli, "A Profile of the Paxton Boys: Murderers of the Conestoga Indians," *Journal of the Lancaster County Historical Society* 87, no. 3 (1983): 88.

¹⁶⁷ Edward Shippen to John Penn, 27 December 1763, Joseph Shippen Papers.

¹⁶⁸ Joseph Shippen to Edward Shippen, 6 June 1764, Joseph Shippen Papers.

flood of pamphlets both condemning and supporting their actions.¹⁶⁹ Critics promptly denounced the Paxton Boys' actions as "the worst of Crimes." Unwilling to dismiss the murders of Native Americans, they argued that each rioter deserved "a more grievous punishment, then if he had murdered twenty of his Neighbours in cool blood."¹⁷⁰

Representatives of the frontier residents refuted any efforts to cast their group as murderers and instead portrayed the Paxton Boys as freedom fighters on the frontier. They claimed to "have suffered and bled in the Cause of their Country" while the Philadelphia Quakers remained intent on protecting the Native Americans. The countryside was stained "with the Blood of their slaughtered inhabitants," leaving "the murdered Ghosts [who]...cry'd aloud for Vengeance" to haunt the surviving settlers. Moreover, the supporters of the Paxton Boys contended, "You may shoot them [the rioters]—You may hang them—But till the Oppression is removed or alleviated, they will never be quiet," thus stripping away the power that the colony placed in the gallows.¹⁷¹ The Quakers in the Assembly drew the ire of the Paxton Boys for displaying hospitality to the Moravian Indians in Philadelphia as well as failing to pay bounties for scalps during Pontiac's War. The Paxton Boys and their supporters generally emphasized the horrendous assaults upon their bodies and property committed by the Native Americans throughout these violent exchanges.¹⁷² In this unsettled time, many believed that the gallows could re-establish order. One pamphlet even portrayed a Quaker asserting that not only did the Paxton Boys "deserve the gallows," but so did the

¹⁶⁹ Alison Olson, "The Pamphlet War over the Paxton Boys," *PMHB* 123 (January-April 1999): 31-55.

¹⁷⁰ "I am Philanthropy", *An Answer to the Pamphlet Entituled the Conduct of the Paxton Men; impartially represented* (Philadelphia: Anthony Armbruster, 1764), 4, 21.

¹⁷¹ *The Conduct of the Paxton-Men, Impartially represented, with some remarks on the narratives* (Philadelphia: Andrew Stewart, 1764), 5, 8, 13.

¹⁷² Kenny, *Peaceable Kingdom Lost*, 163-65, 174-81.

Presbyterians, their main rivals for authority in the colonial assembly.¹⁷³ These assertions that executions failed to resolve the issue, which may have been a major issue why colonial officials failed to pursue any real sanctions against the rioters even as the English government feared the deterioration of relations on the frontier.¹⁷⁴ Although this was only one example that involved a small percentage of the overall settlers in the Pennsylvania frontier, rural violence in the frontier offered the eastern government's inability to effectively police the region and create a universally accepted definition of the criminal class.

Native Americans also feared the threat of western settlers. During the 1762 conference at Lancaster, Teedyuscung accused the white residents of poisoning the water drunk by the Native American representatives. Scholar Anthony Wallace also attributed Teedyuscung's murder in the Wyoming Valley to the settlers sponsored by the Susquehannah Company of Connecticut who set his house on fire in order to secure the land held by the Delawares.¹⁷⁵ In 1768, tensions on the frontier again boiled over into violence as one of the more savage homicides took place in Cumberland County. Frederick Stump, a German immigrant along with John Ironcutter, his servant, first "most inhumanly murdered" a total of six Senecas and Mohicans who came to Stump's home and drank with him. They also scalped at least one of the male victims, which could be viewed as an act of war against the Native Americans. The next day, the two men went to

¹⁷³ *The Paxton Boys, A Farce in The Paxton Papers*, ed. John R. Dunbar (The Hague: Martinus Nijhoff, 1957), 161.

¹⁷⁴ Alden T. Vaughn, "Frontier Banditti and the Indians: The Paxton Boys' Legacy, 1763-1775," *Pennsylvania History* 51 (January 1984): 1-2.

¹⁷⁵ Anthony F. C. Wallace, *King of the Delawares: Teedyuscung, 1700-1763* (Philadelphia University of Pennsylvania Press, 1949), 254, 258-61.

a nearby settlement and “barbarously put to death” four more Native Americans.¹⁷⁶ This attack had devastating ramifications in the east as the colonial leaders struggled to maintain peaceful relations with the Native Americans. Indeed, this attack had widespread consequences. Moravian missionaries working with local Native Americans began to fear the possible repercussions of Stump’s actions because they threatened to undermine their work.¹⁷⁷ However, Stump and Ironcutter returned and “freely confessed” the multiple murders without expressing any remorse over their acts.¹⁷⁸

John Penn immediately denounced Stump’s action and called for an “Exemplary Punishment.” He further informed the Delaware chief Newoleeka that Stump would receive the same punishment as if he had murdered a white man.¹⁷⁹ However, colonial officials in the east faced stiff opposition as many Cumberland County residents resented indications that Stump and Ironcutter would be tried in Philadelphia. The governor and the Assembly sought to reassure the western inhabitants that only the examinations and not the trial would be held in the east. However, this did little to quell the rumors, which further bolstered support for Stump and Ironcutter. Many viewed Stump’s initiative as “a meritorious Action” that should be celebrated rather than costing him his life.¹⁸⁰ Consequently, “a Number of daring and riotous persons” rescued Stump and Ironcutter

¹⁷⁶ The best overview of this murder and the subsequent attempts to apprehend the perpetrators may be found in G. S. Rowe, “The Frederick Stump Affair, 1768, and its challenge to legal historians of early Pennsylvania,” *Pennsylvania History* 49 (October 1982): 259-88; *Pennsylvania Chronicle & Universal Advertiser*, 1 February 1768.

¹⁷⁷ *A short Extract of a Journal of the Indian Congress at Friedens-Hutten near the Susquehannah for the Months of February, March and April 1768*, 8 February 1768, Box 131, Folder 7, Item 2, Records of the Moravian Mission among the Indians of North America.

¹⁷⁸ *Pennsylvania Chronicle & Universal Advertiser*, 1 February 1768.

¹⁷⁹ *CR*, 9:425; *Pennsylvania Archives*, 4th series, 3:362-64.

¹⁸⁰ *Pennsylvania Chronicle & Universal Advertiser*, 1 February 1768.

from the Carlisle prison shortly after their arrest.¹⁸¹ News of these “villainous Rescuers” spread across the colony and forced the provincial government to reassure the Iroquois that the colonial laws were not simply “a Farce to deceive them.”¹⁸² One commentator observed the divide between eastern and western residents by claiming that the western inhabitants “could not part with *so brave a champion of their rights as Mr. STUMP, or agree that he should suffer for so trifling a crime as the death of a few infidels.*”¹⁸³

Colonial leaders assured the Iroquois that the perpetrators were just a “few rash & wicked people” driven by an “unparalleled degree of Infatuation and Wickedness.” Penn demanded a speedy trial, culminating in an execution, to convince the Delawares “that the Government does not countenance those who wantonly Spill their Blood.”¹⁸⁴ Colonial officials never apprehended Stump and Ironcutter, who disappeared from the public record. However, this case resurrected many of the tensions that existed forty years before when the murders committed by the Winters left the frontier on the brink of war.¹⁸⁵

Also in the mid to late 1760s, the Black Boys or Brave Fellows emerged as a new problem in Cumberland County. Although these men disagreed with the methods employed by the Paxton Boys, the Black Boys viewed themselves as defenders of the frontier who championed removing all Native Americans from the region or keeping the area racially segregated. They did adopt native dress and blackened their faces, which

¹⁸¹Oyer and Terminer papers, Cumberland County, Box 2, 1768, RG-33.

¹⁸² Joseph Shippen, Jr. to Edward Shippen, 30 January 1768; Joseph Shippen, Jr. to Edward Shippen, 9 February 1768, Joseph Shippen Papers.

¹⁸³*Pennsylvania Chronicle and Universal Advertiser*, 14 March 1768.

¹⁸⁴*CR*, 9:425; *Pennsylvania Archives*, 4th series, 3:351; Joseph Shippen, Jr. to Edward Shippen, 9 February 1768, Joseph Shippen Papers.

¹⁸⁵ Joseph Shippen to Edward Shippen, 9 February 1768, Joseph Shippen Papers; *CR*, 9:443; *Pennsylvania Gazette*, 11 February 1768; *Pennsylvania Chronicle & Universal Advertiser*, 15 February 1768.

provided the origins of their name. In the aftermath of the French and Indian War, Indian raids besieged frontier settlements, prompting rural residents to petition the colonial government for aid. However, the Assembly proved reluctant to assist the region and even agreed to resume trade with Native Americans at Fort Pitt. Consequently, James Smith, a local justice of the peace and the leader of the Black Boys, moved from simply patrolling the frontier to raiding a convoy carrying trade goods to the fort in 1765. Their actions soon reduced the region to a powder keg of activity as both the Black Boys and British soldiers targeted each other on occasion.¹⁸⁶ The Black Boys remained active in the region and again attacked trade caravans in 1769 in response to news of renewed tensions with Native Americans.¹⁸⁷ James Braidon received orders to apprehend James Smith, the leader of the Black Boys, before he reached Fort Pitt. The soldiers accused Smith and his fellow travelers to be “Highwaymen” and attempted to arrest Smith with the warning that any resistance and “he was a dead Man.”¹⁸⁸ When John Johnston, Smith’s traveling companion, sought to intervene to prevent any bloodshed, Smith accidentally shot him in the ensuing struggle. Smith subsequently attempted to flee, but was soon captured and allegedly admitted his guilt as well as the justness of the gallows in his case for murdering “an Inosant man.”¹⁸⁹ William Smith, James’s brother, defended his actions, stating James was “treated in a Manner utterly inconsistent with the Laws of their Country, and the Liberties of Englishmen.”¹⁹⁰ Although the jury acquitted Smith based on

¹⁸⁶ Eleanor M. Webster, “Insurrection at Fort Loudon in 1765: Rebellion or Preservation of Peace?,” *Western Pennsylvania Historical Magazine*, 42 (1964): 124-39.

¹⁸⁷ Gregory Evans Dowd, *War under Heaven: Pontiac, the Indian Nations, & the British Empire* (Baltimore: The Johns Hopkins University Press, 2004), 200-11.

¹⁸⁸ *Pennsylvania Gazette*, 2 November 1769.

¹⁸⁹ Oyer and Terminer papers, Cumberland County, Box 2, 1769, RG-33.

¹⁹⁰ *Pennsylvania Gazette*, 2 November 1769.

doubts about who fired the fatal shot, the trial also raised questions regarding the legitimacy of the government to punish alleged offenders when local jurors viewed their actions much differently than eastern officials. However, to further handle this situation, the Assembly passed a new law in 1770 that made it a capital crime for individuals with blackened faces to commit arson, robberies, assaults, or rescues of prisoners from jail.¹⁹¹ Through these efforts, the colony sought to discourage offenders like the Paxton riots or Smith and his allies. Nevertheless, Pennsylvania officials never carried out any sentences under this statute, perhaps content with creating the image of opposition without alienating the western settlers.

While the colony viewed the gallows as a means of restoring order on the frontier, eastern legislators were forced to contend with the differing interpretations of many western settlers. The frontier region remained unsettled as both Pennsylvania and Connecticut asserted ownership of the Wyoming Valley in Northampton County. The Susquehannah Company argued that Connecticut's 1662 charter predated Penn's claim and granted the colony this disputed territory.¹⁹² Connecticut claimants attacked the homes of the proprietors' tenants and destroyed their livestock and crops.¹⁹³ Northampton County officials struggled to check the Connecticut immigrants who flocked to the valley. Moreover, support for the Connecticut claimants came from disillusioned Pennsylvanians such as Lazarus Stewart of Lancaster County. They combined to build a fort in the region in 1770 and used this as a base of operation to burn down Charles

¹⁹¹ *Statutes at Large*, 7:351.

¹⁹² Connecticut did recognize New York's borders, but claimed that the charter granted them the territory beyond New York. Anne M. Ousterhout, "Frontier Vengeance: Connecticut Yankees vs. Pennamites in the Wyoming Valley," *Pennsylvania History* 62 (July 1995): 333-35.

¹⁹³ Paul B. Moyer, *Wild Yankees: The Struggle for Independence along Pennsylvania's Revolutionary Frontier* (Ithaca, N.Y.: Cornell University Press, 2007), 23-31.

Stewart's home on the proprietary tract. According to witnesses, Nathan Ogden, a member of the posse sent to apprehend the arsonists, approached the fort to negotiate with the men, but Stewart instead "most wickedly and treacherously, without any Provocation, murdered" him.¹⁹⁴ John Penn and the Assembly responded by declaring Stewart and his followers outlaws, which allowed the colony to execute them without a trial. Through this deprivation of legal rights, the colony sought to define the Yankee supporters as different from the rest of the settlers in the region.¹⁹⁵ Authorities finally arrested William Speedy, one of his accomplices, and opted to try him in Philadelphia. Even in this relocated venue, the jury acquitted Speedy. Therefore, the colony again failed to fully redefine a perpetrator as an irredeemable deviant, which damaged its ability to exact justice.¹⁹⁶

As the 1760s ended, Pennsylvanians realized that crime had far from abated despite the unprecedented use of the gallows over the previous three decades. During the next decade, many observers complained of a rise in crime especially with the onset of the Revolutionary War. Murders, robberies, and other crimes frequently filled the newspapers, fueling fears of these "Rogues" who threatened to disrupt the region's peace and commerce and forcing the colony's inhabitants to scrupulously attend to the "Fastenings of their Cellar Doors, Windows, &c."¹⁹⁷ Pennsylvanians began to question the effectiveness of capital punishment as a deterrent. Paramount in this debate was the difficulty defining criminals as the other. While some had committed heinous acts that

¹⁹⁴ Julian P. Boyd, ed., *The Susquehanna Company Papers* (Wilkes-Barre, Pa.: Wyoming Historical & Geological Society, 1931), 3:xvii-xxix; *CR*, 9:674-76; *Pennsylvania Archives*, 4th series, 3:435.

¹⁹⁵ *Pennsylvania Gazette*, 4 October 1770; 9 February 1771; 26 September 1771.

¹⁹⁶ Oyer and Terminer papers, Philadelphia County, Box 5, 1771, RG-33.

¹⁹⁷ *Pennsylvania Gazette*, 23 February 1769.

drew widespread condemnation, divisions throughout the colony made it much more complicated in other cases. Regional differences increasingly split the colony and shaded the perception of events such as the debates over the Paxton Boys, Frederick Stump, and the Black Boys. Indeed, the problem in defining the other may have accounted for all members of the Paxton and Black Boys escaping the gallows. Instead, they apparently counted on local support in order to ensure they would not be captured, thus foiling the hopes of colonial officials in the east to bring some stability to the frontier. The Revolutionary War further divided the state over who was most deserving of death. The Pennsylvania government continued to cling to these older methods of punishment as the best means of maintaining order, leading to the execution of seventy-five individuals between 1740 and 1769. Even pardons were sparingly used for those who were defined as different from the rest of the colony's population as only 17 percent of the condemned received mercy. However, the divisions within Pennsylvania society over the frontier crisis and the impending Revolutionary War made it increasingly difficult to define individuals as the other by the 1770s. These doubts made it easier for the condemned to avoid death penalties. No longer were they viewed as morally and inherently different from the rest of the population. Instead, the growing divide between the colonies and Britain further exacerbated the difficulties in defining who represented the other. Numerous individuals exploited these diverse views regarding the condemned, which launched a wave of petitions written in hopes of obtaining mercy from the state.

Chapter 3
“Spare His Life”:
Reshaping the image of criminals in eighteenth-century Pennsylvania, 1770-1794

Robert Steel petitioned the Supreme Executive Council (SEC) in October 1785 as he languished in prison awaiting his execution. During the Revolutionary War, he had joined a gang of outlaws who robbed the Bucks County treasurer. However, Steel claimed that these “wicked men” coerced him to take part and he had managed to persuade the gang to avoid committing even more outrageous crimes. Steel soon departed and moved to North Carolina where he settled and married a woman of good standing. News of his crimes followed Steel down south, and he was eventually arrested and returned to Philadelphia to stand trial. Steel used these final moments to beg the SEC not to “cut him off in the prime of Life” and instead grant him mercy. The SEC also received favorable statements about Steel’s character from notable citizens in North Carolina and the Pennsylvania Supreme Court justices. Moved, the SEC pardoned Steel based on the belief that he could become a “useful Member of Society.”¹

The SEC’s ruling offered a stark contrast to the earlier view of the irredeemable criminal, and the period from 1770 to 1794 witnessed a dramatic transformation of capital offenders through the numerous petitions addressed to the SEC. This chapter contends that the image of the condemned became increasingly contested even after sentencing as both the condemned and their supporters sought to reshape their public perception and gain a more favorable view. Rather than simply worry about their legacy,

¹ Robert Steel to the SEC, 15 October 1785; Supreme Court justices to the SEC, 15 October 1785, Records of Pennsylvania’s Revolutionary Governments, Clemency files, RG-27, State Archives, Harrisburg, Pa. (hereafter referred to as RG-27), Roll 39; *CR*, 14:558.

these individuals realized that the criminal justice process did not end with the sentencing. Although some criminals used their final days to prepare their souls for the afterlife or to tend to earthly matters before their death, many others were unwilling to await their fate. Instead, they used this time to petition the government in hopes of obtaining mercy. Throughout the eighteenth century, these petitions formed a regular component of capital punishment because the Pennsylvania government often weighed the merits of carrying out the sentence.² These petitions took on even greater significance in the years between 1770 and 1794 when at least 246 individuals received death sentences.³ This composed 64.6 percent of the total executions ordered by the colony/state from 1718 to 1794. The condemned and their numerous supporters, ranging from family members to prominent citizens, authored at least 271 petitions that typically offered a more sympathetic view of the condemned between 1775 and 1794. Overall, the SEC proved much more willing after 1770 to extend mercy as 39.6 percent of the condemned (excluding the thirteen outlaws never brought to justice) received pardons. The condemned who either authored petitions or had supporters on their behalf were the most successful at escaping the gallows as seen in Table 3.1. Petitioners recognized their opportunity for success, which led them to regularly manipulate the available forms of

² Various sources reveal that the Provincial Council and the Supreme Executive Council received at least 271 petitions with the full text existing for 259 petitions written either by or for 109 individuals between 1775 and 1794. The vast majority are found in the in RG-27. Several other letters are located in RG-26, the *CR*, the *Pennsylvania Archives*, 1st series, and the *Pennsylvania Mercury*. These petitions served as the basis for this chapter. However, more letters were written, but no longer appear to exist. Both *CR* and the *Pennsylvania Archives* cite several petitions that were filed with the Supreme Executive Council, which have been lost. In cases where the full text was lacking, these petitions were not cited in this number. Nevertheless, any petition filed—even if the actual document no longer exists—was used to complete the tables found throughout this chapter.

³ Robert Elliott and Jacob Dryer both received two death sentences in this period. Overall, 381 individuals received death sentences between 1718 and 1794 although Catherine Connor also was condemned on two different occasions in the 1730s.

media to re-create their public image and pursue pardons. Consequently, this made the enforcement of the law much less certain and in many ways weakened the use of capital punishment as an effective means of social control.

Table 3.1
Petition authors, 1775-1794

	Condemned criminals	Number pardoned	Percent pardoned
No petition recorded	82	4	4.9%
Petitioned by condemned alone	15	6	40.0%
Petitions only by others	43	31	72.1%
Petitions by condemned and others	52	32	61.5%
Total	192	73	38.0%

Sources: RG-26 and RG-27, *Colonial Records, Pennsylvania Archives*, and *Journal of Henry Muhlenberg*. Prior to 1775, petitions were only listed as received in the Colonial Records and the few records make no mention of any condemned criminals penning one on their own behalf. Therefore, the sixteen recorded petitions between 1770 and 1774 were not included in this analysis. This breakdown reveals the number of condemned criminals and if they received petitions on their behalf. If they and their supporters wrote multiple petitions on their behalf, they still only appear once. However, both Robert Elliot and Jacob Dryer appear in the above chart twice because they both received pardons and were later condemned again for other criminal activities.

No matter how heinous the crime arsonists, rapists, robbers, and pirates often could count on the possibility of a pardon. For example, nearly 22 percent of the murderers sentenced to death between 1770 and 1794 received mercy. Pennsylvania officials began to openly share many of the misgivings of reformers and felt the compulsion to change the penal system. The increase in the number of pardons also

suggests the effectiveness of the petitioners in altering their perception of the criminal and their actions. Although the identities of the criminals and their crimes ranged greatly, each of these petitions sought to convince Pennsylvania officials that this individual did not deserve the sentence of death. The petitions rarely asserted the innocence of the condemned, but, instead, concentrated on offering a host of reasons why they should be spared the ignominy of death. The excuses ranged from blaming the evil influence of others to a previous lack of criminal behavior. This chapter argues that the different excuses and methods employed successfully reshaped how the SEC and other prominent Pennsylvanians viewed various offenders and helped lead to new questions about the efficacy of capital punishment.

Most historians who have studied mercy have focused on how the government employed it as a means of social control. Douglas Hay argued that petitions for mercy allowed British elites to project the image that they sought to protect the lower classes. With the fickle nature of British justice, pardons allowed the gentry and British officials “to proclaim the law’s incorruptible impartiality, and absolute determinacy.”⁴ Recent studies of Pennsylvania executions have incorporated Hay’s argument. Gabriele Gottlieb contended that the use of pardons allowed the state to assume the mantle of a merciful entity.⁵ Michael Meranze also asserted that the forms of public punishment and mercy reflected patronage extended to the poor. Because the most successful pardons generally

⁴Hay, “Property, Authority and the Criminal Law,” 48.

⁵Gottlieb, “Theater of Death,” 31.

contained recommendations from the local elites, this again allowed the upper classes to gain the support of the lower ranks.⁶

Petitioning also raised questions of deference, which did not always coincide with the more egalitarian worldview that emerged in Pennsylvania by the Revolutionary War. Gary Nash argued that, in the years leading up to independence, the laboring ranks in Philadelphia increasingly assumed a position of power in local politics. Similarly, Gordon Wood contended that the American Revolution represented a radical shift in social relations as deferential relations broke down.⁷ Although John K. Alexander argued that the charitable system sought to perpetuate attitudes of deference, he also found that the elites often failed to fully control the lower classes.⁸ V. A. C. Gatrell's study of nineteenth-century Britain has examined how the condemned "harnessed every conceivable rhetorical device to support their thin hopes."⁹ They adopted deferential tones in a carefully scripted role-playing scenario in which they desperately attempted to reshape how local authorities perceived the convict.

Petitions were a regular component of Pennsylvania's criminal justice system. Initially, petitioners addressed the governor as Penn's initial charter granted him and his heirs the power to pardon any criminals arrested in his colony except for murderers and traitors. For these exceptions, the charter allowed the governor to grant a temporary reprieve until they could receive notice from the crown on how to proceed in the case.¹⁰

Typically, the governor relied on the recommendations of the Provincial Council as well

⁶ Meranze, *Laboratories of Virtue*, 36-37.

⁷ Nash, *The Urban Crucible*, 376-82; Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991), 6-7.

⁸ Alexander, *Render Them Submissive*, 165-74.

⁹ Gatrell, *The Hanging Tree*, 212-18.

¹⁰ *CR*, 3:xi.

as the Oyer and Terminer justices to determine if the condemned was an apt candidate for mercy. In 1776, the Assembly drew up a new constitution to address the issues in governing the newly independent state. Despite their desire to prove their independence from Britain, the framers of Pennsylvania's constitution gave the president of the SEC, who was elected by the General Assembly, along with a quorum of five members of the SEC the ability to pardon any offenders and remit fines as well. The SEC consisted of twelve members from eleven counties and the city of Philadelphia. However, the SEC and its president still only had the ability to grant reprieves for treason and murder cases. Now rather than awaiting word from the king, the final decision lay with the Assembly, reflecting the increased importance of the legislative branch under the 1776 constitution.¹¹ In addition, soldiers serving in Pennsylvania could appeal to the Commander in Chief to have their death sentences pardoned.¹² The constitution of 1790 established the office of the governor endowed with the authority to pardon or reprieve criminals.¹³ Therefore, in this period, the SEC and its president followed by the governor remained the primary recipients of these appeals since they possessed the power to determine if the condemned deserved mercy.

However, the petitions offer much more than this. Despite their formulaic appearance, the petitions to the Pennsylvania government were far from passive statements. The condemned and their supporters already saw how the government and, by extension, the public viewed the criminals. The indictments, which continued to follow

¹¹*The Constitution of the Commonwealth of Pennsylvania, as established by the General Convention elected for that Purpose* (Philadelphia: John Dunlap, 1776), 18, 21.

¹²*Rules and Articles for the Better Government of the Troops* (Fishkill, N.Y.: S. Loudon, 1776), 29.

¹³*Constitution of the Commonwealth of Pennsylvania as altered and amended by the Convention* (Philadelphia: Zachariah Poulson, Jr., 1790), 9, 11.

the British model, by their very words defined the condemned as evil and possibly irredeemable. For many crimes such as murder, rape, and even treason, the indictments alleged that the perpetrator was “moved and seduced by the Instigation of the Devil.” Robbers typically not only stole from the victim, but they also violated the “peace of God.”¹⁴ Many Pennsylvanians continued to view the offenders as the other even while their contemporaries called for the rehabilitation of offenders. Thus, newspaper advertisements generally identified unknown criminals as “evil-minded” or “evil disposed” individuals.¹⁵ Similarly, after James Fitzpatrick was finally arrested for numerous robberies in Chester County during the Revolution, an anonymous letter-writer to the SEC complained that “He is an offender of great magnitude & attention.” Consequently, “The public expect & demand his punishment.”¹⁶ Not content to allow the state to define the criminal, these petitions offered a contrast to the public perception of the condemned.

By the 1770s, the Pennsylvania government began to become more receptive to these pleas for mercy and accepted pardoning as an appropriate method to deal with criminals. Benjamin Rush, a prominent Philadelphia physician and signer of the Declaration of Independence, emerged as a primary critic of capital punishment in the early republic. Rather than take their lives, Rush emphasized forgiveness and rehabilitation. Even the Supreme Court justices often expressed this view. Chief Justice Thomas McKean wrote, “Pardoning is a God like power, and a God like virtue.”¹⁷ Other

¹⁴ These citations emerged as part of the typical indictments found in RG-33.

¹⁵ For several examples of this label in relatively minor crimes, please see *Pennsylvania Gazette*, 6 October 1778; 24 September 1788.

¹⁶ Anonymous to George Bryan [?], n.d. RG-27, Roll 36.

¹⁷ Thomas McKean to William A. Atlee, 5 June 1778, William Augustus Atlee Papers, Roll 104.

leading Pennsylvanians joined his calls in condemning the death penalty. Some contended that in the new republican nation, they should show more mercy than the despotic reign of tyrannical monarchs like George III and abolish the barbaric practice of capital punishment.¹⁸ Supporters of John Roberts, a condemned traitor during the Revolution, professed “that the characteristick of the True Americans shall be Humanity, mercy, charity & forgiveness.”¹⁹ Even the condemned could be shocked by the decision to extend mercy, which reflected their lack of faith in the appeal process. When General John Sullivan opted to pardon Lawrence Miller, he was so overwhelmed that “he almost Fa[i]nted A way.”²⁰ However, the success of other petitioners emboldened many others who expected similar mercy as they pled their circumstances.

Multiple petitioners contended that an execution would fail to produce any beneficial results. The courts sentenced criminals to death not only as a source of communal vengeance and to deter others from imitating their actions, but also to serve the community as a whole by removing these unsavory elements. Ostensibly, this decision matched with the republican ideal of working for the public good, namely, that individuals should subvert their own desires and work for society as a whole.²¹ The condemned and their allies routinely countered this argument as they claimed that a pardon was indeed consistent with the principles of working towards the common good. Rather than take the life of the offender, which served little purpose beyond communal

¹⁸Masur, *Rites of Execution*, 50-70.

¹⁹*Pennsylvania Archives*, 1st series, 7:39.

²⁰“Journal of Sergeant Thomas Roberts,” in *Journals of the Military Expedition of Major General John Sullivan against the Six Nations of Indians in 1779*, ed. Frederick Cook (Auburn, N.Y.: Knapp, Peck & Thomson, 1887), 1 July 1779, 241.

²¹ For a more thorough examination of the idea of virtue in this period, see Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, N.C.: University of North Carolina Press, 1969).

vengeance, the extension of mercy could allow the condemned to then become agents working for the common good themselves. Moreover, mercy could help persuade others to behave as good citizens. John Carmichael of Chester County pleaded for a pardon for John Roberts because it might “sweeten the minds of those of the prisoner’s connections” because his supporters “may have been heretofore sour and disaffected to our free, and...happy, New Government.”²² Others warned that the criminal was so well esteemed that an execution could actually elicit the wrong types of reactions from the public. After the conviction of John Bell for murdering James Chalfant in Washington County in 1794, members of the community advised Governor Thomas Mifflin that Bell was an “Industrious, peaceable, [and] poor man” who was provoked to commit this action. Even then, he acted not out of malice, but of a desire to defend himself.²³ According to Alexander Addison, the local justice of the peace, several neighbors had assembled for a corn-husking. As at many of these events, the participants drank heavily and Chalfant soon grew belligerent. He began to antagonize Bell, who grew agitated, which only prompted Chalfant to escalate his taunts. Eventually this led to violence, and Bell seized a wooden stake and used it to slay Chalfant. In his assessment of the case, Addison even denied that the prosecutor managed to prove malice, but instructed the jury to rule it murder because Chalfant offered “no provocation but words” and Bell employed a deadly weapon to strike him.²⁴ Despite the conviction, many remained convinced that the jury had reached an erroneous decision and informed Mifflin that to carry out the sentence

²² *Pennsylvania Archives*, 1st series, 7:43.

²³ Petition to Thomas Mifflin, 27 March 1794, Clemency files, RG- 26, State Archives, Harrisburg, Pa. (hereafter referred to as RG-26), roll 43, Harrisburg, Pa.

²⁴ Evidence presented by Alexander Addison, n.d., RG-26, roll 43.

would “excite the pity and tears of all who know him instead of impressing the idea that guilt was suffering the punishment properly inflicted by Law.”²⁵ Robert Taylor, one of the jurors, averred that he and several other jurors deemed Bell’s offense to be manslaughter rather than murder. However, they were unaware that the murder conviction required a unanimous verdict from the jury, so they did not push for the lesser sentence after failing to convince their fellow jurors. Consequently, Taylor hoped that Bell’s life would be spared, so that he would not die because of Taylor’s ignorance about the jury process.²⁶ If the community viewed Bell as a real criminal, then they would have no qualms about sanctioning his execution. Their reluctance suggests that they possessed a different image of him, which they sought to reveal to the governor. The governor agreed with this new image as he pardoned Bell after receiving these multiple statements on his behalf.²⁷

During the Revolution, suspected traitors could challenge the popular perception that they supported the British cause and sought to undermine the revolutionary efforts. The Whig government sought to root out any suspected British loyalists, especially after reoccupying Philadelphia in 1778. Those who collaborated with the British ran the risk of being targeted.²⁸ William Cassedy, a former soldier in the Pennsylvania militia, defected after the British captured him at Fort Mifflin. Cassedy enlisted with the British, but deserted and rejoined the American cause. However, he only acted out of a desire to

²⁵Petition to Thomas Mifflin, 27 March 1794, RG-26, Roll 43.

²⁶Deposition of Robert Taylor, 11 January 1794, RG-26, Roll 43.

²⁷*Pennsylvania Archives*, 9th series, 2:742.

²⁸Anne M. Ousterhout, *A State Divided: Opposition in Pennsylvania to the American Revolution* (New York: Greenwood Press, 1987), 184-96.

rejoin his wife, which led to his condemnation for treason.²⁹ His plight elicited two petitions on his behalf by concerned citizens. Two advocates were “mov’d, with that noble spirit of Patriotism and humanity, which is the Characteristick of all true Whiggs” to recommend him for mercy.³⁰ The British took advantage of his youth to trick Cassedy into abandoning the patriot cause. Thus, he acted only out of naivety rather than revealing himself to be an enemy of the state. Such a statement not only identified the authors as firm supporters of the American cause, but they also extended this distinction to the unfortunate Cassedy. This ploy resonated among the SEC, which granted the petition on the condition Cassedy join the Pennsylvania navy.

The young age of the offenders emerged as a consistent argument against executing a sentence. Numerous petitioners cited their youth and bad judgment as the primary reasons they committed these crimes. Although a third party, such as the condemned’s lawyer or another supporter, often authored the petitions and followed a script, they occasionally did provide personal information on the condemned, including age. At least twenty petitions that argued for mercy based on youth listed an age of the offender—either while waiting in prison or at the time of the offense—with the average age being approximately eighteen.³¹ The petitioners often passed the blame to others who took advantage of their tender young age. The petitions on behalf of Nathan Bunting revealed he was condemned for arson while only twelve years and five months old. He burned down his master’s barn. Although Oyer and Terminer justices Thomas McKean and George Bryan informed John Dickinson, president of the SEC, that Bunting should

²⁹Petition of William Cassedy, n.d., RG-27, Roll 36.

³⁰John and Zibiah Howson to the SEC, n.d, RG-27, Roll 36.

³¹ This figure was computed from the information located in petitions contained in RG-27.

have been able to differentiate between right and wrong at this age, they found his education to be lacking. During the trial, they learned that he was unable even to recite the Lord's Prayer. The justices felt compelled to convict Bunting in order to prevent similar crimes from occurring throughout the state. However, they found that "the child appeared penitent and promised amendment," so they recommended him for mercy.³² Mary Grover, another young person convicted of arson, received her sentence alongside her father in Lancaster County. Even her mother was initially indicted, although she managed to be acquitted at the trial. The justices admitted that Mary warranted a conviction based on the evidence, but she like Bunting, was "very weak of understanding and intirely under the influence & direction of her parents, who appeared to be exceeding poor, ignorant & worthless vagrants from the Eastern part of the State of New Jersey."³³ In both of these cases, they shifted the blame away from the minor and placed it on others. The justices implicitly blamed Bunting's master for failing to educate his young ward. Similarly, Mary had few chances at a life without crime since her parents had failed her so miserably. Therefore, the court felt that they had no choice, but to initially condemn Bunting and Mary Grover. Even the justices believed that it would be an injustice to actually carry out these harsh sentences when the youths were not to be blamed.

³²Thomas McKean and George Bryan to John Dickinson 5 May 1783, RG-27, Roll 37.

³³Justices' opinion, 21 June 1783, RG-27, Roll 37.

Petitioners also likened executions to the barbaric history of the older order, and therefore incompatible with the new republican society of the United States. Many Pennsylvanians felt that rather than take the lives of the condemned, they should instead seek to convert them into useful members of society. The revised penal statutes of 1786 (which will be discussed in chapter 5) stated, “it is the wish of every good government to reclaim rather to destroy.”³⁴ Petitioners consequently claimed that pardons would benefit rather than hurt society especially if the condemned could indeed be reformed. Joseph Doan Jr., of the infamous Doan gang of Bucks County, sought to exploit these sentiments while in prison. He petitioned the council claiming he was “resolved in the future to lead a new life & expiate to his God & Country for the injury he has done.”³⁵ Doan admitted his past errors in robbing tax collectors during the early 1780s, but vowed to live as a useful member for the rest of his life. Others took a more proactive stance and asked the council to grant them a pardon on the condition that would best lead to “Repentance & Reformation.”³⁶ Following his conviction for burglary in 1786, Henry Richards appealed to the SEC that Indian raids in Northumberland County left him impoverished. In a desperate attempt to provide for his family, he stole a variety of foodstuffs in Lancaster County. Although he admitted that the crime was wrong, Richards successfully contended that the community would receive no benefit from executing him, especially since he was striving to provide for his wife and children.³⁷ In the case of Patrick Waugh, who murdered his wife, members of the Society for Alleviating the Miseries of Public

³⁴ *Statutes at Large*, 12:280.

³⁵ Joseph Doan Jr. to the SEC, 13 April 1784, RG-27, Roll 38.

³⁶ Charles Read to the SEC, n.d., RG-27, Roll 41.

³⁷ Henry Richards to the SEC, 12 June 1786, RG-27, Roll 39.

Prisons, including the Reverend William White of Christ Church, disagreed with the belief that only an execution would serve the public good. Inspectors appointed by the Society to visit Waugh found him truly penitent for this deed and claimed that he never intended to murder his wife. Instead, they found that Waugh's guilt entirely consumed him and he resigned himself to his fate. Consequently, he never attempted to escape or even requested a pardon on his behalf. Moved with compassion for this suffering soul, the Inspectors beseeched the council to pardon him as they claimed, "Did we believe him to be a deliberate murderer, or, that society would receive any detriment in future by his pardon, we assure you we would never have petitioned in his behalf."³⁸ These prominent Philadelphians believed that the threat of the gallows would more successfully promote reform than an actual execution, and the release of a newly virtuous citizen would benefit the nation as a whole.

Even criminals guilty of horrific crimes sought to downplay their indiscretions and cast themselves as redeemable. During the Revolution, they regularly promised to serve in the military in exchange for their lives. Following his conviction for piracy in the Admiralty Court, Thomas Wilkinson petitioned for his freedom. Although he never denied committing the crime, Wilkinson emphasized his past service to the American cause despite being born in England. He begged the SEC to allow him to make amends as a living citizen rather than serving as a public example through an execution. As an experienced sailor, he could return to the navy and serve for the remainder of the war.³⁹ Despite the differences in their crimes, the Council decided to grant a pardon to both

³⁸James Sproat, Ashbel Green, Thomas Morris, Henry Helmuth, William Rogers, Samuel Bayard, and William White to the SEC, 23 October 1790, RG-27, Roll 42.

³⁹Thomas Wilkinson to the SEC, 30 May 1781, RG-27, Roll 37.

Wilkinson and McKeever on the condition that they serve in the Continental navy for the duration of the war.⁴⁰ The pardon of McKeever probably elicited little response as many who committed property crimes received its mercy. Nevertheless, the decision to pardon Wilkinson and return him to naval service surprised many. In October 1780, he led a mutiny onboard the *Richmond* and planned to sail it to Charleston, South Carolina, and surrender the vessel to the British. He then would serve on their behalf for the rest of the war.⁴¹ Despite the severity of his crime, Wilkinson's emphasis on his past service and expertise convinced the Council that he had truly reformed and could serve them well in the future.

Others echoed the theme that they too could be reformed. During the invasion of Philadelphia, three naval lieutenants and one gunner deserted their posts. They were later arrested and condemned for their actions. Such a judgment was unique, as officers generally escaped the corporal and capital punishments reserved for the rank and file. However, it was not unprecedented. During Sullivan's campaign, a court martial under General William Maxwell sentenced two soldiers to death for encouraging desertions to the British, including "one of whom formerly had been a Lieut. in the Militia."⁴² Moreover, Washington himself supported the use of the death penalty in the Continental army as key to maintaining discipline among the ranks. Soldiers faced a death sentence

⁴⁰ CR, 12:779; 13:135.

⁴¹ Copy of indictment of Thomas Wilkinson, RG-27, Roll 37.

⁴² It is possible that one of these individuals did manage to receive a pardon. Lieutenant John Jenkins recorded that two Tories received death sentences, but only one was executed. The other received a reprieve and was returned to his family in the Easton area. These men were identified as Michael Rosebury and Lawrence Miller, who were both from Sussex County, New Jersey, with Miller receiving the pardon. "Journal of Lieut. John Jenkins," in *Journals of the Military Expedition ... 1779*, 30 June 1779, 169; "Journal of Major James Norris," 1 Jul, 1779 in *Ibid.*, 225.

for a variety of crimes including forgery, theft, and desertion.⁴³ Nevertheless, the state deemed that all four soldiers' dereliction of duty in a time of need as reprehensible and deemed that they should die as an example to the rest of the armed forces. This decision provoked numerous petitions on their behalf. One appeal signed by numerous residents of the city asked for a pardon for all four men in hopes that mercy would instead have a transformative effect on their character and "from a Sense of the favour [they would] hereafter become usefull Citizens of the State."⁴⁴ The SEC ultimately opted to execute just two of the men, Lieutenants Samuel Ford and Samuel Lyons, and pardoned the other two. George Bryan, the vice president of the SEC, justified the decision to execute Ford and Lyons because of "the impossibility of suporting an armed [force], without making examples of offenders in this way."⁴⁵ No evidence suggested that Lieutenant Joseph Wilson and gunner John Lawrence were any less deserving of this fate than their colleagues. Instead, they proved to be the fortunate beneficiaries of this partial application of mercy as the state managed to appease some while still projecting a stern image to other potential offenders.

To further extol the merits of the condemned, the petitioners often emphasized past service to the state, especially in the military. John McGilofroey received a death sentence at a court martial for desertion while serving in the colonial navy. Most radical Whigs would not sympathize with his plight as the American forces regularly struggled

⁴³ Gregory T. Knouff, *The Soldiers' Revolution: Pennsylvanians in Arms and the forging of Early American Identity* (University Park, Penn.: Pennsylvania State University Press, 2004), 95-96; "Journal of Serg't Major Grant," in *Journals of the Military Expedition ... 1779*, 14 June 1779, 107; Harry M. Ward, *George Washington's Enforcers: Policing the Continental Army* (Carbondale, Ill.: Southern Illinois University Press, 2006), 183-97.

⁴⁴Petition to the Supreme Executive Council for Samuel Lyons, Samuel Ford, Joseph Wilson, and John Lawrence, n.d., RG-27, Roll 36.

⁴⁵CR, 11:564.

with deserters. Nevertheless, while awaiting the execution of his sentence in a Lancaster jail, his wife Ann implored George Bryan to take pity on him. She claimed that his desertion reflected not a negligence of duty, but a desire to honor an even greater duty. She and their five children—one more than his initial petition stated—were barely surviving and only had enough potatoes to last another two weeks. In recognition of their plight, he left his ship and returned to his family. Invoking the sacrifice of Christ, she begged Bryan to spare her husband “For the Sake of your Lord and saivour Who gave his own precious Life.”⁴⁶ An experienced soldier such as McGilfroey could help to overcome their manpower shortages even if he carried the stigma for desertion. Although George Washington regularly railed against deserters and expressed few qualms about executing them, he realized the impossibility of imposing this punishment on every offender.⁴⁷ Consequently, he offered clemency to deserters earlier in 1777. Although the deadline set by Washington for deserters to return to their regiments had already passed, Mrs. McGilfroey inevitably knew of this proclamation and sought to exploit this past compassion to soldiers in his favor.⁴⁸ John expressed similar sentiments when he appealed to the council on his own and even denied that he ever served on behalf of the British.⁴⁹ When the Council voted to forgive McGilfroey’s offense, they also authorized Commodore John Hazelwood to pardon all deserters from the state navy who surrendered themselves by September 1, 1778.⁵⁰ Therefore, far from being powerless, Mrs.

