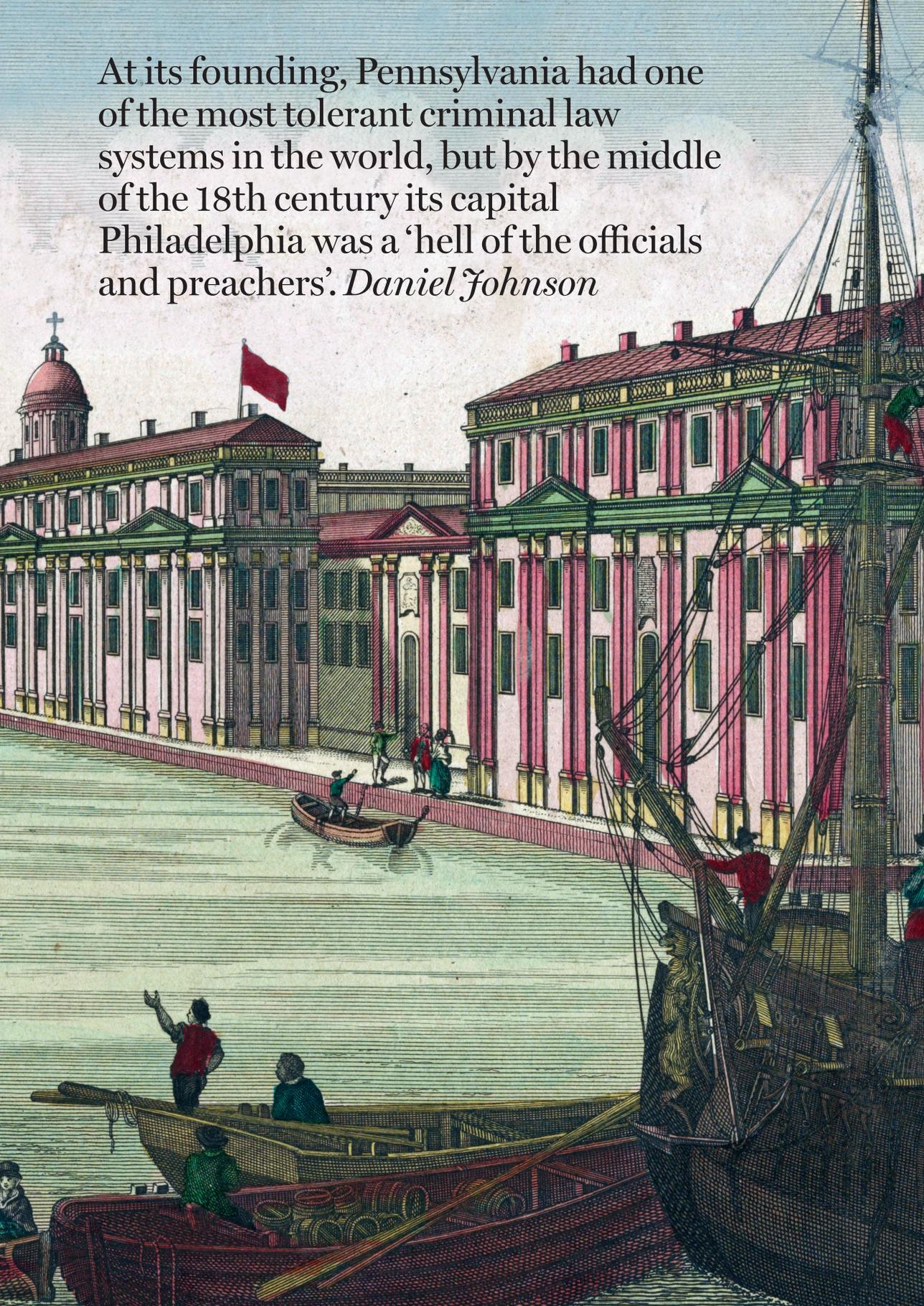


CRIME IN THE CITY OF BROTHERLY LOVE



At its founding, Pennsylvania had one of the most tolerant criminal law systems in the world, but by the middle of the 18th century its capital Philadelphia was a 'hell of the officials and preachers'. *Daniel Johnson*



