IN so far as any portion of what is now the Commonwealth of Pennsylvania was under a civilized form of government before the English assumed control, the responsibility rested with the Swedish South Company and the Dutch West India Company. Each in turn, under the terms of the charters creating them, assumed the right to establish settlements upon the Delaware Bay and River, and to apply to these the laws of their respective countries to the extent that such laws were applicable to wilderness conditions. The local courts erected by the Swedes and Dutch respectively were apparently required to deal only with rather trivial matters, which would argue in favor of the law-abiding disposition of the earliest settlers who were few in numbers and naturally much dependent on one another in the scattered settlements.

On March 12, 1664, James, Duke of York, was most generously granted the lands of New Netherlands by his brother, King Charles II, and in an equally benevolent frame of mind, the Duke commissioned Colonel Nicolls to proceed to the New World in order to relieve the Dutch of the responsibility for governing this possession. For a time after this transference of authority, the settlers in the region of the Delaware were allowed to maintain the authority of their Dutch laws and customs, but in 1676 the magistrates were called upon by the Duke of York's aggressive governor, Edmund Andros, to enforce the code of laws adopted originally in 1664 at Hempstead on Long Island for those counties within the new province where the English-speaking people had principally settled; that is, on Long Island and in what is now West-

\footnote{For a discussion of this see William H. Loyd's *Early Courts of Pennsylvania* (Boston, 1910), especially Chapter I.}
chester County. This code is known as the Book of Laws of the Duke of York.\(^2\) While its preamble states that the measures contained within were: "Collected out of the several laws now in force in his Majesties American Colonies and Plantations," the codes of Massachusetts Bay and New Haven colonies served as the chief sources. Therefore, the Delaware settlements before the year 1682 were in turn under Swedish law, Dutch law, and modified New England law. The latter was in reality the law of the Pentateuch. The New England influence upon the Duke of York's laws is indicated especially by some of the so-called capital laws. It was a capital offense to deny the true God and his attributes; to slay a defenseless man by the sword, by lying in wait, or by poisoning; to bear false witness in order to take away a man's life; to invade a town; to commit certain acts of sexual perversion; to kidnap; to commit treason; to invade a town; and to curse and smite a parent (for a child over sixteen) unless under proper provocation.\(^3\) Under this code burglary and highway robbery were punished in the first instance by branding on the forehead and by whipping, with an extreme penalty of death.\(^4\)

As to the enforcement of this code in the region of the Delaware, it would appear that there was little occasion ever to apply any of the more severe sanctions in the peaceful Dutch and Swedish communities. The records of the court at Upland, now known as Chester, for the years from 1676 to 1681 indicate that the principal cases coming before the magistrates involved such offenses as assault and battery, and slander.\(^5\) The paternal quality of justice meted out is illustrated by a case involving extra-marital relations in which the offender was excused upon promise to avoid his partner in the offense and to maintain the child.\(^6\) It is not without significance that parties to disputes were frequently advised


\(^3\) *Charter to William Penn and the Laws of the Province of Pennsylvania Passed between the Years 1682 and 1700, Preceded by the Duke of York's Laws in Force from the Year 1676 to the Year 1682*, compiled by George Staughton and Others (Harrisburg, 1879), pp. 14-15. This will be referred to subsequently under the title *Charter and Laws of Pennsylvania to 1700.*


to depart and settle the matter in question between themselves in a friendly way.\(^7\)

On March 4, 1682, William Penn was granted by Charles the lands within certain prescribed limits west of the Delaware which were erected into the Province of Pennsylvania. Soon afterwards, the Duke of York turned over to him, by means of a deed of lease and release, the settlements on the lower Delaware River and the Bay which became known as the Lower Counties. According to the terms of the royal charter, within the Province the law of property real and personal and the criminal law were to be the same as that of England until altered by the proprietor and the freemen.\(^8\) As Penn was opposed to applying to his fair province the harsh sanctions of the mother country as well as those embodied in the Duke of York laws, he and his advisers set to work to prepare a code which would exemplify, in so far as seemed possible, the social ideals of the Society of Friends. A body of laws, reflecting much more the spirit of the New Testament rather than the Old, was agreed upon in England in May.\(^9\) With this and the famous Frame of Government, Penn came to the New World and on December 10th of the same year at a somewhat miscellaneous assemblage at Upland, the Great Law for the Province as well as for the Lower Counties was formally adopted.\(^10\)

It should here be pointed out that one provision of the charter received by Penn was the cause of much confusion—that transcripts of all laws adopted for the Province must be regularly submitted within a period of five years to the Royal Council in

\(^7\)Ibid., VII, 47, 51, 70.

