

**"Ingenium est Fateri per quos profeceris":
Francis Daniel Pastorius' Young Country Clerk's Collection
and Anglo-American Legal Literature, 1682-1716**

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This article appeared in revised form in the 3 *University of Chicago Law School Roundtable* 637-742 (1996).

In the rare book room of the University of Pennsylvania's Van Pelt library are two manuscript volumes by Francis Daniel Pastorius. The larger one, his *Bee Hive*, collects Pastorius' thoughts on subjects as diverse as religion, slavery, usury, and horticulture. The *Bee Hive* is a source of knowledge about Pastorius' wide-ranging interests and about ideas in the American colonies in the late seventeenth and early eighteenth centuries.¹ The smaller volume, *The Young Country Clerk's Collection*, written mostly between 1698 and 1710, consists largely of legal forms that aided in drawing contracts, land transactions, wills, and pleadings. *The Young Country Clerk's Collection*² is the oldest extant treatise on law written in British North America and it has the ability to illuminate the nature of the law in early America in a way that few other sources do.

¹ Francis Daniel Pastorius, *The Bee Hive*, Mss. Am. 1, Special Collections, Van Pelt Library, University of Pennsylvania.

² See Francis Daniel Pastorius, *Young Country Clerk's Collection*, Ms. Am. 63, Special Collections, Van Pelt Library, University of Pennsylvania [hereafter YCCC]. See also Marianne S. Wokeck, 1 *Biographical Dictionary of Pennsylvania Legislators* (Craig W. Horle & Marianne S. Wokeck eds. 1991) 586-90 (mentioning existence of *Young Country Clerk's Collection*); Michael Learned, *Life of Francis Daniel Pastorius* 258 & plate following 274 (1908) (briefly describing *Collection*).

Massachusetts published its legal code in 1648, three years before Pastorius was born; William Penn published a volume dealing with English constitutional ideas, The Excellent Priviledge of Liberty and Property, in Philadelphia in 1687,³ and dozens of volumes of manuscript records of early Massachusetts, New York, Pennsylvania, Maryland, and Virginia courts antedate Pastorius' volume.⁴ Nevertheless, no one in America wrote a practical legal treatise before Pastorius.⁵ This essay examines the treatise and Pastorius' other writings to see

³ See The Book of the General Lawes and Liberties . . . [of] Massachusetts . . . (Cambridge, 1648) Evans 28; William Penn The Excellent Priviledge of Liberty and Property (Philadelphia, 1687) Evans 433. See also John Cotton, An Abstract of the Laws and Government (London, 1655); An Abstract or Abridgment of the Laws Made and Past by William Penn . . . (Philadelphia, 1701) Evans 1018; The Laws of the Province of Pennsylvania Collected into One Volume (Philadelphia, 1714) Evans 1712. For discussion of the extent of legal literature in early America, see Morris L. Cohen, Legal Literature in Early Massachusetts, in Law in Colonial Massachusetts, 1630-1800 243-72 (Daniel R. Coquillette ed. 1984); Herbert A. Johnson, Imported Eighteenth Century Law Treatises in American Libraries, 1700-1799 (1978); W. Hamilton Bryson, Census of Virginia Law Books (1982); Edwin C. Surrency, The Beginnings of American Legal Literature, 31 J. Am. Legal Hist. 207-20 (1987).

⁴ The wealth of surviving records, from minute books to records of trials, to compilations of statutes, demonstrate well-developed legal knowledge. See, e.g., The Trials of Quakers for Several Great Misdemeanors (Philadelphia, 1693); Nicholas Bayard, An Account of the illegal prosecution and tryal of Coll. of Nicholas Bayard (New York, 1702) Evans 1038; Abstract of Laws, *supra* note 3; The Laws of Jamaica (London, 1683) Wing J124. For a discussion of the wealth of legal records and citations to further bibliographies of the records, see David H. Flaherty, An Introduction to Early American Legal History, in Essays in the History of Early American Law 3-38 (David H. Flaherty ed. 1969).

⁵ The earliest "practical" legal treatise--as distinguished from treatises dealing with constitutional issues or compilations of statutory laws--printed in British North America appears to be a copy of John Hill's Young Secretaries Guide (London 1685), printed in Boston in 1708. It contained a short appendix detailing Massachusetts law on wills. See Young Secretaries Guide (Boston, 1708) Evans 39,476. Other early treatises included the Secretaries Guide (New York, 1714) Evans 1668 and Conductor Generalis (Philadelphia, 1722) Evans 2327, both printed by William Bradford. None of the early American treatises employed Pastorius' creativity in compiling useful precedents from several English treatises nor were they tailored as closely to American law as was Pastorius' treatise.

Pastorius also wrote one of the first medical treatises in British North America. See John

how he viewed the law. In particular, it asks what legal issues were important to him and what sources he turned to in dealing with legal issues. This article connects Pastorius' thoughts on law with his practical legal writings to show the relationship of religious belief to formal law and then the differences in the substantive law of Pennsylvania and England.

I

Legal History of Early America: The Debate on English Origins

Historians of seventeenth-century English and American law have been puzzled by its nature. Answers to even relatively simple questions of how English civil law worked outside of the great royal courts of Kings Bench, Chancery and Common Pleas, have been by-passed in favor of examination of the criminal law.⁶ We are, finally, getting some answers about who used the courts and what they sued over. But the substantive and procedural law of post-

David Weaver, Francis Daniel Pastorius: Life in Germany 21 n.3 (Ph.D. diss. Univ. California, Davis, 1985). His "Artzney und Kunst" includes a several hundred page treatise, "Medicus Dilectus," which catalogs various diseases. Pastorius Coll, Historical Society of Pennsylvania [hereafter, HSP]. Pastorius also compiled a manuscript on agriculture, "The Monthly Monitor, briefly Showing When our works ought to be done in Gardens, Orchards, Vineyards, Fields, Meadows and Woods." Pastorius Coll., HSP. Like Pastorius' Young Country Clerk's Collection, his medical and agriculture manuscripts draw upon English books. See Weaver, *supra*, at 21 n. 3.

⁶ There exist such excellent works on English criminal law and prosecution in the seventeenth century as John Bettie, *Crime and Courts in England, 1660-1800*, E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (1977), and Craig W. Horle, *Quakers and the English Criminal Justice System, 1660-1688* (1988). But little is known about English local law of a non-criminal nature in the seventeenth century. Indeed, much of what we know comes from studies of American law that refer tangentially to English law. See, e.g., David Konig, *Puritan Law and Society: Essex County Massachusetts* (1977).

Reformation England remains under-explored. And the law in early America has received, consequently, little attention until recently. One is left wondering, how similar was law in the marchlands of European civilization in Philadelphia, Boston, New York, and Charleston within the first one hundred years of settlement to that of the British Isles? And how does one account for the differences?

To some extent, the questions about early American law mirror questions raised about other elements of American settlement. How similar were religion, culture, and politics in England and America? Was there anything distinctly American about the settlers as early as the seventeenth century, or were they merely replicating European culture and values in the new land?⁷ Many have responded with varying answers. Scholars of the middle Atlantic colonies in particular have discussed the similarity of middle Atlantic culture to that of Britain. They have found in religious practice and family life striking similarities to European culture, leading one historian to comment that "much of the British North American culture was familiarly European, traditional, even conservative."⁸

Those few who have addressed the relationship of British and early American law in particular have offered diverse answers. Julius Goebel, one of the first serious commentators on seventeenth-century American law, suggested that the law of the Plymouth settlement in

⁷ See, e.g., Louis Hartz, The Liberal Tradition in America 35-66 (1952); David Hall, Religion and Society: Problems and Reconsiderations, in Colonial British America: Essays in the New History of the Early Modern Era 317, 320-21 (1984).

⁸ Bernard Bailyn, The Peopling of British North America 127 (1986). See Barry Levy, Quakers and the American Family (1988) (concluding that Quakers maintained their inheritance and family patterns in America); Jon Butler, The American Denominational Order, Proceedings of the American Philosophical Society (1977) (concluding that middle Atlantic religion was strikingly similar in organization to English church structure).

Massachusetts was similar to the law applied in English county and manor courts. Goebel also found that the religious beliefs of the Plymouth settlers motivated some changes, including a penchant for written codes, derived from their "insistence upon a literal use of the Book and an irrefragable confidence in the written word."⁹ George Haskins, writing in Law and Authority in Early Massachusetts found a similar result, mixing English ideas with Puritan religious beliefs.¹⁰ A host of more recent writers, whose concerns have not been quite as strictly legal as Goebel and Haskins, have argued that settlers brought with them a great deal of intellectual baggage, including English legal ideas. Sumner Chilton Powell's Pulitzer-Prize winning Puritan Village showed that the settlers of Sudbury Massachusetts copied the land distribution and farming practices from their home villages in England as well as their ideas about town government.¹¹ David Grayson Allen's In English Ways demonstrates that the land-distribution practices in Massachusetts were largely determined by the practices in the settlers' homelands.¹² It seems that a consensus has been building that the fruit falls close to the tree. But so little work concerning the actual substantive law has been undertaken that it remains difficult to make firm judgments. Most recently, Richard Ross has suggested, using the descriptive phrase "memory jurisprudence,"

⁹ Julius Goebel, King's Law and Local Custom in Seventeenth Century New England, 31 Colum. L. Rev. 416, 432 (1931).

¹⁰ See George L. Haskins, Law and Authority in Early Massachusetts: A Study in Tradition and Design 141-62 (1960).

¹¹ See Sumner Chilton Powell, Puritan Village: The Formation of a New England Town (1963).

¹² See David G. Allen, In English Ways (1983) (demonstrating that New England settlers distributed property in the same ways that they had in England).

that much of the law of early America was what the colonists remembered of European practices.¹³

Determining how settlers differed from their counterparts in Europe is important because it tells how settlement occurs and, in law in particular, details the ways in which the settlers were able to reform the law according to their own desires. Legal historians constantly debate the role of social forces in shaping law. The most popular belief, exemplified by the works of such people as Willard Hurst and Lawrence Friedman, is that law is largely a creation of the surrounding social conditions. Based on such work, one might expect a great deal of change in the law in the new world, where the surrounding conditions were so different from England and where the colonists had the power to change the law. Professor Horwitz's stunningly influential Transformation of American Law, for instance, argues that early American law was a creation of a society not so much concerned with commercial relations as with fairness. In the nineteenth century, Horwitz demonstrates, the precommercial and antidevelopmental law was transformed by the judiciary in response to changing attitudes towards economic development.¹⁴

Some vigorously contest the assertion that law follows society, however. Professor Alan Watson has been the most persistent advocate of the theory that law develops autonomously from social concerns. In his provocative work Slave Law in the Americas Watson posited that "the

¹³ Richard J. Ross, The Legal Past of Early New England, 50 William & Mary Q. 28, 36-38 (1993).

¹⁴ See, e.g., Lawrence Friedman, A History of American Law 37 (2nd ed. 1985) (concluding that "colonial legal experience was richly diverse from the outset, because conditions were so varied in the colonies. . . . This was, at least, the American experience."); James Williard Hurst, Law and the Conditions of Freedom in the Nineteenth-Century United States (1954) (examining ways that people shaped their legal environment); Morton J. Horwitz, The Transformation of American Law, 1780-1860 (1977).

lesson of history is that over most of the field of law and especially of private law . . . rulers need have no interest in determining what the rules of law are or should be." Because of disinterest among the rulers, Watson concluded, legal growth has been "haphazard, slow, unresponsive to social and economic conditions, . . . and unsystematic." According to Watson, legal tradition is of primary importance in determining the law in newly settled areas.¹⁵ Watson's thesis, which he has expounded in a series of books spanning several millennia of legal development, has attracted substantial attention. The debate over the relative importance of social factors and legal tradition remains strong, as well as the debate over the extent to which early American law was similar to or different from English law.¹⁶

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Pastorius' Young Country Clerk's Collection is particularly illuminating because it allows a detailed examination of the ways that Pennsylvania law was similar to that of England and how it differed. The book, a collection of legal forms, offers a rare snapshot photograph of the substantive and procedural law of early America, because Pastorius set out to write a comprehensive legal manual for use by lay people. One can, therefore, derive an excellent idea of what legal forms were needed by early Pennsylvanians. Indeed, there appears to be no other book containing as large a supply of information on the law of another colony contemporaneous with Pastorius' Collection. One is particularly fortunate when dealing with Pastorius because his other writings give a remarkably vivid picture of his goals for the law and of the role of

¹⁵ See Alan Watson, Slave Law in the Americas 1, 3 (1989).

¹⁶ See, e.g., Alan Watson, Legal Transplants (2nd ed. 1986); The Evolution of the Law (1985); J.R. Pole, Reflections on American Law and the American Revolution, 50 Wm. & Mary Q. 123- 59 (1993) (questioning effect of Revolution on law).

magistrates and substantive law in achieving justice. Pastorius' writings thus allow one to see the goals and the way that those goals are achieved, which is almost unique among the writings of early American lawyers. Together, they create a picture of the aspirations that motivated people to settle in Pennsylvania and the specific ways in which people used legal forms to help achieve those aspirations. One can, thereby, gauge the relative influence of desire for change with the power of legal continuity.

Section II of this essay describes Pastorius' background and training in law in Germany, which sets the stage for understanding why his religious ideas impelled him to emigrate to America. Section III then takes up his thoughts about law and religion. It shows that Pastorius' religious beliefs caused him to emphasize justice and fair treatment of individuals by the legal system. Those grand, general ideas about justice are related to Pastorius' treatise in Part IV. Part IV discusses in detail the differences between English, as represented in English legal manuals, and Pennsylvania law as illustrated by Pastorius' Collection. The final part of this essay draws specific connections between the Collection and the ideas of law reformers. It shows how Pastorius' religious ideas related to his efforts to reform and simplify English law for use in Pennsylvania. Part V draws some conclusions about the relative importance of precedent and social surroundings on forming American law in the seventeenth century.

II

Francis Daniel Pastorius:

Legal Education in Germany and Pietism

Francis Daniel Pastorius was born in Somerhausen, Germany, in 1651 into the family of an affluent lawyer, Melchior Adam Pastorius, who later served as Bürgermeister of the city of

Windsheim. He was educated in law at a number of universities, first at the University of Altdorf, where he began studying law in July 1668. In mid- and late-seventeenth-century Germany, law studies consisted of largely private law courses centered around the Corpus Juris Civilis and its various parts, including the Institutes, the Digests of the Institutes, the Codex--the twelve books of Roman imperial law--and the Novella, additions to the law made during Justinian's reign. In his autobiography, Pastorius records that he studied the Institutes at Altdorf with Professor Johann Christian Ulrici beginning in September 1670 and with Professor Obrecht in January 1671.¹⁷

Starting in August 1670, he attended the University of Strassburg, where he spent two years. Although private law was a crucial part of Pastorius' curriculum, he was probably more intrigued by public law, which was a burgeoning area of study among German legal scholars in the wake of the Thirty Years War. Such prominent thinkers as Thomas Hobbes, Baruch Spinoza,

¹⁷ See Francis Daniel Pastorius, Res Propria, Historical Society of Pennsylvania, folio 12 (autobiographical sketch); Pastorius, Bee Hive, supra note 1, at 229 (describing Pastorius' life in Germany). On legal education in seventeenth century Germany, see Helmut Coing, Die Juristische Fakultät und Ihr Lehrprogramm, in 2/1 Handbuch der Quellen und Literatur Der Neueren Euopäischen Privatrechtsgeschichte 1-53 (Helmut Coing ed. 1977); Weaver, supra note 5, at 245-52.

In addition to his Bee Hive, Pastorius left a wealth of writings. Several of Pastorius' volumes were published during his life: Umständige Geographie beschreibung der provinze Pensylvanien (Frankfurt, 1701), translated and reprinted in Albert Cooke Meyers ed., Original Narratives of Early America (1904); Four Boasting Disputers of this World Briefly Rebuked (New York, 1697) Evans 811; A New Primmer or Methodical directions to attain the true spelling, reading & writings of English (New York, 1698) Evans 851. A volume of Pastorius' poetry has been published recently. See Francis Daniel Pastorius, Deliciae Hortenses (Christopher E. Scheitzer ed. 1982). Professor Learned has published parts of the Bee Hive. See Michael Learned, ed., Pastorius' Bee Hive, 1 Americana Germanica (no. 4) 67-110 (1897); 2 id. (no. 1) 33-86; 2 id. (no. 2), 33-58; 2 id. (no. 4), 65-74 (1898). For a complete bibliography of Pastorius' writings, see Weaver, supra note 5, at 490-95. I have benefited greatly from Dr. Weaver's excellent dissertation on Pastorius' training and life in Germany.

and Samuel Pufendorf were studied closely for their insights into the origin and extent of political power.¹⁸ Pastorius mentions Dr. Johann Böckler, who taught him public law at Strassburg, as particularly influential in his studies. Böckler's writings and courses included discussions of the limitations on the emperor's power, Hugo Grotius' ideas of international law, and Hermann Conring's efforts to re-establish the importance of German legal traditions over Roman law. After two years at Strassburg, Pastorius visited (and possibly studied at) the University of Basel during the summer of 1672. He wintered in 1672 and early 1673 in Windsheim, his boyhood home, then returned to the University of Altdorf again in April 1673, followed by a stint at the University of Jena starting in July 1673 that lasted until April 1674.¹⁹

The city of Jena, an important center of Protestant thought, and the University of Jena in particular exposed Pastorius to ideas about natural and canon law and probably nurtured Pastorius' religious views. In the 1670s Jena had several prominent faculty who may have influenced Pastorius' intellectual development. Georg Adam Struve, a law professor, advocated empirical study of the law on government; Johann Wilhelm Bair, a theology professor, taught the theories of Georg Calixit, who emphasized the fundamental aspects of agreement among denominations of Christians. In 1694, Bair became the first rector of the Pietists' university in Halle. Finally, Erhart Weigel, a philosophy professor, sought to apply mathematical and scientific principles to politics. Weigel included Hugo Grotius and Thomas Hobbes in his

¹⁸ See John P. Dawson, *The Oracles of the Law* 234-35 (1968); 2 Roderich von Stintzing, *Geschichte der Deutschen Rechtswissenschaft* 32-54 (München & Leipzig, 1884); Franz Wieacker, *Privatrechtsgeschichte Der Neuzeit* 301-12 (1969).

¹⁹ See Bee Hive, *supra* note 1, at 229; Johann Heinrich Böckler, 2 *Neue Deutsche Biographie* 372-73. Böckler is credited with introducing a historical element into German jurisprudence; he accomplished that in part by editing Grotius' *De Iure Bello* (Strassburg, 1664). *Id.*

courses.²⁰ It remains unclear how much direct contact Pastorius had with those professors; whatever their direct influence on him, Pastorius had located himself in a place where innovative religious and legal ideas were common. Pastorius had extensive contact with one of Weigel's student, Professor Heinrich Linck. Pastorius studied the Panducts with Linck using Bernardus Schotanus' textbook. Linck, who had graduated from Jena in 1668, straddled both the academic and political worlds of late seventeenth-century Germany, publishing extensively on public and canon law.²¹

Perhaps the religious and political ideas were taking hold, for shortly after Linck left Jena in 1674, Pastorius took a break from formal study within universities and visited the Imperial City of Regensburg to study public law in 1674 and 1675. Fourteen months later, he returned to Nürnberg in September 1675, to study with and live in the house of Professor Linck, recently transplanted from Jena. His advanced work at Nürnberg in 1675 and 1676 used textbooks by

²⁰ See Georg Adam Struve, Jurisprudentia Romane Germanica Forensi (Jena, 1694); Weaver, supra note 5, at 249-50 (discussing Jena). See also 2 Coning, Handbuch, supra note 17, at 546, 548 (discussing Struve's work); Wieacker, supra note 18, at 219 (same). Professor Dawson discusses the influence of reason on German law generally in the late seventeenth century. See Dawson, supra note 18, at 212-58.

²¹ Res Propria, supra note 17, at 11 (mentioning Linck's courses and Schotanus); Bernardus Schotanus, Examen Juridicum, quo fundamenta Jurisprudentia secundum seriem Digestorum . . . (Amsterdam, 1643). See also 3 Roderich von Stintzing, Geschichte der Deutschen Rechtswissenschaft 51-52 (Munich & Leipzig, 1884) (discussing Schotanus). Pastorius also mentions studying with Dr. Tillemann and Johann Duerr at Jena. Res Propria, supra note 17, at 11-12. Jena's proximity to Gotha allowed Pastorius to visit the liberal court of Duke Ernest the Pious, a renowned reformer whose court formed the basis of Veit Ludwig von Seckendorf's Teutscher Fürstenstaat. See DeElla Victoria Toms, The Intellectual and Literary Background of Francis Daniel Pastorius, 53-54 (Ph.D. diss. Northwestern Univ. 1953); Weaver, supra note 5, at 250-52.