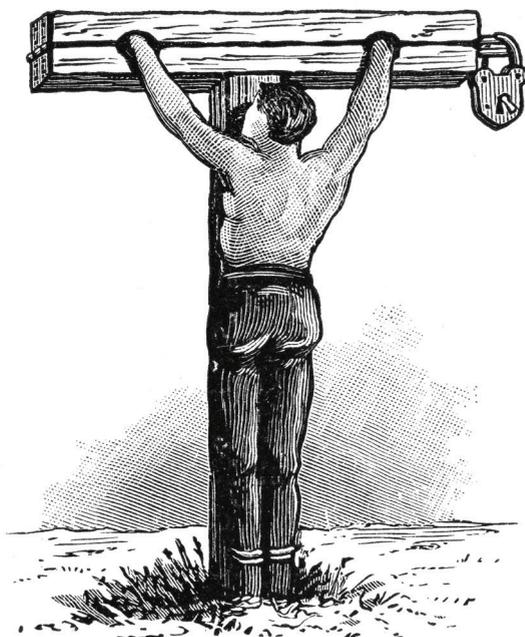
In *Spirit of the Laws*, first published in 1748, Charles de Montesquieu characterised the Quaker founder of Pennsylvania William Penn as the greatest lawgiver since antiquity, ‘a modern Lycurgus’. The Anglophile Voltaire also praised the Religious Society of Friends and the Pennsylvania proprietor, emphasising Penn’s wise laws – ‘none of which have ever been changed since his time’. Voltaire claimed the colony’s principal town of Philadelphia was ‘the most flourishing city’ in America, a claim supported by the port’s rapid growth after its founding in 1682. Though established close to 50 years after Boston and New York (known as New Amsterdam until 1664), by the 1760s Philadelphia was the largest city in North America and a centre of enlightened print culture.

Montesquieu and Voltaire’s admiration for Penn’s laws and system of government reflected 18th-century philosophers’ growing support for religious toleration. Though Independents had called for liberty of conscience during England’s Civil Wars of the 1640s, the enshrinement of religious freedom at Pennsylvania’s founding was unprecedented. Peace and prosperity in the colony seemed to confirm the virtues of a legal system rooted in liberal notions of tolerance and individual conscience. The existence in the city by the 1750s of Quaker, Anglican, Lutheran, Presbyterian, Methodist and Catholic places of worship provided concrete evidence for peoples of different (Christian) beliefs living together in harmony.

Yet the relationship between Penn’s legal order and Philadelphia and Pennsylvania’s affluence is more complicated than such tributes suggest. Voltaire was in fact quite wrong in claiming that none of the colony’s laws had changed since Penn’s time. This was most notable in criminal statutes. While at its founding Pennsylvania’s punishments reflected Quaker opposition to violence and a belief in individual reformation, by the time of Penn’s death in 1718 the colony had completely abandoned its humanitarian penal code. Whipping posts, stocks and pillories were regularly used in Philadelphia by this time. Between 1718 and the outbreak of the American Revolution in 1775 the Pennsylvania government executed close to 100 people, with

Previous spread:
Philadelphia waterfront,
18th-century coloured
engraving.

Below: a whipping post,
as used in colonial
America, 19th-century
engraving.
Right: lithograph
commemorating the
bicentennial of the
founding of Pennsylvania,
1882.