\(^8\)However, the punishment for treason and for “wilfull and malicious Murder” could in no way be altered from that provided for by the laws of England. For text of the charter see Charter and Laws of Pennsylvania to 1700, pp. 81-90. Referring to early American codes of laws Professor Reinsch declared that some of the codes like that of Pennsylvania “departed in many essentials radically from the principles of the English common law and “show that their framers consciously desired to meet the entirely novel conditions... by new and appropriate legal measures.” P. S. Reinsch, “English Common Law in the Early American Colonies,” in Select Essays in Anglo-American Legal History (Boston, 1907), I, 410-411.


\(^10\)Ibid., pp. 107-123. One should not fail to stress, even in passing, the undoubted influence upon Penn in making his plans for the government of his province, of the experiments that he and his Quaker associates carried on in West Jersey under the “Concessions and Agreements,” formulated in 1676 after the division of the proprietary of New Jersey under the terms of the quintipartite deed of that year.
England for acceptance or rejection. In light of this requirement it is often difficult to determine what actually was the law, in spite of the fact that the acts in question were temporarily operative, since there was during the seventeenth century the greatest negligence in fulfilling this charter requirement of sending the laws to England.

Without going into detail regarding the Great Law, it may be pointed out that murder was the only crime that expressly entailed death as a penalty. Life imprisonment was the penalty for bigamy, incest, and for some other sexual perversions which also brought forfeiture of one-half or one-third of one's estate. Whipping in public together with other suitable punishments, shall we say, less striking, was provided for those guilty of such offenses as robbery, stealing, and adultery. For even the Quakers seemed to believe that in certain instances to spare the rod was to spoil the offender, and they could point to the New Testament example of Jesus scourging the money-changers from the Temple. It is interesting to note that one found guilty of stealing living goods was expected to make a double satisfaction together with the return of the same. A threefold satisfaction was required in the case of the theft of dead goods, but for highway robbery or housebreaking there was provided a fourfold restitution. In the case of the cattle or hog thief, he was to pay triple damages and for the third offense, in addition to this, suffer banishment after receiving thirty-nine lashes. As for such pastimes as stage plays, masques, bull-baiting, and cock-fighting, these were banned under penalty of fine or imprisonment. While some of these punishments may seem to our generation extreme and harsh, nevertheless, the Great Law was remarkable for its humaneness, especially as it existed side by side with codes loaded down with atrocious sanctions. In spite of the extreme confusion within the Province after the departure of Penn for England in August, 1684, this code together with the supplementary laws passed in 1683 and in

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13 The penalties for those crimes of sexual perversion which brought life imprisonment for the second offense were abrogated by the Privy Council in 1693. Charter and Laws of Pennsylvania to 1700, p. 110.
14 Ibid., pp. 109, 110.
15 Ibid., pp. 112, 170.
16 Ibid., p. 138.
17 Ibid., p. 114.
the spring of 1684 seem to have been but little modified before the close of the century. 18

Given this body of law, which for the seventeenth century was truly paternal, the question arises: Was it adequate for the situation? Did the social fabric suffer in substituting for the harsh Duke of York's laws this extraordinarily mild code? As bearing upon this query one may think in terms of the testimony of M. L'Auvergne, an authority on criminology, who insisted that the abolition of punishment accompanied by torture resulted in France in greatly augmenting the number of homicides. 19

The court records of Germantown for the last decade of the century may be analyzed in this connection, for these seem to be typical for the administration of justice within the Province at this period. The first fact that confronts one is that no really serious offense was dealt with by the Germantown magistrates. One comes across cases involving assault and battery, drunkenness, slander and the use of menacing or obscene language but there is an absence of those of a serious nature. 20 Referring to seventeenth century Pennsylvania, Judge Pennypacker declared: "Gross crimes did not occur and ferocious punishments were never inflicted." He was able to uncover but one case during the seventeenth century in connection with which the death penalty was inflicted within the province—that was for the crime of murder. 21 The real spirit underlying seventeenth century Pennsylvania justice is indicated by the action of the Germantown court which, after giving one George Muller five days' imprisonment for drunkenness, thereupon ordered the constable to be paid two shillings for serving a warrant in case said Muller should lay a wager, as apparently he had threatened to do, to smoke above one hundred pipes in a day. 22 In a case of illicit relations, it is of interest to note that a jury of women was drafted to ascertain the existence

