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ORIGINAL ARTICLE

Legal Pluralism, Arbitration, and State Formation: The Rise and Fall of Philadelphia's Quaker Court, 1682–1772

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Abstract

Legal centralization in British America was characterized by the passing of arbitration from the community level to the colonial courts. As a consequence, when the 1765 Stamp Act raised the cost of court business, colonists were at a loss for alternatives. This paper addresses the question of why, at this point, colonists did not return to earlier, non-state forms of arbitration. It offers an explanation by providing a detailed empirical study of an alternative American legal forum: the Philadelphia Quaker monthly meeting. While busy arbitrating disputes in the early colonial period, it declined from around 1720. Contrary to what might be expected, this decline was not the consequence of state efforts to marginalize competing institutions. Rather, the local Quaker population abandoned their community legal forum in favor of the public courts. This was likely due to the Quaker court's reliance on reputation-based instruments for enforcement. As Philadelphia's population grew, the meeting's practice of pressuring culprits into compliance through public shaming lost its edge. Accordingly, Friends moved their legal business to the public courts. The paper contributes to the debates on the legal pluralism of empires, the history of arbitration, and state formation in the Atlantic.

On the 28th day of the Third Month of 1760, Quaker merchant John Reynell approached his Philadelphia monthly meeting. Acting as an attorney for fellow Friend and merchant Elias Bland, he lodged a complaint against a third Quaker merchant: William Griffitts. Griffitts, Reynell reported, was "indebted to said Elias which he neglects paying or giving sufficient security for payment." The meeting dispatched a group of Friends to speak to Griffitts and "acquaint him [that] it is the judgement of this meeting, that he should exhibit an account of his affairs for the satisfaction of his creditors & Friends, & offer

the best securities in his power for an equitable settlement with them."[1] Alas, too late: As Reynell informed Bland by letter about two weeks later: "the same day he was arrested at the suit of Isaac Levy for about £1000."[2] While Reynell and Bland turned to the Quaker meeting to secure the debt, Levy had invoked the colony's public legal institutions, and beaten him to the punch.

Over the following months, Philadelphia's sheriff, county court, and the Assembly of Pennsylvania became involved in the case. The process culminated in the passing of the "Act for the Relief of William Griffitts" the following year.[3] Having convinced the colonial authorities that he had paid all he could, the public legal system absolved Griffitts from any further demands by dissatisfied creditors. In the eyes of colonial law, he was free to start over.

While the Assembly discussed his case, the Quaker meeting continued its investigations. It collected evidence, spoke to witnesses, and repeatedly questioned Griffitts. At the end of this procedure, the meeting judged his transgressions unforgivable: the elders publicly announced his "disownment" due to, "imprudence" in his "temporal affairs" as well as having "been so unjust, as to satisfy some of his creditors to the prejudice of the rest."[4]

This episode illustrates the legal complexity of colonial America. As Lauren Benton has argued, European empires were legally pluralistic. Early modern people were subject not merely to a distant metropolitan government, but navigated a plethora of sovereign spaces. Often these overlapped, competed with, and complemented each other.[5] British America was comprised of a great number of corporations and communities. They each created their own law and enjoyed varying degrees of independence from the crown.[6] This diversity offered Philadelphia's merchants a choice of legal fori to solve disputes.

Over time, a more centralized order replaced the legal pluralism of early imperial expansion. Philip Stern described this development as the "history of one form of corporation, the nation-state, triumphing over its rivals, both within and without its borders."[7] Scholars like Lauren Benton, Michael Braddick, Judith Resnik, and Dennis Curtis have emphasized the link between state building and litigation.[8] By permitting the state to supervise their

[1] Monthly Meeting of Friends in Philadelphia (MMFP), Minutes 1757–1762, p. 240.

[2] Historical Society of Pennsylvania, John Reynell Letterbook 1760–62, to Elias Bland, 14th of fourth month 1760, n.p.

[3] An Act for the Relief of William Griffitts, with respect to the imprisonment of his person. Statutes at large of Pennsylvania. 1761, Act 0471. Pennsylvania State Archives, Harrisburg.

[4] MMFP 1757–1762, multiple entries from third month 1760 to fourth month 1761.

[5] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (Cambridge: Cambridge University Press, 2002), chapter 1.

[6] Philip J. Stern, "British Asia and British Atlantic: Comparisons and Connections," *The William and Mary Quarterly* 63, no. 4 (2006): 693–712, quote on p. 702. On legal plurality of British Atlantic see also Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," *The William and Mary Quarterly* 60, no. 3 (2003): 471–510, 496.

[7] Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2011), 213.

[8] Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2000), 168; Benton, *Law and Colonial Cultures*, 148–49; Judith Resnik and Dennis Edward Curtis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic*

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disputes, subjects invest it with the legitimacy to govern them. Legal historians including Bruce Mann and David Konig have shown that in early British America, communities solved disputes through arbitration.[9] Over time, arbitration procedures moved from the community level to the colonial courts. By the mid-eighteenth century, colonists had come to rely on colonial courts for dispute resolution. Thus, the state came to dominate dispute resolution and colonial governance. As its influence grew, legal pluralism in the empire declined.[10]

The 1765 Stamp Act aimed to exploit colonial (merchants') reliance on public courts by effectively taxing all court business.[11] To avoid the new expenses, colonists frantically sought alternative means of dispute resolution. Christian Burset argued that the contemporary creation of chambers of commerce, which arbitrated commercial disputes, was a consequence of this struggle.[12] While such institutional innovations may reflect mercantile dynamism and flexibility, it is unclear why they were necessary. When seeking alternatives to the colonial courts, why did merchants not simply return to the legal fori of other bodies politic that had shared sovereignty and provided law in the colonies only a few decades earlier?

It is well established that at least protestant diaspora communities, such as the Puritans and Quakers, did provide formal dispute resolution services—for free.[13] Indeed, as one author recently pointed out, the new chambers of commerce functioned much like pre-existing Quaker "arbitration courts."[14] If religious courts offered such obvious alternatives, why did they not move to the

Courtrooms (New Haven: Yale University Press, 2011). See also Christian Burset, "Arbitrating the England Problem: Litigation, Private Ordering, and the Rise of the Modern Economy," *Ohio State Journal on Dispute Resolution* 36 (2020): 60 for an overview over this literature.

[9] Bruce H. Mann, "The Formalization of Informal Law: Arbitration Before the American Revolution," *NYUL Review* 59 (1984): 443–465; David Thomas Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629–1692* (Chapel Hill: University of North Carolina Press, 2004/1979). See also Burset, "Arbitrating the England Problem," 60.

[10] Stern, *The Company-State*; Gould, "Zones of Law, Zones of Violence," 502; Daniel J. Hulsebosch, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664–1830* (Chapel Hill: University of North Carolina Press, 2006), 5. Note that Britain itself remained largely legally pluralistic throughout the eighteenth century, see Philip Loft, "A Tapestry of Laws: Legal Pluralism in Eighteenth-Century Britain," *The Journal of Modern History* 91, no. 2 (2019): 276–310.

[11] Justin DuRivage and Claire Priest, "The Stamp Act and the Political Origins of American Legal and Economic Institutions," *The Southern California Law Review* 88 (2014): 875.

[12] Burset, "Arbitrating the England Problem." For reliance on public courts for debt enforcement see p. 60; for quote "sense of chaos" see p. 53; on chambers of commerce providing arbitration see pp. 55, 56; quote on p. 53.

[13] On Puritan arbitration see George Lee Haskins, *Law and Authority in Early Massachusetts: A Study in Tradition and Design* (Milburne, NJ: University Press of America, 1984); Konig, *Law and Society in Puritan Massachusetts*. On Quaker arbitration see Carli N. Conklin, "Transformed, Not Transcended: The Role of Extrajudicial Dispute Resolution in Antebellum Kentucky and New Jersey," *American Journal of Legal History* 48 (2006): 39–98. F. Peter Phillips, "Ancient and Comely Order: The Use and Disuse of Arbitration by New York Quakers," *The Journal of Dispute Resolution* (2016): 81–114; William McEnery Offutt, *Of "Good Laws" and "Good Men": Law and Society in the Delaware Valley, 1680–1710* (Champaign, IL: University of Illinois Press, 1995); Esther Sahle, "Law and Gospel Order: Resolving Commercial Disputes in Colonial Philadelphia," *Continuity and Change* 35, no. 3 (2020): 281–310.

[14] Burset, "Arbitrating the England Problem," 56.

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center of American legal development, and indeed early republican state-building? This article takes a step toward resolving this puzzle. It traces the development of one such forum across the colonial period: the Quaker monthly meeting of Philadelphia, one of North America's largest ports and the future republic's first capital. This paper offers the first empirical study of Quaker arbitration across the colonial period. It demonstrates that this Quaker legal forum began to decline in the early eighteenth century. By the time of the Stamp Act, it had fallen out of use. By analyzing the dynamics of its decline and contextualizing it within wider colonial developments, this article contributes to debates on the legal pluralism of empires, state-building, commercialization in the Atlantic, and arbitration.

The remainder of the article is structured as follows: it starts with an overview of arbitration in early America. It then introduces the Quakers and how they shaped Pennsylvania's legal system. Three analytical sections follow: I first demonstrate that the Quaker legal forum was typical of contemporary Atlantic legal fori. In terms of procedures, types of cases, and enforcement it *acted* just like any number of contemporary arbitration courts and merits to be treated by historians as such. My conclusions therefore have implications for wider legal developments, beyond the limits of the Quaker faith. I then conduct a quantitative analysis of the meeting's case load, tracing its decline over the course of the colonial period. Finally, a qualitative analysis of the Quaker meeting's minutes shows its relationship to Pennsylvania's public courts, and how this changed over time. To conclude, I discuss the findings' implications for our understanding of state formation and commercialization in the British Atlantic and the legal pluralism of early modern empires.

Arbitration in early America

Early modern people believed that disputes should be solved in private. Litigation made details of individuals' personal and business lives public, causing severe reputational harm. Its confrontational nature could rupture community and family ties and was therefore best avoided. Arbitration proved the most popular alternative.[15] From the late Middle Ages onward, European public courts, as well as the legal fori of smaller corporations like towns and guilds began to formally arbitrate disputes between their members. This was considered more circumspect and less dangerous to the dispute parties' reputations.