PENN·BI·CENTENNIAL

1682

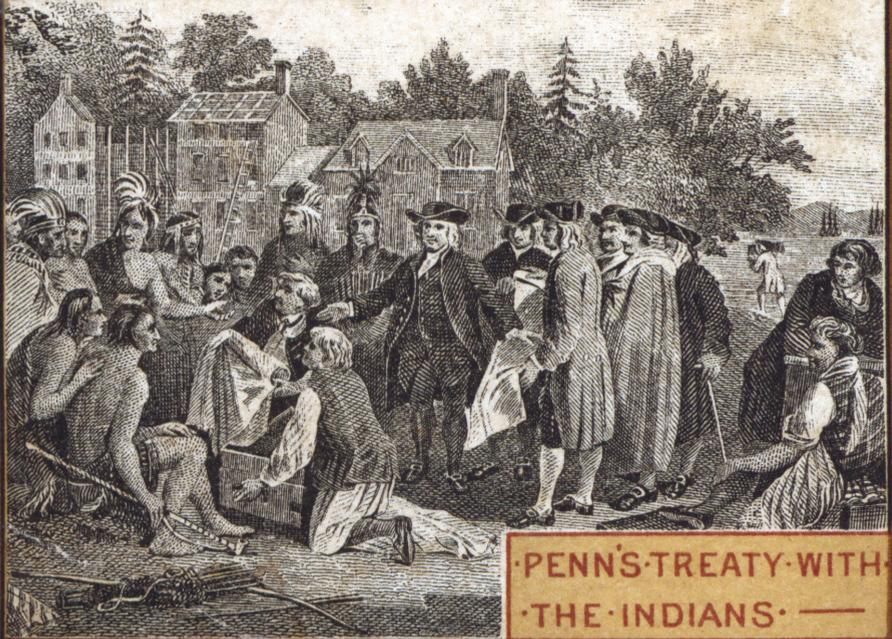


1882

·THE·FOUNDER·OF·PENNSYLVANIA·

·BORN·OCT. 13TH 1644·

·DIED·JULY·30TH 1718·



·PENN'S·TREATY·WITH·
·THE·INDIANS· —

AN
A C C O U N T
Of the
R O B B E R I E S

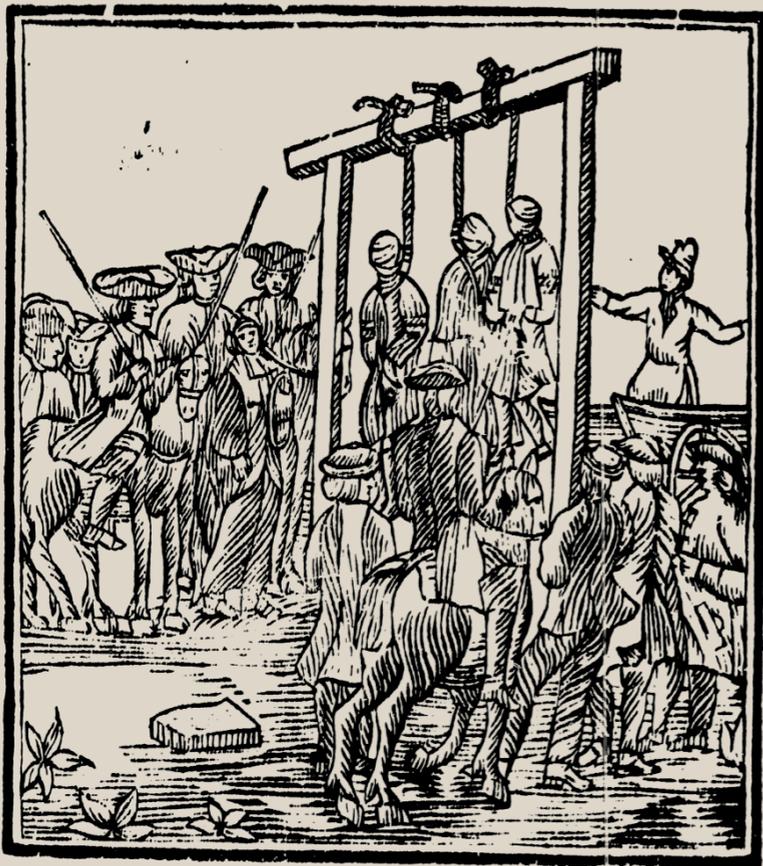
Committed by

J O H N M O R R I S O N,

And his ACCOMPLICES, in and near *Philadelphia*, 1750:

Together with

The Manner of their being *discover'd*, their BEHAVIOUR on their
T R Y A L S, in the *Prison* after *Sentence*, and at the Place of
Execution,



Right: frontispiece to *An Account of the Robberies Committed by John Morrison, 1750-51.*

Below: pillory, as used in colonial America, 19th-century engraving.