18 It is true that in 1698 it was decided to add to the existing penalties for stealing dead goods the wearing of a badge on the arm for six months, and to increase the satisfaction due to the injured party from threefold to fourfold, which, incidentally, would argue that stealing was going on with unbecoming frequency. Ibid., p. 275.
19 See reference to this in S. E. Baldwin's article on "Whipping and Castration," Yale Law Journal, VIII, 376-377.
20 "Extracts from the Records of the Courts held in Germantown from 1691 to 1707," Collections of the Historical Society of Pennsylvania (1853), I, 243-258.
22 Collections of the Historical Society of Pennsylvania, I, 252.
of an illegitimate before birth. This jury was unable to reach a decision with the result that the issue was decided in favor of the accused. In another similar case the woman although now married to her co-partner in the offense was not only fined fifty shillings but obliged to stand at the public whipping post bearing a placard announcing to all her misdeed.\textsuperscript{23} In 1695, we also find a case of witchcraft. George Roman of Chester county was accused of practicing “geomancy” according to Hidon’s formulas in his \textit{Temple of Wisdom}, and also of divining with a stick. He was happily let off with a fine of five pounds and the confiscation of his library of knowledge which consisted of Hidon’s book, Scots’ \textit{Discovery of Witchcraft}, and Cornelius Agrippa’s \textit{Teaching Necromancy}.\textsuperscript{24}

But a change was coming over the Commonwealth. Whether principally by reason of its generally favorable location or due to its merciful code of laws, undesirables began flocking to its borders, so that at the dawn of the new century it was pronounced: “The greatest refuge and shelter for pirates and rogues in America.” As will be remembered by students of the history of this period, Penn declared that he had heard that no place was more overrun with wickedness than Philadelphia where things were done “so very Scandalous openly committed in defiance of Law and Virtue: facts so foul, I am forbid by Common modesty to relate them.” He pleaded with Markham: “Let neither base gain nor a byast affection mak you partial in these cases, but for my sake, yor own sakes, and above all for God’s sake, Let not the poor province Longer suffer under such grievous and offensive Imputations.”\textsuperscript{25} From prosecuting cases almost exclusively of petty larceny, slander, swearing, Sabbath breaking, assault and battery, and drunkenness which, as had been suggested, characterized seventeenth century Pennsylvania, the courts now with the coming of the new century began to deal with burglary, highway robbery, petit treason, rape, homicide, infanticide, and murder. It is, therefore, not surprising that with the year 1700 there came a new era in the history of criminal law and procedure in Pennsylvania.

The Newcastle Code of that year—confirmed for the Province the following year at Philadelphia while the Proprietor himself was in America—exhibits marked departure from that passed by the Assembly at Upland in 1682. Mutilation and branding stand out prominently among the new sanctions. The proprietor and his sturdy settlers were confronted by stern facts and not theories and were, therefore, impelled to adopt a realistic attitude toward government—putting into the background some of the generous idealism that had animated them at the earlier period. Indeed of the 104 acts that made up the new code, fifty-three were finally rejected by the English Privy Council, largely by reason of the fact that these provided punishments out of harmony with the laws prevailing in the mother country, especially with respect to the mutilations provided for in some of the acts. Most of the laws, however, were promptly re-enacted with slight modifications and thereby became permanently embodied in the code. How changed was the temper of the lawmakers in the early part of the eighteenth century as against their complaisance in 1682 may be seen by reference to a few of the laws. Under the earlier code adultery was punished by a public whipping and a year’s imprisonment; throughout the eighteenth century the law provided that for the third offense the offender was to receive twenty-one lashes, seven years’ imprisonment, and have in addition the letter “A” branded on the forehead. Under the earlier code the thief was to make fourfold restitution and was also liable to twenty-one stripes; by the re-enacted law of 1705-06 he was, in addition to other punishments, to be branded on the forehead with the letter “T”, and so was the housebreaker.