⁴⁶ Ann McGilfroey to George Bryan, n.d., RG-27, Roll 36.

⁴⁷ Bruce Chadwick, *George Washington’s War: The Forging of a Revolutionary Leader and the American Presidency* (Naperville, Ill.: Sourcebooks, 2004), 157-63.

⁴⁸ *Pennsylvania Packet*, 29 November 1777.

⁴⁹ John McGilfroey to George Bryan, n.d. RG-27, Roll 36.

⁵⁰ *CR*, 11:541; *Pennsylvania Packet*, 28 July 1778.

McGilofroey recognized what values the council esteemed and offered an alternative view of her husband and his action that coincided with them.

Similarly, other petitions cast the crime as just one stain on an otherwise commendable reputation. Daniel Zuber in Lancaster County in 1780 claimed that prior to his conviction for counterfeiting “he hath lived an honest Life, and did not desert the Paths of Virtue.”⁵¹ Following his conviction for burglary, James Roach in Philadelphia in 1783 informed the SEC that this was “the first capital Offence he was ever guilty of.”⁵² Louis Collinet of Philadelphia contended that “during the whole Course of his Life, he has never been Guilty, or even in the least addicted, to any Crime that could any way tend to Impeach his Character.” Even in this case, he was “ensnared by his fellow sufferers” to commit a crime for “which he is now doom’d to Die.”⁵³ After the York session of the high court sentenced John Sheffer to death for burglary in 1781, Lancaster County residents emphasized his good reputation and military service to justify a pardon. He enlisted in the early days of the Revolutionary War under Captain Matthew Smith and fought the British in Massachusetts. He later took part in the unsuccessful invasion of Canada, which resulted in his capture and subsequent imprisonment for nine months. Following his release, Sheffer again served for his nation in the Battle of Germantown before leaving the militia. An unsuccessful stint as a privateer combined with the corruptive influence of the nearly pervasive “bad Company” led Sheffer astray as he committed this “detestable Crime.”⁵⁴ Following a long list of signers, the petition

⁵¹Daniel Zuber to the SEC, 1 June 1780, RG-27, Roll 37.

⁵²James Roach to the SEC, 13 October 1783, RG-27, Roll 38.

⁵³Louis Collinet to Thomas McKean, 5 April 1785, RG-27, Roll 38.

⁵⁴Petition of residents of Lancaster County to SEC, n.d., RG-27, Roll 37.

included two statements from Sheffer's fellow soldiers. Both the enlisted man and officer praised Sheffer's honesty and bravery throughout his military career. His fellow volunteer John Joseph Henry stated that while serving as a prisoner of war, Sheffer nearly died in prison from lack of food and clothing. The net result of these appeals offered a radically different view of the criminal awaiting execution in York's prison. The petitioners portrayed Sheffer as a man who lost everything in defense of his nation, which ultimately reduced him to a life of crime, rather than a hardened criminal. He chose this career path not out of depravity of character, but simply because of a desire to survive. Proud Whigs could not ignore the contributions of a soldier like Sheffer. Consequently, it came as no surprise that the Council opted to pardon Sheffer on the condition that he enlist for the duration of the war, reflecting Sheffer's success in recasting his image following his initial condemnation. The SEC embraced this new image and now emphasized Sheffer's potential role in forging the new nation as well as his past contributions to winning independence.

Revolutionary war service continued to resonate in the condemned's petitions throughout the 1780s and 1790s. In 1781, Thomas McCulley sought mercy following his conviction for burglary. He insisted that he had proven himself "to be a Steadfast Friend" of the United States throughout the Revolution. McCulley had previously served in the Pennsylvania militia and, even after falling ill, refused to allow the British to capture him while he recuperated in Philadelphia. Because the British treated many American prisoners of war poorly during the occupation of Philadelphia, McCulley's emphasis that he refused to abandon the American cause sought to portray himself as a staunch

opponent of the British.⁵⁵ He escaped as soon as he was healthy and rejoined Washington's troops outside of the city. Coupled with his youth and concern for his "Ancient, and now Afflicted Mother," McCulley successfully convinced the SEC to grant him mercy.⁵⁶ Historian John Resch's analysis of Peterborough, New Hampshire contended that Revolutionary war veterans projected an image of "suffering soldiers" because of sacrifices in service to their country. By the end of the 1790s, many Americans increasingly viewed the veterans as a heroic group who bravely fought against the forces of injustice. By the early nineteenth century, this proved to be a major reason behind the push to grant pensions to the veterans, which reshaped the traditional poor image of soldiers.⁵⁷ Pennsylvanians in the late eighteenth century also embraced this view to encourage state officials to be merciful to condemned criminals. In June 1794, Jacob Moode received a death sentence in Pittsburgh for murdering Daniel Murray. Moode and his accomplice Daniel Griddle served as soldiers in the garrison and shared a room with Murray. The two men had started a drunken brawl, but for some inexplicable reason the sergeant of the garrison confined them together despite Moode's assertions that he would kill Murray. Moode and Griddle left the fort early the next morning and shortly later Murray was found dead with a wound to the back of his head. They found Moode and Griddle eating breakfast at a nearby tavern, and Moode possessed a bloody and broken walking stick that had been whole just the previous day.⁵⁸ In his defense, Henry Shrupp, Moode's former master, wrote to Governor Thomas Mifflin, stressing

⁵⁵Rosswurm, *Arms, Country, and Class*, 151.

⁵⁶ Thomas McCulley to the SEC, 12 May 1781, RG-27, Roll 37; CR, 12:370.

⁵⁷ John Resch, *Suffering Soldiers: Revolutionary War Veterans, Moral Sentiment, and Political Culture in the Early Republic* (Amherst: Mass.: University of Massachusetts Press, 1999), 47-92.

⁵⁸Statement of the trial by Alexander Addison and John Gibson, 7 June 1794, RG-26, roll 43.

Moode's noteworthy service with distinction as a member of the light dragoons under Captain Bartholomew Von Ker. Shrupp may have also sought to appeal to Mifflin's own service during the Revolution. As a former general, Mifflin may have been expected to show compassion to his fellow brother in arms. Such support was paramount because the 1790 constitution granted the governor sole authority to determine if the condemned deserved a pardon. Shrupp also dismissed the chances that Moode could even commit such a crime, since he had gone blind fifteen months before. This new image of the poor, suffering soldier moved Mifflin to pardon him on March 3, 1795, after Moode and his supporters successfully appealed to the patriotic fervor surrounding the "spirit of '76" and the men who fought on behalf of the burgeoning nation.⁵⁹

Some sought to justify their criminal behavior rather than assert their innocence. In 1779, the Cumberland County Oyer and Terminer sentenced Robert Story to death for murder. In his impassioned letter to the SEC, Story denied his guilt and claimed he acted not out of malice, but in accordance with his orders as a sentinel at the Carlisle magazine. As an unidentified man approached the magazine, Story issued a challenge that went unanswered, prompting him to fire at the man. This act of performing his duty "unfortunately [resulted in], the death of a Worthy and good Citizen." Story had distinguished himself as a soldier who "hath both fought and bled" for his nation prior to this incident. Story never condoned the act of murder, but his emphasis on his innocence led him to ask the Council to act on his behalf.⁶⁰ Story faced a challenge since earlier that year, the state carried out a death sentence against three soldiers in Northampton County

⁵⁹Memorial of Henry Shrupp to Thomas Mifflin, 27 June 1794, RG-26, Roll 43; *Pennsylvania Archives*, 9th series, 2:934.

⁶⁰Robert Story to the SEC, 3 December 1779, RG-27, Roll 36.

who also murdered a local resident.⁶¹ Throughout the Revolutionary War, soldiers were often seen in a negative light as Americans viewed them as representing the worst elements of the lower ranks. Unlike these three individuals, Story's account of his actions successfully recast the SEC's perception of this incident. No record exists that the other three soldiers appealed their case. An attached petition bearing numerous signatures bolstered Story's claims to good character. While in prison, he resisted the entreaties of several prisoners to join in an escape. Not only did Story help to foil their plot, but his actions also saved the life of the jailer.⁶² Combined, these two letters managed to sway the SEC who were left with the image not of a hardened murderer, but a good soldier who fell prey to adverse circumstances. Story successfully reshaped his image so that the SEC ordered his pardon albeit with the condition that he serve in the American navy for the rest of the war.⁶³ This decision could be attributed to manpower shortages as less exemplary criminals also received such conditional pardons. Nevertheless, it also reflected the SEC's acceptance of his account and its willingness to allow Story to redeem his reputation by serving his country.

Story, like other petitioners, may have sought to exploit the sentiments of the members of the SEC. The board consisted of twelve members, but only needed five in order to form a quorum. When Story petitioned the SEC, the sitting members were Joseph Reed, president, William Moore, vice-president, John Lacey, James Read, and John Hambright. Both Reed and Lacey served during the Revolution. Lacey had seen

⁶¹*Pennsylvania Gazette*, 26 May 1779.

⁶²Petition to the SEC by many, 3 December 1779, RG-27, Roll 36.

⁶³CR, 12:192, 412.

action in multiple battles, which perhaps made him more sympathetic to Story's plight.⁶⁴ Although Hambright did not fight in the Revolutionary War, he still bore the title of captain from his experiences at Fort Augusta in the French and Indian War.⁶⁵ Even if Story did not know the background of the SEC members, his tale forged a connection with the men who would decide his fate. Story's cooperation against the plotting prisoners, rather than his wartime record, probably proved to be the deciding factor as the SEC initially rejected his petition.⁶⁶ Even if Story himself did not know the military background of Reed and Lacey, the unknown advocate who helped to pen the petition may have been aware of this connection. Consequently, Story's own service sought to forge a connection with the councilors and reshape Story as a victim of circumstance rather than an irredeemable offender.

Other condemned criminals admitted to wrongdoing, but attributed it to their naivety and unfamiliarity with the practices that could cost them their lives. Counterfeiters especially took this stance, since they could easily claim to have unwittingly passed on the fake currency. Nathaniel Patton traveled from the western fringes of the state to Chambersburg to sell both furs and his horse. After completing the sale, he passed some of this money in local taverns leading to his conviction. Patton claimed that his life on the frontier had left him ill-prepared to recognize counterfeit paper money.⁶⁷ Richard Chamberlane also downplayed his conviction for counterfeiting,

⁶⁴ "Memoirs of Brigadier-General John Lacey, of Pennsylvania," *PMHB* 25, no. 1 (1901): 1-13; no. 2 (1901): 191-207; no. 3 (1901): 341-54; no. 4 (1901): 498-515; 26, no. 1 (1902): 101-11; no. 2 (1902): 265-70.

⁶⁵ Frederick A. Godcharles, "The Influence of Lancaster County on the Pennsylvania Frontier," *Papers read before the Lancaster County Historical Society* 24, no. 1 (1920): 80.

⁶⁶ *CR*, 12:179, 181.

⁶⁷ Nathaniel Patton to the SEC, 27 October 1779, RG-27, Roll 36.

claiming he had no intention of “injuring the State of Pennsylvania or the Cause of America.”⁶⁸ Counterfeiting was viewed as a growing threat throughout the Revolution, even leading Congress to declare that British operatives “have villainously counterfeited your bills” to weaken the new nation’s economy.⁶⁹ John Brown claimed that he only broke into a home to seek shelter and passed out while drunk. Since he had stolen no items, then he surely could not be seen as worthy of death.⁷⁰ Although only Brown proved successful, their protestations sought to place blame on the conditions of the time rather than accept any responsibility for their actions.⁷¹

Because one of the justifications employed to support the continued use of the gallows was the need to deter other criminals through the use of effective examples, other petitioners sought to downplay the benefits of executing these individuals. Samuel Hillegas contended that his slave Jack Dorset, condemned for robbery, would make a poor example because Jack acted not out of his malicious nature, but only due to the enticements of Kimble Stackhouse, Dorset’s co-defendant.⁷² Similarly, three of the four Supreme Court justices petitioned on behalf of Jesse Shrieves, a Chester County slave. Although they admitted his guilt, diverse circumstances prompted them to urge for mercy. Foremost in their rationale was the belief that his execution “will be scarcely known among those of his own rank & have little influence on the conduct of society.”⁷³ Likewise, the Supreme Court justices recommended mercy for Margaret Matthews in Cumberland County after she was condemned for committing a burglary. In her case,

⁶⁸Richard Chamberlane to the SEC, 17 October 1780, RG-27, Roll 36.

⁶⁹*Pennsylvania Packet*, 6 May 1778.

⁷⁰John Brown to the SEC, 12 October 1784, RG-27, Roll 37.

⁷¹*CR*, 12:178, 535; *Pennsylvania Mercury*, 15 October 1784.

⁷²Samuel Hillegas to the SEC, 8 January 1783, RG-27, Roll 37.

⁷³Thomas McKean and John Rush to John Dickinson, 28 April 1784, RG-27, Roll 38.

they again argued that “Her example will be of little consequence.”⁷⁴ Each of these letters offered several reasons why they would fail to deter others through the example of their execution. If Matthews was of low status and only broke into the store when drunk, her hanging would serve little purpose to the community. Slaves also only represented a small percentage of Chester County’s population at the time, so news of Shrieves’ execution would fail to excite the same fears that it could in other regions. Consequently, petitioners argued that these cases offered little to discourage others from carrying out similar offenses.

Other petitioners further dismissed the efficacy of executing the condemned by downplaying his or her culpability in committing the crime. Catherine Ellwood’s husband John was condemned for piloting the British during their invasion of Philadelphia in 1777. In response to his death sentence, she claimed that John was deprived of his senses when he worked against the new government. Citing this condition, she hoped that the SEC would take pity on him and spare him from this ultimate indignity.⁷⁵ Her appeal reflected a shrewd understanding of the law. British legal jurists such as William Blackstone and Edward Coke emphasized the need for a sound mind in order to commit a crime.⁷⁶ If one failed to meet this criterion then he or she was not responsible for their actions. Oftentimes, this argument could easily justify a murder in which an individual could be consumed by a fit of rage and kill another person. However, Catherine offered a different take on this. She never denied that her husband had indeed collaborated with the

⁷⁴ *Pennsylvania Archives*, 1st series, 8:298

⁷⁵ Catherine Ellwood to the Vice President and the SEC, 16 November 1778, RG-27, Roll 36.

⁷⁶ Blackstone, *Commentaries on the Laws of England*, 4:24-25; Coke, *The Third Part of the Institutes of the Laws of England*, 4.

British. He served as a guide for General William Howe's army and assisted them in the invasion of Philadelphia. Nevertheless, she claimed that John acted not out of support for British tyranny, but because of impaired judgment. This presented the SEC with a quandary because Elwood's alleged insanity did not prevent him from successfully serving as a guide for the British. The SEC agreed and eventually granted Elwood a full pardon.⁷⁷ The British had already withdrawn from the city, so ideally, these conditions would not recur, and Elwood would be able to live his life peacefully. Similarly, supporters of John Delong of Northampton County offered insanity as the explanation for the murder of his wife. Besides this incident where he lost control, Delong's petitioners claimed that he was largely virtuous and thus should not be held responsible for this grievous mistake.⁷⁸ In both cases, the emphasis on the criminal's deranged state identified him as an individual who only became a threat in extreme extenuating circumstances. Therefore, a pardon generally would not threaten the safety of other Pennsylvanians. Others stopped short of invoking an insanity defense, but they still claimed that the condemned suffered from impaired reasoning. James Lang found John Bell to possess an inferior level of understanding. Over the years, he had experienced "Epileptic fits which have not only deminished his bodily vigour but lessened the little strength of mind which originally he may have possessed."⁷⁹

Through these many petitions, evidence suggests that the SEC and governors considered a range of factors in determining the supplicant's worthiness for a pardon. Overall, women generally were much more successful than men in obtaining mercy as

⁷⁷CR, 11:631, 653; 12:48.

⁷⁸*Pennsylvania Archives*, 9th series, 1:435-36.

⁷⁹James Lang to James Ross 10 January 1794, RG-26, Roll 43.

eighteen of the thirty-four condemned women (52.9 percent) were spared the gallows between 1718 and 1794.⁸⁰ Even prior to the 1770s, women typically were able to strike a penitential pose. For example, Margaret Ingram received a pardon in 1739 after the Provincial Council ruled that she appeared remorseful for her crime.⁸¹ Gender became an even more effective reason to extend mercy after 1770 when 66.7 percent of the condemned women received pardons, compared to only 36 percent of the male offenders (Table 2.2).⁸² Facing the non-capital charge of harboring a felon, Elizabeth Boyd petitioned to have her fine relieved because she was “a weakly woman” and unaware of his crimes.⁸³ Although this case only dealt with a fine rather than her life, the argument swayed the SEC who agreed to spare her. Gender became an even more significant factor in determining whether to execute condemned women. The Supreme Court justices even shared this view at times. In 1778, Supreme Court Justice William Atlee regretted that Sarah Wilderness would probably be convicted of manslaughter, but opined, “I heartily wish she may be acquitted, to save us the disagreeable task of ordering her to be burnt [in the hand].”⁸⁴ The status of women as mothers also deeply concerned many officials. After her conviction for robbing a store in Philadelphia, Mary Hall not only downplayed the evidence used to convict her, but also stressed her role as a mother. She begged the Council for mercy, claiming she had “a sucking Infant at her breast, which deeply

⁸⁰ The percentage of male criminals who received a pardon was much lower. Out of the 336 male criminals whose fate was recorded, only 115 or 34.2 percent were granted mercy.

⁸¹ *CR*, 4:329-30.

⁸² Despite the tendency to grant women mercy, other individuals blamed women for criminal activities. For example, Benjamin Robinson attributed his larceny conviction to “the arts & abuse of an infamous woman.” Benjamin Robinson to the SEC, 10 April 1782, RG-27, Roll 37. Similarly, Laurel Thatcher Ulrich convincingly argued that New England colonists often blamed women for encouraged men’s sexuality, leading to various sex crimes. Ulrich, *Good Wives*, 89-105.

⁸³ Elizabeth Boyd to the SEC, 18 June 1783, RG-27, Roll 37.

⁸⁴ William A. Atlee to Esther Atlee, 22 April 1778, William Augustus Atlee Papers, Peter Force Collection, Series 9, Library of Congress, Washington, D.C.

Augments, her Dismal Distresses.” Knowing that she would leave her child alone in the world made “her Impending Fate Inexpressibly Deplorably.” Although her petition was initially rejected, her appeals did not fall on deaf ears. Instead, the council reconsidered her case and opted to reprieve her.⁸⁵ Not surprisingly, the only two women executed in this final period were both sentenced for infanticide. In both cases, these women acted contrary to the expected role of a mother, even one in impoverished circumstances. No records remain if Catherine Fisher petitioned for relief in 1779 following her conviction. Similarly, no letters on behalf of Elizabeth Wilson remain, although Charles Biddle claimed that her brother’s tireless efforts gained her a temporary reprieve. (This case will be examined in greater detail in the final chapter as it helped to spark a great deal of debate regarding the use of the death penalty in Pennsylvania.) Nevertheless, gender often proved a decisive factor in re-evaluating the decision and determining if the condemned deserved mercy.

Furthermore, many officials increasingly empathized with the limitations facing many women—especially female slaves—in the years following the Revolution. Following her conviction for infanticide in 1787, Alice Clifton, a domestic slave, attracted a great deal of sympathy. Just two years after the much publicized execution of Elizabeth Wilson for infanticide, this young mulatto slave girl became an object of mercy in the eyes of both the jury and two of the Supreme Court justices. The jury felt compelled to convict her based on the circumstances, but still asked that her life be spared because she was “of tender Age ignorant and unexperienced [and] was reduced to

⁸⁵*Pennsylvania Gazette*, 14 November 1781; Mary Hall to the SEC, 16 November 1781, RG-27, Roll 37; *CR*, 13:116, 121, 127, 135.

the Perpretration of the said Crime by the Persuasions and Instigation of the Father of the Child.”⁸⁶ Many would not expect Alice, as a slave, to possess the education of a freeborn young woman. Even with the establishment of schools for African Americans in Philadelphia, there was no evidence that Alice attended one.⁸⁷ Therefore, she relied upon the guidance of a male to help her avoid such compromising situations. Unfortunately, Alice’s protector actually led her astray and left her facing the death penalty. Changing attitudes toward slavery also made her a far more sympathetic figure than similarly uneducated and lower-class white criminals. The Pennsylvania Abolition Society shared this sentiment that slavery deprived African Americans of their faculties since a slave was only “treated as a brute Animal.” Through these repeated degradations, they were reduced to “a meer Machine.”⁸⁸ Pennsylvania had also passed a gradual emancipation law in 1780. Although the new law did little to immediately free slaves, the Assembly felt it would relieve “as much as possible the sorrows of those who have lived in undeserved bondage.”⁸⁹ Only Benjamin Franklin, who served as president of both the SEC and the Pennsylvania Abolition Society, held a leadership position in both organizations. For example, Peter Muhlenberg, the vice president of the SEC, was also a slave owner.⁹⁰ The predominant views regarding the condition of slaves, especially female slaves, convinced the rest of the council that Clifton deserved mercy. Her tale so moved state officials that they tried John Shaffer, the man who impregnated her, for rape.

⁸⁶Jury to Thomas McKean, 21 April 1787, RG-27, Roll 39.

⁸⁷ Jean R. Soderlund, “Black Women in Colonial Pennsylvania,” *PMHB* 107 (January 1983): 64-65.

⁸⁸Quoted in Gary B. Nash, *Forging Freedom: The Formation of Philadelphia’s Black Community, 1720-1840* (Cambridge, Mass.: Harvard University Press, 1988), 116.

⁸⁹*An Act for the Gradual Abolition of Slavery* ([Philadelphia]: n.p., [1781]), 2.

⁹⁰ Edward W. Hocker, *The Fighting Parson of the American Revolution: A Biography of General Peter Muhlenberg, Lutheran Clergyman, Military Chieftain and Political Leader* (Philadelphia: Edward W. Hocker, 1936), 174.

Although Shaffer was acquitted of the charge, his trial revealed just how effectively Clifton had recast herself.⁹¹ Not only had she acquired mercy, but now the state felt compelled to investigate her accuser.

The condemned soon realized the importance of obtaining additional support in boosting their chances to obtain pardons as illustrated in table 3.1. In cases where only the condemned criminal alone petitioned the SEC for a pardon, only 40 percent proved successful. Meanwhile, 72.1 percent of the cases in which only supporters of the condemned wrote a petition on his or her behalf succeeded in obtaining a pardon for the offender. Countless individuals including signers of the Declaration of Independence and Constitution, militia officers, and Supreme Court justices lent their support to various offenders. The support of local elites often proved much more valuable than the support of the lower levels of society. Even more than ordinary citizens, the opinions of the Supreme Court justices significantly influenced how the Council perceived the criminal. Prior to the Revolutionary period, the Provincial Council often relied on their assessment in determining if an individual deserved mercy for their crimes. After hearing and reviewing the merits of the case, the justices possessed a more intimate knowledge of the proceedings and the merits of granting mercy to the offender. The Provincial Council elected to carry out James Anderson's death sentence in 1774 after Benjamin Chew, the chief justice, testified that no evidence suggested that Anderson deserved mercy after murdering his son-in-law.⁹² One or more of the justices wrote on behalf of forty condemned criminals between 1770 and 1794. In only three cases (7.5 percent) did their

⁹¹Oyer and Terminer papers, General Gaol Delivery Dockets, Philadelphia County, Box 1, 1788, RG-33.

⁹²CR, 10:186.

efforts fail to convince the Provincial Council or SEC to grant a pardon.⁹³ The court often spoke out against perceived excessive sentences as part of an ongoing effort to alleviate the severity of Pennsylvania's criminal code. In 1771, the testimony of several witnesses led to William and Mary Dickson receiving a death sentence for murdering a neighbor in Lancaster County. However, the justices testified that they had only sought to assault—not kill—him. The Provincial Council agreed and granted them a reprieve.⁹⁴ This trend continued in the 1780s as the justices supported efforts to reduce the number of capital crimes. According to historian G. S. Rowe, Thomas McKean and his fellow justice William Atlee favored death in unequivocal cases of premeditated murder. Otherwise, the two justices, as well as their colleagues, regularly petitioned on behalf of the condemned.⁹⁵ Based on the success rate in achieving pardons on behalf of the condemned, they clearly helped to revise the predominant image of criminals as they emphasized the condemned's strengths rather than the defects in their character. Although the court increasingly faced popular resentment by the latter decades of the eighteenth century because of the justices' personalities and their various decisions, its ability to exert this influence revealed that even its most vehement critics still hoped that the Supreme Court "might serve as an essential and neutral spokesman for the people of the state."⁹⁶

⁹³ They did convince the SEC to grant Charles Read, a convicted murderer, who received a temporary reprieve in 1789. However, the SEC eventually decided to execute him. *CR*, 16:14-15, 27.

⁹⁴ Oyer and Terminer, Lancaster County, Box 3, 1771, RG-33; *CR*, 9:745-46.

⁹⁵ Rowe, *Embattled Bench*, 146-47.

⁹⁶ *Ibid.*, 244; G. S. Rowe, "Judicial Tyrant and Vox Populi: Pennsylvanians view their State Supreme Court, 1777-1799," *PMHB* 118 (January/April 1994): 37-50. For a thorough analysis of the court in this period, please see Rowe, *Embattled Bench*, 233-52.

Juries also engaged in this apparently paradoxical behavior, convicting the offender but also hoping that he or she would receive a pardon. One observer claimed that without such hopes, the legal system would “introduce a very dangerous power in the judge or jury, that of construing the criminal law by the spirit instead of the letter; or else it must be holden.”⁹⁷ Although jurors did not voice their support for a pardon as frequently as the justices, twenty-four cases saw a majority of the jurors petition on behalf of the condemned between 1770 and 1794. Their support often helped to sway either the Provincial Council or the SEC as 79.2 percent of their petitions proved successful. Jurors often felt compelled to justify the extension of mercy after they had already opted to condemn the individual. After convicting Abraham Carlisle for treason, the twelve jurors claimed they felt compelled to rule in this manner based on treasonous activities. However, his previously “blameless character” coupled with his advanced age and family situation left them hoping “that the Rigor of the Law may be abated in his case.”⁹⁸ Jurors who convicted Jeremiah Sturgeon of buggery in Cumberland County took over thirteen hours to reach their verdict, indicating the divisive nature of the case. The jurors immediately followed his sentence with a recommendation that the state grant him mercy, especially because he had always shown good character prior to his lone transgression.⁹⁹ Finally, ten of twelve jurors attested that burglar William Brock possessed the ability to rehabilitate himself and become a productive member of society. Therefore, they joined him in pleading for a pardon from the SEC.¹⁰⁰ The jurors

⁹⁷ *Pennsylvania Packet*, 31 October 1778.

⁹⁸ *Pennsylvania Archives*, 1st series, 7:52.

⁹⁹ Petition from the jurors who tried Jeremiah Sturgeon, 29 May 1783, RG-27, Roll 38.

¹⁰⁰ Petition from the jurors who tried William Brock, 5 April 1786, RG-27, Roll 39.

convinced the SEC to extend mercy to both Sturgeon and Brock although Carlisle still hanged for his offense.¹⁰¹ Jurors may have voted to convict based on the merits of the case. However, they also realized that many of their neighbors disagreed with the decision and perhaps viewed the law as far too harsh in this regard. Brock's appeal for mercy cited the state's changing penal laws, which removed burglary from the list of capital crimes. Moreover, Sturgeon's petitions boasted over 130 signatures on his behalf. Therefore, juries remained unwilling to fully accept the view of the criminal as inherently evil and irredeemable by the 1780s. Instead, they tended to offer their own view of the criminal and emphasized the willingness to re-integrate the offender into the rest of society.

Many local elites joined the justices and juries in championing the cases of the condemned in hopes of portraying them as unworthy candidates for the gallows. In 1783, Daniel Brodhead, a distinguished officer in the Continental army, wrote to the SEC on behalf of several enslaved African Americans who were condemned for burglary. Brodhead promised to remove them from the United States in exchange for a pardon, so they could no longer serve as a threat to the new nation. Because Brodhead apparently had no connection with the slaves and would not profit financially from their sale, he underscored his appeal by "trusting that your Excellency and your Honor will do him the Justice to believe he is incapable of wishing any Favor incompatible with the general Good."¹⁰² By linking his own reputation to their fate, Brodhead contended that this execution would serve no purpose and fail to help society as a whole. Similarly, twenty-

¹⁰¹ *Pennsylvania Packet*, 5 November 1778; CR, 13:595; 15:164.

¹⁰² Daniel Brodhead, Jr. to the President and SEC, 7 February 1783, RG-27, Roll 37.

one residents of Chester County, including four local officials, joined the three Supreme Court justices petitioning the SEC on behalf of James Read, a convicted counterfeiter. Based on this support, the Council deemed Read worthy of mercy and granted a pardon in exchange for naval service for the remainder of the war.¹⁰³

The condemned often realized the importance of obtaining the support of local elites in order to enhance the chance of success of their petition. As John Roberts awaited his execution, he wrote to Daniel Clymer, the deputy commissary of prisoners. After briefly acquainting him with his condition, Roberts appealed to Clymer to aid him during this time of need. He stated, “I know well that your Humanity will lead you to take any steps towards affording Assistance to an unfortunate Man, borne down by popular prejudice and his own Natural Infirmities to the lowest Degree.”¹⁰⁴ Roberts solicited Clymer’s because of the powers of his post held, which included granting pardons to prisoners of war.¹⁰⁵ Reverend Henry Muhlenberg recorded several incidents in which individuals asked for his assistance in obtaining a pardon. By appealing to these individuals, the petitioners increased their likelihood of escaping the gallows. Moreover, as evident in Roberts’ petition, the condemned sought to sway them to their cause. He painted himself as a sickly man suffering in prison not because of any fault of his own, but because of “popular prejudice.” Furthermore, Roberts promised to reimburse any expenses that Clymer accumulated in coming to his defense. As one of the wealthier landowners in Lower Merion Township, Roberts surely could offer Clymer numerous

¹⁰³ Note on front of the copy of the conviction transcript in RG-27, Roll 37.

¹⁰⁴ John Roberts to Daniel Clymer, 8 October 1778, Collection 851, Quaker Collection.

¹⁰⁵ Laura L. Becker, “Prisoners of War in the American Revolution: A Community Perspective,” *Military Affairs* 46 (December 1982): 169.

financial incentives to work on his behalf, even if he never explicitly made an offer.¹⁰⁶

Although such a financial incentive offered a stark contrast to the republican ideal of a disinterested public servant, Roberts hoped to gain his support and therefore use it in his favor. Unfortunately, even these affirmations of good character failed sometimes to influence the council. The petitions for Carlisle and Roberts amassed more signatures than any other offender, but failed to spare them the gallows.

Altruism alone fails to explain why so many prominent Pennsylvanians supported these petitions for the condemned. According to Gatrell, the process of supporting petitioners served as a means of patronage. In return for their aid, the elites could then hope for the support of the condemned and also their local communities.¹⁰⁷ Even if the petition failed, it could still serve this purpose. Those who supported the pardon would be left with an image of a merciful protector who sought to defend the downtrodden. One cannot assume that the lower classes relied simply on the fickle nature of the ruling elites. In the increasingly democratic society of Pennsylvania, the increase in voting rights placed more power in the hands of common people. The radical state constitution of 1776 allowed all freemen over the age of 21 to vote. The adult male population possessed the power to influence the traditional gentry and failure to adhere to their wishes could easily witness a loss of support and an unsuccessful bid for reelection. Charles Biddle, the former vice president of the SEC discussed just how easy it was to obtain signatures to support a petition in favor of a pardon. Biddle claimed that constituents often encouraged a local sheriff to sign a petition on the behalf of a criminal and make a recommendation

¹⁰⁶ For an account of Roberts' wealth at the time of the Revolution, please see claim of Jane Roberts, his widow, in Loyalist Claims Commission, AO12/95/6.

¹⁰⁷ Gatrell, *The Hanging Tree*, 203, 208-9; Hay, "Property, Authority and the Criminal Law," 45-48.

for mercy to the governor on his or her behalf. The sheriff felt obligated to comply both in gratitude for past support and the hopes of their future patronage. Nevertheless, the sheriff believed this to be an empty gesture. The governor realized that unless the sheriff made a “personal application” on behalf of the condemned, then the signature on the petition was simply an empty gesture to appease his constituents. If Pennsylvanians were most likely to become involved in matters that directly affected them, few scenarios could attract their attention more than a loved one being condemned to death. Consequently, they would remember those who worked on their behalf and those who refused to support their efforts as well.

Others exploited their final days awaiting the execution to reshape public perception and win over elites to obtain the elusive pardon. In 1779, a court martial conducted by General William Maxwell under General John Sullivan’s forces in Easton sentenced Lawrence Miller and Michael Rosebury to death encouraging their comrades to desert. They were given several days for their sentences to be considered, but every sign pointed to both receiving the gallows. In the interim, the chaplains, Reverend William Rogers and Reverend Samuel Kirkland, visited the condemned in prison and stressed the importance of admitting their mistakes and preparing their souls for eternity. Rogers spoke on “their awful condition by nature and practice, their amazing guilt in the sight of an holy God; the spirituality of the divine law...and the great importance of a due preparation for another world.” As he repeatedly stressed these themes to the prisoners, Miller “softened” and began to express concern about the fate of his immortal soul. Rosebury seemed unmoved and professed his innocence. Faced with this disparity in the reactions, the clergymen recommended only Miller for mercy. Their recommendation

coupled with petitions from Miller's family and his previously good character convinced Sullivan to extend mercy to him. However, to carry out the most effective sentence, Sullivan opted to pardon Miller under the gallows to further impress him with the severity of his crime. Rosebury received his sentence—dying as a “stupid man”—but Miller was overjoyed at his unexpected pardon. Rogers found his gratitude to be “very affecting” as Miller portrayed himself as a reformed individual who would no longer negatively affect society.¹⁰⁸

Although men composed the bulk of the authors and signers, women also figured prominently in several petitions and used their gender in innovative ways to plead the case of the condemned. During these decades, women began to exert unprecedented political influence. The Revolution presented new opportunities for women to enter the political sphere. With their economic role, they began to participate in boycotts and later to write petitions in support of various causes.¹⁰⁹ Not surprisingly, they began to use their influence to regularly sign and even author petitions throughout this tumultuous period. Women had a long tradition of petitioning the government in both the colonies and England as a means of expressing their views since the law deprived them of the franchise. Consequently, they often sought to influence various legislatures on a host of issues ranging from divorce to economic relief.¹¹⁰ This political activity continued after the Revolution as many women continued to follow political affairs and voice their

¹⁰⁸“Journal of Rev. William Rogers, D.D.” 29 June 1779, 30 June 1779, 1 July 1779 in *Journals of the Military Expedition ... 1779*, 249-50.

¹⁰⁹ For a more thorough analysis of female patriotism during the Revolution, please see Linda Kerber, *Women of the Republic: Intellect an Ideology in Revolutionary America* (Chapel Hill, N.C.: University of North Carolina Press, 1980), ch. 3.

¹¹⁰ Nancy F. Cott, “Divorce and the Changing Status of Women in Eighteenth-Century Massachusetts,” *William and Mary Quarterly* 33 (October 1976): 586-614; Ruth Bogin, “Petitioning and the New Moral Economy of Post-Revolutionary America,” *William and Mary Quarterly* 45 (July 1988): 392-425.

opinions on current events.¹¹¹ This period also witnessed the publication of several histories of women. Rosemarie Zagari argued that although many readers disagreed with the flattering portrayals contained within their pages these works “presented irrefutable evidence of women’s past accomplishments and, hence, of their current untapped potential abilities.”¹¹² Moreover, the ideology of the republican mother offered women an opportunity to have their voices heard. Linda Kerber also noted that this concept served as a step in integrating women into the political process. By striking a deferential tone, they were able to try to sway their influence among the male voters.¹¹³

In Pennsylvania, prominent women took advantage of the changing political atmosphere of the early republic to appeal for mercy on behalf of the condemned even in cases where they had no direct connection.¹¹⁴ In the early republic, women increasingly exploited opportunities to challenge the idea that their place was in the home as they wrote on behalf of prisoners awaiting death. Respectable women not only possessed virtue, but they also could prompt men to follow their suit.¹¹⁵ Following a robbery in Colonel John White’s regiment, the two thieves were marched out of the city to be hanged. “Upon the Colonel’s lady’s intercession,” their sentence was commuted to

¹¹¹ Mary Beth Norton, *Liberty’s Daughters: The Revolutionary Experience of American Women, 1750-1800* (Boston: Little, Brown and Company, 1980), 188-94.

¹¹² Rosemarie Zagari, *Revolutionary Backlash: Women and Politics in the Early American Republic* (Philadelphia: University of Pennsylvania, 2007), 16.

¹¹³ Linda Kerber, “The Republican Mother: Women and the Enlightenment—An American Perspective,” *American Quarterly* 28 (Summer 1976): 202-205.

¹¹⁴ This attitude extended beyond Pennsylvania in the early republic. Betty Wood contended that elite women in Sunbury, Georgia petitioned on behalf of a mulatto slave condemned for robbery in 1791. In this case, the women embraced the ideals of the Revolution and refused to remain silent and complained that the death sentence was not based on the evidence in the trial, but on the slave’s prior poor reputation. Wood, “White Women, Black Slaves and the Law in Early National Georgia: The Sunbury Petition of 1791,” *The Historical Journal* 35 (September 1992): 611-22.

¹¹⁵ David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill: University of North Carolina Press, 1997), 81-84.

several hundred lashes.¹¹⁶ The condemned for whom they petitioned could be portrayed as virtuous individuals by extension. Only one group petition in Pennsylvania consisted solely of female signers. In 1788, twenty women from York County petitioned on behalf of Philip Nagle who was sentenced to death for counterfeiting. These women appealed to the council's humanity in asking them to pardon Nagle especially after the courts had acquitted another counterfeiter who faced similar evidence. In addition, the petitioners called upon the rhetoric of the Revolution to remind the council that "the present seems to be an occasion of general Joy for the approaching Anniversary of a day which gave us freedom, and for the adoption of a Government which promises to establish and secure peace, liberty and happiness to every federal Son of America." Written on the eve of Nagle's execution, the ladies of York reminded the SEC that the young nation had just celebrated independence. Through this petition, they sought to closely associate the unfortunate who currently laid in jail with the redeeming qualities of the new nation. They used this shrewd tactic to argue that a pardon would result in his transformation into "an useful Citizen."¹¹⁷ Nagle's petition echoed some of the same sentiments, namely his youth and the acquittal of Valentine Shockey when faced with similar counterfeiting charges, in hopes of obtaining a pardon. Unfortunately for Nagle, these petitions fell on deaf ears and he ended up hanging for his crime. Nevertheless, the new political atmosphere of the early republic allowed these women an opportunity to extend the virtue associated with their gender to the condemned even if they failed to reshape the public perception of Nagle.

¹¹⁶William Duane, ed., *Extracts from the Diary of Christopher Marshall, Kept in Philadelphia and Lancaster during the American Revolution, 1774-1781* (1877; repr., Albany: Arno Press, 1969), 125.

¹¹⁷Petition from the ladies of York borough to the SEC, 7 July 1788, RG-27, Roll 40.

Wives and other female family members presented themselves as pitiful examples who could only benefit from the pardon of their male relative. Although Clare A. Lyons's recent work has downplayed the importance of a male wage owner for Philadelphia women, the patriarchal society still expected men to serve as the primary breadwinners. Married women typically earned substantially less than their husbands when working outside of the home.¹¹⁸ The execution of a beloved wage earner usually caused the family as a whole to suffer. The impassioned pleas of Martha Wright to the SEC exploited this rhetoric after the Philadelphia session of the Supreme Court condemned her husband, Abijah Wright, for burglary. In her petition, Martha noted the justness of the sentence for his crime. However, she appealed to the sentiments of the members of the council, asking that they consider "the Distress of an Afflicted Wife & Several Small Chidren."¹¹⁹ Not only would his execution possibly force Martha to appeal to the Overseers of the Poor for aid, but it also would require her to leave her young children in search of some type of work. Wright's loyalist tendencies along with his criminal activities were too much to overlook, and he ended up hanging. Many other petitions focused on the role of the condemned as a father and provider for his family, oftentimes with more success than Wright. A petition on behalf of John Bell mentioned how he served as the sole supporter of his wife and five small children. If the sentence had been carried out, then these six individuals would "become chargeable to the township."¹²⁰ Supporters for Thomas Ward of Chester County emphasized that he supported not only his wife and two children, but

¹¹⁸Lyons, *Sex among the Rabble*, 30-33.

¹¹⁹Martha Wright, et al. to the SEC, n.d., RG-27, Roll 36.

¹²⁰Petition for John Bell to the SEC, 27 March 1794, RG-26, Roll 43.

also his mother.¹²¹ Both of these cases resulted in a much more successful outcome than for Wright, because they portrayed the condemned as a provider for his family.

Other family members also sought to excuse the actions of the condemned. Peter and Regina Dryer petitioned the Council in 1787 on behalf of their son Jacob who received a death sentence for burglary. Dryer initially received a pardon on the condition that he leave the state within thirty days, but he failed to comply with the terms. Therefore, the government withdrew their initial mercy and instead opted to hang him as an example to other criminals.¹²² Dryer's parents deeply regretted this decision and informed the Council that they were German immigrants who had lived honestly in Philadelphia for nearly thirty years while supporting "themselves and Children by their Industry and hard Labour and have used their utmost endeavours to raise them in the Fear of the Lord." After living exemplary lives in their adopted homeland, they looked forward to enjoying their golden years surrounded by their family. Instead, the Dryers painted a pitiful scene as "their hopes are blasted and their gray Hairs must sink to the Grave under the Weight of Sorrow and affliction in beholding their Son condemned to an Ignominious Death."¹²³ Overwhelmed with concern for their son, they argued he was led astray by a combination of his youth and bad company. The Dryers appealed to the humanity of the Council, asking them to take pity on Jacob because of his youth and the low value of the stolen goods. Furthermore, Jacob did not return to Philadelphia to resume a life of crime, but only because he lacked funds to leave the country. Even in his pitiful financial state, he returned filled "with Terror and Reluctance" to his old

¹²¹Petition on behalf of Thomas Ward to the SEC, 30 May 1785, RG-27, Roll 41.