Amadeus Eckolt and Wilhelm Ludwell.²² He completed his disputations with Linck and graduated in April 1676, then began to practice in Somerhausen.²³

The movement for religious reform surrounding Pastorius during his legal education continued to influence him while he practiced law. Somerhausen was suffering internal upheaval, including a significant peasants' uprising that targeted Pastorius' father, while Pastorius was practicing there.²⁴ In reflecting on the two and one-half years he spent in practice in Somerhausen, he wrote that he spent his time "marching from one Nobleman's house in the Province unto the other . . . and in short making nothing but work for Repentance."²⁵ It was that

²² See Res Propria, supra note 17, at 12; Weaver, supra note 5, at 246-47.

²³ See Res Propria, supra note 17, at 12; Francis Pastorius, Disputatio Inauguralis De Rasura Documentorus, Quam, Divina suffragante Gratia, Auctoritate Magnifici Jctorum Ordinis in Incluto Noribergensium Athenaeo . . . (Dissertation, University of Nürenberg) (Altdorf, 1676). A number of other Linck students completed dissertations on issues of public and local law. See, e.g., Christoph Scheurl, De Judiciis Republicae Noribergensis . . . (Altdorf, 1670); Bernhard Harssleben, Usum testamentorum moralen, civilen, canonicum et feudalem (Jena, 1673); Thomas Stolley, De Usurarum praerogativa in concursu creditorum (Altdorf 1684); Christoph Clapmar, De persecutione ac remissione delinquentium (Jena, 1671).

²⁴ See Werner Korndörfer, Studien zur Geschichte der Reichsstadt vornehmlich im 17. Jahrhundert (Ph.D. diss., University Erlangen-Nurnberg, 1972) (discussion of Windsheim rebellion); Weaver, supra note 5, at 291-99 (discussing political and social upheaval in Pastorius' Windsheim). Later, Pastorius advised his father to judge rightly. Umständige Beschreibung, supra note 17, at 61-62, quoted in Weaver, supra note 5, at 290 ("May we constantly bear in mind that the Most Superior Judge of the living and the dead confers such governmental power upon us for the sake of the common good rather than for our personal advantage, and that, on the great Day of Final Judgment, He will expect much of those who were given much.").

²⁵ Bee Hive, supra 1, at 229. Later in life, Pastorius wrote home to his father his concern that his half-brother was studying law:

I only regret that anyone who . . . learned piety and the fear of the Lord from his dear Parents . . . may then lose this piety again while at the University . . . at extreme danger to his mortal soul, and I would rather advise him . . . to learn a decent and readily-comprehensible trade in which he could serve God and his fellow man; although the crafts are despised and held in low esteem among you,

attitude that made Pastorius susceptible to the suggestion of Dr. Johann Heinrich Horb, a professor of religion at the University of Strassburg during Pastorius' tenure there, to relocate to Frankfurt in 1679, a hotbed of religious reform.²⁶

In Frankfurt Pastorius "still plaid the Lawyer"²⁷ while he developed a friendship with a group of Pietists, an offshoot of the Lutherans who criticized Lutherans for their emphasis on doctrine over "the teaching of an earnest, inner godliness."²⁸ At the center of the Frankfurt Pietists was Philip Jacob Spener, a prominent Lutheran minister in Frankfurt and the author of the Pia Desideria, the leading statement of Pietism and a brother-in-law of Johann Heinrich Horb. Pia Desideria proposed "the ancient and apostolic kind of church meetings" of lay people--a collection of people known as the collegia pietatis--as a way of reforming the church. It also criticized the civil authorities for failing to pay attention to spiritual matters:

how few [civil authorities] there are who remember that God gave them their scepters and staffs in order that they use their power to advance the Kingdom of God! Instead, most of them, as is customary with great lords, live in those sins and debaucheries that usually go along with court life and are regarded as virtually inseparable from it, while other magistrates are intent on seeking their own advantage. From their manner of life one must conclude with sighs that few of them know what Christianity is, to say nothing of their being Christians and practicing the Christian life. How many of them there are who do not concern

they are nevertheless far more in keeping with God's laws and the teachings of the Apostles than all the strange conceits of the scholastics. Umständige Beschreibung, supra note 17, at 99-100, quoted in Weaver, supra note 5, at 290. See also id. at 54 (criticizing excesses of Europe and European schools for teaching nothing useful).

²⁶ Bee Hive, supra note 1, at 401.

²⁷ Bee Hive, supra note 1, at 227; Res Propria, supra note 17, at 11 (noting that he represented a food supplier while in Frankfurt), quoted in Toms, supra note 21, at 68.

²⁸ Elizabeth W. Fisher, "Prophesies and Revelations": German Cabbalists in Early Pennsylvania, 109 Penn. Mag. Hist. & Bio. 299, 301 (1985).

themselves at all with what is spiritual, who hold . . . that they have nothing to do with anything but the temporal!²⁹

Among Spener's beliefs expressed in Pia Desideria was the thought that the millennium was fast approaching and that lay people could hasten it by reforming the church. One way to awaken spirituality in lay people was to emigrate to America, where they could pursue their livelihood away from the corruption of Europe.³⁰ Pastorius, writing to his parents in March 1684, shortly after he arrived in Pennsylvania, emphasized the impending "divine justice" that "will be poured out over this abominable Babylon to the point of total destruction. If you want to escape the calamity awaiting Germany . . . do not become accomplices to its sin. . . depart from it!" Spiritual as well as physical separation was needed, he thought, to escape the "Babylonian vanities and disordered human laws" of Europe.³¹

²⁹ Philip Jacob Spener, Pia Desideria 43 (Theodore G. Tappert trans. 1964). Spener refers to the Biblical injunction that civil authorities act as foster parents. Id. (citing Isaiah 49:23). References to magistrates as parents was widespread in early America. See, e.g., Richard L. Bushman, From Puritan to Yankee: Character and Social Order in Connecticut, 1690-1765 18-20 (1968). In his commentary on Pia Desideria published in 1680, Horb specifically criticized lawyers and judges for their failure to settle cases quickly. See Johann Jakob Spener, Pia Desideria 181-86 (Johann Heinrich Horb ed. Frankfurt 1680), discussed in Weaver, supra note 5, at 290-92.

³⁰ See Fisher, supra note 28, at 302-03; Johannes Wallmann, Philip Jakob Spener und die Anfänge des Pietismus 283-306 (1970). Some Pietists believed the millennium was imminent and that a more decentralized church governance, allowing lay people to gather and work as the seed for reformation of the church, would hasten its coming. Others believed that it was desirable to refocus individuals' attention on God, without necessarily linking piety to the millennium. See Fisher, supra, at 302-03. Apparently Pastorius belonged to the later group. See Umständige Beschreibung, supra note 17, at 45, 48 (letters to Schütz describing Pastorius' hopes for quiet and pious life in Pennsylvania). But see id. at 41-43 March 7, 1684 (millennial theme of impending destruction of Europe in Pastorius' letter); Weaver, supra note 5, at 298-302, 393-94 (emphasizing Pastorius' millennial ideas).

³¹ Umständige Beschreibung, supra note 17, at 42-43, quoted in Weaver, supra note 5, at 299. See also Umständige Beschreibung, supra note 17, at 99 (criticizing excesses of Europe); id. at

One prominent Pietist particularly important to Pastorius was Johann Jacob Schütz, a Frankfurt lawyer. Schütz compiled the lectures of Johann Lauterbach, a law professor at the University of Frankfurt, on Justinian and published them in 1679, shortly after Lauterbach's death. The lectures, called the Compendium Iuris, became one of the most popular law books in Germany in the early eighteenth century and were reprinted frequently until 1744.³² The preface to the Compendium Iuris criticized "the inexperience, negligence, and malice of the judges, lawyers, and litigants, whose outrageous conduct is creating nothing but disorder." Instead, Schütz urged reliance upon "the true laws of our most holy Savior" based on "pure love." Pastorius expressed similar sentiments in a poem to James Logan, a Justice in Philadelphia: "Do not say that your social rank demands that you do what Christ has forbidden . . . Woe to you eternally, if you seek honors and riches opposed to the meekness of Christ." Like Schütz, Pastorius was concerned with the law's focus on wealth rather than the inner spirit.³³

53 (describing the earthquake of 1692 in Port Royal, Jamaica as divine retribution in which wealthy were punished, whether they acquired wealth legally or illegally).

³² See Johann Jakob Schütz, Compendium Iuris (Tubingen, 1679). There were numerous reprintings of Compendium Iuris until the middle of the eighteenth century. See Klaus Luig, "Wolfgang Adam Lauterbach," 13 Neue Deutsche Biographie 736-38 (1982). See also Fredrich Elsener, Die Schwiezer Rechtsschulen vom 16 bis zum 19 Jahrhundert 82 n. 31 (1975).

³³ See Weaver, supra note 5, at 324-25 (translating Compendium Iuris); Bee Hive, supra note 1, Poem 354 (poem to James Logan). Pastorius kept a copy of Compendium Iuris in his library and occasionally referred to it. See infra note 34 (listing law books in Pastorius' library); Bigamy Entry, Bee Hive, supra note 1 (referring to Compendium Iuris for prohibition on bigamy). Pastorius lived with Schütz upon his arrival in Frankfurt and their friendship continued even after Pastorius emigrated to America. Pastorius corresponded with Schütz, reporting the ways that Germans in Pennsylvania were reforming society. See Bee Hive, supra note 1, at 229; Umständige Beschreibung, supra note 17, at 45, 48. See also Francis Daniel Pastorius, Sichere Nachricht (1684) (report to Saalhof Pietists).

Based on the books in Pastorius' library and on an examination of his colleagues in Frankfurt,³⁴ it is possible to reconstruct the nature of his beliefs about Pietism. The leading religious reformers of the early seventeenth century, the people whose thought presaged that of the Pietists in emphasizing individuals' spiritual connection to God over religious doctrine, are represented in the books in Pastorius' library. Pastorius had several copies of Thomas à Kempis' The Imitation of Christ, a central document to early seventeenth century German Lutherans, which emphasized mystical piety through the connection of individuals to Christ.³⁵

³⁴ Professor Learned's excellent biography includes a list, taken from the Res Propria, of Pastorius' library around 1719. See Learned, supra note 2, at 275-84 [hereafter Pastorius' Library]. The books in his library relating to law included: Edward Cocker, Young Clerk's Tutor (London, 1680) Wing C4860; John Hill, Young Secretary's Guide (London, 8th ed. 1697) Wing H1993; Richard Hill, Young Clerk's Guide (London, 1649); Richard Chamberlain, Complete Justice (London, 1681); Johann Jacok Schütz, Compendium Juris Brevissimis Verbis (Tübingen, Johan Georg Cotta, 2nd ed. 1681); Conductor Generalis (London, 1686); and an edition of Edward Coke's Reports (London, 1656). Pastorius' pamphlets on law included Thomas Ellwood, Caution to Constables on Conventicles Act (London 1683) Wing E616; Abstract of the Laws of Pennsylvania, supra note 3; Concerning the Election of Assembly men (Philadelphia, 1714); Anon., Proceeding Against the Rebels in the West of England (London, 1679); Bayard, Trial for High Treason, supra note 4; J.S. The Case of Quakers Concerning Oaths (London, 1681); Penn, Privilege of Liberty, supra note 3; William Penn, Constant Cry of the Oppressed for Justice (London, 1677).

The Bee Hive also contains a separate list of books that Pastorius referred to in compiling the Bee Hive, although he did not own all of them. See Bee Hive, supra note 1, at 120-25. The law books referenced in the Bee Hive included John Cowell's Interpreter (London, 1609), George Whitehead, Due Order of Law Pleaded Against Irregular & Arbitrary Proceedings (London, 1680), William Penn, The People's Ancient Liberties Asserted in the Trial of William Penn (London, 1670); and George Merton, The Touchstone of Wills, Testaments and Administrations (1668).

His manuscript volumes included "Law Terms added to Complete Justice"; "Leges Pennsilvannae," Am. 1991, Historical Society of Pennsylvania; "Good Counsel for bad Lawyers and Attornies". Unfortunately, "Good Advice" and "Law Terms added to Complete Justice" have been lost. The later was apparently written to help Germans understand English law. See Pastorius, Bee Hive, supra note 1, stanza 48.

³⁵ See Thomas à Kempis, The Imitation of Christ (London, 1657); Pastorius' Library, supra note 34.

Particularly influential on the Frankfurt Pietists were Jacob Böhme and Johann Valentin Andreae. Together Böhme, a shoemaker from Görlitz, who lived from 1575 until 1624 and Andreae, a theologian from Württemberg who died in 1668, inspired the Pietists' beliefs in the possibility of reformation of society through the study of nature. Pastorius had two of Böhme's books, Aurora, oder die Morgenröte im Aufgang (1606) and Der Weg zu Christo (1624), which promised a restoration of paradise.³⁶ Similar to Böhme in outlook was Johann Valentin Andreae, one of Schütz' cousins, whose writings spoke of a mythical Rosicrucian Brotherhood, which has supposedly existed since the fourteenth century. Andreae claimed to have re-discovered in 1604 Rosicrucian writings, which deciphered God's meanings hidden in nature. He thought that their rediscovery presaged a reformation of society based on a reawakening of religious spirit. Pastorius had a copy of Andreae's Menippus, a general attack on shortcomings of society and was undoubtedly familiar with Andreae's thoughts.³⁷

Pastorius also had numerous popular books written in German, including Johann Tauler's Kernlehre, a collection of writings by the fourteenth-century mystic emphasizing the importance of individual Christianity independent of church doctrine,³⁸ and Johann Arndt's Vom wahren Christenthum, published in 1606, an early seventeenth-century precursor to the Pietists. Arndt recognized the "insufficiency of orthodox doctrine toward the complete attainment of a true

³⁶ On Böhme, see Fisher, *supra* note 28, at 310-11; Nils Thune, The Behmenists and the Philadelphians 18-13 (1948); Pastorius' Library, *supra* note 34.

³⁷ On Andreae and the Rosicrucian Brotherhood, see Frances Yates, The Rosicrucian Enlightenment (1972); Fisher, *supra* note 28, at 306-08. Besides Andreae's satirical work, Pastorius owned some writings by Johann Balthasar Schupp. See Toms, *supra* note 21, at 93.

³⁸ In the Pia Desideria, Spener credits Tauler as second only to the Bible in "mak[ing] our dear Luther what he was." Spener, *supra* note 29, at 110.

Christian life." The Wahren Christenthum presented Arndt's idea "of a personal religion founded on Scripture and developed in the individual through spiritual illumination and experience."³⁹

One common critique of established churches made by both the Pietists and Quakers was that the church had strayed too far from its simple origins. William Penn's To the Churches of Jesus Christ called for people to become "peacefully disentangled from the cares of the world."⁴⁰ Before Pastorius read To the Churches of Jesus Christ, he probably read Heinrich Cornelius Agrippa von Nettesheim's De incertitudine et vanitate scientiarum, which attacked the superstructure built on the simple principles of the Christian church.⁴¹ Pastorius' library also included the key religious works of his generation of Pietists. He owned the works of August Hermann Francke, a leading figure of Pietism in the later part of the seventeenth century.⁴²

³⁹ See Toms, supra note 21, at 83-85 (discussing religious books in Pastorius' library).

⁴⁰ William Penn, To the Churches of Jesus Christ Throughout the World (1677), cited in Weaver, supra note 5, at 322.

⁴¹ The corruption of the physical world was a common theme in Pastorius' writings. See Bee Hive, supra note 1, at 229 (describing his motivations for leaving Europe as concern for vanity); Res Propria, supra note 17, at 6; Pastorius, De Mundi Vanitate, Umständige Beschreibung, supra note 17, at 62 (poem "Of the vane world," criticizing concern for the world); Von der Welt Eitelkeit, id. at 63 ("of the vane world"); id. at 99 (criticizing European education in which Aristotelian syllogisms substitute for religious piety and ethics). The criticism of Aristotle became common in the late seventeenth century German University. See 2/1 Coning, supra note 6, at 14-16.

⁴² Augustine Francke, Works (London 1710); Pietas Hallensis (London, 1705). See Pastorius' Library, supra note 34 (listing Francke's Works and Pietas Hallensis in Pastorius' library); Toms, supra note 21, at 151, 124 (discussing Francke). The writings of Humanists appeared in Pastorius' library. He had books from Sir Thomas More, Erasmus, Ramus and more contemporary Humanists like Roger Ascham, A Report and Discourse of the Affairs of State of Germany and the Emperor Charles his Court. See Pastorius' Library, supra note 34; Toms, supra note 21, at 90, 165, 196 (discussing Humanists in Pastorius' library). On the relationship between Humanism and law, see Guido Kisch, Der Einfluss des Humanismus auf die Jurisprudenz, in Studien zur Humanistischen Jurisprudenz 17-64 (1972); Hans E. Troje, Die

Although Pastorius, at the urging of Spener, left Frankfurt for several months in 1681 and 1682 to accompany a young nobleman on a trip throughout Europe, his trip only confirmed his disdain for European excesses. Upon return, he felt fortunate to be associated with his "Christian friends," "especially those who frequently assembled in a house called the Saalhof," the meeting place of the Frankfurt Pietists. Besides Spener and Schütz, Pastorius mentioned Notarius Fende, Jacobus van de Wall, Maximilian Learner, Eleanor von Merlau, and Maria Juliana Barim, the leaders of the Frankfurt Pietists, who represented some of the most influential religious reformers in Germany in the later part of the seventeenth century. Together Fende, van de Wall, Learner, and especially von Merlau, were progressing towards a vision that the millennium was imminent.⁴³ Pastorius' closest friend among the Frankfurt Pietists was probably Eleanor von Merle. Writing in 1719, Pastorius commented that "I have been most Intimately Acquainted" with von Merle "those 40 years past." von Merlau and her husband, Johann Petersen, helped to provide the critical enthusiasm for the formation of the Frankfurt Pietists in the early 1670s and then von Merle's brilliance helped to sustain the movement through the early eighteenth century.⁴⁴ Pastorius, having seen European excesses in war, politics, and law, was confirmed in his Pietism and eager to act on his beliefs by 1682.

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Literatur des Gemeinen Rechts Unter Dem Einfluss Des Humanismus, in 2 Coning, supra note 17, 615-795; infra note 76.

⁴³ See Bee Hive, supra note 1, at 229. See Fisher, supra note 28; Toms, supra note 21, at 90, 145 (discussing Frankfurt Pietists).

⁴⁴ Pastorius to Lloyd Zachary, April 18, 1719, Pastorius Letterbook, HSP; Johann Wilhelm Petersen, Lebens-Beschreibung Johannis Wilhelmi Petersen . . . (2nd ed., Frankfurt, 1719). See generally Fisher, supra note 28 (describing beliefs of circle of Frankfurt Pietists).

Soon after Charles II granted William Penn a colony in America in 1681, the Pietists saw their chance to act on their beliefs that society could be reformed. Penn undertook a vigorous promotional campaign for his colony, traveling throughout Germany and the Netherlands, areas that he had visited several years before as a missionary, to promote settlement in his colony. Penn also published promotional tracts, emphasizing the opportunity for both spiritual and economic advancement.⁴⁵

The Pietists in Frankfurt were well-acquainted with Penn; he had visited Frankfurt in 1677 and established a friendship with them, particularly with Nortarius Fende and Maximillian Learner. The Frankfurt Pietists spoke enthusiastically with Pastorius about emigration to Pennsylvania and circulated to Pastorius letters from Penn and Benjamin Furly, an English Quaker living in Rotterdam, and probably Eine Nachricht wegen der Land-schaft Pennsilvania, a translation of Penn's Some Account of the Province of Pennsylvania.⁴⁶ Penn's pamphlet praised both the opportunity for economic advancement and the ability to live peacefully, separated from the strife of Europe. To encourage emigration and thus further their "philadelphian ideal," the Salhoof Pietists formed the Frankfurt Land Company in 1682 to purchase land in Pennsylvania and finance immigration.

⁴⁵ On Penn's promotional writings, see Richard S. Dunn, Penny Wise and Pound Foolish: Penn as a Businessman, in The World of William Penn 37-54 (Richard S. Dunn & Mary Maples Dunn eds. 1986); Marianne S. Wokeck, Promoters and Passengers: The German Immigrant Trade, *id.* 259-78; William I. Hull, William Penn and the Dutch Quaker Migration to Pennsylvania 329-35 (1935).

⁴⁶ See Bee Hive, *supra* note 1, at 229; William Penn, Some Account of the Province of Pennsylvania (London, 1681). See also Bernhard Fabian, The English Book in Eighteenth-Century Germany 6-8 (1991) (discussing the importance of English devotional works, translated by German Pietists, in bringing English ideas into German culture in the late seventeenth and early eighteenth century).

