The Founders of Pennsylvania had no love for English courts or English criminal justice.* During the period when they had been oppressed on religious grounds, the Quakers had been persecuted especially vengefully in the courts; intolerant English judges delighted in calling them before the Bench on any pretext, and then, when the Quakers refused to remove their hats, punishing them for contempt of court.1 When they established the government in their own province, the Quakers wanted to avoid creating their own oppressive judicial institutions. “Fear of judicial oppression . . . had a marked influence on the development of our courts . . . and was the primary cause of that jealousy of the judiciary which was long a feature of local politics.”2 This distrust of the judiciary took institutional form in a variety of measures designed to reduce the scope of the law and the role of courts, judges, and lawyers in the life of the colony. Most adjudicatory functions were entrusted to the laymen who staffed the provincial or local councils, and court procedures were designed to be simple enough to make lawyers unnecessary.3 Lawyers were discouraged from establishing practices.4 A system of arbitration—hopefully to take the place of

* The research on which this essay is based was supported by a grant from the National Endowment for the Humanities. The author wishes to thank Jeffrey D. Adelman, John Daly, and Marc J. Hershman.

1 Samuel M. Janney, Life of William Penn (Philadelphia, 1852), 27.


3 Their goal was courts so open that “all persons . . . may freely appear . . . and personally plead their own cause . . . .” Statutes At Large, II, 128 (1690?).

4 The attempt to do away with the need for lawyers was the least successful part of the Quaker reforms. There were already lawyers in the province before William Penn arrived; in 1677, one John Mathews had been admitted to practice before the court at Whorekill. Samuel Hazard, Annals of Pennsylvania (Philadelphia, 1850), 439. The Quakers hired David Lloyd as Attorney-General in 1686, making him the colony's first government lawyer. Philadelphia's most famous attorney, Andrew Hamilton, seems to have been in practice by 1713.
lawsuits—was set up within the church meetings, and aggrieved persons were not supposed to resort to the courts unless this private arbitration had failed.6

The Quakers made even more innovations in the substance of the law. The major causes of crime were thought to be poverty, and such property-based emotions as greed and envy. The character of individuals was considered malleable, and in the new colony, which would have little poverty and great opportunities for material and spiritual advancement, there would be less crime.6 "As to their [the British] criminal code, it was adapted to a people grown old in the habits of vice."7 In the morally uplifting atmosphere of the new province, this would not be the case; the few criminals would be strays, capable of correction. Therefore the Quakers established a mild criminal code, with lenient punishments for property offenses and ample opportunities for rehabilitation. Unlike the Duke of York's criminal code, which it superseded in 1682, and which provided the death penalty for twelve specified felonies, the new Quaker code imposed the death penalty only in cases of willful murder.8 Punishment for most thefts was to be triple restitution, instead of the brandings and mutilations then commonly in use, and prisons, when established, were to be workhouses, devoted to rehabilitation.9

Minor offenders, it was hoped, would not be criminally prosecuted at all. As part of the effort to divert troublemakers from the criminal justice system, the Quakers made extensive use of the peace bond, a power of common-law courts now no longer in use. The common

Charles P. Keith, Chronicles Of Pennsylvania (Philadelphia, 1917), II, 560. By 1722, there is a regular Bar. See generally, Loyd; and Thomas R. Meehan, "Courts, Cases And Counselors In Revolutionary And Post-Revolutionary Pennsylvania," Pennsylvania Magazine Of History and Biography (PMHB), XCI (1967), 3-34.


8 In a curious provision, the life of a black could be taken for the crimes of rape, bestiality, or burglary as well as for willful murder.

9 The Quakers were among the first to realize that a prison could have a use other than as a dungeon, a place of very temporary incarceration.
law had developed an extensive and complex system of money escrows or forfeitures, called bails, or, more generally, recognizances. These were used by the courts to insure compliance with their decrees. For instance, both parties to a civil lawsuit were usually required to guarantee a sum of money in advance. Often, the sum was set at twice the value of the goods or damages in question. The money was to guarantee that the loser would abide by the judgment of the court; if he defied it, he would forfeit his bond. Even today, defendants in criminal cases are required to post bail, which they forfeit if they do not appear for trial. A peace bond, like civil or criminal bail, was a sum of money which a person was required to guarantee in advance, and which he would forfeit if he performed some explicitly forbidden act. However, peace bonds differ from other forms of bail in that it is not necessary for the accused person to be criminally convicted, criminally accused, or sued before the bond could be imposed. He need not be subject to any formal court proceeding. At common law, a properly authorized magistrate could require a peace bond of any person subject to his jurisdiction, whenever he thought it necessary. There were no limits in the principle as it was later formulated by Blackstone: "A recognizance is an obligation of record, which a man enters into before some court of record or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, to keep the peace, to pay a debt, or the like."