[15] Mann, "The Formalization of Informal Law," 443; Margo Todd, "For Eschewing of Trouble and Exorbitant Expense: Arbitration in the Early Modern British Isles," *The Journal of Dispute Resolution* 2016 (2016): 7–18; Henry Horwitz and James Oldham, "John Locke, Lord Mansfield, and Arbitration during the Eighteenth Century," *The Historical Journal* 36, no. 1 (1993): 137–59; Justyna Wubs-Mrozewicz, "The Late Medieval and Early Modern Hanse as an Institution of Conflict Management," *Continuity and Change* 32, no. 1 (2017): 59–84; Sebouh David Aslanian, *From the Indian Ocean to the Mediterranean: The Global Trade Networks of Armenian Merchants from New Julfa* (Oakland, CA: University of California Press, 2011); Edmond Smith, *Merchants: The Community That Shaped England's Trade and Empire, 1550–1650* (New Haven: Yale University Press, 2021), chapter 3.

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It was also more private than public litigation.[16] Derek Roebuck's monumental study of English Arbitration has shown state and local authorities to have appointed arbitrators to solve seemingly any and all types of disputes.[17] For New England, scholars have located the formalization of arbitration in the period 1680–1720. Bruce Mann, David Konig, and William Nelson attributed this transformation to a number of deep-reaching social changes: first, increased immigration meant that the population became larger, denser, and more religiously and ethnically diverse. The new arrivals did not attend the same religious meetings and created separate sub-cultures. The colonies' original, community-based institutions for dispute resolution proved unable to exert control over newcomers and consequently lost their power. Second, commercialization, based on expanding credit networks, created a demand for new forms of contract enforcement.[18] Arbitration continued to be important. However, it now became increasingly attached to the colonial courts and by the end of the eighteenth century, commercial arbitration depended fundamentally on public authority.[19] It is important to note, however, that research on the centralization of dispute resolution toward the public courts has relied almost entirely on records of said courts. The picture that has emerged therefore tells us little about the work and contribution of other corporate and quasi-corporate actors. It appears that somewhere along the way, alternative providers of law and debt enforcement in colonial America became marginalized, but we know little about how this played out beyond the court houses' walls.

We do know that before the courts, religious legal fori offered some forms of dispute resolution. Konig and Haskins noted that Puritan congregations in New England formally arbitrated disputes between their members. However, they found the available sources too limited for an in-depth analysis of these legal fori's procedures and functions within the wider context of colonial legal institutions.[20] More recently, scholarship has shifted away from New England and toward the mid-Atlantic colonies where sources are more abundant. These were home to another Protestant diaspora whose institutions shaped early America: the Quakers.[21] Friends had formal written rules which extended beyond immediate religious concerns to regulate various aspects of

[16] Following modern understanding of law as pluralistic, I use the terms "court" and "legal forum" interchangeably. When referring to a legal forum belonging to the state I specify this as either "state court" or "public court."

[17] Derek Roebuck, *The Golden Age of Arbitration: Dispute Resolution Under Elizabeth I* (Oxford: The Arbitration Press, 2015).

[18] Mann, "The Formalization of Informal Law"; Konig, *Law and Society in Puritan Massachusetts*. Although legal historians have found structural changes in legal culture in the middle colonies, too, they have not focused on the relationship between arbitration and litigation in similar ways as the New England studies have done. See Offutt, *Of "Good Laws" and "Good Men"*; Linda Briggs Biemer, *The Transition from Dutch to English Law: Its Impact on Women in New York, 1643 to 1727* (Syracuse, NY: Syracuse University, 1979); Deborah A. Rosen, "Courts and Commerce in Colonial New York," *The American Journal of Legal History* 36 (1992): 139.

[19] Burset, "Arbitrating the England Problem."

[20] Konig, *Law and Society in Puritan Massachusetts*, 28.

[21] Jerry W. Frost, *The Quaker Family in Colonial America* (New York City: Macmillan, 1973); Conklin, "Transformed, Not Transcended," 39–98; Morton J. Horwitz, *The Transformation of American Law,*

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daily life, within the community and with outsiders, extending from how to dress to the conduct of business.

Friends placed much emphasis on solving disputes through arbitration. Morten Horwitz famously argued that this preference had a long-lasting impact on Pennsylvania legal culture.[22] Important articles by Carli Conklin and Peter Philips have explored the procedures Quaker meetings in the Jerseys and New York employed to solve disputes, and William Offutt has provided a quantitative analysis of litigation and arbitration in the Delaware Valley up to 1705, which includes Quaker dispute resolution.[23] Jack Marietta's seminal study of Pennsylvania Quaker meetings included arbitration as part of Quaker disciplinary procedures. However, a more recent, tans-Atlantic study by Esther Sahle argued that monthly meetings' dispute resolution procedures presented a separate practice.[24] She found that Quaker disciplinary measures and monthly meetings' dispute resolution procedures constituted two distinct practices: Quaker discipline books from the early eighteenth century onward discuss both arbitration and disownments, separately, and each under its own heading. One important distinction between the two procedures was how each started: disciplinary proceedings arose from meetings' initiatives. If an elder learned of a community member's suspected transgressions, the meeting started an investigation. This did not require a direct complaint or accusation from another community member. Instead, the meeting acted to defend what it perceived to be the interest of the community as a whole. If the culprit refused to cooperate with the meeting and amend their ways, they would be disowned.[25]

Arbitration, on the other hand, required at least one conflict party to request the meeting's assistance in a specific conflict with one or more other, named members of the community. The meeting only arbitrated conflicts if the parties requested its help, never of its own accord. The process depended entirely on the conflict parties' cooperation. On occasion, meetings employed disownments to enforce arbitration awards.[26] In this way the two activities could become connected.

While these studies have begun to shed light on an otherwise neglected area of American legal history, important questions remain: we lack a clear understanding of the actual scope of formal arbitration by Quaker meetings. More importantly, none of the work on Quaker dispute resolution has connected this with developments in arbitration and legal centralization in the wider Atlantic world. Rather, Quaker arbitration is taken to have been an exceptional phenomenon, rooted in particular Quaker beliefs, and specific to

1780–1860 (Cambridge, MA: Harvard University Press 1977); Digby Baltzell, *Puritan Boston & Quaker Philadelphia* (New York City: Routledge, 2017).

[22] Horwitz, *The Transformation*.

[23] Conklin, "Transformed, Not Transcended"; Phillips, "Ancient and Comely Order"; Offutt, *Of "Good Laws" and "Good Men."*

[24] Esther Sahle, "A Faith of Merchants: Quakers and Institutional Change in the Early Modern Atlantic, c. 1660–1800" (PhD diss., London School of Economics and Political Science, 2016), 184.

[25] For a detailed discussion of Quaker disownment practices, see Esther Sahle, *Quakers in the British Atlantic World, c. 1660–1800* (Martlesham, UK and Rochester, NY: Boydell & Brewer, 2021), chapter 5.

[26] Conklin, "Transformed, Not Transcended."

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that religion. Perhaps as a consequence of this assumption, the practice is often treated as static, leaving no room for possible changes in frequency and outcomes over time.

In contrast to these assumptions, this paper argues that Quaker arbitration was not distinct, but integral—and typical—of arbitration procedures found in legal fori across the early British Atlantic world. It evolved over the course of the colonial period and eventually declined in response to broader social, economic, and political developments. This new chronology explains why this once vital channel for dispute resolution was no longer available to offer an alternative to colonial courts after the stamp tax.

The Quakers

The Quakers, or Friends, are a Protestant dissenting sect that emerged from the English Civil Wars of the 1640s. During their early years they rallied against the religious and political establishment: they emphasized the importance of spiritual experience over scripture as well as believers' direct communication with God.[27] With other dissenting communities Friends shared a rejection of oaths as well as formal forms of address, preferring the use of "thee" and "thou" over "you," and replacing pagan names of days and months with numbers. What set them apart from other dissenters was their sophisticated, formal organization.[28] Closely resembling formal corporations, this consisted of a hierarchy of meetings and committees. Each layer of meetings dispatched representatives to the next level, creating a highly participative church government. Quaker meetings on all levels either included both women and men, or held parallel gatherings for both sexes, each with the power to make decisions for the community. While gender inclusive, Africans and indigenous Americans were not admitted to membership. The meetings took care of Friends' buildings and cemeteries, they distributed poor relief, solemnized marriages, maintained correspondence with sister meetings both locally and across the Atlantic, and engaged in diplomacy with the state in order to defend and serve their members' interests.[29] The latter was important as Friends suffered persecution during the seventeenth century, and again from the Seven Years' War onward.[30]

[27] Rosemary Moore, *The Light in Their Consciences: Early Quakers in Britain, 1646–1666, Vol. 1* (University Park: Penn State Press, 2020); Barry Reay, *The Quakers and the English Revolution* (New York City: St Martin's Press, 1985).

[28] Gary S. De Krey, *A Fractured Society: The Politics of London in the First Age of Party 1688–1715* (Clarendon Press, 1985); for an overview of attributes shared with other dissenting communities see Sahle, *Quakers in the British Atlantic World*, chapter 2.

[29] Jordan Landes, *London Quakers in the Trans-Atlantic World: The Creation of an Early Modern Community* (New York City: Springer, 2015), 26; Ethyn Williams Kirby, "The Quakers' Efforts to Secure Civil and Religious Liberty, 1660–96," *The Journal of Modern History* 7, no. 4 (1935): 401–21; Alison Okson, "The Lobbying of London Quakers for Pennsylvania Friends," *The Pennsylvania Magazine of History and Biography* 117, no. 3 (1993): 131–52.

[30] John Miller, "'A Suffering People': English Quakers and Their Neighbours c. 1650–c. 1700," *Past & Present* 188, no. 1 (2005): 71–103; Jack D. Marietta, *The Reformation of American Quakerism, 1748–1783* (Philadelphia, PA: University of Pennsylvania Press), 2007; Sahle, *Quakers in the British Atlantic World*.

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Quaker missionaries appeared in America from the 1650s and the community expanded greatly from the 1670s.[31] In 1681 William Penn obtained a charter to found Pennsylvania on land inhabited by the Lenape. Formal colonization began the following year. The colony's governing institutions, such as the Assembly and the colonial courts, were distinct from those of the Society of Friends.[32] However, a Friend himself, Penn envisioned the colony as a homeland for Quakers. On the one hand, this desire was driven by idealism, faith, and the quest for financial gain.[33] On the other, it was a practical matter as Quakers suffered persecution in England and sought a place of greater safety.