Pastorius, believing that the entire group was about to emigrate, felt "a desire in my soul to continue in their Society, and with them to lead a quiet, godly and honest life in a howling Wilderness."⁴⁷ The Pietists took full advantage of their trusted and learned friend and designated Pastorius as their agent in Pennsylvania. In April 1683, fortified with the Company's Articles of Incorporation, a Letter of Attorney to act as their agent, and apparently dozens of books on religious themes, Pastorius departed Frankfurt for Pennsylvania, by way of London.⁴⁸ Upon departing Deal, England, Pastorius wrote a Farewell letter reminiscent of those written by English Puritans fleeing to New England. Pastorius wrote of his desire "to escape disaster in time and eternity" by leaving "the worldly impudence and sin of Europe." He reminded his father one more time of young German noblemen who waste "their German patrimony on worldly frivolities that profit no one" and who use both legal and illegal means "to live in pomp and finery after finishing the university."⁴⁹

⁴⁷ See Bee Hive, supra note 1, at 229. Pastorius also wrote that after hearing the extreme praise of Pennsylvania, "there arose a not small lust with me to set sail in their company (after seeing the abundance and costs of European vanity) to lead a quit and Christian life next to them." Res Propria, supra note 17, at 6, quoted in Toms, supra note 21, at 79 (in German) (translation mine). Eventually, under Pastorius' leadership, the Company purchased 25,000 acres; their largest supporter was Schütz, who purchased 4,000 acres. On Schütz' religious connection to Spener, see Wallmann, supra note 30, at 283-306.

⁴⁸ See Wallmann, supra note 30, at 321 (discussing formation of Frankfurt Company); Pastorius' Library, supra note 34 (listing books in Pastorius' library in 1718, many of which were published before Pastorius' emigration). Johann Jakob Schütz, who died before he had the opportunity to emigrate, served as a director of the Frankfurt Land Company and in that capacity had contact with Pastorius; Pastorius continued to express his friendship to Schütz and Schütz' widow throughout his life. See Francis Daniel Pastorius, Exemplum Sine Exemplo, (Swathmore College Library), reprinted in Pennsylvania Colonial Cases 171 (Samuel W. Pennypacker ed. 1892) (mentioning Schütz in connection with Frankfurt Company litigation).

⁴⁹ Umständige Beschreibung, supra note 17, at 43; The Puritans in America: An Anthology 62-80 (Alan Heimert & Andrew Delbanco eds., 1988) (discussing English Puritans' Farewell

Once he arrived in Pennsylvania, Pastorius quickly took on an important role in German society. As the Frankfurt Land Company's agent he was responsible for a 15,000 acre tract of land, which he purchased for the Company in London, and for the distribution of the Company's land to its members. The Company's Charter, not written until 1686, provided for the economic development of the Company. Members of the Company were given the right to vote and receive profits based on the number of shares they owned. The Charter contemplated the purchase of a brick kiln, commodities and cattle, to be owned jointly by the members of the Company and provided for the transportation to Pennsylvania at Company expense of both people--servants and tenants--and products, such as tools and food. Perhaps most importantly, it provided for the distribution of Company land through both sale and rental.⁵⁰ Pastorius negotiated with William Penn, the proprietor of the colony, to obtain a Charter for Germantown. The Charter, modeled on English borough charters, allowed the Germantown residents to set up their own court and free themselves from some taxation. Pastorius was established as bailiff and in that capacity presided over the court. The Charter was an important accomplishment for

Sermons).

⁵⁰ See Learned, supra note 2, at 288-93 (reprinting charter of Frankfurt Land Company) (in German); plate following 298 (Pastorius' map of the Germantown, showing Frankfurt Company's land sales); 110 (discussing land sales in Pennsylvania); 121 (reprinting Pastorius' letter of attorney authorizing him to act for the Company). Some of Pastorius' records of land distributed by the Frankfurt Company are preserved in his manuscript, *Grund und Lager Buch*, HSP. For a modern reprinting of the original distributions of land, see Stephanie G. Wolf, Urban Village: Population, Community, and Family Structure in Germantown, Pennsylvania, 1683-1800 60-62 (1976).

Pastorius and the Frankfurt Land Company, which he proudly mentioned in his letters home encouraging immigration to Pennsylvania.⁵¹

As proprietor of the colony, William Penn had the right to appoint the justices of the County Courts.⁵² Penn recognized the importance of the local justices. In appointing the justices of New Castle County in 1701, Penn reminded them of the importance of their position:

I need not putt you in mind, I hope, what Efficacy & Influence the Example of Authority has always had on the minds of the people, nor can you be insensible that the management of those that stand invested with the power of the Laws often works stronger in the minds about them than the Apprehensions of the Laws themselves. . . . You are intrusted with the administration of justice; you are her officers and are not called so much to serve me or any interest of mine, as to serve the Publick, to whose Good each man is a born debtor.⁵³

Penn, therefore, sought Justices who would lay "the Line of Equity and true Judgment."⁵⁴ Penn recognized Pastorius' substantial talent and his importance in the German community by appointing him a Justice of the Philadelphia County Court in 1686 and later clerk of the

⁵¹ See Brieffe aus Pennslvanien, October 10, 1691, in Umständige Beschreibung, supra note 17, at 49, 50-51; Weiterer Bericht aus Germanton, June 1, 1693, id. at 54, 55; 1 Pennsylvania Archives 111-15 (Philadelphia, 1838) (printing charter).

⁵² For a fine study of Penn's rights and duties as proprietor, see William R. Shepherd, History of Proprietary Government in Pennsylvania (1896).

⁵³ 1 Pennsylvania Archives, supra note 51, at 142, 143.

⁵⁴ See Penn to Sussex County Justices, Dec. 25, 1682, 3 Papers of William Penn, Microfilm Edition, at 719 [hereafter Micro]. For more on the role of the justice in early American society, see infra II.A.3; Bushman, supra note 29, chap. 1; T. H. Breen, The Character of the Good Ruler: A Study of Puritan Political Ideas in New England, 1630-1730 (1970).

Philadelphia County Court. In 1693, Governor Benjamin Fletcher again appointed Pastorius a Justice; meanwhile Pastorius served as a clerk and judge of the Germantown court.⁵⁵

Even after his term as a Justice ended, Pastorius remained a central figure in the German community; he began teaching school in 1698 and compiled some of his important manuscripts, including his Bee Hive, a huge volume containing excerpts from books that he read as well as his own thoughts. The Bee Hive is a fascinating book; it contains a table of all the books that he read while compiling the Bee Hive and that alone makes the manuscript almost invaluable as a source of information on the books in circulation in early Pennsylvania. But Pastorius' bibliography is not the most important part of the work; elsewhere in the Bee Hive, Pastorius copied into nearly 2000 "honeycombs" the nectar of wisdom he found in the books he read. He further collected some of the writings and reformed them into a sort of encyclopedia. The several hundred headings of his encyclopedia included such diverse subjects as "Justice," "cannibalism," "Redemption," and "Universal Grace." At other points in the manuscript he has popular maxims, several hundred stanzas of poetry, copies of letters he wrote, a short autobiography, and a biography of his family.⁵⁶

After 1698, when Pastorius began teaching school, he had less time to devote to the operation of the Frankfurt Land Company. Consequently, he asked to be relieved of his duties as attorney for the Company, a duty he undertook only because he believed that "others would

⁵⁵ See Umständige Beschreibung, supra note 17, at 54-55; Records of the Court of Record of Germantown, HSP; Raths-Buch der Germantownishcen Gemeinde, HSP. See also Lionel K.J. Glassey, Politics and the Appointment of Justices of the Peace, 1675-1720 (1979) (discussing role of justices in politics in England).

⁵⁶ Professor Learned undertook the task of reprinting some of the Bee Hive's poems. See Michael Learned, German-American Historical Magazine passim (1898-1904).

follow on my heels as soon as the ice is broken."⁵⁷ Eventually, through somewhat nefarious dealings, several other people emerged who took control of the Frankfurt Company.⁵⁸ Pastorius then devoted more time to his own scholarly efforts, to teaching, and less time to involvement in political affairs. His health declined and he died shortly after December 18, 1719, leaving behind a wealth of manuscripts as a tribute to his wide-ranging interests.⁵⁹

III

Pastorius' Beliefs About Law and Religion

A. Pietism and Law

Pastorius' thoughts on a diverse range of subjects appear in his extensive writings. Most prominent are his thoughts on religion, which provided guidance in how humans should behave. Overriding all human concerns was a sense of love. He asked in verse:

With his own kind deals bad
neither wolf nor leopard
why then should put Christ the man
Christian against Christian
when he commands constantly
Love and Peace and Unity. John 13:24 etc.⁶⁰

⁵⁷ See *Exemplum sine Exemplo*, *supra* note 48, at 127.

⁵⁸ See *Exemplum sine Exemplo*, *supra* note 48 (describing machinations of Daniel Faulkner and others to gain control of Frankfurt Company, presumably for their own profit); Petition of Francis Daniel Pastorius, March 1708, 2 *Minutes of the Provincial Council* 430 (Philadelphia, 1852) (appealing decision of Philadelphia County Court to Provincial Council); Frankfurt manuscripts, Pastorius Collection, HSP (original of Pastorius' petition). Swathmore College's Quaker Collection has several manuscripts detailing the litigation, which have been excerpted in Pennypacker, *supra* note 48, at 143-74. Julius Sachse has taken a somewhat more favorable view of Pastorius' opponents. See Julius Sachse, *The Pietists of Provincial Pennsylvania* 304-13 (1886).

⁵⁹ See Wokeck, *supra* note 2, at 590.

⁶⁰ Francis Daniel Pastorius, *Commonplace Book*, HSP 582.

The themes of love, peace and unity appear throughout his writings and those of other Pietists.⁶¹

Before the entry in his commonplace book for Jeremiah Dykes' Treatise of Good Conscience,

Pastorius wrote:

Our Duty is to reverence
the good of God in everyman
and Labour too, as much we can,
To get and keep good Conscience.⁶²

Similarly, he identified seven elements that permeated human society. "The Revolution or changeable character course and Recourse of the present world;/viz of all Empires, kingdoms, and Provinces thereof, yea of all particular Inhabitants of the Same, prefigured in a wheel of seven spokes: Poorness (Armüth), Humility, Peace, Traffik, Wealth, Pride, War."⁶³

Morality occupied a central role in Pastorius' thoughts about law and lawyers. He summed up his pessimistic attitude toward lawyers in one stanza of his poetry:

Those who for money's sake Doe Preach and Plead and Cure,
May of the Fiery Lake Fulwell Themselves Assure.
But they that Preach, Plead, Cure as Christ, our Lord, has done
For Love's sake, free & pure, Are Blessed ones anon. Forever & ever.
Good Teachers, Lawyers and Physicians surely grieve,

⁶¹ See generally Spener, supra note 29; Johann Jakob Schütz, Gedenck Büchlein (Frankfurt, 1675); Poem to James Logan, Bee Hive, supra note 1, at 167; Pieter Corneliszoon Plockhoy, A Way Proposed to make the poor in these & other nations happy by bringing together a fit, suitable, and well-qualified People (London, 1659) Wing P1724 (essay by settler of Germantown preaching love of neighbors).

⁶² Pastorius, supra note 60, at 608.

⁶³ Id. at 605. See also Bee Hive, supra note 1, poem 12: "war begets Poverty, Poverty Peace/Then People will traffick, & Riches increase/Riches produceth Pride; Pride is War's ground/War begets Poverty, So we go round."

When others do bemoan more than themselves would give.⁶⁴

Lawyers were particularly problematic in Pastorius' vision of a peaceful community. He related the parable of "a poor man [who] complained to a king that a L[awyer] took a Cow from him. I will hear (:saith the king) what the L[awyer] will say to the matter. Nay (:saith the poorman) if you hear him speak then have I lost my Cow indeed."⁶⁵

Pastorius, like other Pietists, focused on the inward nature of the search for peace. In the world of late seventeenth-century Germany, which was torn by war and vast disparities of wealth, the gravitational pull of a religion promising peaceful coexistence with other humans proved strong. The beliefs formulated in Germany continued to exercise control in America. Pastorius frequently wrote home to Germany praising the simple and godly life in America.⁶⁶

⁶⁴ See Pastorius, Bee Hive, supra note 1, stanza 334. See also id. at stanza 393 (opposing 8% interest rate as usurious).

Pastorius' critique of lawyers mirrors that of George Fox. In his Journal, Fox argued that lawyers pretend to cure "the property of the people." But they do so "out[side] of the equity and perfect law of God." The lawyers might be reformed, Fox thought, if they were "brought into the law of God." God would in turn answer for their transgressions and bring them to love their neighbor as they loved themselves. "This [love of God] lets man see if he wrongs his neighbors he wrongs himself; and this teaches him to do unto others as he would they should do unto him." Journal of George Fox, 26-27 (London, Thomas Ellwood ed. 1696) (Henry J. Cadbury ed. 1952). Fox believed, as did Pastorius, that lawyers, physicians, and priests might be reformed if they "believe in the light and walk in the light," a metaphor for acceptance of Quaker beliefs. Id. at 29. Pastorius criticized the physical appearance of lawyers with white wigs. See Bee Hive sec. 27, supp. (citing 1 Corinthians 11:14 and Revelations 9:8). While it was lawyers' white dress that drew Pastorius' attention, George Fox directed his comments to the "lawyers black, their blacks robes as a puddle, and like unto a black pit, almost covered over with blackness." George Fox, Law of God the Rule of Lawmakers 3 (London, 1658).

⁶⁵ Lawyer Entry, Bee Hive, supra note 1.

⁶⁶ See Umständige Beschreibung, supra note 17, at 52.

Pastorius' disdain for inhumanity appeared most strongly in his writings on slavery. He is credited with writing the first anti-slavery protest in British North America. The Protest, addressed to a Monthly Meeting of Quakers, argued first that no one would themselves want to be treated as a slave. "How fearful and fainthearted are many on sea when they see a strange vessel, being afraid it should be a Turck, and they should be taken and sold for slaves into Turkey." The Protest then went on to argue, based on the precept that "we shall doe to all men, licke as we will be done our selves," that blacks should not be enslaved, because the saying should be followed, no matter what "Generation, descent, or Colour they are." It was the protest that motivated John Greenleaf Whittier's apotheosis of Pastorius in the 1871 poem, "The Pennsylvania Pilgrim."⁶⁷

Closely akin to slavery in Pastorius' mind was usury. Usury proved particularly troublesome to Pastorius as it did to so many other Protestants in the seventeenth century. Some of his thoughts appear in the Bee Hive, such as his combined protest against both slavery and usury:

If in Christian Doctrine we abide, then God is surely on our side;
But if we Christ's Precepts transgress, Negroes by Slavery oppress,
And white ones grieve by usury (Two evils, which to Heaven cry),
We've neither God, not Christ his son, But straightways travel
Hellwards on.

...

Among Christ's followers Are no Extortioners,

⁶⁷ See Learned, *supra* note 2, at 261-2 (reprinting Protest); John Greenleaf Whittier, *The Pennsylvania Pilgrim*, in *The Complete Poetical Works of John Greenleaf Whittier* 103-12 (1891). See also Ira V. Brown, *Pennsylvania's Antislavery Pioneers, 1688-1776*, 55 *Pennsylvania Hist.* 59, 62-63 (1988). George Keith employed similar arguments in his 1693 protest, *An Exhortation & Caution to Friends Concerning Buying or Keeping of Negroes* (Philadelphia, 1693) Evans 636. Keith relied upon the Golden Rule, among other biblical injunctions, to urge Quakers to avoid buying slaves.

No biting Usuers, not Negro (worryers) butchers
All these are Satan's tools, Abominable Fools,
Not worthy of Christ's Name, to which they bring but Shame.⁶⁸

Later he further criticized usury:

It is a great Mistake at best
To call that Monster Interest,
Which God and good men, as we see,
Have ever stiled Usery;
But now our Saints this name refuse,
And to their Brethren lend on use:
On Usury, says Christ our Lord,
Though they abbreviate the word;
Yet surely, 'tis not His Intent,
T'abbreviate their Punishment.⁶⁹

B. Pastorius and the Concept of Law

Beyond the injunctions against usury and slavery, Pastorius has also left his thoughts about justice and law generally. His views on those subjects, as on every other, rested heavily upon his interpretation of the Bible. One gains a sense of the overriding importance of religion for his concept of the law from the title page of Pastorius' manuscript copy of the laws of Pennsylvania and Germantown. He wrote three maxims, two taken from the Bible:

All the law is fulfilled in one word, in this: Thou shalt Love thy neighbor as thyself. Job 5:14. Therefore all things whatsoever ye would that men should do to you, do ye even so to them, for this is the Law and the prophets. Matthew 7:12
Salus populus suprema lex est.⁷⁰

⁶⁸ Bee Hive, supra note 1, stanzas 471, 474.

⁶⁹ Id., stanza 479.

⁷⁰ Pennsylvania Leges, folio 1, Historical Society of Pennsylvania. He also cited Romans 13:8 ("Owe no one anything, except to love one another; for he who loves his neighbor has fulfilled the law."). Id. at 1. The Pennsylvania Leges is a manuscript copy of the laws. Each county had its own copy of the laws, which was hand copied after the conclusion of each session of the legislature. See 1 Statutes at Large of Pennsylvania, 1680 to 1700, (Gail Beckman ed.

His aphorisms on the next page included: "The law is good, if a man use it lawfully," a paraphrase of Paul's first letter to Timothy, which he repeated in his entry on Law in the Bee Hive.⁷¹ The phrase is ambiguous, but Pastorius probably believed that it requires a litigant to follow the spirit of the law. Indeed, the spirit was believed by Quakers to supercede human law, a theme that Pastorius elaborated in his Bee Hive entry for Law. There he made several Biblical references to the spirit's triumph over law, noting that: "by the law of the Spirit of life we overcome the Law of Sin and Death" and "the Spirit lead thee through the Law from under the Law to Grace."⁷² Pastorius concluded that by "Christ[']s] bringing in everlasting righteousness the law is fulfilled."⁷³ Pastorius drew upon the writings of George Fox, a founder of Quakerism, for

1976) Chaps. 38, at 124; Chap. 60, at 142 (requiring that the laws be posted at the courthouse, read to the community yearly, and read to initial meetings of the courts); Penn to Justices of New Castle, Jan 7, 1701, 1 Pennsylvania Archives 142 (reporting that laws will be sent to Justices as soon they can be copied). Pastorius may have made his own copy from the Philadelphia County laws. In addition to the Pennsylvania statutory laws, Pennsylvania Leges contains the charters to Pennsylvania and Germantown.

Seventeenth and eighteenth century lawyers glossed the phrase salus populi extensively. See Francis Bacon, Of Judicature, in Essaies 316, 323 (London, 1654); Giles Jacob, A New Law Dictionary (London, 1729), quoted in Conductor Generalis 447 (Philadelphia, 1749) Evans 6300.

⁷¹ Pennsylvania Leges, supra note 34, 70, at 2 (paraphrasing 1 Timothy 1:11). See also Bee Hive, Law Entry ("The law is good if a man use it lawfully").

⁷² See Law Entry, Bee Hive, supra note 1, (citing Rom 8:2). For similar statements by George Fox, see Journal, supra note 64, at 16-18; William Penn, Fundamental Constitutions, 2 Papers of William Penn 140 (Richard S. Dunn. ed 1986) [hereafter PWP].

⁷³ Law Entry, Bee Hive, supra note 1 (citing Daniel 9:24 and 1 Timothy 1:9); Fox, supra note 64, at 16-18. The tension between the spirit and the law explained in Paul's Letter to the Apostles generated substantial debate in early modern thought. See, e.g., id.; 1 Legal Papers of Alexander Hamilton 359 (Julius Goebel ed. 1965) (Hamilton's notes from argument in Rutgers v. Waddington that "in law as in religion letter kills"). Professor Horwitz has recently suggested that differences in approaches to constitutional interpretation in early America correlate with modes of biblical interpretation. Horwitz has even suggested that the differences in constitutional and legal approaches of Jefferson and Marshall may derive from their different

his views of law. In keeping with Fox, Pastorius believed that reliance upon God's commands and faith in God would fulfill man's duties and allow them to attain salvation, thus allowing humans to overcome the "law" that humans were sinful.⁷⁴

In a 1692 letter to his father in Germany, Pastorius wrote that he had identified what he called the *Leges Conceptite*--legal ideas--to guide the Germantown court in deciding cases. He reported to his father that he had written the "following heavenly memoranda on his copy" of the Germantown lawbook:

It is without authority, unless from God. Rom 13:1. You are given the authority by Him and the power from heaven that will tell you how to act. Sap. 1 For that reason let the search of men and take not a bribe. Exod. 23:8. Afflict no widow nor orphan. Exod. 22:22. Create right for the poor and help the wretched and destitute. Ps. 82:[3] Judge right between everyman, stand with no person but hear the small [in like manner] as the great. Deut. 1:16. You shall also not follow unjust bargaining in law courts. Lev. 19:15. You also ought not to make favor. 1 Tim. 5:11. In your election set importance on bold, honest, wise, experienced, and sensible people, who seek God, and are the enemy of haste and meanness. Deut. 1:13. Pious men have no twisted heart nor proud attitude and arrogance, so also they are not slanderous, false, and lying. Ps. 101:4 How you wish people to treat you, so treat them. Luc 6:31.⁷⁵

In a similar sentiment, he wrote on his copy of the laws, "Extreme Right is Extreme Wrong," a popular phrase in the seventeenth century, perhaps taken from Cicero, which also suggested that it is inappropriate to exact the utmost in legal rights from an adversary.⁷⁶ The

religious backgrounds. See Morton J. Horwitz, Foreword: The Constitution of Change: Legal Foundationalism without Fundamentalism, 107 *Harv. L. Rev.* 32, 48-51 & n. 90 (1993).