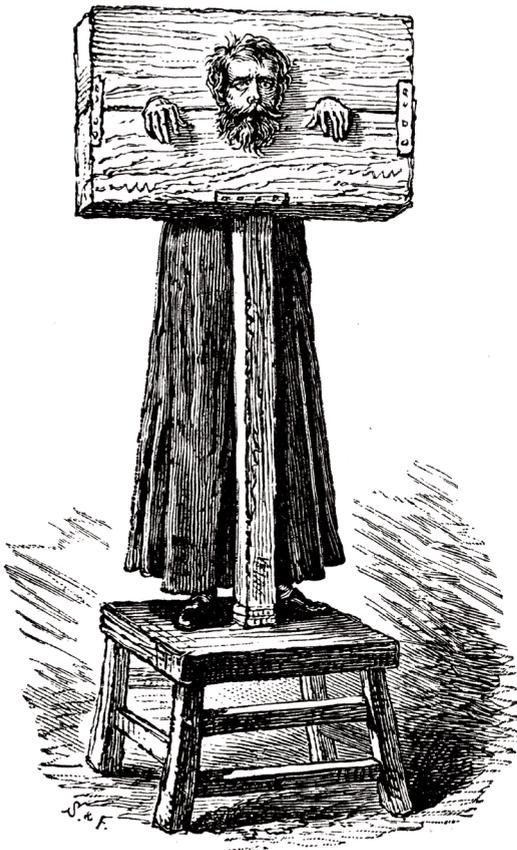
the overwhelming majority hanged in Philadelphia. According to the historian Gabriele Gottlieb, the city's officials executed nearly five times more people than the authorities in Boston in the second half of the 18th century, with two thirds of them being convicted of property offences.

The association between liberal government and Philadelphia's flourishing print culture is also far from straightforward. Print and an open press could educate and enlighten, as suggested by the publication of numerous plans for social reform – most notably the abolition of slavery – in Philadelphia in the mid-1700s. Yet sensationalist crime stories also contributed to a belief in the incorrigibility of offenders, providing printed legitimacy to the weekly spectacles of punishment that were the norm by the mid-18th century. Far from its unique humanitarianism, crime and punishment in the early modern 'City of Brotherly Love' show its integration into an expanding British Atlantic social and cultural world.

A tyranny of lawyers

In the late Middle Ages the secular fields of law and medicine joined theology as higher disciplines in European universities. Like the clergy, lawyers and physicians came under suspicion for their privileged access to mysterious and powerful forms of knowledge. Popular hostility to the intricacies of law and 'crafty' lawyers persisted well into the early modern era. Thomas More alluded to this suspicion in *Utopia*, where laws were few and simple to understand. Since in the perfect commonwealth of *Utopia* all citizens could read and plead their own causes, there was no need for lawyers or their craft.

During the civil wars in Britain and Ireland, activists such as the Leveller William Walwyn claimed many people believed the 'misery of the Commonwealth' resulted from the nefarious practices of lawyers. The Hale Commission, established in late 1651 under the Rump Parliament, addressed the delays, expense and procedural 'irregularities' of the law. None of its proposals (including reducing the use of the death penalty) were enacted, however, and law remained a source of contention. Later in the decade Quakers such as George Fox, James Naylor and Edward