From the beginning of the colonial period, Pennsylvania had four types of public courts: the county courts sat four times a year, alternatively as quarter sessions and common pleas. The former heard criminal cases, the latter civil disputes. An orphan court oversaw wills and estates. Finally, the provincial court decided the most serious criminal cases and heard appeals from all lower courts. The same judges presided over all these courts, many of them Friends.[34]

Quakers were a major part of the English legal reform movement and this heritage strongly influenced Pennsylvania's legal system. The Quaker colony abolished executions, except for premediated murder, and limited corporal punishment. Doubtless due to Friends' experience of persecution in England, the Quaker legislators aimed to make fines more bearable. Goods essential to one's livelihood could not be seized. Terms of imprisonment for debt were limited and prisoners did not have to pay for room and board.[35]

The province's legislators also wanted to make the law easily accessible. They decreed that court fees were to be moderate, and set strict timetables for processing. They simplified and streamlined procedures, and mandated that all court business was to be transacted in English—reflecting their understanding that the law was intended primarily for English colonists.[36] Importantly, they also strengthened options for out-of-court dispute resolution.[37] Justices of the Peace could settle debt cases up to forty shillings. Certain cases should be moved out of court to be solved through arbitration.[38] This may have given further legitimacy to Friends' own legal fori: the monthly meetings.[39]

[31] Oliver Finnegean, "Quaker Outcasts and the Creation of Missionary Anglicanism, 1691–1706," *The English Historical Review* 137 (2022): 109–39.

[32] Stephen Saunders Webb, "'The Peaceable Kingdom': Quaker Pennsylvania in the Stuart Empire," in *The World of William Penn*, eds. Richard S. Dunn and Mary Maples Dunn (Philadelphia: University of Pennsylvania Press, 2015), 173–94.

[33] Gary B. Nash, "The Free Society of Traders and the Early Politics of Pennsylvania," *The Pennsylvania Magazine of History and Biography* 89, no. 2 (1965): 147–73, 149.

[34] Margaret Salmon, "Notes and Documents: The Court Records of Philadelphia, Bucks, and Berks Counties in the Seventeenth and Eighteenth Centuries," *The Pennsylvania Magazine of History and Biography* 107 (1983): 249–91.

[35] John Smolenski, "'As the Discharge of My Conscience to God': Narrative, Personhood, and the Construction of Legal Order in 17th-Century Quaker Culture," *Prospects* 24 (1999): 117–75, 142.

[36] Offutt, *Of "Good Laws" and "Good Men,"* 19.

[37] Smolenski, "As the Discharge of My Conscience to God," 143.

[38] Offutt, *Of "Good Laws" and "Good Men,"* 19.

[39] The Quaker monthly meeting is the only alternative legal forum mentioned in the literature so far. The records of other religious groups survive only from the second half of the eighteenth-

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Quaker meetings as arbitration courts

Quakerism shared the early modern ideal of resolving disputes within the community to avoid litigation. To support Friends in this endeavor, the Philadelphia Quaker monthly meeting (MMFP) regularly *acted* as an arbitration court.[40] Founded in 1682, in 1772 MMFP split into three meetings to accommodate the growing size of the community. The minutes of all three meetings survive for the entire colonial period, however for the sake of simplicity, this study ends in 1772. The minutes grew more extensive over time. During the seventeenth century, they often comprised one page per month or less. By 1800 five to six pages per month were the norm. To explain its activities, I furthermore draw on Pennsylvania Yearly Meeting's 1719 *Book of Discipline*.[41] This set out the rules the community expected Friends to live by. While not Philadelphia's first Quaker Discipline, the 1719 version is the first to include a detailed section on arbitration.[42]

The sources reveal three core elements of the Quaker courts' functioning: first, its procedure for dispute resolution, second, the types of cases it handled, and third, how it enforced its arbitration awards. The following section discusses each of these in turn. Contextualizing them within the history of arbitration, it demonstrates that the Quaker court was typical of contemporary legal fori. As such, its evolution may inform our understanding of legal development in the Atlantic beyond Quakerism.

Across the British Atlantic world, arbitration constituted the most common form of dispute resolution. It aimed not only to solve disputes, but re-establish community harmony after a conflict. A wide range of legal fori, from crown and ecclesiastical to manor and guild courts all followed the same procedure.[43] This was adopted from the New Testament, Matt. 18:15–17 and involved the following steps:

Conflict parties were first to try and solve their differences privately. If unable to reach an agreement, the aggrieved parties were each to recruit a team of trustworthy representatives to negotiate on their behalf and come to an agreement. Both parties promised to honor the representatives' verdict. If these arbitrators failed to reach an agreement, or if one party refused to adhere by their decision, they could approach their community's legal

century onward. I'm not aware of any research on indigenous dispute resolution procedures in Pennsylvania in this period.

[40] MMFP – Monthly Meeting of Friends in Philadelphia. This is the men's meeting. I have found no evidence of arbitration in women's meeting minutes, hence the following discussion focuses on the men's meeting.

[41] Philadelphia Yearly Meeting, Discipline, 1719. Haverford special collections.

[42] For a detailed discussion of Quaker Discipline books, see Andrew Fincham, "Friendly Advice. The Making and Shaping of Quaker Discipline," in *Quakerism in the Atlantic World, 1690–1830*, ed. Robynne Rogers Healey (University Park: Penn State Press, 2021), 73.

[43] Roebuck, *The Golden Age of Arbitration*, chapter 1; Todd, "For Eschewing of Trouble and Exorbitant Expense"; Wubs-Mrozewicz, "The Late Medieval and Early Modern Hanse"; Carli Conklin discusses this in detail for the case of New Jersey Quakers: Carli A. Conklin, "A Variety of State-Level Procedures, Practices, and Policies: Arbitration in Early America," *Journal of Dispute Resolution*, 55–79. See also Philadelphia Yearly Meeting (PYM) Discipline 1719.

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forum. The legal forum, either independently or in dialogue with the parties, appointed another set of arbitrators who together would make inquiries, uncover evidence, and discuss the conflict. The arbitrators reported back to the legal forum regularly on their progress. Once an agreement had been reached, the legal forum would announce this publicly at a community function, for instance a church service or guild gathering. The publicity of the announcement and involvement of several community members would serve to pressure the conflict parties into honoring the arbitration award. Familiar with the procedure from other contexts, Friends adopted it for their community, and called it "Gospel Order." The Quaker courts sat at predetermined dates and places—the monthly meeting's regular gatherings in the meeting house. Procedures were overseen by the meetings' elders, or officers, in the presence of the community, thus resembling those of other legal fori across the Atlantic.[44]

The Quaker court resembled other legal fori not only in terms of the procedure it followed, but also in the sort of disputes it arbitrated. Philadelphia Yearly Meeting's 1719 *Book of Discipline* defined the types of conflicts that might be brought to meetings' attention. These included "differences [that] happen or arise between any Friends" in "their interests, claims or properties in worldly affairs." It specified debts, bonds, and "differences in accounts."[45] In other words, the meeting's arbitration procedure was not intended for religious conflicts, but specifically for disputes of a secular, even financial nature: it was intended for disputes over contracts.

What is more, the types of disputes Friends brought before the Quaker meeting were identical to those negotiated before Philadelphia's equity courts. During the period 1682–1772, Philadelphia monthly meeting arbitrated 284 disputes. The meeting minutes specify the causes for 161 (56%) of these. The remainder concern undefined "differences." The causes which were specified appear random. I divided the known causes into categories according to issues that appeared most frequently. The largest category was "debt," constituting 79% of known causes. They include both debts disputed between two or more individuals (58%), as well as claims on the estates of deceased Friends (22%). Philadelphia county court's records survive for just one year during the early colonial period, 1695/96.[46] During this year, the court held equity powers. As in the Quaker meeting, the largest category of cases, 79%, concerned debts. Disputes between living parties constituted 69%, and disputes surrounding deceased persons' estates 11%. In other words, both legal fori dealt with the exact same types of cases. The Quaker meeting acted as an equity court.[47]

[44] Burset, "Arbitrating the England Problem." MMFP's minutes reflect this process exactly. Carli Conklin observed the same procedure in New Jersey Quaker meetings: Conklin, "A Variety of State-Level Procedures, Practices, and Policies."

[45] PYM, Discipline 1719.

[46] Philadelphia County Court, Ledger, held at Historical Society of Pennsylvania.

[47] This also mirrors what Nelson has suggested for Puritan arbitration boards in New England: while record survival was too poor to allow for definite conclusions, he thought that "breach of promise," aka the failure to honor contracts and settle debts, constituted one of the two main types of disputes eighteenth-century Massachusetts churches arbitrated. This was also one of

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In line with an equity court's focus on contract and commercial cases, a closer look at the Philadelphia Quaker court's debt cases reveals that they often concerned trade. They include conflicts over bills of exchange, differences in accounts, and money lent on bond.[48] The conflict parties resided in Philadelphia, in other colonies or in England. Parties based abroad acted through attorneys, who represented their interests in the meeting. The minutes often do not specify a person's location. While MMFP arbitrated his complaint, merchant Francis Richardson actually resided in New York. This is not obvious from the minutes, and is only revealed by his correspondence.[49] Fifteen cases (16.3%) could safely be identified as involving at least one party living in a different colony or in England.[50] For instance, in 1687, Daniel Wharley, Quaker and hatter of London needed help with a bill of exchange he received from Philadelphia Quaker merchant Griffith Jones. Instead of taking the case to court, Wharley asked his correspondent in Philadelphia, Samuel Carpenter for support. Carpenter approached Jones but could not convince him to compensate Wharley for the protested bill. As a next step, Carpenter turned to the monthly meeting. He reported Jones "for not satisfying this Bill of Exchange to him on the behalf of Daniel Wharley with charge of protest and interests since it became due." He requested the meeting exert pressure on Jones. The meeting directed that:

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the main causes of conflicts in Massachusetts civil jurisdiction, suggesting that a specialization in chancery cases was not exceptional for colonial dissenting legal fori. See William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725–1825* (Chapel Hill: UNC Press Books, 2017), 35. The other was moral failings, which is likely also true for the Quaker meeting, however they had a separate procedure for those that did not involve arbitration.

[48] Examples for cases involving bills of exchange include: MMFP minutes 1682–1714, p. 39, seventh month 1687, Samuel Carpenter vs Griffith Jones; Ibid., p. 61, second month 1690, Richard Whitfield vs Richard Cubbon. Examples for cases involving difference in accounts include: MMFP minutes 1682–1714, p. 98, twelfth month 1695, Richard Davis vs David Powell; MMFP minutes 1715–1744, p. 300, seventh month 1738, Benjamin Trotter vs Jacob Shute. Examples for cases involving debts upon bond include: MMFP minutes 1682–1714, p. 82, fourth month 1693, Richard Dean vs Richard Sutton; Ibid. p. 311, twelfth month 1712, Widow Hallwell vs John Harper.

[49] Letter book of Francis Richardson, Historical Society of Pennsylvania.