⁷⁴ See Fox, *Journal*, *supra* note 64, at 22-23, 32-33.

⁷⁵ Briefe aus Pensylvanian von 10 Oct. 1691, *Umständige*, *supra* note 17, at 50-51 (in German).

⁷⁶ *Pennsylvania Leges*, *supra* note 22, at 2. See also Primmer, *supra* note 17, at 34-35 (entry on magistrates' duties). Cicero, 1 *De Officiis* 10, 33.

Bible provided a "rule to walk by" for Protestants in general in early America.⁷⁷ Pastorius was familiar with English writers who similarly relied on the Bible for legal principles. The writings of George Fox, a founder of Quakerism, circulated freely in Pennsylvania. In addition to Fox's Journal, Pastorius had access to Fox's Instruction to Judges and Lawyers, a tract published in 1659 to encourage judges to conform their behavior to Biblical precepts. Fox urged the abolition of the death penalty for property crimes; the punishment was inconsistent with "the Scripture, the

Later in life, Pastorius used the phrase to attack Daniel Falkner, who had used legal machinations to wrest control of the Frankfurt Land Company from Pastorius. In his essay on the Frankfurt Land Company litigation, Pastorius invoked the aphorism, "summo jure, ie, summa Injuria, by extreme right, extreme wrong" when discussing the inequity of ejecting him as legal representative of the Frankfurt Land Company, based on questionable legal maneuvering. See Exemplum, supra note 48.

The phrase "Summa ius summa injuria" occupied an important place in post-Renaissance legal thinking. See Guido Kisch, Summum Ius Summa Inuria: Basler Humanisten und der Aequitas, in Aequitas und Fides, Festgabe zum 70 Geburtstag von August Simonius (Basel, 1955). See generally Guido Kisch, Humanismus und Jurisprudenz (Basel, 1955); Guido Kisch, Humanistic Jurisprudence, 8 Studies in the Renaissance 71-87 (1960); Myron Gilmore, Humanists and Jurists: Six Studies in the Renaissance (1963). The phrase also appeared widely in English law. In a 1693 pamphlet describing a trial in Philadelphia, one writer commented that "for ever the Law saith, Summa jus, Summa Injuria; i.e. The Rigour of the Law is high Injustice; . . . the Law of Christianity [may] be called Lex Misericordia, i.e. The Law of Mercy, that is, forbearing, and exacteth not the utmost Farthing." Trials of Quakers, supra note 84, at 24-25. It is likely that Pastorius was exposed to the writings of legal humanists who used the phrase as an illustration of the errors of German law.

⁷⁷ For discussion of the importance of Mosaic law upon early America, see Goebel, supra note 9, at 416-48; Bushman, supra note 29, chap. 1; Haskins, supra note 10 141-62; G.B. Warden, Law Reform in England and New England, 1620 to 1660, 35 William & Mary Q. 668-90 (1978). For the influence of religion on English law specifically, see John Dykstra Eusden, Puritans, Lawyers, and Politics in Early Seventeenth-Century England (1958); Nancy L. Matthews, William Sheppard, Thomas Cromwell's Law Reformer (1984); Barbara Shapiro, Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature (1983); Donald Veall, The Popular Movement for Law Reform, 1640-1660 (1960).

Law of God, and the Apostles Doctrine."⁷⁸ He also argued against legal fictions as "not a form of sound words" but "a form of lyes" and thus inconsistent with Moses' teaching that lies should be punished. Similarly inconsistent with Biblical teachings, Fox thought, was the requirement that defendants be forced to appear in court through an attorney rather than in person, even though the writs issued to defendants were issued in the defendants' names. Fox reserved special scorn for the judges who prosecuted Quakers for refusing to remove their hats in the presence of the court, a practice itself rooted in Quaker opposition to elevating one group of human beings over others.⁷⁹

And when the Judge is askt by the prisoner concerning the hat, what Law and custom is for it, and where he may read it? Oh, cryes the Judge, and swells, and rages, and full of fury, I doe not carry my Law books upon my back; I but faith the poor prisoner, the Judges of old was legs to the lame, and eyes to the blind, and a help to the helpless, and why wilt not thou and you inform me of that Law and custome that sayes, I must be fined a hundred mark, and forty pounds, if I will not put off my hat to you. . . and thus the poor prisoner goes away uninformed in the Law and custom, not knowing the ground and the author of it, the Judge not informing him, contrary to Moses and the Judges of old, and the Scripture, which saith, They shall teach them in the Law, and instruct them in the Law . . . that all might know it and fear.⁸⁰

In his entry on "Justice" in the Bee Hive, Pastorius refers to Henry Clark's Here is True Magistracy Described, a pamphlet written in 1660, that suggests the attributes that magistrates should possess. Clark stated that "the way to rule well is to take Counsel of God." The Magistrates were to "walk with the Lord God" and "to do justly and to love mercy, and govern

⁷⁸ George Fox, An Instruction to Judges and Lawyers: that they may act and consider these as the judges did of old . . . 6 (London, 1658) Wing F1848.

⁷⁹ Id. at 22-23, 10 (discussing importance of humility).

⁸⁰ Id. at 24.

the People by the law that is Holy, Just, Pure, and good, as it came from God." Clark's suggestions were general and probably few disagreed with his advice, but at bottom was the implication that if an individual disagreed with the law as it was applied, he could disobey it. Clark's pamphlet concluded that love and obedience are owed magistrates, but if magistrates order people to do something contrary to the command of God, the people should "underg[o] the Penalties of their unjust laws."⁸¹ Pastorius' writings demonstrated a similar concern for general notions of justice. And like Clark, Pastorius cited the Bible for general propositions surrounding justice.

The Bible was the beginning point for his analysis of other issues involving government. His pamphlet on taxation rested entirely upon the Bible for its discussion of individuals' duties to pay taxes.⁸² Even when he did not refer explicitly to the Bible, Pastorius used religious references as the starting points for his teachings. Under the heading "Law" in the Bee Hive, he observed that "[t]here is no Law to be compared to Love. Between just laws and righteous men [there is] no antipathy."⁸³ The Bible thus provided a general framework for Pastorius' thinking

⁸¹ Henry Clark, Here is True Magistracy Described 6 (London, 1660). Clark wrote True Magistracy to respond to charges that Quakers did not believe in civil courts. See infra III.C.

⁸² See Henry J. Cadbury, ed., Francis Daniel Pastorius, "Essay on Taxes," 54 Penn. Mag. Hist. & Bio. 255-59 (1934). See also The Tithe-Teacher Plaintiff and the Poor Man Defendant, in Bee Hive, supra note 1, at 297-300.

⁸³ See Law Entry, Bee Hive, supra note 1, ("The law is good if a man use it lawfully."). In keeping with the prevailing beliefs of the late seventeenth century, Pastorius unfortunately appended the historically inaccurate and theologically naive statement that "but the Jews made use of it to crucify Christ. . . . they have acted contrary to your pure, loving God." Id. Pastorius also expressed disdain, though less severe, for atheists. See Atheism Entry, Bee Hive, supra note 1.

about the goals of law, such as the promotion of love and peace. In order to achieve such important goals, several elements were necessary--most prominently justice.

1. Justice

Pastorius grouped his thoughts about the nature of law and the legal system into three main areas in his Bee Hive--justice (and its antithesis, injustice), law and magistrates. The need for justice occupied a central position in Quaker political and religious thought in the seventeenth century. Particularly because Quakers had themselves been left without justice so frequently--by legislation aimed against them in Parliament, by failure of judges to protect them from attacks, and by outright mistreatment by judges--Quaker writings are vigilant to note the need for justice for a well-functioning country.⁸⁴ For instance, Fox's Journal is replete with instances of the unjust application of laws.⁸⁵

⁸⁴ See generally Craig W. Horle, The Quakers and the English Legal System, 1660-1689 (1988). Dr. Horle's wonderfully detailed book shows how Quakers mobilized legal and political arguments to protect themselves from the English legal system. Several more general histories of Quaker beliefs present illuminating discussions of the connection of Quaker beliefs to law. See, e.g., Hugh Barbour, The Quakers in Puritan England (1964); Richard Vann, Quakers and Social History (1968); J. William Frost, Quakers and the American Family chap. 1 (1972) (discussing Quaker beliefs).

⁸⁵ Fox tells of his questioning of New England magistrates who, relying upon an unspecified law allowing the execution of Jesuits, executed four Quakers. Fox told the magistrates they had committed murder, because even the magistrates recognized that the Quakers were not Jesuits. "For by this it plainly appears that you have put them to death in your own wills without any law." Journal, supra note 64, at 414-15. See also id. at 51-55 (Fox committed to goal without proper authority); id. at 161-63 (same). Fox recounts his preachings and travels in the fairs and markets, where he "declare[d] against their deceitful merchandise and cheating and cozening, warning to all to deal justly, to speak the truth, . . . and to do unto others as they would have others do unto them." Id. at 37-38.

The idea of justice and equity, as dictated by the Bible, occupied a central place in Fox's Journal. After suffering imprisonment in Derby in 1650, Fox wrote to the magistrates who imprisoned him and asked them:

to consider what you do, and what commands of God call for. He doth require justice and mercy, to break every yoke and to let the oppressed go free. But who calleth for justice or loveth mercy or contendeth for the Truth? Is not judgment turned backward and doth not justice stand afar off? Is not Truth silenced in the streets, or can equity enter? And do not they that depart from evil make themselves a prey? O consider what ye do in time, and take heed whom ye imprison⁸⁶

Fox also expressed concern for injustice to others. In 1651 he opposed the execution of both men and women for mere theft of cattle or money. Again relying on the Bible, Fox reminded justices to "mind the laws of God in the Scriptures and the Spirit that gave them forth and let them be your rule in executing Judgment; and show mercy, that you receive mercy from God, the judge of all." Fox pointed out that the Biblical punishment for theft of cattle was restitution, not death, and that justices should show mercy. Lest the justices forget that they too

⁸⁶ Fox, Journal, supra note 64, at 54. For a strikingly similar letter from Elizabeth Hutton, who was imprisoned along with Fox, to the Derby Justices, see Early Quaker Writings 381-82 (Hugh Barbour ed. 1973). Fox wrote to several justices independently to remind them of God's commands and to the mayor of Derby, reminding him that "thou art set in place to do justice; but, in imprisoning my body, thou hast done contrary to justice, according to your own law. . . . Remember who said, 'I was a stranger, and ye took me not in; I was in prison and ye visited me not.'" Id. at 55. See also Edward Burrogh, Message of Instruction to All the Rulers, Judges, and Magistrates to Whom the Law is Committed (London, 1658) (arguing that Quakers should not be punished for following God's law rather than English law); William Penn, Summons or Call (London, 1677) (criticizing judges); William Penn, Peoples' Ancient Liberties Asserted (London, 1670); Thomas Rudyard, The Second Part of the Peoples Ancient and Just Liberties Asserted (London, 1671); Thomas Rudyard, The Case of Protestant Dissenters (London, 1670).

would be judged, Fox concluded with an allusion to judgment day: "fear God and serve him, for he is a consuming fire."⁸⁷

William Penn, who himself suffered imprisonment, postulated that there could be no valid government without justice. In his pamphlet One Project for the Good of England, Penn raised the specter of revolution; he argued that when government left its citizens without justice, the citizens would be unlikely to support the government. He left it to others, such as John Locke and Algernon Sydney, to postulate that governments that failed to operate by well-defined rules were illegitimate.⁸⁸

Pastorius adopted some of Penn's pragmatic grounds for ensuring justice. The "Justice" entry in the Bee Hive consists largely of maxims from William Penn's Fruits of Solitude, a book of advice Penn wrote for his children and then published in the 1690s. Penn's thoughts on justice, which Pastorius quoted, included "Impartiality is the life of Justice, as that is of Government" and "Justice is a great support to Society, because an Insurer to all men of their Property. This vitiated, there's no Security, which throws all into Confusion to recover it."⁸⁹ Less pragmatic reasons also supported Pastorius' call for justice, however. He simply believed that people should treat each other justly, because it was commanded by God. "Deal Rightfully upon earth," he warns, "that you may find heaven." Most of Pastorius' Bee Hive entry, however, consists of general concerns about the nature of justice. He begins his entry by paraphrasing

⁸⁷ Fox, supra note 64, at 66.

⁸⁸ See generally Melvin Endy, William Penn and Early Quakerism (1973); Mary Maples Dunn, William Penn: Politics and Conscience (1968).

⁸⁹ Justice Entry, Bee Hive, supra note 1 (quoting William Penn, Some Fruits of Solitude, Maxims 2:352, 2:181 (London, 1696)).

Penn's Fruits of Solitude, "Justice is justly represented Blind because she sees no difference in the Parties concerned. She has but one scale and weight for the rich and poor, great and small. Her sentence is not guided by the person, but the cause." He goes on to emphasize the need for impartiality: "the impartial judge in judgment knows nothing but the law, the Prince no more than the Peasant, kindred than a stranger. Nay, his enemy is said to be on equal terms with his friend, when he is on the bench."⁹⁰ Following Penn's maxims, Pastorius added, from Cicero's Attica oration, that "None should lose his right to any thing, because another has a longer Sword."⁹¹

Pastorius' views about law also appear in a short essay he wrote discussing the litigation has was involved in over control of the Frankfurt Land Company, Exemplum Sine Exemplo, Or the Cheats and the Projectors.⁹² The litigation arose from the attempt of Daniel Falkner and John Henry Sprogel to obtain the right to sell the Company's land. In January 1701 the Frankfurt Land Company directors conferred joint, not several, power of attorney on Johann Jawert and Daniel Falkner. Falkner, according to Pastorius and Jawart, proved untrustworthy, even profligate with the Company's money, causing Jawart to ask in April 1705 that no one conduct any of the Company's business with Falkner. Then in November 1705 John Henry Sprogel appeared, with an apparently forged letter giving him title to the Company's land. At the January 1708 meeting

⁹⁰ Id. (citing Penn, Fruits of Solitude, supra note 89, maxims 348, 349, 351). Similarly, Pastorius wrote in his Equity entry, "A just weight is God's delight. Prov. 11:1 with an equal and just hand . . . on the one side & on the other square dealing upright dealing. Justice mixed with mercy." Equity Entry, id.

⁹¹ Equity Entry, Bee Hive, supra note 1 (citing Cicero, Attica Oration, 169).

⁹² See Pastorius, supra note 48.

of the Philadelphia County Court of Common Pleas, Philadelphia County's civil court, Faulkner and Sprogel appeared with two attorneys and filed an ejectment action to obtain title to the Company's land. No one contested the action, because none had notice, and the court granted the petition. When Pastorius and Jawert appealed to the Provincial Court in March 1708 they observed that all four lawyers in Pennsylvania had been retained by Falker and Sprogel, thus making it impossible to obtain legal advice. Pastorius' petition further complained that ejectment was a legal fiction "wherewith your Petitioner is altogether unacquainted." Pastorius' account of the litigation disparagingly referred to one lawyer's role as "fictionem juris ad re ipsa detrudendos veros possessores"--legal fiction abhors the true owner. He concluded his account of the litigation with a universal condemnation of Sprogel, which summarized his attitude toward law and religion:

I . . . heartily wish that the LORD (who is called a Father to the fatherless and a Judge of Widows, whereof there are at this instant in the abovesaid Company) may prosper their just Proceedings, and all, who reverence Righteousness and Equity countenance them therein, and no be partakers of the Spoil, nor of the Curse entailed thereon with the aforesaid John Henry Sprogel, for whom notwithstanding the foregoing discovery of his unheard of Villanies I retain that sincere Love as to pray God Almighty to . . . Convert him . . . from his Perverseness, that he may forsake his diabolical lies, pride, bragging and boasting, and not longer continue the Vassal of Satan and heir of Hell, but become a child of Heaven and a follower of Christ . . . [who is] meek and lowly in heart, leading out of all cozening Practices into the way of holiness and eternal Felicity.⁹³

Justice also had a substantive component for Pastorius. Elsewhere in the Bee Hive he discussed the evils of exacting too much legal payment from another person and willingly forgave the people who had extracted too much from him:

⁹³ Id. at 174.

As what I have I owe to one Above, to You on Earth beneath nothing but Love/
Except some trifling sums to such as wrought for me, and those of whom I lately
bought, the which I hope I shall now shortly pay; oh, that my Debtors too the self
same way. But many wronged and wrong me while I live, to whom heartily and
Frankly [I] forgive. I willing to lay down my hand in peace, I herewith put my
hand to this Release.⁹⁴

In another Poem he drew upon the Golden Rule to urge equitable dealings with others:

To do to Others as We would be done by them
This was Christ's doctrine and, if fully understood
Is the Eternal Band of Peace, the noblest Good
With this runns parallel what holy Prophets taught,
To shun the Sin as hell: Be Vertuous, and not nought.⁹⁵

Pastorius was concerned with the ways to make the law serve humanist ends. He was particularly concerned with the idea of law as incorporating certain just principles that should be followed to the extent that they created justice.

2. Law

Pastorius recognized, as did other reformers, however, that mere ideas about justice were insufficient to properly order society. Pastorius, therefore, invoked the Biblical aphorism that "[t]he law is made for Disobedient Persons."⁹⁶ It is unknown whether he ever read Henry Finch's

⁹⁴ Bee Hive, supra note 1, at 367. Pastorius recommended reading William Perkins, Discoverie of the damned Art of Witchcraft (1608). Perkins protested the cruelty of witchcraft trials, which may be indicative of Pastorius' beliefs. Toms, supra note 21, at 168.

⁹⁵ Bee Hive, supra note 1, at 176, stanza 331. Reliance upon the Golden Rule, Matthew 7:12, was common. See, e.g., Fox, Journal, supra note 64, at 38; Fox, Instruction, supra note 78, at 20; Ernst Stoeffler, The Rise of Evangelical Pietism 58-68 (1961) (discussing God's law in pietism); supra note 77 (historians' discussion of Mosaic law in seventeenth-century England and America). Cf. William Perkins, The Whole Duty of Man, Containing a Practical Table of the Ten Commandments (London, 1674); John Dod, A Plain and Familiar Exposition of the Ten Commandments (London, 1607).

⁹⁶ Bee Hive, supra note 1, maxim 197 (citing 1 Timothy 2:10).

Discourse on Law, which was present in the library of Philadelphia Judge John Guest contemporaneously with Pastorius; however, Pastorius shared Finch's belief--expressed on the first page of his 1613 treatise--that law is designed to order society.

Pastorius began his Bee Hive entry for Law by recognizing the importance of respecting and observing the law. As with the Justice entry, most phrases were taken from William Penn, often from Penn's 1696 book, No Cross, No Crown, a collection of stories designed to show that Quaker principles had existed throughout history. Pastorius' first phrase, which was taken from Penn, referred to the Ten Commandments: "The Law He delivered to Moses upon Mount Sinai, for a Rule to his People, the Jews, to walk by," was "confirmed by thunderings and other sensible solemnities to strike the people with the awe of keeping it."⁹⁷ Pastorius thus expressed the common belief that a primary goal of society was to impress people with the need to follow just laws.