11 For the development of civil bail, which by the eighteenth century had largely become a device of the defendant acting as his own sureties, and promising to pay upon default, see William S. Holdsworth, A History Of English Law (London, 1922-1938), I, 220-221; IX, 253. We know that the institution was adopted in Pennsylvania because after about 1712, most of the writs of attachment which have been preserved note that the plaintiffs bind themselves to pay court costs if they should lose. To guarantee the promise, each plaintiff posts as sureties the famous John Doe and Richard Roe, which is a way of saying that the plaintiff is his own guarantor. The defendants were placed under similar bond when the writ was served, though if the amount was large, they might be required to name living, not fictional, sureties. Many writs of attachment and copias, as well as a great volume of court papers of all types, have been preserved in the Historical Society of Pennsylvania, Philadelphia Court Records, 1681-1800, items 501, 805 (hereinafter cited as Philadelphia Court Papers, unpaged).

Peace bonds were used in England, where justices of the peace were vested with the power to bind any individual, upon application from a complainant toward whom the accused person had been threatening or abusive. Justices of the peace also had the power to exact good behavior bonds from persons who may not have uttered specific threats but who were generally of ill repute. However, these bonds had fallen out of general use. The various guides to legal procedure—much used in the seventeenth and eighteenth centuries by justices of the peace and sheriffs with little legal education—devote few pages, if any, to the subject. The Conductor Generalis, a widely-used guide, which spends many pages spelling out the rules for the use of civil and criminal bails, the forms required, the numbers of sureties needed, and the amounts that may be imposed, notes about peace bonds only that any justice of the peace may take them.

But peace bonds were common in Pennsylvania. Even though they were not authorized by statute until 1700, they were used much earlier. One of the earliest courts of Pennsylvania for which we have even fragmentary records, held at Upland in 1680, imposed a peace bond on two feuding neighbors who slandered and apparently assaulted each other. Each was required to post £40; the person who struck the next blow or uttered the next slander would

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13 Ibid., II, 430–433.

14 Coke made little mention of peace bonds, either in the Institutes or in the specialized Little Treatise Of Baile And Maineprize (London, 1635). Since the subject was not legislated on by Parliament, it is not surprising that it is not discussed in those legal treatises which are primarily comments on statutes, e.g., Thomas Wood, An Institute Of The Laws Of England (London, 1734). But if the institution were in general use, the procedure and forms should have been discussed in the guidebooks intended for use by lawyers or sheriffs, e.g., William Bohun, An Introduction To The Study And Practice Of The Laws Of England (London, 1732); Michael Dalton, The Office And Authority Of Sheriffs (London, 1682); or in the early form books, e.g., William West, The First Part Of Symboleography (London, 1632). During the period, such books provided the only reference sources available to lay court officials, especially those who lived outside of London. Every attempt was made to include practical information, and the forms for common complaints, pleas, writs of attachments and the like are given in great detail.

forfeit his bond.\textsuperscript{16} Several other cases have been recorded for the period 1680–1700 in Bucks county\textsuperscript{17} and at Philadelphia.\textsuperscript{18}

The circumstances in which peace bonds were used during this early period are illustrated in the case of Margarit Matson, who was criminally accused at Philadelphia on December 27, 1683, of being a witch and of casting spells on cattle. The jury concluded that on the basis of the evidence presented to them they could not find her guilty of any specific acts of witchcraft. They noted, however, that she was “having the common fame of a witch.” After her acquittal, she was placed under a peace bond: she was required to provide two sureties who would each guarantee to pay £50 if she failed to keep the peace at any time during a period of six months.\textsuperscript{19}

In this example are several noteworthy features of peace bonds: there is a judicial proceeding, and the peace bond is imposed by a court, as required by the common law. But the procedure is not criminal. Margarit Matson was acquitted of the criminal charges; in other similar cases there may be no criminal charges at all. In any case, the bond is not intended as a punishment for a crime committed in the past. Rather, it is forward-looking, in that it attempts to encourage good behavior and prevent misconduct in the future. The conditions of the bond include a specific period of time during which the peace must be kept, and a specific sum of money. Margarit Matson, like most bonded persons, did not post the money in advance. Rather, she was required to find sureties, persons who will guarantee to pay the forfeit if she defaults, and who will help to keep her on her best behavior during the period when the bond is in force.

