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'CHILDREN OF LIGHT AND SONS OF DARKNESS': QUAKERS, OATHS AND THE OLD BAILEY PROCEEDINGS IN THE EIGHTEENTH CENTURY

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ABSTRACT

This paper makes use of the technology that allows for the searching of the online edition of the *Old Bailey Proceedings*. Although Quakers were once very familiar with courts of justice, by the eighteenth century they had become considerably less persecuted than formerly. Their way of life meant that they did not figure highly among defendants in criminal courts. Their testimony against oaths excluded them too from the ranks of prosecutors and witnesses, the newly won right to affirm not extending to criminal trials. Quakers figure in fewer than 100 of the 45,000 Old Bailey trials in this period. Nevertheless, what evidence there is gives some fascinating insights into the creation of the popular image of Quakers and their interaction with both the criminal justice system and wider society in eighteenth-century London.

KEYWORDS

Quakers, criminal law, oaths, Old Bailey Proceedings, eighteenth century

On 17 December 1732, a young woman named Elizabeth Caton was in St James's Park in London. She had been in the city only a matter of weeks and, being unable to find a place as a servant, was making her living as a prostitute. A man approached her and asked if she was a Quaker. When she replied 'no' he asked why, then, she looked so discontented. She clearly remembered this when called to give evidence in her own defence a month later after he charged her with pick-pocketing. His own memory of events was less clear since he admitted to being 'very much in liquor' at the time.[1]

In June 1738, John Wright was convicted and sentenced to death for sending an anonymous, threatening letter. According to Wright's friend, William Cruikshank, Wright was subject to fits of depression, and had attempted suicide, declaring himself 'devoted to eternal Destruction, and abandon'd of God'. Cruikshank said that Wright had not been baptised as a child, being the son of Quakers; 'as far as I can remember he mentioned this as the reason for his Melancholy'.[2]

One evening in November 1755, John Wigmore, who was later to be transported for shoplifting, was in a public house in Drury Lane, haggling over the price of a coat with a dealer in clothes. The dealer asked twenty shillings for it. Wigmore replied, 'I'm like a quaker, I'll give you not more nor less than 16s'.[3]

The historical source in which we find all these details of the everyday life of London folk, complete with degradation, drunkenness, despair and drudgery is a periodical which was published regularly from 1674 to 1834. Its full title, with occasional modification was *The Proceedings of the King's Commission of the Peace and Oyer and Terminer, and Gaol-Delivery of Newgate, held for the City of London and the County of Middlesex, at Justice Hall, in the Old Bailey*, and will be referred to in this paper simply as the *Old Bailey Proceedings*, or just the *Proceedings*.[4] The Old Bailey was London's central criminal court where all those committed for serious crimes in London and Middlesex were tried.

The *Proceedings* had a dual purpose.[5] For much of the eighteenth century, they were a commercial enterprise, catering for the popular appetite for crime reporting, notably in the period when there was still little competition from newspapers. Shorthand reporters attended the trials, and then edited their notes for publication. For most of the century, the *Proceedings* were sold comparatively cheaply and at a profit, the publisher paying a fee to the City of London for the privilege.

The *Proceedings* also had a quasi-official role which became increasingly important. Since 1678, they had provided a calendar of all trials at each session, and when from the early eighteenth century they included an increasing amount of verbatim testimony, they could be used by the Court in perjury cases, and by the King and Privy Council to help decide on pardons. The Lord Chancellor and twelve common law judges all received free copies.

From 1778, the City authorities were insisting that the *Proceedings* provide a 'true, fair and accurate narrative'.[6] As Simon Devereaux argues, the *Proceedings* were important to the administration of 'public justice', assuming an important role in demonstrating the fairness of the legal system. This was evident in the 1770s, for example, when politics in the City were dominated by the popular radical, John Wilkes, whose reputation was built on championing the freedom of the press, and who was a critic of judicial malpractice.[7] The *Proceedings* were seen as an aid to the reformation of morals, and in the last decades of the century, the Lord Mayor and Aldermen were anxious that, above all, they showed 'the guilty receiving their just deserts at the hands of legitimate authorities'.[8] By the 1790s the City was subsidising publication of what was still considered an important reference work, capable of influencing public opinion, and even though the former commercial appeal had been largely lost, coffee houses remained regular purchasers.[9]

The *Proceedings* form a rich source, providing information not only for historians of crime and the legal system, but a wealth of incidental detail for the study of the metropolitan area in the period. However, it is also a massive source, since there were at least eight sessions a year and over 45,000 trials in the eighteenth century alone. So, perhaps equally remarkable as the source itself is the XML technology that allows for the free-text searching of the online edition of the *Proceedings* (available, since 2004, at www.oldbaileyonline.org), to identify specific evidence that would

otherwise be as elusive as the proverbial needle in a haystack. The opening anecdotes give an idea of the kind of 'everyday' evidence that becomes available by searching for keywords 'quaker' and 'quakers'. Though the references are few, Quakers had clearly gained a place in the popular imagination where they appear to have been regarded as pompous, despondent and un-Christian. This kind of perspective could not readily be found elsewhere, for most of those who gave evidence were people who were generally neither heard nor regarded.