Pastorius also drew upon Francis Bacon, who similarly emphasized the role of the law and magistrates in peacekeeping in his essay "On Judicature." Pastorius adopted Bacon's belief that the "principle duty of a Judge is to suppress Force and Fraud." Pastorius also elaborated on the Biblical basis for such obedience in the 1698 schoolbook that he published for his students, A New Primmer. The Primmer, which was designed for students learning to read, consisted of passages, mostly taken from the Bible, that prescribed good behavior. Pastorius' students reading the Primmer learned that subjects must:

⁹⁷ See William Penn, No Cross, No Crown, 246 (London, 1686) Wing P1328 (referring to the prohibition of Exodus 23 on stealing); Law Entry, Bee Hive, supra note 1 (quoting only the latter part of the sentence).

obey magistrates, Tit. 3:1, subject themselves to every Ordinance of Man, for the Lord's sake, 1 Pet. 2:13, despise not Government, [be] afraid to spread evil of Dignitaries, 2 Pov. 2, . . . not resist the Power, Rom. 13:2, but render unto Caesar the things which are Caesar's, and unto God things that are God's, Math. 22:21, paying Tribute, Custom, Rom. 13:7, and making supplications for all that are in Authority. 1 Tim. 2:2.⁹⁸

There was also a strong sense in Quaker writings that the law came from God and that each person had an intuitive sense of the law. Pastorius emphasized the source of law in his *Leges Conceptiret*, written on the first page of his Germantown lawbook: "it is without authority if not from God" and "you are given the authority by Him and the power from heaven which will tell you how to act."⁹⁹ Pastorius also quoted from George Fox's *Journal* that "the thunder of Moses, the law of God is perfect and written in the heart."¹⁰⁰ One lesson of the *Journal* is that each person must follow the "pure Love of God." Following the perfect law of God--the "pure love of God"--Fox thought, allowed people to escape from the "the law of sin and death." The two spheres--the flesh and the spirit--continually opposed each other. They could not co-exist, so that the pure and perfect law of God was over the flesh. By following God's law, "ye have liberty and victory over the flesh and its works."¹⁰¹

⁹⁸ *Primmer*, *supra* note 17, at 35.

⁹⁹ See *Umständige Beschreibung*, *supra* note 17, at 50. See also 2 *Connecticut Records* 567 (ordering that the lawbooks print on their first page "there is no power but of God, the powers that be are ordained of God"); Bushman, *supra* note 29, at 10 (discussing Connecticut's reliance upon Bible as law).

¹⁰⁰ Law Entry, Bee Hive (citing Fox's *Journal* and an unidentified "Statute of Parliament"); Fox, *Journal*, *supra* note 64, at 15-18.

¹⁰¹ Fox, *supra* note 64, at 16-17; 15-18. See also Frost, *supra* note 84, chap. 2.

Even when God gave law, it was necessary for people to follow the spirit of the law in order to achieve justice. Pastorius quoted Paul's Letter to the Romans, "The Law is good if a man use it lawfully."¹⁰² The idea of law incorporated one other element--that it be executed without passion. Perhaps from Seneca, he took the maxim that "Law is reason without the passions."¹⁰³ Pastorius realized that laws might be misinterpreted. He recounted the story from Penn's No Cross, No Crown about the Spartan leader Lycergus, who refused to allow the Laws to be written in order to avoid barratry.¹⁰⁴

Pastorius also recognized, however, in keeping with the most sophisticated writings on law that there were human-made regulations as well as the God-given natural law that Fox wrote about. He wrote in his Bee Hive entry on Law that "All laws are either fundamental and so immutable or Superficial and so alterable."¹⁰⁵ The dual nature of law had been recognized since the time of Coke. Pastorius drew the idea from Penn's Ancient Liberties Asserted, a pamphlet Penn wrote explaining his 1670 trial for sedition, in which he asserted the supremacy of the common law over more recent statutes prohibiting preaching.

Pastorius also expressed the idea, growing in strength in the seventeenth century, that "People should have a share in the making of their own Laws and likewise in the judicatory

¹⁰² Law Entry, Bee Hive, supra note 1.

¹⁰³ Id.

¹⁰⁴ Penn, No Cross, No Crown, supra note 97, at 382.

¹⁰⁵ See Law Entry, Bee Hive, supra note 1 (citing Penn's Ancient Liberties, supra note 34, at 31).

Power to apply these laws made."¹⁰⁶ Again, Pastorius drew upon William Penn's writings popularizing the idea of democracy. Pastorius cited Penn's 1679 pamphlet England's Present Interest in the Choice of this New Parliament, which Penn wrote to foster support for religious toleration in the Parliamentary elections. In England's Present Interest, Penn argued that there were three fundamental rights: property, legislation "or the power of making laws" and judicatory power--"the application and execution of the laws that you agree to be made." Penn went on to suggest that those three fundamental rights could be best protected by electing to Parliament people who "will not sacrifice their neighbor's property to the forwardness of their own part in religion."¹⁰⁷ Penn was advancing the cause of democracy in general at the same time he advanced the cause of religious toleration.

Perhaps Penn's most influential writing in America was his eighty-seven page pamphlet, The Excellent Privilege of Liberty and Property, published by William Bradford in Philadelphia in 1687 under the pseudonym, Philodelphius. Penn designed the Excellent Privilege to help Pennsylvanians "who may not have leizure from their Plantations to read large Volums" to understand "the unparrallell'd Priviledge of Liberty and Property" so that they might preserve their rights "from unjust and unreasonable men." Penn was concerned that many colonists were "strangers" to the rights of liberty and property and that the colonists did not have an understanding of "the eminent Case, Wisdom and Industry of our Progenitors in providing for themselves and Posterity so good a Fortress that is able to repel Lust, Pride and Power of the

¹⁰⁶ See *id.* (citing William Penn, England's Present Interest 14, 17 (London, 1679)). Penn further explored these ideas in The Continued Cry of the Oppressed for Justice, *supra* note 34. Pastorius had a copy of Continued Cry in his library. See Pastorius' Library, *supra* note 34.

¹⁰⁷ See Penn, England's Present Interest, *supra* note 106, at 4.

Noble, as well as Ignorance of the Ignoble." To inform the colonists of the "Inheritance that every Free-born Subject of England is Heir unto by Birth-right" Penn printed five documents: the Magna Charta, Edward I's Forrester Charter, the Statute De Tallageo non Concedendo passed during Edward I's reign, Charles II's Charter to Pennsylvania, and Penn's Charter of Liberties. His ultimate goal was to impress upon the readers the common law's "excellent and discreet Ballance that gives every man his even proportion, which cannot be taken from him, nor [can he] be dispossessed of his Life, Liberty or Estate, but by the tryal and judgment of Twelve of his Equals, or Law of the Land, upon the penalty of the bitter Curses of the whole People." He hoped that diffusion of knowledge about English liberties would then enable the readers to protect their rights and thus "take up the good Example of our Ancestors, and understand, that [it] is easie to part with or give away great Priviledges, but [they are] hard to be gained, if once lost."¹⁰⁸ Pastorius had a copy of the Excellent Priviledge in his library and believed with Penn in the importance of justice and the role of law in fostering liberty.

3. The Magistrates

Englishmen of the Restoration period struggled with the question of how to create a virtuous country. Magistrates, as the people charged with enforcing the laws and maintaining control of society, occupied a particularly important role in English political thoughts. Penn, in his Frame of Government, explicitly recognized the importance of virtuous authorities. "I know that some say," Penn wrote, "let us have good laws, and no matter for the men that Execute them: but let them consider, that though good laws do well, good Men do better; for good Laws may want good Men, and be abolished or invaded by ill Men; but good Men will never want good

¹⁰⁸ Penn, Excellent Priviledge, supra note 3, at i-ii.

Laws, nor suffer Ill Ones." Pastorius was attuned to the importance of the magistrates. He told magistrates that "you that sit at the stern, whether of little bargues or greater ships, whether counties or countries, you should not (like the heards of Hrael) injure Justice and pervert equity for the love of money."

There was much in recent English history to warn about the dangers of justices selling their positions or favoring their friends. The concept of virtuous judges was absolutely central to Pastorius' vision as well as that of Penn and Quakers in general. Having suffered at the hands of the capricious judges in England, who prosecuted them for their religious beliefs, Quakers were particularly wary of the discretion accorded magistrates. Isaac Penington asked on behalf of Quakers that

no laws formerly made contrary to the Principle of equity and righteousness in man, may remain in force; nor new ones be made, but what are manifestly agreeable thereunto. All just laws, say the Lawyers, have their foundation in right reason, and must agree with, and proceed from it, if they be properly good for, and rightly serviceable to mankind. Now man hath a corrupt and carnal Reason, which sways him aside from Integrity and Righteousness towards the favoring of himself and his own party; And whatever Part is uppermost, they are apt to make such new Laws as they frame, and also the interpretation of old ones bend towards the favor of their own party. Therefore we would have any man in Authority wait in favor of God, to have that Principle of God raised up in him, which is for righteousness and not selfish, and watch to be guided by that in all he does, either in making Laws for Government or in governing by Laws already made.¹⁰⁹

¹⁰⁹ 1 Isaac Penington, Works 326-27. See also George Fox, Quaker Testimony Concerning Magistracy (London, 1669) Wing F1752; George Fox, Something in Answer to a law lately made at the first sessions of the General Court (London, 1679) Wing F1911; George Fox, The Christian Judge, so called their words judged by the holy men of God (London, 1676) Wing 1759; George Fox, The Beginning of Tithes in the law and the ending of tythes in the Gospel (London, 1676) Wing F1752; George Fox, The Law of God the Rule of Law-makers (London, 1658) Wing F1856; Thomas Rudyard, The Second Part of the People's Ancient and Just Liberties (London, 1670). See generally Horle, *supra* note 84.

Thomas Ellwood, himself a lawyer, would provide a useful study of the effect of English criminal justice upon the thought of Quakers. Ellwood, who left an extended autobiography

Pastorius' concern with English political theory appears in the books that he recommended as reading. Among the works Pastorius thought worthwhile were John Selden's Table Talk, a work of England's great legal historian that discussed English politics; John Barclay's Argenis, a political novel written expressly for the guidance of young Louis XIII and then translated into English, and John Higgins, Mirroure of Magistrates, which provided advice for rulers. One can also deduce something of Pastorius' attitudes from the books in his library. Although one must be suspicious of making too much out of the books in a library, the preponderance of works on pietism and Quakerism testify to Pastorius' religious beliefs. Other books present tantalizing suggestions. He had, for instance, a copy of an account of the treason trial of New York Governor Nicholas Bayard. Bayard was opposed by William Atwood, himself a proponent of the Ancient Constitution and thus a supporter of Parliament's rights and, presumably, of English rights against the crown. Despite a vigorous defense, Bayard was sentenced to death. It remains unclear why Pastorius had the account, but it may testify to Pastorius' sympathy with Bayard's cause.¹¹⁰

detailing his sufferings, published several tracts to aid Quaker defendants in the legal system. See Thomas Ellwood, Caution to Constables (London, 1681); Thomas Ellwood, A Discourse Concerning Riots (London, 1682); Thomas Ellwood, The History of the Life of Thomas Ellwood (London, 1714) (C.G. Crump ed. 1900).

¹¹⁰ See Toms, supra note 21, at 176, 166 (discussing Pastorius' recommendations); Pastorius' Library, supra note 34. See also William Atwood, Jani Anglorum Facies Nova (London, 1680); Eben Moglen, Considering Zenger: Partisan Politics and the Legal Profession, 94 Colum. L. Rev. 1495, 1500-02 (1994) (observing a growth in sophistication in the New York bar between Bayard's treason trial and the Zenger trial). For an initial examination of the more than 300 books by Quakers that Pastorius consulted while compiling his Bee Hive, see Alfred L. Brophy, The Quaker-Bibliographic World of Francis Daniel Pastorius' Bee Hive, (manuscript in progress).

In his search for ways to create a virtuous magistracy, Penn turned to classical examples. Sparta, the republic famous throughout antiquity for its self-denying and hence virtuous citizens, occupied a central place in many of their writings. William Penn told the story in No Cross, No Crown of "Archidemus, King of Sparta": "being askt, who was Master of Lacedemonia the laws, saith he and after them the Magistrates." Pastorius included the story in his Bee Hive entry for Law.¹¹¹ The colonists realized that the magistrates were responsible for guiding the state. And it was the establishment of a virtuous magistracy that occupied much of the thoughts of Quakers. If judges began to sell their positions or favor friends, then they ran the risk of tearing down the structure of government. Despite the warnings of Penn and Pastorius, the magistrates in Pennsylvania were subject to reproach. Samuel Carpenter warned Penn in 1684 after the Free Society of Traders, a joint stock company that Penn had an interest in, received favorable treatment from the county courts.¹¹²

Virtue was important for magistrates not only because they affected people's fortunes, but also because they served as models. Penn himself warned about the dangers in his No Cross, No Crown. Penn included in the second part of No Cross, No Crown examples from ancient history to illustrate his points. Pastorius copied several of Penn's examples into his Bee Hive entry for Law. First, he used the example of Xenophanes, who was jeered for refusing to gamble. "They that make laws must keep them saith Xenophanes" in response.¹¹³ Pastorius also took the example of "Pericles, [who] mounting the tribunal prayed to God, not a word might fall from

¹¹¹ Penn, No Cross, No Crown, supra note 97, at 382.

¹¹² See Carpenter to Penn, Dec. 25, 1684, 2 PWP, supra note 72, at 610.

¹¹³ Penn, No Cross, No Crown, supra note 97, at 341.

him, that should scandalize the people, wrong the public affairs, or hurt his own."¹¹⁴ Penn explained the context of Pericles' statement:

One of his friends praying him to speak falsely; we are friends, saith he, but not beyond the Alter; meaning, not against Religion and Truth. Sophocles being his companion, upon sight of a Beautiful woman, said to Pericles, Ah! What a lovely creature is that! To which Pericles reply'd, It becometh a Magistrate not only to have his hands clean, but his Tongue and Eyes also.¹¹⁵

Pastorius concluded with a general aphorism, that "He cannot be a competent judge of another's crime that is guilty of the like himself." From Seneca, Pastorius added the idea that judges must be passionless when they decide a case or pass judgment. "The Publick magistrate begins with persuasion and his Business is, to beget a Detestation for vice, and a Veneration for Virtue: From Thence, if need be, he advances, to Admonition, and Reproach, and then to Punishment; but Moderate and Revocable, unless the Wickedness be incurable, and then the Punishment must be so."¹¹⁶ Seneca, Pastorius, and Penn all thought that the magistrate had the duty of maintaining control of society. When the magistrates failed to fulfill that duty, government suffered. "Where the reins of Government are too slack," Penn warned, "there the Manners of the People are corrupted; and that destroys Industry, begets Effiminacy, and provokes Heaven against it."¹¹⁷

¹¹⁴ Law Entry, Bee Hive, supra note 1 (citing No Cross, No Crown, supra note 97, at 383).

¹¹⁵ Penn, No Cross No Crown, supra note 97, at 383-84.

¹¹⁶ Judges Entry, Bee Hive, supra note 1 (quoting Robert L'Estange, Seneca's Morals 71 (London, 1696)). Pastorius also recommended L'Estange's version of The Fables of AEsop and other Eminent Mythologists: With Moral Reflections (1692). See Toms, supra note 21, at 176.

¹¹⁷ Penn, Fruits of Solitude, supra, note 89, at 72. Classical ideas, such as virtue, pervaded Penn's writings, as they did those of his contemporaries. See Dunn, supra note 88; J.G.A. Pocock, The Machievellian Moment 333-422 (1975). One can see his reliance upon classical models particularly well in No Cross, No Crown and in his early drafts of fundamental constitutions of Pennsylvania. See 2 PWP, supra note 72, at 140-56.

The chief job of magistrates, Pastorius thought, was to uphold morals. In the New Primmer he prepared for use by his students, Pastorius summarized the duties of magistrates.

Magistrates must, he thought:

rule in the fear of God, 2 Sam 23:3, with Diligence, Rom. 12:8, as wise and understanding men, 2 Deut. 1:17, Know the law, Ezra 7:25, judge righteously, respect not person, but judge the small as well as the great, Vers. 16, 17, and chap. 16-19, condemn not the just, Prov. 17 15, pervert not the judgment of the poor in his Cause, Exod. 23:6, slay not the innocent, . . . take no Gift, Vers. 8 (Acts 24 26) . . . not vex nor oppose the stranger, 12.9 afflict not any widow or fatherless child, chap. 22 Isa. 1:23, do justice to the needy, defend and deliver him, Pal. 82:3, stem and passions Zech. 7:9, justify not the wicked for reward, Isa. 5:23, but rebuke him, Prov. 24, 23, execute wrath upon evil Doers, Rom. 13:3,4, that good men may lead a quiet and peaceable life in all goodness and honesty. 1 Tim 2:2, [be] blameless themselves, John 8:3, [and] not d[o] the same things. Rom 2:1.¹¹⁸

Related to this is Pastorius' statement that judges should interpret and not make law, taken from Lord Bacon's Essays. Pastorius begins his entry on Judges by quoting Bacon: "Their proper virtue is integrity; their office not to make Law, but to interpreting Law." Bacon continued: "Else it will be like the Authority, claimed by the Church of Rome; which under the pretext of Exposition of Scripture, doth not sticke to Adde and Alter; And to pronounce that, which they doe not Finde; And by Shew of Antiquity, to introduce Novelty."¹¹⁹ Pastorius meant that judges should be bound by the law; otherwise, they would not maintain integrity, because they would substitute their own thoughts for the law and in that way introduce improper results.

¹¹⁸ Pastorius, A New Primmer, supra note 17, at 34.

¹¹⁹ See Judges Entry, Bee Hive, supra note 1; Francis Bacon, Of Judicature, Essays 316 (London, 1654); Daniel R. Coquillette, Lord Bacon 192-94 (1992) (discussing Bacon's "Of Judicature" essay).

Pastorius believed that magistrates should be obeyed. "By nature it is ordained that the better command the worse"¹²⁰ and magistrates were some of the superiors who ought to be obeyed. Nevertheless, just as Lord Bacon had written, Pastorius thought that "the Magistrate is bound to act according to the law, and not to set up his Will in the stead thereof."¹²¹ He concluded the Bee Hive entry on magistrates with the stern warning that "A good Government is a ship and [a] Magistrate [is a] shipmaster, that takes the shortest and safest course, but a wicked Magistrate is a wolf made leader of the fold. [He] Will not protect us in our lives, liberties and estates."¹²²

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Although he opposed the use of law to extract undue advantage from an adversary, like others interested in legal reform in the seventeenth and eighteenth century, Pastorius was concerned with the payment of just debts. He also believed that the courts should be used to

¹²⁰ Magistrates Entry, Bee Hive, supra note 1. Quaker writings were frequently addressed to magistrates, as the people who carried the power to enforce the laws. George Fox's Journal, for example, contained numerous instances of his addresses to magistrates. See, e.g., Fox, Journal, supra note 64, at 45, 435. But magistrates could do only so much; religion also served to condition people to accept their place. Id. at 90. We need further study of the way that Quakers' experiences in England conditioned them to adopt religious tolerance and focus attention on "justice" as a key element of good government. And in turn the way that those attitudes influenced the subsequent development of a revolutionary constitutionalism in the American colonies. A beginning appears in Horle, supra note 84 and William Offutt, Of Good Laws and Good Men: Law and Community in the Delaware Valley, 1680-1710 (1995), which look at how Quakers' treatment by the English legal system influenced their beliefs. See generally Alan Heimert, Religion and the American Mind from Great Awakening to Revolution (1966) (tracing influence of religious beliefs on American Revolution); Christopher Hill, Ideological Origins of the English Revolution (1960) (tracing the influences of religion and the social surroundings on English political thought).

¹²¹ See Magistrates Entry, Bee Hive, supra note 1.

¹²² Id.

enforce just debts. Some Quakers suggested that one should never resort to law suits.¹²³

Pastorius explicitly sided with those Quakers supporting use of the legal system to compel payment of fair debts and to punish wrongdoers.¹²⁴

Concern over the payment of debts likewise occupied an important place in Pastorius' thinking. He began his discussion of "Debt," by imploring "Christians, you owe love to one another. Will ye not be honest men and pay your debt." And then, quoting Penn's Fruits of Solitude, he warned do not "ruin him to get that which will not ruin thee to lose." Nevertheless, he concluded that one should pay one's debt. "Whatever we owe, it's our part to pay it; for whether the Creditor be good or bad, the Debt is still the same."¹²⁵ His final warning was to stay out of debt completely: "he that cannot pay, let him pray; he is rich who has no debt."¹²⁶ Thus, while many of Pastorius' writings concern the need for justice, fair dealing, love and peace, he recognized simultaneously the need for strict enforcement of law and the duty of both magistrates

¹²³ Daniel Leeds, New England's Spirit of Persecution Transmitted to Pennsylvania 82-83, 90 (New York, 1699) (suggesting that Quakers should never sue at law).

¹²⁴ See Caleb Pusey, Satan's Harbinger Refuted (Philadelphia, 1699) (refuting Leeds' claim that Quakers should avoid lawsuits). Given Pastorius' heavy reliance upon other pietists and Quakers in the Bee Hive, one might look to their writings, as well as English legal reformers, for further elaboration of the ideas that Pastorius expressed. Pastorius' entry for Magistrates cited Pusey to show that law suits were appropriate. He thereby avoided the tendency of Pietists to move entirely away from law. See A.G. Roeber, Palatines, Liberty, and Property chap. 3 (1993) (discussing Pietism, Christian liberty, and the problem of worldly goods); Der Hoch-Deutsch Americanische Calender (Christopher Saur ed. 1749) (opposing use of courts).