[50] MMFP minutes 1715–1744, p. 92, tenth month 1722, Richard Lundy vs Ebenezer Large et al.; MMFP minutes 1682–1714, p. 104, twelfth month 1696, Ralph Jackson vs Josiah Ferne; MMFP minutes 1682–1714, p. 39, seventh month 1687, Samuel Carpenter vs Griffith Jones; MMFP minutes 1682–1714, p. 104, twelfth month 1696, David Powell vs Richard Davis; MMFP minutes 1682–1714, p. 281, tenth month 1710, Griffith Owen vs John Martin's estate; MMFP minutes 1715–1744, p. 251, ninth month 1734, John Salkelds vs Martha Trueman; MMFP minutes 1715–1744, p. 310, eleventh month 1738, Cadwallader Foulke vs Dennis Rochford; MMFP minutes 1682–1714, p. 276, sixth month 1710, John Rodman vs David Lloyd; MMFP minutes 1682–1714, p. 322, ninth month 1713, Widow Duckett vs Thomas Duckett; MMFP minutes 1682–1714, p. 302, fourth month 1712, Isaac Norris vs Mary Duckett; MMFP minutes 1682–1714, p. 61, second month 1690, Richard Whitfield vs Richard Cubbon; MMFP minutes 1682–1714, p. 171, eleventh month 1702, Widow Goldsmith vs Robert Haydock; MMFP minutes 1682–1714, p. 39, seventh month 1687, Samuel Carpenter vs Griffth Jones; MMFP minutes 1682–1714, p. 117, tenth month 1698, Nathanial Lamplugh vs Thomas Duckett; MMFP minutes 1682–1714, p. 34, second month 1687, Francis Richardson vs Elisabeth Frampton; MMFP minutes 1682–1714, p. 303, fourth month 1712, Isaac Norris vs John Walker.

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> Griffith Jones shall pay unto Samuel Carpenter on the behalf of Daniel Whaley the money due upon the aforesaid bill of exchange protested, with the lawful damage and protest, and also the full interest of six p cent since the first day the bill arrived in Pennsylvania after it came back protested from England, and to pay the same in silver money or to content of the said Carpenter in three months after this day without fail.[51]

The "lawful damage and protest," a penalty payment, and the interest rate of six per cent were standard procedure in Pennsylvania at the time. The Philadelphia Quaker meeting enforced commercial contracts, following procedures and commercial standards that were common across the British Atlantic world.

In order to enforce its arbitration awards, Philadelphia Quaker monthly meeting employed the same mechanisms and instruments as many other legal fori across the British Atlantic. As Marc Galanter famously observed, a court's power depends on its ability to diffuse information.[52] By doing so it signals norms for interaction and dispute resolution outside the court. Moreover, communication helped to enforce courts' verdicts. This was crucial for early modern legal fori. While in principle, public courts were able to fine, physically punish, or incarcerate offenders, in practice, early modern states' limited capacity restricted their ability to do so. Instead, public courts frequently relied on informal, communication-based instruments. The legal fori of other corporations and voluntary organizations relied entirely on these. They publicized information about cases and culprits. Community pressure then served to ensure dispute parties honored courts' verdicts and adjusted their behavior.[53]

The literature offers some vivid descriptions of how this could play out in different early modern settings: A.G. Roeber observed how in seventeenth-century Virginia, court days were "public spectacles." A court house's "porch was usually occupied by servants, slaves, and smallholders, who milled about, hawked wares, quarrelled, or listened to the proceedings inside."[54] All proceedings were open to the public as well as recorded. Court houses were typically found at central locations and easy to reach.[55] Margo Todd described how in early modern Scotland the announcement of arbitration awards was followed by community banquets. They relied on the publicity "to ensure that the settlement would be kept, since violating an agreement witnessed by the whole neighbourhood would bring charges of duplicity and undermine reputation."[56]

A reputation-based enforcement tool popular with colonial courts was public shaming. In seventeenth-century Maryland, those convicted of slander had to apologize publicly to the person they had slandered and withdraw

[51] MMFP 1682–1714, seventh month 1687, Samuel Carpenter vs Griffith Jones, p. 39.

[52] Marc Galanter, "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law," *The Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (1981): 1–47.

[53] Burset, "Arbitrating the England Problem," 36.

[54] Anthoy Gregg Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680–1810* (Chapel Hill: UNC Press Books, 2017), 79.

[55] Ibid., 77, 78.

[56] Todd, "For Eschewing of Trouble and Exorbitant Expense," 15.

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their accusations.[57] Pennsylvanian courts published the names of defendants found guilty of fraud.[58] Massachusetts Puritans barred members found to have broken community rules from receiving communion. They were singled out during church service and forced to remain in their seats while the rest of the congregation stepped forward to receive bread and wine.[59]

The Philadelphia Quaker meeting used similar reputation-based enforcement tools in various contexts. It "disowned" Friends who transgressed rules set out in the Discipline. Quaker disownments have received much attention from historians. However, both their reliance on reputation and relationship to meetings' arbitration has often been misunderstood. Traditionally, historians assumed a Quaker disownment to have constituted an ostracism which cut a Friend off from the community, with severe personal and financial consequences for the individual.[60] Recent work by Sahle however, shows that in fact, seventeenth- and eighteenth-century Quaker disownments were of a different nature. If a Quaker meeting found a Friend in breach of the discipline, such as refusing to engage in its arbitration procedures or honor its verdicts, the meeting might draw up a "testimony of denial" against her or him. These were letters that listed a culprit's "crimes." They would be read out loud at Quaker meetings within a region. Sometimes copies were distributed in the offender's neighborhood. While harmful to the individual's reputation, this did not amount to an ejection from the community. Disowned Friends continued to attend meetings for worship, socialize, and trade with other Quakers. They were prohibited from getting married in a Quaker meeting or receiving poor relief. However, by demonstrating repentance, they could apply for formal re-entry at any time. Disownments' force lay not in formal exclusion, but in the community pressure they generated through exercises of publicly shaming culprits. Rather than an ostracism in the sociological sense of the word, Quaker disownments constituted a reputation-based tool of governance, akin to those employed by legal fori across the British Atlantic world.[61]

Philadelphia monthly meeting issued threats of disownment nineteen times during the period under investigation. For example, in 1722, MMFP warned Samuel Hudson, who refused to cooperate with the meeting's arbitration process, "that he must be conformable to the rules & discipline of Friends or he cannot be held in community with them."[62] In 1753, it informed "John Renshaw Senr & Junr & Thomas Renshaw" that if they continued to refuse to honor the meeting's ruling and "not pay or secure the debt" they owed fellow

[57] Mary Beth Norton, "Gender and Defamation in Seventeenth-Century Maryland," *The William and Mary Quarterly: A Magazine of Early American History and Culture* 44 (1987): 4–39, 35.

[58] John Smolenski, *Friends and Strangers: The Making of a Creole Culture in Colonial Pennsylvania* (Philadelphia: University of Pennsylvania Press, 2011), 73, 75; and Smolenski, "As the Discharge of My Conscience to God," 149.

[59] Todd, "For Eschewing of Trouble and Exorbitant Expense"; Konig, *Law and Society in Puritan Massachusetts*, 123, 125; Haskins, *Law and Authority in Early Massachusetts*, 26, 27.

[60] Conklin, "Transformed, Not Transcended"; Philips, "Ancient and Comely Order."

[61] Sahle, *Quakers in the British Atlantic World*, chapter 5.

[62] MMFP 1715–1745, sixth month 1722, Samuel and Joseph Richardson vs William and Samuel Hudson, p. 88.

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Friend Joshua Emlen, "the meeting will be under the necessity of testifying against them."[63] The threat seems to have worked, as the next month the meeting recorded that "The Friends appointed on Joshua Emlen's complaint say that the cause of it is removed by J. Renshaw & Sons having paid him their debts."[64]

While frequently using the threat of disownment to pressure arbitration parties into compliance, the Quaker court carried this out only eight times. The first instance was in 1707, the last in 1760.[65] Importantly, testimonies of denial usually listed more than one "crime." Philadelphia Quaker meeting often found Friends who refused to submit to the meeting's procedures or verdicts also guilty of other failures. For instance, following a dispute between Ralph Loftus and Joseph Stretch about ownership of a house, the meeting disowned Ralph for "very disreputable" conduct and "neglecting to follow some employment for the maintenance of his family."[66] Similarly, it disowned Adam Rhodes in 1748 for "spending his time with idle company & of taking strong drink to excess, to the neglect of his business" as well as "not attending our Religious Meetings."[67] By adding moral failings to its testimonies of denial, the Quaker meeting increased the potential reputational damage it inflicted on those it disowned.

To sum up, Philadelphia's Quaker meeting followed the same procedure of arbitrating disputes as other contemporary legal fori. It negotiated the same types of disputes as Pennsylvania's colonial equity court. For enforcement, it relied on instruments targeting individuals' reputation, which was also common practice across the Atlantic, and especially among colonial courts. In these three key features, procedure, case types, and enforcement mechanisms, the Quaker meeting did not differ from other contemporary legal fori. It should therefore be recognized as a community court. Doing so will help us better understand colonial American legal development.

How Philadelphia monthly meeting's case load developed over time

The literature on Quaker dispute resolution has assumed their meetings' arbitration practice to have been rooted in specific Quaker beliefs. Based on this interpretation, scholars in turn assumed that the practice was constant, continuous, and unchanging over time.[68] As the previous section showed, however,

[63] MMFP 1745–1755, seventh month 1753, Joshua Emlen vs John Renshaw, Sr., p. 232.

[64] Ibid., eighth month, p. 234.

[65] MMFP 1682–1714, eleventh month 1707, James Logan vs William Rakestraw, p. 241; MMFP 1715–1744, seventh month 1721, Joseph Richardson vs Samuel and William Richardson, p. 77; MMFP 1715–1744, tenth month 1722, Richard Lundy and Ebenzer Large vs Christopher Topham, p. 92; MMFP 1715–1744, first month 1723, John Durborow and Edward Pleadwell vs executors of James Atkinson, p. 95; MMFP 1745–1755, fourth month 1747, Thomas Nickson vs Adam Rhodes, p. 38; MMFP 1745–1755, fifth month 1746, Joseph Stretch vs Ralph Loftus, p. 20; MMFP 1745–1755, first month 1747, Isaac Norris and Elisabeth Norris vs executors of Nicholas Walln's estate, p. 33; MMFP 1757–1762, third month 1760, John Reynell and Elias Bland vs William Griffitts, p. 240.