Popular perceptions, however, do not materialise out of nothing. The *Proceedings* were integral to the role of the criminal law, which was essentially to serve the interests of the social elites, the 'men of property and respectability who dominated their neighbourhoods'.[10] Certainly, to be effective, the criminal law needed broad public approval and a belief by individual victims of crime that their interests were being attended to. Nevertheless, those who ran the courts had considerable opportunity to exercise their discretion in the administration of the law, and it is widely accepted that, integral to the criminal justice system, was the will 'to sustain and legitimize the established social, economic and political arrangements of society'.[11]

Those, like Quakers, who did not conform to accepted social values, or who might be considered outsiders, were often accorded a particular role in the narrative of the Court's proceedings, which might feed-off and in turn feed wider perceptions. For example, in one of the shorter trial accounts for theft from 1727, disproportionate emphasis was given to a marginal incident. A Quaker was called to give evidence. Quakers were well known for their refusal to show the expected courtesy to magistrates and judges by removing their hats, so the *Proceedings* relate with some glee how this Quaker 'through inadvertency pull'd off his hat, of which being told, took pet, and ran out of court'.[12] At the end of the same volume of *Proceedings*, the following advertisement appears:

> This day is published,
> A Merry Conversation that lately pass'd between a very noted Quaker of this city and his Maid, upon a very merry occasion.
> Hearken, oh, ye Sons of Darkness to the sayings of the Children of Light.
> Printed for A. Moore, in St Paul's Churchyard. Pr. 6d.[13]

Investigation reveals this to be a pamphlet in the form of a dialogue between a Quaker master and his maidservant on the occasion of an explicitly described sexual encounter. An irreverent eighteenth-century readership certainly seemed to find it titillating since it was in its third edition by 1739. Quakers are characterised as deluded and sanctimonious; as the master tells his maid, 'thou and I cannot sin; we are perfect', but outward appearances matter to him. As he goes on to tell her:

> I know a Friend, a young man, a Taylor, who went in unto a harlot...and was discovered and became a great scandal to the Saints, because it was known; but we will be as subtil as serpents, so shall we be accounted as innocent as doves.[14]

What can be discerned here is a trend to represent Quakers as figures of fun, and, ultimately, as hypocrites, something that we shall find reflected in different contexts in later *Proceedings*.

From their beginnings Quakers had clashed with the criminal justice system, and the focus of this tended to revolve around Quaker testimony on oaths. William Braithwaite describes the refusal to swear as 'the best known of Quaker testimonies' and 'the one least intelligible to the outside world'.[15] The basic rejection of oaths stemmed from Scripture; according to Matt. 5.33-37, Jesus had exhorted his listeners to 'swear not at all', while the General Epistle of St James 5.12 urged, 'swear not, neither by heaven, neither by earth, neither by any other oath'. There was considerable theological debate about the precise applicability of these injunctions, and most Christians held the pragmatic view that judicial oaths were necessary because of human weakness. The Articles of the Anglican Church (dating from 1571) stated:

> As we confess that vain and rash swearing is forbidden Christian men by our Lord Jesus Christ, so we judge that Christian religion doth not prohibit but that a man may swear when the magistrate requireth in a cause of faith and charity, so it be done according to the Prophet's teaching in justice, judgement and truth.[16]

By the seventeenth century, those, like Quakers, who refused to take a lawfully tendered oath, put themselves in a dangerous and difficult position. Oaths of Supremacy and of Allegiance and Obedience were designed to enforce the authority of the monarch and of the Anglican Church. In addition, as Craig Horle has shown, the oath was required for a whole range of day to day business, including recovering stolen goods, suing for debts, probating wills involving goods and chattels, and becoming a copyholder, as well as serving on juries or holding law enforcement positions.[17] Between 1661 and 1665 the already numerous situations requiring specific oaths were bolstered by a series of acts aimed specifically at religious dissent. The so-called Quaker Act of 1662 was directed at all those who maintained that an oath was contrary to the law of God, and who either refused or encouraged others to refuse to take an oath. Horle has shown that the difficulty and expense of dealing with every case meant the effect of this legislation was probably not as severe in practice as has sometimes been claimed.[18] Nevertheless, Quakers were clearly vulnerable to enormous persecution.

Subsequent relief for Protestant dissenters ultimately included an acceptance of a right to affirm rather than have to swear a judicial oath. Some explanation of the 'affirmation question' is necessary here if only to help throw light on why, as Braithwaite argues, the testimony was so often misunderstood. *A Treatise of Oaths*, presented to the king and Parliament in 1675 in the hope of winning relief from persecution, was a comprehensive explanation of why Quakers would not swear. The *Treatise* declared.

> We cannot for pure conscience, take any oath at all (though we have again and again tendered our solemn yea or nay, and are most willing to sustain the same penalty in case of lying that is usually inflicted for perjury); to the end we may not be interpreted to decline the custom out of mere humour and evasion.[19]

It was argued that the oath had been ordained not by God but by sinful humanity as a means 'to awe one another into truth speaking'; but Christians did not need to 'take this liberty'.[20]

> [Christ] came not to implant so imperfect a religion as that which needed oaths... He is that powerful Lord, who cureth the diseases of them that come unto him, and the Mystical Serpent exalted, that relieves all them that believingly look up to him; his office is to make an end of sin that made way for swearing, and introduce that everlasting righteousness which never needs it; the religion he taught is no less than Regeneration and Perfection.[21]

A Christian would speak the truth at all times, and if individuals chose not to be open to God, then they would not scruple to lie under oath, and so the oath was both useless as well as sinful. By the late seventeenth century, Quakers saw their role as that of an example:

> How is it possible for men to recover that ancient confidence that good men reposed in one another, if some do not lead the way... [T]rustiness did not all at once quit the world, not will it return universally in the twinkling of an eye; things must be allowed their time for rise, progress, and perfection; and if ever you would see the world planted with primitive simplicity and faithfulness, rather cherish than make men sufferers for refusing to swear.[22]