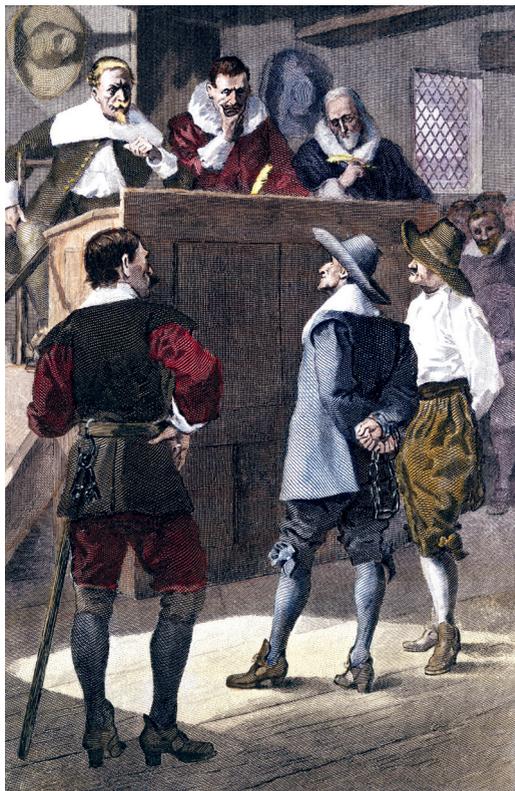


Billings were among the most vociferous in denouncing ‘terrible and lawless lawyers, under whose oppression the whole nation smarts’. Such figures demanded the reformation of English law.

The legal changes implemented after the restoration in 1660 of Charles II were not what activists had hoped for under the Commonwealth. The group of laws known as the Clarendon Code (1661-65) attempted to impose religious conformity by excluding Dissenters from public office and banning conventicles (religious meetings not sanctioned by the Church of England). A separate act of 1662 targeted Quakers specifically, leading some to worship secretly and others to gather openly in defiance of the law. Between the 1660s and 1680s thousands of Quakers were imprisoned and hundreds died during or as a result of incarceration.

George Fox’s establishment of the Society of Friends was a response to internal divisions among Quakers, as well as to official persecution. Writers such as the Scottish Friend Robert Barclay rejected the common association of Quakers with anarchistic Anabaptists, Familists and Ranters and embraced traditional norms and institutions. Yet, while Barclay acknowledged the need for strong laws and educated men to maintain the social order, he retained a traditional suspicion of the legal profession. In a perfect world, in which truth and righteousness prevailed, the ‘deceitful Tribe of Lawyers’ could be dispensed with. Like priests, lawyers’ ‘Tricks’ and ‘endless Intricacies’ made the law a ‘burden to honest men’.

William Penn also believed in the need for conventional hierarchies, while retaining Quaker ideas concerning a more humane legal system. Pennsylvania’s *Laws Agreed Upon in England* therefore declared that ‘all courts shall be open, and justice shall neither be sold, denied or delayed’. People of all religious persuasions would be allowed to argue on their own behalf and all proceedings would be ‘short, and in English, and in an ordinary and plain character’. Court fees were to be moderate and prisons would be free – meaning inmates would not have to pay fees to gaolers for their upkeep, another common source of complaint in the 17th century. Importantly, those convicted of crimes would make



A Quaker on trial in England, 19th-century coloured engraving.

‘Like priests, lawyers’
“Tricks” and “endless
Intricacies” made
the law a “burden
to honest men”

restitution through labour in workhouses rather than suffer physical punishments, reflective of Friends' opposition to the death penalty for property offences and their belief in individual reformation.

Advancing justice

Members of the Pennsylvania Assembly quickly amended the colony's laws. Within two years of its founding, a stocks and pillory stood in the centre of Philadelphia and those convicted of robbery or assault could be whipped. Townspeople welcomed pirates who brought much-needed specie to the port, while counterfeiting rings operated openly. In 1697 Penn wrote a scathing letter from London to his provincial council concerning reports of crime and vice in the city. A committee charged with looking into Penn's complaints admitted that 'Looseness and vice' had crept into the town, but claimed 'it cannot be avoided but the bad as well as ye good will be entertained' in a growing city like Philadelphia. According to the committee, the existence of too many public houses and, suggestively, the absence of sufficiently punitive laws explained the growth of criminality and immorality in the port.