The provincial statute of 1700 gave the power to impose peace bonds to justices of the peace and equivalent judicial officers;\textsuperscript{20} in this, it followed the common law. But the bond itself is not a

\textsuperscript{16} Quoted in Frederick A. Godcharles, \textit{Daily Stories Of Pennsylvania} (Milton, Pa., 1924).
\textsuperscript{17} Records Of The Courts Of Quarter Sessions And Common Pleas Of Bucks County Pennsylvania, 1684–1700 (Meadville, Pa., 1943), 123, 125 ff. (hereinafter Bucks County Records).
\textsuperscript{18} Edwin S. Bronner, “Philadelphia County Court Of Quarter Sessions And Common Pleas, 1695,” \textit{PMHB}, LXXVII (1953), 470.
\textsuperscript{19} Minutes Of The Provincial Council Of Pennsylvania, I, 95.
\textsuperscript{20} Laws, I, 7 (1700); Statutes At Large, II, 23 (1700).
criminal court procedure. Rather, it is an attempt to make some future criminal court procedure unnecessary. Today, peace bonds could not be used as alternatives to criminal prosecutions, for the bonds themselves are denials of liberty, and the Fourteenth Amendment forbids such deprivations without due process of law. "Due process" is usually legislatively defined as a criminal conviction—that is, modern due process concepts would require that a peace bond could not be imposed until after the criminal trial to which the Quakers hoped it would be an alternative. But in the small, face-to-face communities of the 1680s, due process concepts were quite different. Small communities, organized by utopian planners, have often been structured as a practical effort to organize individuals to pursue some common goal. This goal requires community discipline and structure, and is generally felt to be more important than the happiness of individual members. There are many different kinds of community goals: for the Spartans, it was simply to maintain the optimum military defense against the outside world; for the early Romans, it was to defeat the Carthaginians; and for many Rousseau-esque or utopian socialist communities, it has been to live in conditions of greater freedom and equality than are available in the larger society. For many of the colonial settlements of the seventeenth century, the goal was to build the new Jerusalem, to construct a city in which individuals could more closely live in accordance with their religious precepts.

However it is originally conceived, the goal is of ultimate importance. But in many such communities, the maintenance of group discipline is thought of as an end in itself, and is used to justify minor extra-legal impositions on recalcitrant members. Backsliders and slackers are often "forced to be free" in this way. For instance, during the early period of the Roman republic, any magistrate could fine a citizen by decree to punish the violation of an order he had previously given relating to the community defense. Cases exist of individuals being fined for such unsoldierly attributes as obesity. The punished citizen had no legal recourse.\footnote{C. E. Brand, \textit{Roman Military Law} (Austin, Texas, 1968), 38-42.} The extra-legal harassment of the Puritan magistrates in the New England colonies has
been the subject of much literature. In small, frontier communities, the citizens, who agree on the goals for which community discipline is needed, generally know which of their number are backsliding, and which are endangering the collective mission. They generally support minor extra-legal control devices, like the peace bond, in cases where the offense seems too mild to invoke the full weight of the criminal law.

Sureties, who agreed to guarantee behavior, were common in colonial jurisprudence. They served several purposes. Their credit was added to that of the defendant, so the amount of the bail could be larger. Credit was essential: it was rare that any individual had cash, because on the frontier capital must be used. Escrow accounts kept capital idle. But the promise to pay on demand, rather than the posting of cash in advance, let the individual keep his capital working during the period of the bond. In addition, sureties were expected to exercise some supervision over the bonded person, and they possessed the power to render him up for incarceration if they felt he was becoming untrustworthy.

During this period, there were no full-time police, and, often, there were no safe places of incarceration. The courts lacked the means to supervise bonded persons, and thus relied on the sureties, who did some of the work that today would be entrusted to such officials as probation officers. Not until the fear of crime led to the reorganization of the night watch, and the hiring of constables empowered to arrest malefactors, about 1750, could Philadelphia be said to have a police force—and, even then, it was never very large, numbering twenty-five constables in 1770. In the early years, the frontier community needed every pair of hands. The courts could not afford to imprison such minor offenders as slanderers, even had prisons been available, because their services were necessary to the community. In theory, sureties thus provided the most flexible kind of restraint: enough

22 Statutes At Large, III, 75 (1715) provides that the surety may at any time discharge his obligation by returning the bonded person to custody.
23 Desmond.
24 Statutes At Large, V, 111, 113 (1750).
25 The Philadelphia Court Papers provide occasional lists of constables. In the 1780s, there were usually about thirty constables apportioned among the thirteen townships in Philadelphia County, and an equal or smaller number in the city itself.
freedom to allow the bonded person (and his capital) to work; enough restraint to keep him from disturbing others.  