The testimony was essentially the product of an age of millennial expectation, and the Quaker belief that everyone had the potential for achieving regeneration by submitting themselves to the spirit of Christ. The personal experience was essential. For example, John Fothergill, brought up in a Quaker family in the early eighteenth century, regarded oaths as one of the 'defiling liberties' of the 'vain and restless flesh pleasing spirit of the world'. He traced this understanding back to a specific incident in his childhood when, playing with another boy, he was suddenly tempted to swear an oath, which, as he wrote, 'notwithstanding it was to a truth, yet such secret conviction of the evil of so doing in the sight of the almighty God, so affected my mind with sorrow and remorse, as made a lasting impression on my judgement'.[23]

Not surprisingly, given the level of Restoration persecution and the beliefs of Quakers themselves, the passage of affirmation legislation was a tortuous one. The process began in the late seventeenth century following the accession of William III, but it was 1722 before an act (8 Geo. I. cap. 6) was passed that established a wording for an affirmation that was broadly acceptable.[24] The affirmation was given 'the same force as an oath except in criminal cases, to serve on juries, or to bear any office or place of profit in government'.[25] The exclusions would have been a matter of marginal interest to Quakers at the time, who claimed no 'worldly' ambitions, and for whom the bloody criminal code in particular was something to be avoided at all costs, being the salient example of the pride and corruption of temporal power.[26]

Being persecuted for their refusal to take the oath had enabled Quakers to be 'eloquent through suffering',[27] but once relieved of the persecution, the testimony lost its prominence. Quaker writings on the subject of the oath became somewhat formulaic. Thomas Clarkson in 1806 and Joseph John Gurney in 1824 presented the arguments in what Clarkson described as a 'blend [of] religious with secular considerations'.[28] The arguments were very similar to those presented in the 1675 *Treatise*, but the language was considerably less enthusiastic. Gurney, for example, wrote that 'it might be admitted that a real adaptation exists between the practice of judicial

swearing, and that lax and imperfect morality which grievously prevails in almost every part of the world' but that there was 'no just excuse for relinquishing the lofty ground on which [the Christian] ought ever to be found standing'.[29]

Standard arguments were clearly useful to those who found themselves in the now rare position of being asked to swear. William Hoare, a Quaker called as a witness in the trial of John Gilbert in 1810, made his refusal as follows:

> Q[uestion]...what is your objection to being sworn. A[nswer] A religious objection. Q. do you mean to state, that you in your conscience, think it unfit to take an oath to speak the truth? A. To speak the truth anywhere, to take an oath nowhere. Q. You are not asked to take a prophane oath, you are asked whether you have any conscientious objection to take an oath in this place. A. I have. I consider a prophane oath and judicial oath very similar, I think they are both against the tenor of the New Testament, and therefore I object to it.[30]

In order to understand something of the nature of Quakers' decidedly limited involvement with the criminal law in the eighteenth century, we need also to understand something of court procedures. In criminal law, all cases had to be tried during that allotted sitting of the court, and the gaol had to be cleared. It was generally the private citizen who initiated a prosecution; in the eighteenth century, more than 80 per cent of prosecutions were conducted by the victims of crime.[31] However, the trial was represented as being between the Crown and the accused, and the prosecutor was treated like the other prosecution witnesses whose evidence was given under oath. From 1703, defence witnesses were also required to give evidence under oath. Witnesses were required to swear that 'the evidence you shall give to this jury between our sovereign lord the king and the prisoner at the bar shall be the truth, the whole truth and nothing but the truth. So help you God'.[32] The oath was seen as an indication of whether the witness understood the difference between right and wrong, and to suggest that, even if false evidence was not detected in the trial, ultimately the witness would be punished for lying. This is best illustrated in the swearing of children, where additional enquiries were often made to ensure understanding, as with the following exchange between the Court and a young girl:

> Did you ever take an oath? No, Sir.
> Have you ever been taught your catechism? Yes.
> Have you ever been told what will become of you if you are a naughty girl and tell stories? Go to hell, Sir.[33]

The oath was seen as a safeguard against the defendant being 'set up', something that was all too possible throughout the eighteenth century, when it was common to offer rewards for the arrest and conviction of criminals. Statutory rewards began in 1689 with the offer also of pardons for those accomplices who 'turned evidence' (that is, who offered to act as prosecution witness against the other persons implicated). The practice led to abuses; the business of crime-detection was often a shadowy and haphazard affair, and the more unscrupulous 'thief takers' could become 'thief makers' by luring individuals into crime in order to turn them in and claim the rewards. As a result of some notorious cases in the mid-eighteenth century, statutory

rewards were not extended to new offences, but the system of rewards was not abolished until 1818.[34]

Clearly, court officials were not sufficiently naïve to think that the oath was a guarantee that the truth would be told.[35] There was also an awareness that the compulsory oath might operate against the interests of the innocent. Children who were considered too young to understand the implications of the oath could not give evidence against those accused of abusing them, and thereby 'lost the protection of the law, which is every subject's birthright'.[36] However, on balance, it was regarded as more important to protect the defendant's rights by insisting that those who spoke against him or her at least had to do so under oath, and ensuring that penalties against perjury were severe.