¹²⁵ Penn, Fruits, supra note 89, maxim 43. Like other German and English writers of his time, he opposed luxury and ostentatious displays. For example, he criticized "A lawyer with a bushy powdered whig on his head," citing 1 Corinthians 11:14 and Revelations 9:8." Bee Hive, supra note 1, supplement sec. 27. See also Seneca Morals, supra note 116, at 46.

¹²⁶ Debt Entry, Bee Hive, supra note 1.

and those they governed to follow the law. It is the specific legal structure established in Pennsylvania that Pastorius' Young Country Clerk's Collection illustrates well.

IV

The Young County Clerk's Collection and English Law

A. Seventeenth-Century English Legal Treatises in Pennsylvania

The types of treatises available in early Pennsylvania mirrored the distinctions between Pastorius' writings on justice, law, and magistrates that appeared in his Bee Hive and those on practical law that appeared in the Young Country Clerk's Collection. There were a few books in early Pennsylvania that discussed law in substantive terms with wide-ranging statements about the nature of English law and justice, such as Henry Finch's Law, or a Discourse Thereof, Bacon's Essays, Coke's Institutes, Penn's Excellent Priviledge of Liberty and Property and his Ancient Liberties Asserted, John Selden's Table Talk and Henry Care's English Liberties. Pastorius' library included some such books, as well as a number of religious books that discussed law, such as George Fox's Journal and Jacob Spener's Pia Desideria.¹²⁷

There were also a significant number of sophisticated works detailing English and colonial statutes, such as The Laws of Jamaica and Edmund Wingate's Abridgement of all the Statutes in force. Works on civil law, such as John Cowell's Interpreter and Schütz'

¹²⁷ See Edwin Wolf, The Library of a Philadelphia Judge, 79 Penn. Mag. Hist. & Bio. 180-91 (1959) [hereafter Guest's Library] (listing books in Judge John Guest's library); Pastorius's library, supra note 34. One of the areas in which historians of colonial America have expanded our knowledge the most in recent years is that of books. We now know a substantial amount about what early Americans read and hence have increased our ability to see the world in the way that they did. Mr. Wolf has contributed probably as much as any other individual to expansion of knowledge of what lawyers read. See Edwin Wolf, The Book Culture of a Colonial American City: Philadelphia Books, Bookman, and Booksellers 131-63 (1988) (discussing law books available in early Philadelphia) [hereafter Book Culture of Philadelphia].

Compendium Iuris, as well as reports of cases in both the Chancery and the common law courts also appeared in Pennsylvania libraries.¹²⁸ Sometime near the beginning of the eighteenth century, lawyers such as James Logan, Penn's secretary and later a Justice in Philadelphia, and Ralph Asheton, a lawyer who emigrated to Pennsylvania in 1708, built extensive libraries of dozens of law books, advising on highly technical areas of the complicated English law, as well as on more abstract topics of political philosophy. Logan kept up a steady correspondence with Pastorius, so it is likely that Pastorius had access to Logan's law books, to the extent that they interested him.¹²⁹

One also finds a healthy collection of "practical" legal treatises in early Pennsylvania. A number of important books known to be in Pennsylvania contemporaneous with Pastorius consisted largely of forms for pleadings in court. Such books included Richard Brownlow's Book of Entries and John Herne's The Pleader. There were also books aiding in land transactions such as William Style's The Practical Register and Robert Gardiner, Ars Clericals: the Art of Conveyancing, which included both forms for land transactions and explanations of the law of property. Other books combined some forms with discussion of substantive law. Those largely discussed the powers of the local courts and justices of the peace, such as John Kitchen's Jurisdictions and Richard Chamberlain, The Complete Justice. Chamberlain's manual, which

¹²⁸ See Wolf, Guest's Library, supra note 127; Pastorius' Library, supra note 34.

¹²⁹ Edwin Wolf, The Library of James Logan of Philadelphia, 1674-1751 (1974) (describing each book in Logan's library); Catalogus Bibliothecae Loganianae . . . (Philadelphia, 1760) (catalog of Logan's library); Edwin Wolf, The Library of Ralph Ashton, Penn. Mag. Hist. & Bio. 319-26 (1964). Pastorius recommended reading Hugh Grotius. Pastorius to Lloyd Zachary, Letterbook, Dec. 1718, HSP.

was in Pastorius' library, consisted of an alphabetical listing of issues facing justices, from Abjuration through Women. It advised justices of their powers and jurisdiction.¹³⁰

There were, finally, three practical volumes that proved particularly influential on Pastorius because he drew upon them in compiling the Collection: Richard Hill's Young Clerk's Guide, Edward Cocker's Young Secretaries Guide and John Hill's Young Clerk's Tutor. The Young Clerk's Guide and the Young Secretaries Guide consisted largely of forms for land transactions and contracts; the Young Clerk's Tutor contained no forms for land transactions other than testamentary and inter vivos gifts, but had ample contracts and some forms writs as well as forms for use outside of court.

B. The Young Country Clerk's Collection

The Young Country Clerk's Collection nearly two hundred pages of closely-written manuscript begins with a grand title: "The Young Country Clerk's Collection of the best Presidents of Bills, Bonds, Conditions, Acquittances, Releases, Indentures, Deeds of Sale, Letters of Attorney, Last Wills and Testaments &c With many other necessary and useful Forms of such Writings as are vulgarly in use between Man and Man."¹³¹ It certainly lives up to its billing; the Collection consists largely of forms for land transactions, contracts and writs for operation of the courts.

The Collection devoted much space to forms for operation of the courts. From commissions to justices, to presentments for violating laws, to summons to appear, to recognizances, Pastorius' book included all the forms that were necessary for a court to operate.

¹³⁰ See Guest's Library, supra note 127; Pastorius' Library, supra note 34.

¹³¹ YCCC, supra note 2, at 201.

There were ample forms for insuring the functioning of Pennsylvania society, including a petition to the court from a family who had lost their house to fire, a petition to the Queen to restore Pennsylvania's charter, and several letters to William Penn, the proprietor, to grant residents of Germantown additional privileges. Pastorius even had sample notices of lost animals and runaway servants and numerous forms for letters to parents, relatives, friends, and business associates. He also included a table of regnal years and a page of models for bookkeeping. Near the end of the manuscript, he also added about forty pages of sample letters, apparently largely taken from the Young Secretary's Guide. Real property took up most of the space in private law; more than twenty manuscript pages were devoted to real property. Contracts took up more than fifteen pages.

The Collection was apparently written over a period of time, from around 1698 through about 1715. Many of the pleadings refer to dates from 1690 through 1703.¹³² Other references suggest a later date. Pastorius refers to Queen Anne's Address on the Union of England and Scotland, which took place in 1707. The Address is quoted near the end of the book, so he may have written the bulk of it earlier, perhaps much earlier than 1707; likewise, his petition to the Queen on behalf of the Pennsylvania Charter suggests a date around 1710. Moreover, his table of regnal years seems to have been completed in Queen Anne's reign, with the entries for George I and II added later.¹³³

¹³² See YCCC, supra note 2, at 214 (double bond dated 1690); 249 (sale of land dated 1700); 250 (agreement about payment of land dated 1701); 285 (land sale dated 1703).

¹³³ Id.

One is left wondering why, given the extraordinary investment of time involved in writing the Collection, the manuscript was never published. One suspects that Pastorius planned to publish the manuscript, as he had his New Primmer, which he prepared for use by his students. The Collection could stand on its own as a general treatise, because it contains information of general use such as personal names, fictitious names, a table for computing interest, a table of regnal years, and forms for letters, which he compiled largely out of the Young Secretaries Guide. Given his integration of definitions of legal terms with precedents, it appears that he intended the manuscript for learning the basics of law. He may even have had thoughts about using the Collection with his students.¹³⁴ Perhaps the lack of a printer in Pennsylvania in the first years of the eighteenth century accounts for Pastorius' failure to publish the manuscript. Pastorius wrote in a period in which even the most basic documents, such as the statutes passed by the General Assembly, remained in manuscript form.¹³⁵ For whatever reason, the book was never published and Pennsylvanians were left without books providing them legal counsel on Pennsylvania law. The first practical legal treatise published in Pennsylvania was Conductor Generalis, printed by William Bradford in 1722, two years after Pastorius' death, and that was merely a reprint of the English justice of the peace manual by the same name. It was not until

¹³⁴ See Pastorius, New Primmer, supra note 17. Professor Learned, author of an excellent biography of Pastorius, hypothesized that Pastorius may have used the Collection to teach law to his students. See Learned, supra note 2, at 272.

¹³⁵ After William Bradford fled to New York in 1693 in the wake of the Keithian controversy, in which Bradford he was prosecuted for printing books without identifying himself as the publisher, Philadelphia lacked a printer until 1707. See 3 PWP, supra note 72, at 639. Until 1714, there was no printed copy of the laws, only an abstract, see Abstract or Abridgement, supra 3; Laws of the Province of Pennsylvania, supra note 3. Pastorius made due with a manuscript copy of the laws. See supra note 34, 70.

1761 that David Henderson published his Des Landsman Advocat, a German-language handbook on Pennsylvania law, that German speakers had counsel in their own language.¹³⁶

In order to make the treatise as accessible as possible, it had three detailed indexes. The first, located at the front of the manuscript, indexed the forms in the main portion of his treatise. Appendix I prints part of the title page and the first table of contents, with Pastorius' notations to indicate where he obtained each precedent. The second index, known as the "Universal Index", was apparently written after he completed the treatise. It referred to both the forms in his treatise and to other forms found in English law books. The third index, called the "Supplement," is only a page long; it was likely added sometime after the main portion of the manuscript was completed.¹³⁷

1. Sources

On the first page of The Young Country Clerk's Collection, Pastorius explains that there are four sources of his treatise: John Hill's Young Secretaries Guide, Edward Cocker's Young Clerks Tutor, Richard Hill's Young Clerk's Guide, and Pastorius' own former precedents. Pastorius drew freely on the three treatises. In the body of the text, he cited the Clerks Tutor nearly forty times, the Secretaries Guide more than thirty times, and the voluminous Clerks Guide, the most comprehensive and sophisticated of the three, nearly thirty times. In many

¹³⁶ See Conductor Generalis, supra note 5; Pastorius had a copy of the English version of Conductor Generalis in his library. See Pastorius' Library, supra note 34. David Henderson, Des Landsman Advocat (Philadelphia, 1761). For detailed discussion of the diffusion of knowledge about English law in the German community, see Roeber, supra note 124, at 184-205.

¹³⁷ See YCCC, supra note 2, at 361-71 ("Universal" index); id. at 372, 314 (Supplemental index).

instances, he drew his forms nearly verbatim out of the books.¹³⁸ At other times he merely cited the works to show that further elaborations were available in the treatises. He also drew upon precedents given to him by others in Pennsylvania. Charles Brockden, a lawyer with a large collection of English law books, was credited with furnishing at least one precedent. Brockden in turn had apparently derived many of his precedents from his English law books, suggesting that Pennsylvanians drew upon their English legal heritage frequently. George Lowther, another Philadelphia lawyer, supplied several precedents, and William Clark, a Justice of Sussex County who at one time served as speaker of the General Assembly, furnished one precedent. Another precedent, a *mittimus* from Queens County, Long Island, shows that Pastorius' circle of contributors stretched far and that legal knowledge was communicated between New York and Pennsylvania.¹³⁹

Pastorius also included a comprehensive index at the end of the work, which referred the reader to additional precedents in the Young Secretaries Guide, the Young Clerk's Tutor, and the Young Clerk's Guide. In introducing the comprehensive index, Pastorius observed that "Whereas there is almost a numberless number of such like Legal Writings (as in the former part of this Book you may See a pretty many) all which to transcribe I had neither time, paper, will, nor patience enough, therefore know yee that this following Table shall direct you where to find

¹³⁸ See Appendix I, II (showing Pastorius' citations to the treatises). The citation frequencies do not include citations to the treatises in Pastorius' Universal Index.

¹³⁹ See Wolf, Book Culture of Philadelphia, *supra* note 127, at 141 (discussing Brockden's library, which consisted of at least 24 titles); YCCC, *supra* note 2, at 315 (Brockden precedent); 257 (Clark precedent); 285 (Lowther precedent); 257 (precedent from Queens County, Long Island).

abundance of them."¹⁴⁰ He shows that he consciously thought of his manuscript as building upon the English law books by beginning the pagination of his work at 200, noting that "the previous 199 pages are in Edward Crook's Young Secretaries Guide."¹⁴¹

It is by comparing Pastorius' manuscript to the English law books upon which he drew that one gains a sense of where Pastorius' work was original and where it was derivative. Table 1 shows the relative space devoted to each area by Pastorius' manuscript and his two most often cited sources, Edward Cocker's Young Clerk's Tutor and John Hill's Young Secretaries Guide. It shows that Pastorius had a balance between contracts, property and forms for operation of the courts that the other two lacked. The Collection devoted proportionally more space to property than the Secretaries Guide and proportionally less space to contracts than either the Secretaries Guide or the Clerks Tutor, although he maintained the essential contract forms. The Collection, one suspects, had a broader usefulness than any of the three treatises that he drew upon. Once he completed his work, it was useful to justices of the peace as well as clerks wanting to transfer land, write a will, or write contracts for sale of goods and services.

2. The Structure of Pastorius' Collection

Historians have learned a substantial amount about legal systems and the minds of those who inhabit the legal systems by examining the contents of legal treatises.¹⁴² Examination of

¹⁴⁰ YCCC, supra note 2, at 361.

¹⁴¹ See id. unnumbered introductory page.

¹⁴² See, e.g., Daniel Boorstin, The Mysterious Science of the Law (1948); Robert Cover, Tucker's Blackstone, 70 Colum. L. Rev. 1475 (1970) (discussing Henry St. George Tucker's 1803 edition of Blackstone's Commentaries and Tucker's extensive glosses); Duncan Kennedy, The Structure of Blackstone's Commentaries, 28 Buffalo L. Rev. 205 (1979); Alan Watson, The Structure of Blackstone's Commentaries, 97 Yale L.J. 795 (1988) (responding to Kennedy's

treatises adds a further dimension to our knowledge of colonial American legal systems, which is based largely on studies of court records.¹⁴³ Examination of court records is valuable for showing some points of contention in a society and how the courts resolved disputes, but it cannot tell us much about legal procedures that do not involve suits, such as contracts and land transactions. Legal treatises, on the other hand, are valuable because they tell us about the issues important to their authors and they can give excellent overviews of a legal system, even though they may fail to tell us much about patterns of dispute within a community. Particularly with a treatise compiled by a participant in the legal system under study, the contents illuminate much

thesis and pointing out that Blackstone took his structure from Justinian's Institutes). Professor Charles Donahue's lectures on the structure of Athelbert's Code and of Glanville first suggested to me the profitability of structural analysis.

¹⁴³ Historians have quite profitably mined court records to see the issues of importance to the legal/court system, see, e.g., Eben Moglen, *Settling the Law: Legal Development in Colonial New York* (Ph.D. diss. Yale University, 1992); William M. Offutt, *Law and Social Cohesion in a Plural Society: The Delaware Valley, 1680-1720* (Ph.D. Diss. Johns Hopkins University, 1987); Alfred L. Brophy, "For the Preservation of the King's Peace and Justice": Community and English Law in Sussex County, Pennsylvania, 1682-1696, forthcoming, *American Journal of Legal History* (1995). For a comprehensive bibliography of the wealth of outstanding work done in this area in other colonial American colonies, see Peter Hoffer, *Law and People in Colonial America* (1992).

about the surrounding legal system.¹⁴⁴ Pastorius' treatise is particularly valuable because it shows what he believed were the most important elements of Pennsylvania law.

Historians of colonial American law are familiar with the range of law books that were available in early America. They have not sufficiently examined the contents of those books in relation to the law as practiced in early America, however; nor have they always known what parts of the books the colonists read.¹⁴⁵ Pastorius' manuscript is exciting because he frequently

¹⁴⁴ Many of the earliest legal treatises published in America were little more than direct copies of English treatises. See Hill, Young Clerk's Guide, supra note 5; William Blackstone, Commentaries (Philadelphia, 1771-73); Eben Moglen, Taking the Fifth: Reconsidering the Origins of the Constitutional Privilege Against Self-Incrimination, 92 Mich. L. Rev. 1086, 1097-99 (1992) (mining legal treatises printed in early America for evidence of self-incrimination law). When Americans set out to remold English law books for use in America, as Henry St. George Tucker did in 1803 with Blackstone's Commentaries, their results are extraordinarily illuminating about both the mind of the Americans and the state of American law. See Cover, supra note 142. See also Hugh Henry Brackenridge, Law Miscellanies (Philadelphia, 1813); see also John H. Langbein, Chancellor Kent and the History of Legal Literature, 93 Colum. L. Rev. 547-94 (1993).

Professor Alan Watson has judiciously cautioned against too heavy reliance on legal treatises as representations of the reality of the legal system under study. See Watson, supra note 142; Legal Transplants: An Approach to Comparative Law (2nd ed. 1993); The Comity of Errors: Justice Story and the Conflict of Laws (1992) (reminding that Story drew his conflicts jurisprudence from continental writers). Moreover, Professor Watson has made solid arguments that significant portions of a legal system's rules may be borrowed and thus have little if any relationship to the society of which they are a part. See generally Alan Watson, Slave Law in the Americas (1989). Nevertheless, a legal treatise that is compiled by a participant in the legal system of which he is writing will likely reflect the author's perception about the reality of the legal system.

¹⁴⁵ In recent years there has been a proliferation of knowledge about the contents of early American libraries of lawyers and non-lawyers alike. See, e.g., Wolf, Book Culture of Philadelphia, supra note 127, chap. 5; Richard Beale Davis, A Colonial Southern Bookshelf: Reading in the Eighteenth Century 24-69 (1979); W. Hamilton Bryson, Law Books in Colonial Virginia, A Census (1979); Jon Butler, William Teackle's 333 Books, 49 Wm. & Mary Q. 449-91 (1992); Lawrence B. Custer, William Cumming: A Colonial Lawyer and His Library, 3 J. Southern L. Hist. 221-40 (1994). We know what some judges and lawyers read from their notebooks and collected papers. See William Fitzhugh and His Chesapeake World, 1676-1701: The Fitzhugh Letters and Other Documents (Richard Beale Davis ed., 1963); Samuel

tells us where he has obtained his precedents. We can also see how he distilled English law for use in Pennsylvania.

Following the introductory page and index, Pastorius proceeds to notices, such as advertisements for lost animals and servants, then to Notes, certificates of marriage, letters of attorney, bonds and awards, and land transactions. He then shifts to warrants, releases, petitions, land sales again, mittimus, and miscellaneous other forms and index. It appears as though Pastorius tried to group similar forms together, as had been done in the Young Secretaries Guide. As the size of the treatise grew, however, his plans were foiled. This hypothesis is supported by Pastorius' heavy reliance upon the English treatises--particularly the Young Secretaries Guide and the Young Clerks Tutor in the first fifty pages of the Collection. After the initial fifty pages, however, the Collection draws only infrequently upon the English treatises. It relies upon forms that Pastorius encountered either as a justice or as a clerk. One suspects that he intended to have the forms appear in an orderly fashion--initial notices first, followed by bills and contracts, then land transactions, and finally forms for operation of the court, such as warrants. A complete table of contents appears in Appendix II, which further illuminates the structure of the Collection. Appendix III prints a small portion of the Collection.

C. Pennsylvania Law and The Young Country Clerk's Collection

The treatise allows us to see the several areas of Pennsylvania law and government that concerned Pastorius and allows a comparison between Pennsylvania and English law. The

Sewell's Diary (M. Halsey Thomas ed., 1973). See also David Hall Days of Wonder, Days of Judgment chap. 5 (reconstructing Sewell's life and thoughts based on his journal); A.G. Roeber, Faithful Magistrates and Republican Lawyers chap. 2 (1984) (mining William Fitzhugh's journal for evidence of nature of the law).

treatise is particularly illuminating about the state of real property, contract and criminal procedure. It shows that Pennsylvania law followed closely many aspects of English law and suggests that early Pennsylvanians “settled” the intellectual domain of law in America using English legal ideas.¹⁴⁶

1. Real Property

The Young Country Clerk's Collection contains more than twenty pages of forms for land transactions. It includes simple forms for absolute sales, taken directly from the Young Clerk's Tutor and Young Clerk's Guide as well as more complicated forms for land sales, mortgages, leases, and releases of land and quitrents.

a. Sale of Land and Mortgages

Beginning in 1683, Pennsylvania statute provided a simple format for land transactions.¹⁴⁷ Pennsylvania's reform of the notoriously complicated English law of land transactions is one of the triumphs of the Pennsylvania legislature and of the reformers of English law. The land law, in particular, attracted the attention of Quaker reformers. One E.B., perhaps the prominent Quaker Edward Burroughs, advocated in 1659 in The Mite of Affection the abolition of "all servile Tenures or Copy holds . . . being the badge or yoke of the Norman Conquest."¹⁴⁸ Penn presented practical reasons as well as political ones for his requirement of recording of land

¹⁴⁶ Eben Moglen's wonderful forthcoming study, Settling the Law: Colonial New York, 1650-1776, explains in detail the process by which the intellectual territory of the law was settled. I have drawn upon his insightful work in thinking about the contribution of Pastorius.