[66] MMFP 1745–1755, fourth month 1747, Testimony of Denial against Ralph Loftus, p. 37.

[67] MMFP 1745–1755, tenth month 1747, Testimony of Denial against Adam Rhodes, p. 45.

[68] Conklin, "Transformed, Not Transcended"; Philipps, "Ancient and Comely Order"; Horwitz, *The Transformation*.

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"gospel order" was not Quaker specific. It was a practice Friends were familiar with from other contexts and adapted to their needs. These may have varied depending on the environment they found themselves in at any one time. As the Quaker court formed part of the institutional fabric of colonial Philadelphia, it was likely also affected by colonial political, legal, social, and economic developments. This section therefore traces the Quaker court's activities over the long run and contextualizes it within broader colonial developments.

While an early success in many ways, Pennsylvania during its first four decades also suffered from a series of political and religious crises.[69] Instability and insecurity directly impacted the colonial legal system. From about 1720, things changed. The political situation grew less volatile, institutions stabilized, trade expanded, and immigration increased. The Quaker court's case load was negatively correlated with these developments. The court was most popular with Friends during the colony's early period of instability. Of the total 284 disputes the meeting arbitrated across the colonial period, the vast majority fell into the years before 1720: 195 cases, about 69% of the total, with an average of about five cases per year.

It is important to remember that at the same time that Friends colonized North America, they still suffered persecution in Europe. Officially tolerated in 1689, they continued to face persecution well into the eighteenth century.[70] Pennsylvania was supposed to be safe because Friends controlled its governing institutions. In England, public courts fined Friends, confiscated their property, and threw them in jail. In Pennsylvania, many of the men on the bench were themselves brethren. William Offutt's research on Delaware Valley courts suggests that early colonial Friends indeed frequently litigated against each other as well as outsiders, making heavy use of Pennsylvania's public courts.[71]

Yet, as both Table 1 and Figure 1 show, Philadelphia Friends frequently resorted to their community court as well. They had good reasons to do so. First of all, Friends shared the contemporary ideal of solving disputes within the community. This will have guided many of them when choosing a legal forum. In addition, several political developments directly impacted the public courts' functioning, providing a further incentive to turn to the Quaker court instead.[72] Some of these factors were the result of imperial interests, others had local roots.

[69] Gary B. Nash, *Quakers and Politics: Pennsylvania, 1681–1726* (Boston, MA: Northeastern University Press, 1993), 56. On Pennsylvania's early and unusual economic success see also David Hackett Fischer, *Albion's Seed: Four British folkways in America* (Oxford: Oxford University Press, 1989), 560; Carl Bridenbaugh: "The Old and New Societies of the Delaware Valley in the Seventeenth Century," *The Pennsylvania Magazine of History and Biography* 100 (1976): 145–63, 159, 168; Barry Levy, *Quakers and the American Family: British Settlement in the Delaware Valley* (Oxford: Oxford University Press, 1992), 6, 14; Offutt, *Of "Good Laws" and "Good Men,"* 5.

[70] Miller, "A Suffering People."

[71] Offutt, *Of "Good Laws" and "Good Men,"* chapter 2. His study spares out Philadelphia, from where few court records survive. There is however no reason to believe that Friends in the capital differed in this regard from their rural and small-town co-religionists.

[72] On frequent legal changes see for instance, Salmon, "Notes and Documents." On Pennsylvania courts' development see for instance Conklin, "Transformed, Not Transcended"; Edwin B. Bronner,

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Table 1. References to "Liberty to go to Law" in the Philadelphia Quaker Meeting Minutes

Period	Cases with References to "Liberty"	Total Number of Cases	% Liberty-Related Cases/Total
1680–89	0	21	0
1690–99	2	67	3
1700–09	6	40	15
1710–19	16	67	23.9
1720–29	7	24	29.2
1730–39	6	15	40
1740–49	10	24	41.7
1750–59	3	15	20
1760–69	1	8	12.5

Source: See text.

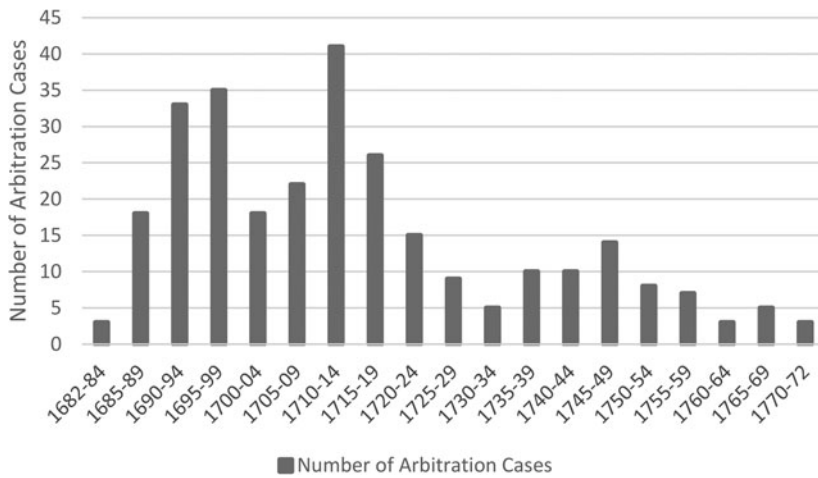

Figure 1. Distribution of disputes in the Philadelphia Quaker court over time.
N = 284. *Source*: See text.

"Philadelphia County Court of Quarter Sessions and Common Pleas, 1695," *The American Journal of Legal History*, 1 (1957): 79–95; Lawrence Lewis, "The Courts of Pennsylvania in the Seventeenth Century," *The Pennsylvania Magazine of History and Biography* 5 (1881): 141–190. William J. Offutt, "The Atlantic Rules: The Legalistic Turn in Colonial British America," in *The Creation of the British Atlantic World. Anglo-America in the Trans-Atlantic World*, eds. Elizabeth Mancke and Carole Shammas (Baltimore: Johns Hopkins University Press, 2005), 160–81, 174; Jack D. Marietta and G. S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (University of Pennsylvania Press, 2006), 20; A. Laussat, *An Essay on Equity in Pennsylvania* (Lawbook Exchange, 1826/2002).

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From the Glorious Revolution onward, the metropolitan government worked to increase control over the American provinces. John Murrin and others have argued that this led to an uniformization of law in the colonies, which became not only more akin to each other, but also increasingly conformed with English law.[73] The new policies significantly interfered with Pennsylvania's legal system from 1705.[74] Qua Penn's Charter, the metropolitan government had a right to veto all colonial legislation.[75] As part of its attempts to gain greater control over the colonies it increasingly made use of this prerogative. For instance, in 1706 the Privy Council revoked 53 of 105 laws the Pennsylvania Assembly submitted.[76] Indeed, Offutt found that among the American colonies, Pennsylvania suffered "the highest percentage of disallowed colonial legislation." In between sending laws for approval to England and hearing back about their acceptance or rejection, rumors and uncertainty reigned. This led to general confusion over which laws were in place, and over colonial courts' jurisdiction.[77] Between 1705 and 1710 Pennsylvania's courts functioned merely based on ordinances issued by the governors, at times they did not sit at all.[78]

Local power struggles also impacted Pennsylvania's courts. Penn had envisioned the colony as a homeland for Friends, where they could live free from the persecution they continued to be exposed to at home. However, like all colonies, Pennsylvania needed financing. In order to fund his "holy experiment," Penn recruited non-Quaker supporters as well. Successfully so: unlike some other North American colonies, Pennsylvania did not struggle with a shortage of willing settlers. The first Quaker colonizers disembarked on the banks of the Delaware in late 1682. For the next forty years, Philadelphia remained small. By 1690, the City of Brotherly Love counted roughly 2,000 European inhabitants.[79] Just over half of them were Friends.[80] A majority of the remaining Europeans were Anglicans. Soon, conflict erupted between the two religious groups over control of the colony. This was carried out in part through the court system. As part of their beliefs, Friends would not swear. Instead, they affirmed. During the 1690s, Anglicans tried to gain hold over the colony by attempting to make oaths mandatory throughout the public

[73] Cornelia Hughes Dayton, "Turning Points and the Relevance of Colonial Legal History," *The William and Mary Quarterly* 50, no. 1 (1993): 7–17; Konig, *Law and Society in Puritan Massachusetts*; John M. Murrin, "The Legal Transformation: The Bench and Bar of Eighteenth-Century Massachusetts," in *Colonial America: Essays in Politics and Social Development*, eds. John Murrin and Douglass Greenberg (New York City: McGraw-Hill Humanities/Social Sciences/Languages 1983/2001), 540–72.

[74] Smolenski, "As the Discharge of My Conscience to God."

[75] William Edward Nelson, *The Common Law in Colonial America: The Middle Colonies and the Carolinas, 1660–1730* (Oxford: Oxford University Press, 2012), 2, 3.

[76] Marietta and Rowe, *Troubled Experiment*, 20.

[77] Offutt, "The Atlantic Rules," 174; Marietta and Rowe, *Troubled Experiment*, 20; Laussat, *An Essay on Equity*, 22.

[78] Marietta and Rowe, *Troubled Experiment*, 30, 32.

[79] Billy G. Smith, "Death and Life in a Colonial Immigrant City: A Demographic Analysis of Philadelphia," *The Journal of Economic History* 37, no. 4 (1977): 863–89.

[80] Marietta, *The Reformation*, 47.

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legal process. This "affirmation controversy" both threatened Friends' access to the public courts and called into question any legal verdicts obtained without the use of oaths. The conflict repeatedly disrupted legal procedures.[81] A further religious dispute of the 1690s, the Keithian schism, saw different factions within the Society of Friends pitted against each other. Former Quaker minister George Keith published attacks against Friends in England, which "threatened to destabilize the Society's delicate legal position."[82] The differences continued through the decade.

What was more, during the 1690s, William Penn was twice arrested under charges of treason, due to his close relationship with former King James II. Between 1692 and 1694 the colony came under crown control, as it failed to take measures to defend itself against the French in the War of the League of Augsburg.[83] In 1708 Penn again was imprisoned, this time for unpaid debts. Close to bankruptcy, he prepared to sell Pennsylvania to the crown. These plans hung over the colony until Penn's death in 1718.