¹²²CR, 15:15, 213, 219, 311.

¹²³Peter and Regina Dryer to the SEC, 2 February 1787, RG-27, Roll 40.

neighborhood.¹²⁴ Unfortunately, the authorities arrested Jacob before he had the opportunity to leave the state. However, his advocates claimed that Dryer had renounced his former criminal activities and lived honestly despite violating the conditions of his pardon. This image presented by both his parents and friends offered a stark contrast to the Council's perception of a hardened and incorrigible criminal. Instead, they successfully convinced the body that he had reformed and deserved a third chance.

Few petitioners claimed that they were innocent, but Benjamin and James Nugent, two Cumberland County yeomen, claimed that they received a too severe sentence and that a local magistrate had unjustly prosecuted them. Following their conviction for highway robbery, the brothers complained that they had only stolen a bottle of yeast, which should not cost them their lives. Instead, they suggested that the unjust court system had resurrected an old charge out of a desire to execute the brothers.¹²⁵ Testimony from several other Cumberland County residents cast doubts on the credibility of John Vance, a Cumberland County resident who apparently held a vendetta against the Nugents. James Dugan, a local laborer, testified that Vance had him arrested on the pretense of some threats, but was willing to pay him £1,000 in exchange for falsely testifying that the Nugents committed arson. Robert Moore, a Carlisle weaver, similarly testified to Vance's determination to rid the community of these "damn'd Rogues." Consequently, Dugan and Moore both depicted Vance as willing to use any means necessary in order to convict and execute the Nugents.¹²⁶ James had also faced charges

¹²⁴Petition of Dryer's parents and friends to the SEC, 14 November 1787, RG-27 Roll 39.

¹²⁵Benjamin and James Nugent to the SEC, 8 March 1780, RG-27, Roll 37.

¹²⁶Deposition of James Dugan, n.d., Roll 37, Clemency file; Deposition of Robert Moore, n.d., Roll 37, Clemency file.

for counterfeiting and Benjamin had been indicted for arson at the same court session. They both failed to show up for their trials, which possibly made the SEC less receptive to their pleas and it instead ordered their execution.¹²⁷ Nevertheless, their petitions raised doubts about the severity of the offense and the justness of the sentence, which resonated throughout the state as Pennsylvanians began to debate the efficacy of capital punishment.

Pardons did not suggest that society fully forgave the offender. Many pardons contained the stipulation that the criminal had to leave the state or country within a relatively short period of time. After a court martial convicted Frederick Verner for serving as both a guide and spy for the British during their occupation of Philadelphia in 1778, he received a temporary reprieve from Benedict Arnold, Philadelphia's military governor, who cited concerns about the evidence offered in his case.¹²⁸ The Continental Congress handed the case over to the SEC who ordered Verner to be tried at a Philadelphia Oyer and Terminer. Verner proclaimed his innocence, claiming that the witness "must have taken another Person for me" and complained of his mounting physical problems as the jailer refused to allow him to exercise in the yard.¹²⁹ Nevertheless, Verner never received a new trial. Instead, the SEC eventually agreed to exchange Verner for an American prisoner held in New York.¹³⁰ These decisions suggested that the SEC partially accepted the claims of Verner and his supporters that he was undeserving of death. In the 1770s and 1780s, the state pardoned nine men

¹²⁷ *CR*, 12:375-76.

¹²⁸ *Pennsylvania Archives*, 1st series, 6:704.

¹²⁹ Frederick Verner to Henry Laurens, 7 December 1778, Papers of the Continental Congress, Petitions to Congress, 1775-1789, 8:33.

¹³⁰ *CR*, 11:720, 752.

condemned for either treason or spying. At least three were required to enlist in the military, George Hardy was forced to leave the country, and Verner was sent to the British.¹³¹ The fate of the other four is unknown although John Elwood's wife did cite insanity as an excuse for his actions, so he probably stayed in Bucks County.¹³² For these men their pardons probably did little to win the acceptance of many of their neighbors, especially the more ardent Whigs in the area. Hardy remained on display for forty minutes at the gallows "bound like a Malefactor."¹³³ In this tumultuous era, potential subversives struggled to overcome this image even when leading citizens agreed to petition the SEC on their behalf.

Other Pennsylvanians believed that a pardon would lead to more harm than good. Chester County magistrates Thomas Cheyney and Caleb James informed the SEC that they had abandoned their initial support for a pardon for Richard Shirliffe. The state had reprieved him for the rape of Esther Painter after receiving several petitions on his behalf. Cheyney and James contended that they supported his reprieve on behalf of his wife and family and believed that he could be peacefully reintegrated into the community. Even William Bradford, who served as a lawyer, judge, and Attorney-General of the United States, believed that rapists did not exhibit "any irreclaimable corruption," since the act was "the sudden abuse of a natural passion."¹³⁴ The magistrates learned that Shirliffe had soon resumed his criminal ways, as he threatened Painter as well as the jailer and his family. In her affirmed statement before Cheyney, Painter contended that after his trial,

¹³¹ *Pennsylvania Archives*, 9th series, 1:193

¹³² Catherine Ellwood to the SEC, 16 November 1778, RG-27, Roll 36.

¹³³ Quoted in Knouff, *The Soldiers' Revolution*, 209.

¹³⁴ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 29.

Shirtliffe promised to have his revenge on her. Consequently, she lived in a state of “Slavish Fear” that her life may soon come to an end.¹³⁵ Shirtliffe failed to appear in any subsequent court records, so perhaps these fears were unfounded. Nevertheless, the concerns about Shirtliffe and his future actions reveals the inherent tensions within the pardoning system. Officials needed to recognize which individuals most deserved mercy.

Subsequent criminal activity by the condemned following a pardon also damage the petitioners’ reputation, which also made some reluctant to call for mercy. After the arrest of the German surgeon William Authenrieth for burglary in 1764, leaders of Henry Muhlenberg’s congregation split over supporting him for a pardon. Several called for providing aid for their compatriot. Others rejected these appeals. Instead, they argued that an appeal for mercy would hurt Germans in Pennsylvania as a whole, especially since Authenrieth had already been designated for mercy in Britain and was instead transported to the colonies.¹³⁶ Even years later, Muhlenberg continued to agonize over writing petitions on behalf of the condemned. In response to several appeals, Muhlenberg consented to write on behalf of two soldiers condemned for desertion in 1778. While he realized the benefits of a pardon, he also questioned if this coincided with the will of God. Nevertheless, he placed the concerns of his congregation over his own scruples and helped to obtain their release.¹³⁷ Despite his lofty objections, Muhlenberg may have had a more selfish reason to resist writing a petition on behalf of the deserters. Only a year earlier, a rumor quickly took off that his son Peter had engaged in a “treasonable

¹³⁵Thomas Cheyney and Caleb James to the SEC, 24 June 1786, RG-27, Roll 39; Deposition of Esther Painter, 2 August 1786, RG-27, Roll 39.

¹³⁶Tappert and Doberstein, *Journals of Henry Melchior Muhlenberg*, 2:66.

¹³⁷*Ibid.*, 3:180.

correspondence” with General William Howe and had been sentenced to death. The rumors even went so far as to claim that Reverend Muhlenberg had been arrested as well.¹³⁸ Although Muhlenberg’s friends soon managed to quash these unfounded rumors, it is unlikely that he forgot them so soon after the accusations had been leveled. Pennsylvania Germans failed to present a unified front in support of the war. Throughout the state, many Germans embraced the Revolution as it allowed them to redefine themselves as proud Americans. Nevertheless, in many regions like Berks County, some German groups such as the Moravians and Mennonites refused on the basis of their pacifist beliefs to support the patriot cause, which left them open to criticism.¹³⁹ In many parts of the state, radical Whigs increasingly identified even the neutral elements of society with the loyalists.¹⁴⁰ Muhlenberg’s hesitation to support the two deserters probably reflected not only his support for capital punishment, but also a desire to avoid furnishing his enemies with any ammunition to identify him with the disloyal segments of Pennsylvania society.

The petitions failed to always convince the SEC to overturn the death sentences as nearly 38 percent of the petitioners still lost their lives. Few cases received as much attention in this period as the executions of prominent Quakers John Roberts of Lower Merion and Abraham Carlisle of Northern Liberties. When the British invaded Philadelphia, both of these men stayed behind and performed a variety of duties for the

¹³⁸ Ibid., 3:44.

¹³⁹ Karen Guenther, “Berks County,” in *Beyond Philadelphia: The American Revolution in the Pennsylvania Hinterland*, ed. John B. Frantz and William Pencak (University Park, Pa.: Pennsylvania State University Press, 1998), 74-75

¹⁴⁰ For example, see the treatment of Quakers in Ousterhout, *A State Divided*, 282-84 and Arthur J. Mekeel, *The Relation of the Quakers to the American Revolution* (Washington, D.C.: University Press of America, 1979), 160-84.

British. Both men entered Philadelphia during the English occupation and accepted commissions. Roberts, labeled as “an infamous tory,” even allegedly served as a guide for English troops in the countryside.¹⁴¹ The Whig government sought to exact revenge on those believed to have been collaborators after the English evacuation of Philadelphia in June, 1778. Various proclamations named 345 individuals, including Roberts and Carlisle, as traitors for collaborating with the enemy.¹⁴² Carlisle and Roberts faced a daunting challenge in their quest for a pardon as the public sentiment often turned against those who committed treasonous acts. Christopher Marshall, former Quaker disowned for his support of the war, recorded in his diary that a “band of banditti worse than savages” devastated the countryside.¹⁴³ John Bayard, a prominent Whig official, took a near gleeful delight in anticipating the punishment following the arrest of several loyalists who had treated Whigs in Philadelphia “with the greatest insult & Cruelty.”¹⁴⁴ Many Philadelphians, especially the Presbyterian Whigs who dominated the government in the fall of 1778, distrusted the Quakers. Joseph Reed, the prosecutor against Carlisle and Roberts, complained, “Out of the great Number of Pilots, Guides, Kidnappers, & other Assistants of the British Army two of the most notorious were convicted.”¹⁴⁵ Chief Justice Thomas McKean agreed in his final statement that Tories posed a threat to Pennsylvania as,

¹⁴¹ *Pennsylvania Packet*, 27 August 1778; *Pennsylvania Evening Post*, 6 November 1778; *Pennsylvania Archives*, 1st series, 44-53; *CR*, 11:600-605; Messer, “A Species of Treason & not the least Dangerous Kind,” 303-304.

¹⁴² This number was a trifling total as historian Anne M. Ousterhout found evidence that over 3,000 Pennsylvanians defected to the English during the occupation of Philadelphia. Ousterhout, “Frontier Vengeance,” 332.

¹⁴³ Duane, *Extracts from the Diary of Christopher Marshall*, 150-51.

¹⁴⁴ John Bayard to Thomas McKean, 28 February 1778, McKean papers, vol. 1, p. 13, HSP.

¹⁴⁵ Joseph Reed to Nathaniel Green, 5 November 1778 in *Collections of the New York Historical Society for the Year 1873* (New York: New York Historical Society, 1874), 3:250; Messer, “A Species of Treason & Not the Least Dangerous Kind,” 306-09, 317, 327-32.

Treason is a crime of the most dangerous and fatal consequence to society; it is of a most malignant nature; it so a crimson colour and of a scarlet dye. Maliciously to deprive one man of life, merits the punishment of death, and blood for blood is a just restitution. What punishment then, must he deserve, who joins the enemies of his country, and endeavours the total destruction of the lives, liberties, and property of all his fellow citizens...¹⁴⁶

The courts' general leniency may have prompted the mobs of Whigs to act on their own.

Anne M. Ousterhout reported that Pennsylvania charged 639 individuals with treason during the Revolutionary War.¹⁴⁷ The vast majority of these accused traitors avoided the full brunt of the law as the 1770s saw only five men hanged for treason. Many radical Whigs bristled in response to this perceived leniency, especially when they believed that traitors threatened the state. For example, Stansbury obtained multiple releases from prison and constantly resumed his support of the British despite facing several treason charges.¹⁴⁸ Joseph Reed, the president of the SEC, complained that "Treason, Disaffection to the Interests of America & even assistance to the British Interest is called openly only Error of Judgment." Following the English withdrawal from Philadelphia, radical Whigs formed the Patriotic Society, which leveled a number of accusations of treason through the summer of 1778. Members used both legal and extralegal methods, including occasional mob violence, to confront these suspected Tories.¹⁴⁹

Consequently, the state needed examples to prevent future disobedience. Based on their suspect status as Quakers coupled with their cooperation with the English forces,

¹⁴⁶ *Pennsylvania Packet*, 11 November 1778.

¹⁴⁷ Ousterhout, *A State Divided*, 319-20.

¹⁴⁸ *Ibid.*, 211-13.

¹⁴⁹ Steven Rosswurm, *Arms, Country, and Class: The Philadelphia Militia and 'Lower Sort' during the American Revolution, 1775-1783* (New Brunswick, N.J.: Rutgers University Press, 1987), 152-62.

Carlisle and Roberts were selected as unfortunate examples of disloyalty to the state.¹⁵⁰ Approximately 130 of the alleged traitors surrendered, but only twenty-three ever faced trial, and only Roberts and Carlisle were executed.¹⁵¹ Three other men were later executed for treason, but the courts and SEC employed a good deal of discretion in other cases. George Cook, Jr., another traitor, accused of serving as a guide for the British received an acquittal when a Philadelphia jury agreed that he was forced into the position.¹⁵² Joseph Reed approved the execution of Carlisle and Roberts despite an outpouring of support on their behalf. He dismissed these impassioned pleas because they failed to consider “the Lives & safety of officers & soldiers who are so often destroyed by these treacherous Practices.”¹⁵³ Instead, Reed contended that the courts proved far too lenient in this regard, as many deserving individuals managed to avoid the gallows.

The SEC’s ruling required the officials to ignore pleas for mercy on the behalf of Carlisle and Roberts from the Supreme Court justices, jurors, grand jury, and approximately 7,000 local residents.¹⁵⁴ The proponents for mercy offered a variety of reasons to spare Carlisle and Roberts. Several hoped that the new nation would use this opportunity to offer a break from despotic forms of traditional punishment. If they opted to show these two elderly men mercy, this decision “has the advantage of convincing the

¹⁵⁰ For a more thorough analysis of their case, please see Messer, “‘A Species of Treason & not the least Dangerous Kind’,” 303-32.

¹⁵¹ Ibid., 184-90; Messer, “‘A Species of Treason & not the least Dangerous Kind’,” 303-304, 313-23; Carlton F. W. Larson, “The Revolutionary American Jury: A Case Study of the 1778-1779 Philadelphia Treason Trials,” *Southern Methodist University Law Review* 61 (Fall, 2008): 1443-44.

¹⁵² *Pennsylvania Evening Post*, 9 October 1778.

¹⁵³ Reed to Green, 5 November 1778, *Collections of the New York Historical Society for the Year 1873*, 3:250; Rosswurm argued that Reed and George Bryan mistakenly attributed this support to the anticonstitutionalists and Quakers. However, he found that they had far too diverse support, including some radical Whigs, for that to be the case. Rosswurm, *Arms, Country, and Class*, 157-58.

¹⁵⁴ *CR*, 7:21-58. The estimate of 7,000 signers on the petitions comes from Messer, “‘A Species of Treason & not the least Dangerous Kind’,” 304.

World that the Conduct of these States has not proceeded from Resentment, but from the purest Principles of Liberty and Lenity.” Supporters of Roberts also asserted that he “was a person in whom the Enemy had no confidence” in hopes of convincing the SEC that he did not deserve death.¹⁵⁵ By ignoring these impassioned calls for a pardon, the Council asserted its supremacy over even the most notable members of society. Historian John M. Coleman has argued that the executions of Carlisle and Roberts along with two other convicted traitors, David Dawson and Ralph Morden, sought to appease the most vitriolic Whigs while also allowing the state to exercise mercy in numerous other cases.¹⁵⁶ Some such as Joseph Reed, president of the SEC, had already criticized the courts for being far too lenient in prosecuting traitors. Moreover, the revolutionary government faced widespread complaints in the wake of rising food prices. Supporters of price controls proclaimed that “those evils, too amphibious to be defined, and too subtle as well as too transitory, to become the object of established laws” needed to be addressed in order to eliminate the problems plaguing the state.¹⁵⁷ The Fort Wilson incident, an attack against James Wilson partly because of his defense of traitors such as Carlisle and Roberts, revealed that even patriot leaders could be targeted if their behavior drew suspicions.¹⁵⁸ The state realized the need for further examples, which partially accounts for the executions of Morden and Dawson for high treason in 1780, who became scapegoats in the midst of this turbulent period.

¹⁵⁵ CR, 7:21-22, 41.

¹⁵⁶ Oyer and Terminer, Northampton County, Box 4, 1780, RG-33; John M. Coleman, *Thomas McKean: Forgotten Leader of the Revolution* (Rockaway, N.J.: American Faculty Press, 1975), 230.

¹⁵⁷ *Pennsylvania Packet*, 29 June 1779.

¹⁵⁸ John K. Alexander, “The Fort Wilson Incident of 1779: A Case Study of the Revolutionary Crowd,” *William and Mary Quarterly* 31 (October 1974): 589-612; Ousterhout, *A State Divided*, 194-207.

Fears of reprisals probably influenced the Philadelphia Yearly Meeting not to formally petition on behalf of Carlisle and Roberts. The Quaker peace testimony provoked an outcry of criticism from Pennsylvania Whigs who often viewed the Quakers as closeted Tories. Fabricated documents allegedly authored by the fictional Yearly Meeting of Spanktown, New Jersey, claimed that the Quakers were passing intelligence to the English army in August 1777. After a published Quaker testimony advised Friends to eschew the war effort and criticized the activities of many Quakers, the Whig government decided that many Quakers were indeed opposed to the American war efforts. Fearing that they could subvert the government from within, the state compiled a list of forty-one individuals who were suspected of being potential threats to the state with Quakers dominating the list. In September 1777, as the British marched closer to Philadelphia, the state exiled twenty Quakers to Winchester, Virginia, in order to remove the threat. These men spent the next seven months away from their families in exile before they were finally allowed to return despite their regular protestations of innocence.¹⁵⁹ Even after their return the following spring, Quakers could not escape these suspicions. A letter to the *Pennsylvania Packet* claimed the English officers praised the Quakers' "alacrity as spies, guides and informers."¹⁶⁰ Finally, the Meeting of Sufferings chronicled numerous other slights to Quaker residents in Philadelphia such as unlawful imprisonments and the loss of property during the Revolution.

These actions by the state government elicited an immediate response from Philadelphia Yearly Meeting. Only days after the arrest of twenty Quakers, the Meeting

¹⁵⁹Ousterhout, *A State Divided*, 165-68; Robert F. Oaks, "Philadelphians in Exile: The Problem of Loyalty during the American Revolution," *PHMB* 96 (1972): 298-325.

¹⁶⁰*Pennsylvania Packet*, 15 August 1778.

for Sufferings appointed individuals to investigate this “arbitrary & unjustifiable proceeding.”¹⁶¹ A letter to the SEC signed by both Quakers and non-Quakers revealed their unity in opposing these unjust arrests because these matters reflected “an alarming violation of the Civil and religious Rights of every free Man.”¹⁶² Nevertheless, they remained reluctant to bring criticism on themselves and even recommended that a petition written by the exiled Friends not be published at this time.¹⁶³ Even after their return, the Meeting for Sufferings noted Quakers who refused to take the test oath remained imprisoned in both Lancaster and Berks counties. Consequently, it was not surprising that the Yearly Meeting remained largely silent on Carlisle and Roberts. Because both of these men were involved in some form of military matters, even if they simply aided American prisoners of war, the Yearly Meeting could disown them.¹⁶⁴ The Yearly Meeting never took this step, but refused to speak out on their behalf. Instead, they appointed a committee to investigate their actions (posthumously) and determined that they failed to live up to the standards expected of them by their fellow Quakers.¹⁶⁵ Quakers strove to avoid angering the Whig government, which dominated Philadelphia after the British withdrawal in June, 1778. Samuel Rowland Fisher, a Quaker, was convicted of passing information to the British in New York in 1779. He recorded

¹⁶¹Pennsylvania Yearly Meeting, Meeting for the Sufferings, 11 September 1777, Quaker Collection, 82B.

¹⁶²Letter to the President and Council of Pennsylvania, 5 September 1777, Quaker Collection.

¹⁶³Meeting for Sufferings, 23 March 1778, Quaker Collection.

¹⁶⁴ The state convicted Roberts of aiding the British as a guide for the British and convincing Pennsylvanians to enlist in the British military. Carlisle’s conviction stated that he accepted a commission from the General William Howe to serve as a gate keeper in occupied Philadelphia. However, American prisoners of war attested that Roberts used his position to work on their behalf and save them the “Repacious hand” of the British. Similarly, supporters on behalf of Carlisle claimed that he only took this position to be “of Service to his Fellow-Citizens” rather than displaying a “Malicious and deliberate Intention to aid and assist the Enemies of the Unites States, in their pernicious system of Oppression, Tyranny & Barbarity.” *CR*, 11:600-605; *Pennsylvania Archives*, 1st series, 7:36, 38-42, 55

¹⁶⁵ Arthur J. Mekeel, *The Quakers and the American Revolution* (York, UK: Sessions Book Trust, 1996), 221.

numerous visits from leaders of the Pine Street Monthly Meeting in his journal as they strove to convince him of the error of his ways. In response to their admonishments, Fisher proclaimed, “I believed myself innocent & therefore could not make such an acknowledgment to them.” Nicholas Waln responded that the local authorities had convicted Fisher, so there was no point offering a pretense of innocence before them or others.¹⁶⁶ This example along with the experience of Carlisle and Roberts reveal the reluctance of local Quakers to denounce the actions of the new government because of the potential dangers it would present to themselves. Nevertheless, numerous Quakers signed the petitions on their behalf. By including the names of prominent public Friends with non-Quakers, they sought to express their dissatisfaction with the decision without bringing condemnation down upon the meeting itself.¹⁶⁷

Quaker critics of the government’s treatment of Carlisle and Roberts often spoke from either a veil of anonymity or while they were already being punished. Hannah Griffiths, a Quaker poet, composed the poem “On the Death of John Roberts and Abraham Carlisle Novr. 4, 1778” under the pseudonym Fidelia. Scholar Catherine La Courreye Blecki has argued that Griffiths selected this name to emphasize her dedication to the Quaker community, which also revealed her solidarity with both Carlisle and Roberts.¹⁶⁸ Expressing her grief over their fate, Griffiths referred to the “guiltless victims” who suffered under tyrants exercising “Proud Dominion, and oppressive power.” Referencing the war that continued to plague the nation, she claimed the Whigs have torn

¹⁶⁶“Journal of Samuel Rowland Fisher,” 184.

¹⁶⁷ The petitions and signers may be found in *CR*, 7:22-58.

¹⁶⁸ Catherine La Courreye Blecki and Karin A. Wulf, ed., *Milcah Martha Moore’s Book: Documenting Culture and Connection in the Revolutionary Era* (University Park, Pa.: Pennsylvania State University Press, 1997), 78-79.

the previously peaceful society apart. Despite the loss of “The Tender Husband & the father,” Roberts, Carlisle, and their families would be avenged eventually. On Judgment Day, the Whig officials needed to worry “How will your souls, sustain His dread Decision.”¹⁶⁹ While they may be able to escape earthly consequences, eventually they would have to pay for their misdeeds. George Churchman, another prominent Quaker, bemoaned their executions since “Many supposing them not to be sinners worthy of death, are affected with pensive sadness in the present gloomy Season.”¹⁷⁰ Fisher was even more overt in his criticisms of the government as he alleged that “Mob party had prevented the 12 Men from exercising their own Judgment.” Cadwalader Dickinson, one of the jurors in Carlisle’s case, visited Fisher soon after his conviction with the hopes of convincing him “how happy we should be if we could all unite with one Mind.”¹⁷¹ Nevertheless, Fisher ignored this “very active Statesman[’s]” suggestions and blamed Dickinson for his change in quarters following this meeting. He further claimed that the “present Rulers” were intent on maintaining the support of the French and consequently were “equally insincere & treacherous with themselves, if they did not exceed any people that ever undertook to Rule in the violation of Justice, in persecution, Oppression & the laying waste of everything that is truly virtuous & praiseworthy.”¹⁷² Despite criticisms from these few individuals, most Quakers opted to remain silent and not risk challenging the government over the fate of Carlisle and Roberts.

¹⁶⁹Hannah Griffiths, “On the Death of John Roberts and Abraham Carlisle Novr.4, 1778,” in *Milcah Martha Moore’s Book*, 317, 318.

¹⁷⁰ George Churchman, *Journal of George Churchman*, Quaker Collection, 975B, 3:43.

¹⁷¹“Journal of Samuel Rowland Fisher,” 166.

¹⁷²*Ibid.*, 178, 185.

Overall, the appeals process produced mixed results. Petitioners on behalf of the condemned managed to change the state's perception of the offenders and crimes in 62.4 percent of the cases appealed to the SEC. Moreover, the success of the petitioners after 1770 was a dramatic rise over just the 1760s, when the state extended only eight pardons. Criminals became increasingly aware of these trends and sought to foster support in reshaping their identity. This debate revealed the ongoing issues for the state in promoting a generally accepted definition of the condemned and their crimes in an attempt to impose order in Pennsylvania. In the 1760s, offenders such as Lazarus Stewart and Frederick Stump took advantage of regional differences to avoid being labeled as the other and escape the efforts of colonial officials to bring them to justice. These last decades of the eighteenth century witnessed the condemned recasting themselves to avoid this label. Moreover, numerous prominent Pennsylvanians ranging from members of the SEC to the Supreme Court justices frequently sought to ameliorate the worst elements of the criminal justice system. The new sentiments unleashed by the Revolution provided Pennsylvanians with an unprecedented opportunity to offer their own interpretation of how the condemned should be perceived. Overall, the early republic witnessed a growing emphasis on political participation by all levels of society. Even with their deferential tones, these letters sought to force the state's government to reconsider its decision. These letters reveal the often elaborate steps that Pennsylvanians took to emphasize the condemned's redeeming features and to convince the state to grant them mercy. Finally, these petitions took root in an era when Pennsylvania, like many parts of the Atlantic World, increasingly questioned the use of capital punishment. As the debate regarding the appropriate methods to punish offenders raged on, these arguments helped convince

many of the need for leniency. Although others took issue with the apparently wanton extension of pardons, complaining that it made the law impotent, this wave of petitioning forced Pennsylvanians to rethink the current methods of punishment and seek more effective means to root out criminal behaviors. Consequently, Pennsylvanians debated the effectiveness of capital punishment in the 1780s and 1790s in search of a better solution for preventing future crimes, which will be discussed in the final chapter. These petitions helped to fuel this debate by raising the possibility of the criminal's ability to reform, which the gallows would never grant them.

Chapter 4 Contested Property: Ownership of the Dead and the Significance of the Gallows

Early in 1770, rumors soon swirled throughout Philadelphia that Dr. William Shippen, Jr., the first professor of anatomy at the College of Philadelphia, had stolen the body of Elizabeth Roberts, a servant who died the previous summer, from Christ Church's burial grounds. The unchecked fears led concerned observers to open Roberts' grave to ensure that she had not been disturbed. Only five years earlier, Shippen had stated "that the Bodies he dissected, were either of Persons who had willfully murdered themselves, or were publickly executed, except now and then one from the Potters Field, whose Death was owing to some particular Disease" to deter suspicions of body snatching.¹ Shippen angrily denounced these new allegations by claiming, "I never have had, and that I never will have, directly or indirectly, one Subject from the Burying ground belonging to any Denomination of Christians whatever." Despite "these wicked and foolish, nay almost impossible Stories," he assured Philadelphians "that none of your House or Kindred shall ever be disturbed in their silent Graves, by me or any under my Care." Instead, Shippen claimed that he taught this subject only to advance the "public Good" and he will always "preserve the utmost Decency with Regard to the Dead." He concluded his rebuttal with a statement from Joseph Harrison, a medical apprentice who lived with Shippen's father for the past eight years, which stated neither Shippen nor any of his students had "taken [cadavers] out of any burying Ground belonging to any Religious Society in this City."² Although Shippen's defense emphasized his right to own

¹*Pennsylvania Gazette*, 26 September 1765.

²*Ibid.*, 8 January 1770.

the corpses of condemned individuals, he failed to sufficiently resolve this issue as Pennsylvanians debated the necessity and effectiveness of imposing additional sanctions upon capital offenders beyond death.

Shippen's angry denunciation revealed a generally overlooked question about how far Pennsylvania officials should go in their quest to eliminate criminal activities by making an example out of the condemned. Although the days and weeks prior to an execution often witnessed a flood of literature in hopes of shaping how the public and government officials viewed the condemned, pens often fell silent following the execution. Despite numerous appeals on behalf of the condemned, no records remain of friends and family fighting the state for possession of the body following the sentence. Furthermore, newspaper and diary accounts rarely provide much information about the fate of the condemned's body. This silence obscured a number of debates surrounding the executions, namely who owned the dead, the location of the execution, and the office of the hangman. Each of these issues became contested subjects at times as Pennsylvanians struggled to come to grips with the use of capital punishment, the search for additional means to punish the offenders, and the best means to convey the appropriate message to the rest of the populace. For example, the growth of medical training in Philadelphia created a need for cadavers for anatomists. However, the source of these cadavers soon provoked a great deal of disagreement because many Pennsylvanians viewed only the condemned as worthy candidates for the surgeons' table. In addition, the site of the execution could be seen as a means to further shame the condemned. The location could associate the criminal with unsavory aspects of society and create a stigma that lasted even after death. Finally, the unpopular aspects of public executions led many to eschew

the job of executioner in the eighteenth century. Pennsylvanians failed to fully resolve these various issues, which instead sparked discussion and even violence when the officials used these various aspects of public executions to further assert its authority.

The birth of medical training on both sides of the Atlantic reduced the corpses of the condemned into commodities that could be purchased and stolen. Although British jurists such as William Blackstone contended that no one could own a corpse, the worst offenders often failed to receive this protection.³ Even the condemned's clothing was typically seen as property of the executioner. British officials further asserted ownership of the condemned by expanding the number of cadavers by the mid-eighteenth century because of the growing number of medical schools. The condemned occasionally even sold their bodies to surgeons or their agents in order to pay off their prison expenses. However, the decision to grant the surgeons the bodies of the condemned criminals prompted a great deal of debate throughout the Atlantic world. Oftentimes, the demand for cadavers outweighed the available supply, prompting surgeons to resort to body snatching. This crime occurred throughout London and Edinburgh, which housed the largest medical schools.⁴ Unlike most forms of theft, Blackstone stated that the "stealing of the corpse itself, which has no owner (though a matter of great indecency) is no felony, unless some of the grave-clothes be stolen with it."⁵ Because it was not a capital statute,

³ P. D. G. Skegg, "Human Corpses, Medical Specimens, and the Law of Property," *Anglo-American Law Review*, 4 (1975): 412-22.

⁴ Linebaugh, "The Tyburn Riot Against the Surgeons," 71-74; Richardson, *Death, Dissection and the Destitute*, 39-40.

⁵ Blackstone, *Commentaries on the laws of England*, 4:236.

body snatching, both real and imagined, provoked a great deal of fear on both sides of the Atlantic as the Enlightenment failed to fully eradicate older beliefs.⁶

The birth of medical training in Philadelphia in the 1760s heightened these fears as Pennsylvanians struggled to decide if death was a sufficient punishment for the colony's worst offenders. Dr. William Shippen, Jr. attempted to pacify his critics by claiming that only he dissected those bodies that did not receive a proper Christian burial. Thus, he asserted the right to use the bodies of those denied this privilege, typically suicides and murderers. Shippen's public response to his critics suggests the widespread acceptance of the belief that the local government could own the bodies of the condemned and employ this public property for the general good.⁷ Although Pennsylvania never passed any official legislation to provide Shippen with the bodies of these individuals, if he was indeed truthful in these statements the city copied British law, which was a common occurrence throughout the colonial period. Pennsylvania jurists also failed to differentiate between the murder of one's self or another in regards to its classification by the law. Coroner inquests of suicides often used the same language with the exception of the fact that the act was committed on one's self. Despite this lack of

⁶ Among the scholarship on body snatching are, Richardson, *Death, Dissection and the Destitute*; Sappol, *A Traffic of Dead Bodies*; Suzanne M. Shultz, *Body Snatching: The Robbing of Graves for the Education of Physicians in Early Nineteenth Century America* (Jefferson, N.C.: McFarland & Company, 2005); Linebaugh, "The Tyburn Riot Against the Surgeons," 65-117; Thomas Gallagher, "The Body Snatchers," *American Heritage* 18, no. 4 (1967): 64-73; Steven Robert Wilf, "Anatomy and Punishment in Late Eighteenth-Century New York," *Journal of Social History* 22 (1989): 507-30; David C. Humphrey, "Dissection and Discrimination: The Social Origins of Cadavers in America, 1760-1915," *Bulletin of New York Academy of Medicine* 49, no. 9 (1973): 819-27; Frederick C. Waite, "Grave Robbing in New England," *Bulletin of the Medical Library Association* 33 (July 1945): 272-94; and James O. Breeden, "Body Snatchers and Anatomy Professors: Medical Education in nineteenth-century Virginia," *Virginia Magazine of History and Biography* 83, no. 3 (1975): 321-45.

⁷ Dr. Thomas Bond alluded to this concept in his introductory lecture as he answered the critics who opposed the use of cadavers in anatomy classes and also spoke of how fostering education in the hospital would play a vital role in transforming Philadelphia into the "Athens of America." Thomas G. Morton, *The History of the Pennsylvania Hospital, 1751-1895* (Philadelphia: Times Printing House, 1897), 462, 463-64.

official distinction, the government reserved a harsher penalty for individuals who committed suicide. In Britain, individuals who committed suicide would have their estates forfeited to the crown and have a wooden stake thrust through their naked bodies at a crossroads before being buried.⁸ Indeed, contemporaries attacked the act of suicide because it “robs [society] of a subject, and the fact is reckoned amongst the greats of crimes in civil society.”⁹ However, Pennsylvania officials only used that punishment for Philip Cane, arrested on suspicion of murder in Philadelphia. While awaiting his trial in prison, Cane slit his throat with a razor and died before anyone could assist him. Denied the ability to punish him, local officials decided that Cane merited the traditional treatment of “such wretched Offenders.” Cane’s body was publicly displayed, before the magistrates dragged him through the city and drove a stake through his body at a crossroads.¹⁰ The reluctance of Pennsylvanians to carry out these harsh sanctions fit with the Italian philosophe Cesare Beccaria’s assessment that even carrying out a sentence “on a cold and insensible corpse” failed to be effective because it “would make no more impression on the living than whipping a statue.”¹¹ Beccaria’s denunciation of capital punishment and other antiquated penalties led him to claim that civil authorities should reserve the punishment of suicide to God, who was most qualified to address such a heinous offense.

Pennsylvania, unlike Britain, never passed any laws to provide the local anatomists with cadavers. Only the Duke of York’s laws even mentioned the fate of the

⁸ Michael MacDonald and Terence R. Murphy, *Sleepless Souls: Suicide in Early Modern England* (Oxford: Clarendon Press, 1990), 15-16, 24-28.

⁹ *Pennsylvania Mercury*, 15 May 1788.

¹⁰ *American Weekly Mercury*, 2 April, 1741; *Pennsylvania Gazette*, 2 April, 1741.

¹¹ Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. Richard Bellamy (Cambridge: Cambridge University Press, 1995), 83.

condemned's body through the stipulation that the criminal should be buried close to the gallows.¹² The revised laws of 1718 made it more likely that the colony would be willing to follow the British model. Harry Elmer Barnes argued that the new penal code saw the colonies "adopt the English criminal code."¹³ While this statement exaggerates the changes as Pennsylvania never possessed as many capital crimes as Britain, the new laws often invoked British precedents.¹⁴ If the colonial government truly wished to copy the forms of punishment employed in Britain and to adhere to "the directions of the statute laws of Great Britain," then dissection also remained an option.¹⁵ Colonial law called for the confiscation of the estates of murderers, which allowed officials to impose additional penalties upon the criminals beyond simply hanging them.¹⁶ During the Revolutionary War, the state regularly confiscated the estates of loyalists and sold them to finance the government.¹⁷ Therefore, the confiscation of one's estate could also allow the state to assert ownership of the condemned's body, serving as a further warning to those individuals who committed such acts of violence and disturbing the general peace by reserving the most horrific penalty available at the time. Pennsylvania officials were willing to invoke ownership of the corpse even after executing the offender. Following the hanging of William Battin in Chester County for murder and arson in 1722, the governor ordered the local magistrates to hang his corpse "in Irons in the most public

¹² *Statutes at Large*, 1:87.

¹³ Barnes, *The Evolution of Penology in Pennsylvania*, 37.

¹⁴ Rowe, *Embattled Bench*, 65; Marietta and Rowe, *Troubled Experiment*, 22-23

¹⁵ *Statutes at Large*, 3:200.

¹⁶ *Ibid.*, 2:207.

¹⁷ Thomas R. Meehan, "Courts, Cases, and Counselors in Revolutionary and Post-Revolutionary Pennsylvania," *PMHB* 91 (January 1967): 29.

place.”¹⁸ His rotting body would serve as a lasting example of the fate that awaited others, especially other disobedient servants, if they committed similar acts. Perhaps due to the lack of legislation, few historians have touched upon the subject of dissection as a form of punishment in Pennsylvania. Gabriele Gottlieb briefly discussed the topic in her recent dissertation as a difference between the North American colonies and Britain since American officials generally provided the condemned’s body to any acquaintances who requested it. Furthermore, she agreed that the public display of the corpse sought to impart the message to an even larger audience.¹⁹ However, this was a relatively minor point as she failed to explore this subject in much detail as well as the significance of the state asserting control over the condemned’s body.

The sources of cadavers for Philadelphia’s surgeons are difficult to ascertain, largely because few records remain. The British government reserved the right to hand the condemned’s corpse over to the local physicians for dissection or prominently display the body as a warning to other miscreants. The government first allowed the dissection of criminals under Henry VIII as London surgeons annually received the corpses of four murderers. Later, it expanded this number to ten corpses a year for two surgical companies in London.²⁰ Pennsylvania’s justices, unlike their British counterparts, never included the final fate of the body in their verdicts. Eighteenth-century Pennsylvanians instead concentrated on the afterlife even for the condemned. Chief Justice Thomas McKean sought to perform his Christian duty when issuing a death sentence by

¹⁸ CR, 3:193.

¹⁹ Gottlieb, “Theater of Death,” 26-31.

²⁰ Ruth Richardson, *Death, Dissection and the Destitute*, 2nd ed. (Chicago: University of Chicago Press, 2000), 32; Peter Linebaugh, “The Tyburn Riot Against the Surgeons” in *Albion’s Fatal Tree*, 70-71.

reminding the condemned to “Endeavor therefore to reconcile yourselves to him [God]; improve with diligence the little time that may be allotted to you in this life...and prepare for death and an eternal judgment” before imploring God to have mercy upon their souls.²¹ Only the newspapers tracked the exchange, listing just five men whose bodies were sent to the surgeons before 1788.²² Just two were condemned criminals, both from New Jersey. New Jersey officials donated Cadry Lacey’s body after his execution in 1770. A runaway servant, Lacey’s attempted rape proved fatal after the woman resisted him. Enraged by his failure, Lacey proceeded to severely beat her children, nearly killing the eldest child.²³ Peter Mennel, a sixteen-year-old servant, lured his master’s daughter away from the house with the promise of picking grapes. Mennel raped and murdered her, and then buried her body in a nearby swamp, but others soon discovered his treacherous act, which ultimately cost him his life. His act was seen as so atrocious that the local residents requested a special court of Oyer and Terminer to prosecute such a heinous crime.²⁴ Mennel’s status may have also contributed to this ignominious end. Female servants were often coerced into having sexual relationships with their masters throughout the British colonies.²⁵ However, Mennel disrupted the social hierarchy by violating his master’s trust and kidnapped his daughter.²⁶ Not only did his act of perfidy

²¹“An Exordium or preparatory discourse to the pronouncing a sentence of death,” n.d., McKean Papers, Box 3, p. 61, HSP.

²² *Pennsylvania Gazette*, 2 December 1762; 2 June 1768; 26 April 1770; 8 November 1770; *Pennsylvania Evening Herald*, 21 March 1787.

²³ *Pennsylvania Journal*, 2 February 1770.

²⁴ *New York Gazette, or Weekly Post-Boy*, 10 September 1770; Daniel Allen Hearn, *Legal Executions in New Jersey: A comprehensive registry, 1691-1963* (Jefferson, N.C.: McFarland & Company, 2005), 31.

²⁵ Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill, N.C.: University of North Carolina Press, 2006), 66-74.

²⁶ In late eighteenth century, French courts began to treat the rape of children as a much more serious offense. This case may be indicative that a similar trend had reached the colonies by this time as evident in

defile and kill the young girl, but hiding the body also denied the family the chance to provide a Christian burial, which was considered a necessity for most eighteenth-century British colonists.

The birth of anatomical training in Philadelphia under Dr. William Shippen Jr., in the 1760s soon brought questions of ownership of the dead and body snatching into the limelight. Unfortunately, Shippen, the son of a prominent physician, left few written records, especially in regards to his teaching career. Benjamin Rush, a regular adversary of Shippen, criticized him as “too indolent to write, to read, and even to think.” Nevertheless, even his harshest critic still admitted his expertise in regards to anatomy as he studied under him in the 1760s. Rush depicted Shippen’s lectures as “eloquent, luminous, and pleasing.”²⁷ Others also recognized Shippen’s knowledge of the human body and his skill in teaching it. John Adams was “charmed” by Shippen’s lecture on the human anatomy. Indeed, Adams found it so enjoyable that he dined with Shippen several times during his stay in Philadelphia and even attended another lecture in the fall.²⁸ Shippen later taught courses on anatomy and surgery at the University of Pennsylvania, through which he had a lasting legacy on the training of Pennsylvania’s physicians through the early nineteenth century.