Accordingly, in 1700 legislators passed a raft of penal laws allowing a variety of new corporal punishments for offences from fornication to robbery. In the same year assemblymen followed other colonies in instituting a separate legal system for enslaved people that included capital punishment. Representatives claimed the death penalty for theft was necessary as a deterrent because 'Negroes', knowing their masters would do anything to protect their most valuable property, committed felonies with impunity.

Remarkably, considering the benevolent founding legal system, the Crown repealed several of these statutes because of their excessive cruelty. Attorney general Edward Northey claimed that there was no precedent for a 1700 Pennsylvania law allowing castration for sodomy or bestiality, or for the castration of enslaved men convicted of attempting to rape a 'white woman or maid'. Northey also found Pennsylvania's punishments for robbery to be extreme, specifically the selling of unpropertied offenders into servitude, as 'selling a man is not a punishment allowed by the laws of England'.

The privy council repealed the laws, though assemblymen simply re-passed disallowed statutes after removing the offending clauses.

It was in 1718, however, that Pennsylvania completely jettisoned its original legal system. The *Act for the Advancement of Justice* claimed that, although the common law was the birthright of all English subjects, some acts of Parliament had not been extended to American plantations. This failure evidently encouraged some to commit crimes in the knowledge they would not receive the same punishments as they would have in England; Pennsylvania's criminal statutes would henceforth follow those of Great Britain. In exchange for being allowed to retain the right to take affirmations rather than oaths (which Friends opposed on religious grounds) in legal proceedings, Quaker legislators offered no resistance to this Act.

Punishment and print

The first person executed in Philadelphia under the new statute was a silversmith named Edward Hunt. Captured at the Battle of Preston during the Jacobite rising against George I in 1715, Hunt was transported as a rebel to the island of Antigua. Five years later, Philadelphia authorities apprehended the silversmith for making Spanish American pieces of eight – the most important coin in the colonies. After a jury found Hunt guilty of treason for coining, the governor, William Keith, referred the issue of a reprieve to the provincial council. The council decided that a pardon to 'so miserable a Life' as Hunt's would be of no service to the public and that a demonstration of the new law was necessary. In November of 1720 Hunt was hanged on the Philadelphia common.

The following week Hunt's 'last dying speech' appeared in Philadelphia's first newspaper, the *American Weekly Mercury*. Publication of crime stories and gallows speeches was not new to the American people, as the practice had migrated with English colonists in the 17th century. Such stories included information concerning the background of the accused, followed by a description of the youth's sinful descent into a life of crime. Entertaining tales of wrongdoings were followed by inevitable reports of capture and conviction. Crucially for



‘Tom Bell, about whom 100 stories appeared between 1738 and 1755, was frequently spotted on the streets of the growing metropolis’

the social function of the genre, offenders’ last words acknowledged guilt and the justness of their punishment. Young people were warned not to stray from the straight and narrow path, lest they meet a similar end.

Edward Hunt’s speech did not follow the traditional gallows script, however. Hunt insisted that he did not mean to cheat or defraud anyone and complained that jurors did not take oaths; he was, therefore, not tried by the laws of England. In a dramatic reversal, rather than request mercy for himself Hunt asked God to forgive those responsible for taking his life, ‘for they know not what they do’. *Mercury* printer Andrew Bradford inserted a preface to the speech that claimed Hunt misrepresented Pennsylvania’s justice system and attempted to ‘infuse both ill Principles and Practices into the Minds of the People’. But despite his ‘Falsehoods, Contradictions and silly Evasions’ Hunt’s speech was ‘extraordinary’ and therefore worth publishing.