¹⁴⁷ The legislature was apparently motivated by concerns that land transactions in England were too complicated. See Chap. 78, in 1 Statutes at Large, supra note 70, at 146-47.

¹⁴⁸ E.B., The Mite of Affection 1 (London, 1659).

transactions. "To prevent frauds and vexatious suits," Penn wrote, "all charters, gifts, grants, and conveyances of land (except leases for a year or under) . . . shall be enrolled or registered in the public enrollment office." He went on to require "all deeds, grants, and conveyances of land . . . shall be enrolled or registered . . . within six months next after the making thereof . . . else to be void in law against all persons whatsoever."¹⁴⁹ But that was soon changed when many people found it a hardship to register the transaction. Benjamin Furly, a prominent Quaker and adviser to Penn, commenting from Rotterdam in 1682 on Penn's proposed constitution and laws for his colony, advised that "a form of deed be agreed upon that's short and plain, that we not be bound by the tricks of the lawyers of England." He also suggested that land transactions be made in open court.¹⁵⁰ Quakers were joined in their criticism of the land law by other reformers in seventeenth century England. William Sheppard, one of the most important and influential advocates of law reform and author of the most widely read legal treatise proposing reform, England's Balm, suggested standardizing forms for conveyances and establishing public registries for landholders.¹⁵¹

¹⁴⁹ Law 20, Laws Agreed Upon in England, in William Penn and the Founding of Pennsylvania, 1680-1684: A Documentary History 128, 130 (Jean R. Soderlund ed. 1983); but see Chap. 190, in 1 Statutes at Large supra note 56, at 172-73 (extending period for recording land) and Law about Recording Deeds, May 31, 1693, in id. at 202 (removing requirement that deeds be registered, but providing that "deeds and writings as shall be Enrouled or Registered in the rouls office and the exemplification of the records of the same in all Courts of Judicature shall be allowed and judged as valled as the original.") I wish to thank Barbara Weir and Laurie Rofini of the Chester County Archives for sharing their knowledge of the mechanics of early land transfers with me.

¹⁵⁰ Benjamin Furly, Critique of the Frame of Government, 1682, 2 PWP, supra note 72, at 229, 230.

¹⁵¹ William Sheppard, The President of Presidents. Or, one general president for common assurances by deeds (London, 1655) (advocating standard forms for conveyances as a way of

In keeping with Pennsylvania law, several of Pastorius' sample forms for land sales were simple, although not as simple as permitted by statute.¹⁵² There are more complicated forms, however. His first land sale form occupies five pages, the longest of any in his book. It contained a number of intricate clauses, providing for a description of the parties and the land involved, reciting the chain of title of the land from William Penn, with detailed words of grant and warranties, as well as a habendum clause. It followed the popular form for land sale in England. Pastorius may have compiled it largely from clauses in the Young Clerk's Guide, or from deeds in use in Pennsylvania, which in turn might have been taken from such popular books as the Modern Conveyancer or Ars Clericus.¹⁵³

Another popular method of land sale in seventeenth century England, indeed probably the most popular, was the lease and release. To convey by lease and release, the grantors first put the grantees into possession of the property through a lease, usually for six months or one year. The next day, the grantors, having seised the grantees, executed a release of all their interests in the land to the grantees (now lessees). The grantees' future interest in the land merged with their

securing property rights); Matthews, supra note 77, at 119 (discussing Sheppard's advocacy of county deed registries). See generally G.B. Warden, Law Reform in England and New England, 1620-1660, 37 William & Mary Q. 668-90 (1982).

¹⁵² See A Short Form of Sale of Land, YCCC, supra note 2, at 249 (Appendix III, Form A-7); Sale of Land Entailed, id. (Appendix III, Form A-8); Chap. 78, in 1 Statutes at Large, supra note 56, at 146-47 (prescribing format for land transactions and limiting estates to those of inheritance--fee simple--life, and years).

¹⁵³ YCCC, supra note 2, at 235-239 (Appendix III, Form A-1). See Young Clerk's Guide, supra note 34, at 158-64; Ars Clericus: The Art of Conveyancing, 35-96 (London, 2nd ed. 1696) (discussing parts of deeds); Modern Conveyancer: Or Conveyancing Improved 144-51 (London, 2d ed. 1696) ("A Bargain and Sale of Lands by Deed Inrolled"); William Shepherd, The Touchstone of Common Assurances (London, 1660) (discussing real property law and suggesting reforms).

present possessory right in the land, creating a fee simple in the grantees.¹⁵⁴ The lease and release method offered several advantages over the traditional grant. First, it allowed the parties to avoid the Statute of Enrollments and therefore allowed parties to transfer land without making a public record of the transaction. That advantage was initially not present in Pennsylvania, where the legislature required that all transactions be recorded, although it soon proved important because in 1693 the legislature removed the requirement that all deeds be recorded. A related advantage was that lease and release made livery of seissen unnecessary. Pastorius devotes an entire page to discussion of feoffment and livery of seissen, taken from the Young Clerk's Tutor. Pastorius concludes, "[i]nstead of this Livery here in Pennsylvania Deeds are delivered and acknowledged (in Open Court of Record . . .) before a Justice of the Peace or now by Lease and Release."¹⁵⁵

The lease and release also allowed grantees to create a settlement of uses. The common law prevented the creation of uses on uses. Thus, A seized to the use of Blackacre could not in turn create a use on Blackacre, nor could A sell Blackacre to B to the use of C. A could, however, release Blackacre to B, to the use of C.¹⁵⁶ Pennsylvanians might take advantage of the ability to make settlements with the lease and release; however, they seem to have rarely used lease and release for settlement, perhaps because uses were themselves rare.

¹⁵⁴ See 2 Blackstone, Commentaries *324-25 (Oxford, 1766) (discussing release); id. app. II, ii-xii (forms for conveyance by lease and release); Modern Conveyancer, supra note 153, at 13-14, 339-41 (describing lease and release and form for release); Ars Clericus, supra note 153, at 332-35. See also Simpson, supra note 156, at 188-90 (discussing lease and release); 6A Powell on Real Property sec. 895A (Patrick J. Rohan ed. 1994 ed.) (same).

¹⁵⁵ YCCC, supra note 2, at 248 2d. The notation "or now by Lease and Release" appears to have been added after the rest of the sentence.

¹⁵⁶ A. W. Brian Simpson, A Short History of the Land Law 190 (2nd ed. 1986).

Pastorius includes several forms providing for the lease and release. He explains how the lease and release operates in regard to the Statute of Uses. One must be put into possession "To the Intent and purpose that by vertue hereof and of the Statute made for transforming Uses into possession, [the grantee] may be in actual possession of the . . . land, hereditaments and premises . . . and be enabled to take and accept of a Release."¹⁵⁷ The placement of some of the forms for lease and release at the end of the manuscript suggests that they may have been added when it became apparent that Pennsylvanians were making use of the forms.¹⁵⁸

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Other land transactions were not so simple. A significant number of Pennsylvanians financed their purchase of land through mortgages.¹⁵⁹ English law provided several ways of mortgaging property. One of the most popular mortgage procedures, known as the classical common law mortgage, required that the purchaser (mortgagor) convey the property to the mortgagee, with a clause terminating the deed to the mortgagee when the mortgage was satisfied. Sometimes the conveyance to the mortgagee included a provision for the mortgagor to remain

¹⁵⁷ YCCC, supra note 2, at 320 (Appendix III, Form A-25). See also id. at 264; 277,6th; 277,7th-281; Young Clerk's Guide, supra note 34, at 261 (form for lease and release). Pastorius' commentary on the virtues of the lease and release is similar to that appearing in the legal literature. See Modern Conveyancer, supra note 153, at 14.

¹⁵⁸ For uses of lease and release in Pennsylvania land records, see Donna B. Munger, Pennsylvania Land Records: A History and Guide for Research 40-42 (1991) (discussing use of lease and release). Cf. Gary B. Nash, City Planning and Political Tension in the Seventeenth Century: The Case of Philadelphia, 112 Proceedings of the American Philosophical Society 54-73 (1968) (discussing extent of land sales in Philadelphia); Mary Schweitzer, Custom and Contract: Pennsylvania, 1681-1776, 89-113 (1987) (discussing land sales in Pennsylvania).

¹⁵⁹ See Gary B. Nash, Quakers and Politics: Pennsylvania, 1681-1720 60, 91 (1968) (reporting that land speculation and debt were rampant in Pennsylvania); Schweitzer, supra note 158, at 145, 153-54 (identifying the significance of mortgages in early Pennsylvania).

on the property, at other times a separate lease with the mortgagee as landlord and mortgagor as tenant was necessary.¹⁶⁰ Pastorius included the appropriate forms for the classical common law mortgage. In one form, he provided for a mortgagor to convey his land to the mortgagee and then make yearly payments to the mortgagee. When the mortgage was paid, then "this deed shall cease, termine and become utter void and to no effect." He also supplied several contracts to require the owner to reconvey the property to the lessee, or mortgagor, upon satisfaction.¹⁶¹

Probably even more popular than the classical form of mortgage was granting of a long-term lease to the mortgagee. Under the long-term lease mortgage, the mortgagor (purchaser) granted a lease to the mortgagee, with provision that the mortgagor retain possession until he (the mortgagor) defaulted. The deed also provided that the lease would be void when the mortgage

¹⁶⁰ See 7 William Holdsworth, A History of English Law 375-76 (2nd ed. 1937) (describing mechanics of mortgages and noting that standard form had been developed by fifteenth century); Simpson, supra note 156, at 242-44 (describing classical common law mortgage). See also Modern Conveyancer, supra note 153, at 122, 311 (describing mechanics of mortgages and providing forms).

¹⁶¹ See YCCC, supra note 2, at 283 (classical common law mortgage, printed in Appendix III, Form A-18); 240/2d (an indenture of recovery); 241; 240 (form drawn from the Young Clerk's Tutor for a recognizance (receipt) showing that the mortgage was satisfied). See Young Clerks Tutor, supra note 34, at 156-58 (classical common law mortgage). Pastorius provided a form for a related mortgage, which delivered the deed to the mortgagor only when the last payment was made, two years after the sale of land. The mortgagor was liable on a £74 penal bond if he failed to convey his title when the final payment was received. See YCCC, supra note 2, at 250. In another mortgage, Pastorius provided a deed of defeasance between a widow and her mortgagee, an Ironmaker. The deed stated that if the widow paid the mortgage money with interest, then the deed she had used to convey to the Ironmaker would be void. Id. at 283 (variant of classical common law mortgage, printed in Appendix III, Form A-19).

was satisfied. Pastorius included one long-term lease mortgage, perhaps based on the three works that he drew upon.¹⁶²

English law also provided a simpler mortgage process, which did not involve the sale or transfer of legal title to the mortgagee and then the lease-back to the mortgagee pending payment of the mortgage. The simpler mortgage required a contract providing that the mortgagee had a lien on the mortgagor's property. Such mortgages, which were growing in popularity in England, had the advantage of ease of execution and insured that the mortgagee would own the property upon payment, without any need to resort to lawsuit to compel the mortgagor to convey title. They also insured that if the mortgagee died before the mortgage was satisfied, the mortgaged property was not subject to dower and forced-share rights.¹⁶³ Pastorius provided forms for such simple mortgages, drawing upon forms that appeared in the Young Clerk's Tutor and Young Secretaries Guide.¹⁶⁴ Perhaps the simplest form of mortgage at English law was a sale of land through installments, with the grantor (mortgagee) retaining title until the last payment was completed. Pastorius included such a form.¹⁶⁵

¹⁶² See YCCC, supra note 2, at 239/2d (long-term lease mortgage), 283 (same) (printed in Appendix III, Forms A-2, A-19). See Tutor, supra note 34, at 75-77 (99 year lease mortgage); Young Clerk's Guide, supra note 34, at 140-45 (99 year lease mortgage); id. at 146 (covenant to convey seissen to mortgagee upon mortgagor's default); id. at 148-50 (assignment of lease). See also Simpson, supra note 156, at 242-43 (describing long-lease mortgage and providing further examples); 2 William Blackstone, Commentaries on the Laws of England *158 (describing advantages of long-lease mortgage and its vagaries); Modern Conveyancer, supra note 153, at 311, 319.

¹⁶³ See 7 Holdsworth, supra note 160, at 375-76; Simpson, supra note 156, at 242-44.

¹⁶⁴ See YCCC, supra note 2, at 283; 239/2d (printed in Appendix III, Forms A-2, A-18); Tutor, supra note 34, at 75; Secretaries Guide, supra note 34, at 156-57.

¹⁶⁵ YCCC, supra note 2, at 250 (Appendix 3, Form A-8).

b. Leases

Leases in the seventeenth century were used most commonly as part of a transfer of ownership of property and as parts of mortgages. Pastorius also included two leases appropriate for creating a landlord-tenant relationship. One lease provided for a six year rental of a plantation. The rent was be paid out of the produce of the land. The landlord, who had already planted ten acres of grain, was entitled to "one half part of all the wheat, rye and barley, the produce of the . . . Plantacion yearly during the . . . Term" and "one half of the yearly Increase of the Stock." The other lease provided for a rental of a house with fixed yearly payments for a term of seven years. In his Universal Index, Pastorius also refers to another lease in the Young Clerk's Guide.¹⁶⁶

c. Trusts

Pastorius even included two forms for trusts, which had recently replaced uses as a way of dividing equitable and legal control over property between two entities. Both trusts were created to provide a legacy for the Quakers. In one the creator provided that the Dublin Township Monthly Meeting chose the trustees and that the trustees should always insure that the Quakers occupied the land granted. It remains somewhat unclear what legal purpose either of the trusts served in Pennsylvania. The widespread use of wills would seem to serve the same purpose, by allowing the testator to control the property until death and then pass the remaining property to the various devisees. The trusts allowed, to a limited extent, more control over the devise than an outright bequest, as the first trust would insure that the Quakers would continue to

¹⁶⁶ See YCCC, supra note 2, at 277 (Appendix III, Form A-15); id. at 277 6th (Appendix III, Form A-15); id. at 366 (referring to Young Clerk's Guide, supra note 34, 335, 54, 221); id. at Index Supplement (referring to Young Clerk's Guide, supra note 34, at 66, 113, 205).

receive equitable use of the land, while a mere defeasible estate granted to the Quakers would allow the property to return to the grantor's heirs, who might not be Quakers, or to escheat to the state. Like the lease and release, Pastorius seems to have included the forms because they were in use, rather than because they were indispensable.¹⁶⁷

d. Gifts

Quaker families were particularly generous with their children. They frequently gave outright gifts of land upon marriage, a practice not followed in Puritan New England. The ability to make gifts of land during life, therefore, took on a particularly important role in Quaker Pennsylvania.¹⁶⁸ Pastorius was perhaps recognizing the importance of inter vivos transfers or perhaps simply relying upon forms available to him in the Secretaries Guide. The form in the Collection followed closely the form in the Secretaries Guide, as did the several paragraphs discussing "things to be considered" in deeds of gift following Pastorius' deed. Pastorius recognized the importance of deeds of gifts to Quaker families by altering the deed so that it was a grant within a family, rather than among friends as in the Secretaries Guide, and by mentioning in the consideration clause of the grant the grantor's family.¹⁶⁹

¹⁶⁷ See YCCC, supra note 2, at 249 2d (Appendix III, form A-8); Simpson, supra note 156, at 202-07.

¹⁶⁸ See Barry Levy, Quakers and the American Family chap. 4, esp. 144-51 (1988) (finding high rate of inter vivos transfers of land); Philip Greven, Four Generations (1977) (surveying transfer of property among families in Andover Massachusetts during the eighteenth century and finding that land was infrequently granted inter vivos).

¹⁶⁹ YCCC, supra note 2, at 246 (citing Secretaries Guide 121, 122). Thus, Pastorius' deed granted land "in consideration of the Love & good will & affection . . . which I have & do bear towards my loving BB and for his & his children their better & more comfortable subsistence in the world" and in further consideration of some unspecified sum of money. Id. The other deeds provided in the Collection could, of course, also be used to convey property inter vivos to family

e. Wills

As with inter vivos gifts, the Quakers behaved differently from the New England Puritans in their devises on death. Quakers distributed property to a wider range of family members and friends than did those in New England. The Collection included several forms for wills. The first will, based loosely on precedents from the Clerk's Tutor and the Secretaries Guide provided for distribution of property among several devisees, with payments of debts by the executor and grants of money to other devisees. Although lengthy, the will was not especially complicated when compared to the wills appearing in some English books that provided for family settlements. Once again the Pennsylvanians benefited from their relatively simple real property law.¹⁷⁰

Another was apparently based on the 1699 will of John Dumpling of Philadelphia. Dumpling gave his wife a life estate in his property, with the provision that if she remarried, she would receive half of his estate and the remainder would go in equal parts to his brother and sister, who resided in Holland. Several clauses providing for executors followed the will. Another will, only a paragraph long, devised all the property to the testator's spouse. Pastorius also included several notes on wills, including the requirement of three witnesses and the requirement that specific legacies require enumeration in the will.¹⁷¹

members.

¹⁷⁰ YCCC, supra note 2, at 230-34 (citing Clerk's Tutor, supra note 34, at 87; Secretaries Guide, supra note 34, at 119).

¹⁷¹ YCCC, supra note 2, at 230-31 252 (referring to Secretaries Guide, supra note 34, at 119). See also Swinburn's Wills (London, 1677), which was in Pennsylvania by the 1720s. See Wolf, supra note 127, at 183.

One is left with the impression that early Pennsylvania land law mirrored in important ways the procedures of English law. Thus, the forms for land transactions were largely similar. Nevertheless, the complicated aspects, such as uses, were rare in Pennsylvania. Thus, Pennsylvanians drew upon their English heritage to settle their ownership rights. At the same time, they avoided the complications of English land law, which caused the treatises written on English conveyancing to run to several hundred pages. There was not much need for extensive discussion of how lands were conveyed, or forms for settlements of uses, nor for covenants to stand seized to uses. Fines were likewise unimportant and recoveries were relatively unimportant.¹⁷² Pastorius' real property forms, therefore, helped to make land transfers easier, thus complying with the Biblical commands to make law and justice accessible. In that process, he was part of a larger movement to reform property law by simplifying the procedure for transferring land and by eliminating feudal vestiges of property law such as uses and settlements.

2. Contracts

In keeping with the vigorous market economy existing in Pennsylvania, Pastorius included a substantial number of forms for contracts in the Collection. By contract, Pastorius meant "the mutual consent of the Parties concerned by a formal Deed in writing, whereby they promise to give or do somewhat in such sort as they have concluded amongst themselves."¹⁷³

¹⁷² See Ars Clericus, supra note 153; Modern Conveyancer, supra note 153. Young Clerks Tutor, supra note 34, at 92-104 (forms for fines, none of which are included in Pastorius' Collection).

¹⁷³ YCCC, supra note 2, at 210. Several fine studies examine the importance of the economy in Pennsylvania's early development. See, e.g., Thomas Doerflinger, A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia (1986); Nash,

The types of forms fall into several broad categories: obligatory paper, such as bills, notes, and bonds, contracts for sales of goods and services, such as indentures for apprentices and agreements to make bricks or construct buildings, and paper recognizing the fulfillment of obligations, such as receipts, recognizances and releases.

a. Bills, Notes, and Bonds

Most of the commercial transaction forms in the Collection are bills, bonds, or notes. Pastorius, in the midst of his bills, includes several paragraphs, based on the Young Clerk's Tutor that a "Bill or Obligation is a Deed in Writing, and the nature thereof is to bind one (or more) to another to pay a sum of money, or to give, do and perform something. The difference betwixt them is that when it is in English, they call it a Bill; but when it is in Latin, a Bond or Obligation."¹⁷⁴

Several of the bills served merely to acknowledge a debt and bind the signer to pay the debt. Such bills were were called unconditional. Thus, one would on receiving a loan or a sum of money, sign a simple bill promising to pay back the money at a specified time.¹⁷⁵ Such simple bills were "rarely sealed," Pastorius observed, apparently based on a statement in the Young Secretaries Guide.¹⁷⁶ Several letters of credit, including one in Dutch, appear in the Collection.

supra note 137; Schweitzer, supra note 158. Professor Nash's Urban Crucible (1979) explores the economy of Philadelphia.

¹⁷⁴ YCCC, supra note 2, at 210 (quoting Young Clerks Tutor, supra note 34, at 2).