A final important point regarding Friends' use of the public courts concerns trade. Among other things, Pennsylvania was also designed as a business opportunity, and a large number of Quaker merchants settled in Philadelphia and its surroundings.[84] Philadelphians exported tobacco, skins, furs, lumber, and flour from its hinterland to the West Indies and bought English-manufactured goods via the New England colonies.[85] Trade in this period functioned on the basis of credit. It required institutions to enforce contracts and ensure that trading partners settled commercial debts. Elsewhere, chancery or equity courts were instrumental in this.[86] Unlike common law courts, they possessed procedural instruments that enabled them to better understand and determine commercial contracts. For example, in equity courts, plaintiffs were able to file cases against multiple parties, and others involved in the suit were able to add their own related claims. Equity courts relied on testimonies in writing, including that of the dispute parties, and generally included a broader range of evidence.[87] Equity courts however also faced

[81] William H. Lloyd, "The Courts of Pennsylvania in the Eighteenth Century Prior to the Revolution," *University of Pennsylvania Law Review and American Law Register* 56, no. 1 (1908): 34; Marietta and Rowe, *Troubled Experiment*, 30.

[82] Robynne Rogers-Healy, "Introduction," in *Quakerism in the Atlantic World, 1690–1830*, ed. Ibid. (University Park, PA: Penn State University Press, 2021), 2.

[83] Offutt, *Of "Good Laws" and "Good Men,"* 3; on defense finances: Bronner, "Philadelphia County Court," 81.

[84] Frederick Barnes Tolles, *Meeting House and Counting House: The Quaker Merchants of Colonial Philadelphia, 1682–1763* (Chapel Hill, NC: University of North Carolina Press, 1948/2017), 43.

[85] John J. McCusker and Russell R. Menard, *The Economy of British America, 1607–1789* (Chapel Hill, NC: University of North Carolina Press, 1986), 205.

[86] See for instance, Christian R. Burset, "Merchant Courts, Arbitration, and the Politics of Commercial Litigation in the Eighteenth-Century British Empire," *Law and History Review* 34, no. 3 (2016): 615–47; Claire Priest, "Law and Commerce, 1580–1815," *The Cambridge History of Law in America* 1 (Cambridge: Cambridge University Press, 2008): 400–46, 412; William C. Jones, "An Inquiry into the History of the Adjudication of Mercantile Disputes in Great Britain and the United States," *The University of Chicago Law Review* 25 (1957): 445.

[87] Amalia D. Kessler, *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800–1877* (New Haven: Yale University Press, 2017), 54.

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criticisms. As they operated without juries, some colonists worried they would be biased against locals and act in favor of proprietors' interests. Nowhere was this controversy fought harder than in Pennsylvania. According to Stanley Katz, "Controversies over the nature of jurisdiction of equity courts was a distinguishing feature of early Pennsylvania political life."[88]

Before 1720, Pennsylvania's county court possessed equity powers only intermittently. The colonial legislature repeatedly passed laws issuing the courts with equity powers, only for the crown to revoke them. Courts with equity powers were active in Pennsylvania briefly after 1684, again from 1690 to 1693, from 1701 to 1705, from 1710 to 1713, and from 1715 to 1719.[89] This back and forth led to constant confusion over whether the courts held equity powers or not. Importantly, it also caused insecurity as to whether the verdicts obtained during these periods would in fact be enforced once the courts' equity powers were revoked.[90]

The situation changed noticeably from around 1720.[91] Political turmoil subsided. Laws remained in place and the courts sat regularly. Even an equity court was introduced that year.[92] Trade with Europe as well as with other colonies grew almost threefold, as Philadelphia merchants exported more wheat and flour to feed growing populations and provision the troops of Europe's many conflicts.[93] By the time of the Revolution, Philadelphia had emerged as North America's primary port, surpassing both Boston and New York. Demographic change accompanied commercial growth. Philadelphia's population increased dramatically. In 1720 less than 5,000 people lived in the city. By 1775 their number had grown to 32,000.[94] As the colony became more politically stable and prosperous, the Quaker court began to decline. Only 89 cases fall into the period after 1720, making about 31% of the total and an average of only 1.7 cases per year. By the time the Seven Years War began, the Quaker meeting had all but shelved its dispute resolution activities.

Both the threats to and actual loss of control over its political and legal sovereignty to powers that continued to persecute them in England would have made Friends think twice about using Pennsylvania's public courts. In addition,

[88] Stanley Katz, "The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the Eighteenth Century," *Perspectives in American History* 5 (1971): 266.

[89] Lewis, "The Courts of Pennsylvania," 147.

[90] James Irwin Brownson, *Equity in Pennsylvania from the Historical Point of View* (Washington Bar Association, 1914/here reprint Miami, 2019), 17. For history of equity powers in Pennsylvania courts, repeatedly issued and repealed, see Spencer R. Liverant and Walter H. Hitchler, "A History of Equity in Pennsylvania," *Dickinson Law Review* 37 (1933): 156–183; William Henry Rawle, *Equity in Pennsylvania: A Lecture Delivered before the Law Academy of Philadelphia, February 11, 1868* (Philadelphia, 1868), especially 10–20; Sydney G. Fisher, "The Administration of Equity through Common Law Forms in Pennsylvania," in Schools, *Select Essays in Anglo-American Legal History* (Boston: Little, Brown, & Company, 1908).

[91] Marietta and Rowe, *Troubled Experiment*, 33.

[92] An equity court ledger extant from the period contains no entries before 1725. I would not interpret this to mean that it had no business, however. More likely, court minutes were kept elsewhere. See Katz, "The Politics of Law," 268.

[93] McCusker and Menard, *The Economy of British America*, 205.

[94] Smith, "Death and Life in a Colonial Immigrant City."

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limited equity powers on the one hand combined with insecurity regarding the reliability of verdicts obtained using affirmations on the other, endangered property rights. This limited the colonial courts' ability to support trade, and Friends turned to their own legal forum for support enforcing contracts instead. Once the political situation stabilized and the public courts became more reliable, Friends were less dependent on their community court and may have turned elsewhere for support solving disputes. The next section discusses this possibility.

How the Quaker court related to the public courts

The Quaker court formed part of colonial Philadelphia's legal fabric. As discussed earlier, its case load declined just as religious and political conflict subsided and the public courts improved. It seems likely that the two developments were connected. To explore this possibility, we need to take a closer look at how the Quaker meeting fit into Philadelphia's wider legal structures.

The meeting minutes reflect how the relationship between the Quaker monthly meeting and the colonial courts evolved. During Pennsylvania's first decade, the 1680s, the two appear to have acted independently from each other: the Quaker minutes do not refer to the public courts as alternative forums for dispute resolution at all. From the 1690s, this began to change. The meeting now occasionally mentioned other courts in the context of dispute resolution procedures. The frequency of these references slowly increased. The previous section showed an overall decline in the meeting's case load from about 1720. A close reading of the meeting's minutes suggests that there was a qualitative component to this change as well: Friends grew increasingly skeptical of the meeting's arbitration procedure. From the early eighteenth-century onward, the colonial courts' shadow loomed ever larger over the Quaker meeting. As time went by, Friends came to reject the meeting as a legal forum, increasingly expressing a preference for the public courts instead.

Formally, Quakerism prohibited Friends from litigating against each other. However, Quaker meetings before the mid-eighteenth century rarely policed members' behavior.[95] Philadelphia monthly meeting only intervened against public litigation if one conflict party explicitly requested this. Quite the opposite: in 1701, the Widow Moore complained against merchant Philip England for withholding money from her, "the County Court having ordered him to pay it." In other words, she requested the meeting enforce a public court's verdict! The meeting responded by dispatching officers to speak to England and "press him to give the woman satisfaction."[96]

Despite MMFP's apparent laxness regarding the prohibition of law suits, its minutes include requests for "liberty to go to law." In other words, some Friends asked the meeting for permission to litigate a dispute in the public courts even though they had little reason to fear consequences for doing so

[95] Sahle, *Quakers in the British Atlantic World*.

[96] MMFP 1682–1714, ninth month 1701, Widow Moore vs Philip England, p. 155.

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without permission. Why did they take this extra step? I suggest that these requests were part of Friends' dispute resolution strategies. When in 1723 merchant George Claypool asked "that he may be left to his liberty to sue."[97] Daniel Standish over a debt, or renown Quaker minister Thomas Story in 1706 "laid before this meeting that Richard Sutton is in his debt for money lent,"[98] and "desires liberty to recover it by a due course of law," they were not merely asking the meeting's permission to sue. Rather, filing such a request with the meeting served to signal to the opposing party that they were serious and ready to litigate. The move served to exert pressure on opponents to agree on a solution to the conflict.[99] Early colonial Friends freely shopped around for the legal forum they thought most likely to support their interests. They were aware of the possibilities both the Quaker meeting and the public courts offered and evoked the public courts as part of their personal dispute resolution strategies. These reflect Friends' perception of the usefulness—and effectiveness—of either legal forum.

David Konig suggested that an indicator of a court's effectiveness is how many of its cases resurface in other legal fori.[100] If conflict parties move a dispute from one court to another, they likely expect a better outcome: the legal forum they first approached failed to deliver according to their expectations. It was not effective in solving the dispute or enforcing its verdict. For the early colonial period, the decades in which the Quaker court was most active, very few court records survive from Philadelphia. Unlike some other religious minorities, Quakers in this period did not have distinct names. The limited surviving court records contain no information that would allow us to identify Friends among the litigants. Nor are the records elaborate enough to allow us to pursue individual disputes through different legal fori or determine the numbers of Friends using the public courts at any one time. However, Friends' requests for "liberty to go to law" and the meeting's responses to these may serve as indirect evidence for the changing relationship between Quaker meeting and public court. The following section sketches the development of references to "liberty to go to law" in the Philadelphia Quaker meeting's minutes over time.

As Table 1 shows, Philadelphia Quaker meeting minutes from the 1680s are free of requests for "liberty to go to law." Possibly because Penn's "holy experiment" was still young, Friends were still idealistic enough to try to live as strictly as possible according to Quaker discipline. The meeting began to invoke the possibility of referring disputes between Friends to the colonial court around the turn of the eighteenth century. The first such case recorded was

[97] MMFP 1715–1744, eighth month 1723, George Claypoole vs Jonathan Dickinson, p. 101.

[98] MMFP 1682–1714, second month 1706, Thomas Story vs Richard Sutton, pp. 215, 216.

[99] Rosen, "Courts and Commerce in Colonial New York," and Clinton W. Francis, "Practice, Strategy, and Institution: Debt Collection in the English Common-Law Courts 1740–1840," *The Northwestern University Law Review* 80 (1985): 807–940 for England: both have evidence of attorneys settling disputes out of court after they disappear from the records. Entering a suit in a legal forum hence was a means of putting the other party under pressure to find an out-of-court solution.

[100] Konig, *Law and Society in Puritan Massachusetts*, 28, specifically uses this to test the effectiveness of Puritan church arbitration versus public courts. See also Rosen, "Courts and Commerce in Colonial New York," 154, who found this to have been the case among New York courts.