The only person who could not give their testimony under oath was the defendant (and this remained the case until 1898). It was a 'central belief' in the criminal courts that the accused's best defence was his or her 'own natural and unprepared responses to the charges' and these, along with character witnesses, would allow the court to judge if the truth was being told.[37] The privilege against self-incrimination had formed the basis of opposition to the hated ecclesiastical and prerogative courts in the 1640s, and elements of the principle that no one should have to swear against themselves especially when their lives were at stake were reflected in the criminal justice system.[38]

In general the system operated more in favour of the prosecution than the defendant (hence the perceived importance of the oath as a counter-balance). The pressure on the courts to clear the gaol at each sitting meant that trials were hurried through. The Marian pre-trial procedure (established in 1555) did reduce the number of cases that had to come to trial. The prosecutor was at liberty to go direct to the clerk of the court to get his case heard, but the intention of the pre-trial procedure was to allow the magistrates to aid citizen prosecution, giving them the powers to issue search and arrest warrants, to commit the accused to gaol until the next court session, and to examine suspects and witnesses. The Lord Mayor and Aldermen of the City conducted regular pre-trial hearings, and increasingly exercised their discretion to dismiss cases, although, in general, cases were not dismissed if sworn to by a 'respectable prosecutor'.[39]

The written accounts of the examination of witnesses, known as depositions, would be handed over to the clerk of the court. Witness evidence was taken on oath, and so at this stage those who objected to swearing could be identified. One prosecutor, Jonathan Parker, told the court how he had identified a Quaker witness, and brought him 'before Sir John Fielding [the magistrate]; he gave his affirmation...he would not swear, so can be of no service here'.[40] In this case, there were other witnesses, and so the Quaker was not needed, but the magistrate did have the power to bind over prosecution witnesses to appear in court, and on occasions, Quakers were called to give evidence.

Once the clerk had received the depositions of a case, he would draw up a bill of indictment. If the Grand Jury decided that the prosecution evidence represented a true bill, the case came to trial, and the accused was arraigned before the court. This would be the first time that the accused would have heard any of the evidence

against him or her. The jury would listen to a group of cases, and then huddle together in order to consider their verdicts. By the middle of the eighteenth century, the average trial time was around half an hour, the jury deliberations generally lasting little more than a few minutes.[41]

Up until the early eighteenth century, trials in criminal courts were conducted as a direct altercation between prosecutor and accused, and defence counsel was specifically forbidden so that lawyers might not prevent the court hearing the accused's version of events.[42] By the 1730s, an adversarial system was slowly developing, characterised by a conflict between prosecution and defence lawyers on behalf of prosecutor and accused.

Court sessions were conducted in such a way as to demonstrate forcibly the justice and authority of the law and those who administered it. The personnel of the Court developed a strong sense of their almost sacred duty, and this is nowhere more evident than in the use of the oath. By the end of the century, the City of London had a population of nearly a million; there was considerable cultural diversity and neither a Protestant nor even Christian exclusivity could be expected. A common, professed belief in God and acceptance of the Court's right to administer the oath could still serve the purpose of social cement. The following exchange in a trial where the prosecutor, Isaac Lindo, was a Jew, illustrates the level of attention paid to this matter:

> I. Lindo sworn, his hat being off.
> Juryman. I desire to know if he thinks an oath taken to be equally binding with his hat off, as on?
> I. Lindo. I think it equally binding but will do as his Lordship pleases. The Court was satisfied with the oath he had taken.[43]

In 1764, the judges took the unusual step of committing the accused to a further period in gaol while they deliberated if the prosecutor, John Morgan, a Muslim, originally from Bengal, might be sworn on the Qu'ran. It was decided unanimously that he might be, and his oath taking was described in careful detail in the *Proceedings*.[44]

There was a strong attachment then to the judicial oath, which, as well as being regarded as an incentive to telling the truth, was also a means to profess faith both in God and certain shared values. In his *Letter concerning Toleration*, John Locke had specifically excluded atheists from its scope, on the grounds that they were not bound by 'promises, covenants, and oaths, which are the bonds of human society'. 'The taking away of God', he argued, thereby 'dissolves all'.[45] Oaths were generally regarded as necessary for the common good, and it is notable that both the *Treatise of Oaths* and John Fothergill effectively recognised this when they described the oath as a 'liberty', a word which, then as now, suggests freedom and privilege as well as presumption. Many people may not have understood that the refusal by Quakers formally to call upon God as their witness was motivated by a strongly theocratic tendency, and assumed instead that it indicated an absence of proper religious feeling.

How did Quakers interact on a day to day basis with the powerful social and cultural forces, which were reflected in the continuing attachment to the oath in the criminal justice system? Their professed aim by the eighteenth century was to detach

themselves from the customs and fashions of the world as much as possible. As one Quaker wrote, 'we are indeed a chosen people, and what may not be wrong in others is so in us'. He went on to assert that 'plainness of dress is as a hedge about us. The world is not then seeking our company'.[46] Quakers' dress (and speech), however, tended to make them conspicuous. By the 1780s particular pale and drab colours had taken on the epithet of 'Quaker', and the *Proceedings* made a point of identifying Quakers by their peculiarities of speech.[47] Given that a significant proportion of London Quakers made a successful living in trade, it is unsurprising that the more opportunist elements of the 'world' did indeed seek their company, and were able to identify them with some ease. The knowledge that they were unlikely to prosecute may have made them especially noteworthy to the unscrupulous and desperate. This is most graphically illustrated in the decidedly gossipy style of the late seventeenth-century *Proceedings*. In 1680, Arthur Garland was convicted of pick-pocketing in St Sepulchre's Church. The account of his trial ends with this comment:

> It was said that some of the Diving Gang [pickpockets] should declare, that they would no more go to Church, because many of them had had such ill there of late, but henceforth they would haunt the Quaker Meetings, and nip their things without controul, because they would not swear, and if so there was no danger of conviction.[48]

An account of 1717 reinforces the impression that Quakers were not only seen as soft targets but were regarded as 'letting the side down' when it came to law enforcement. James Anderson, accused of stealing thirty yards of calico from a shop in Lascelles Street, claimed in his defence that he had been asked by someone else to carry the calico to an alehouse in Gracechurch Street. As the *Proceedings* reported:

> that pretence would scarce have availed him, but that he had the good luck to have been dealing with a Quaker who would not swear, and so that lucky scrupulosity, in all probability saved him; for the Jury was obliged to acquit him upon the deficiency of the evidence.[49]

Although there are few details in the *Proceedings*, Quakers continued to suffer abuse for the very fact of their religious beliefs, and to be cast as scapegoats.[50] During the 'High Church' riots in the summer of 1715, Thomas Rye was convicted of breaking the peace, and in the evidence against him it was reported that he had assaulted Joshua Gee, a Quaker, by turning his hat around and striking him in the face.[51]

It may have been that the name 'Quaker' was itself simply a form of insult. There is no indication, for example, that Abraham Lawrence who was robbed in Stepney Fields in 1749 was a Quaker, and yet he recounted how a highwayman had accosted him with '"You, Quaker, stand"; I said, "stand, you dog, for what?"'[52] This incident suggests that a similar prejudice may have occasioned the altercation between William Corryndon and Thomas James in May 1744, which resulted in Corryndon's death. According to a witness, Corryndon was drunk and was following James and challenging him to fight, while James was heard to ask 'What do you mean by abusing me in this manner?' While it is clear that Corryndon was the prime aggressor, striking the first blows, (and indeed James was acquitted on the grounds of self-defence), it is also clear that James defended himself vigorously with his cane. The

surgeon who gave evidence described the accused as 'Mr James the Quaker', although there is no other reference to his religion.[53]

Whatever the facts of James's trial for murder, it is clear that Quakers did not always live up to the high standards they set themselves, and the *Proceedings* were generally ready to jump on any lapses they came across. When John Harris, a hatter and haberdasher in Cannon Street, was sworn in order to give evidence against his servant, John Blonde, the *Proceedings* made a point of footnoting that 'Mr Harris is one of the people called Quakers'.[54] In 1751, John Davis was charged with stealing bank notes to the value of £30 from William Tibey. According to the evidence of Joseph Hall who was with Tibey in Jonathan's Coffee House, Tibey was making a bargain over ten lottery tickets with another man, when he suddenly laid hold of Davis as a pickpocket. When asked in court why Tibey did not give evidence, Hall replied that being a Quaker, he 'does not care to swear'. However, after the court had heard character witnesses for Davis, the *Proceedings* reported that Tibey suddenly made himself known, claiming 'I never did take an oath before, but if I must, I must. (He is sworn.) The prisoner at the bar did pick my pocket of these notes, I am sure of it'. Davis was found guilty of theft and sentenced to transportation.[55] The victim of the crime here would appear to have been the same William Tibbey who was nephew and colleague of another Quaker businessman, Peter Briggins, and whose diary Simon Dixon has recently studied in order to explore the relationship between London Friends and their wider community. This particular trial is a further salient reminder of his point that:

> The reality of life within the hustle and bustle of the ever expanding metropolis was that no matter how strong an individual's allegiances to one particular community it was impossible to cut ties with all others.[56]

In a number of trials for crimes in which Quakers were the victims, there were other witnesses who were prepared to swear, thereby avoiding the necessity for Quakers to be called to give evidence. For example, when Mr Cross, 'a Quaker and haberdasher of hats', had his pocket picked in Gracechurch Street, the accused, Henry Harris, was convicted upon the evidence of an errand boy who worked for a stationer in the street, and there is no indication that Cross had been involved in the prosecution at all.[57] In addition, there were five cases (involving seven defendants) for theft of some description, in which a way round the scruples of the Quaker victims was found, when their servants or lodgers either agreed or were bound over to give evidence instead. All seven defendants were found guilty. The two women convicted were sentenced respectively to transportation and to be imprisoned and whipped. Of the five men convicted, one was sentenced to transportation, and three were sentenced to death, although the sentences were subsequently mitigated to transportation. The fifth, George Smith, convicted of theft from the dwelling house of Deborah Weaver, widow, tailor and Quaker, was also sentenced to death, and in spite of a recommendation to mercy was hanged at Tyburn at the end of the court session.[58]

On other occasions, Quakers, although not prepared to give evidence, were quite proactive in pursuing those they suspected of crime. A Highgate turnpike collector,

giving evidence in a trial for animal theft, described how one Mr Brown, a Quaker from Luton, 'rode up to me and said, I'll beg you'll shut the gate, for this man coming with horses, I suspect has stolen them'.[59] In the case of Abraham Godin, Thomas Goldfinch and Samuel Roberts, all found guilty, in 1785, of stealing calico from a bleaching yard, the watchman who was the principal prosecution witness, described how he and his Quaker employers, Richard Adams and Samuel Lay, had chased after and apprehended the defendants.[60] When Robert and Henry Womersly, both Quakers, suspected their shopman, John Smith, of stealing from them, they marked some money and called in an 'officer', Joseph Niblow, to witness the turning out of Smith's pockets. Although the money was found in his pockets, a dispute over wages owed to him and the fact that his masters were not prepared to come to court to swear, resulted in the court deciding that it would be 'a great deal too much to convict the prisoner', who was duly acquitted.[61] Robert Womersly had previously brought another prosecution against one Elizabeth Williams for stealing linen from the shop, although again he had not been prepared to swear, and since 'his affirmation could not be admitted', Williams too was duly acquitted.[62]