It is difficult to trace how peace bonds worked in practice during the early colonial period, for most of the trial records have perished, and the appellate courts seem not to have kept written copies of their opinions. But enough records and anecdotal details survive for us to be sure that peace bonds were commonly used. They served a variety of purposes, both as a substitute for criminal prosecution, and, later, accompanying prosecution. The early colonists were of a querulous nature, quick to argue, quick to threaten each other, and quick to file lawsuits. Many peace bonds were imposed on slanderers, persons who threatened others, or persons who were abusive or intemperate in their language. For example, in Bucks county, in 1686, three persons criminally convicted of defaming others were fined £3 each, and then were placed under peace bonds of £40 each to be of good behavior and to appear at the next session of court (when their sureties would be discharged). In 1687, in the same county, an individual forfeited a similar bond of £40, "levied . . . on his lands, goods and chattels"; after the bond was imposed, he repeated the undescribed unruly behavior.

The amount of money involved in these early bonds is surprisingly large. Although there was gradual inflation throughout the colonial period, the sum of £1 represented considerable capital. In 1724, "one brown gelding" was valued at £3 in a true bill for horse theft. In 1714, the same sum was enough of a stake to cause one G. Munrow to sue one Henry Coombe in trespass. There are many instances of civil suits, complete with lawyers, depositions, and other ex-

26 The same reasoning was behind the use of fines and whippings, in preference to incarceration, in more serious cases: "In criminal cases the sentences were usually limited to fines, whippings, or the stocks. Sentences to terms of imprisonment were rare; the colony could ill afford to spare the labors of any individual, however depraved, and still less was it inclined to support him in idleness." Loyd, 56. This was true even though each prisoner paid his own out-of-pocket expenses, and could not be released from prison until he settled his bills.

27 Ibid., 1, 2, 59.


29 Bucks County Records, 58, 60.

30 Ibid., 81.
pensive encumbrances of the law, over sums of this magnitude.\textsuperscript{31} Few individuals had any cash to spare, and even a very wealthy person would not take lightly a forfeiture of £20 or £30.

There must have been many defaults. Sheriffs were responsible for the administration of bail, and were empowered to collect forfeitures from the sureties.\textsuperscript{32} But they had many other duties, and limited resources.\textsuperscript{33} Sheriffs were to receive $1\frac{1}{2}$ per cent of whatever forfeited bail they collected, plus expenses, sometimes figured at so much per mile.\textsuperscript{34} But if a sheriff pursued a defaulter and failed to collect, either because the defaulter had absconded or because he didn’t have any money, the sheriff received nothing, and could only appeal to the county board, or to the Assembly, to cover his expenses.\textsuperscript{35} By contrast, the sheriff’s income from other duties was likely to be steadier. He probably devoted few resources to collections.

Many of the defaults thus remained uncollected, due either to sheriff’s neglect or to lack of money. In 1687, the Bucks County sheriff seized a grey mare, seventeen gross of buttons, and some other property belonging to one Jon Brock, who had forfeited £20 bail. The goods were valued at less than £8, and the sheriff was ordered to try again.\textsuperscript{36} There is no record that he ever did so.

These defaults were one aspect of the general eighteenth-century

\textsuperscript{31} These examples are all drawn from the writs of attachment, \textit{copias}, and other papers preserved in Philadelphia Court Papers.
\textsuperscript{32} Bohun, 45–46.
\textsuperscript{33} Among the traditional duties of sheriffs were the serving of writs of all kinds, criminal prosecutions, confining dangerous persons, supervising the night watch, taking bail in criminal and civil cases, supervising elections and retaining possession of the ballots, and keeping an eye on other government officials. In addition, they were usually important figures in local politics. Dalton, and later \textit{Digest Of County Laws} (Philadelphia, 1839), esp. 36ff.

In Philadelphia during the period 1767–1770, the sheriff, Joseph Redmond, sought reimbursement from the county commissioners for his expenses in a wide variety of activities, including administering hangings and whippings, staging elections, burying paupers, and keeping courtroom furniture and equipment in repair. County Commissioners’ Minute Book, Am 378, Historical Society of Pennsylvania.
\textsuperscript{34} Ibid.
\textsuperscript{35} The costs of pursuit were inclined to be high—£23 in one case—and both county boards and the Assembly were inclined to be niggardly. Examples of their penuriousness in such cases are ample, \textit{e.g.}, \textit{Pennsylvania Archives} (8th series), IV, 3259, 3313, 3340; \textit{ibid.}, VIII, 6666, 6735.
\textsuperscript{36} Bucks County Records, 92.
problem of bad debts. Most business, both public and private, was