Prior to the 1760s, medical education in Philadelphia was still in its infancy. Despite the city’s rapid growth, many of the city’s doctors obtained their formal medical

the harsh fate given to Mennel. Georges Vigarello, *A History of Rape: Sexual Violence in France from the 16th to the 20th Century*, trans. Jean Birrell (Cambridge, U.K.: Polity Press, 2001), 75-86.

²⁷ Benjamin Rush, *The Autobiography of Benjamin Rush: His ‘Travels through Life’ together with his Commonplace Book for 1789-1813*, ed. George W. Corner (Princeton: Princeton University Press, 1948), 322.

²⁸ John Adams, *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (Cambridge: Belknap Press of Harvard University Press, 1961), 2:116, 137.

training in the old world as they flocked to medical schools in England and Scotland. Even with the establishment of Pennsylvania Hospital, the first hospital in the colonies in 1751, the city still lacked formal medical training facilities.²⁹ Thomas Bond and the other early supporters of the hospital envisioned it as an institution to serve the poor and downtrodden who lacked any other means of acquiring medical care. The initial rules for admitting new patients allowed the hospital to accept paying patients only if they had spare rooms after accommodating the poor who needed medical care.³⁰ This emphasis on treating the lower sorts did little to assist in the education of many physicians. Meanwhile, the distance and expense made studying in Europe impossible for many would-be physicians. Whitfield Bell estimated that less than 12 percent of the physicians in the colonies had received formal medical school training by 1775. The bulk of American doctors had only completed an apprenticeship with an established physician who probably lacked any formal education. Anatomy training was also in its infancy as only a few doctors in the colonies had offered any lessons on this topic prior to Shippen. One of the earliest physicians to offer an anatomy lecture was Dr. Thomas Cadwalader of Philadelphia. The local physicians benefited from the “pritty good anatomical preparations of the muscles and blood vessels injected with wax,” although they lacked real anatomical specimens to examine.³¹ This substandard training led many physicians to look down upon the American doctors and to view European universities, especially

²⁹ *Pennsylvania Gazette*, 6 June 1751.

³⁰ *Pennsylvania Gazette*, 24 March 1752.

³¹ Whitfield J. Bell, Jr., *John Morgan: Continental Doctor* (Philadelphia: University of Pennsylvania Press, 1965), 118-20; Bridenbaugh, ed., *Gentleman's Progress*, 19.

Edinburgh, as the only true centers of medical knowledge.³² Even Benjamin Franklin, one of the founders of the Pennsylvania Hospital, omitted education as one of the primary purposes of the new hospital. He, like many, assumed that medical training would take place across the Atlantic.³³

Like many medical students in the mid-eighteenth century, Shippen received the bulk of his medical training overseas. His father lacked formal medical training and realized the importance of anatomical study following a lecture by Dr. Thomas Cadwalader, so Shippen, Sr., envisioned that studying abroad would allow his son to overcome his own deficiencies.³⁴ During his time abroad, Shippen Jr. studied under the prominent anatomists William and John Hunter and returned to Pennsylvania convinced of the benefits of dissection to better understand the human body.³⁵ Shippen also brought anatomical drawings and castings from Dr. John Fothergill of London. Fothergill recommended that the Pennsylvania Hospital managers allow Shippen to lecture on anatomy because of the poor training of many American physicians. In such a setting, the materials may “at least furnish them [medical students] with a better Idea of the Rudiments of their Profession than they have at present the means of acquiring on your Side of the Water.”³⁶ The managers agreed, and Shippen soon began to provide lectures for both medical students as well as the general public, but the managers refused

³² Thomas Neville Bonner, *Becoming a Physician: Medical Education in Britain, France, Germany, and the United States, 1750-1945* (New York: Oxford University Press, 1995), 42-43.

³³ James Bordley and A. McGehee Harvey, *Two Centuries of American Medicine* (Philadelphia: Saunders, 1976), 54, 56.

³⁴ Geoffrey Marks and William K. Beatty, *The Story of Medicine in America* (New York: Charles Scribner's Sons, 1973), 77-79; George W. Corner, *Two Centuries of Medicine: A History of the School of Medicine, University of Pennsylvania* (Philadelphia: J. B. Lippincott Company, 1965), 3.

³⁵ Wendy Moore, *The Knife Man: Blood, Body Snatching, and the Birth of Modern Surgery* (New York: Broadway Books, 2005), 83-84.

³⁶ Pennsylvania Hospital Board of Managers, Minutes (hereafter referred to as Managers' Minutes), Pennsylvania Hospital Historic Collections, Philadelphia, Pa., 2:326.

Shippen's request to establish a medical school.³⁷ He instead set up a private school to provide lectures on human anatomy that catered both to potential doctors as well as anyone in the area who professed an interest in the subject.³⁸ Educated elites in Philadelphia professed an interest in science. In addition to the notable example of Benjamin Franklin and his numerous experiments with electricity, other Pennsylvanians sought to obtain a better understanding of the natural world. By the 1760s, numerous scholars toured through Philadelphia to provide lectures on various scientific topics, often for the public's edification. Shippen's lectures further added to Philadelphians' quest to gain more knowledge—if the attendees could stomach the sight. Shippen gave his first lectures in the State House. Although they were generally well received, he failed to gain much of an early following as only twelve individuals attended his initial course.³⁹ Shippen soon moved beyond simply providing lectures for the curious public with the establishment of a medical school at the College of Philadelphia in 1765.⁴⁰ Shippen joined the faculty as a professor of anatomy. However, Shippen needed more than just Fothergill's castings and drawings to truly train his students. He, like his mentors, believed that students must actively participate in order to gain the first-hand knowledge of the human anatomy.⁴¹ Therefore, he required a steady supply of cadavers.

Shippen emerged as a staunch advocate of the right of the surgeons to assume ownership of the condemned. He lectured his students that Herophilus, a renowned

³⁷ *Pennsylvania Gazette*, 11 November 1762.

³⁸ Betsy Copping Corner, *William Shippen, Jr., Pioneer in American Medical Education; A Biographical Essay. With notes, and the original text of Shippen's student diary, London, 1759-1760* (Philadelphia: American Philosophical Society, 1951), 100.

³⁹ Caspar Wistar, *Eulogium for William Shippen* (Philadelphia: Thomas Dobson and Son, 1818), 25.

⁴⁰ Bell, Jr., *John Morgan*, 116-28.

⁴¹ Michael Sappol, *A Traffic of Dead Bodies: Anatomy and Embodied Social Identity in Nineteenth-Century America* (Princeton: Princeton University Press, 2002), 52-53.

ancient Greek surgeon, dissected 700 criminals, including some living subjects. Shippen provided a backhanded compliment of this “cruel” practice because the practitioner was motivated by his quest for “new discoveries.” Although some of Herophilus’s contemporary denounced his use of cadavers, which ultimately led to end the practice, Shippen viewed these early studies as a necessary step to advance the field of anatomy. A surgeon required the knowledge and experience gained only through dissections in order to fulfill the rigors of their position. In contrast, an unskilled wielder of the scalpel behaved in a way characterized by “barbarity” and their actions could even be classified as “Criminal.”⁴² His choice to define the inept doctor—rather than a skilled physician such as himself—as criminal suggests that the practices necessary to make a trained physician could never be illegal. Dr. Thomas Bond, one of the founders of the hospital, also spoke of the importance of using cadavers in medical training, thus ensuring prominent support for continuing dissections and praised Shippen as extremely well qualified and that “his Dissections are Accurate and Elegant.”⁴³ Instead, any restrictions upon them would only serve to the detriment of society and benefit no one.

Pennsylvania officials probably expressed little hesitation in handing over the other three bodies to Shippen, especially in the case of two African Americans who both committed suicide. The final individual was killed in a prison riot. The idea of giving the bodies of disobedient slaves was far from novel. In the southern colonies, surgeons commonly received the bodies of the condemned. Douglas R. Egerton even contended

⁴²“Anatomical Lectures taken from Doctr.Wm.Shippen, Professor of Anatomy in the College of Philadelphia, taken by William McWilliam,” 1777, MS, Library of the College of Physicians, Philadelphia, Pa., 2, 9.

⁴³ William H. Williams, *America’s First Hospital: The Pennsylvania Hospital, 1751-1841* (Wayne, Pa.: Haverford House, 1976), 47; “Thomas Bond’s Introduction Lecture to a Course of Clinical Observations in the Pennsylvania Hospital,” *Managers’ Minutes*, 3:280

that the mutilation in these cases often was not simply for anatomy lessons but, instead, to impose an additional punishment upon an unrepentant offender. Because the sentence of death alone failed to discourage others from rebelling or emerging as disobedient slaves, Egerton claimed that the act of dismembering the body terrified African Americans.⁴⁴ Caribbean slave owners regularly mutilated the dead—often by beheading them—in hopes of impressing the slaves with their authority over their spiritual fate. Dismemberment would force their souls to “wander forever in the desolate waste of the undead.”⁴⁵ Because most African cultures did not place the same taboo on suicide as Christian society, this punishment was often employed in cases of suicide. Vincent Brown has argued that little evidence suggests that decapitation or other forms of mutilation convinced Africans that their souls would be unable to reach their homeland.⁴⁶ Pennsylvanians could easily have learned of the multitude of punishments imposed on enslaved Africans through regular trade with the Caribbean.⁴⁷ The French and Indian War also led to an increased reliance on slave labor. In the 1760s, slaves composed approximately 8.2 percent of Philadelphia’s population.⁴⁸ As discussed in chapter 2, Pennsylvania already had employed special courts to try black offenders. Because of these previous legal distinctions, the state also proved much more willing to hand over the bodies of African Americans who committed suicide rather than their white

⁴⁴ Douglas R. Egerton, “A Peculiar Mark of Infamy: Dismemberment, Burial, and Rebelliousness in Slave Societies,” in *Mortal Remains: Death in Early America*, ed. Nancy Isenberg and Andrew Burstein (Philadelphia: University of Pennsylvania Press, 2003), 149-60.

⁴⁵ *Ibid.*, 153.

⁴⁶ Vincent Brown, *The Reaper’s Garden: Death and Power in the World of Atlantic Slavery* (Cambridge: Harvard University Press, 2008), 133-37.

⁴⁷ For a discussion of Philadelphia’s mercantile connections by the eve of the Revolution, please see Thomas M. Doerflinger, *A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill, N.C.: University of North Carolina Press, 1986), 70-77.

⁴⁸ Nash and Soderlund, *Freedom by Degrees*, 15-16, 55.

counterparts. The trend to further punish African Americans continued into the nineteenth century as southern medical schools typically dissected cadavers of African Americans along with some lower-class whites.⁴⁹

Despite the lack of records indicating the body's fate, eighteenth-century Pennsylvanians realized that the treatment of the corpse could honor or dishonor an individual. European royal funerals were often an exercise in state authority besides burying the deceased.⁵⁰ Similarly, American funerals offered a chance to honor the many achievements of the dead. Benjamin Franklin's eminent status resulted in a multitude of posthumous honors. A number of local clergy, including the Jewish rabbis, attended his funeral. Franklin's coffin was "carried by [prominent] citizens" such as Governor Thomas Mifflin, Chief Justice McKean, and former mayor Samuel Powel. Along with a host of other dignitaries, contemporaries estimated that 20,000 people attended the procession.⁵¹ The onlookers honored Franklin by interring him "with every mark of the esteem and veneration of his fellow citizens," thus recognizing just how much power the body continued to exercise even after the spirit had departed.⁵² A death mask of Franklin's face served as a lasting memory of his many accomplishments, and it allowed future generations to remember his monumental impact by gazing upon a representation of his body. Even the burial site could be a way to pay homage to the deceased. Anglican churches such as Christ Church buried individuals in the aisle ways of the church.

⁴⁹ Robert L. Blakely and Judith M. Harrington, "Grave Consequences: The opportunistic procurement of cadavers at the Medical College of Georgia," in *Bones in the Basement: Postmortem Racism in Nineteenth-Century Medical Training*, ed. Idem (Washington, D.C.: Smithsonian Institution Press, 1997), 162-83.

⁵⁰ Jennifer Woodward, *The Theatre of Death: The Ritual Management of Royal Funerals in Renaissance England, 1570-1625* (Woodbridge, U.K.: Boydell Press, 1997).

⁵¹ *Pennsylvania Mercury*, 24 April 1790.

⁵² *Boston Gazette, and the Country Journal*, 3 May 1790.

Although their corpses remained hidden from view, these graves represented an eternal privilege awarded only to the most noteworthy church members. Not only were these deceased parishioners given a place of honor, but the close proximity to religious services could only benefit their souls.⁵³ Similarly, the Catholic Church's veneration of the relics of saints led to the frequent partial dismemberment of their bodies.⁵⁴ As Caroline Bynum noted, corpses "were exciting and powerful," so the dead could easily be seen as worthy of a fate greater than a simple burial.

Pennsylvanians, similar to Christians throughout the Atlantic world, found any violations of the grave to be repugnant. Individuals throughout the Great Britain feared that the lack of a Christian burial could leave the soul left wandering the earth for all eternity.⁵⁵ Even scripture opposed the dissection of criminals because, "if a man guilty of a capital offense is put to death and his corpse hung on a tree, it shall not remain on the tree overnight. You shall bury it the same day; otherwise, since God's curse rests on him who hangs on a tree, you will defile the land."⁵⁶ Some of the wealthier members of society took elaborate steps to protect their graves because they realized that the body served little use for anatomists after it had begun to putrefy. In Scotland, churches kept

⁵³ The issue of prayers benefiting the soul after death is discussed in Craig M. Koslofsy, *The Reformation of the Dead: Death and Ritual in Early Modern Germany, 1450-1700* (New York: St. Martin's Press, 2000), 23-24.

⁵⁴ For a discussion of relics, please see Christine Quigley, *The Corpse: A History* (Jefferson, N.M.C.: McFarland & Company, 1996), 250-63.

⁵⁵ Clare Gittings, *Death, Burial and the Individual in Early Modern England* (London: Croom Helm, 1984), 39-40, 46-51, 57, 60-61. Gittings convincingly argued that many of these traditional elements of popular religion persisted into the eighteenth century despite the efforts of the Reformation to eradicate these older beliefs. Ralph Houlbrooke offered a similar assessment of the treatment of the body of the dead in British society in his study, which traced England on the eve of the Reformation through the mid-eighteenth century. Ralph Houlbrooke, *Death, Religion, and the Family in England, 1480-1750* (Oxford: Clarendon Press, 1998), 337-43. For a discussion of the death bed as a chance to redeem one's life as well as the funeral rights in England prior to the English Reformation, please see Christopher Daniell, *Death and Burial in Medieval England, 1066-1550* (London: Routledge, 1997), 30-64.

⁵⁶ Deuteronomy 21:22-23.

bodies in locked buildings to allow sufficient decomposition. More secure coffins also made it more difficult to steal the body, prompting the grave robbers to look for easier targets.⁵⁷

In the wake of these older beliefs and fears, changing attitudes and the emergence of new allies gave the anatomists hope for gaining legitimacy for the dissection of cadavers. By the mid-eighteenth century, anatomists began to dehumanize the corpse in order to counter some of the popular beliefs that venerated the body. Dr. John Morgan, a Pennsylvania physician, asserted that “the human body is certainly one of the most compound machines in nature.”⁵⁸ Similarly, Dr. William Shippen stated the body “may not improperly, be compared to a hydraulic Machine.”⁵⁹ Defining the body as a machine fitted closely with the growth of new sciences at this time. This description further denounced the practice of venerating the body. Instead, it would be best to use the body to advance medical thought. Furthermore, Shippen proclaimed that all physicians required a firm grasp in anatomy in order to move to other branches of medicine, most notably diagnosing and treating illnesses and ailments.⁶⁰ Even religious groups such as the Quakers embraced the ideas of scientific thought. In Britain, Quaker medical students often attended the University of Edinburgh where they were exposed to modern ideas regarding the study of anatomy. John Fothergill, a renowned London physician who gave anatomical casts to Shippen, was a member of London Yearly Meeting and regularly

⁵⁷ Mary Roach, *Stiff: The Curious Lives of Human Cadavers* (New York: W. W. Norton, 2003), 48.

⁵⁸ John Morgan, *Apology for attempting to introduce the Regular Practice of Physic in Philadelphia* (Philadelphia: William Bradford, 1765), 16.

⁵⁹ “Anatomical Lectures Taken from Doctr. Wm. Shippen,” 13.

⁶⁰ John Morgan, *A Discourse upon the Institution of Medical Schools* (Philadelphia: William Bradford, 1765), 6-8.

corresponded with Philadelphia Yearly Meeting.⁶¹ Nina Reid-Maroney's research revealed the combination of religious faith and scientific learning among many of Philadelphia's eighteenth-century philosophes. For example, Benjamin Rush believed in the resurrection of the body on Judgment Day although his colleagues dissected the corpses of the condemned.⁶² Shippen contended the study of anatomy overlapped with theological matters since man was made in God's own image.⁶³ Nevertheless, supporters of dissections often failed to convince the population, leading to several riots against the surgeons on both sides of the Atlantic during the eighteenth century.⁶⁴

Despite having the backing of the city's elites and the local government, other Philadelphians soon questioned Shippen's source of corpses. Critics regularly accused his private school and later the medical department of the College of Philadelphia of grave robbing. These complaints gained additional merit when one considers how few bodies must have been available to medical students. Although by the 1760s Pennsylvania had thirteen capital crimes, colonial magistrates rarely exercised this power. Philadelphia, the most obvious source of Shippen's corpses, executed only nine individuals in the entire decade. Even with some counties from New Jersey providing the bodies of condemned individuals, this was a far from sufficient total for the medical college. Coroners' reports

⁶¹ Corner, *Two Centuries of Medicine*, 7-8; Geoffrey Cantor, *Quakers, Jews, and Science: Religious Responses to Modernity and the Sciences in Britain, 1650-1900* (Oxford: Oxford University Press, 2005), 63-71.

⁶² Nina Reid-Maroney, *Philadelphia's Enlightenment, 1740-1800: Kingdom of Christ, Empire of Reason* (Westport, Conn.: Greenwood Press, 2001), 20-29, 126-27.

⁶³ "Anatomical Lectures Taken from Doctr. Wm. Shippen," 13.

⁶⁴ See for example, Linebaugh, "The Tyburn Riot Against the Surgeons," 65-117 and Wilf, "Anatomy and Punishment in Late Eighteenth-Century New York," 507-30. Clare Gittings argued that the riots took place for two key reasons. First, the crowd wanted to harness the supernatural power of the corpse for themselves and felt the surgeons sought to sever such a valuable connection. Moreover, they had formed a relationship with the criminals because of a shared class identity. Gittings, *Death, Burial and the Individual in Early Modern England*, 74-76.

followed the trends in Britain and classified just over 10 percent of the investigated deaths between 1751 and 1794 as suicides, which would have allowed the Pennsylvania officials to impose additional penalties on their bodies. Therefore, students struggled to find an adequate supply of corpses for their training.⁶⁵ Shippen also believed that all medical practitioners needed a firm grasp of anatomy in order to understand the myriad of problems that plagued the human body. He also found lecture alone to be lacking as “Whoever is desirous of being a good Anatomist ought to take nothing on Supposition, but to see every thing,” thus calling for regular dissections because “what he gains that Way, will not only be lasting but unerring Knowledge.”⁶⁶ While the smaller class sizes of the medical school at the College of Philadelphia required fewer cadavers than their counterparts in London—the first graduating class only had ten students—the demand still far outweighed the supply from more conventional sources. Enrollment grew to thirty to forty students on the eve of the Revolution, which further exasperated the demands for additional cadavers.⁶⁷

⁶⁵ This statistic was derived from the records in RG-33. The number may actually be a bit higher as it includes some questionable cases that did not receive the official ruling of suicide. This may be partly due to the lack of medical training for many coroners. Roger Lane, *Violent Death in the City: Suicide, Accident, and Murder in nineteenth-century Philadelphia* (Cambridge, Mass.: Harvard University Press, 1979), 15-16. For studies on suicide in England, please see Michael MacDonald, “The Secularization of Suicide in England, 1660-1800” *Past and Present* 111 (May 1986): 50-100. According to MacDonald, following 1760, juries rarely would classify a death as a suicide except in cases where individuals sought to escape punishment for various deeds including crimes. Leniency provoked so much criticism in eighteenth-century England that one commentator called for suicides to receive different punishments based on their social classes in order to dissuade juries from continuing to classify upper class deaths as natural. Only the lower classes would be dragged through the streets while the upper classes would be displayed to the local community. Roland Bartel, “Suicide in Eighteenth-Century England: The Myth of a Reputation,” *Huntington Library Quarterly* 23 (February 1960): 151,

⁶⁶“Anatomical Lectures taken from Doctr. Wm. Shippen,” 16.

⁶⁷Joseph Carson, *A History of the Medical Department of the University of Pennsylvania, from its Foundation in 1765* (Philadelphia: Lindsay and Blakiston, 1869), 218; Wister, *Eulogy*, 27.

The lack of sources makes it impossible to assess just how often Shippen's students dissected corpses. It is likely that their training mirrored his own under the Hunters. Shippen enrolled in William Hunter's school on October 2, 1759, and regularly attended the lectures on anatomy. From October 5 through January 5, 1760, Shippen mentioned dissections on at least forty-six occasions. Several of these incidents only involved dissection of certain parts of the anatomy, which may have been possible because of amputations at local hospitals. Nevertheless, for the remainder of the term, it is likely that Shippen operated on most of the body especially since he often spent the bulk of the day in the anatomical room.⁶⁸ Shippen's classes typically consisted of sixty lectures.⁶⁹ Even if the students dissected in only a quarter of the classes, they still required far more bodies than the law provided for them.

Because of public fears about the source of the hospital's cadavers, the managers of the Pennsylvania Hospital attempted to project a positive public image through both internal admonishments and from flattering depictions from their allies. In 1768, the managers of the Pennsylvania Hospital stipulated that any physicians, presumably including Shippen, needed permission from the managers before performing any dissections.⁷⁰ Two years later, the managers were forced to respond to "the indecent conduct of some Young Surgeons in taking up and dissecting dead bodies" because it caused "a general uneasiness and displeasure in the minds of all humane People." The managers urged the physicians, especially Shippen, to eliminate this practice because it

⁶⁸ This number does not include one case in which Shippen noted the anatomical analysis of a live dog. Betsy Copping Corner, ed., "London Diary, 1759-1760," in *William Shippen, Jr.: Pioneer in American Medical Education* (Philadelphia: American Philosophical Society, 1951), 25-34.

⁶⁹ *Pennsylvania Gazette*, 29 September 1763; 26 September 1765.

⁷⁰ Managers' Minutes, Pennsylvania Hospital Historic Collections, 3:291.

reflected so poorly on the institution.⁷¹ The managers remained concerned with improving the hospital's public image. Shortly after the suspicions of body snatching, an author identified as Amor Charitatis wrote to the *Pennsylvania Gazette* to praise the physicians who served at the Pennsylvania Hospital. He lauded their "beneficent Dispositions" and claimed that they "freely give their Time, and employ their Skill, in this most noble Cause, to relieve from their Distress the Needy, and grant Assistance to the Wretched."⁷² Through this aggressive public relations campaign, the supporters of the hospital sought to convince their many critics that the positive aspects of the institution far outweighed any of their potential disadvantages.

Despite the sporadic attacks on Shippen, other medical practitioners began to realize the insatiable appetite for scientific lectures among the city's elite. Dr. Abraham Chovet settled in the city by 1774 after first plying his trade in London. He was forced to flee London after news broke that he had purchased the body of a condemned criminal. With little assistance from the local authorities, Chovet barely escaped the wrath of the rampaging mob. Following this incident, he served as a surgeon in Jamaica until his anatomical studies once again forced him to relocate.⁷³ He finally settled in Philadelphia and established an anatomical museum in which he also offered private lessons on anatomy, which was similar to Shippen's early educational career.⁷⁴ Unlike Shippen's courses, Chovet relied on realistic wax figures rather than corpses, possibly because of

⁷¹Ibid., 4:72.

⁷² *Pennsylvania Gazette*, 14 March 1771.

⁷³ James L. Whitehead, ed., "The Autobiography of Peter Stephen Du Ponceau," *PMHB* 63 (July 1939): 325.

⁷⁴ Whitfield J. Bell, Jr., *The College of Physicians of Philadelphia: A Bicentennial History* (Canton, Mass.: Science History Publications, 1987), 13.

his previous experiences. He also possibly hoped to attract a more diverse crowd to his lectures,

As this course will not be attended with the disagreeable sight nor stench of recent diseased or putrid carcasses, which often disgust even the students in physic as well as the curious, otherwise inclined to this useful and most sublime part of natural Philosophy, it is to be hoped this undertaking will meet with suitable encouragement.⁷⁵

John Adams found Chovet's models to be the "most admirable, exquisite Representations of the whole Animal Æconomy." Indeed, he claimed that Chovet's exhibit offered better representations of the human anatomy than Shippen's casts. Similarly, the Marquis de Chastellux commented that Chovet's anatomical models surpassed those in Europe.⁷⁶ Consequently, Fothergill's castings alone failed to convince students to attend Shippen's lectures. Instead, he needed to provide actual cadavers to provide experiences that even Chovet's "exquisite Representations" lacked. Other physicians also collected human samples to obtain a better knowledge of the body. Dr. John Foulke testified in Alice Clifton's infanticide case to keeping both Clifton's daughter and other infants "of almost every period of conception" preserved in bottles.⁷⁷ Newspapers regularly commented on the possibility that abandoned children and higher infant mortality rates, which potentially provided a source of samples for Foulke's collection. Although Foulke never explained the source of his corpses, he asserted ownership of the body of Clifton's daughter after the autopsy by preserving the corpse in a jar. The presence of additional medical professionals only served to fuel the fears of body snatching.

⁷⁵ *Pennsylvania Packet*, 24 October 1774.

⁷⁶ Adams, *Diary and Autobiography of John Adams*, 2:152; Howard C. Rice, Jr., trans., *Travels in North America in the years 1780, 1781 and 1782* (Chapel Hill, N.C.: University of North Carolina Press, 1963), 1:146.

⁷⁷ *The TRIAL of ALICECLIFTON for the Murder of her Bastard-Child* ([Philadelphia]: n.p., [1787]), 8.

In response to the mounting fears of body snatching, local churches began to take measures to secure interred within their burial grounds. Unlike the individuals who suffered the ignominy of a Potters field burial, church burial grounds were considered sacred repositories of the dead. In October 1769, the vestry of Christ Church decided to immediately undertake a project to build a new stonewall around the burial grounds. By the following September, the church had nearly completed the new enclosure, which would serve not only to improve the yard's appearance, but also to deter any potential body snatchers.⁷⁸ This project took on increased importance especially as rumors spread throughout the city that Shippen had stolen a body from the church's grounds earlier that year.⁷⁹ Philadelphia churches continued to deal with obstacles in protecting the bodies buried on their grounds. During the occupation of Philadelphia from September 1777 to June 1778, British troops removed the wooden fence surrounding St. Peter's churchyard for fuel.⁸⁰ In 1779, the vestry still had not replaced the fence as a body was stolen from a grave. The outraged church wardens offered a \$150 reward for the apprehension and conviction of the "evil minded person or persons" who scandalously removed "the BODY of a person interred" in St. Peter's church yard. Such an intrusion went beyond trespassing and theft from the church. The offender was a "violator of the dead, and disturber of the repose of civil society" who deserved a fitting punishment for his or her heinous crime.⁸¹ Consequently, the church wardens, and presumably the rest of polite

⁷⁸Minutes of the Vestry of Christ Church, Philadelphia, 23 October 1769, 10 September 1770, HSP.

⁷⁹*Pennsylvania Journal*, 11 January 1770.

⁸⁰James Allen noted in his diary that the British army suffered from a lack of adequate firewood, so they converted the woods near the city and the fences into fuel during their occupation. James Allen, "Diary of James Allen, Esq., of Philadelphia," *PMHB*, 9 (1885): 427-28.

⁸¹Minutes of the Vestry of Christ Church, Philadelphia, 14 January 1779' *Pennsylvania Packet*, 23 January 1779.

society, resented such an unwarranted attack, which treated the corpses of the church's congregation no better than those of condemned criminals. Because Shippen had recently resumed his anatomical lectures, he faced suspicion, although no public charges were ever leveled against him in this best recorded incident of grave robbing.⁸² To avoid any similar invasions of their grounds, several parishioners at St. Peter's urged the vestry to begin a subscription fund for the construction of a new fence and even pledged financial assistance.⁸³ By 1784, the church agreed and began to raise funds for the construction of a new brick wall, which suggested not only permanence, but could also seek to deter any potential raiders.⁸⁴ Fears of body snatching failed to abate over time, which prompted the vestry to create a committee in order to "examine the burial ground and to prevent the opening of any Grave which has been lately dug."⁸⁵ With multiple medical schools competing for available corpses, the church felt they had no choice but to act in this manner.

As fears mounted, Shippen increasingly became the target of personal violence. According to one nineteenth-century history—which unfortunately contemporary sources do not confirm—general resentment against him boiled over several times. One incident witnessed Shippen sprinting for his carriage, which he barely boarded before a number of projectiles, including a musket ball, pounded into the side of the coach.⁸⁶ Historian Thomas G. Morton claimed that a troop of sailors later assailed Shippen's home in

⁸² *Pennsylvania Packet*, 28 November 1778; Corner, *Two Centuries of Medicine*, 35.

⁸³ Minutes of the Vestry of Christ Church, Philadelphia, 25 March 1779, HSP.

⁸⁴ Minutes of the Vestry of Christ Church, Philadelphia, 30 April 1784, 14 June 1784, HSP.

⁸⁵ *Ibid.*, 22 January 1794, HSP.

⁸⁶ Corner, *William Shippen*, 102-103.

response to allegations of body snatching.⁸⁷ Considering how frequently sailors died while in port (the newspapers of the 1760s contain many accounts of unknown sailors who unfortunately drowned either in the city or nearby) many of these individuals had no roots in Philadelphia and ended up in the Potter's field. Because these individuals could potentially end up on the physicians' cutting table, many sailors likely feared they could suffer the same fate. Through a preemptive act against the most prominent anatomist in the city, the sailors sought to defend themselves and their dead colleagues from suffering this indignity after death. Indeed, the fears of sailors persisted long after 1770. In 1789, Francis Hopkinson published *An Oration Which Might Have been delivered to the Students in ANATOMY on the Late Rupture between the two schools in this City* which opined,

Methinks I hear them cry, in varied tones,
'Give us our father's—brother's—sister's bones.'
Methinks I see a mob of sailors rise—
Revenge!—revenge! they cry—and damn their eyes—
Revenge for comrade Jack, whose flesh, they say,
You minc'd to morsels and then threw away.⁸⁸

Hopkinson made several references to grave robbing for the benefit of scientific knowledge. Medical students even needed to fight through crowds in order to procure their cadavers for further research.⁸⁹ Nevertheless, Hopkinson justified this practice as key for medicine to improve. Without the dissection of the dead, the living could gain no further knowledge of the human body.⁹⁰

⁸⁷ Morton, *The History of the Pennsylvania Hospital*, 493.

⁸⁸ [Francis Hopkinson], *An Oration Which Might Have been delivered to the Students in ANATOMY on the Late Rupture between the two schools in this City* (Philadelphia: T. Dobson and T. Lang, 1789).

⁸⁹ *Ibid.*, 8-9.

⁹⁰ Sappol, *A Traffic of Dead Bodies*, 44-48.

Perhaps these attacks explain why the only two executed criminals who ended up on the surgeons' tables both came from New Jersey while other offenders avoided the same fate. Pennsylvania witnessed a number of barbaric events throughout the 1760s and 1770s that culminated in a trip to the gallows. Only five years prior to Mennel's acts, Henry Halbert, a German servant under Jacob Woolman, committed the "barbarous and willfull Murder" of Woolman's son.⁹¹ Less than a decade later, the colony executed James Swain in Philadelphia for beating his wife to death.⁹² Matthew McMahan received a death sentence for mortally wounding James McClester with a hoe.⁹³ In 1771, Patrick Kennedy brutally raped Jane Walker and "Left her Languishing in a heavy Cold pain and Dismal Storming Night almost."⁹⁴ No existing records suggest that any of these men were handed over to the surgeons despite the brutal nature of their crimes. For some, the timing of their execution may have mattered. McMahan was executed at the end of June, which was not when Shippen typically gave his lectures.⁹⁵ Halbert assumed the role of a penitent sinner before his death, which possibly dissipated the desire to further punish him. Moreover, such a decision may have proved unpopular with Philadelphia's sizable German population. However, the primary reason may have been a desire to avoid any more attacks upon the surgeons. After suffering several assaults at this time, Shippen may have feared further reprisals from the friends or family of the condemned. Although New Jersey was not overly far away, the greater distance may have convinced Shippen that these cadavers were far less risky commodities.

⁹¹ *Pennsylvania Gazette*, 5 September 1765; 3 October 1765; 24 October 1765, *CR*, 9:286.

⁹² Oyer and Terminer papers, Philadelphia County, Box 4, 1774, RG-33.

⁹³ Oyer and Terminer papers, Chester County, Box 2, 1769, RG-33.

⁹⁴ Oyer and Terminer papers, Chester County, Box 2, 1771, RG-33.

⁹⁵ *CR*, 9:678.

Although some individuals escaped the surgeons' tables, the need for suitable cadavers grew as the College of Philadelphia and the University of Pennsylvania competed for access to the dead between 1789 and 1791. The Assembly had terminated the charter for the original College of Philadelphia in 1779 when they instead chartered the University of Pennsylvania. The College regained its charter ten years later, which created a second medical school in Philadelphia for two years until the two institutions were unified in 1791.⁹⁶ The growing enrollments led Benjamin Rush to conclude that "Our city swarms with students of medicine."⁹⁷ Shippen taught at both institutions, which possibly reduced some of this competition for anatomical subjects.⁹⁸ Nevertheless, the public feared that the growing number of medical students regularly engaged in body snatching to fuel their studies. An anonymous letter writer to the *Pennsylvania Mercury* complained that "the practice of corpse-stealing has become so notorious in this city, that seldom a body is buried without the friends of the deceased watching it." He contrasted Pennsylvania's feeble laws to protect the corpse with other nations that made body snatching a capital offense. Instead, Pennsylvania law allowed "the most wanton depredations on the dead." The author claimed that the 1788 New York riot against the surgeons had further fueled these fears and "alarmed the citizens," leaving a sizable portion of the population motivated to push the legislature to sanction any individuals who engage in "such vile and indecent practices." Moreover, the author used the practice

⁹⁶ Corner, *Two Centuries of Medicine*, 36-41.

⁹⁷ Benjamin Rush, *Letters of Benjamin Rush*, ed. L. H. Butterfield (Princeton: Princeton University Press, 1951), 1:571. Between 1789 and 1800, Joseph Carson listed eighty-nine graduates from the University of Pennsylvania's medical school, which suggests that Rush may have exaggerated the numbers. Nevertheless, this was a sizable increase as only forty-nine men graduated between 1780 and 1788. Carson, *A History of the Medical Department of the University of Pennsylvania*, 218-19.

⁹⁸ Corner, *Two Centuries of Medicine*, 39-41.

to speak against capital punishment as the state began to debate the effectiveness of the death penalty. He contended that these additional sanctions left the condemned “devoid of every principle of justice.”⁹⁹ Despite this opposition, the increased numbers of medical students surely augmented the demand at a time when Pennsylvanians were drastically reducing the number of capital crimes, thus making it much more difficult to find additional corpses.¹⁰⁰ Although the University of Pennsylvania instructed its students to behave in a “quiet, decent, orderly manner” and threatened to expel them for theft, it would not be surprising if many students ignored these rules and robbed the local graveyards.¹⁰¹

Fears surrounding the desecration of the dead, including condemned criminals, also prompted military leaders to debate the ownership of the dead during the American Revolution. In 1779, troops under General John Sullivan were stationed in Easton as they prepared to begin a campaign against the Iroquois in the western parts of the state. Before departing, three soldiers committed a murder and consequently were executed for their offense. Following their burial, an unidentified doctor received permission to perform a nocturnal exhumation of one of the bodies. Under the supervision of an officer, the surgeon “Cut his [the corpse’s] arm and Leg and Examined him and the next night then buried him again.”¹⁰² Such treatment of the condemned was rare after military executions. Harry M. Ward’s analysis of the Revolutionary War period concluded that

⁹⁹ *Pennsylvania Mercury and Universal Advertiser*, 3 May 1788.

¹⁰⁰ Corner, *Two Centuries of Medicine*, 35-43.

¹⁰¹ *Rules for the Good Government and Discipline of the School in the University of Pennsylvania* (Philadelphia: Francis Bailey, 1784).

¹⁰² “Journal of Sergeant Thomas Roberts,” 12 June 1779, in *Journals of the Military Expedition of Major General John Sullivan Against the Six Nations of Indians in 1779*, ed. Frederick Cook (Auburn, N.Y.: Knapp, Peck & Thompson, 1887), 240.

the Continental Army generally buried executed soldiers beneath the gallows and rarely subjected them to dissection. However, this additional sanction was not out of compassion for the condemned, but because of the distance of the army from local practitioners of anatomy. For soldiers who died of natural causes, burial by the gallows could be “consider[ed] as an Insult to the American Cause.” Indeed, the mistaken burial of a soldier in Lancaster County at the grounds typically used to bury the condemned prompted a harsh rebuke from political leaders in his home state of Maryland. The critics vehemently denounced the decision and vigorously encouraged the soldier’s re-interment as “the most certain Way of wiping of the unfavourable Improfessions at the Service that had already been too frequently struck by Reports of this act.”¹⁰³ Nevertheless, soldiers readily mutilated the corpses of various offenders. Captain Samuel Dewees recounted how a pursuing posse decapitated a deserter because he killed one of them. Not content with this one example, the soldiers also hanged a loyalist refugee and placed his head on display. The soldiers left the gallows to complete this morbid scene “for the tories to look at and rejoice over.”¹⁰⁴ Despite these harsh reprisals on the bodies of the condemned, the surgeon’s decision to perform his inspection at night suggested the disapproval of many soldiers of this desecration following this most “melancholy occasion.”¹⁰⁵ The presence of the accompanying officer not only served to guarantee the surgeon’s protection, but

¹⁰³Ward, *George Washington’s Enforcers*, 191-92; Frederick Committee to Lancaster Committee, 3 January 1777, William Augustus Atlee Papers, Roll 103. Even before the Revolution, the gallows sites could be seen as possessing a corruptive influence. During a church dispute in 1764, opponents of Reverend Henry Muhlenberg instructed him to build his church near the gallows sites, which would negatively affect how other Pennsylvanians viewed his institution. Tappert and Doberstein, *Journals of Henry Muhlenberg*, 2:27.

¹⁰⁴Samuel Dewees, *A History of the Life and Service of Captain Samuel Dewees* compiled by John Smith Hanna (Baltimore: Robert Neilson, 1844), 202.

¹⁰⁵ “Journal of Serg’t Major George Grant,” 13 June 1779 in *Journals of the Military Expedition of Major General John Sullivan against the Six Nations of Indians in 1779*, 107; “Journal of Captain Daniel Livermore, 13 June 1779 in *Ibid.*, 180.

also quell the fears among the ranks that the dissection maliciously abused the deceased's body.

The practice of dissection also allowed the state to save on expenses associated with the execution of condemned criminals. Although few records on this topic exist, the planned 1779 execution of George Hardy would have cost the state £3 for his coffin in addition maintenance costs while in prison. Shippen sporadically taught anatomy classes throughout 1779, so the court could have opted to turn Hardy's body over to Shippen rather than pay the costs to bury him.¹⁰⁶ By offering the bodies of suicides and criminals to the local medical school, city officials served the best interests of both Pennsylvania and the future physicians. It allowed county officials and the Assembly to escape the costs of burying these offenders while providing a much-needed resource.

British tradition revealed that condemned criminals often were treated differently than other deceased members of the community. Archaeological excavations of medieval British cemeteries revealed that the graves predominantly faced the east. This would prepare them for the second coming of Christ, which presumably would come from the east during the final judgment. However, condemned criminals were often buried facing different directions. Some still had their arms pinioned behind their backs and even were placed face first, a much different treatment than their non-condemned contemporaries.¹⁰⁷ The practice of denying deviants the right to be buried in consecrated

¹⁰⁶ The SEC compensated James Claypoole, Philadelphia's sheriff, £109 3 shillings and six-pence in the Hardy case. Hardy received a pardon, so the state never had to pay for his burial. Gratz Collection, High Courts of Errors & Appeals of Pennsylvania, Case 3, Box 19, Folder Thomas McKean, HSP; CR, 12:38; *Pennsylvania Archives*, 9th series, 1:193.

¹⁰⁷ Daniell, *Death and Burial in Medieval England*, 148-49. Even after the Reformation, this practice continued in England. Gittings, *Death, Burial and the Individual in Early Modern England*, 139. The monuments that adorned seventeenth-century British graves often depicted the resurrection of the dead

ground was widespread in the Atlantic world. Catholics occasionally rioted against the burials of Protestants in Catholic burial grounds, thus signifying that they existed outside of God's grace and would never obtain salvation anyway. Individuals buried in holy ground could even be secretly disinterred and the corpse could be attacked as a reprimand for the individual's scandalous or immoral life.¹⁰⁸ Because so many people condemned their actions anyway, few would disagree that this was a worthy fate for the worst offenders.

The desire to further punish the condemned led Pennsylvania officials to vehemently defend the assertion of ownership of the worst offenders at times when others made claims on the body. Following the execution of Edward Hunt for counterfeiting in 1720, Governor William Keith and the local Anglican rector soon fought over control of Hunt's body. Keith instructed the sheriff to have the body buried beneath the gallows. Nevertheless, the pastor had promised Hunt's brother an honorable burial. Since Keith remained adamant on burying Hunt at the gallows, the local representatives of Christ Church then went to the gallows site and conducted the funeral there instead.¹⁰⁹ Similarly, a new debate raged regarding the fate of James Molesworth's body during the Revolution. In 1777, he confessed to serving as a British spy sent to guide British ships

during the second coming, which suggested the reanimation of the corpse at this time. Houlbrooke, *Death, Religion, and the Family in England*, 350.