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a dispute between merchant Arthur Cook and the widow Guest in 1698. Cook complained against Guest for allegedly owing him money. The meeting recorded that contrary to Cook's demands, "Alice Guest doth not think herself obliged to pay any debts due from her husband, when he was in partnership with Joseph Brown," apparently because she saw "the said Joseph" as the responsible party. The meeting therefore left Cook "to his liberty to endeavour to recover it from whom it is due."[101] While not specifying the use of courts in this instance, the meeting's use of the term "liberty" in a debt dispute strongly suggests that this is what they had in mind.

During the eighteenth century, the number of references to "liberty" increased steadily. In the period 1700–1709, 15% of disputes (six out of a total of forty cases) were processed by invoking the threat of public litigation. While the overall case numbers remained small, a clear trend toward an ever-greater reliance on the public courts emerges. In the 1710s the percentage of such cases climbed to almost a quarter of the total, by mid-century to over 40%. From the 1750s this development was reversed, however. At that time the overall number of cases also decreased dramatically to soon peter out entirely. This does not have to mean that the Quaker court became more effective at this time. Rather, I suggest, the disappearance of arbitration from the Philadelphia Quaker meeting's minutes reflects Friends' abandonment of the court—they no longer approached the meeting first but likely went directly to the public courts.

If we look at the individual cases in detail, evidence of two developments emerges: first, a change in the relationship between the Quaker meeting and the public courts. Second, a change in Friends' relationship to their community court. The following paragraphs discuss both phenomena in turn.

Into the early years of the eighteenth century, Philadelphia Quaker meeting issued threats of granting "liberty" only after first attempting to solve the dispute on its own. Only if it saw its efforts at risk of failing did it resort to threats. In 1709, for the first time, it changed its approach: when one James Kite complained that fellow Friend Emmanuel Walker refused to settle a debt, the meeting immediately ordered Walker "make the said James Kite satisfaction" or it "must leave him to his liberty to recover his right by due course of law."[102]

[101] MMFP 1682–1714, first month 1698, p. 119, Alice Guest vs Arthur Cook, p. 119.

[102] MMFP minutes 1682–1714, first month 1709, James Kite vs Emmanuel Walker, p. 257. For further examples see: MMFP 1682–1714, tenth month 1713, William Reall vs Joshua Granger, p. 325; MMFP 1682–1714, ninth month 1713, Richard Hill vs Samuel Taylor, p. 323; MMFP 1682–1714, ninth month 1713, Thomas Barnes vs Thomas Broadgate, p. 323; MMFP 1715–1744, seventh month 1715, Isaac Norris vs Thomas Masters, p. 8; MMFP 1715–1744, sixth month, Thomas Potts vs Thomas Shute, p. 19; MMFP 1715–1744, third month 1717, John Worrall vs Thomas Pryor, p. 27; MMFP 1715–1744, third month 1717, Richard Moore vs Henry Child, p. 28; MMFP 1715–1744, eighth month 1723, George Claypoole vs Jonathan Dickinson, p. 101; MMFP 1715–1744, second month 1729, Mary Lisle vs John Heart, p. 170; MMFP 1715–1744, second month 1729, William Carter vs George Shoemaker, p. 170; MMFP 1715–1744, seventh month 1738, Benjamin Trotter vs Jacob Shute, p. 300; MMFP 1715–1744, sixth month 1738, William Hudson vs Isaac Bolton, p. 299; MMFP 1715–1744, eleventh month 1738, Cadwallader Foulke vs Dennis Rochford, p. 304; MMFP 1715–1744, fifth month 1738, Samuel Powell vs Isaac Bolton, p. 298; MMFP 1715–1744, tenth month 1739, Joshua Walton vs Hugh Durburrow, p. 313; MMFP 1745–1755, eighth month 1746, William Cundall vs Adam Rhodes, p. 24; MMFP 1745–1755, eighth month 1749, Armitt Renshaw

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From this time onward, the meeting regularly issued threats of granting "liberty" immediately upon hearing of a dispute. The types of cases the meeting dealt with did not change in this period, suggesting that the disputes themselves did not provoke the meeting's new, harsher response. Rather, the meeting's new approach likely reflected a change in the two legal fori's relationship to each other as well as the Quaker court's relationship to its community. It suggests a decline in the Quaker court's effectiveness in solving disputes on its own. Aware of this, the meeting made use of its position of acting in the shadow of colonial law. It used the presence of the colonial courts as a means to pressure Friends into complying with its process and decisions. Having started out as an independent legal forum in the 1680s, from the 1720s onward the meeting increasingly resigned itself to a position as a subsidiary court.

The second development that emerges from the minutes is that Friends' relationship to their community court also changed in the early eighteenth century. Over the years, the minutes show an increasing reluctance on the part of Friends to engage with the Quaker court's process. This reluctance played out in several ways. First, from the 1720s we see instances of Friends refusing to engage with the meeting's arbitration process outright. The first such incident occurred in 1721. That year, "the Friends appointed in the case of Joseph Richardson and the Executers of Samuel Richardson" reported that "Samuel Hudson, one of the Executors [is] refusing a submission."[103] In other words, Hudson would not agree to let the Quaker court arbitrate and solve the dispute. It dispatched a delegation of Friends to speak to Hudson. After several months of fruitless negotiations, they conceded failure. They reported that Hudson "appeared obstinate, and tho (sic) they desired him to be at this meeting, he is not here, but has sent in a paper, the purport thereof begin a clear refusal to submit to the rules and discipline of Friends."[104] In a similar manner, Isaac Bolton in the same year "had notice that the complaint would be brought to this meeting, and was desired to attend, and he accordingly appeared." However, he "refuse[d] to leave it to the determination of Friends." Instead, he expressed the preference that the plaintiff "might be left at liberty to obtain his right in a legal way."[105] In all these instances, Friends' resistance left the Quaker court unable to conduct its arbitration procedures. Friends rejected their community court's method of settling disputes, sometimes specifically in favor of public litigation.

Initially, the Quaker meeting could use the threat of referring a case to public litigation as a tool to make Friends comply with its arbitration procedures and awards. Over time, this changed. The minutes show an increasing skepticism on the part of Friends to use "gospel order." Instead, the evidence

vs Richard Renshaw, p. 111; MMFP 1745–1755, eighth month 1749, Israel Pemberton vs Peter Lloyd (estate of), p. 111; MMFP 1745–1755, tenth month 1750, John Burr vs Thomas Fisher, p. 160; MMFP 1745–1755, eleventh month 1750, Thomas Lightfoot vs Thomas Fisher, p. 282.

[103] MMFP, minutes 1715–1745, fifth month 1722, p. 87.

[104] Ibid., eighth month 1722, p. 89.

[105] Ibid., fifth month 1738, Samuel Powell vs Isaac Bolton, p. 298; see also Ibid., seventh month 1738, Benjamin Trotter vs Jacob Shute, p. 300, the meeting equally leaves him to litigate after he insists.

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suggests, they leaned increasingly toward litigation. Left with no other option, the Quaker legal forum passed the cases on to the public courts.[106]

Those familiar with Quaker history will notice that the decline in Philadelphia monthly meeting's arbitration roughly coincides with an Atlantic-wide increase in Quaker meeting's disownments that were part of the Quaker reformation. In other words, monthly meetings doubled down on discipline during the same time as they ceased to arbitrate disputes. How do these two seemingly contradictory developments fit together?

The explanation lies in the procedural differences between disciplinary measures and arbitration. As discussed earlier, disownments followed an individual's refusal to comply with the meeting's orders. As Sahle's recent study of London and Philadelphia Quaker community-policing showed, many Friends resented the meetings' increased policing of their communities that accompanied the Quaker reformation. They refused to submit to the new, stricter rules. This led to the dramatic increase in disownments observed from the 1750s.[107]

Arbitration procedures on the other hand depended on conflict parties themselves approaching the meeting for help. As shown in the previous section, Philadelphia Friends grew increasingly reluctant to comply with the meeting's arbitration procedures. They refused to follow the awards or even submit their disputes. This means that both, the decline in arbitration and the increase in disownments were symptoms of the same malady: Friends' growing refusal to cooperate with their meetings.

Arbitration, demography, and commercialization

Scholarship on early modern empires contends that their governance was highly fractured. Multiple spheres of law coexisted and overlapped, acting with varying degrees of sovereignty and independence from the metropole. Over time, the legal pluralism of early empire declined and the state emerged as the dominant body politic. In British America, historians have argued, legal centralization emerged via a formalization of dispute resolution. Traditional arbitration became court-centered and litigation grew more prominent. Scholars including Bruce Mann, David Konig, and Deborah Rosen proposed that commercialization and demographic change drove both the formalization of arbitration and the centralization of dispute resolution in the hands of the state. This paper found strong evidence for this hypothesis at a much more detailed level than previous studies. While the lack of public court records precludes secure conclusions, the evidence from the meeting records suggests that in Philadelphia, as in other colonies, the increase of trade was accompanied by an increase in public debt litigation, and that this happened at the expense of the Quaker meeting.

[106] Further examples: MMFP minutes 1745–1755, sixth month 1746, p. 20, Ralph Loftus also had notice and refused to attend the meeting; equally MMFP minutes 1715–1745, Elizabeth Griffitts, second month 1742, p. 340.

[107] Sahle, *Quakers in the British Atlantic World*.

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What is more, the evidence from Philadelphia hints at a possible link between demographic and commercial change and the formalization of dispute resolution: consider the conflict over debts introduced at the beginning of this article. As John Reynell wrote to Elias Bland in the summer of 1760, William Griffitts had been arrested for debts upon the initiative of a fourth merchant, Isaac Levy. Levy does not appear in the Quaker meeting minutes. Given his name, he was likely Jewish. His involvement with Griffitts suggests that Philadelphia's Quaker merchants at this point were part of larger, trans-religious credit networks. As a non-Quaker, Levy had no access to the meeting's arbitration services. Nor was he subject to their disciplinary procedures. His relationship with Griffitts fell outside the meeting's jurisdiction. In order to secure his debts, Levy therefore turned to the state. Pennsylvania's public legal institutions superseded private, religious ones. In this context, relying exclusively on the meeting for contract enforcement put Friends at a disadvantage when competing with merchants from other communities. This incentivized Friends to call on state institutions instead for such conflicts.

The meeting's lack of jurisdiction over non-Friends does however not explain why Philadelphia Quakers stopped using their court for disputes with co-religionists. Given both the norm of solving disputes within the community and the rising cost of public litigation, this is surprising. To shed light on possible motives, let us return to our merchants' dispute once more.