carried on by personal credit. "Collections of accounts receivable

were slow," and defaults were many. A large majority of all civil

lawsuits were over bad debts.\textsuperscript{37} Courts and legislatures suffered their

share of uncollectable accounts; both frequently complained about

the difficulty of collecting fines, forfeited bail of all kinds, rents for

the use of public property, and even taxes.\textsuperscript{38} By statute, bail might

be required of persons who wanted to leave the colony,\textsuperscript{39} so that if

the debtor could not be located, his creditors might address them-

selves to his sureties. Pennsylvania seems to have been a large ex-

porter of people throughout the colonial period;\textsuperscript{40} thus, it is surprising

that this statutory recourse appears to have been little used.

Some bail seems to have been used to encourage undesirable

persons to leave the province. In 1709, for example, one Thomas

McNamara, indicted for an unknown crime, petitioned to have the

charges dropped and his sureties discharged because he had arranged

passage for Great Britain. The city council agreed to discharge his

sureties when he embarked, provided he absorb the costs of prose-

cution thus far.\textsuperscript{41} In 1739, two prisoners incarcerated for inability to

pay fines were released and put under bond to leave the province

immediately.\textsuperscript{42} Other, similar cases are occasionally recorded.

In the examples thus far, a certain flexibility can be detected. The

amount of the bail, the number of sureties, and the duration of the

bond were completely within the discretion of the trial judge. The

circumstances requiring the bond—feuding neighbors, chronic slan-

derers, or the like—were known to the judge personally, as they

were to most members of the small frontier community. The bond

was tailored to the circumstances; more surety was required from

bad risks, and less from good. This flexibility is usually not avail-

\textsuperscript{37} Wilbur C. Plummer, "Consumer Credit In Colonial Philadelphia," \textit{PMHB}, LXVI

(1942), 385-409.

\textsuperscript{38} \textit{Minutes Of The City Council}, 47-48 (1707); 79 (1712); \textit{Register Of Pennsylvania}, I, 446.

There are some instances of poor people being sold into servitude for nonpayment of fines.


\textsuperscript{39} \textit{Statutes At Large}, II, 130 (1700).

\textsuperscript{40} Wayland R. Dunaway, "Pennsylvania As An Early Distributing Center Of Population," \textit{PMHB}, LV (1931), 134-169.

\textsuperscript{41} \textit{Minutes Of The City Council}, 63 (1709).

\textsuperscript{42} \textit{Ibid.}, 391 (1739).
able in criminal prosecutions, since the penalty on conviction is fixed relatively rigidly by statute or custom. When the offense was minor, or the possibility of rehabilitation existed, the peace bond was by far the superior remedy. Indeed, the need to temper the rigidity of the criminal law in minor cases is the reason for many judicial innovations in our own time: juvenile courts, small-claims proceedings, etc.

However, much of this flexibility was lost as Philadelphia grew larger, the number of criminal complaints increased, and the courts themselves became increasingly professionalized. Philadelphia grew rapidly throughout the colonial period, especially during the periods 1681–1700 and 1730–1765. About the year 1700, the problem of crime began to obsess the public. Whether there was an extraordinary increase in crime, or whether the increase simply reflected the larger number of people who lived in the city, or whether, perhaps, there was no increase at all, cannot now be determined. What is certain is that many citizens felt that they were in the midst of a crime wave, and their complaints were loud and frequent. As early as 1697, there are complaints that Philadelphia is becoming infested with "pirates and rogues," and in that year, William Penn felt strongly enough to write that "there is no place more overrun with wickedness" than Philadelphia. There are many contemporary complaints that the area was becoming a refuge for undesirables, that piracy was "common," and that desperadoes were organizing into criminal bands. An example of the crime-wave mentality is the panic which swept Philadelphia in 1761 when a gang of persons was said to be stabbing women on the streets. Later, it was found that some high-spirited youths were slashing the dresses of women with razors; the danger had been greatly exaggerated.

The response to the increase in crime was to insist on more prose-

culions and harsher punishments. William Penn’s remedy for Philadelphia’s “wickedness” was to order the provincial council to “take care that justice be impartially done upon transgressors.” By 1731, Governor Gordon could remark to the Assembly that criminal prosecutions “are greatly multiplied among us.” Before 1700, “the offenses for which indictments were most frequently found . . . were for drunkenness, larceny, profanity, assault and battery and breach of the peace, offenses against morality [and similar minor crimes].” During the period 1683–1715, the provincial council in Philadelphia, which had taken on itself jurisdiction over the most serious felonies, heard only three cases. There seems to have been only one execution carried out. But from 1715 to 1745, Lawrence H. Gipson found one death sentence imposed for arson, twelve for burglary, one for counterfeiting, six for murder and three others for unclear reasons. From 1745 to 1775, there were 112 such death sentences, of which at least 61 were actually carried out.