Such cases were few, but were enough to earn Quakers a reputation for being hypocrites or concerned only with their own interests. In 1761, Christopher Terry, who kept the King's Head in Ivy Lane, complained how he had been given a counterfeit bill of exchange drawn by one Benjamin Strafford. The bill was drawn to Messrs Barclay, Freame and Co. who refused payment. Terry had gone to the magistrate's office:

> Sir John Fielding, knowing I had been defrauded bound me over to prosecute; and Barclay and his servants being quakers, will not swear; so I am hauled into very great hardship.[63]

An element of compulsion could certainly be brought to bear on prosecution witnesses, as happened in the case of Elizabeth Rock who was tried in 1778 for the murder of her elderly servant, Elizabeth Young. The only eye witness to the events was Miranda Gordon who was known to Quakers and was probably a Quaker herself. She had only recently arrived in London and was staying at the house of Rock. On Wednesday 10 June, 'two gentlemen quakers' had called on Gordon. They had asked Rock to stay during their interview and had given her money to pay for Gordon's lodging until they should call again. Later that day, Young and Rock quarrelled over money. Young had gone out and later returned home drunk, for which Rock had literally flung her out of the house. Young sustained injuries from which she died three days later. Gordon's evidence was given in a spirited manner which nevertheless showed some confusion, and it was clear that pressure had been brought on her to appear.

> Counsel for the prisoner. What country woman are you? My lord I am not come to inform the court of that; I beg pardon for lording it; (speaking to the counsel) I will not tell; it does not concern the cause.
> Are you ashamed of you country? That is a matter of no concern...
> You say two quakers came to you? There were.
> Are you a quaker? I am not to tell.

> Court. If any of these circumstances should happen to be material you will be obliged to answer? But they are not material, my lord.
> Court. You are not the judge of that, if the court insist upon your answering you must.
> Counsel for the prisoner. Because she has [s]worn.
> Court. You took the oath very willingly and freely, you made no scruple? None, because I have nothing to say but what is truth...
> You speak warm against her [Rock]? Nothing but for justice; what I do is against my will that I was ever brought on evidence; I was kept prisoner some days in the compter [City prison for debtors], but I must tell the truth when called upon.[64]

It is worth noting that this trial took place during a period when the Recorder (whose job was to advise the Mayor and Aldermen of the City on legal matters and to ensure the accurate recording of Court proceedings) was John Glynn, a prominent supporter of John Wilkes and a fellow radical politician. It was probably considered worth both the time and effort to ensure a conviction in this case, in order to show publicly that the Court was pursuing justice for such a humble and unfortunate victim.

As altercation trial developed into adversarial trial with the employment of defence counsel, lawyers made the most of the chance to discredit those whom they felt jeopardised their clients' cases, and Quaker reputation suffered accordingly. In 1785, William Hurt and William Kenton were tried for highway robbery on John Walker.[65] The defence counsel was William Garrow, one of the most celebrated Old Bailey lawyers. The principal prosecution witness in the case was Walker's coachman; the others present at the robbery, Mr and Mrs Walker and their son and a Mr Collinson, were all Quakers and would not swear, and a footman, although not a Quaker, also refused to swear. Garrow's cross-examination was intended both to discredit the coachman's evidence by suggesting that he had been told what to say by the Walkers, and also to 'show up' the Quaker victims as being very much involved in wordly affairs. For example, responding to the coachman's description of the purse stolen in the robbery as having 'trinkets of gold about it', Garrow chose to reinforce the point by asking him if he would swear 'to the gilding of the said quaker purse?' From the outset of his cross examination, Garrow told the coachman. 'state what you know of your own knowledge and observation and not what other people have told you'.

> Which side was the highwayman on? On the near side, my master fell out of the coach, and hallooed out for a gun...
> How many conversations have you had with your master and mistress about this robbery? None at all, only speaking to them, not to ask my master or mistress, or their saying any thing to me about it.
> But you have talked to them about the robbery? Yes sir.
> I believe they are of the description of people called quakers? Yes.
> They do not choose to swear about it, but they told you what they know about it? Yes.
> Now is not your memory very much assisted by the story they have told you?

Garrow remarked that he was 'not quite so young' as to believe that the evidence was the coachman's own, and that he wished he would follow the example of his master and mistress and 'not swear upon such subjects'. He was not able to secure the

acquittal of the defendants, but his questioning of the victims' integrity doubtless found its mark among the readers of the *Proceedings*.

Another defence lawyer named Swift, in railing against 'cant and hypocrisy', told the following story which indicates the kind of reputation that Quakers had gained in the *Proceedings* by the end of the century.