¹⁰⁸ Clodagh Tait, *Death, Burial and Commemoration in Ireland, 1550-1650* (New York: Palgrave Macmillan, 2002), 82-83, 93-96. In seventeenth-century Paris, a grave digger was accused not only of stripping the corpses of Huguenots, but also of selling their corpses to the local surgeons to further stigmatize religious dissenters. Vanessa Harding, *The Dead and the Living in Paris and London, 1500-1670* (Cambridge: Cambridge University Press, 2002), 105-106, 116, 258-59, 277-79.

¹⁰⁹ According to Thomas Wendel, this conflict did not only deal with the appropriate way to punish the condemned. Keith increasingly split with Reverend John Vicary of Christ Church and was unwilling to grant him any concessions. William Keith to Cadwallader Colden, 24 November 1720, Gratz Collection, Case 2, Box 32, HSP. Thomas Wendel, "Jacobitism Crushed: An Episode Concerning Loyalty and Justice in Colonial Pennsylvania," *Pennsylvania History* 40 (January 1973): 62.

up the Delaware River to invade Philadelphia.¹¹⁰ Despite the heinousness of his offense during the Revolution, the state allowed Molesworth to be buried in the Potter's Field rather than give him over to the surgeons. This may have been an effort to appease Philadelphia's sizable Loyalist population, who surely would have resented such a fate. In the fall, the British seized the city, which allowed unknown loyalists to reinter Molesworth's body from the Potter's Field to the Quaker burial grounds. After the patriot leaders reoccupied the city, they reacted harshly to Molesworth's removal. Many Whigs became irate over the secret re-interment of Molesworth's body because "it should have been done in the day in a public manner."¹¹¹ They ordered the immediate return of his body or else "ample vengeance will undoubtedly fall on the heads of the delinquents."¹¹² Quakers felt compelled to deny any association with those individuals who made such a direct assertion of ownership of the dead. Thomas Harrison, who attended Molesworth's original burial, admitted to taking part in the removal of the corpse, but claimed he did so only because of the pleas of a young woman who was deeply concerned about the location Molesworth's body. Samuel Richards, a member of the Philadelphia Monthly Meeting, also claimed to have opposed the re-interment, but conceded that he followed Molesworth's corpse to its new location not out of respect for the condemned, but "for other reasons which tenderness forbids me to mention."¹¹³ Harrison and Richards both assured the Whigs that the body was returned to Potter's Field. This exchange revealed not only how the government deemed itself the rightful owner of the condemned, but also

¹¹⁰ *Pennsylvania Gazette*, 2 April 1777.

¹¹¹ Duane, *Extracts from the Diary of Christopher Marshall*, 201.

¹¹² *Pennsylvania Packet*, 26 September 1778.

¹¹³ *Ibid.*, 6 October 1778.

how ordinary Pennsylvanians agreed with the state's ownership of the criminal classes even beyond life. Based on the scant opposition to this declaration, the majority of the population must have agreed with this assertion. This final statement allowed the state to truly assert its ownership of the dead and the lasting legacy of the corpse.

Pennsylvania officials could even assert continual ownership of the condemned's body by displaying it in a prominent location in order to instill the appropriate message to the populace. In his seminal work *Discipline and Punish*, Michel Foucault argued that public display of the body following an execution allowed for the creation of a link between the crime and the execution.¹¹⁴ For sailors, the state selected locations that witnessed a high amount of ship traffic rather than the urban commons in order to instill the appropriate message. In 1781, the Philadelphia Admiralty Court convicted Thomas Wilkinson of mutinying onboard the *Richmond* and sailing to Charleston, South Carolina, to offer his services on behalf of the British. Upon his arrest, Wilkinson was soon convicted and sentenced to be hanged on Windmill Island and then have his dead body suspended by chains in a gibbet on Mud Island. Although this was rarely employed, the colonies occasionally made use of the gibbet in order to display the bodies of the most heinous criminals such as rebellious slaves and pirates.¹¹⁵ Because sailors regularly passed this destination, they would easily be able to witness Wilkinson's harsh penalty and would be encouraged to avoid these types of behavior. Mud Island had served as a base of military operations since the French and Indian War. In the late 1750s, local

¹¹⁴ Foucault, *Discipline and Punish*, 44-45.

¹¹⁵ *Respublica v. Thomas Wilkinson*, 23 April 1781, RG-27, Roll 37. For more information about the gibbet to display Wilkinson's rotting cadaver, please see Thorsten Sellin, "The Philadelphia Gibbet Iron," *Journal of Criminal Law, Criminology, and Police Science* 46, no. 1 (1955): 11-25.

military leaders planned to construct a fort on Mud Island, which lay just south of the city on the Schuylkill River. Although this never came to fruition, the British government, with the backing of the Pennsylvania Assembly, selected Mud Island as the site of a new fort just prior to the Revolution and even George Washington placed a great deal of emphasis on this location as key to his unsuccessful Philadelphia campaign.¹¹⁶ The initial plan to display Wilkinson's body on the island would allow state officials to send a message to the sailor population. As the war with Britain neared an end, trade out of Philadelphia drastically increased in the early 1780s. Mariners routinely sailed by Wilkinson's gibbeted body, ostensibly helping to control this transient—and occasionally problematic—population.

The advent of the penal reform movement of the 1780s prompted Pennsylvanian officials to question the use of additional sanctions such as the gibbet. Despite the desire to make an example out of Wilkinson both by executing and displaying his body, the SEC granted him mercy for his crimes and eventually commuted his sentence into service to the state.¹¹⁷ State officials may have been more concerned about the possible backlash by the seafaring population if they did carry out his full sentence. Simply spreading news of the intended fate of Wilkinson—followed by his quiet pardon—could be seen as trying to deter other lower-class sailors from committing similar acts. Some observers questioned such leniency because they believed that if notorious offenders disturbed the public peace then “these villains [should be brought] to the gibbet.”¹¹⁸ Critics of these

¹¹⁶ Jeffrey M. Dorwart, *Fort Mifflin of Philadelphia: An Illustrated History* (Philadelphia: University of Pennsylvania Press, 1998), 12-27, 59.

¹¹⁷ *CR*, 12:751; 13:135.

¹¹⁸ *Freeman's Journal*, 17 July 1782.

public displays instead questioned their overall effectiveness. Benjamin Rush, one of the more prominent advocates of penal reform in Pennsylvania in the 1780s, challenged the belief that the gibbet served as an convincing deterrent because “How often do we find pockets picked under a gallows, and highway-robberies committed within sight of a gibbet?”¹¹⁹ Even prior to Wilkinson’s conviction, William Eden Auckland, a eighteenth-century British jurist, complained that “our [Britain] gibbets are crouded with human carcasses. May it not be doubted whether a forced familiarity with such objects can have any other effect, than to blunt the sentiments, and destroy the benevolent prejudices of the people.”¹²⁰ Comparable sentiments may have resonated in Pennsylvania by the 1780s, prompting state officials to express their reluctance in imposing such harsh sanctions. Indeed, Wilkinson benefited as the recipient of a pardon despite the state’s earlier intention to make his body a lasting example for other sailors.¹²¹

As instruments of state authority and possibly areas of unrest, the gallows and stocks could become contested regions as well throughout the eighteenth century. Typically colonial executions took place in a public square in order to maximize the effect on the public.¹²² John F. Watson described Philadelphia’s Center Square the site of the gallows for much of the eighteenth century “as an object of universal terror to boys.”¹²³ During periods of turmoil, these areas could become targets of mob violence

¹¹⁹ Benjamin Rush, *An Enquiry into the Effects of Public Punishments upon Criminals and upon Society* (Philadelphia: Joseph James, 1787), 9.

¹²⁰ William Eden Auckland, *Principles of Penal Law* (London : printed for B. White; and T. Cadell, 1771), 71.

¹²¹ *CR*, 12:751, 13:135.

¹²² Negley K. Teeters, “...Hang by the Neck...”: *The Legal Use of Scaffold and Noose, Gibbet, Stake, and Firing Squad from Colonial Times to the Present* (Springfield, Ill.: Charles C. Thomas, 1967), 59.

¹²³ John F. Watson, *Annals of Philadelphia and Pennsylvania, in the Olden Time* (Philadelphia: Edwin S. Stuart, 1884), 1:393.

such as in 1726 when a mob destroyed the pillory in Philadelphia.¹²⁴ The gallows attracted even more debate because of the awful sentences carried out there. In 1788, Francis Swaine, the sheriff of Montgomery County, engaged in a heated dispute with Colonel Thomas Craig regarding the gallows site for the execution of John Brown in Norristown. As a new county seat, Norristown had witnessed no prior executions, so local officials had never debated a possible site for the gallows prior to Brown's case. Swaine contacted the leading men of Norristown and sought their advice on an appropriate location for the hanging to set a gloomy example for the rest of the county. Upon their recommendations, Swaine decided to erect the gallows near Craig's property. However, Swaine learned that Craig vehemently opposed the construction of the gallows "on any of the Streets... nor on any part of the plantation and swore as soon as a Gallows was erected he would cut it Down."¹²⁵ Because of Craig's opposition, Swaine and several of the Norristown officials searched for a more agreeable location. They finally settled on a spot near the bridge at Stony Creek, but Craig responded to this decision with a torrent of abuse.¹²⁶ Frustrated with Craig's hostility, Swaine instructed the jail keeper to erect the gallows on the public space near the jail. Undeterred, Craig had the gallows torn down anyway. Throughout this encounter, Craig sought to avoid any association with the gallows and the body of the condemned. Craig never voiced any support for Brown or any superstitious reasons for moving the gallows site. Instead, he may have believed that an execution would have a negative effect on his property values. The large crowds whom executions attracted even in the late 1780s may have made Craig fear the

¹²⁴ Meranze, *Laboratories of Virtue*, 33-34.

¹²⁵ *Pennsylvania Archives*, 1st series, 11:269.

¹²⁶ *Ibid.*, 270.

assembled mob would damage his land. Any connection with the execution could stigmatize himself or his property. Indeed, Brown's execution coincided with the reform movement advocating either a reduction of capital offenses or the end of the practice altogether in Pennsylvania. Although Craig apparently never joined the Philadelphia Society for Alleviating the Miseries of Public Prisons, he possibly resented an execution for a property crime so close to his property.

Even the location of the execution could be used as an opportunity to further shame the condemned. In the mid-eighteenth century, many Britons on both sides of the Atlantic still possessed anti-Semitic views—even in the religiously tolerant colony of Pennsylvania. Prime Minister Henry Pelham's decision to grant naturalized Jews the same rights as their native-born counterparts in 1753 provoked such vitriolic outrage that he had no choice but to repeal the act. By the early eighteenth century, Jews settled in Pennsylvania and at least the wealthier members of society gained a great deal of acceptance among their peers. Nevertheless, Jews continued to face intermediate attacks after the 1750s, especially when they engaged in illegal activities.¹²⁷ Although little evidence exists to identify Jews in the court records, they were occasionally mentioned and in a far from savory light. In 1772, John Thomas confessed to stealing several coats and a hat with John Underwood and Thomas McGinnes and that they subsequently sold the clothing to a Jew on Walnut Street. Thomas later joined forces with William Davis and purloined the velvet draperies from St. Paul's Church. Thomas claimed that Davis had gone on to New York with the hopes of selling the stolen items to Moses Jacobs,

¹²⁷ William Pencak. *Jews & Gentiles in Early America, 1654-1800* (Ann Arbor: University of Michigan Press, 2005), 4-5, 180, 182-84, 191-202.

another Jew.¹²⁸ In both of these crimes, the Jew was not the actual thief, but the recipient of stolen property and the perpetuator of criminal activities in Philadelphia. This distinction would do little to endear Jews to the rest of the colony's population. The growth of anti-Semitism even affected the location of their cemeteries. By 1740, a Jewish cemetery had been established on Spruce Street between Eighth and Ninth Streets in Philadelphia. Until the Revolution, this area remained on the outskirts of Philadelphia as the city developed much closer to the Delaware River. According to historian William Pencak, this isolation reflected the lingering animosity towards Jews.¹²⁹ Even in the colony lauded for its religious tolerance, Jews struggled to gain full acceptance from the rest of the population.

Consequently, association with Jews could become a way to further shame the dead. In 1768, British military officials executed a soldier in the 34th regiment for desertion. The *Pennsylvania Chronicle & Universal Advertiser* stated that John Robinson's execution took place in the city's commons, the regular gallows site prior to the Revolution.¹³⁰ This location ostensibly allowed civil officials to use the death of the offender as an example to the rest of the city. However, Jacob Hiltzheimer, a Philadelphia farmer and later politician, claimed that the execution took place next to the wall of the Jewish burial ground. Based on the stated intention of public executions to instill a sense of fear among the populace, this remote location would appear to be an unlikely location for an execution. Hiltzheimer also provided a vivid account of the grisly scene, which

¹²⁸Oyer and Terminer papers, Philadelphia County, Box 4, 1771, RG-33.

¹²⁹Pencak, *Jews & Gentiles*, 175-90.

¹³⁰*Pennsylvania Chronicle & Universal Advertiser*, 29 August 1768; Windmill Island in the Delaware River was used to hang pirates and traitors. After the Revolution, Logan Square became the preferred gallows site. Watson, *Annals of Philadelphia and Pennsylvania*, 3:164.

added further credence to his version. Six soldiers fired upon the hapless victim from only twelve feet away, killing the deserter who fell forward on his face.¹³¹ The British military often employed public punishments, especially for “an old Offender,” to warn other soldiers not to commit similar offenses.¹³² Because of his repeated offenses, the British officers probably felt that past mercy had been misguided and another pardon would only embolden the deserter. The more pressing issue was the decision to execute Robinson at the Jewish cemetery on the outskirts of the city. Even if the officers opted not to use the commons, the city’s barracks appeared to be a more suitable choice. In 1757, the city constructed barracks for British troops in the Northern Liberties section near Third Street.¹³³ Since public executions sought to provide a public example to would-be offenders, one would assume that the officers could more easily impose their message by providing the execution closer to the barracks. Therefore, the decision to use the Jewish burial grounds as the backdrop for the execution suggests a way to shame the offender. In British society, Jews continued to face scorn and derision throughout the eighteenth century. Although Jews had begun to play a more influential role in the British armed forces by the mid-eighteenth century, they still were often denied rights especially in Britain. Therefore, the use of the burial grounds could further punish the condemned. No records remain regarding the eventual burial site of the condemned, but during the American Revolution, executed soldiers were routinely buried under the gallows. If the condemned was interred in the Jewish burial ground, even if this was only a threat from

¹³¹Diary of Jacob Hiltzheimer, 29 August 1768, vol. 3, American Philosophical Society, Philadelphia, Pa.

¹³² *Pennsylvania Chronicle and Universal Advertiser*, 29 August 1768.

¹³³ Theodore Thayer, “Town into City, 1746-1765” in *Philadelphia: A 300-Year History*, ed. Russell F. Weigley (New York: W. W. Norton & Company, 1982), 105.

the officers, the denial of a Christian burial would ideally resonate among the troops and hopefully prevent the need for any additional examples.

Similar to the ownership of the dead and the location of the gallows, the identity of the executioner could provoke criticism from the local residents. In Europe, the office of the hangman often attracted scorn and derision, especially if the individual botched the job. Gottlieb Mittelberger asserted that the position only paid £5 for each execution, which could potentially lead to unskilled executioners plying their trade before the angry mob. Mittelberger claimed one inept hangman's numerous delays frustrated the onlookers who demanded a quicker execution. In this case, the hangman deflected their criticisms when he responded that "If you, gentlemen, can hang a man better than I can, just come on." The hangman's bravado led the crowd instead mocked his hecklers.¹³⁴ The position also was fraught with personal danger if the assembled crowd disagreed with the decision to execute the criminal. In these cases, the hangman could attract their ire as the visible manifestation of the state's authority. Indeed, this may have prompted the state to ply the executioners with alcohol as they carried out their grisly duty.¹³⁵

The difficulties associated with finding someone to fill this position forced the various nations to turn to criminals at times because the more respectable elements of society wanted nothing to do with the occupation.¹³⁶ Pennsylvania's records are largely

¹³⁴ Mittelberger, *Gottlieb Mittelberger's Journey to Pennsylvania in the year 1750*, 96, 97. The only recorded incidents of the mobs attacking the executioners took place in the 1800s. Teeters, *Scaffold and Chair*, 11.

¹³⁵ Greenberg, "The Effectiveness of Law Enforcement in Eighteenth-Century New York," 180; Teeters, "...*Hang by the Neck...*", 58-59. In Pennsylvania, the execution of two African American murderers in 1808 incited the black mob to attack the executioner. Meranze, *Laboratories of Virtue*, 34.

¹³⁶ Pieter Spierenburg, *The Spectacle of Suffering: Executions and the evolution of repression: from a preindustrial metropolis to the European experience* (Cambridge: Cambridge University Press, 1984), 13-40; Gatrell, *The Hanging Tree*, 99-100.

silent on the men who filled this post throughout the eighteenth century.¹³⁷ However, the scant available evidence suggests that the position was also not held in high regard in this region. In 1737, Isaac Brandford or Bradford was sentenced to death for robbery along with the burglars Henry Wildman and Catherine Connor. The governor and the provincial council opted to uphold the executions of Wildman and Connor, but pardoned Brandford because of his youth. Nevertheless, the government refused to pardon him unconditionally. They imposed the condition that Brandford serve as the executioner, so “that his Crime may leave a more lasting Impression on him.” Although performing this task spared Brandford’s life, even observers noted that it was “*A very hard choice*” for the young man.¹³⁸ He was condemned for robbery, so he lacked any prior experience with taking the lives of others. Pennsylvania may have selected Brandford to perform this duty not only to deter him from future criminal endeavors, but also because of the problems finding someone else. In 1731, the sheriff of Somerset County, New Jersey, had to execute Robert Roberts, a murderer, after failing to procure another hangman.¹³⁹ This reluctant decision reveals the efforts of even the local law enforcement officials to avoid being identified with the unpopular post. However, Brandford’s previous bad behavior made him a likely candidate for this unpopular office.

¹³⁷ Negley Teeters found that Henry Byrnes hanged Negro Peter in 1782. Unfortunately, few details are available regarding Byrnes besides his position. Another case in 1780 suggested that the local constables hanged James Sutton for piracy in Philadelphia. Daniel Pellito is also mentioned as the “publick Whipper” for Philadelphia in the late 1740s and early 1750s. Pellito even received a pay raise, possibly in hopes that he would better help preserve order within the city. However, it is unclear if his duties also included serving as the hangman especially since the city council, not the colonial assembly, paid his salary. Teeters, *Scaffold and Chair*, 10; *Minutes of the Common Council of the City of Philadelphia. 1704 to 1776* (Philadelphia: Crissy & Marley, 1847), 517, 566-67; Townsend Ward, “A Walk to Darby,” *PMHB* 3, no. 2 (1879): 151.

¹³⁸ *Pennsylvania Gazette*, 19 May 1737; 7 July 1737; *American Weekly Mercury*, 7 July 1737; *CR*, 4:224.

¹³⁹ *Pennsylvania Gazette*, 15 July 1731.

Other hangmen sought to conceal their identity to avoid any possible repercussions for their role in the execution. When William Welsh was sent to the gallows in 1784, the minister was appalled by the hangman's decision to blacken his face. Nevertheless, Welsh defended the executioner's actions, claiming that it would have no effect on the proceedings and "probably would prevent his being ill-used by some of his comrades."¹⁴⁰ The German hangman clearly feared local backlash for his role in executing Welsh, a Revolutionary War veteran. Indeed, although Welsh earned his fate by robbing a local woman, his actions differed from many robberies. Unlike many highwaymen, Welsh did use violence to steal from victim. Furthermore, he claimed to have only robbed her because of his inability to find work and in a desperate attempt to fulfill his husbandly duties as his wife languished under an unspecified illness. Several officers testified on his behalf during the trial to no avail. However, many in the region may have expressed sympathy for Welsh. During the Revolution, Berks County witnessed the growth of a sizable Whig population who may have sympathized with the disgraced veteran.¹⁴¹ The execution of Welsh and George Scheffer attracted a large crowd that surely contained some friends of the condemned. Consequently, the hangman sought a modicum of anonymity, even if some in the crowd could still identify him.¹⁴² Consequently, his efforts to conceal his identity, and those of the crowd to learn it, led to yet another aspect of the ceremony to be contested.

Furthermore, it is possible that county officials imported a hangman at times because the local residents refused to serve in this capacity. In 1759, Elizabeth Crowl was

¹⁴⁰ Biddle, *Autobiography of Charles Biddle*, 194.

¹⁴¹ For a discussion of Berks County during the Revolution, please see Guenther, "Berks County," 67-84.

¹⁴² Biddle, *Autobiography of Charles Biddle*, 192-94.

executed in Berks County for infanticide. The death of a young girl, probably a servant, garnered scant mention in the local newspapers except to mention that she died penitent, thus making it difficult to learn much about her life or exact manner of death.¹⁴³

However, a bill of expenses for the execution remains in which Berks officials paid the hangman £7 10 shillings for Crowl's execution as well as compensating him for living expenses of 18 shillings for eleven days. These expenses related to the executioner far outweighed any other costs that her trial or execution incurred. His costs more than doubled the expenses for the judge and clerks.¹⁴⁴ Most Berks County officials probably viewed this as a necessary expense because so few individuals in the county would be willing to take such an unpopular office. Therefore, they were forced to hire someone from outside the region. While the bill of costs maintained a degree of anonymity for the participants in Crowl's final days, the decision to keep the executioner anonymous could further suggest the desire for a secret identity with this job.

These contested areas—the ownership of the dead, the location of the execution, and the identity of the hangman—took on added significance when Pennsylvanians began to debate the efficacy of capital punishment in the 1780s. The harshness of the law may have made Pennsylvania coroners reluctant to return a suicide verdict. As the state decreased the number of capital crimes, the issue of the fate of the condemned also became a minor issue. In 1790, the *Pennsylvania Mercury* reprinted an essay that lampooned much of the treatment of the condemned. The essayist facetiously championed opening dissections of the condemned to the general public because

¹⁴³ *Pennsylvania Gazette*, 15 March 1759.

¹⁴⁴ Costs with Elizabeth Crowl, n.d., Boone Family Archives (Collection #15), Box 1, folder 9, Berks County Historical Society, Reading, Pa.

observers would find “a culprit’s *insides* being at least as *wonderful* a sight as a *camel*.” When examining the body, they may even discover “that half a dozen devils will be found lodged under the left ventricle of the heart, all armed with pointed pitchforks, with which they used to stimulate the culprit to all manner of crimes.”¹⁴⁵ This satirist critiqued both the decision to hand the condemned over to the surgeons and capital punishment. These views fit with the predominant sentiment after the Revolution that the criminal could be reformed and rehabilitated. The continuing practice of punishing the corpse would serve little purpose and instead could simply harden the rest of the populace to such criminal activities.

Despite the more widespread acceptance of Shippen and the practice of anatomy, the issue of grave robbing and ownership of the dead remained a hotly debated topic in Pennsylvania and other parts of the nation throughout the nineteenth century.¹⁴⁶ The United States Congress gave federal judges the discretion to “add to the judgment” by giving the bodies of murderers to local surgeons for dissection. Realizing the potentially unpopular aspects of this decision, Congress also mandated a fine of up to \$100 and one year in prison for anyone who attempted to forcibly recover the corpse.¹⁴⁷ William Bradford, Pennsylvania’s attorney general, criticized the practice of punishing the condemned beyond death through anatomical dissections. Rather than pursue these

¹⁴⁵ *Pennsylvania Mercury*, 20 November 1790.

¹⁴⁶ For a general overview of the nineteenth-century body snatching, please see Shultz, *Body Snatching*; Sappol, *A Traffic of Dead Bodies*, 74-135; and Horace Montgomery, “A Body Snatcher sponsors Pennsylvania’s Anatomy Act,” *Journal of the History of Medicine & Allied Sciences* 21, no. 4 (1966): 374-400.

¹⁴⁷ *An Act for Punishment of certain Crimes against the United States* ([New York]: Childs & Swaine, [1790]), 1. Bradley Chapin noted that there was some opposition to this bill, but the proponents proved successful in including dissection as a punishment. Bradley Chapin, “Felony Law Reform in the Early Republic,” *PHMB* 113 (April 1989): 182.

additional sanctions, he claimed that the state would be better served by striving to eliminate their criminal tendencies.¹⁴⁸ Indeed, even members of Philadelphia's medical establishment feared the fate of their bodies following death. Dr. Philip Syng Physick, a professor of surgery in the late eighteenth and early nineteenth centuries, left explicit instructions for the preparation and final burial of his body. First, he only allowed two of his long time female domestic servants to handle his corpse. The body was kept in a warm room for a period of time to allow the onset of decay before it was to be placed within two coffins with the outer coffin soldered shut. No one would be invited to the interment, at which the body would be placed in yet another coffin. John Bell, Physick's biographer, contended that such outlandish demands reflected the growing diminishment of his mental faculties, especially since several other early anatomists like John Hunter encouraged the dissection of their bodies. Physick's demands also revealed his desire to avoid the fate awarded only to the condemned or others who forfeited the right to their corpses.¹⁴⁹ The growth of medical schools in the city may have also fueled his fears that one of his former medical students could have reveled in the possibility of violating the body of the once-venerated professor.

Throughout these debates, the issue of capital punishment and the appropriate penalties for offenders remained at the forefront. For eighteenth-century Pennsylvanians, the gallows and the corpse served as tangible reminders of the state's authority. Because of British precedent, the state possessed the authority to assume ownership of the deceased to either display or pass on to the surgeons, which allowed for a transformation

¹⁴⁸ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 52.

¹⁴⁹ John Bell, "Philip Syng Physick" in *Lives of Eminent American Physicians and Surgeons of the Nineteenth Century*, ed. Samuel D. Gross (Philadelphia: Lindsay & Blakiston, 1861), 423-25.

of the condemned. No longer seen as a villain or cancer upon society, such a change allowed the criminal now to prove advantageous in a way that he or she had not served in life. In the final moments leading up to death, the state possessed the ability to further redefine the criminal, even if he or she was not given to the surgeons. Similarly, the state sought to control the body after moving away from capital punishment in the 1780s and 1790s. Rather than asserting posthumous ownership, the state stipulated standards of dress, diet, and appearance for the inmates of the new prisons.¹⁵⁰ The manner of death or the location of the gallows, especially if in an unfamiliar location, could impose further shame upon the criminal. These methods of providing additional sanctions were increasingly viewed as outdated as the state moved away from capital punishment. Rather than punish the body, the government increasingly placed a larger emphasis on sanctioning the mind through incarceration and solitary confinement in hopes of reforming the criminal. The changing atmosphere by the end of the century reduced the number of candidates for the gallows as well as subjects for the dissection table. In a similar vein, the desire to punish through the location of the execution also faded over time. By the 1830s, the practice of public executions ceased altogether as Pennsylvania reformers advocated private executions in order to avoid the spectacle at the gallows.¹⁵¹ Nevertheless, the contested issues surrounding the penal system failed to dissipate as the executions were now performed privately in new institutions such as Eastern State Penitentiary that now dotted the landscape.

¹⁵⁰ Peter Okun, *Crime and the Nation: Prison Reform and Popular Fiction in Philadelphia, 1786-1800* (New York: Routledge, 2002), 15-16.

¹⁵¹ Masur, *Rites of Execution*, 95-116.

Chapter 5
“JUSTICE IN MERCY”:
Selective executions while debating the practicality of capital punishment, 1780-1794

The onset of the Revolution provoked numerous questions about the continuation of traditional punishments in the new nation. Historian Louis Masur contended that the colonists sought to differentiate themselves from the bloodthirsty reputation of the English, both in their use of the gallows as well as the atrocities attributed to English soldiers throughout the Revolution.¹ Throughout the conflict, American newspapers offered a skewed perception of English soldiers, emphasizing their numerous misdeeds while downplaying the crimes committed by American forces. During the invasion of Philadelphia in 1777, one observer from Delaware reported the troops “ravish[ed], or attempt[ed] violently to effect it, on the person of a young woman of spotless character,” thus exposing their ultimate depravity, especially in contrast to the American soldiers, who represented the new nation’s republican ideals.² Thomas McKean accused the English of “committing actions of cruelty hitherto unthought of even by themselves such as murdering old men, ravishing women & little girls, [and] burning houses with the inhabitants in them.”³ During the final days of the conflict, Pennsylvania newspapers regularly reported on “rogues,” “villains,” “desperate robbers,” and “banditti” infesting the area, and often resisting the Whigs.⁴ The rise of Tory outlaw gangs like the Doans prompted some critics to contend that the “enemy, taking every mean, pitiful advantage of our situation, have even descended to the low art so long practiced in their native

¹ Masur, *Rites of Execution*, 54-59.

² *Pennsylvania Evening Post*, 2 September 1777.

³ Thomas McKean to Sally McKean, 20 July 1779, McKean Papers, vol. 6, p. 25, HSP.

⁴ *Pennsylvania Gazette*, 7 February 1781; 3 October 1781; 5 December 1781; 24 March 1784.

country: I mean *that of robbing on the highways*.”⁵ Similar to earlier decades, many Pennsylvanians feared that an influx of immigrants, the growth of urban centers following the Revolution, and along with the new potential danger of a growing free black population in the aftermath of the 1780 abolition law could de-stabilize life in the newly independent state.⁶ In the wake of these fears, the use of the gallows came under increased scrutiny. Over the course of the eighteenth century, the Assembly had routinely expanded the number of capital crimes with an aim to preserve order throughout Pennsylvania. However, the perceived rise in crime along with new intellectual trends emerging out of the Enlightenment and the Revolutionary War made numerous reformers doubt the effectiveness of the penal codes. Although advocates of the penal changes contended that capital punishment would curb these threats, others claimed that profligate use of the death penalty would undermine the new republican government.

These doubts about Pennsylvania’s capital statutes and the novel ideas springing forth on both sides of the Atlantic regarding capital punishment also led the Pennsylvania legislature to drastically revise the existing penal laws in 1786 and again in 1794 to create a more humane and effective criminal justice system.⁷ The new penal code of 1786

⁵*Independent Gazetteer*, 22 June 1782.

⁶ Mark E. Kann, *Punishment, Prisons, and Patriarch: Liberty and Power in the Early American Republic* (New York: New York University Press, 2005), 43-45; Rowe, “Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century,” 688-706.

⁷ Bradley Chapin noted that both liberal and conservative governments supported the revised penal codes, first in 1786 and later in 1794, as they jointly recognized the need to reduce the number of capital statutes. Chapin, “Felony Law Reform in the Early Republic,” *PMHB* 113 (April 1989): 179. Among the more notable works on the subject of penal reform and the rise of the penitentiary in the late eighteenth century are David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New Brunswick, N.J.: Aldine Transaction, 1990), 57-62; Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978); David B. Davis, “The Movement to Abolish Capital Punishment in America, 1787-1861,” *American Historical Review* 63 (1957): 23-46; Meranze, *Laboratories of Virtue*, 87-127; Post, “Early Efforts to Abolish Capital Punishment in Pennsylvania,” 38-42; Foucault, *Discipline and Punish*, 73-131; Gottlieb, “Theater of

conceded the inefficacy of the death penalty as both a deterrent and an appropriate penalty for most offenses. Such a final sentence failed to allow criminals to reform and overcome their past mistakes. Therefore, robbery, burglary, sodomy, and buggery were now punished with the forfeiture of goods and up to ten years of imprisonment and servitude. Even non-capital crimes such as larceny saw changes in their punishments. Previously the state punished larceny through a combination of corporal punishment and restitution. The law increased the number of lashes for subsequent offenses and a third conviction could result in up to four years in the house of corrections, but the crime remained a regular problem throughout the eighteenth century. The new statutes now punished the crime with anywhere from one to three years of labor based on the value of the stolen items. The Assembly contended that “visible punishment of long duration” would succeed where the gallows had failed.⁸ Convicted felons would be assigned a variety of duties such as maintaining the streets, building defensive fortifications, and toiling in mines, which prompted Pennsylvanians to commonly refer to this new statute as the wheelbarrow law. The new laws also mandated means to distinguish the inmates from the rest of the population without employing the older methods of branding or mutilation. Michael Meranze contended that such a system relied not only on the practice of public shame to deter similar crimes, but was also a visible manifestation of “human

Death,” 189-211; Adam Jay Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America* (New Haven: Yale University Press, 1992), 47-68; Martin B. Miller, “Dread and Terror: The Creation of State Penitentiaries in New York and Pennsylvania, 1788 to 1838” (PhD diss., University of California, Berkeley, 1980), 116-84; Jim Rice, “‘This Province, so Meanly and Thinly Inhabited’: Punishing Maryland’s Criminals, 1681-1850,” *Journal of the Early Republic* 19 (Spring, 1999): 15-42; and Masur, *Rites of Execution*, 50-92.

⁸ *Statutes at Large*, 12:280-90.

depravity,” which resonated among the citizens of the early republic.⁹ In a political atmosphere that regularly exploited public displays to honor virtue and condemn the villainous, public labor could potentially educate Pennsylvanians of the possible ill-effects of their behavior. Pennsylvania slowly returned to Penn’s original vision by 1794, as only first-degree murder and treason remained as capital crimes.

Nevertheless, Pennsylvanians refused to completely abandon the death penalty and reserved the right to take the lives of the worst offenders. This chapter argues that Pennsylvanians were plagued with doubts about the death penalty and its effectiveness in the early republic. For example, the 1780s witnessed the highest success rate of pardons since the 1730s (40.9 percent).¹⁰ Yet, state officials still frequently used the bloody justice to remove criminals who were deemed irredeemable and deserving only of death. The early decades saw Pennsylvanians debate the use of the death penalty as reformers such as Benjamin Rush embraced European trends and questioned the use of the gallows. Individual cases such as Elizabeth Wilson, who was condemned for infanticide in 1785, were cited as proof of the inherent flaws that resulted from the widespread use of the death penalty. However, other inhabitants believed that the gallows offered the best means to impose order and refuted these beliefs. Following the reduction of the capital statutes in 1786, these debates raged on as Pennsylvanians failed to reach a consensus about their effectiveness. Although reformers embraced labor and the new prison system as the means to rehabilitate an offender, these novel penal methods posed a number of unanticipated challenges, which weakened their overall efficacy. Many Pennsylvanians

⁹ Meranze, *Laboratories of Virtue*, 72.

¹⁰ This percentage excludes the thirteen outlaws who were condemned, but never hanged nor pardoned.

remained committed to reform, but instead abandoned public labor and the majority of the state's capital crimes in hopes of reforming offenders by the early 1790s.

Several prominent Europeans, including Montesquieu and Voltaire, had denounced capital punishment as a barbaric practice that contrasted with the ideals of the Enlightenment. For the Pennsylvania reformers, Cesare Beccaria and John Howard had perhaps the most significant impact on the formation of their ideas. In his seminal work, *An Essay on Crimes and Punishment*, Beccaria claimed that bloody executions employed throughout Europe did little to deter crime. Instead, "the execution of a criminal is to the multitude a spectacle which in some excites compassion mixed with indignation."¹¹ Furthermore, Beccaria complained that the current legal systems contained "a multitude of laws that contradict each other, and many which expose the best men to the severest punishments, rendering the ideas of *vice* and *virtue* vague and fluctuating, and even their existence doubtful."¹² According to him, the often draconian punishments simply served to harden men's hearts and instead "gives rise to impunity" rather than eliminating these behaviors all together. Instead, legal codes needed to ensure that punishments fit the severity of the offense in order to best serve society. Finally, he rejected the seemingly capricious nature of the petition system. Beccaria argued, "Crimes are more effectually prevented by the *certainty* than the *severity* of punishment."¹³ The regular extension of the pardons to the condemned made it possible for criminals to evade the law's greatest sanctions. If criminals could count on a pardon, then the law failed to deter because of the possibility to escape the consequences. According to Beccaria, this undermined the law's

¹¹ Cesare Beccaria, *An Essay on Crimes and Punishments* (Edinburgh: n.p., 1778), 86.

¹² *Ibid.*, 28.

¹³ *Ibid.*, 80.

effectiveness and increased the challenges in creating a civil society. This last point resonated among Pennsylvania reformers as numerous capital offenders obtained pardons in the 1770s and 1780s.

Critics of Pennsylvania's criminal justice system found numerous flaws within the current administration of justice, especially the practice of granting pardons. As discussed in chapter 3, many of the condemned obtained the support of various esteemed individuals to present their case to the SEC. The potential for a pardon, even in the wake of admitting their guilt, stripped "away the dread of punishment, and consequently flatter villainy with impunity."¹⁴ Although the condemned generally assumed a penitential stance, their assurances counted for little once they left the watchful eyes of the state. Indeed, Pennsylvania's history in the eighteenth century offered several examples of such repeat offenders. In 1736, colonial officials pardoned Catherine Connor for burglary, but she resumed her life of crime resulting in her execution the following year.¹⁵ In 1751, John Crow's confession led to the arrest and execution of a crime ring that terrorized Philadelphia.¹⁶ For his cooperation and because the Provincial Assembly deemed Crow "the least guilty," they pardoned him under the gallows. Crow played the role of a grateful sinner, "shedding many Tears of Joy, thanking God, and the Governor, for the Mercy he had reciev'd, and making large Promises of forsaking those wicked Courses and leading a good Life for the future."¹⁷ However, this reprieve did little to alter Crow's behavior. Only a few months later, he was re-arrested in New Jersey for horse theft.

¹⁴ *Pennsylvania Herald*, 25 November 1786.

¹⁵ *CR*, 4:47; *Pennsylvania Gazette*, 7 July 1737.

¹⁶ *An Account of the Robberies Committee by John Morrison*.

¹⁷ *CR*, 5:506; *An Account of the Robberies by John Morrison*, 11.

Although Crow apparently escaped the gallows a second time, he was later arrested in Chester County for lurking near a farm, possibly planning to rob the house. Finally, he was executed for burglary in 1754—only three years after his initial pardon.¹⁸

Cases such as Crow prompted some Pennsylvanians to reject the lenient elements of Pennsylvania's legal system for failing to promote real reform in the offender. The state could rarely rely on their assurances despite how earnest they may appear. The local newspapers lampooned the perpetual threat of repeat offenders, even those individuals who were seen as deserving mercy. The *Pennsylvania Herald* printed an anecdote about a young man brought before the Oyer and Terminer. When the prosecutor failed to show, the chief justice asked the defendant if he would leave the state in return for his freedom. The young man immediately agreed, but when pressed on the issue, replied, "*I don't know—but I'll try.*"¹⁹ Another author described pardons as "tacit disapprobations of the laws!"²⁰ Although most commentators condemned European methods of punishment, an article in the *Pennsylvania Packet* praised the Russian government for eradicating serious crime partially by never pardoning criminals.²¹ The weaknesses of the pardon system convinced many reformers that the law required more certain punishments.

In addition to the problems associated with pardons, eighteenth-century reformers also claimed that the death penalty failed to serve as an effective deterrent against future crimes. Beccaria likened the death penalty to the "war of a whole nation against a citizen,

¹⁸ *Pennsylvania Gazette*, 13 June 1751; 16 January 1753; 30 May 1754.

¹⁹ *Pennsylvania Herald*, 20 September 1787.

²⁰ *Pennsylvania Evening Herald*, 7 October 1786. Not all officials shared this opposition to pardons. James Wilson believed that pardons helped to offset the possible errors in judgment as men administered the law. However, he still did not believe that even the majority of criminals deserved such mercy. Homer T. Rosenberger, "James Wilson's Theories of Punishment," *PMHB* 73 (January 1949): 62.

²¹ *Pennsylvania Packet*, 27 February 1783.

whose destruction they consider as necessary or useful to the general good.”²² The execution could transform the condemned into a sympathetic and even heroic figure, which threatened to undermine the state’s ability to maintain order. Furthermore, the use of the death penalty guaranteed no reduction in the crime rate. The newly independent Americans needed only to gaze across the Atlantic to see the problems with the older system of punishment. The gallows at London groaned from overuse, yet they had no shortage of thieves to hang. Critics maintained that English criminals accepted death as their eventual fate and consequently focused on enjoying life before this untimely end.²³ If the state instead sentenced individuals to permanent servitude, then their lasting condition could easily serve to deter others from committing the crime in the future. The loss of personal freedom when sentenced to this ignominious fate would be a far greater penalty than any man or woman could endure.²⁴ Consequently, creating a system in which men feared the law would be sure to prevent the spread of crime and licentiousness.²⁵ John Howard, the English reformer, extensively studied prisons in both England and the European continent. Based on his research, he concluded that penitentiaries could much more effectively eliminate such criminal behaviors and reintegrate the offenders into society. However, prisons needed to make sweeping changes in order to become these institutions of reform. Howard called for better food, a cleaner environment, the elimination of alcohol, the separation of inmates based on their

²² Beccaria, *An Essay on Crimes and Punishments*, 83.

²³ Between 1781 and 1785, the Old Bailey court sentenced 687 individuals to death. However, the British government carried out only 293 executions, which constituted 42.6 percent of the condemned. Gatrell, *The Hanging Tree*, 616; *Pennsylvania Evening Herald*, 16 July 1785.

²⁴ Beccaria, *On Crimes and Punishments and Other Writings*, 66-72.

²⁵ *Ibid.*, 103-104.

offenses, religious education, and the introduction of prison labor.²⁶ If prisons made these necessary reforms, Howard believed that prisons could effectively reduce the behaviors that caused crime.

By the early 1780s, the ideas of Beccaria and Howard began to take root in Pennsylvania as the first critics emerged to attack the current penal system. The Philadelphia Society for Alleviating the Miseries of Public Prisons (henceforth this will be referred to by its later name, the Pennsylvania Prison Society) agreed with Howard and praised his work in improving prison conditions. The members shared his view that by making “the Miserable Tenants of Prisons, the objects of more General attention & Compassion and for having pointed out, the means of not only alleviating their Miseries but of Preventing these Crimes & Misfortunes which are the Causes of them.”²⁷ Perhaps the greatest champion of these ideals was Dr. Benjamin Rush, a prominent figure in both Philadelphia’s medical and political fields by the end of the eighteenth century.²⁸ Rush’s work in both physiology and psychiatry convinced him, like Beccaria and Howard, that criminals could truly eliminate these evil tendencies. Similar to eighteenth-century Quakers, he believed that the key was promoting the proper qualities such as temperance and industry in the citizenry. However, such values did not have to be inculcated at an

²⁶ Howard’s impact extended beyond Pennsylvania as reformers in various states invoked his ideas in an attempt to revise their penal statutes. Michael Kraus, “Eighteenth Century Humanitarianism: Collaboration between Europe and America,” *PMHB* 60 (July 1936): 272-76; Robert Alan Cooper, “Ideas and their execution: English Prison Reform,” *Eighteenth-Century Studies* 10 (Autumn, 1976): 77-80.