William Penn’s criminal code, with its mild punishments, was considered a great humane reform. But the colonial legislature, faced with a rise in crime, responded by increasing punishments. As early as 1700, the legislature changed the criminal code to make castration a possible punishment for rape or bestiality, although there is no indication that this penalty was ever used. Whippings and brandings were resorted to more often, and even fines increased. There are records that more serious mutilations were imposed, at least occasionally. And, one by one, the legislature added offenses to the list of crimes punishable by death. By 1767, there were sixteen such crimes, exceeding the number of twelve originally proscribed by the Duke of York’s code.

48 Minutes Of The Provincial Council Of Pennsylvania, I, 527 (1697).
49 Loyd, 52; Gipson; Bronner; and Henry Leffman, The Consolidation Of Philadelphia (Philadelphia, 1917), 27.
51 Gipson, 10–11.
52 Statutes At Large, II, 8, 9 (1700).
53 Pennsylvania Archives (1st series), VIII, 326, and the many whippings, brandings, etc., imposed by the Philadelphia court of Quarter Sessions.
54 By 1720, we read of the death penalty being routinely imposed for the crimes of counterfeiting and burglary, though the provincial council, which had the power to commute, did so liberally. Minutes Of The Provincial Council Of Pennsylvania, III, 109–110. Around 1750, “a great deal of hanging occurs,” all at once. Watson, I, 309.
The increase in the harshness of sentences led to an increase in the money spent on penal machinery. Although Penn's original plan had called for the construction of workhouses, which would serve as places of incarceration and correction, none were actually built until after 1718, when the number of felons, debtors, and vagrants exceeded the capacity of private warders. Construction of a more secure prison was begun in Philadelphia in 1773.\textsuperscript{56} A new pillory, stocks, and whipping post, apparently previously unnecessary, were built in 1708.\textsuperscript{67}

The structure of the courts, too, became more elaborate and more formalized. As long as the colony was sparsely settled, unspecialized governmental institutions were the rule, and judicial jurisdiction vested in bodies which also possessed legislative and executive powers: the provincial councils dealt with felonies, and the boards of aldermen (who were, \textit{ex officio}, justices of the peace) handled lesser crimes. These bodies retained some of their criminal jurisdiction throughout the colonial period, but, increasingly as the judicial workload increased, trials came to be conducted before relatively specialized courts. Justices of the peace, sitting together, constituted themselves courts of Quarter Sessions and Common Pleas on an \textit{ad hoc} basis, at least since 1680. Even though there was no statute authorizing such courts, we know that they sat quite regularly, dealing with both civil and criminal cases.\textsuperscript{58} In 1715, the Assembly recognized the existence of Quarter Sessions courts in each county, dealing exclusively with criminal matters, and separate from Common Pleas.\textsuperscript{59} The jurisdiction of Quarter Sessions courts was

\begin{itemize}
\item \textsuperscript{56} \textit{Laws}, II, 83-85 (1773).
\item \textsuperscript{57} \textit{Minutes Of City Council}, 59 (1708).
\item \textsuperscript{58} \textit{Statutes At Large}, II, 1 (1710?) discusses the duties of these courts. They retained some legislative functions, including viewing fences, overseeing county accounts, laying out roads, and appointing assessors. However, even at this early date, the great bulk of their time was taken up with judicial activities.
\item \textsuperscript{59} \textit{Pennsylvania Archives} (8th series), II, 1119-1120, 1124, 1129. An attempt had been made to create separate Quarter Sessions courts, with judges appointed by the governor, in 1715. \textit{Statutes At Large}, III, 33, 34. These courts were to have criminal jurisdiction over all crimes except felonies of death. The statute was repealed in 1719. However, we know that the courts were in existence, and continued to sit. Quite likely they defined their jurisdiction, informally, in the terms of the repealed statute. Judges were part-time officials, and, once appointed, remained judges \textit{for life}. When called on to serve, they were assigned, according to need, to either civil or criminal sittings. But after 1759, the staff of the two courts, as well as the jurisdiction, was separated.
\end{itemize}
vague until 1742, when the Assembly specified that they were to have original jurisdiction over all felonies and misdemeanors except those for which the death penalty could be imposed.\textsuperscript{60} Felonies of death were cognizable only by courts of Oyer and Terminer, which would include among their sitting judges at least one supreme court justice. These courts had been in existence, on an \textit{ad hoc} basis, at least since 1715, but their circuits were irregular.\textsuperscript{61} Although the jurisdictional separation between Quarter Sessions and Oyer and Terminer was supposed to be complete, in practice there was considerable overlap. There are instances of Quarter Sessions courts imposing the death penalty, and, especially in the more rural areas, Oyer and Terminer was often called on to deal with minor offenses.