Even this rather drastic strengthening of the sanctions was not sufficient, it appears, to check the rising tide of lawlessness, with notorious pirates among others making a rendezvous of Philadelphia. With the coming of Sir William Keith to the Lieutenant-Governorship in 1717, bringing as he did an effective power of leadership, it is, therefore, not surprising that in May of the fol-

26 Statutes at Large of Pennsylvania from 1682 to 1801 (Harrisburg, 1896-1908), II, 1-140.
27 For example, castration for rape was provided for the second offense; for a negro assaulting a white, the penalty was death; see Ibid., II, 7, 79, 178, 235. When re-enacted in 1703 after repeal, castration was omitted from the penalties for this crime.
28 Ibid., II, 6, 180.
29 Ibid., II, 175; III, 202.
lowing year there was enacted the famous "Act for the Advance-
ment of Justice and More Certain Administration Thereof." This statute declared that "for-as-much as some persons have been
couraged to transgress certain statutes against capital crimes and
other enormities," because the statutes of Parliament did not ex-
tend to this province, those committing certain acts should in the
future incur the same penalties, disabilities, and forfeitures, as
persons incur convicted by the laws of Great Britain. In other
words, the Provincial Assembly virtually admitted that local
efforts to frame a criminal code more satisfactory than that of the
mother country had ended in failure. It, therefore, accomplished
by formal act something that the charter to Penn had anticipated
in the provision that unless otherwise altered the criminal law of
England would apply to Pennsylvania. By this wholesale incor-
portation of English law, arson, the doing away with an illegitimate
child or the concealing the fact of its death, burglary, murder, the
malicious mutilation of a man, petit treason, and misprison of
treason became felonies of death. Besides these, other offenses
such as certain sexual crimes, manslaughter, robbery and, it should
be noticed, witchcraft, were also made felonies punishable accord-
ing to the laws of the mother country. Nevertheless, even this
tremendous strengthening of the severity of the provincial law
apparently did not terrify all evil-doers into submissiveness, for in
1722 came the statute concerning counterfeiting. This drastic law
provided that anyone guilty of forging a provincial note should not
only pay all damages and a fine of £100 but should be set upon the
pillory and thereupon have both ears cut off and be publicly whip-
pered thirty-one lashes; in default of payment, he should be sold into
bondage for a term of not over seven years. In the year 1767,
this law was strengthened by now providing the death penalty
without benefit of clergy for forging or counterfeiting any pro-
vincial note or any gold or silver coin "which now is or shall be
passing in circulation in this Province." Further, the crimes of

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*Ibid.*, III, 199. It is true that Governor Evans had earlier issued an
ordinance calling upon the judges of the courts thereby established to hear
and determine cases "as near as conveniently may be to the laws of England,
and according to the laws and usages" of the Province. See St. George L.
Sioussat, "The Extension of English Statutes to the Plantations," *Select
Essays in Anglo-American Legal History* (Boston, 1907), I, 425; and W. R.
Shepherd, *History of Proprietary Government in Pennsylvania* (New York,
1896), p. 386.

*Pennsylvania Statutes at Large, 1682-1801*, III, 331.

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arson and stealing when disguised and armed were made capital offenses in 1769.\textsuperscript{33} Robbery was also so designated in 1780.\textsuperscript{34} In other words, the offenses after 1767 involving the death penalty were sixteen as against two, according to the code of 1682; for those involving branding, five as against none in the earlier laws. In addition, the loss of ears and selling into bondage were to be found in the later and not in the earlier code, not to mention certain mutilations in the code of 1700 which met with the warm disapproval of the King-in-Council. It may be further pointed out that with respect to oath-taking and common swearing the Quaker majority of the Assembly was peculiarly sensitive, not to say harsh, in the eighteenth century. In the code just referred to, it was provided that any person who "shall swear in his or her common conversation by the name of God, Christ or Jesus" for the fourth conviction should be fined at the discretion of the county court not exceeding five pounds or be compelled to work in prison at hard labor not exceeding two months and be deemed a "common swearer" and as such be liable to receive twenty-one lashes once every three months for seven years.\textsuperscript{35} Professor Channing has pointed out that this would make him or her liable to a total of 588 lashes.\textsuperscript{36}

It is now necessary to turn to a brief consideration of the machinery devised for the maintenance of law and order. Before the creation of the Province of Pennsylvania the courts erected on the Delaware employed conciliation as is indicated in the Upland court records for the years 1676-1677. There was also created by the act of 1683 the institution of the "common peace-makers" yearly appointed in every precinct by the judges of the county court to settle disputes quietly, the decisions of whom were to be as valid as judgments of the courts of justice.\textsuperscript{37} The work of these "peace-makers" may be illustrated by a case that arose in 1687 involving a complaint of assault and battery. In this case, Samuel Rowland was ordered to pay the lawful charges involved in the suit and to give to one Samuel Baker a hat and, in the

\textsuperscript{33} Ibid., VII, 351.
\textsuperscript{34} Ibid., X, 221.
\textsuperscript{35} Ibid., II, 49.
\textsuperscript{37} Law of March 10, 1683, Charter and Laws of Pennsylvania to 1700, p. 120.
quaint language of the day, "so discharge each other of all manner of difference from the beginning of the world to the present day." These conciliators and peace-makers gave way some time after 1692 to arbitrators. From that time arbitration has prevailed in Pennsylvania as a permanent feature of her legal system.