> I must observe that it is very easy thing to cry, a mad dog! and if you let such a one loose, he may be hanged: you know the story of the Quaker; says he to his dog, 'I will neither hurt thee, nor kick thee, nor starve thee; but I will do this I will give thee a bad name, and let thee loose; halloo mad dog'.[66]

Given that this study has been based predominantly on one source (albeit an influential and remarkably rich one) the conclusions that can be drawn are inevitably limited. Quakers, because of their testimony on oaths and their sense of themselves as a separate people, played only a small part in the workings of the Old Bailey, and references to them in the *Proceedings* might be too few to be considered representative of wider perceptions. Certainly all the tentative conclusions reached here would benefit from being tested against a wider range of popular literature and provincial court records

From the incidental detail of the *Proceedings*, it seems clear that Quakers were marked, if by nothing else, then by their peculiarities of dress, speech and demeanour, and that they came to be popularly regarded with a mixture of irritation and amusement. Those few appearances that Quakers do make in the *Proceedings* are a useful reminder that, in spite of all the prominence given in Quaker literature to the 'hedge' behind which they sheltered from 'the world', they could not avoid wider social interaction. The evidence reinforces Dixon's point that it is too simplistic to characterise Quakers in the period as being entirely preoccupied with their own concerns.[67] However, because Quakers were successfully engaged in business and trade, it must also follow that they were victims or witnesses of many more crimes than those that appear in the *Proceedings*, and their very limited involvement with the Old Bailey might in itself be taken as evidence of the strength of their testimonies, both in a refusal to swear and, indeed, to become involved with the bloody criminal code.

This study also reinforces Devereaux's view that the criminal justice system can only be properly understood within the specific social and political context in which it was operating. At times, it would certainly seem that Quaker obstinacy could be useful to the publishers of the *Proceedings* in allowing them to reinforce the Court's claims to administering 'public justice'. Quakers could be represented as lacking in public-spiritedness and hindering the legitimate efforts of the courts to ensure the security and welfare of the population at large. This is not to suggest that there was some conspiracy against Quakers by the publishers of the *Proceedings*, but it does reinforce the view that the publication was 'embedded, not only with the administrative pressure of a severe penal code, sustained through discretionary application, but also in the ideological concerns that underpinned the system'.[68]

The *Proceedings* certainly remind us that there were sharp differences in understanding of the legitimacy and value of the judicial oath. Although Quakers had won considerable relief from the policy of persecution on this matter, there remained, in

the eighteenth century, a strong belief among non-Quakers that the oath was absolutely essential in the criminal justice system. In the context of criminal courts, where human depravity was all too evident, Quaker emphasis on Christ's immediate power to bring about the work of 'regeneration and perfection' must have seemed fanciful.[69] It is noticeable that the seventeenth-century belief that Christ's offices were bringing an end to the sin that had originally necessitated oaths was much diluted in later expositions of the testimony. The reasons for not swearing came to be expressed predominantly and often exclusively on scriptural grounds. Such expressions of the testimony were now largely detached from that personal suffering that had attended it before affirmation legislation, so that for Quakers, whose belief was essentially experiential, the reasons for refusing to swear must have felt increasingly remote. There was certainly some falling away in the understanding of the original expressions of the testimony, especially when not swearing prevented 'the true story' from being heard. Some Quakers may have been prepared to collude in prosecutions even though they themselves were not prepared to swear. Such behaviour inevitably brought down upon Quakers the charge of hypocrisy. The examples, though very few, appear to have been sufficient to have had a disproportionate effect on their reputation.

For those of us who spend time immersed in Quaker literature, it is useful to remember that Quakers were not always viewed by others as they liked to view themselves. Their wider social relationships were complex and shifting, and had at least some effect on Quakers' own beliefs and behaviour. It would certainly be unwise for Quaker historians to shut themselves away behind their own 'hedge' and assume with Braithwaite that, in the early eighteenth century, 'with the accommodation of the Affirmation question, the external history of Friends becomes of secondary importance'.[70] Sources such as the *Old Bailey Proceedings* offer insights that allow us to build up a more rounded picture of Quaker experience in the past.

NOTES

1. *Old Bailey Proceedings Online* (hereafter *OBP*) (www.oldbaileyonline.org), January 1732, trial of Elizabeth Caton (t17320114-39). All trials accessed between November 2004 and June 2005.
2. *OBP*, June 1738, John Wright (t17380628-7).
3. *OBP*, February 1756, John Wigmore (t17560225-38).
4. Devereaux, S., 'The City and the Sessions Paper: "Public Justice" in London 1770-1800', *Journal of British Studies* 35 (1996), pp. 466-563. Contemporaries often referred to the publication simply as the *Sessions Paper.*
5. The following discussion on the role of the *Proceedings* is based on evidence from Devereaux, 'The City and the Sessions Paper', pp. 406-533, and Hitchcock, T. and Shoemaker, R., 'Publishing History of the Proceedings', *OBP* (www.oldbaileyonline.org, accessed 23 July 2006).
6. Devereaux, 'The City and the Sessions Paper', p. 477.
7. Thomas, P., 'Wilkes, John (1725–1797)', in *Oxford Dictionary of National Biography*, Oxford: Oxford University Press, September 2004; online edn, May 2006 (http.//www.oxforddnb.com/view/article/29410, accessed 15 July 2006).
8. Devereaux, 'The City and the Sessions Paper', p. 492.
9. Devereaux, 'The City and the Sessions Paper', p. 499.