In Philadelphia County, another jurisdictional separation emerged after about 1745. In addition to the Quarter Sessions court, the county contained the court composed of the mayor and aldermen; this older mayor's court jealously retained its jurisdiction over crimes committed within the city limits. Although the Philadelphia County Quarter Sessions court was not supposed to deal with offenses committed within the city itself, in practice, after about 1750, it came to handle an increasing proportion of the county criminal workload.\textsuperscript{62} Thus, from a system in which criminal jurisdiction was largely handled by legislatures, the province had, by about 1760, evolved a highly specialized set of trial courts.

The use of peace bonds also changed, and the early concepts of flexibility were largely lost. Instead of being a small frontier community, Philadelphia was now a city with a complex social organization. Margarit Matson's dirty linen might have been apparent to her few neighbors, but in a large city it is impossible to determine just who is "well known" in the community to be a witch or any-

\textsuperscript{60} \textit{Pennsylvania Archives} (8th series), IV, 2840.

\textsuperscript{61} \textit{Ibid.}; and \textit{Pennsylvania Archives} (8th series), III, 1839. A court of Oyer and Terminer for capital crimes reported, in 1730, the trial of two burglars, two murderers, one counterfeiter (charged, following British custom, with treason), and one person accused of concealing a felony. Two were hung, one received a life sentence, and three were acquitted. \textit{Pennsylvania Archives} (1st series), I, 279–280.

\textsuperscript{62} \textit{Laws}, II, 113 (1774), and the registers of indictments in the Philadelphia Court Papers. The only dockets of the Mayor's court of record which have survived are for the years 1754–1776, and are not complete. Am 3093, Historical Society of Pennsylvania. There are no records of any peace bonds, and very few criminal trials.
thing else. Peace bonds, instead of being an alternative to criminal prosecution, began to be used as additional punishments imposed on people who had already been involved in more formal procedures. Their use, instead of being flexible, began to be rigid and routine.

For instance, during the period 1754-1764, the court of Quarter Sessions imposed forty-one recorded peace bonds. Of the forty-one, thirty-seven were imposed on individuals who had been convicted of crimes. Fourteen had been convicted of felonies, usually theft, fourteen of assault, three of running a disorderly house, four of fornication or bastardy, and two of unspecified misdemeanors. In each case, the peace bond was an additional punishment, imposed along with a fine, and, usually, a whipping. The bond was to run for a fixed period of time: for one year (in twenty-four cases), six months (one case), or three months (four cases). The duration of four bonds is unrecorded.

In the four cases in which the peace bonds were imposed on men who had been convicted of fornication or bastardy, the duration was longer. These bonds were to guarantee the support of the resulting illegitimate child. Each was to continue in effect until the child had reached a specified age, five or seven years. The convicted fathers were also punished by fines and whippings. In these cases, the peace bonds seem less an additional punishment and more an attempt to keep the child and its mother from becoming public charges.

This concern for saving the taxpayers’ money clearly played a part in two cases of peace bonds where no criminal charges were involved. In 1757, George Cast was held in £50 upon condition that Stephen Honolder not become a public charge to the county for four years. The relationship between the two is not specified. And in 1761, John Bringhurst, who proposed to manumit a slave, was required to post £30 to guarantee that the freedman would not become a public charge “by sickness or otherwise.” This seems to have been a common requirement in cases of manumission. Two

63 Enough dockets and papers of Quarter Sessions court for Philadelphia County have been preserved to indicate that this sample is typical. The years 1753-1770, 1773-1780, 1779-1787 have been preserved by the City of Philadelphia, Department of Records. Some have been microfilmed. The years 1780-1785 are at the Historical Society of Pennsylvania, Am 30924.
other peace bonds were imposed without criminal charges being brought, but no details are given. This sample of forty-one cases is fairly typical of the general workload of the Philadelphia Quarter Sessions court.

However, the court of Oyer and Terminus for the eastern circuit, which traveled from county to county, and numbered among its members Thomas McKean, a member of the supreme court, used peace bonds in quite a different way. Most of the workload of this court involved serious felonies, which were almost automatically punished by death upon conviction. Peace bonds clearly could not be used as additional punishments! They were, instead, routinely imposed upon persons who had been found not guilty after jury trials; that is, they were imposed upon persons, who, legally, were innocent. They were not imposed because the acquitted defendants were "well known" to the community to be murderers, robbers, or whatever. They seem to have been used to try to quiet community hostility, and to try to reduce the tensions caused by the prosecution.