As to the handling of the more serious offenses, it may be said that after the establishment of the provincial government in 1682 until the year 1684, the Provincial Council was the only body competent to consider these. With the setting up of a Provincial Court, which after much experimentation resulted in the creation of the Supreme Court in 1722, and the creation also of courts of oyer and terminer for the purposes of jail delivery, the Council seems to have limited its judicial activities largely to that of a board of review and pardons, receiving from time to time petitions for pardons and reprieves. It also issued warrants for executions in cases of capital punishment. One may further add that after 1685 the clerk of the Supreme Court was expected to deliver into the hands of the Council a list of the names of all those who had been found guilty of capital felonies. The records of the Council, therefore, shed light on the history of crime in Provincial Pennsylvania, at least crime of a serious nature.

The question may now be raised: How far were the sanctions existing at any particular period actually applied? Further, to what extent, if any, can one trace during the course of Pennsylvania colonial history any significant growth in criminal tendencies? Any satisfactory answer to these queries demands exhaustive research. However, as suggested above, the records of the Provincial Council offer valuable clues. What do these records seem to indicate? For the sake of convenience and as a basis of comparison the year when the Provincial Council came into existence down to September 1775, covering about ninety-two years may be divided roughly into three periods.

From March 10, 1683, when the Council held its first meeting until September 27, 1715, or a period of some thirty-two years, only three serious offenses, according to the records, came before

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40 For a good illustration of the procedure see Pennsylvania Colonial Records, II, 155.
it. One case involved counterfeiting.\textsuperscript{41} The two others, witchcraft.\textsuperscript{42} With respect to the first, the defendant was fined forty pounds and ordered to recompense all who within a period of a month should bring in any of the base coin. As to the witchcraft cases, the defendants happily were discharged because of insufficient, or trivial evidence.

Taking the next period from September 27, 1715, to September 27, 1745, or thirty years, the minutes of the Council indicate that there were, among other offenders sentenced by the courts, one who was condemned to death for arson,\textsuperscript{43} twelve, for burglary,\textsuperscript{44} one, for counterfeiting,\textsuperscript{45} six, for murder,\textsuperscript{46} two, for causes not stated,\textsuperscript{47} and one "for divers horrid, complicated crimes,"\textsuperscript{48} making a total of twenty-three at least who were convicted of capital crimes. That there was no reluctance when the occasion seemed to warrant it, to employ the English common law penalties is indicated by the fact that in 1731 a woman convicted of petit treason was drawn and burnt.\textsuperscript{49}

During the last period from September 27, 1745, to September 27, 1775, the Council records indicate that sixty-six were condemned to death for burglary,\textsuperscript{50} thirty-four of whom were ordered to be executed; seven for counterfeiting; two of whom were executed;\textsuperscript{51} four for horse stealing, one of whom was executed;\textsuperscript{52} thirty-one for murder, twenty-three of whom were executed.\textsuperscript{53} This gives a total of at least 112 who were convicted and given death sentences during this period, of whom sixty-one were executed. In other

\textsuperscript{41} Ibid., I, 29, 32.
\textsuperscript{42} Ibid., I, 40; II, 20.
\textsuperscript{43} Ibid., IV, 243-244.
\textsuperscript{44} Ibid., III, 109-10, 240, 370, 390, 591; IV, 47, 329-330. The first case in which the convicted actually suffered death after conviction for burglary was in 1736; Ibid., III, 47.
\textsuperscript{45} Ibid., III, 109-110.
\textsuperscript{46} Ibid., III, 30, 45, 429.
\textsuperscript{47} Ibid., III, 193.
\textsuperscript{48} Ibid., III, 193.
\textsuperscript{49} Pennsylvania Gazette, Sept. 23, 1731.
\textsuperscript{51} Ibid., V, 119, 268; IX, 666; X, 50, 88-89, 99-100, 172, 257-258.
\textsuperscript{52} Ibid., V, 75, 104, VII, 172, IX, 338, 698.
\textsuperscript{54} Ibid., X, 43-44.
words, during the first period from 1683 to 1715 on the face of
the records only one serious case, and not one of violence, that is
one involving counterfeiting, came on record before the Provincial
Council. During the second period of thirty years the number
mounted to twenty-four; and during the third period to 112.