Crime stories from across the Atlantic world became a staple of Philadelphia’s print culture, while local offenders were whipped and pilloried on a weekly basis at the entrance to the city market on High Street. Benjamin Franklin’s *Pennsylvania Gazette* regularly reported on crime and, as he noted sardonically in 1731, in his printing shop copies of *Robin Hood’s Songs* sold consistently well at two shillings, while a small number of *David’s Psalms* sat unsold for years. Philadelphians read about famous English felons, such as the robber Jack Sheppard and highwayman Dick Turpin, as well as American conmen such as Tom Bell, about whom 100 stories appeared in American newspapers between 1738 and 1755, and who was frequently spotted on the streets of the growing metropolis.

Importing convicts

Colonists often blamed the Transportation Act of 1718, which resulted in close to 50,000 felons being sent to the New World before 1775, for the increase in crime in the Americas. Most were sent to the Chesapeake colonies of Virginia and Maryland to labour on tobacco plantations, but Pennsylvania was the third most popular destination and the previous offences of many of those prosecuted in Philadelphia contributed to a willingness to

punish with severity. The colonial government attempted to limit the importation of convicts, with the Irish soon stigmatised as especially prone to crime. The first woman executed in Pennsylvania, an Irish transportee named Catherine Connor, was hanged in 1737 for burglary alongside one of her (English) confederates. By mid-century, stories detailing the harshness of life in the Americas led to criticism of the transportation policy in England. Representations of crime in American newspapers fostered opposition to the act from a very different perspective.

The apparent contradiction between the Society of Friends' professed pacifism and Pennsylvania Quakers' use of the death penalty was noted by Governor George Thomas in 1740. After England declared war against Spain in 1739, the Crown instructed colonial governors to raise money and men for the war effort. After Quaker representatives informed Thomas that compelling Friends to bear arms violated the provincial constitution, the frustrated governor stated: 'You yourselves have seen the Necessity of acting in Civil Affairs, as Jurymen and Judges, to convict and condemn such little Rogues to Death as break into your Houses.' Why, then, were assemblymen opposed to supporting the Crown and the Protestant cause against the papist enemy? Legislators responded that there was a major difference between soldiers in loyal service to a sovereign and burglars, who knowingly broke the law and therefore deserved the ultimate punishment.

The famous Devonshire 'king of the gypsies' also accused Pennsylvania Quakers' of hypocrisy in his bestselling autobiography, *The Life and Adventures of Bampfylde Moore Carew*. Carew was transported to Maryland for vagrancy sometime in the 1730s, but escaped and fled to Pennsylvania with the aid of local Native Americans. Whereas the indigenous people of the Chesapeake Bay region were 'simple and honest', Pennsylvania colonists 'act everything in disguise'. Because the honesty and simplicity for which Quakers were famous was mere artifice, Carew had no qualms about disguising himself as a Friend while in the colony. Using a variety of disguises Carew fooled a number of eminent people in and around Philadelphia, from the governor and leading city merchants to the evangelical

George Whitefield. He even appropriated a 'brogue' to spend the day drinking for free with an Irish publican on High Street.

Carew's literary inversions were commonplace in Augustan England and his picaresque autobiography was designed to sell books. More understated accounts also expressed contradictory views of Pennsylvania. Like other travellers, the Swedish naturalist Peter Kalm noted Philadelphia's 'fine appearance, good regulations, agreeable location, natural advantages, trade, riches and power'. Less impressive were frequent whippings and the placing of offenders in the pillory and stocks 'full in the public eye' at the entrance to the market. Such 'barbarous appendages' seemed incongruous with the city's finer qualities.

At mid-century, Gottlieb Mittelberger of Württemberg claimed a popular expression went that Pennsylvania was 'the heaven of the farmers, the paradise of the mechanics, and the hell of the officials and preachers'. While he marvelled at Philadelphia's wealth and liberties, Mittelberger also expressed shock at the severity of punishments for larceny and noted that counterfeiter of local paper money were hanged without possibility of reprieve. For the theft of something as small as a handkerchief or a pair of stockings offenders were tied to a post in the public market, stripped to the waist and 'so terribly lashed with a switch, or a horse- or dog-whip, to which knots are sometimes attached, that patches of skin and flesh hang down from his body'. Repeat offenders were bound and transferred to the gallows in a cart, where a rope was then placed around the neck of the condemned. The cart was then driven away: 'Sometimes the culprit suffers long and dies miserably.'