10. Beattie, J.M., *Crime and the Courts in England 1660–1800*, Oxford: Clarendon Press, 1986, p. 621.
11. Beattie, *Crime and the Courts*, pp. 621-22.
12. *OBP*, April 1727, Sarah Willaw (t17270412-36).
13. *OBP*, April 1727, Advertisements (a17270412-1).
14. Ja***bs, Hil**d, *A Merry Conversation which lately pass'd between a very noted Quaker, and his Maid, upon a very merry occasion*, London: printed for E. Hill, 3rd edn, 1739, pp. 7-12.
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18. Horle, *Quakers and the English Legal System*, pp. 50, 258-71.
19. Penn, W., *The Select Works of William Penn*, 5 vols., London: James Phillips, 3rd edn, 1782, II, pp. 361-62.
20. Penn, *Select Works*, pp. 363, 365.
21. Penn, *Select Works*, p. 378.
22. Penn, *Select Works*, p. 367.
23. Fothergill, J., *An Account of the Life and Travels in the Work of the Ministry of John Fothergill*, London: Luke Hinde, 1753, pp. 7-8.
24. Braithwaite, *Second Period*, pp. 181-206.
25. *Extracts from the Minutes and Advices of the Yearly Meeting of Friends*, London: James Phillips, 1783.
26. Braithwaite, *Second Period*, pp. 16, 588, and Gurney, J.G., *Observations on the Religious Peculiarities of the Religious Society of Friends*, London: J. and A. Arch, 3rd edn, 1824, p. 275.
27. Braithwaite, *Second Period*, p. 206.
28. Clarkson, T., *A Portraiture of Quakerism*, 3 vols., London, 1806, III, pp. 13-15.
29. Gurney, *Observations*, pp. 237-38.
30. *OBP*, July 1810, John Gilbert (t18100718-42).
31. Emsley, C., *Crime and Society in England 1750–1900*, London: Longman, 2nd edn, 1996, p. 178.
32. Quoted in Baker, J.H., 'Criminal Courts and Procedure at Common Law', in Cockburn, J.S. (ed.), *Crime in England 1500–1800*, London: Methuen Press, 1977, pp. 15-48 (38).
33. *OBP*, December 1790, Robert Watson (s/17901208-24).
34. Beattie, *Crime and the Courts*, pp. 50-59.
35. See, for example, *OBP*, July 1797, Ann Thompson (t17970712-35).
36. Michael Foster, a King's Bench judge from 1746–63, quoted in Langbein, J.H., *The Origins of Adversary Criminal Trial*, Oxford: Oxford University Press, 2003, p. 241.
37. Beattie, *Crime and the Courts*, p. 350.
38. Langbein, *Origins*, p. 286.
39. Beattie, *Crime and the Courts*, pp. 275-79.
40. *OBP*, January 1765, Christopher M'Donald, Francis Farrel, John Roney, Alice Roney, Jonathan Parker (t17650116-35).
41. Langbein, *Origins*, p. 18.
42. Langbein, *Origins*, p. 2.
43. *OBP*, June 1742, Cecilia Wilson (t17420603-19).
44. *OBP*, February 1765, John Ryan, Jeremiah Ryan, Mary Ryan (t17650227-5).
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46. Bevan, J.G., *Piety Promoted. In brief memorials and dying expressions of some of the Society of Friends, commonly called Quakers. The tenth part*, London: William Phillips, 1810, p. 83. Memorial of Daniel Bowley, died 1793 aged 25.

47. See, for example, *OBP*, May 1780, Thomas Humphreys, Thomas Johns (t17800570-33) and December 1783, John Smith (t17831210-73).
48. *OBP*, July 1680, Arthur Garland (t16800707-9).
49. *OBP*, October 1717, James Anderson (t17171016-10).
50. See, for example, Stevenson, J., *Popular Disturbances in England 1700–1832*, London: Longman, 2nd edn, 1992, pp. 37, 220, 307.
51. *OBP*, July 1715, Thomas Rye, Thomas Harvey, Thomas Stringer, William Harvey, Thomas Oven, John Tyler, Richard Cannon (t17150713-14).
52. *OBP*, September 1744, James Walock (t17490906-3).
53. *OBP*, September 1744, Thomas James (t17440912-37).
54. *OBP*, April 1781, John Blonde (t17810425-77).
55. *OBP*, December 1751, John Davis (t17511204-43).
56. Dixon, S., 'The Life and Times of Peter Briggins', *Quaker Studies* 10 (2006), pp. 185-202 (198). I would like to thank Simon Dixon for his help in tracing the likely connection between Briggins' nephew Tibbey and the Tibey referred to in the *Proceedings*.
57. *OBP*, September 1743, Henry Harris (t17430907-45).
58. *OBP*, January 1747, Daniel Harvey (t17470116-40), April 1758, George Smith (t17580405-2 and s17580405-1), April 1773, Sarah, the wife of Stancey Tonge (t17730421-2), October 1781, Elizabeth Harris (t17811017-7), May 1785, Abraham Godin, Thomas Goldfinch, Samuel Roberts (t17850511-5).
59. *OBP*, September 1754, Edward Brocket (t17540911-36).
60. *OBP*, May 1785, Abraham Godin, Thomas Goldfinch, Samuel Roberts (t17850511-5).
61. *OBP*, December 1783, John Smith (t17831210-73).
62. *OBP*, September 1776, Elizabeth Williams (t17760911-80).
63. *OBP*, July 1766, Benjamin Stratfod (t17660702-53).
64. *OBP*, July 1778, Elizabeth Rock (t17780715-86).
65. All the evidence for this trial comes from *OBP*, January 1785. William Hurt, William Kenton (t17850112-51).
66. *OBP*, December 1790, Renwick Williams (t17901208-54).
67. Dixon, 'Life and Times', p. 198.
68. Devereaux, 'The City and the Sessions Paper', p. 469.
69. Penn, *Select Works*, p. 378.
70. Braithwaite, *Second Period*, p. 206.

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