²⁷ Minutes of the Pennsylvania Prison Society, 14 November 1787, HSP.

²⁸ For additional analysis of Rush’s views on penology, please see Robert R. Sullivan, “The Birth of the Prison: The Case of Benjamin Rush,” *Eighteenth-Century Studies* 31 (Spring, 1998): 333-344; Kann, *Punishment, Prisons, and Patriarch*, 89-109; Meranze, *Laboratories of Virtue*, 120-26, 148-49.

early age, but could be fostered even later in life to produce truly reformed individuals.²⁹ Older methods of corporal punishment such as the lash and the gallows could never produce such results because they were “inflicted in an arbitrary manner... [are] contrary to the spirit of liberty, and ... should not be tolerated in a free government.” Rush contended that rather than promote rehabilitation, public penalties stripped the offender of his or her sense of shame, leaving only “a spirit of revenge against the whole community, whose laws have inflicted his punishment upon him.”³⁰ Indeed, Rush also found these older methods of punishment to be far too ineffective. Even those individuals, who committed non-capital crimes were far more likely in the future to resume a life of crime, and potentially end up on the gallows. Instead, the state needed to recognize the limitations of the current system of penalties and embrace new methods such as “solitude and labour.”³¹ Rush agreed with Howard that these harsh penalties would force criminals to contemplate the severity of their offenses, thus leading to a true redemption of their lives.

Rush took a radical stance on some aspects of capital punishment. He denounced the death penalty for the crime of murder because it simply “multiplies murder” rather than prevents future ones.³² Rush further argued that earthly judges lacked the authority to take a life. Instead, only God could make this choice. He reminded Pennsylvania’s Christians that their faith “commands us to forgive, and even to do good to, our enemies, [which] can never authorise the punishment of murder by death.” Rush downplayed

²⁹ Kann, *Punishment, Prisons, and Patriarch*, 89-97; Thomas L. Dumm, *Democracy and Punishment: Disciplinary Origins of the United States* (Madison, Wisc.: University of Wisconsin Press, 1987), 89-96.

³⁰ Benjamin Rush, *Essays: Literary, Moral and Philosophical*, ed. Michael Meranze (Schenectady, N.Y.: Union College Press, 1988), 80.

³¹ *Ibid.*, 37, 39, 40.

³² *Ibid.*, 95.

instances in the scriptures of capital punishment and instead countered that every execution possibly prevented God from exercising “his darling attribute of mercy.”³³ Man needed to rely on God’s judgment and infinite wisdom to determine if death was truly necessary. Indeed, Rush believed that biblical justification for the death penalty may have referred to eternal damnation, not an earthly death. Ultimately, though, Rush dismissed the use the scripture as the basis for Pennsylvania’s penal law. Mosaic law listed numerous capital offenses, including adultery and blasphemy. Modern society could no longer rely on such outdated punishments. Rush employed this rhetoric to appeal both to devout Christians and Pennsylvania’s religious skeptics. Throughout his essay, Rush contended that modern society no longer needed, nor accepted, such penalties.

Moreover, Rush claimed capital punishment failed to deter crime. If the death penalty truly worked in this manner, then all criminals would have been deterred, especially after the gratuitous use of the gallows during the Revolutionary period. Criminals often won a fair bit of public sympathy, especially as they stood awaiting their imminent death. Several examples discussed in chapter 2 such as the cases of Frederick Stump, John Ironcutter, and Lazarus Stewart reveal how capital offenders often received a degree of popular support, which either facilitated their escape from prison or allowed them to elude capture. Rush argued that, rather than instill the proper values in the populace, public executions instead built up “a hatred of all law and government; and thus disposes [the criminal] to the perpetration of every crime.”³⁴ Finally, the current system of government was too arbitrary to adequately promote social control. The

³³Ibid., 96, 97.

³⁴Ibid., 85.

profligate extension of pardons coupled with overly sympathetic jurors weakened the state's ability to effectively punish offenders. Indeed, the opportunities for mercy perhaps even promoted criminal behavior, as many offenders believed they could avoid the gallows except in rare cases. These negative effects of the current judicial system served only to undermine the possible elimination of crime.

According to Rush, the Revolution presented Pennsylvania—and the nation as a whole—with the novel opportunity to incorporate these radical new ideas. The older methods of punishment provided vengeance (both communal and personal) but failed to produce any lasting benefits for the state. Instead, Americans should completely sever all ties with these barbaric vestiges of the old system.³⁵ Rush was critical of the evolution of American penal reform since it largely lagged behind regions such as Tuscany, which totally outlawed public executions.³⁶ Consequently, Rush proposed following Beccaria's ideal punishment of public labor for the benefit of the state. Unlike the gallows, which often had a limited effect, Rush believed that "Personal liberty is so dear to all men, that the loss of it, for an indefinite time, is a punishment so severe that death has often been preferred to it."³⁷ Fitting with this loss of liberty, the state needed to commission a large public prison that accomplished a new goal. No longer could the prison be used simply to hold prisoners. It now had to serve as both a place of incarceration and a promoter of reform. For the profligate criminal, such an institution would serve as an "abode of misery" and soon tales of "its horrors... which cannot fail of increasing the terror of its

³⁵ Rush, *Letters of Benjamin Rush*, 1:527-28.

³⁶ *Ibid.*, 1:526.

³⁷ Rush, *Essays*, 87.

punishments,” would spread throughout the populace.³⁸ Thus, these methods could far more effectively reform individuals than the gallows ever did. With this system firmly in place, the law guaranteed the “certainty of punishment,” thus leading to rehabilitation.³⁹

By the 1780s, numerous other Pennsylvanians believed that the laws, which were devised in the “despotic and barbarous ages,” needed to be revised.⁴⁰ Amicus, a pseudonymous author in the *Pennsylvania Packet*, feared that independence would attract “the scum of some European dominion” to flock to Pennsylvania. Although the state had a growing number of capital crimes, these individuals could commit regularly commit lesser crimes without the fear of losing their lives. Amicus argued that public labor rather than corporal punishment would prove to be the most effective means to eliminate these criminal activities while also benefiting the state.⁴¹ Other observers agreed that acts of cruelty had no place in a “civilized city.”⁴² These sentiments led the courts and even local citizens to seek ways to ameliorate the punishments whenever possible. In a finding consistent with this study, Roger Lane concluded juries often accepted a myriad of excuses, even in murder cases, to acquit the offender.⁴³ Justices such as McKean often played an opposing role during the court cases. In one address before a convicted burglar, he informed the condemned man that “The law has so particular and so tender a regard to the immunity of a man’s house, that it stiles it his castle, and will not suffer it to be violated with impunity.”⁴⁴ Nevertheless, McKean also urged jurors to exercise

³⁸Ibid., 88.

³⁹Ibid., 91.

⁴⁰Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 5.

⁴¹*Pennsylvania Packet*, 9 October 1784.

⁴²*Pennsylvania Evening Herald*, 12 July 1786.

⁴³Lane, *Violent Death in the City*, 66-76.

⁴⁴“Address to the Grand Jury,” 1777-79, McKean Papers, Box 3, p. 63, HSP.

compassion and give the accused a fair sentence. During a burglary trial, McKean informed the jury “that there was not evidence sufficient to touch 5s. worth of the defendant’s property, much less his life.”⁴⁵ Juries also managed to find ways to express their dissatisfaction with the harsh penal laws, tacitly agreeing with the reformers that offenders were “seldom reclaimed by any terrors he has undergone or any mercy he has received.”⁴⁶ The court system also presented jurors with a fair deal of leeway in assessing capital crimes such as burglary and robbery. From 1701 to 1786, Pennsylvania’s statutes defined larceny as the theft of goods worth less than five shillings.⁴⁷ Nevertheless, the juries regularly were willing to downgrade charges to simple larceny throughout this period. Juries for the Oyer and Terminer court reduced the charges forty-five times between 1767 and 1786 (Table 5.1).

⁴⁵ *Carlisle Gazette*, 23 November 1785.

⁴⁶ Bradford, *An Enquiry How far the Punishment of Death is Necessary in Pennsylvania*, 23.

⁴⁷ *Statutes at Large*, 2:159, 3:246-47, 9:15-16.

Table 5.1
Capital property cases handled by Pennsylvania’s Oyer and Terminer courts, 1767-1792.

	<u>1767-1779</u>	<u>1780-1786</u>	<u>1787-1792</u>
Trials	99	143	115
Defendants	138	254	215
Repeat offenders	8	55	54
Condemned	45 (32.6%)	97 (38.2%)	4 (1.9%)
Not Guilty	20 (14.5%)	43 (16.9%)	18 (8.6%)
Reduced to larceny	26 (18.8%)	19 (7.5%)	4 (1.9%)
Labor	0 (0%)	17 (7.0%)	113 (52.6%)
Ignoramus	32 (23.2%)	55 (21.7%)	36 (16.7%)
No action	15 (10.9%)	22 (8.7%)	42 (19.5%)

Sources: Oyer and Terminer Dockets, State Archives. Percentages of the defendants for each period appear in parentheses. The condemned totals for property crimes between 1780 and 1786 are inflated because of the outlaws declared during the Revolution.

Although Peter Linebaugh discussed how the prices of different goods were often subjective to market forces leading to a broader definition of their value, convictions under the lesser charge revealed how the jurors displayed their compassion for the accused.⁴⁸ Meanwhile, juries extended this same leniency only four times after 1786 when the penal codes were revised. In the final years before the revision of the penal codes, eight cases alone were downgraded by the juries in hopes of easing the punishments. Overall, fewer than 37 percent of those convicted for property crimes had their charges reduced to larceny between 1767 and 1779. A closer examination of the numbers reveals increasing unwillingness of many juries to impose the death penalty upon criminals in the 1780s. In 1785, the last year before the revision of the penal laws,

⁴⁸ This number includes those cases that were sent to the court of the Quarter Sessions as well even if no verdict was listed in the records of RG-33. This follows a similar pattern in England where Peter Linebaugh contended that jurors frequently “under-valu[ed]” stolen property to avoid hanging the accused. Linebaugh, *The London Hanged*, 82.

sixteen individuals faced death for property crimes, including seven, who were charged with multiple offenses. Only four received death sentences while six had their charges reduced to larceny, which composed 26.1 percent of the total verdicts.⁴⁹ Unfortunately, the incomplete court records for most of the 1770s make it impossible to fully assess the true significance of this statistic. However, the bulk of the individuals receiving lesser sentences came during this period.

The views of the juries often reflected the attitudes of many local residents. As seen in chapter 2, Pennsylvania magistrates had a difficult time designating certain individuals as worthy for the gallows as the geographic differences often led to alternative interpretations of their actions. This trend continued through the Revolution. In the early 1780s, Tories, who were upset with their treatment under the Whig government, provided ample aid to the Doan gang. At least 28 individuals were charged with aiding and abetting the robbers, who plagued the Whig tax collectors. On the other hand, residents of Bucks County wanted to offer Joseph Doan, Jr., one of the members, a lesser sentence in hopes that he would implicate others, thus reflecting the problems in gaining a capital conviction when the system relied on the local populace.⁵⁰ As discussed in chapter 3, numerous citizens implored the SEC throughout the 1770s and 1780s to act on behalf of the condemned even in cases in which they believed the sentence was just. When confronted with the petitions of their friends and family, the SEC generally opted to extend leniency rather than the full brunt of the law.

⁴⁹ One woman, Mary Joiner, was listed with several men, who received death sentences for burglary. However, she was not included in this assessment as no punishment was listed for Joiner. Instead, she appears once more in a separate entry in the court dockets charged only with receiving stolen goods, which was not considered a capital offense. Oyer and Terminer papers, General Gaol Delivery Dockets, Philadelphia County, Box 1, 1785, RG-33

⁵⁰Rowe, "Outlawry in Pennsylvania," 233.

These concerns led several prominent Pennsylvanians to champion the need to reform the state's penal code. James Wilson, a law professor at the University of Pennsylvania and an original justice to the United States Supreme Court, argued that punishments needed to be moderate in order to prevent future crimes. Overly harsh penalties often hardened criminals and perpetuated crime rather than helping to deter such behavior.⁵¹ Although Benjamin Franklin differed with Rush by supporting capital punishment for murder, he agreed with his colleague that one could not punish all crimes with such harsh sanctions.⁵² In particular, Franklin denounced the use of the death penalty in property cases because the criminal's life exceeded the value of the stolen goods. Franklin served as president of the SEC from October 1785 until November 1788. Throughout his tenure, he regularly worked to lessen the harsher elements of Pennsylvania's penal laws. Nearly 50 percent of the condemned received pardons during his tenure in office, which exceeded the rate for the rest of the decade.⁵³ Excluding the thirteen outlaws who never faced justice, the state imposed 127 death sentences in the 1780s and spared 52 individuals (40.9 percent). When given the opportunity, Franklin regularly pardoned criminals who appeared deserving of death. For example, Jacob Dryer received a pardon for burglary in 1786 upon the condition of banishment from the state. Various circumstances prevented Dryer from complying with this stipulation, which led to his arrest. The state's Supreme Court ruled "that Council may legally issue a warrant for the execution of the prisoner, if they think that the public good requires

⁵¹Rosenberger, "James Wilson's Theories of Punishment," 54-59.

⁵² Marcello Maestro, "Benjamin Franklin and the Penal Laws," *Journal of the History of Ideas* 36 (July-September 1975): 558-59.

⁵³ The breakdown was twenty-seven death sentences with thirteen pardons.

it.”⁵⁴ Instead, Franklin and the SEC accepted the argument put forth by Dryer’s parents that he “may yet reform, if permitted once more to live,” and granted him a pardon.⁵⁵

In lieu of death, reformers claimed that wholesome labor could eliminate criminal tendencies and even posed a harsher penalty than death. Possibly reflecting the Protestant work ethic, critics of the death penalty claimed that “working in the mines with a brand on the forehead, so as to carry with them a monument of their infamy” would produce a much more lasting and salubrious effect than the gallows ever could.⁵⁶ Indeed, Pennsylvanians, similar to many Americans in the late eighteenth century, professed an abhorrence of being reduced into slavery. Throughout the 1760s and 1770s, publications and orators regularly denounced the English for attempting to enslave the Americans by stripping away their rights. Abolitionists in the 1780s denounced slavery as “disgraceful to any people, & more, especially to those, who have been contending in the great cause of liberty.”⁵⁷ Given these attitudes, advocates of reform easily felt that “mankind are more afraid of infamy, or slavery, than of death.”⁵⁸ Realizing that criminals often came from the lower classes and possibly lacked the skills to carry out more complex jobs, simple tasks such as sawing stone could help to effect this worthwhile change.⁵⁹ Because the assignment relied more on strength than skill, convicts could acquire “An employment which has the appearance of hard labour, yet is not oppressive.”

⁵⁴ CR, 15:631.

⁵⁵ Peter Dryer and his wife to the SEC, 3 October 1788, RG-27, Roll 39.

⁵⁶ *Pennsylvania Evening Herald and the American Monitor*, 16 July 1785.

⁵⁷ CR, 11:688.

⁵⁸ *Freeman’s Journal*, 31 August 1785.

⁵⁹ Albert Post offered a capitalist interpretation of this leniency. Although humanitarian efforts did weigh strongly on the minds of the reformers, they also realized that the early nation needed additional laborers, especially as the country expanded to the west. Therefore, such revisions would protect access to labor. Post, “Early Efforts to Abolish Capital Punishment in Pennsylvania,” 42.

Consequently, the criminals would have time to devote to the study of religion and personal reform while also benefiting the region with more stones for building.⁶⁰

This opposition to capital punishment prompted many Pennsylvanians to romanticize the noble origins of the Quaker colony, especially as the death penalty appeared ineffective in guaranteeing the safety of the populace. A 1782 author claimed that under William Penn's stewardship, Pennsylvania witnessed "the dawns of reason, happiness and humanity rising from among the ruins of a hemisphere, which still reeks with the blood of all its people."⁶¹ Similarly, an essayist in 1784 contended that Penn's "humanity and wisdom" strove to create a society distinguished by harmonious relations among all the inhabitants.⁶² Penn also mandated laws for his new colony like "a philosopher whose elevated mind rose above the errors and prejudices of his age, like a mountain, whose summit is enlightened by the first beams of the sun." While older precedents such as the Mosaic law may have worked "for a tribe of ardent barbarians," they failed to properly serve "an enlightened people of civilized and gentle manners."⁶³ Contemporaries could look at the rise of executions over the subsequent century to see the deviation from Penn's initial vision.

The regular crime reports in the newspapers also did little to ease concerns regarding the gallows' effectiveness. In May 1784, "a gang of villains" plagued Philadelphia and the surrounding countryside making the roads increasingly dangerous after dusk as the local watch proved ineffective. One group of "villains" attacked a

⁶⁰ *Pennsylvania Gazette*, 29 March 1786.

⁶¹ *Independent Gazetteer*, 29 June 1782.

⁶² *Freeman's Journal*, 28 April 1784.

⁶³ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 14, 21.

couple on the streets of Philadelphia and left Mrs. Elizabeth Houston bloody as they “attempt[ed] to cut her throat.” Following this street robbery, the same criminals proceeded to break into three nearby buildings. The robberies persisted even after the state offered a £300 reward for each of the perpetrators and a pardon to any individual, who implicated his accomplices.⁶⁴ These criminal activities prompted other Pennsylvanians to provide for their own protection. Several months after the previous robberies, a group of highwaymen ambushed two men arriving into the city. The city witnessed several break-ins over the next few nights, revealing the difficulties in policing the populace.⁶⁵ These crimes persisted despite regular executions for property crimes. In 1784, Pennsylvania executed thirteen men—all but one for burglary or robbery. Nearly 42 percent of the hangings took place in Philadelphia, the site of the bulk of the criminal activities. Thus, Pennsylvania’s bloody code of 1718, along with its later expansions, had failed to make the state safer.

The perceived rise in crimes and the efforts of reformers such as Rush helped lead to a campaign to revise the state’s penal code. Proponents of reform looked to New York’s novel labor law in 1785, which sentenced criminals to be chained to wheelbarrows and clean various public areas rather than use corporal punishments. Not all spoke glowingly of this new code, as one observer referred to it as “a new piece of tyranny, only calculated for the meridian of the piratical states in the Mediterranean.”⁶⁶ Nevertheless, many Pennsylvanians agreed that “An aversion to work is generally the

⁶⁴ *Pennsylvania Gazette*, 19 May 1784; *Pennsylvania Packet*, 9 October 1784; *Pennsylvania Archives*, 4th series, 3:964-65.

⁶⁵ *Pennsylvania Gazette*, 22 September 1784.

⁶⁶ *Pennsylvania Packet*, 27 August 1785.

chief inducement” for criminal behavior. Because these individuals strove to avoid work at all costs, a sentence of public labor would effectively deter crime because it “would be more horrid, to many of them, than death itself.” Opponents of capital punishment believed that the combination of labor and incarceration allowed the criminal ample opportunity to reform his or her character. Removed from corrupting influences and forced to work, the offender would have no choice, but to inculcate the values of industriousness, thrift, and even republican virtue. Finally, the labor produced a lasting benefit for the state. While public executions served as a form of communal vengeance and permanently removed the offender, public labor could result in more advantageous benefits. The laborers would perform a variety of tasks for the region ranging from cleaning roads to dredging canals, thereby promoting commerce and the general well-being of all the citizenry.⁶⁷

Others critics believed that the death penalty, in addition to its failings as a deterrent, was too repugnant for the new revolutionary society. A letter by “A Subscriber” in the *Pennsylvania Mercury* complained that “British criminal law...is too sanguinary, and has annexed punishments to crimes in very undue proportions.”⁶⁸ Another essayist contended that “the mind revolts at the cruelty of the sentence; the anguish of the criminal is supposed to exceed his guilt.”⁶⁹ Similarly, the death penalty imposed a cruel and unusual punishment on the condemned, as the very sentence often proved horrifying. Another author cited Beccaria in describing public executions as

⁶⁷ *Independent Gazetteer*, 27 November 1784.

⁶⁸ *Pennsylvania Mercury*, 14 April 1786.

⁶⁹ *Ibid.*, 4 August 1786.

“examples of barbarity.”⁷⁰ Indeed, several criminals even preferred suicide over a public hanging. John Webster dreaded the gallows so much in 1752 that he attempted to commit suicide in prison only to be foiled by the timely intervention of the jail keeper.⁷¹ In 1764, condemned burglar William Authenrieth lamented that “hanging is a terrible, infamous death! I cannot bear such a thing.” Consequently, he would rather die in prison than suffer the “infamous death of the gallows.”⁷² In 1785, Mamachtaga, a Native American condemned for murder in Westmoreland County, “writhed with horror and aversion” when the sheriff entered the courtroom holding a rope. These cases revealed the sheer terror elicited by the threat of capital punishment.⁷³ Such concerns alarmed many throughout the state as fear of the law appeared inconsistent with the republican experiment upon which they had embarked.

No consensus existed over the effectiveness of public executions in creating examples for the populace. Executions typically attracted huge crowds throughout the state. Sergeant Thomas Roberts estimated that the triple execution of William McCoy, Daniel Monaghan, and Patrick Drogan for murdering a barkeeper in Northampton County in 1779 attracted approximately 4,000 individuals, causing him to remark, “I never saw so many Specttators in my Life I think.”⁷⁴ Charles Biddle estimated that individuals traveled as far as twenty miles in 1784 to witness the hangings of William Welsh and George Scheffer in Berks County. Although Biddle criticized the spectators in hindsight,

⁷⁰ *Pennsylvania Herald and General Advertiser*, 25 November 1786.

⁷¹ *Pennsylvania Gazette*, 21 January 1752.

⁷² Tappert and Doberstein, *Journals of Henry Melchior Muhlenberg*, 2:68, 69.

⁷³ Hugh Henry Brackenridge, “The Trial of Mamachtaga, a Delaware Indian, the First Person Convicted of Murder West of the Alleghany Mountains, and Hanged for His Crime,” *Western Pennsylvania Historical Magazine* 1 (January 1918): 34.

⁷⁴ “Journal of Sergeant Thomas Roberts,” 12 June 1779, 240.

many parents brought their children, probably in hopes that their children would learn from this ghastly experience. So great was the desire to witness this monumental event that one elderly woman trekked nearly seventy miles to the gallows. Exhausted by her efforts, she fell asleep and missed the executions. Once awake, she “cried most bitterly” because of her failure to see the hangings.⁷⁵ Biddle’s enlightened views in the nineteenth century downplayed the effectiveness of the death penalty, but these responses revealed how numerous Pennsylvanians in the 1780s continued to place value in public executions. Some Pennsylvanians even contended that public executions could produce salubrious effects. Reverend Henry Muhlenberg claimed that the execution of Thomas Crouch in Berks County in 1779 inspired an aged German woman to confess to murdering a peddler some years before. Muhlenberg rejoiced in this revelation and her subsequent arrest, since she too “will receive the due reward of her deeds.”⁷⁶ However, many critics believed the gallows scene possessed real limitations. A reprinted account from a London newspaper characterized the spectators as “the idlest of holiday-makers.” Moreover, “thieves and pickpockets of both sexes” flocked to the scene in order to ply their trades within the anonymity of the large crowd.⁷⁷ Finally, one astonished reader in Pennsylvania questioned the role of executions as deterrents after reading about an execution in the Caribbean. A sentry who guarded the gallows during an execution was arrested and hanged for looting the corpses.⁷⁸ Because of these concerns and the large crowds attending Pennsylvania executions, many Pennsylvanians may have harbored

⁷⁵ Biddle, *Autobiography of Charles Biddle*, 194.

⁷⁶ Tappert and Doberstein, *Journals of Henry Muhlenberg*, 3:249.

⁷⁷ *Pennsylvania Packet*, 13 July 1780.

⁷⁸ *Pennsylvania Mercury*, 23 September 1788.

similar doubts about the efficacy of the gallows and the use of public executions in general throughout the 1780s.

Specific incidents also aided the battle against the death penalty as several cases excited public sympathy for the offender. Although many eighteenth-century Pennsylvanians deemed infanticide as “the highest and most heinous crime against the law of nature,” doubts about convictions increased by the 1780s.⁷⁹ The 1718 penal laws made the concealment of the death of a bastard child a capital offense. Although this was rarely enforced, the previous decades did see a rise in infanticide convictions. By the end of the century, changing attitudes about mothers challenged this trend. Family historians have argued that this era witnessed a rise in affection towards children. In infanticide cases, mothers, who professed their love for the child and claimed to have never meant to harm them were more likely to gain an acquittal.⁸⁰ Several historians have recently noted that women accused of infanticide were often painted in a more sympathetic light by the end of the eighteenth century.⁸¹ Novels depicted women as naïve and easily seduced by corrupt figures such as Joseph Deshong, who was portrayed in pamphlets as the villain that led to the disgrace and execution of Elizabeth Wilson. In *Moll Flanders*, the heroine’s downfall began after she too was lured into a sexual relationship under false

⁷⁹ *The Trial of Alice Clifton* ([Philadelphia]:, n.p., [1787]), 12.

⁸⁰ Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981), 65-91. Mark Jackson’s analysis of eighteenth century England found that many accused women were often portrayed in a better light, but they still often faced a great deal of hostility as “lewd, unnatural, and inhuman murderers.” Jackson, *New-born Child Murder*, 128.

⁸¹ Meredith Peterson Tufts, “A Matter of Context: Elizabeth Wilson Revisited,” *PMHB*, 131 (April 2007): 149-50; Merril D. Smith, ‘Unnatural Mothers’: Infanticide, Motherhood, and Class in the Mid-Atlantic, 1730-1830,” in *Over the Threshold: Intimate Violence in Early America*, ed. Christine Daniels and Michael V. Kennedy (New York: Routledge, 1999), 175, 180-81.

pretenses.⁸² Consequently, contemporaries began to offer causes beyond simply the evil behavior of the woman that led to the death of the infant. Wilson's supporters championed a more maternal view of her actions and speculated that "A helpless woman, in a situation so novel and so alarming---alone, and, perhaps, exhausted by her sufferings---may she not be the involuntary cause of her infant's death?"⁸³ Nevertheless, Wilson, a young single woman in Chester County, was executed for murdering her two twin children in 1786. Memorialized in print and the popular culture, this case sparked a howl of indignation as Wilson's defenders claimed that she unjustly bore the blame for the father's foul actions.⁸⁴

As the unwed mother of five illegitimate children, Wilson became an unlikely figure to galvanize public opinion or challenge views about proving infanticide. Yet, her trial and subsequent recasting of her public image provoked Pennsylvanians to debate the justness of convicting Wilson of a capital crime. In January 1785, a man found two corpses after his dog brought back the head of one of the children. Wilson was soon arrested because she was seen nursing her children in the region. She admitted only to abandoning the children in hopes that someone "who had humanity enough" would chance upon the children.⁸⁵ Despite her claims, William Atlee performed the "disagreeable task" of sentencing her to death, which he deemed a deserving fate for this

⁸² Daniel Defoe, *The Fortunes and Misfortunes of the Famous Moll Flanders* (London: Oxford University Press, 1961), 17-58.

⁸³ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 39.

⁸⁴ Daniel E. Williams provided a thorough analysis of *The Faithful Narrative of Elizabeth Wilson* as a literary document and the emotions that it sought to elicit in its readers. He contended that the tale sought to use her final words—which were dramatically shaped by the printer—to manipulate the audience to obtain a favorable image of her. Daniel E. Williams, "Victims of Narrative Seduction: The Literary Translations of Elizabeth (And 'Miss Harriot') Wilson," *Early American Literature* 28, no. 2 (1993): 148-49, 152-56, 163-64.

⁸⁵ *Freeman's Journal*, 12 January 1785.

“wicked abandoned woman,” who committed such a “horrid deed.”⁸⁶ Wilson remained silent throughout her trial except to assert her innocence. Many observers contended that these repeated assertions suggested either true innocence or that she was “an insensible, hardened creature,” who desperately sought to avoid the gallows.⁸⁷ Even when Wilson provided a confession, she portrayed herself as a young, naïve girl, who was seduced by promises of marriage. Thus, she did not accept full blame for the murder of her children. Over the subsequent years and even decades, Wilson’s tale became the subject of multiple pamphlets and broadsides. A decade later, Elizabeth Drinker read *A Faithful Narrative of Elizabeth Wilson*. Although she only vaguely remembered the details surrounding Wilson’s conviction and execution, Drinker deemed it a “sad tale,” which was “generally believed to be the truth.”⁸⁸ Drinker’s assessment revealed how successfully Wilson’s final confession countered Atlee’s description and instead recast her as a sympathetic figure.⁸⁹

Wilson’s tale not only paralleled many other confessions by chronicling the myriad of factors that led to her downfall, but she also included a villain, who potentially could draw the public’s ire. Despite coming from “honest, sober parents” and raised in a moral environment, Wilson deviated from her upbringing by engaging in “the soul-

⁸⁶ William A. Atlee to Esther Atlee, 21 October 1785, William A. Atlee Papers, Peter Force Collection, Series 9, Roll 107, Library of Congress, Washington, D.C.

⁸⁷ *A Faithful Narrative of Elizabeth Wilson*, 3.

⁸⁸ Crane, *The Diary of Elizabeth Drinker*, 2:918.

⁸⁹ Wilson possibly adopted this stance in hopes of securing a pardon. In eighteenth-century England, women who vehemently protested their innocence in response to infanticide charges were much less likely to receive mercy than those that meekly submitted to the court. Marilyn Francus, “Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth-Century England,” *Eighteenth-Century Life*, 21, no. 2 (1997): 133-56.

destroying sin of fornication.”⁹⁰ Wilson, a single mother, moved from Chester County to Philadelphia, possibly in search of work. The same problems continued to plague her even after relocating. Joseph Deshong, the sheriff of Sussex County, New Jersey, convinced her to enter into a sexual relationship through promises of marriage. Although Wilson already experienced the problems of being a single mother in the early republic, Deshong’s position of authority may have convinced Wilson to trust him. Wilson’s wayward lover abandoned her after she gave birth to twins, which forced her to return to her parents’ home as the single mother of three young children. Nevertheless, Wilson continued to desperately hope that Deshong would honor his promise to marry her. In the interim, she fulfilled the role of a good mother by nursing her children. Wilson’s behavior convinced many middle-class readers that she could not murder her children after caring for them. Deshong arrived six weeks later and the happy reunion with Wilson culminated with him convincing Wilson to accompany him on a walk into the woods. However, once alone, Deshong treacherously revealed his true character as he ordered Wilson to kill the children. After she refused, the “inhuman monster” pulled a gun and forced Wilson to remain still while “he wickedly stamped on their dear little breasts,” thus killing them.⁹¹ Prior to his departure, Deshong warned Wilson that he would murder her as well if she told anyone what had transpired.

Throughout Wilson’s account, she described herself as a loving mother in comparison to Deshong, the evil father. Although she admitted to be guilty of numerous sins and that she “deserve[d] not only death, but hell,” Wilson claimed “my Righteous

⁹⁰A *Faithful Narrative of Elizabeth Wilson*, 4.

⁹¹ Biddle, *Autobiography of Charles Biddle*, 199; A *Faithful Narrative of Elizabeth Wilson*, 6.

Judge doth know my innocence in respect of that cruel murder.”⁹² Other witnesses attested to Wilson’s proper behavior in prison, thus giving more credence to her assertions of innocence and her redeemable character. Consequently, she hoped that her pitiful tale coupled with the tireless exertions of her brother William would still win her a pardon. Indeed, learning of her story from William, Charles Biddle, the vice president of the SEC, claimed that if Elizabeth deserved death, then Deshong surely merited an even more severe sentence.⁹³ The circumstances surrounding her execution cast Wilson as an even more tragic figure. She approached death “perfectly calm & resigned” and used her final moments to warn others to avoid such a fate. Despite a delay to give the SEC a last chance to issue a reprieve, the authorities finally hanged Elizabeth. When her brother arrived moments later with the reprieve, his sister’s body hung lifelessly from the gallows. Wilson’s supporters viewed the execution as a miscarriage of justice because she only concealed the death of her children. Even this act was done under duress, as Deshong had threatened her. Deshong, who never faced charges from the state, clearly lost this case in the public opinion as the popular literature portrayed him as that “Hard-hearted Wretch! A Monster sure Disgrace to human eye.”⁹⁴ Pennsylvania law mandated a death sentence for Wilson for concealing the dead bodies, while Deshong escaped all sanctions. Consequently, observers “must drop a tear! What heart so hard, as not to melt at human woe!”⁹⁵ Wilson’s tale highlighted the woeful inadequacies of the current penal

⁹² *A Faithful Narrative of Elizabeth Wilson*, 6.

⁹³ Biddle, *Autobiography of Charles Biddle*, 199-202.

⁹⁴ *Elegy, &c. Fair daughters of America, and eke of Britain's isle*, (Boston: n.p., 1786).

⁹⁵ *A Faithful Narrative of Elizabeth Wilson*, 9.

system and the need to reform the law to allow the better treatment of women charged with infanticide.

However, not all Pennsylvanians agreed that the decision to do away with the gallows would improve society. Some clergymen even argued that magistrates carried out God's will by hanging the offenders.⁹⁶ For example, Robert Annan, a Presbyterian minister, disagreed with reformers such as Rush on the efficacy of public executions. Using the language of the philosopher John Locke, Annan contended that one could not dispute the loss of his or her life and property for violating the social contract. He further argued that only fear of the gallows prevented Pennsylvania from degenerating into a truly lawless region. Indeed, Annan refuted Rush's call to make even murder a non-capital crime, claiming that "assassination or murder, but [would] become common." Annan believed that executing murderers potentially saved the lives of countless Pennsylvanians, who failed to realize just how precarious their existence was. He instead denied Rush's belief that the existence of the death penalty led some to commit murder in order to be executed. Ignoring earlier examples such as John Bruleman (discussed in chapter 2), he instead contended that "None of those unhappy people, who are so wretched as to be wary of life, ever, I believe, murdered an innocent person, just for the purpose of bringing themselves to an ignominious end." For property crimes, restitution often failed to produce the desired results as well. Rather than simply viewing this act as

⁹⁶ Harry Potter, *Hanging in Judgment: Religion and the Death Penalty in England* (New York: Continuum, 1993), 10-13. Daniel Cohen argued that the Puritan clergy of New England remained largely committed to the use of the death penalty even into the nineteenth century. Not all shared this view in Pennsylvania. The clergy did emerge as prominent early members of the Pennsylvania Prison Society, including Reverend William White of Christ Church, who was elected its president. Daniel A. Cohen, "In Defense of the Gallows: Justifications of Capital Punishment in New England Execution Sermons, 1674-1825," *American Quarterly* 40 (June 1988): 147-64.

an assault on property, Annan viewed it as a much larger attack on society as a whole. Every act of thievery upset “the order, the peace, the quiet, and safety of society.” Consequently, he believed that all citizens would quickly hand over any criminal, who violated these laws, even in capital cases, because “almost all men are anxious to detect and secure the perpetrator, and bring him to condign punishment.”⁹⁷ Although a few would be able to escape justice, they should be seen as the exception. Thus, the state could be assured of quick and certain punishment for any who chose to break the law. Finally, Annan dismissed Rush’s assertion that public executions only hardened men to accept even more violence. Because “Death is the king of terrors,” then “an ignominious and violent death, preceded by all the solemnities of a formal judicial trial, and attended with all the majesty and awful pomp of the executive authority, must be much more terrible.” The gallows scene impressed the crowd in ways that public labor could never achieve. Deviation from “the laws of God and man” would instead spawn “the worst of evils.” In short, Annan believed that the ideas of Rush and Beccaria only promoted “absolute anarchy” that would ultimately “exterminate the whole human race.”⁹⁸ Although the advocates of reform were much more vocal, surely many Pennsylvanians agreed with Annan that public executions possessed a great deal of benefits for the state.

The reformers gained more support through the 1780s, finally leading to substantial reductions in the use of the death penalty. The 1776 Pennsylvania

⁹⁷ *American Museum, or, Repository of Ancient and Modern Pieces*, December 1788, v. 4, no. 6. Similarly, the minister disagreed with Rush that such crimes should be left to God’s judgment. Much of the current penal laws allowed for restitution, but this failed to be a successful deterrent when many of the accused were unable to pay, which often left them languishing in jail.

⁹⁸ *Ibid.*

Constitution allowed for revisions to the penal laws, but the state delayed making any changes for a decade because of the Revolutionary War.⁹⁹ The new capital statutes of 1786 reflected the beliefs of such prominent opponents of the death penalty as Beccaria and Rush as it claimed that deterrence should be based on “visible punishment of long duration.” Rather than rely on death, the state now sentenced prisoners to hard labor, which should be performed “publicly and disgracefully.”¹⁰⁰ The amended laws rested on the belief that the offenders could atone for their mistakes while also contributing to the general welfare of both the state and their victims. The state strove to provide different punishments based on the severity of the offense, because “to punish a *thief* equally with a *blood-thirsty* murderer, appears to be as inconsistent with reason and justice, as with the divine precepts of the gospel.”¹⁰¹ The new laws also sought to distinguish offenders from the rest of the general population. Consequently, inmates shaved (both their heads and beards) every week and wore distinctive clothing to prevent any attempted escapes. The law stipulated that those prisoners who refused to work and were placed in solitary confinement were supposed to wear irons. However, Ann Warder noted in her diary that the most dangerous criminals wore collars around their neck and waist that were anchored by “heavy ball[s]” in order to prevent escapes.¹⁰² Those who refused to work or were unable to do so were to be chained and kept in solitary confinement. Finally, the law mandated that the jail keepers would provide for the inmates’ material wants in order

⁹⁹ John K. Alexander argued that the legislature was motivated not by feelings of humanity, but a desire to control crime. Alexander, *Render Them Submissive*, 161-62.

¹⁰⁰ *Statutes at Large*, 12:280.

¹⁰¹ *Pennsylvania Mercury*, 28 April 1786.

¹⁰² Ann Warder, “Extracts from the Diary of Ann Warder,” *PMHB* 18, no. 1 (1894): 61.

to help promote their rehabilitation. Overall, the Assembly believed that these changes would transform the offenders into “useful members of society.”¹⁰³

Possibly in response to Wilson’s verdict, the 1786 law also revised the criteria needed to prove infanticide. No longer would the concealment of a bastard’s death be seen as sufficient evidence for a conviction.¹⁰⁴ The only two women, who received a death sentence for infanticide in the late 1780s (Alice Clifton and Sarah Williams) both received pardons. Williams lived with the McClintock family in Carlisle and sought to hide her pregnancy. Although she eventually admitted to giving birth, the defense offered multiple reasons to spare her. She claimed an injury prior to giving birth, had a reputation for honesty, had begun to make clothes for the child, appeared to be mentally incompetent, and also contended that she sent the child to live with her brother. Her attorney concluded it was “Improbable to suppose a Mother guilty of this unnatural Offense.”¹⁰⁵ Nevertheless, the jury convicted Williams, and she received a death sentence. After opting to make an example out of her through this harsh sentence, the jury hoped that her life was spared. Unwilling to replicate a scene similar to the case of Wilson, the SEC pardoned Williams.¹⁰⁶ Overall, some reformers began to call for better treatment of women, even married women, by granting them more autonomy in regards to controlling their property and even raising the children.¹⁰⁷

¹⁰³ *Statutes at Large*, 12:287.

¹⁰⁴ *Statutes at Large*, 12:283-84.

¹⁰⁵ Trial notes for *Respublica v. Sarah Williams*, 16 May 1787, Yeates Papers, Box 1787, Folder 3, HSP.

¹⁰⁶ Petition on behalf of Sarah Williams to the Judges of the Oyer and Terminer, 18 May 1787, RG-27, Roll 40; *Pennsylvania Herald and General Advertiser*, 9 June 1787; *CR*, 15:217-18.

¹⁰⁷ “A Tract on the Unreasonableness of the Laws of England, in regard to Wives,” *The Columbian Magazine*, (January 1788): 22-27. Not everyone agreed with the more lenient attitudes toward infanticide. A Philadelphia grand jury indicted Mary Hansbury, a maid at a nearby tavern, for infanticide in 1792 following the discovery of a dead infant. One observer gleefully noted her arrest which would “doubtless,

In the immediate aftermath of the penal revisions, reform-minded Pennsylvanians championed the new laws as effectively reducing criminal activities and promoting rehabilitating criminals across the state. After the passage of the new laws, Philip Nagle was convicted of burglary in Montgomery County in October, 1786. The new laws gave Nagle the option of choosing between death and five years of hard labor for his sentence. It was only “with some difficulty” that Nagle chose “labour instead of the halter,” which was offered as “convincing proof that the punishments by the new law are more terrifying to the idle vagabonds than all the horrors of an ignominious death.”¹⁰⁸ The *Pennsylvania Herald* proclaimed that if Pennsylvania achieved similar results to New York, then “it cannot fail to produce consequences here equally salutary.”¹⁰⁹ In September 1787, Rush wrote that the Prison Society had succeeded in not only reforming the prison, but also by promoting “virtue in general.” He claimed that societies such as this succeeded even more than religious authorities “in conveying useful instruction to the heart.”¹¹⁰ One assemblyman averred that even with the problems inherent in the new penal laws, they still succeeded because “the law that provides for his punishment, existence and

remove her to satiate the vengeance of humanity, by the forfeiture of her life.” In response, a letter authored by “Humanitas” sharply chastised this assessment of Hansbury’s case. First, such a rush to judgment threatened to taint the jury pool because the conclusion was based on assumptions rather than fact. More importantly, the willingness to employ the death penalty offered a sharp contrast to the prevalent attitudes in the state. Humanitas complained that “the paragraph in question holds us up as a people thirsting for blood, and represents us as a set of Canibals, licking their lips at the prospect of a human feast.” Even if Hansbury committed the crime, the required penalty would prevent her from reforming and returning as a useful and productive member of society, which Humanitas and others deemed to be the true purpose of the law. Hansbury was acquitted for the crime. Oyer and Terminer papers, General Gaol Delivery Dockets, Philadelphia County, Box 1, 1792, RG-33; *The Mail; or, Claypoole’s Daily Advertiser*, 26 October 1792.

¹⁰⁸ *Independent Gazetteer*, 19 October 1786.

¹⁰⁹ *Pennsylvania Herald, and General Advertiser*, 4 November 1786.