Crime wave

Mittelberger's claim that some suffered in agony while being hanged was probably a reference to the execution of three people convicted of robbery in Philadelphia in early 1751, which he may have witnessed. Following the end of the War of Austrian Succession in 1748, the British Atlantic world was gripped by a crime wave that was given dramatic representation in the press. A spate of well-publicised highway and domestic robberies

caused panic in New York and Philadelphia and in early 1751 several people were apprehended for break-ins in Philadelphia. John Morrison, Elizabeth Robinson, Francis McCoy and John Crow were convicted of robbery and sentenced to death. Morrison, McCoy and Robinson were hanged while Crow was granted a reprieve.

Days after the execution of the 'Philadelphia robbers', *An Account of the Robberies Committed by John Morrison* was published in the city. The 15-page chapbook contained a narrative of the group's crimes, with Morrison portrayed as the gang's leader and Betty Robinson (the only transported felon of the group) presented as an alluring femme fatale. At the gallows Morrison acted honourably, while Robinson died quickly and silently. Francis McCoy, however, struggled for a long time and 'died very hard'. It was McCoy's suffering to which Mittelberger may have referred in his travel narrative.

Despite the hangings, robberies and the passing of counterfeited money persisted throughout the region, and colonists continued to blame the Transportation Act for crime. A letter in the *Pennsylvania Gazette* from 'Americanus' of Maryland (actually Franklin, the *Gazette's* printer) claimed 300 to 400 felons, who should have been hanged in London, arrived in the Chesapeake every year. The convicts corrupted not only 'Servants and Negroes': 'even our Children begin to be vitiated by them'. Franklin famously proposed sending American rattlesnakes to England as repayment for these transportees. Though the crime wave receded by the mid-1750s, crime and transportation continued to be a source of colonists' anger until the outbreak of war in 1775 ended the policy.

Liberal ambiguities

A number of historians have pointed in recent years to the ambiguities of liberal thought in relation to American slavery. While 18th-century abolitionists used emerging ideas about natural rights to attack the slave trade, those engaged in the traffic used a language of property rights and free trade to defend the system. Plantation slavery and the Atlantic slave trade showed how modern ideas of individual rights and liberties could be put to markedly different uses.

The development of England's 'bloody code' – the expansion of capital offences from 50 in 1688 to 220 by the end of the 18th century – has also been the subject of considerable historical analysis. The ways in which colonies adapted English laws to conditions in the Americas is less well understood. Colonists were enthusiastic participants in a new consumer culture in the 18th century and they adapted British norms and laws to the colonial environment. These included the sanctification of property rights and a concomitant need to punish those who violated that sanctity.

What distinguished Pennsylvania from other colonies was its overturning of a system of criminal law at its founding that was more progressive than any in the world. Though maintaining its commitment to religious liberty, between the 1720s and 1770s the colony was as willing to whip, pillory and hang offenders in Philadelphia as any place in North America. That this shift elicited virtually no comment from an urban press in which anti-slavery voices grew increasingly prominent is testament to the general consensus concerning the ostensible dangers of crime.

Print tied the motherland and colonies closer together in the 18th century. The distribution of printed works was fundamental to the world's first modern social movement, for the abolition of slavery, and Philadelphia writers and activists were in the vanguard of this movement. Philadelphia also became a publishing capital for crime stories in the colonies. Representations of offenders were often ambivalent; criminals were simultaneously the dregs of society and admirable outlaws who defied social norms. Yet the presentation of crime as a scourge (often originating from the other side of the Atlantic), which could only be eliminated by exemplary brutality, became common sense in Philadelphia, as elsewhere in the Atlantic world, in the 18th century.

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