The above figures would seem to indicate that the people of the
Province before the outbreak of the Revolutionary War were much
more criminally inclined than those of the seventeenth century.
But such an inference cannot be accepted without proper inter-pret-
tation of what is implied. It may well be doubted that the chil-
dren of the earlier settlers—that is, of the Swedes and Dutch, of
the English and Welsh Quakers, and of the German Mennonites—
were much less orderly in their living than their forebears. How-
ever, it must be remembered that Pennsylvania was peopled by
many groups. For it appears, as was earlier suggested, that the
province became an abode toward the beginning of the eighteenth
century of fugitives from justice who were drawn thither from
many parts. Further, during the early part of that century many
hundreds of indentured laborers were brought from Ireland. It
appears by all accounts that—in contrast to the German redemp-
tioners, who as a group were steady and reliable—these servants
from the Emerald Isle gave no end of trouble, so much in fact
that their further importation was discouraged. Many of them
while not criminally inclined at least were given to acts of violence
and helped to swell the class of those considered undesirables.
Finally, to the southward of Pennsylvania is Maryland which in
the eighteenth century imported thousands of convicts from
England under seven-year or fourteen-year indentures. These
after the expiration of their terms of enforced labor, were turned
loose and there is every reason to believe that while a considerable
proportion of them followed the lure of the wilderness to the
westward others drifted northward to the towns of Pennsylvania.

The figures that have been previously given, as was pointed out,
have to do with those convicted of capital offenses whose cases
came before the Provincial Council. What may be said briefly of
the application of the law to those lesser offenders in the eighteenth
century? Some light on this point is shed by such surviving
records as the dockets of the Court of Quarter Sessions for the
County of Philadelphia, and of the Provincial Supreme Court,
fragmentary as these are. They indicate that theft and many like felonies were punished, as a rule, with a whipping, together with a fine and the payment of the cost of prosecution. In awarding justice little discrimination was made between men and women. For example, Samuel Wright was convicted in the September, 1767 session of the Court of Quarter Sessions of an unstated felony. He was sentenced to stand in the pillory for one hour, to be whipped at the public whipping-post thirty-nine lashes on his bare back “well laid on,” to pay a fine of £16 with costs, and to stand committed until these charges were met. In the same session Mary Lister, convicted of theft, while saved the humiliation of standing in the pillory, was sentenced for this felony to twenty-one lashes, also on her bare back, and “well laid on” at the public whipping-post; she was further sentenced to pay a fine of £21-1-10½ to the governor, and to restore the goods or the value thereof to the owner, as well as to settle the cost of prosecution. She was to stand committed until the sentence was fully carried out. Sometimes the punishment was ordered to be repeated. As an example of this, for publishing a forged deed, John Harrobine, was sentenced by the Supreme Court at the April session in 1754 to stand in the pillory for an hour with a paper fixed to his breast denoting his crime, to receive twenty-one lashes and to be punished in like manner four weeks later. As Harrobine had been convicted of forging another deed he was sentenced also to the same punishment four weeks after his second whipping. It may be assumed that as a result of these cumulative punishments, the culprit did not soon forget that forgery was not exactly a healthy business in which to engage, at least, as a steady occupation.

In bringing this brief study to a close it may be stated that while the Pennsylvania judges in the eighteenth century as a body were apparently attempting to enforce the law with considerable strictness, the Council, sitting as a board of review and pardons, was apt to act on the side of clemency. Many with a death sentence hanging over them were reprieved and banished or even given an

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55 See the “Dockets” of the Court of Quarter Sessions in the office of the Clerk of the Court of Quarter Sessions and the “Appearance Dockets” in the office of the Clerk of the Supreme Court, in City Hall, Philadelphia.
56 Docket of the Court of General Quarter Sessions for the County of Philadelphia for the year 1767 under dates of September 1 and 7.
57 Appearance Docket of the Supreme Court of Pennsylvania for the year 1752, p. 234.
unconditional pardon. As an example of this tendency there are eight recorded instances in which women were sentenced to death for doing away with illegitimate children. In only three instances did the Council issue warrants for the execution of the offenders. Of those sentenced to death for burglary, warrants were issued for the execution of less than one-half. In many cases these criminals were ordered to be sent out of the province. This applies also to those similarly sentenced for counterfeiting. In other words, provincial Pennsylvania justice, harsh as it was from many angles in the eighteenth century as contrasted with its mildness in the seventeenth, was tempered with mercy.

For example, see Ibid., III, 370, 390, 591; IV, 329-330.