¹¹⁰ Rush, *Letters of Benjamin Rush*, 1:441, 443.

amendment, is better than one which provides only death as a punishment.”¹¹¹ Other supporters proclaimed that previous methods of corporal punishment had generally failed to reform the offender. Those criminals, who only received lashings generally resumed their life of crime upon their release. The specter of imprisonment, instead, promoted personal rehabilitation as no other sentence was as “terrible to the guilty mind.”¹¹²

However, the lack of consensus about capital punishment extended to the revisions of the penal code as critics bemoaned the effects of the “*experimental law*.” Although some hedged on the issue by both praising the Assembly for its bold initiative that the state desperately needed while also stating that the Pennsylvanians needed to wait and see if the lesser number of capital crimes helped to reduce crime, others complained that Philadelphians faced “Burglaries two or three times a week” as “Rogues and thieves...rob[bed] by night than day, because it is more easy, and the risk is now nearly the same.”¹¹³ Richard Peters, a Philadelphia assemblyman, complained that Philadelphians “are obliged to keep a garrison...[and] nor was the number of vagrants and robbers ever so great, as at the present” because of the revisions to the penal code.¹¹⁴ By the following year, the Assembly was already debating the effectiveness of these new penal laws and whether additional changes were warranted.¹¹⁵ Critics of the reform contended that rather than root out crime, the wheelbarrow law instead allowed previously condemned criminals to continue to plague the region. One member of the

¹¹¹ *Proceedings and Debates of the General Assembly of Pennsylvania* (Philadelphia: Joseph James, 1787), 2:41.

¹¹² *General Advertiser*, 27 December 1791.

¹¹³ *Pennsylvania Herald, and General Advertiser* 25 November 1786; *Independent Gazetteer*, 11 November 1786.

¹¹⁴ *Proceedings and Debates of the General Assembly of Pennsylvania*, 2:41

¹¹⁵ *Ibid.*, 2:39-42.

“wheelbarrow gentry” donned a wig and respectable clothing to pass as a “gentleman” in order to carry out a daring daytime robbery.¹¹⁶ In late October 1788, a farmer was riding into Philadelphia with his wife and daughter. Two men accosted the hapless travelers and placed a gun placed against the farmer’s chest. Thus immobilized, the unfortunate farmer was forced “to be a quiet witness of the most brutal violation of his wife by the other villain.” However, the two perpetrators departed following the rape without searching the wagon for any additional valuables. This failure to steal any goods from the farmer (although they surely assaulted his wife) prompted the author to conclude that the perpetrators could not be escaped wheelbarrow men.¹¹⁷ The threat of the marauding wheelbarrow men jeopardized not only Pennsylvania, but the neighboring states. After escaping in Philadelphia, John O’Neal fled to New Jersey and robbed a man in Monmouth County. Easily identified by the collar and chain that he was unable to remove, authorities soon arrested O’Neal “and it is probable [he] will be hanged.”¹¹⁸ In 1788, New York City authorities arrested two robbers, who had “struck so much terror” to New York City inhabitants. These men were also believed to be part of the “wheelbarrow gentry” because one man wore a wig to conceal his shaved head. A subsequent escape prompted a warning for residents of New York City to be on their guard against “these predatory villains,” especially because of the depredations committed by the “last swarm” from Philadelphia.¹¹⁹

¹¹⁶ *Pennsylvania Mercury*, 31 January 1789.

¹¹⁷ *Freeman’s Journal*, 12 November 1788.

¹¹⁸ *Pennsylvania Gazette*, 29 August 1787.

¹¹⁹ *Pennsylvania Mercury*, 30 December 1788; *Federal Gazette and Philadelphia Evening Post*, 7 February 1789.

George Sinclair, a member of the Doan gang, perhaps best typified the potential threats to the state represented by the move away from the death penalty. Although declared an outlaw, the state never acted against Sinclair either because of a pardon or he simply avoided arrest. Sinclair's close brush with death failed to lead to his rehabilitation as he was arrested in Lancaster County after a gun fight, but managed to escape from the jail in 1788. He again resumed his criminal ways in Northampton County the following year.¹²⁰ When Sinclair and an accomplice broke into a home in Easton, the armed robbers were thwarted by the residents who violently resisted. In the course of the melee, one of the burglars tried to shoot one of the defenders only to be thwarted by his misfiring gun, thus revealing the murderous intentions of the robbers. Sinclair received ten years of public labor, which was "richly merited."¹²¹ His actions closely paralleled typical printed accounts wheelbarrow men who were depicted as insatiable individuals consumed with the desire to steal. In the case of Sinclair and the other ex-convicts who resumed their criminal activities, public executions, which were permissible under the old laws, would have removed such a pernicious threat from society and removed the need for subsequent penalties.

Moreover, the wheelbarrow system appeared flawed to opponents of the reform because criminals frequently managed to avoid the labor sentences, which were paramount to their rehabilitation. John Conrad Metsch and his supporters petitioned the SEC to remove him from the work detail because his sentence prevented him from providing for his wife and young child. Furthermore, his family members—even more

¹²⁰ *Pennsylvania Gazette*, 17 September 1788.

¹²¹ *Independent Gazetteer*, 4 November 1789.

than Metsch—faced the daily humiliation as he worked on the city’s streets.¹²² The state exempted another inmate from daily labor because of a leg injury. Thus, his physical infirmity negated the state’s desire to punish him through hard labor.¹²³ Even more appalling in the eyes of many, opponents claimed that “the commutation of hard labour and slavery of death, had encouraged instead of repressing villainy.”¹²⁴ Consequently, the success of convicts to avoid labor prompted one critic to label them “State Pensioners” rather than prisoners.¹²⁵

In the midst of these changes, proponents of the death penalty continued to view the use of executions as beneficial for society even after the revised penal laws. In 1785, the state sentenced Robert Elliot to death for robbing Peter Whitaker’s house in Chester County. Elliot sought to exploit the debates surrounding capital punishment at this time as he asked for a pardon so that “he may yet become a usefull member of the community.” He also offered to serve in the state’s militia to prove his sincerity.¹²⁶ Elliot’s plight attracted the attention of several leading men of the county, who petitioned the SEC on his behalf. Because the stolen items were valued at only twenty shillings, his supporters successfully convinced the council to pardon Elliot in return on the condition of a permanent banishment from the United States.¹²⁷ Despite this assurance, Elliot soon reneged on the conditions of his pardon and resumed a life of crime. He subsequently was arrested for robberies in both Berks and Lancaster Counties and was sent to Philadelphia

¹²² John Conrad Metsch to the Supreme Executive Council, 30 July 1787; 5 November 1787, RG-27, Roll 40.

¹²³ James Berry to the SEC, 18 May 1790, RG-27, Roll 41.

¹²⁴ *Pennsylvania Herald, and General Advertiser*, 25 November 1786.

¹²⁵ *Federal Gazette, and Philadelphia Evening Post*, 6 February 1789.

¹²⁶ Robert Elliot to the SEC, 12 January 1786, RG-27, Roll 39.

¹²⁷ Petition to the SEC on behalf of Robert Elliott, n.d., RG-27, Roll 38; CR, 14:635.

for the execution of his original sentence.¹²⁸ Through this act, the state “sincerely hoped his death may serve as an expiation for his own iniquities an as a warning to the idle and the profligate to correct in time the corruptions of their hearts.”¹²⁹ This statement countered the attacks on capital punishment offered by the reformers for much of the 1780s. Instead, it harkened back to the sentiments expressed in the mid-eighteenth century, when Pennsylvanians increasingly embraced the use of the gallows. Rather than view Elliot as a redeemable figure, the SEC decided that he could benefit the state only by making him an example through his death rather than seeking to reform him.

Elliot’s case also supported the reformers’ arguments. Not only had he been a recipient of the state’s mercy, but he had prior personal experience with the alleged deterrent effects of the death penalty. One of his brothers was executed in Ireland for robbery. After his family immigrated to Pennsylvania, Fleming, Robert’s other brother, was executed in Chester County for the robbery and murder of a traveling peddler.¹³⁰ Based upon the experiences of his two brothers, an observer contended “We should suppose that these examples were brought as close home to the feelings of Robert, as example can possibly be pressed, and its utmost force on the heart of man fully and fairly tried.” Based upon the exploits and outcomes of the Elliot family, he concluded that the gallows failed to be an effective deterrent. If it truly was, Robert never would have followed his two brothers into a life of crime. In addition, the system of pardoning criminals surely failed since “Is it not probable, that men of base or abandoned principles,

¹²⁸ *Pennsylvania Gazette*, 6 December 1786; *Columbian Herald*, 19 February 1787; *Pennsylvania Evening Herald*, 16 May 1787.

¹²⁹ *Pennsylvania Evening Herald*, 16 May 1787.

¹³⁰ *CR*, 10:269-70; Oyer and Terminer papers, Chester County, Box 2, 1776, RG-33.

on whose hearts the terrors of future punishments may yet have some impressions, at the very time they are meditating such crimes, may deceive themselves by trusting to such opportunity of repentance, and the more boldly make their attempts?" Furthermore, a correspondent in the *Pennsylvania Packet* expressed concern about the new penal laws as well. Similar to the repentant criminal awaiting the gallows to resume criminal activities upon obtaining their release, the criminal working in the streets could pose a comparable threat. He then argued that the prison system was failing because the jail keepers lived in constant fear of attacks from their charges. Indeed, he claimed that last week several nearly killed a jail keeper. Rather than proving the effectiveness of labor and confinement in reforming their criminal tendencies, "these wretches...nearly effected, (but have vowed to complete) the murder of one of them."¹³¹ If a large city such as Philadelphia faced such problems controlling the criminal population, then how would the more rural and desolate parts of the state cope with this danger? This chilling assessment surely convinced numerous Pennsylvanians of the inadequacies of the revised system because it lacked the ultimate sanction of death.

The new emphasis on incarceration and rehabilitation required the state to build institutions to hold the prison population and provide for their well-being. One essayist complained that the public's expectations exceeded the capabilities of the new penal bill because "it is liable to be deranged and depraved, variously, in the execution." In particular, the state lacked prisons with sufficient individual cells to isolate inmates and prevent the spread of criminal behaviors.¹³² Prior to this reform, Philadelphia officials

¹³¹ *Pennsylvania Packet*, 19 May 1787.

¹³² *Pennsylvania Herald, and General Advertiser*, 7 October 1786.

authorized the construction of the Walnut Street Jail in the early 1770s. The 1786 law made jail keepers county employees, who received a regular salary rather than living off the fees collected from the inmates. The labor performed by the prisoners would help to offset the cost of the state supporting them. Moreover, the legislature largely blamed environmental conditions for the spread of crime. Attributing crime to idleness, intemperate behavior, and a lack of education, reformers feared that it could easily spread from one segment of the population to another. Therefore, jail keepers were to prevent the spread of crime by keeping newer convicts separate from “the old and hardened offenders.”¹³³ Fear of mimetic corruption led the state to allocate funds for the construction of an addition to the Philadelphia penitentiary house in 1790 to prevent “the more hardened and atrocious offenders” from contaminating other inmates through their conversation.¹³⁴ A twenty-foot-high wall encompassed the prison along with sturdy iron doors in hopes of deterring the prisoners from attempting any escapes.¹³⁵ Through this practice, the prisoners would slowly transform themselves to emerge as more virtuous and reformed members of society. The state hoped these new sanctions would lead to the reform of criminals who would leave the prison as “useful members of society.”¹³⁶ In 1787, reformers founded the Pennsylvania Prison Society because “the obligations of benevolence, which are founded on the precepts & Example of the author of Christianity, are not cancelled by the follies or Crimes of our fellow Creatures.” The members proposed weekly visits to discover the true conditions the inmates endured in order to

¹³³ *Statutes at Large*, 12:286.

¹³⁴ *Ibid.*, 13:515.

¹³⁵ Negley K. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835* (Philadelphia [?]: Pennsylvania Prison Society, 1955), 17-19.

¹³⁶ *Statutes at Large*, 12:287.

adequately address their material needs.. Echoing the ideas of Beccaria, Howard, and other advocates of penal reform, the society believed that “benevolence” would rehabilitate “our fellow creatures to virtue and happiness.”¹³⁷ Reformers believed that these changes would preclude “these Crimes & Misfortunes which are the Causes of them,” thereby minimize the need for the gallows.¹³⁸

The crux of the new penal laws lay in the ability to reform the criminal through both incarceration and employment in public works, but the state’s flawed prison system and regular contact between inmates and the city’s inhabitants did little to instill confidence in Pennsylvanians. Newspaper accounts regularly reported on prison riots and escapes in the 1780s. John Reynolds, the Philadelphia jail keeper, complained that sympathetic supporters made it nearly impossible to keep some of “these Wretches in Irons” because they supplied the inmates with “Saws, files, & other Instruments ... Baked up in pies & Loaves of Bread.”¹³⁹ Historian Thorsten Sellin estimated that nearly 27 percent of the male convicts escaped from the Philadelphia jail from 1787 to 1789.¹⁴⁰ Furthermore, riots could rage out of control such as a 1786 riot in which approximately eighty convicts rampaged throughout the Philadelphia jail. It was only suppressed when guards opened fire and killed one of the ringleaders, described simply as “an old offender.”¹⁴¹ This riot also reflected the effects of housing prisoners together. Their close proximity facilitated the easy communication and planning for such daring escapes. Their initial plan apparently involved breaking out of the prison in two separate locations and to

¹³⁷ Minutes of the Pennsylvania Prison Society, 8 May 1787, HSP.

¹³⁸ Ibid., 14 January 1788, HSP.

¹³⁹ John Reynolds to John Dickinson, 9 September 1784, RG-27, Roll 38.

¹⁴⁰ Thorsten Sellin, “Philadelphia Prisons of the Eighteenth Century,” *Transactions of the American Philosophical Society* 43, no. 1 (1953): 327.

¹⁴¹ *Pennsylvania Mercury*, 30 June 1786.

thus distract and divide the guards, hopefully resulting in more successfully fleeing the walls. March 1787 was a particularly trying month as the Philadelphia jail witnessed a mass escape of eighteen wheelbarrow men. Local officials soon recaptured several convicts, but not before they had resumed “their profession.” Later that month, prison officials uncovered a planned escape. Newspaper reports expressed the fear that the inmates may have really sought to massacre the jail keeper and his staff, revealing the limitations in rehabilitating offenders.¹⁴² Critics claimed that local sympathizers helped to create many of these problems that besieged the prison system. Following a riot in the Philadelphia jail, an observer noted that the wheelbarrow law was undercut “by many unthinking people, who converse with these felons in the streets, and even supply them with rum, which never fails to bring on a riot among them.”¹⁴³ Ann Warder also complained in her diary that the guards allowed “people to talk to them [criminals]” and did little to “prevent their receiving money.”¹⁴⁴ Enterprising prisoners even unsuccessfully attempted to tunnel out of the Walnut Street Prison in 1789.¹⁴⁵ Rural prisons were also plagued by this problem. Six wheelbarrow men escaped in Chester County. Prior to the recapture of four men near Philadelphia, they were cast as a gang of “atrocious offenders,” who attempted a highway robbery.¹⁴⁶ In York County, six escapees assaulted their jail keeper, stole his weapons, and escaped from the prison.¹⁴⁷ Even when criminals could be quickly recaptured, many feared what these hardened offenders could do while at liberty.

¹⁴² *Pennsylvania Gazette*, 7 March 1787; *Pennsylvania Mercury*, 23 March 1787.

¹⁴³ *Pennsylvania Gazette*, 23 May 1787.

¹⁴⁴ Warder, “Extracts from the Diary of Ann Warder,” 61.

¹⁴⁵ *Independent Gazetteer*, 14 January 1789.

¹⁴⁶ *Pennsylvania Mercury*, 22 June 1787; *Pennsylvania Gazette*, 27 June 1787.

¹⁴⁷ *Pennsylvania Mercury*, 31 July 1790.

Prison administration was often lacking throughout the 1780s and 1790s, which further undermined the possibility of prison's successfully rehabilitating offenders. The Pennsylvania Prison Society found that Walnut Street Jail in Philadelphia was run so corruptly as to dash any hopes of redeeming the prisoners. Instead, it was organized to allow the jail keeper to profit off his charges.¹⁴⁸ After a visit to the Philadelphia jail, the grand jury found conditions that "must shock every good citizen," especially in regards to their failure to rehabilitate criminals.¹⁴⁹ Prisoners complained that John Reynolds, the Philadelphia jailer, often abused his power. One inmate contended that Reynolds held him long after his case had been settled out of "his own Malicious Enmity."¹⁵⁰ Although the state opted not to remove Reynolds due to this allegation, the Philadelphia Oyer and Terminer fined the former tavern keeper for illegally selling alcohol in prison, thus suggesting that the judges found his administration less than exemplary.¹⁵¹ Finally, several prisoners petitioned Peter Muhlenberg, vice president of the SEC, to visit the prison in order to reveal "a secret which will be to the public good" by the end of 1787. However, they begged the inspectors not to notify Reynolds because of their fear of possible reprisals, including death. Another inmate alleged that his cooperation with authorities turned his former associates and Reynolds against him. Following a failed attempt to murder him in prison, authorities were forced to relocate the inmate to the

¹⁴⁸ John T. Scharf and Thompson Westcott, *History of Philadelphia, 1609-1884*(Philadelphia: L. H. Everts, & Co.), 3:1829.

¹⁴⁹ *Pennsylvania Gazette*, 26 September 1787.

¹⁵⁰ James McLaughlin to the SEC, 29 May 1787, RG-27, Roll 40.

¹⁵¹ Oyer and Terminer papers, General Gaol Delivery Dockets, Philadelphia County, Box 1, 1787, RG-33. Reynolds petitioned to have his fine remitted because the courts had overlooked this offense for the bulk of the eighteenth century. His argument suggested that he saw no need to change traditional methods of administrating the prison regardless of the wave of reform that struck the legislature at the time. John Reynolds to the SEC, 29 September 1787, RG-27, Roll 40.

workhouse.¹⁵² Charles Pryor, Jr., a convicted burglar, echoed many of these concerns about life in the Philadelphia jail as “Reynolds is well acquainted that the Felons in the wings [?], will murder any man who, betrays any thing that passes amongst them,” yet did little to provide for their safety. Instead, Reynolds only sought to profit from his position, even through illegal means such as the seizing stolen goods. In addition to these failings, the prison often failed to separate non-violent criminals from the more irredeemable convicts, which jeopardized the safety of these minor offenders and also allowed vices to contaminate the prison population. Pryor concluded that the “security of the Citizens” simply could not be guaranteed as long as Reynolds administered the prison.¹⁵³ Shortly after these complaints, the Board of Inspectors informed Governor Thomas Mifflin that prisons were often so poorly administered and filled with various evils that even the prisoners, who completed their sentences were permanently tainted with “the contagion of vice.” Thus, a former inmate would resume his criminal activities “until the gallows terminated his unhappy career.”¹⁵⁴ These claims emphasized the weaknesses that critics found in the beleaguered prison system and fueled doubts regarding the effectiveness of corrective institutions to reform offenders.

The spread of disease and the threat of violence within prison walls also hampered the efforts to promote rehabilitation. Between 1772 and 1774, Pennsylvania’s

¹⁵²Prisoners to Peter Muhlenberg, 16 November 1787; Thomas Wigley to the SEC, 31 May 1788, RG-27, Roll 40.

¹⁵³Charles Pryor, Jr. to Peter Muhlenberg, 3 June 1788, RG-27, Roll 40. Pryor later recanted this testimony as he claimed that Thomas Wigley, another inmate, misled him and that he only acted “in the Height of Passions.” Pryor to the SEC, 21 July 1788; 7 August 1788, RG-27, Roll 40.

¹⁵⁴ *Federal Gazette*, 29 December 1792.

prisons and workhouses witnessed at least seven deaths within their confines.¹⁵⁵ The inquests generally emphasized the disease that killed the prisoner to absolve the jailer of any blame. Nevertheless, this almost cavalier attitude towards the deaths suggested the widespread acceptance of the spread of disease in prisons. John Patrick Lynch, an inmate in Philadelphia's jail in 1780, begged the SEC for a parole while awaiting his trial after an outbreak of smallpox. Even after the penal reforms of 1786, another inmate complained that the unhealthy atmosphere within the prison had afflicted his body, leading to the loss of the use of his limbs.¹⁵⁶ The rigors and insalubrious effects of prison life (in addition to the fear of punishment) made even non-capital offenders despair and take their lives. In Bucks County, a prisoner fatally poisoned himself. Catherine Rogers slit her throat in the Carlisle jail. Inmates also regularly attacked each other with fatal results at times, which further revealed the limitations of the prison as a reformatory institution in the new nation.¹⁵⁷

Even as the debates surrounding the revised penal laws and new prisons raged on throughout the state, Pennsylvanians debated the need and efficacy of performing limited public executions. From 1787 to 1794, Pennsylvania executed just twenty-one individuals at a rate of 2.6 a year, which reflected a significant decrease from previous

¹⁵⁵ *Pennsylvania Gazette*, 3 March 1737; Inquisition of Negro Dick, 30 April 1772; Inquest of John Vansant, 19 February 1773; Inquest of John McGuyer, 17 June 1773; Inquest of Margaret Manning, 19 June 1773; Inquest of John Nevel, 23 June 1773; Inquest of John Kelley, 7 July 1773; Inquest of Negro Caesar, 3 October 1774, Coroners' inquests, RG-33.

¹⁵⁶ John Patrick Lynch to the SEC, 13 May 1780, RG-27, Roll 36; John Simpson to the SEC, 27 July 1786, RG-27, Roll 39.

¹⁵⁷ Inquest of Hugh Russell, 4 July 1781; Inquest of Catherine Rogers, 29 September 1785, Examination of Benjamin Hopkins, 15 March 1790, Coroners' inquests, RG-33.

years.¹⁵⁸ Indeed, 1791 was the first year since 1763 in which the state did not sentence anyone to death. However, Abraham and Levi Doans' death sentences proved how divisive of an issue capital punishment remained in the late 1780s. The two cousins gained infamy as leaders of a Tory gang that robbed tax collectors and murdered an officer in the Bucks County militia in the early 1780s.¹⁵⁹ Because they refused to submit to the charges, the state declared them outlaws, a status that remained in effect until their arrests in 1787.¹⁶⁰ Chief Justice Thomas McKean contended that British precedents allowed the state to execute outlaws without a jury trial. Opponents railed against such a grievous erosion of their rights and argued "By refusing to execute unjust or cruel laws, we furnish the best reasons for *repealing* them." Proponents on behalf of the accused outlaws reasoned that the length of time since the commission of the crimes and the state's revised laws meant that "*Death* in the scale of punishment, infinitely outweighs the crime of *theft*." An execution in this case would reveal the "inconstancy and imperfection of even the best attempts at reformation" and possibly threaten the experiment altogether.¹⁶¹ Instead, penal reform, and the perceived improvement more effective system of punishments, was viewed as a necessary step to curb these excesses and create a new and more effective means of punishing the deviants.¹⁶²

¹⁵⁸ This number includes Abraham and Levi Doan, who were executed as outlaws in 1788 although their crimes occurred before this period. Besides those, who were actually hanged, ten individuals received pardons, which was 34.5 percent of the total number condemned.

¹⁵⁹ *Pennsylvania Gazette*, 5 March 1783; *Independent Gazetteer*, 6 September 1783; *Pennsylvania Packet*, 6 September 1783.

¹⁶⁰ Rowe, "Outlawry in Pennsylvania," 230-41; George MacReynolds, *The New Doane Book: Bucks County's Bandittories of the Revolution* (Doylestown, Pa.: Bucks County Historical Society, 1952), 447.

¹⁶¹ *Pennsylvania Mercury*, 20 September 1788; 23 September 1788.

¹⁶² Hirsch, *The Rise of the Penitentiary*, 50-54.

Other critics adamantly asserted that the Doans deserved the gallows rather than leniency. Indeed, a robbery of a Bucks County tax collector in 1786 excited fears that “another Doan & Tomlinson Generation had arose.”¹⁶³ Perhaps an even more pertinent case was the criminal career of their cohort Aaron Doan who received a pardon in 1787 on the condition that he leave the United States for the rest of his life.¹⁶⁴ Despite such a generous concession, Aaron remained in the nation and received another death sentence the following year in Newark, New Jersey, for burglary. Perhaps reflecting disgust with the flawed criminal justice system, many observers expressed their disappointment when this “veteran in iniquity” received yet another pardon under the gallows.¹⁶⁵ Because of their fears that Abraham and Levy could also resume their criminal activities, the Bucks County petitioners quickly reminded the SEC of the crimes committed by “these pests of society.” These two men and their cohorts robbed their homes, crippled their businesses, and even caused some “to forsake their houses, to abandon their crying families in the night.” Although Abraham and Levi may have been deserving of a pardon—if they truly were penitent—the enemies of the Doans feared that the two would instead use a reprieve to exact vengeance upon those who testified against them. The petitioners concluded that their fate was a “Merited punishment” and mercy would be “wholly inconsistent with the peace and safety of the good subjects of the State.”¹⁶⁶ The state’s Supreme Court justices concurred as they reported “nothing favorable concerning them.”¹⁶⁷ Confronted with these mixed views about the Doans and their misdeeds, the SEC eventually had the

¹⁶³ *Pennsylvania Archives*, 1st series, 12:299.

¹⁶⁴ *CR*, 15:214.

¹⁶⁵ *New Jersey Journal*, 30 July 1788.

¹⁶⁶ Petition to the SEC against the Doans, 8 September 1788, RG-27, Roll 40.

¹⁶⁷ *CR*, 15:501.

Doans hanged on September 24, 1788 after a great deal of debate. However, the contested career of the Doans had ramifications even after death as the Plumstead Monthly Meeting refused to allow them to be interred in the burial ground.¹⁶⁸

Pennsylvania continued to selectively employ the gallows in these decades as the worst offenders were often viewed as irredeemable. Joseph Ramsey Warner was executed in Cumberland County in 1787 for robbing and murdering David Musselman, his traveling companion. Other travelers found Musselman's body the next day and were shocked by the scene. Even after previously viewing corpses "who had been lacerated by the Savages," these witnesses had never saw a body as mutilated as Musselman.¹⁶⁹ Warner denied any guilt and instead blamed two unknown assailants for the murder. However, the sizable amount of money found on Warner convinced the jury to condemn him in only three minutes despite his frequent protestations of innocence.¹⁷⁰ Although hangings represented a vestige of a past deemed barbaric, local authorities surely realized the value of such a spectacle in the wake of Warner's crime. Consequently, several factors may have contributed to the state's refusal to pardon him. The first reason may have just been the severity of the deed. Even in this frontier region, observers attested to the violent attack, which violated even the sensibilities of the frontier inhabitants. Furthermore, Warner refused to play the role of the penitent sinner. Instead, he professed his innocence to the large crowd even before the gallows. Later that summer, an unidentified man attempted to kill Adam Weaver, the primary witness against Warner.

¹⁶⁸ Harry M. Ward, *Between the Lines: Banditti of the American Revolution* (Westport, Conn.: Praeger, 2002), 132.

¹⁶⁹ *Pennsylvania Packet*, 20 January 1787.

¹⁷⁰ *Pennsylvania Gazette*, 24 January 1787; *Carlisle Gazette*, 16 May 1787; 23 May 1787.

Undeterred following his arrest, the assailant “openly and avowedly declared it was in revenge for the evidence he [Weaver] had given against Warner, adding that he wanted to deprive him of his life.”¹⁷¹ Although this case did not emerge as a major topic in the debate surrounding capital punishment, proponents of the death penalty could have contended that these factors proved the near impossibility of rehabilitating an offender such as Warner. Therefore, county officials instead used his execution to send the appropriate messages to the local population as a troop of soldiers—both mounted and on foot—accompanied Warner to the gallows.¹⁷² These symbols of authority revealed that many Pennsylvanians believed that the public executions continued to serve a valuable purpose even in this more enlightened age.

Even for less horrifying crimes, some Pennsylvanians continued to clamor for the use of the gallows in order to eliminate criminal behavior. Despite being a member of the Pennsylvania Prison Society, Thomas Fitzsimmons did not always share its view that labor and imprisonment was the optimal means to eliminate criminal behaviors. As a member of the House of Representatives, he called for the United States to make forgery a capital crime. Likening the crime to counterfeiting, Fitzsimmons claimed that forgery remained a capital crime in England.¹⁷³ With the rise of banking in the early republic, forgery became an increasing problem, especially for those with ties to the mercantile community such as Fitzsimmons, who also served as a director of the Bank of America, a

¹⁷¹ *Pennsylvania Mercury*, 3 August 1787.

¹⁷² *Carlisle Gazette*, 13 June 1787.

¹⁷³ *Federal Gazette*, 13 April 1790.

post that made him painfully aware of the potential ill-effects of forgery. Thus, he refused to advocate the ideas of his fellow members when it served as a conflict of interest.¹⁷⁴

Although Pennsylvanians did not embrace the idea of making forgery a capital crime, they became increasingly unwilling to tolerate rape after 1780. This crime remained capital crime until the final penal revisions of 1794. This refusal to tolerate sexual assaults marked a striking transformation from earlier decades, as most offenders managed to escape the full effects of the law. Prior to 1781, Pennsylvania juries condemned only five men—Negro James in 1736 and four men, who committed a gang rape in Chester County in 1771—for rape. Moreover, only two men were executed with the other three receiving pardons.¹⁷⁵ Court dockets also contained numerous accounts of violent sexual assaults that often went unpunished in earlier decades. James Brown of Kennett Township, Chester County assaulted Betty, a Native American woman, in 1722 by holding her down and using his thumbs to pry “her privet parts” open before inserting a sharpened stick.¹⁷⁶ James White’s sexual assault of Hannah McCradle in Chester County in 1736 left her overwhelmed by a sense of “great Terror.”¹⁷⁷ Two years later in the same county, John West attempted to stop Isabella Gibson from resisting with the threat that “he would Ravish her if it should Kill her.”¹⁷⁸ In another episode, James Kyle grabbed Christian Strawbridge by the throat to stop her from crying out. He then tossed

¹⁷⁴ Congress agreed with Fitzsimmons as a 1790 federal law made counterfeiting or forgery of United States notes a capital crime. *An Act for Punishment of certain Crimes against the United States*[New York]: n.p., [1790]), 3.

¹⁷⁵ Colonial officials only carried out the sentence for Patrick Kennedy for the gang rape of Jane Walker, as his three accomplices all received pardons. *CR*, 10:43-44.

¹⁷⁶ Examination of Thomas Pryor, 13 August 1722, CCQSP.

¹⁷⁷ Examination of Hannah McCradle, 2 February 1735-6, CCQSP.

¹⁷⁸ Examination of Isabella Gibson, 1 August 1738, CCQSP.

her to the ground, kicking and kneeling her before raping her.¹⁷⁹ Two women reported to the local justice of peace that Charles Campbel was “murdering a Woman” when he raped Lydia White.¹⁸⁰ Finally, when Negro Faris raped Sarah Mutchenor in Bucks County, the prosecutors claimed he caused her “great Damage.”¹⁸¹ Each of these cases saw the accused avoid the worst effects of the legal system because they were not charged with rape, but instead faced only non-capital charges.¹⁸² Prior to 1780, much of the burden rested on women to prove the legitimacy of their rape claims. Consequently, juries proved willing to accept feeble arguments in order to avoid a capital conviction. In 1771, a York County jury acquitted Philip Stone for rape because he failed to consummate the act, despite subjecting the victim to a sexual assault.¹⁸³ Men also seduced women such as Elizabeth Wilson and Alice Clifton, who were both condemned for infanticide, with false promises of marriage or freedom. Both of these cases suggested a coerced relationship, but failed to meet the eighteenth-century requirements for rape.

Women faced numerous difficulties in obtaining a conviction for rape for most of the eighteenth century. British jurists admitted that the woman’s reputation and how diligently she pursued charges against her attacker would easily sway the jury to determine if the woman had consented in any way to the rape. Lawmakers feared women would pursue rape charges simply to maliciously prosecute men. Any perceived

¹⁷⁹Examination of Christian Strawbridge, 30 May 1747, CCQSP.

¹⁸⁰Examination of Gilbert Hicks, Bucks County Criminal Papers, #1189, Bucks County Historical Society.

¹⁸¹ Indictment of Negro Faris, 16 September 1765, Bucks County Criminal Papers, #2284, Bucks County Historical Society.

¹⁸² Only Faris’ sentence carried the possibility of death. He received 39 lashes, had the letter ‘R’ branded on his forehead, and was banished from the colony. If he violated the terms of this sentence and attempted to return, then he could be executed for his transgression.

¹⁸³ Unfortunately, only the indictment and verdict of Stone’s 1771 case in York County remain among the papers of Pennsylvania’s Oyer and Terminer courts. The rationale for the decision was provided by Jasper Yeates in David Long’s case. Notes on the trial of David Long, Yeates Papers, Box 3, Folder 5, HSP.

deviations, ranging from sexual promiscuity to religious zealotry, could result in a sharp rebuke.¹⁸⁴ Consequently, much of the burden lay with the woman to prove the rape and that she had sought to resist his efforts.¹⁸⁵ Female accusers often endured disparaging assessments of their character and potentially suffer in society as a result. Even accounts of rape could often differ, which left women with the difficult task of convincing the jury to condemn the accused. In 1781, a Lancaster jury acquitted David Long of rape after witnesses disagreed with the victim's assessment of the circumstances. Anna Margareta Grubb charged Long and James Wilson with rape after they forced her into an alley "against her will." Wilson clamped his hand over her mouth to prevent her from calling for help and proceeded to rape her. After serving as a lookout, Long then raped her as well. Grubb claimed that she ran "off as hard as she could" when the two men finished and immediately notified her aunt and another woman about the rape. They then sought out the local constable to arrest the perpetrators.¹⁸⁶ Others failed to view Grubb as an innocent victim. Instead, these witnesses emphasized her tacit approval of Long's advancements and that she resented her subsequent treatment.¹⁸⁷ The defense claimed her enjoyment of bawdy jokes revealed that Grubb possessed the "Character of a Faggot." She also expressed no qualms about going with Long alone and appeared to show affection towards him. Grubb failed to cry out during the act suggested her complicity in

¹⁸⁴ Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Vintage Books, 1991), 13-34; Else L. Hambleton, "Playing the Rogue": Rape and Issues of Consent in Seventeenth-Century Massachusetts" in *Sex without Consent: Rape and Sexual Coercion in America*, ed. Merrill D. Smith (New York: New York University Press, 2001), 27-30; Joan M. Jensen, *Loosening the Bonds: Mid-Atlantic Farm Women, 1750-1850* (New Haven: Yale University Press, 1986), 148-50.

¹⁸⁵ Block, *Rape and Sexual Power in Early America*, 129-42.

¹⁸⁶ Oyer and Terminer papers, Lancaster County, Box 4, 1781, RG-33.

¹⁸⁷ Although listed as a co-defendant, Wilson fled and never faced charges. *Freeman's Journal*, 20 June 1781.

the deed. Finally, one witness testified that Grubb even sought compensation for her ripped clothing. Furthermore, she revealed that only one man had raped her as the other was interrupted prior to achieving “full Satisfaction.”¹⁸⁸ Forced to endure numerous assaults upon her character and Long’s acquittal, Grubb surely became disillusioned by the legal process. Possibly fearing similar character attacks, other women may have stayed silent about the abuse that they endured.

Because the vagaries of the law often allowed accused rapists to escape the full brunt of the law, successful rape prosecutions usually centered on portraying the rapist as engaging in a “most detestable crime” and failing to display any potential for rehabilitation.¹⁸⁹ Consequently, rape victims strove to depict the rapist as an unfeeling brute in order to win the jury’s sympathy and a capital conviction. In 1771, Jane Walker testified before a Chester County jury that several men carried her into a field and proceeded to have “Carnal Knowledge of her body by force and against her Will wile she Cryd.” Patrick Kennedy, one of the rapists, even used her clothing to tie her leg to a nearby tree as the rest of the men proceeded to ravish her. Not content with this ill-treatment, they also robbed her of a small amount of money and “abused her in a Cruel and Inhuman Manner.” Indeed, after completing this violent act, they abandoned Walker “in a heavy Cold pain and Dismal Storming Night.” When questioned on the case, the four defendants all admitted that Walker was indeed raped. However, they sought to place most of the blame upon their companions rather than suffer the punishment themselves. Thomas Fryer even admitted that Kennedy’s behavior embarrassed him.

¹⁸⁸Notes on the trial of David Long, Yeates Papers, Box 3, Folder 5, HSP.

¹⁸⁹ McKean papers, Charges to Grand juries, n.d., HSP.

Nevertheless, their inquisitor further cast the men as behaving in an inhuman manner. James Dever testified that he left Walker in the company of Kennedy, who was beating her with a stick, prompting the examiner to ask how he could “leave a woman in Such Company and under Such Distress.”¹⁹⁰ Although the four defendants initially all received death sentences, Richard Penn, the lieutenant governor, granted pardons to Fryer, Neal McCariher, and James Dever, deeming them to be “Objects of Pity and Compassion.” Consequently, these three men received the state’s mercy under the gallows while Kennedy was executed.¹⁹¹ Through this selective justice, local officials expressed their abhorrence of rape, but also a reluctance to carry out such an unprecedented sentence. Instead, they hoped that the theater of the gallows along with the one sacrifice would be enough to deter future offenders.

After 1781, Pennsylvanians typically viewed rapists as irredeemable and worthy of the gallows. Between 1781 and 1793, ten men received death sentences for rape and the state executed seven of them. Francis Courtney, an Irish servant in Philadelphia, was executed for betraying the trust of “a young girl of reputable parentage, and unblemished character.” The unidentified young lady had received permission to visit her previous employers in Philadelphia and dined with the servants, including Courtney. The next day Courtney overtook her on the way home and offered to show her a better way home. However, he soon revealed “the baseness of his intentions” as he verbally and physically abused her. Despite her vigorous efforts, the young girl succumbed as “brutal strength prevailed over female imbecility.” When help finally arrived, the disheveled young

¹⁹⁰Oyer and Terminer papers, Chester County, Box 2, 1771, RG-33.

¹⁹¹CR, 10:44; *Pennsylvania Gazette*, 7 May 1772.

woman quickly sought their aid and informed them that Courtney “had ruined her.” Overcome by the ordeal, she even struggled the next day to identify her rapist as she experienced “strong convulsions” in Courtney’s presence.¹⁹² Portrayed as both a brute and a robber of virtue, Courtney received little sympathy. Indeed, he had already displayed his poor character even prior to this assault. In an unrelated incident, Courtney’s violent beating of a young boy prompted Stephen Moore, an onlooker, to forcibly intervene. The Mayor’s Court in Philadelphia subsequently fined Moore for assault and battery, but he successfully petitioned the SEC in the wake of the rape charges to have the penalty remitted. The SEC agreed with Moore that the rape case and the beating both displayed “the very extraordinary insolence of Courtney.”¹⁹³ For Pennsylvanians, Courtney’s history of deviant behavior and, especially this violent assault made him a prime candidate for the gallows. These two cases suggested that Courtney preyed upon the young and helpless, so the SEC opted to not act in his favor and instead proceed with his execution.¹⁹⁴

Furthermore, the apparently inconsistent application of death sentences in rape cases could provoke a great deal of fear and outrage. In 1785, John McDonough and Richard Shirliffe both received death sentences in Chester County for rape. As discussed in chapter 3, Shirliffe’s plight attracted a great deal of sympathy, as numerous citizens petitioned the SEC on his behalf. Proponents for McDonough also beseeched the SEC for a pardon, arguing that the punishment of death was too severe for his transgression.¹⁹⁵ The

¹⁹² *Pennsylvania Packet*, 26 July 1785.

¹⁹³ Stephen Moore to the SEC, 14 July 1785, RG-27, Roll 39.

¹⁹⁴ *Pennsylvania Gazette*, 27 July 1785.

¹⁹⁵ Petition to the SEC on behalf of Shirliffe, 4 June 1786, RG-27, Roll 39.

SEC only extended mercy to Shirliffe, revealing a reluctance to simultaneously pardon two rapists in the same county.¹⁹⁶ However, local residents struggled to understand this decision. Most importantly, some critics railed against the state's willingness to forgive Shirliffe's crime when the law ostensibly sought to protect the virtue of young women. An essay by Disdain, identified only as a tenant farmer in Chester County, in the *Pennsylvania Mercury* reflected the confusion surrounding Shirliffe's pardon. Disdain claimed to be a recent settler in the state and freely admitted his ignorance regarding Pennsylvania's government, but the decision to pardon Shirliffe left him flabbergasted. His two young daughters regularly traveled to Philadelphia to sell his produce. Disdain used these profits to pay both his rents and taxes as a good citizen. Professing the American dream, he envisioned that his daughters' industrious behavior and "virtuous character" would allow them to eventually marry some of their more respectable neighbors. The pardon of Shirliffe jeopardized this dream as,

That a lurking, lustful ravisher, who destroys a virgin's blooming charms, and the peace and happiness of an affectionate father and mother, and brings shame on the face of many a brother and the tender sister of a helpless victim, should meet protection in Pennsylvania, formerly famed for justice and valour, is lamentable indeed!

Disdain labeled himself the defender of "female virtue" and publicly proclaimed his refusal to allow his daughters to visit the market anymore because such perpetrators escaped the legal penalties in Pennsylvania. Although, the law should seek to protect those, who "by hard labour and the sweat of our brow" maintained the government, the Council's decision threatened their livelihood and children. This lack of a coherent policy led Disdain to extol even the apparently lawless ways of "the wild Indian" exceeded the

¹⁹⁶CR, 15:31.

benefits of Pennsylvania's allegedly enlightened government.¹⁹⁷ Throughout his admonishment of the SEC, Disdain not only railed against the idea of pardons, but any sentence that would allow these perpetrators to prey upon these innocent young women. The gallows potentially would prevent such future travesties of justice according to Disdain as it provided a final solution for rapists.