In one unusual case, however, they seem to have had a political purpose. In 1778, the court of Oyer and Terminus, sitting in Philadelphia, imposed ten peace bonds, each on a person who had been acquitted of the crime of treason. Eight required the bonded persons to guarantee £1,000, and to find two sureties to guarantee £500 each. The remaining two bonds required £500 and two sureties of £250 each. The period for which the bond was to last was always "the duration of the present war." Perhaps the evidence against these ten persons was weighty, though not beyond a reasonable doubt. Or, perhaps, there was no evidence, and the trials were another harassment of suspected Tories. In either case, the peace bonds were themselves harassments, designed to tie down the capital of the suspected Tories, or perhaps even to drive them from the state. It looks suspiciously like that judicial tyranny which the early Quakers were so concerned to protect the colony against.

Peace bonds were routinely imposed on acquitted defendants. During the period 1780-1784, for instance, the court of Oyer and Terminus imposed thirteen additional peace bonds in cases occurring

64 The records of the court of Oyer and Terminus for the eastern circuit are available for the years 1777-1807, with a few gaps. City of Philadelphia, Department of Records.
in Philadelphia. Nine were imposed upon persons who had been found not guilty of the crimes of murder, burglary, and the like. Two were imposed upon persons who had been convicted of manslaughter, a serious felony for which the death penalty was not used. The amounts of these bonds were astonishingly high, usually figured in thousands of pounds, and at times reaching such sums as £80,000 (divided between the bonded person and two sureties). If forfeited, such bonds could never be paid; they represent amounts larger than the total assets of all but the wealthiest citizens. The period of the bond was most often set at one year, but sometimes edged upward to seven or nine years. (The tendency to longer terms was more pronounced in rural counties, where, on at least three occasions, bonds were imposed for the lifetime of the accused person.)

In two cases, bonds seem to have been imposed without criminal charges being pressed. In one case, no details are given, but in the other, we can discern the pattern of earlier years: "It appearing to the court that John Gowin is a man of suspicious character and that he has been concerned in plundering boats and subjects of the United States in the river Delaware, ordered that John Gowin give security in £100 for his good behavior for twelve months."

When compared to the other records of 1783, this case seems an anachronism in every detail. John Gowin, like Margarit Matson a hundred years earlier, came to the attention of the court because he was notorious in the community. Philadelphia, however, had become too large for all the suspicious characters to be known in this way. The amount of the bond, £100, was manageable; if Gowin defaulted, two or three sureties, plus his own chattels, could make up the sum. By imposing larger amounts, the courts had made peace bonds irrelevant: if an accused murderer, acquitted and bonded in, say, £1,000, were accused of murder a second time, forfeiture of the bond—which he could never pay—was the least of his worries. At the same time, there is increasing use of prison sentences as punishments; perhaps the availability of the new prison, built in 1773, encouraged judges to think of incarcerating more convicts. A term in prison, cutting off his income, makes it even more unlikely that a convict can pay a defaulted peace bond.

These changes—the growing anonymity of city dwellers, the in-
flation of the cash value of the bail—made the flexible use of peace bonds increasingly difficult. After about 1780, their use declined; eventually they fell out of use entirely. In 1784, the Philadelphia County court of Quarter Sessions imposed only two peace bonds, both on fathers of illegitimate children. No peace bonds were used in twenty-four cases of assault, all of which were similar to cases in which peace bonds had been used in the 1760s. In June, 1785, one John Molino, who had been convicted of assault and battery, was required to guarantee £200, and find two sureties to guarantee £100 each for his good behavior for six months. After this, no further peace bonds are recorded in the eighteenth century. Nor are any defaults recorded. In the court of Oyer and Terminer, peace bonds continued to be imposed. But the court clerk had ceased to record forfeitures, and it is clear that the bond had become a formality, merely a part of the rhetoric surrounding the proceedings at a criminal trial.

The power to impose peace bonds remained a weapon of the Quarter Sessions court. As late as 1829, two cotton spinners, who had been fired from the Wagner mill in Philadelphia, and who were “picketing,” were required to post peace bonds after they threatened two other persons whom they considered strikebreakers. In this anecdote, there seems to be a glimmer of recognition that industrialisation had brought about new situations in which peace bonds might once again be useful. But the example remained an isolated one, novel enough to make the newspapers, and peace bonds again fell into disuse.

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