When Reynell informed Bland in his letter that his intervention came too late to secure Bland's debts, he lamented: "Thou hast been too tender of his reputation."[108] Bland had hesitated to publicize Griffitts' payment difficulties as he expected this to harm his fellow merchant's reputation and credit. Quaker meeting minutes throughout the Atlantic world reflect their awareness of the danger reputational damage might hold for the individual. They are full of entries reminding Friends not to slander each other. What is more, Philadelphia monthly meeting's arbitration between Reynell, Bland, and Griffitts concerned not only the extent of Griffitts' debts. Rather, the minutes reflect long discussions around what information to include in Griffitts' condemnation. One element that Griffitts objected to vehemently and that was eventually dropped was the charge of indulging "himself in the use of spirituous liquors to excess."[109] Marking him as irresponsible and untrustworthy, this likely would have made it impossible for him to start over in business, even after the Assembly honored its efforts of settling his debts and set him free.

This episode links back to Galanter's point, that a legal forum's power lies in its ability to communicate information about its work to the public. Like the Scottish arbitration boards Margo Todd studied, the Quaker meeting relied entirely on community pressure to enforce its verdicts. Its functioning therefore depended on its ability to communicate information to a significant part of the city's inhabitants. This could only work within a relatively homogenous population. Only those who either personally attended the Quaker

[108] HSP John Reynell Letterbook 1760–62, Letter to Elias Bland, 28th of sixth month 1760, n.p.
[109] MMFP Minutes 1757–1762, first month 1761, adjourned meeting, p. 308.

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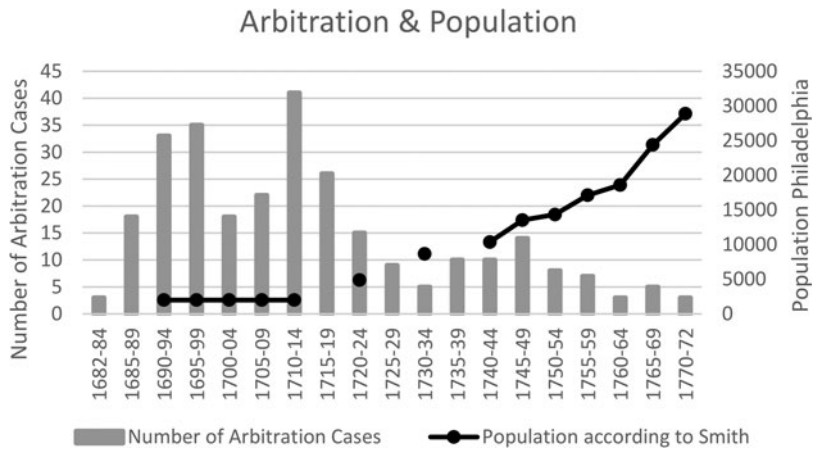

Figure 2. Quaker arbitration and population change in Philadelphia.
Source for population numbers: Smith, Death and Life in a Colonial City.

meeting, lived in their households, or were otherwise socially connected to Friends would learn of the meeting's proceedings.

Until about 1700, this would have worked very well, as Friends made up the majority of Philadelphia's population. After that, they slowly began to become outnumbered by followers of other religions. Around the same time, the meeting first began to invoke the public courts in its arbitration procedures. The decline in the meeting's case load from around 1720 coincided with a second, more monumental demographic shift, depicted in Figure 2: from the late 1710s onward, immigration to Philadelphia grew exponentially. The new immigrants were predominantly non-Quaker. As such, they would not have attended the Quaker meeting, and were probably less likely to be members of Quaker households. In addition, many of them were Germans who did not speak English.[110] The language barrier further diminished their chance of learning about disputes in the Quaker court. Together, these factors reduced the meeting's ability to publicly shame, and thereby pressure, dispute parties. This demographic explanation would also answer the question of why Friends did not revive their community court after the Stamp Act. Given the meeting's exclusive reliance on reputation-based enforcement tools, it no longer provided a viable alternative, even as colonists once again became weary of the public courts.

Conclusion

The dominant narrative of state formation in British America is that of increasingly aggressive metropolitan control efforts which began with the Glorious Revolution and eventually led to American Independence. According to John

[110] Richard Unger, "Income Differentials, Institutions, and Religion: Working in the Rhineland or Pennsylvania in the Eighteenth Century," in *Working on Labor Essays in Honor of Jan Lucassen*, eds. Marcel van der Linden and Leo Lucassen (Leiden: Brill, 2012), 269–95.

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Murrin's anglicization theory, under British pressure, colonial law became increasingly like that of England. As colonial law professionalized, to become a comprehensive system for conflict resolution able to fulfill the demands of increasingly complex colonial society, it did so within the British imperial context. The British legal system served as a role model and thus professionalization of state law in America also meant increasing assimilation to metropolitan law. By the eve of the Revolution, American colonial law had achieved a degree of sophistication that allowed it to serve an independent nation. Ironically, at this point it had also become more alike that of Britain than ever before.[111]

Murrin's research of colonial legal emancipation remains important. The evidence presented in this paper however suggests that it does not show the full picture. Murrin's discussion focuses on the transformation of state courts, and the professions serving them. He thereby sets law firmly within the realm of the state, leaving little room for the law of other corporate and quasi-corporate actors, including religious communities.

Such a reading does not sit well with more recent scholarship. First, historians now agree that early modern empires were legally pluralistic. Benton argued that different ethnic and religious populations were governed by different sets of law. Multiple legal systems existed side by side, at times overlapping and complementing each other. Stern showed how such multifaceted law functioned in the British East India Company's governance in Asia.[112] The story of Philadelphia's Quaker court suggests that in British North America too, quasi-corporate actors operated legal systems and enforced law independently from the crown. Courts that did not draw their legitimacy or power from the state solved colonists' disputes. The Philadelphia Quaker court served its community for a good part of the colonial period. Its specialization in contract enforcement at a time when that area of state law was particularly underdeveloped suggests that it stepped up to fulfill an important function—and may help solve an old puzzle of Atlantic History.

From the later seventeenth century onward, trade in the British Atlantic expanded to an unprecedented degree. Scholars have been unable to explain how this was possible despite the lack of strong state institutions to enforce contracts and mitigate risk. In this challenging environment, Quakers exceled. They were overrepresented among Atlantic merchants.[113] The Quaker city of Philadelphia became integrated into various colonial trades immediately after foundation—despite the troubled nature of its public courts.[114] As we saw earlier, it was during this early period that the Quaker meeting complemented, perhaps even substituted Pennsylvania's state courts. Specializing in contract enforcement, it offered a crucial legal service at a time when the colony's state courts could not be relied upon to do so. This suggests that by

[111] Murrin, "The Legal Transformation," 540–72.

[112] Stern, *The Company-State*.

[113] For an overview of this literature see Esther Sahle, "Quakers, Coercion, and Pre-Modern Growth: Why Friends' Formal Institutions for Contract Enforcement Did Not Matter for Early Modern Trade Expansion," *The Economic History Review* 71, no. 2 (2018): 418–36.

[114] McCusker and Menard, *The Economy of British America*, 205.

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securing property rights and mitigating the risk of exchange, Friends' meetings provided them with a competitive advantage in trade—and supported early Atlantic trade expansion.

Furthermore, limiting the study of law to state institutions has led historians to underestimate the colonial population's agency. By focusing exclusively on the development of state law and its anglicization, we have rendered the vast majority of colonial subjects mere witnesses to their own society's development. Confronted with the continuous expansion of metropolitan control, they remained passive, unable—or unwilling—to intervene. Only with the Stamp Act, and thus in direct response to a metropolitan intervention, was the colonial population roused from its inertia. In contrast to this interpretation, Benton argued that European empires' colonial subjects played an active role in colonial state formation. Through forum shopping, they shaped the legal landscape they inhabited. Sometimes, they opted for colonial state institutions instead of those of their own communities, if this served their interests. By authorizing the colonial courts to settle their disputes, subjects invested these with legitimacy. Thereby they unintentionally strengthened the colonial state's hold over their territory, facilitating the marginalization of other, nonstate legal actors.

The case of the Philadelphia Quaker court appears more in line with Benton's model of colonial state formation than Murrin's. It shows Friends increasingly shifting their legal business from their community court to the public courts. This began around the turn of the eighteenth century and increased dramatically from around 1720. At this point, the colonial courts improved, offering more effective contract enforcement to an increasingly diverse population. Philadelphia's commerce entered a new phase of growth, expanding from intercolonial exchange to direct trade with Europe. Friends took the opportunity and moved their legal business from the meeting to the improving public courts. These enabled them to do business across religious lines, which was essential to succeeding in an increasingly commercialized Atlantic world. In doing so, however, Friends transferred legitimacy from their community institution to the state. This development is strongly reminiscent of what Benton described for colonial Latin America and British India. Unlike the indigenous populations Benton studied, the Quakers were themselves colonizers. Perhaps for this reason, scholars have not yet applied Benton's understanding of colonial state formation to British America. Bearing this in mind, the developments in Philadelphia open a new perspective on Atlantic state formation: the population's agency in this process did not begin with the Stamp Act crisis. Instead, early Americans shaped governing institutions according to local needs and circumstances from the very beginnings of colonialism.

To conclude, let us return to Benton's work once more. She argued that what united the multiple legal spheres of early modern empires was the prevalence of legal diversity. The fact that everywhere, people could access and were subject to multiple legal systems at the same time constituted the common basis of the early modern, global legal order.

One would expect such diversity to cause some difficulties, especially for merchants. Even if familiar with the presence of multiple legal systems, they

would still need the training and experience to effectively use each one. This would raise transaction costs and impede trade expansion. Yet, the case of the Philadelphia Quakers highlights just how easily subjects moved between different legal spheres. Friends chose courts freely, easily abandoning one legal forum for another when it suited them. How were they able to do so?

The evidence presented in this article suggests that it was the similarity of procedures that facilitated Friends' legal mobility. As discussed earlier, the Quaker meeting employed the same procedures as other arbitration courts across the British dominions. Friends were able to move between different forums with ease, because they were familiar with the processes. They learned how to arbitrate in other contexts—be it London guilds or Scottish arbitration boards—and transferred these techniques to their community court. Certainly, arbitration will have differed somewhat from place to place, from legal system to legal system. But it appears that procedures were similar enough to be easily recognized and followed. Friends were able to apply legal know-how acquired in one context to another at little cost. This transferability of knowledge allowed people to move between the different legal spheres of early modern empires—to navigate the global legal order.

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