Others agreed with Disdain that rapists were vile offenders, who deserved no mercy, and in these cases, the death penalty could continue to prove beneficial for the state. Thomas Cheyney and Caleb James, two Chester County justices of the peace, both averred that Shirliffe failed to express remorse for his actions or display any evidence of rehabilitation. Instead, Shirliffe remained an unrepentant offender despite the efforts of his wife on his part. Indeed, the subsequent statement of Esther Painter, the rape victim, did little to assuage the concerns of Disdain. In August 1786, she expressed her ongoing fears that Shirliffe would act upon threats he made to her at his trial.¹⁹⁸ For contemporaries in the 1780s, Painter's fear would suggest that rapists could not live in civilized society and if the government persisted in proceeding this way, it would destroy the very fabric of society. As the Supreme Court justices issued their sentences, they had the opportunity to address the severity of the crime and to take the criminal to task for his deviant behavior. Thomas McKean viewed rape as, especially heinous, leading him to offer little support for those, who committed this crime. Despite the reluctance to impose death for some other crimes by the 1780s, he continued to fully believe that rape was a valid capital offense. Offenders, who committed such an act had "fatally indulged a

¹⁹⁷ *Pennsylvania Mercury*, 30 June 1786.

¹⁹⁸ Thomas Cheyney and Caleb James to the SEC, 24 June 1786; Affirmation of Esther Painter, 2 August 1786, RG-27, Roll 39.

lawless lust” as they “ravished virgin innocence” and “robbed a chaste young woman...of her only treasure.”¹⁹⁹ During his tenure as chief justice, twenty-two men were brought before the court and charged with the crime of rape.²⁰⁰ The court only sentenced seven of those individuals to death while the grand jury dismissed five other cases and the remainder were either acquitted or apparently faced no further action. Out of the seven condemned individuals, only four were actually executed. Although the juries passed the final verdict and the SEC could grant pardons after the trial, McKean never lent his support to an individual convicted of rape, which suggested that he did not tolerate this crime.

Other factors also caused Pennsylvanians to embrace the need for capital punishment for rapists. Cornelia Hughes Dayton’s research on Connecticut in the seventeenth and eighteenth centuries concluded that the colony condemned only individuals, who fitted the definition of the “other”—African Americans, Native Americans, or foreigners—for rape. Thus, those of means or with more connections in society could easily avoid prosecution. Pennsylvania reflected similar trends. In the 1780s and 1790s, the state executed seven men for rape, including three African Americans and an Irish immigrant.²⁰¹ Rapists such as that of Jack Durham convinced proponents of capital punishment of the necessity of the gallows in eliminating such a vile threat. Durham, an escaped slave, raped Margaret Sthal in addition to an attempted

¹⁹⁹ McKean papers, Charges to Grand juries, n.d., HSP. It is unclear, who this case referred to as it was filed in a group identifying it as taking place between 1777 and 1779. However, the Oyer and Terminer court did not convict anyone of rape in that time period. It is possible that this crime may refer to Francis Courtney’s rape case in 1785. *Freeman’s Journal*, 26 July 1785.

²⁰⁰ Two more men were both listed in the court records, but no record was made in regards to their fate. Therefore, it is likely that they did not appear in court and are not included in this analysis.

²⁰¹ Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill, N.C.: University of North Carolina Press, 1995), 233.

rape only several days before this incident.²⁰² Three others, including one African American, received death sentences for rape after 1786. Possibly reflecting McKean's views as well as the opposition to Shirtliffe's pardon, none of these individuals received a pardon.

Even as the number of actual public executions decreased, symbolic ones continued, further revealing the power of capital punishment and public sanctions in the eyes of many Pennsylvanians. In 1788, the anti-Federalists violently responded to a public celebration in Carlisle to announce the ratification of the Constitution. The assailants not only attacked the celebrants, but the next day they hosted a mock ceremony in which McKean and James Wilson appeared in effigy. Mimicking the procession of the condemned, the anti-Federalists paraded the effigies throughout the streets of Carlisle as the crowd heaped scorn and derision on the unpopular representations. The ritual culminated with the mob throwing the two effigies into a bonfire "with shouts and most dreadful execrations."²⁰³ This unceremonious conclusion parodied the eventual fate of the condemned as the process of hanging removed these malcontents from society while allowing for communal justice. Even in this professed age of enlightenment, this symbolic execution sought to satisfy the desires for communal justice. Although they did not actually hang McKean and Wilson, the replication of the gallows theater allowed the anti-Federalists to voice their displeasure with the new Constitution.

Other unpopular acts created opportunities for Pennsylvanians to exploit these instruments of state control. During the early stages of the protests against the unpopular

²⁰² *Independent Gazetteer*, 27 June 1788.

²⁰³ *Carlisle Gazette*, 2 January 1788.

whiskey excise, tax collectors ran the risk of being apprehended and whipped for their actions.²⁰⁴ As the state moved to mitigate the practice of punishment, many Americans continued to view these acts as viable methods of punishing offenders. Even when they could not execute alleged guilty party, the symbolic act of the effigy allowed the community to gain some sense of vengeance. Similar to one of the main reasons for public executions in the first place, the metaphoric hangings and burnings provided a catharsis for the community—even if it did little to actually end these unpopular policies. The whipping of tax collectors also continued to impose the message of the people, this time without the backing of the state, on the offender’s body. In response to his endorsement of the unpopular policy, the tax collector had to be whipped in order to deter him from continuing this practice. Further reflecting the revolutionary influence, the opponents of the tax in the western counties proceeded to tar and feather the unfortunate man, which provided additional markings of his misdeeds. Alexander Hamilton noted at least five occasions in which western mobs tarred and feathered tax collectors. In the aftermath of the Whiskey Rebellion, two hundred men marched into Carlisle and once again burned an effigy of McKean in response to his opposition to the rebels.²⁰⁵ Although these examples lacked actual executions, Pennsylvanians incorporated these familiar symbols as the most effective means to convey their dissatisfaction with the current system. Therefore, the gallows continued to possess a popular power even as leading citizens questioned its efficacy.

²⁰⁴ *Pennsylvania Gazette*, 27 August 1794.

²⁰⁵ Johann N. Neem, “Freedom of Association in the Early Republic: The Republican Party, the Whiskey Rebellion, and the Philadelphia and New York Cordwainers’ Cases,” *PMHB*, 127 (July 2003): 264, 273-76, 277.

The courts continued to inconsistently apply law, which further undermined the effectiveness of these reforms. Jacob Dryer refused the option of labor for burglary and instead received a death sentence in an act of “human depravity and turpitude.”²⁰⁶ William Bradford contended that Dryer opted for this sentence in hopes of a pardon, thus revealing “how strong are the hopes of a pardon!”²⁰⁷ After much debate, the SEC eventually decided to extend this mercy to Dryer on the condition of exile from the country.²⁰⁸ Although Dryer failed to comply with these generous terms, he again managed to escape a death sentence. In the aftermath of the outlaw executions of Abraham and Levi Doan, the government realized that another execution for a property crime at this point could produce a great deal of public backlash.²⁰⁹ Therefore, the application of mercy allowed officials to claim legitimacy for their new reforms. However, without receiving any additional sanctions, critics believed that “these pests of society” harmed both individuals and the local economy. The decision to abandon the death penalty would “give sanction to the greatest enormities” that would continue to plague the rest of the state.²¹⁰ Thus, this ongoing discussion led both sides to debate the future direction of the state’s penal code.

These numerous problems prompted many observers to ask “who does not see the absurdity of the present wheelbarrow law” and helped push for more reforms only a few years after its passage.²¹¹ Caleb Lownes concluded that “the severity of the law, and disgraceful manner of executing it, led to a proportionate degree of depravity and

²⁰⁶ *Independent Journal*, 31 January 1787.

²⁰⁷ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 8.

²⁰⁸ *CR*, 15:159, 164, 165, 219,

²⁰⁹ *CR*, 15:311, 320, 501, 611, 624, 627, 629-31.

²¹⁰ People of Bucks County to the SEC, 8 September 1788, RG-27, Roll 40.

²¹¹ *Pennsylvania Mercury*, 20 September 1788.

insensibility and every spark of morality appeared to be destroyed.”²¹² Instead, convicts needed to be removed from society, leading to calls for Pennsylvania to embrace “the experiment of *solitude* and *labor*.”²¹³ Consequently, the Assembly reformed the penal laws in 1789 to eliminate some of the worst excesses. Because hardened criminals often corrupted the morals of young or accidental offenders, the state emphasized the need to separate criminals based on the severity of the offense. Prisons were required to separate felons from those held for debt or civil matters as well as housing the sexes in different areas. Prison officials were also to prevent felons from communicating with one another in order to lessen the chances of an escape. Furthermore, the jail keepers needed to maintain dry facilities and only distribute alcohol for medicinal purposes. Even this limited use required permission from an inspector appointed by the mayor and aldermen in Philadelphia or the local justices of the peace in the other counties. More importantly, death became a mandatory sentence for repeat offenders. This new law applied not only to escapees, who committed the same crime while at large, but any criminal, who resumed a life of crime after completing his or her sentence or obtaining a pardon even if the crime was no longer capital.²¹⁴ Similarly, the state passed an act banning the importation of felons into the state because of the subsequent “injury [which] hath arisen to the morals of some and others have been greatly endangered in their lives and property.”²¹⁵ The law sought to prevent ship captains from bringing in the convicts with sentences of three months in prison and a fine of £50 for any offenses. Although capital

²¹² Caleb Lownes, *An Account of the Alteration and Present State of the Penal Laws of Pennsylvania, Containing also an account of the Gaol and Penitentiary House of Philadelphia* (Lexington: J. Bradford, 1794), 4.

²¹³ *Pennsylvania Gazette*, 17 September 1788.

²¹⁴ *Statutes at Large*, 13:243-51.

²¹⁵ *Ibid.*, 13:261.

crimes composed only a minor segment of these changes, the state did show an increased willingness to use the gallows in recognition of the problems with the wheelbarrow law. For example, William Cole received a death sentence in 1789 after escaping from prison and resuming a life of crime. Observers approved of this harsh sentence because “Cole had proved himself incorrigible by repeated robberies” and worthy of only death.²¹⁶ Cases such as Cole reveal how the gallows remained an option for the worst offenders.

Despite the reformers’ lofty goals, regular reminders revealed the inadequacies of the new penal system. Escapes especially remained problematic for the state’s jails. The escape and subsequent crimes of John Logan, John Burns, John Bennet, Daniel Cronan, and John Ferguson represented the worst possible scenario as the state moved away from executions. These five young men—their average age was only 24.2—all had a history of criminal behavior long before they robbed and murdered John M’Farland. Burns had been transported for robbing the mail in Ireland before resuming his life of crime in Pennsylvania, where he was currently serving a three-year sentence for larceny. Logan had previously received a pardon for larceny after he attributed the crime to drunkenness and promised the SEC that with a reprieve “it will once more be in his Power, to tread in the well known paths of Virtue, and live a blameless Irreproachable Life.”²¹⁷ Nevertheless, he ignored the conditions of his pardon ordering him to leave the state and instead resumed his life of crime, resulting in seven more years of labor for burglary. Bennet also received seven years of labor, but refused to abandon his criminal ways as he escaped on three different occasions before his final escape in September 1789. During

²¹⁶ *Pennsylvania Mercury*, 4 August 1789.

²¹⁷ John Logan to the SEC, 5 September 1787, RG-27, Roll 40.

his periods outside of the prison walls, he frequently engaged in even more criminal actions, resulting in his ultimate conviction for two additional counts of burglary in July 1789. Finally, Cronan also escaped on multiple occasions prior to the murder of M'Farland.²¹⁸ This pattern of escape and resumption of criminal behavior represented ready evidence of the flaws with the current system for proponents of reform. The laws of 1786 only allowed the courts to sanction recaptured convicts by increasing their sentence by doubling the days they had escaped. Perhaps the earlier escapes of such as Cronan and Bennet influenced the legislature in revising the law earlier in 1789 to mandate death for escaped felons who committed the same crimes for which they were already incarcerated.²¹⁹

Upon their last escape in 1789, the five men plotted to rob the home of John M'Farland, only one block from the Center Square where the gallows were constructed.²²⁰ Burns struck M'Farland with the barrel of his gun when he answered the door. Despite his injury, M'Farland still managed to shut the door and lock it against the intruders. Undeterred, they broke open the window and entered the house, which they proceeded to rob, but not before striking M'Farland once again. The five assailants left M'Farland bound and “weltering in his blood, not knowing if he was dead or not.” After displaying this callous disregard for human life, they left and divided up their booty before moving on to another robbery and their eventual capture. Although the five appeared to be penitent on the gallows and their “last moments were suitable to their

²¹⁸ *Some account of John Burns, John Logan, John Ferguson, John Bennet, and Daniel Cronan, who were executed upon the commons in the city of Philadelphia, on Monday the 12th of October, 1789, for the murder and robbery of John M'Farland* ([Philadelphia]: n.p., [1789]).

²¹⁹ *Statutes at Large*, 12:286, 13:249.

²²⁰ *Pennsylvania Mercury*, 15 October 1789.

deplorable situation,” the actions of Burns and cohorts prompted one historian to deem the wheelbarrow experiment as a disaster.²²¹ Consequently, the Assembly revised the penal laws in 1791 and stipulated the death penalty for escaped convicts who re-engaged in their crimes. However, many reformers still believed that the prison—rather than the gallows—should serve as the primary instrument of reforming the offender.

Following the case of Burns and his cohorts, the state legislators again adjusted the statutes to eliminate the wheelbarrow laws. Property crimes continued to receive sentences involving labor and imprisonment, but the offenders now had to labor and live in solitary confinement. Furthermore, the prison sought to control access to the convicts. Unlike the public labor allowed in the wheelbarrow law, the prison prevented any unauthorized visitors after 9 p.m. For the recalcitrant inmates, the law did allow limited corporal punishment to force them to adhere to the rules. Inmates could receive up to thirteen lashes or six days in the dungeons wearing irons for various infractions while in prison. Following the same guidelines of the 1789 law, the new statute called for a capital sentence for anyone who committed the same crime after serving their sentence or being pardoned for their crime.²²² The state further refined these laws the following year.

Despite opposition to the treatment of outlaws during the Doan case, the Supreme Court successfully designated suspects as outlaws for failing to answer the indictments.

Although outlaws could submit for a trial, and be found not guilty, they also ran the risk of receiving a death sentence from the court in absentia. A later revision also removed the capital statute against witchcraft. This law had remained in effect since 1718, although

²²¹ *Some account of John Burns, John Logan, John Ferguson, John Bennet, and Daniel Cronan*; Scharf and Westcott, *History of Philadelphia*, 3:1829.

²²² *Statutes at Large*, 13:511-28.

the state never found any opportunity to apply it through the Oyer and Terminer courts for the past seventy years. The decision to remove this offense reflected the effect of the Enlightenment on the penal code. Not only did the Assembly move away from a belief in witchcraft, but the legislators sought to remove all aspects of this “barbaric” past from the legal codes.²²³

Finally, the state accepted the arguments of leading opponents of the death penalty such as Rush and William Bradford and adopted a drastically different penal code in 1794. Over the previous four years, the state rarely used the death penalty and hanged just seven men.²²⁴ Moreover, none of these men were convicted in Philadelphia, which witnessed the majority of the state’s executions throughout the eighteenth century. Instead, new counties such as Fayette and Alleghany relied on public executions in an attempt to impose order on the frontiers. In the midst of this changing climate, the new law stipulated that “the design of punishment is to prevent the commission of crimes, and to repair the injury that hath been done thereby to society or the individual.” Under this revised code, only first degree murder remained a capital crime. Such a law was one of the first penal codes to differentiate between the different levels of guilt involved in the act of murder. Although this provision included any accidental murders committed in the act of committing another crime, it necessarily meant that executions would occur much less often in Pennsylvania. Instead, the act stipulated that “moderate but certain penalties” were far more likely to rehabilitate the offender than “severe and excessive

²²³ Ibid., 14:128-39.

²²⁴ A total of twelve men were sentenced to death. This statistic includes both Jacob Moode and John McFall, who were both sentenced to death in 1794 although their sentences were not to be carried out until the following year. Moode received a pardon in February 1795. *Pennsylvania Archives*, 9th series, 2:808, 928-29, 931, 934.

punishments.”²²⁵ The state even punished high treason with a maximum of twelve years of hard labor and imprisonment.²²⁶ Other crimes such as rape and arson resulted in anywhere from five to twenty-one years of hard labor. Although such sentences could be viewed as harsh, the willingness of the state to continue to spare the lives of offenders offered a clear contrast with the statutes of other areas at this time. To further insure that the possibility of punishment was certain, the legislature ended the practice of benefit of clergy.²²⁷

Even in the wake of numerous failings, many observers believed that the revised penal codes worked and attributed any problems to the lack of proper institutions or officials to implement them. One article looked forward to the day when Pennsylvania had no more capital crimes and that the law would not seek to end the life of an offender, “but to restore him to a state of virtue.”²²⁸ Lownes concluded that the new prison system had resolved the issue of prison escapes that plagued Pennsylvania throughout the 1780s. The new system erased the need for corporal punishment as malcontent inmates were now placed in complete solitary confinement. To this point, the jail keeper had only one convict, who refused to work. After enduring the isolated consequences of his action he has since displayed “the utmost propriety of conduct.”²²⁹ Governor Mifflin joined Lownes in declaring that the new laws successfully produced a dramatic reduction in the

²²⁵ *Statutes at Large*, 15:174.

²²⁶ High treason remained a capital crime under federal law, so Pennsylvanians could still potentially die for this offense. *Congress of the United States: At the Second Session, Begun and held at the city of New-York, on Monday the Fourth of January, one thousand seven hundred and ninety* ([New York]: Childs & Swaine, [1790]), [1].

²²⁷ *Statutes at Large*, 15:174-81.

²²⁸ *General Advertiser*, 9 October 1790.

²²⁹ Lownes, *An Account of the Alteration and Present State of the Penal Laws of Pennsylvania*, 7, 15.

amount of criminal activities, especially with property crimes.²³⁰ In an address to the grand jury, Edward Shippen deemed the revised penal code to be “beneficial to the public, as humane to the individual.”²³¹ Another commentator agreed that crime as a whole had decreased since the penal revisions with the exception of murder. In this regard, “the growing tenderness of our citizens for human life, removes one of the greatest restraints from the perpetration of that crime.”²³² In 1792, the courts tried seven cases of murder with only two convictions. Three incidents that the grand jury returned *ignoramus* for murder were retried for manslaughter. Although all three cases resulted in acquittals, this further prosecution revealed not only the grand jury’s doubts, but also an explicit desire to mitigate the harshness of the sentence by seeking a lesser sentence. Furthermore, the state pardoned 25 percent of the convicted murderers, excluding those convicted of infanticide between 1787 and 1794, William Bradford claimed these previous offenders had managed to reintegrate themselves into society as “*Not one of these, thus pardoned, has ever been prosecuted, to my knowledge for any other crime.*”²³³ Consequently, an essayist in *Dunlap’s American Daily Advertiser* raised the possibility that the horrible experience of prolonged solitary confinement could reform even the most hardened souls.²³⁴ Thus, the state’s mercy would ensure that the criminal’s violent act did not reduce his or her family to poverty and such a sentence would make jurors more willing to impose the full brunt of the law. Indeed, nations that failed to revise their penal code soon became targets of satire. *Tom Paine’s Jests*, published in both

²³⁰ *Pennsylvania Gazette*, 12 January 1791.

²³¹ *Ibid.*, 26 August 1794.

²³² *Federal Gazette*, 24 December 1792.

²³³ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 38.

²³⁴ *Dunlap’s American Daily Advertiser*, 22 January 1793.

Philadelphia and London, critiqued the English common law system for not differentiating punishments based on the severity of the offense. For example, a pickpocket, who merely stole a handkerchief would forfeit their life while a perjurer, who stole “away an innocent man’s life” only received the pillory.²³⁵

Despite the problems found in the prison system, reformers largely believed that these methods could eradicate the spread of crime and make Pennsylvania a safer place. They cited the ineffectiveness of capital punishment and the belief that criminals were truly redeemable figures in an attempt to win support for these changes. As Louis Masur contended, this view rested on the notion that individuals could change based on education and other environmental factors.²³⁶ The increasing number of death sentences during the Revolutionary War years spawned doubts about the efficacy of capital punishment in reducing criminal behaviors. Even the split with England helped fuel the desire to reform the criminal code in order to differentiate the newly independent state government from the barbaric practices of the former mother country. Moreover, the state became less willing to execute individuals for certain crimes such as infanticide as the offenders were cast in a sympathetic light. Nevertheless, feelings of compassion for the condemned were not the sole motivation for the reformers. Instead, state officials believed a combination of incarceration and labor would provoke an even “greater terror,

²³⁵ Thomas Paine [pseud.], *Tom Paine's jests; being an entirely new and select collection of patriotic bon mots, repartees, anecdotes, epigrams, observations, &c. on political subjects* (Philadelphia: Matthew Carey, 1794), 14. Robert Secor argued that the humor found in early jest books such as this sought to exert early nationalist pride. In this case, Pennsylvania’s penal reforms were seen as a step beyond the antiquated past that the English continued to employ. Secor, “The Significance of Pennsylvania’s Eighteenth-Century Jest Books,” *PMHB* 110 (April 1986): 262-67.

²³⁶ Masur, *Rites of Execution*, 76-78.

than the gibbet” and thus lead the offender to “reparation and reformation.”²³⁷ Although the reformers viewed the gallows as a barbaric reminder of the old regime, the state refused to totally abandon capital punishment, even if it appeared inconsistent with the republican values. For those incorrigible offenders such as Warner, Logan, Burns, Bennet, Cronan, Ferguson, and fourteen other unfortunate individuals executed between 1787 and 1794, capital punishment offered the state a final opportunity to remove these miscreants, especially as prisons struggled to deal with the influx of prisoners at the end of the century. Unlike previous decades, the majority of these men committed murder (60 percent) as even reformer believed that the “great object of civil society and government [who] are bound to adopt every measure” to guarantee the preservation of life.²³⁸ Similarly, the state stepped up the prosecution of rapists, who composed 25 percent of the condemned prior to removing this crime from the capital statutes in 1794. Even after revising the law to punish rapists with a prison sentence, the state legislature continued to express the belief that offenders had attacked the stability of the state. Thus, rapists could receive up to twenty-one years in prison, surpassing even the maximum sentence for second degree murder.²³⁹ The use of the death penalty between 1780 and 1794—especially after the reforms of 1786—reveal how many Pennsylvanians continued to believe in the inherent depravity of some criminals, who could never safely re-enter society. Therefore, the gallows remained an unavoidable aspect of life in the late eighteenth century, which prevented the state from ever fully embracing the reformers’ ideals.

²³⁷ *Pennsylvania Mercury*, 27 November 1788.

²³⁸ Bradford, *An Enquiry How far the punishment of death is necessary in Pennsylvania*, 35.

²³⁹ *Statutes at Large*, 15:175-76.

Conclusion

On October 11, 1833, Charles Getter, a convicted murder, was the unfortunate guest of honor for the state's last public execution in Easton, Northampton County. He also suffered the added ignominy of being hanged twice. After the rope snapped on the first attempt, the authorities remained undeterred and hanged him again, this time making sure that they succeeded.¹ This grisly scene ended a sordid aspect of Pennsylvania's history because subsequent executions took place within prison walls away from the prying eyes of the local populace. Pennsylvanians firmly embraced the rise of the penitentiary system as the best method to eradicate crime. The movement spread beyond Pennsylvania as more states sought more effective means to penalize wrongdoers.² Nevertheless, in the forty years since revising the penal codes, crime continued to plague the state as reports of illegal activities regularly filled the newspapers. For the 1790s as a whole, Marietta and Rowe found that Pennsylvania equaled the second highest number of property crime accusations of any decade in the eighteenth century.³ Even as the state accepted the ideas of the reformers, critics continued to contend that the shift away from public executions was not a sign of progress. Many viewed executions as evidence of God's action as "in his all-wise Providence, [he] stopped them [criminals] in their vicious career." The example of the gallows still had merit as this "untimely fate may be a warning to all young men, to forsake the paths of vice" and pursue a more honest

¹ Philadelphia had one additional public execution. James Moran was hanged in 1837 for murder and piracy. However, this was a federal crime and Getter was the last individual hanged by the state. Teeters, *Scaffold and Chair*, 17, 56.

² Masur, *Rites of Execution*, 88-92.

³ Marietta and Rowe, *Troubled Experiment*, 219.

livelihood.⁴ During the trial of John Fries and his cohorts for treason in 1799, one juror proclaimed that they “should be hanged,” which was a far cry from the dispassionate and impartial observer that the court system envisioned would try such cases.⁵ Even Getter’s execution attracted a large crowd as the spectacle of the gallows continued to resonate in the state. Indeed, the scarcity of public executions may have increased their popularity since each one represented a rare spectacle that harkened back to an earlier time in Pennsylvania’s history.

However, individuals outside of Pennsylvania viewed these reforms as an overwhelming success at times especially as other states began to enact their own reforms. Edward Shippen anticipated that “the beneficial Effects already appearing from thus sparing the Lives of our fellow Creatures, may induce every other Government in the United States to follow the laudable Example.”⁶ Indeed, proponents throughout the nation agreed that these penal measures were far more effective than simply relying on the death penalty. The *American Minerva* lauded the Pennsylvania legislature for displaying a “less oppressive and sanguinary” nature as they took “the lead in this reformation.”⁷ Observers in New York cited Bradford’s statistical analysis of the crimes before and after the penal reforms to conclude “Pennsylvania is less troubled with crimes, than under the barbarous and ferocious system of hanging.”⁸ Similarly, a commentator in South Carolina proclaimed that “the mild regulations of the quakers of Pennsylvania

⁴*The Last Words and Dying Confession of the three Pirates, who were executed this day, (May 9th, 1800)* (Philadelphia: Folwell’s Press, [1800]), 7, 8.

⁵*General Aurora Advertiser*, 15 May 1799.

⁶[Edward Shippen], “Charge to Grand Jury delivered at Chester, Lancaster & York at Oyer & Terminer Courts,” May 1791, Balch-Shippen Papers, HSP.

⁷*American Minerva*, 10 March 1795.

⁸*Gazette of the United States*, 7 March 1796.

prove how much society may be benefited by wise and humane laws.”⁹ Such praise extended beyond the new nation. Ludwig Gall, a German visitor to Pennsylvania in 1819, exalted the Walnut Street prison because in this “well-run” institution “criminals as a rule are reformed, and leave as skilled” artisans.¹⁰

The revisions to the penal code of the late 1780s and early 1790s reflected yet another cycle in the history of capital punishment in Pennsylvania. Although the names of the condemned have been largely forgotten in the annals of history over the past two centuries, they represent a lasting legacy of state authority and an attempt to forge a more perfect society. The Quaker founders initially opposed the use of the death penalty except for murder because they believed that it failed to prevent future crimes and was too harsh of a penalty in many cases. As time elapsed, many Pennsylvanians questioned these earlier views and instead claimed that the gallows served as the primary means of imposing order and a worthy punishment for many offenders. Finally, the state re-embraced Penn’s initial beliefs regarding capital punishment in the 1780s and 1790s as the legislature emphasized the redeemable nature of many criminal offenders. Consequently, the state gradually reduced the number of capital offenses by 1794 with an emphasis instead on incarceration and labor. Only first-degree murder remained a capital crime under Pennsylvania’s statutes.

These tendencies possibly influenced even the newly formed federal government in punishing offenses in Pennsylvania. Following the Whiskey Rebellion, the justices and juries generally cooperated to acquit most of the accused with only two men

⁹ *City Gazette and Daily Advertiser*, 27 February 1796.

¹⁰ Frederic Trautmann, “Pennsylvania through a German’s Eyes: The Travels of Ludwig Gall, 1819-1820,” *PMHB* 105 (January 1981): 47.

convicted of treason, which remained a capital crime under federal statutes. These two “scapegoats” soon received pardons from President George Washington.¹¹ Although these men committed a federal, not a state crime, their executions would have taken place in Pennsylvania. Washington’s leniency allowed the state to avoid the further use of the gallows and instead deemphasized the severity of the convicted traitors’ offenses. Thus, Pennsylvania returned to its Quaker roots and presented itself as a beacon of enlightened thought in the Atlantic World. Nevertheless, capital punishment remained a fundamental element of the state’s system of justice. Executions for murder continued, as they do to this day, but concealed within the state’s prisons. No longer could individuals be hardened by the sight of death surrounding them. Instead, as Foucault contended, it became a much more private affair, removing the potential for public disruptions, which occurred occasionally during the early nineteenth century. The crowds were now removed from the equation, but the penalty remained as the ultimate threat to any malcontents.

Capital punishment never worked as the state envisioned, which perhaps contributed to these changing interpretations. However, as this study has shown, the decision to use the gallows revealed a great deal about the mentalities of eighteenth-century Pennsylvanians. Other historians have also examined the symbolic meanings of executions in this regard.¹² This study has sought to add to this discussion by examining

¹¹ Thomas P. Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York: Oxford University Press, 1986), 218-20.

¹² Spierenburg, *The Spectacle of Suffering*; Richard J. Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford: Oxford University Press, 1996); Austin Sarat, ed., *The Killing State: Capital Punishment in Law, Politics, and Culture* (New York: Oxford University Press, 1999); Carolyn Strange, “The Undercurrents of Penal Culture: Punishment of the Body in mid-twentieth-century Canada,” *Law &*

the multiple uses of capital punishment throughout the eighteenth century. Pennsylvania officials continually looked for the most effective means to eliminate criminal activities. Nevertheless, they never reached a consensus on the most effective means of social control. As the Quaker influence began to wane by 1740, many Pennsylvanians increasingly questioned Quaker ideas about the ability of criminals to reform and be re-integrated into society. Therefore, these decades witnessed a new emphasis on the criminal otherness of the condemned in order to define them as outsiders who deserved the gallows. As the colony's population grew, so did the number of homicides especially in the 1750s and 1760s.¹³ Not surprisingly these violent crimes assisted in the transformation of the condemned into the other as the governors and Provincial Council proved reluctant to extend mercy. Between 1740 and 1769 murder accounted for 43.3 percent of the condemnations and 46.7 percent of the executions as seen in Table C.1.

History Review 19, no. 2 (2001): 343-85; Randall McGowen, "History, Culture and the Death Penalty: The British Debates, 1840-70," *Historical Reflections* 29, no. 2 (2003): 229-49.

¹³ Marietta and Rowe, *Troubled Experiment*, 35-36.

**Table C.1
Murder and Property Crimes in Pennsylvania, 1718-1794**

	Percentage of death sentences		Overall percentage of executions		Percentage of condemned who were pardoned	
	Murder	Property	Murder	Property	Murder	Property
1710s	100.0	0.0	100.0	0.0	33.3	0.0
1720s	38.5	46.2	57.1	14.3	20.0	83.3
1730s	16.7	56.7	27.3	54.5	40.0	64.7
1740s	50.0	50.0	54.5	45.5	0.0	16.7
1750s	45.7	40.0	44.8	37.9	18.8	21.4
1760s	39.5	51.2	45.7	45.7	5.9	27.3
1770s	21.9	41.7	28.3	38.3	19.0	42.5
1780s	17.8	57.1	29.3	53.3	12.0	40.3 ¹⁴
1790-94	75.0	0.0	57.1	0.0	55.6	0.0
Total	27.8	48.1	36.7	43.0	18.7	40.7

Moreover, murderers proved unlikely to gain pardons especially in these middle decades. Despite the increase in the 1750s, just 10.3 percent of the condemned received the colony's mercy. While the decision to execute murderers such as John Lewis who violently killed loved ones and Hans Ulrick who threatened the social order by murdering his mistress requires little explanation, other criminals also proved less successful in escaping the gallows in this middle period. The perceived increase in crime coupled with the growing transient population and the tumultuous nature of multiple colonial wars led to a harsher stance against thieves. After pardoning nearly 70 percent of the individuals condemned for property crimes between 1718 and 1739, that number plummeted to less than 24 percent over this subsequent period. Indeed, the perception of the condemned as

¹⁴ This statistic only includes those individuals who the state had either pardoned or executed. Therefore, it excludes thirteen of the outlaws from the 1780s.

irredeemable and morally different may have also played a factor in Shippen obtaining the corpses of the condemned beginning in the 1760s. Through these punishments (public executions and the additional ignominy of ending up on the surgeons' table), colonial officials sought to find the most effective means of gaining public acceptance for their view of the condemned as the other who forfeited his or her life and even control of their body. Even after 1770, these sentiments continued although to a lesser degree. The rise of outlaw robbers such as the Doans and James Fitzpatrick during the Revolution convinced many local officials and the SEC to enforce tougher sanctions in order to protect property. Thus, while the percentage of pardons did dramatically increase in the 1770s and 1780s, those individuals who committed property crimes still proved to be much less successful than their counterparts prior to 1740.

Throughout the eighteenth century, Pennsylvania officials had limited success in presenting the offender as an irredeemable individual. The region never witnessed any significant backlash against the death penalty. With the exception of the destruction of the stocks in the 1720s and the dispute about the gallows location in Montgomery County in the 1780s, Pennsylvania never saw any attacks on the implements used to carry out these executions. Similarly, justices such as McKean could become targets of popular resentment, but death sentences represented only one component of this anger. Finally, the few cases of illegal aid provided to the condemned paled in comparison with the numerous cases where the citizenry complacently agreed with the state's final verdict. Even as capital punishment was increasingly questioned at the end of the eighteenth century, few voiced objections to the justness of executing various criminals. Instead, as discussed in chapter 3, many of the objections stressed the qualities that the condemned

possessed to justify a pardon rather than undermine the verdict. Many Pennsylvanians feared that without some terrifying sanction, criminals would “grow hardened to the monitions of conscience and humanity,” thus leading to even more illegal activities.¹⁵ For much of the eighteenth century and beyond, many Pennsylvanians believed that the death penalty served as the appropriate punishment to handle such individuals.

This especially proved to be the case in Philadelphia, which issued the majority of Pennsylvania’s death penalties throughout the eighteenth century. Although Philadelphia only composed 12.9 percent of the population in southeastern Pennsylvania between 1720 and 1790, the city accounted for 45.4 percent of the death warrants from 1718 to 1794 (Table C.2). Although Pennsylvanians constantly moved out to all corners of the state, Philadelphia’s growing population allowed for a greater degree of anonymity and criminal behavior. The newspapers regularly reported on crimes within the city’s confines, leading city leaders to establish a town watch and guarantee the illumination of the city’s streets for “the preservation of the persons and properties of the inhabitants and ... to prevent fires, murders, burglaries robberies and other outrages and disorders.”¹⁶ Furthermore, the increase in death sentences for Philadelphia could exceed the population growth for the same decade. Between 1760 and 1770, the city’s population expanded by 44 percent growth in population. Meanwhile, the number of death warrants in Philadelphia increased by 63 percent over the same ten year period. As these numbers grew through the eighteenth century, it is not surprising that many Philadelphians became frustrated with the condemned and saw them as inherently different from themselves.

¹⁵ *Pennsylvania Packet*, 22 August 1778.

¹⁶ *Statutes at Large*, 5:111.

Table C.2

Philadelphia death sentences, 1720-1794

	Percentage of death sentences out of all of Penn.	Philadelphia's percentage of Southeastern Pennsylvania's population
1720s	30.7%	13.2%
1730s	73.3%	14.4%
1740s	83.3%	13.8%
1750s	31.4%	12.9%
1760s	39.5%	10.6%
1770s	47.9%	13.1%
1780s	45.0%	12.1%
1790-4	8.3%	14.3%
Total	45.3%	12.9%

Source: Klepp, "Demography in Early Philadelphia," 95. The 1710s are not included because no one received a death sentence in Philadelphia for that decade.

As this study has shown, Pennsylvania officials often struggle to present a undisputed definition of the condemned. Pennsylvanians often responded based on a range of diverse factors, including religious beliefs and geographic location, in deciding on the justness of the death sentence. While some observers could view the criminal and his actions as a sign of "human depravity and turpitude," others easily attested to the same individual's honest and virtuous character.¹⁷ Amidst such contradictory terms, it became increasingly difficult to build any consensus, which allowed the condemned ample opportunity to escape the gallows. Even as the colony rarely extended mercy between 1740 and 1769, local supporters allowed individuals such as Frederick Stump and John Ironcutter to evade the local authorities following their brutal murders in

¹⁷ *Independent Journal*, 31 January, 1787; Subscribers on behalf of Peter Dryer's petition, n.d., RG-27, Roll 39.

Cumberland County. Many residents identified with these men over the eastern government as they frequently dealt with attacks from Native Americans throughout the 1760s. Indeed, the numerous petitions covered in chapter 3 suggest that many Pennsylvanians began to doubt the decision to use the gallows and the potential ramifications for the state as a whole. Moreover, the surge in petitions in the 1770s and 1780s suggests that the state failed in its efforts to fully define the criminal. Even justices and juries would carry out their duty and return a death sentence with the intention of promptly seeking a pardon for the condemned.

Despite the petitions from numerous supporters, many Pennsylvanians continued to struggle to see criminals as truly redeemable. Yet, the increase in criminal prosecutions in the 1780s along with the state's frequent willingness to extend pardons to the condemned also sparked an ongoing debate regarding the effectiveness of capital punishment. Although many reformers emphasized the ability of criminals to reform, most did believe that a criminal class existed that could never be truly rehabilitated. Therefore, the penitentiary movement sought to serve two main purposes. First, it could potentially punish less severe offenders and prepare them to be re-integrated into society. However, for the hardened criminals, the new prisons possessed the potential for an even more horrifying penalty than the gallows as reformers claimed that "confinement and hard labour would be punishments much more terrible, both in idea and experience, than death itself" for many hardened criminals.¹⁸ Similarly, murderers were not even given this option as the state continued to publicly execute them in hopes of instilling the appropriate message to the hordes of spectators who flocked to these events. Thus, the

¹⁸ *Pennsylvania Mercury*, 28 April 1786.

numerous changes that Pennsylvania underwent throughout the eighteenth century prevented it from fully returning to William Penn's ideals. Instead, the same problems in eliminating criminal behaviors that bewildered Pennsylvania's Quaker founders at the onset of the eighteenth century continued to perplex the state's leaders at the century's end.

This study has sought to contribute to the overall discussion of capital punishment. Rather than abating over time, the issue of the death penalty has continued to be a divisive issue in today's society. Countless scholars have addressed the death penalty and its merits as a deterrent and/or a source of communal vengeance.¹⁹ Even today the debate continues to plague the region. The state's most recent execution occurred in 1999 when Gary M. Heidnik died of lethal injection after kidnapping six women, killing two of them. Reports found his actions "depraved and brutal" and worthy of death. However, officials continued to incorporate the ideas of earlier reformers as he died by lethal injection – viewed as a more humane death than either hanging or the electric chair. Heidnik protested his innocence and instead claimed that he did not object to his sentence in hopes that the death penalty would die with him.²⁰ Few appeared to share his views as most felt that the sentence was more than justified. Nevertheless, the

¹⁹ Michael Dow Burkhead, *A Life for a Life: The American Debate over the Death Penalty* (Jefferson, N.C.: McFarland & Company, 2009); Jennifer Louise Culbert, *Dead Certainty: The Death Penalty and the Problem of Judgment* (Stanford, Calif.: Stanford University Press, 2008); Roger G. Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, 4th ed. (New York: Oxford University Press, 2008); Amy Marcaccio Keyzer, ed., *Does Capital Punishment Deter Crime?* (Detroit: Greenhaven Press, 2007); Diane Andrews Henningfeld, ed., *The Death Penalty: Opposing Viewpoints* (Farmington Hills, Mich.: Greenhaven Press, 2006); Mary E. Williams, *Capital Punishment* (Detroit: Greenhaven Press, 2005); Nick Fisanick, ed., *The Ethics of Capital Punishment* (Detroit: Greenhaven Press, 2005); Evan J. Mandery, *Capital Punishment: A Balanced Examination* (Sudbury, Mass.: Jones and Bartlett Publishers, 2005); J. Michael Martinez, William D. Richardson, D. Brandon Hornsby, ed., *The Leviathan's Choice: Capital Punishment in the Twenty-First Century* (Lanham, Md.: Rowman & Littlefield, 2002).

²⁰ Marc Schogol, "11 Years Later, Heidnik has his date with Executioner," *Philadelphia Inquirer*, July 11, 1999.

state has refused to execute anyone since Heidnik, as currently 220 individuals sit on Pennsylvania's death row.²¹ Few topics spark as much discussion in Philadelphia as the fate of Mumia Abu-Jamal, the convicted murderer of a Philadelphia police officer, as his supporters and detractors debate the need for his execution. While pardons for contemporary offenders generally would not result in the criminal's release into society, the defenders of the men and women currently sitting on death row still employ a number of similar reasons why they should not suffer the state's wrath.

These examples, both eighteenth-century and present-day, reveal the potential pitfalls in using capital punishment as the primary means to address serious crime. Admittedly, more work needs to be done in this regard. Pennsylvania's eighteenth-century records are often incomplete, which makes it difficult to perform any definitive analysis of the administration of justice. Similarly, the identity of jurors would be a useful means to determine the willingness of various groups such as Quakers to use the death penalty over time. Unfortunately, it is often difficult to determine who served on juries at this time. Many names are far too generic for positive identification. Because of Pennsylvania's pluralistic nature, ethnicity is also a key issue that was not addressed in much detail. While for some such as the condemned it could prove a factor, more research needs to be performed in regards to its impact on the composition of juries and their decisions. Unfortunately, the incomplete court records for the early parts of the eighteenth century prevent a quantitative analysis of jurors and their backgrounds. Moreover, faulty tax records also make it problematic to assess how issues such as class

²¹Pennsylvania Department of Corrections, "Persons Sentenced to Execution in Pennsylvania as of September 1, 2010," http://www.cor.state.pa.us/portal/server.pt/community/death_penalty/17351 (accessed September 15, 2010).

factored into the decisions of juries. This involves not only the economic status of the jurors, but also the rank of the accused. As discussed in chapter 2, limited analysis can be completed in this regard using the professions listed on indictments, but even this can be too vague at times.

Finally, Gottlieb's study has possibly initiated an interesting new direction for this scholarship. Analysis of one state or region has certain tangible benefits as it allows a scholar to focus on changes in penal laws and executions over time. However, comparative works allow the history to be placed in a broader perspective. Hopefully, more research will be done in this regard, using the research of Pennsylvania in the analysis of general criminal trends throughout the eighteenth-century British Atlantic. Through such efforts, we can obtain a better overall perspective of the role of the criminal justice system for Britons, both at home and abroad, and how it changed over time especially in connection to the Revolution. Nevertheless, this study's limited focus can contribute to such analysis. Based on Pennsylvania's later role in developing a more effective means of criminal justice, it is important to understand the myriad of factors that contributed to the administration of the gallows in the eighteenth century. These precedents continued to resonate throughout the rest of American history because we continue to deal with the ramifications of capital punishment.

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