¹⁷⁵ Id. at 211 (single bill without penalty and bill of debt, printed in Appendix III, Forms B-7, B-8).

¹⁷⁶ Id. at 211; Secretaries Guide, 34, at 126 (noting that "Bills without Penalties are rarely Sealed.").

Pastorius closely follows the organization of the Secretaries Guide in his section on bills.

They supplemented the loans made available through the bills in the Collection by providing for a loan on the signer's account.¹⁷⁷ Pastorius also discusses inland and foreign bills of exchange, terms apparently taken from Dutch and German commercial law. Inland bills of exchange, he explains, are "such as are drawn and payable in the same Country, which is usually either at sight or some days after. And if a bill be drawn to be payable at sight, it is only payable 3 days after acceptor for . . . Inland bills are never protested, but returned by the first opportunity." Foreign bills, he contrasted, are payable in another country, several months afterwards.¹⁷⁸

Other bills were conditional; they contained both an obligation, which was present in the non-penal bills, as well as a condition. If the obligor completed the condition, then the bill was void. They bound one "to give, do and perform something," as Pastorius said. Pastorius explained that a condition "is such an agreement of both parties . . . as stayed . . . the effect thereof . . . until the Condition happen to be fulfilled or relapsed, so that by the non-performance or not doing thereof the Parties to the Condition shall receive Prejudice and loss and by performance Commodity and advantage."¹⁷⁹ One example of the conditional bill is the common money bond, which appeared in both the Collection and in several books that Pastorius drew upon. In the common money bond, the debtor agreed to pay a sum of money--commonly twice

The Guide prints bills in the following order: short note acknowledging money due, single bill without a penalty, single penal bill, explanation of bills and bonds, bond from one party to another; conditional bonds involving multiple parties, bill of sale. *Id.*, at 125-39.

¹⁷⁷ See YCCC, *supra* note 2, at 220 (Appendix III, Form B-12).

¹⁷⁸ *Id.* at 219 (foreign bill of exchange, Appendix III, Form B-11).

¹⁷⁹ *Id.* at 212, 2d. Pastorius further explained that a condition was "a Rule, Law or Bridle annex[ed] to a Bond, staying and suspending the same until a certain time." *Id.*

the sum owing. But the bond included a condition that if the debtor paid the money owed by a certain time, the bond was void. The Young Secretaries Guide contained a bond from James Rainskor for £100 payable to John Wattin. The bond has a condition that if Rainskor paid Wattin £50 by the following September 1, then the "present Obligation to be void and of none effect."¹⁸⁰ The Collection, similarly, used bonds to insure performance of land sale contracts.¹⁸¹

Conditional bonds were, through the later part of the seventeenth century, the "basic contractual institution" of English law. It was through conditional bonds, which offered a flexibility in contracting, that "important agreements were made actionable." The conditional bond facilitated not only the collection of debts, but more sophisticated executory contracts as well. The contracts for services in the Collection were penal bonds. The bonds had a condition that the obligor complete the service in order to avoid liability on the bond. One such executory contract in the Collection related to constructing a house. It joined the usual obligation of a penal bond with the condition that if the obligor constructed "one good and substantial new frame" then the bond was void.¹⁸² One of the best examples of penal bonds appearing in the Collection was arbitration bonds. The Collection provided several forms for binding parties to the decisions of

¹⁸⁰ Secretarties Guide, supra note 34, at 124-25; YCCC, supra note 2, at 214; A. W. Brian Simpson, A History of the Common Law of Contract 90-91 (2nd. ed. 1987); James S. Rogers, The Early History of the Law of Bills and Notes chap. 5 (1995) (discussing bills of exchange); John H. Baker & S.F.C. Milsom, Sources of English Legal History 259-61 (1986).

¹⁸¹ See, e.g., YCCC, supra note 2, at 212, 2d, 277/6th; supra III.B.1.a. (discussing mortgages). Cf. id. at 283 (deed of defeasance used in mortgage, allowing mortgagor to reclaim title to property upon completion of payments).

¹⁸² Simpson, supra note 180, at 90 (describing conditional bonds); YCCC, supra note 2, at 216 (condition "for the building and setting up a Frame of a house" based on Young Clerk's Guide, supra note 34, at 312, and refering to obligation on page 213). The Young Clerk's Guide had entries for numerous conditions. See Clerk's Guide, supra note 34, at 288-318.

umpires. The parties executed penal bonds in favor of each other, with the condition that the bond would be void if they abided by the umpires' decision. The forms mapped closely those available in the Tutor and Secretaries Guide as well as those in more general treatises.¹⁸³

The Collection contained an all-purpose bond for executory contracts. It counseled to first incorporate the general obligation clause of a penal bond, then insert a clause defeating the obligation when the parties performed the acts "mentioned in certain articles of agreement." Using the forms Pastorius provided, parties could make their agreements enforceable.¹⁸⁴ In one form, Pastorius provided the articles of agreement for brickmaking. The brickmaker agreed to spend his entire summer making bricks for the purchaser. Every day that the brickmaker failed to work, however, he was subject to a penalty of 20 shillings.¹⁸⁵

The bills, bonds, and notes are remarkably similar to those appearing in the formbooks that Pastorius drew upon, particularly the Young Secretaries Guide. Pastorius' frequent citations to the formbooks shows his reliance upon them and the importance of those forms. Although

¹⁸³ See YCCC, supra note 2, at 242, 248 (Appendix III, Forms B-15, B-16); Clerks Tutor, supra note 34, Clerks Guide, at 289; Secretaries Guide, supra note 34, at 148; Arbitrium redivivum: Or, the Law of Arbitration (London, 1694). See also Eben Moglen, Searching for the Transformation, 92 Yale L. J. 135 (1985) (discussing arbitration in colonial New York); Bruce Mann, Neighbors and Strangers: Law and Community in Early Connecticut 111-13 (1987) (discussing arbitration in seventeenth-century Connecticut) William Nelson, Dispute and Conflict Resolution in Plymouth County (1982); J.A. Sharp, 'Such Disputes betwyn Neighbors': Litigation and Human Relations in Early Modern England, in Disputes and Settlements: Law and Human Relations in the West 167, 182-83 (John Bossy ed. 1981).

¹⁸⁴ The sample articles of agreement in the Collection was open-ended. It provided the form for binding binding parties to the article of agreement and then left blank the parties' agreement. YCCC, supra note 2, at 250 (referring to Young Clerks Tutor, supra note 34, at 42, articles of agreement of lease).

¹⁸⁵ YCCC, supra note 2, at 250 (Appendix III-B, Form B-17); 262 (contract to construct a barn).

conditional bonds were becoming disfavored in English law because the Chancery courts were increasingly refusing to enforce the bonds, because of the penal nature of the bond, they remained popular in English law books up through the early eighteenth century.¹⁸⁶

b. Indentures and Letters of Attorney

Also important to Pennsylvania's market economy was the ability to arrive at long-term labor contracts and to have factors act on behalf of principals through letters of attorney. The Collection provides several examples of indentures for servants and apprentices. Servants were present in significant numbers from the founding in 1682; they provided, particularly in the seventeenth century, a significant source of stable labor. The three indentures in the Collection spell out the expectations of the master and the servant. According to one indenture the master, who took on a role as a parent for the servant, was responsible for providing "sufficient meat, drink, apparel, Lodging and washing fitting for an apprentice" and for teaching his "art, trade, or mastery" to the apprentice. In return, the master expected that the apprentice "keep his lawful commands, gladly everywhere obey. . . . He shall not comit fornication At card, tables, dice, or any other game he shall not play, whereby his sd Master may have damage with his own goods."¹⁸⁷ The Collection also included notices for runaway servants and to transfer servants from one master to another.¹⁸⁸

¹⁸⁶ Simpson, supra note 180, at 113. Such a conditional bond is unenforceable under modern contract law as a penalty. See E. Allan Farnsworth, Contracts 144 (2nd ed. 1990) (citing Restatement Second of Contracts, sec. 356).

¹⁸⁷ YCCC, supra note 2, at 244; see also id. at 248.

¹⁸⁸ See id. at 205 (runaway notices); 245 (assignment of servants).

Another important category of contracts were letters of attorney. The typical letter allowed another to collect debts, transfer land, or pay money on behalf of the signer. The Collection has forms for general powers of attorney, usually given to a family member, but perhaps most important were the letters authorizing another to sell land. Also significant, however, were letters that allowed another to contract for services and collect debts. Pastorius himself held such a letter from the Frankfurt Land Company and included several in the Collection.¹⁸⁹

The letters of attorney appearing in the Collection were based on the forms appearing in the Young Clerks Guide and in the Young Secretaries Guide. Some letters of attorney were also used to collect judgments from a debtor. The letter, which was typically joined with a bond, provided that if the debt was not paid, the debtor gave the creditor power of attorney to confess judgment in court on behalf of the debtor. Despite the Young Clerks Tutor's inclusion of such a letter, Pastorius failed to include it in his Collection, although he did cite it.¹⁹⁰

c. Receipts, Recognizances, and Releases

A small but for Pastorius significant number of contract forms related to the completion of contracts. Thus, he included receipts (also known as recognizances) to acknowledge the successful completion of obligations under bonds, bills, and notes. Particularly in a legal culture such as Anglo-America, which relies upon the bill itself for proof, receipts played a crucial role

¹⁸⁹ Id. at 226 ("Letter of Attorney to receive Debts and Rents"); 228 ("Letter of Attorney to receive a Bond Debt with Revok[ation of] a former Power"); 227 (revocation of letter of attorney, citing Young Secretary's Guide, supra note 34, at 140, 146-47); 228 (Letter of attorney to demand debt).

¹⁹⁰ See Young Clerks Tutor, supra note 34, at 29, 32 (cited in YCCC, supra note 2, at 227 2d).

in demonstrating a party's obligations. Pastorius, closely following the Secretaries Guide's organization, included a significant number of receipts and recognizances in the first few pages of his treatise.¹⁹¹

Pastorius included a wide variety of recognizances, beginning with recognizances for part payment, proceeding to more than a dozen acquitances in full for such diverse obligations as produce delivered to a brewer's servant, money received for another's account, rent, and purchase money.¹⁹²

3. Procedure for the County Justice

The Young Country Clerk's Collection has many of the forms needed by a county justice for the operation of the courts. Much like the popular English books on court operation, Pastorius provided forms for warrants and summons requiring a defendant to appear, as well as

¹⁹¹ The Young Secretaries Guide begins with acquitances, then proceeds to releases, letters of attornies, wills, and bills. Young Secretaries Guide, *supra* note 34, at 118-28. By comparison, the Collection begins with less than a page of bills, then proceeds to acquitances, bills again, letters of attornies and wills. One may speculate why the Secretaries Guide began with ways of terminating contractual obligations. Edward Cocker, the Guide's author stated that he included the acquitances "for the greater safety and security of the Person paying or receiving Moneys." Perhaps, then, the protection of people completing their contractual obligations appealed to Pastorius as well, or perhaps he was merely following precedent without any larger design. *Id.* at 106. It may be significant that the other two primary sources of the Collection did not, however, begin with recognizances.

¹⁹² YCCC, *supra* note 2, at 206-08. Pastorius drew heavily upon the Young Clerk's Tutor and the Young Secretaries Guide for his recognizances. He cited the Tutor four times and the Guide seven times in three pages of the Collection. *Id.* at 206-08. Additionally, he appears to have taken one form, "A Discharge of a Bill, the Bill being lost," from the Tutor without acknowledgment. Pastorius omitted the Tutor's references to God in the bill. *See id.* at 208; Young Clerks Tutor, *supra* note 34, at 65.

recognizances to seize a defendant, warrants to arrest a defendant, and writs for the levying of fines.¹⁹³

A county justice could use Pastorius' book to prosecute a criminal defendant, beginning with the initial summons to appear. Once the summons was issued, the Collection included three devices to insure appearance. First, a *mittemus* to require security from the defendant, then a *supersedeas*, which allowed a friend of the defendant to vouch for the defendant by providing security for the defendant's appearance, and, finally, an arrest when the defendant was unlikely to appear. For defendants who failed to appear there was a form for *hue and cry*, ordering sheriffs in neighboring counties to search for and arrest a defendant. There was little for the prosecution of a criminal case once it was begun except for a brief form for taking a deposition. Many of the intermediary forms for criminal prosecution are lacking. Absent also are forms for a grand jury to make presentments, which was often the first step in a criminal prosecution; perhaps they are missing because the Collection was not intended to aid jurors. Once defendants were convicted, there were forms for them to acknowledge their offenses and promise their future good behavior.¹⁹⁴

The Collection included several forms for warrants, a multi-purpose writ. Warrants were authorizations issued by a justice to a sheriff or a defendant to carry out an order of the justice.

¹⁹³ See, e.g., William Shepherd, *English Court-Keeper's Guide* (London, 1658); John Kitchen, *Jurisdictions* (London, 1656). Kitchen's volume was present in Pennsylvania contemporaneous with Pastorius. See Guest's Library, *supra* note 127. See also David Konig, Introduction, in 1 *Plymouth County Court Records* 149-73 (1980) (discussing writ pleading in Massachusetts).

¹⁹⁴ See YCCC, *supra* note 2, at 253.

The warrants could require a defendant to appear before the court,¹⁹⁵ or it could order a defendant to pay a fine.¹⁹⁶

Also important for the Justices were recognizances, acknowledgments made before a justice of money owed to another. The recognizances, which were enforceable as a judgment, could only be made before a justice. They were most often used to promise good behavior, as with a man suspected of assault and battery, who was allowed to give a recognizance promising his future good behavior or suffer forfeiture of his bond.¹⁹⁷ Thus, like releases, acquittances, and arbitration bonds, Pastorius included recognizances as yet another means for terminating disputes.

Noticeably absent from the Collection, however, were forms for proceeding by civil suit. There were ample forms for arbitration, to bind parties to the decisions of the umpires, and forms for the umpires to use so that their decisions would be enforced. They were drawn from the Young Clerks Tutor as well as Quaker practices in Pennsylvania. Nevertheless, there is little in

¹⁹⁵ See id. at 254; Chamberlain, supra note 34, at 439. The Justice's authority to command appearances was apparently limited to cases in which there was an indictment or complaint. But Pennsylvanians disputed the point bitterly in the late seventeenth century when a justice alligned with one faction in the legislature arrested the leaders of the other faction. See Provincial Council to William Penn, 3 PWP, supra note 72, at 515; 1 Pennsylvania Archives 8th ser., 107 (1931).

¹⁹⁶ See YCCC, supra note 2, at 257 ("A Warrant to levy money forfeited by Ale house haunters," Appendix III, Form C-8). For further discussion of powers of justices' warrants, see Chamberlain, supra note 34, at 438-41.

¹⁹⁷ See William Shephard, The Justice of Peace: His Clerks Cabinet 89-99 (London, 1660) (forms for recognizances); Chamberlain, supra note 34, at 213, 315-18 (discussing recognizances and warrants). Recognizances for the peace were pledges by a defendant that he would not hurt another, on pain of forfeit of his bond. Warrants, however, were issued by justices commanding a sherrif to arrest.

the way of forms for initiating and prosecuting a civil suit beyond a summons commanding the defendant to appear in court.¹⁹⁸ There is a writ to recover seissen, one to replevy goods, and several references to the Young Secretaries Guide for civil forms. One reference was for a lease of ejectment "to eject a person out of Possession of Land"; another was for a warrant for an attorney to confess judgment in court.¹⁹⁹ The lack of civil forms may be attributed to the availability of the forms in the statutes of Pennsylvania, or to the failure of the lawbooks upon which Pastorius drew to include civil forms. None of his three prime sources had many forms for civil suits; neither did the other practical treatises in Pastorius' library.²⁰⁰ Nevertheless, Pastorius was intimately familiar with civil practice from his service as a justice and clerk in Philadelphia County and from his own background as a lawyer and litigant, and he did not hesitate to add forms for criminal prosecution. One suspects, therefore, that Pastorius' failure to include more forms for civil litigants--as well as the selective inclusion of forms for criminal prosecution--may derive from his opposition to the use of courts for settling civil disputes.

¹⁹⁸ See YCCC, supra note 2, at 253 (In jus vocato, Appendix III, Form C-2).

¹⁹⁹ See YCCC, supra note 2, at 317 (writ to recover seissen, Appendix III, Form A-24); 227, 2d (citing Young Secretaries Guide, supra note 34, at 146-47). See also Young Clerks Tutor, supra note 34, at 29-33 (warrants of attorney to confess judgment).

²⁰⁰ The statutes of Pennsylvania prescribed the form for the standard civil pleadings. See 1 Statutes at Law, supra note 70; supra note 147 (discussing statutory form for land transactions). The laws were posted in every county and were read yearly to the court. Thus, Pennsylvanians had ample opportunity to learn the fundamentals of civil procedure. The systemization of Pennsylvania civil procedure, by prescribing the formet through statute, was an important part of the reform of complicated English law. It was a product of Quaker beliefs that the law should be accessible. Veall, supra note 77 (discussing codification movement); supra II.A.1 (discussing ideas of Fox and Pastorius regarding Justice).

There were other important forms for those appearing before county justices for non-adversarial matters, such as petitions for special privileges. The Collection has petitions for land, for roads, and for licenses to operate taverns. Granting land was one of the most important functions of the early Pennsylvania courts and a sample petition for land was one of the most needed forms of any appearing in the Collection; roads were likewise crucial in connecting the lands to the commercial and cultural center of Philadelphia and thus making the settled land accessible and, therefore, more valuable. Regulation of ale-houses occupied substantial attention of justices, both in granting licenses for operation and in punishing excessively disruptive behavior in ale-houses.²⁰¹

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Some of the forms were important for religious and social reasons, but were less important in commercial relations. They included the contracts of marriage, letters of reference to Quaker meetings, and general letters, which were drawn from the Young Secretaries Guide. Together with the strictly legal forms, the other forms help to compose a well-rounded collection of forms that might be of use to a person without access to other legal and business guides.

V

Connections

²⁰¹ See YCCC, supra note 2, at 268 (petition for road, Appendix C-12); 271 (petition for ordinary, Appendix C-14); 257 (levy of fine for operator, Appendix C-8); William Penn to Justice of Philadelphia, 5 Mirco, supra note 54, at 244 (requesting that justices chagre grand jury on importance of discipling ordinaries). See John Flexer Walzer, Transportation in the Philadelphia Trading Area, 1740-1755 (Ph.D. diss., University of Wisconsin, 1968) (intriguing study of role of roads in economic development).

The predominance of forms and writs in Pastorius' treatise is representative of much of English legal literature of the time period.²⁰² The three treatises that Pastorius primarily drew upon and many of the law books known to be in Pennsylvania by 1710 concentrated on procedure. It is through writs that one can determine the state of the law. The Young Country Clerk's collection is thus representative of a world in which substantive rights were heavily dependent upon procedure and in which the proper procedure had to be followed, or substantive rights were lost.²⁰³ It is also representative of a world in which writs conferred power to hear and decide cases.²⁰⁴

²⁰² See John H. Baker, An Introduction to English Legal History chap. 4 (3d ed. 1990). It is also similar to notebooks of pleadings kept by lawyers in early America. See 1 Legal Papers of Alexander Hamilton 37-166 (Julius Goebel ed. 1964); 1 Legal Papers of John Adams 26-86 (L. Kinvin Wroth & Hiller B. Zobel eds. 1966). But it remains quite different from more theoretical treatises such as Blackstone's, Coke's, and even from previous treatises that collected forms, such as Glanville. See A. W. Brian Simpson, The Rise and Fall of the Legal Treatise: Legal Principles and the Form of Legal Literature, 48 U. Chi. L. Rev. 632, 633-50 (1985). See also Warren Billings, English Legal Literature as a Source of Law and Legal Practice for Seventeenth-Century Virginia, 87 Virginia Magazine of History and Biography, 403-16 (1979) (arguing that early Virginia courts failed to follow English procedure); John A. Conley, Doing it by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America, 6 Journal of Legal History, 257-98 (1985) (assessing state of American legal literature in the eighteenth century).

²⁰³ See Exemplum sine Exemplo, supra note 48 (Pastorius laments legal maneuvering that subverted just result). It is common for English legal historians to note the importance of procedure. It may be that Pastorius was attempting to provide early Pennsylvanians with all the forms that they needed, so that rights turned upon justice rather than technical legal wording. The treatise, for instance, contains simple writs, contracts, and forms for land transactions, not the complicated writs of John Herne's Pleader, nor the more complicated issues raised in important works in common and civil law such the Coke's Institutes or Cowell's Institutes. One suspects that Pastorius' concern for love and peaceful settlement of cases motivated his treatise. There are, for example, few forms for civil suits and none for defamation.

²⁰⁴ See Baker, supra note 202, chap. 4. Thus, a court could not operate until its justices received their commissions from William Penn or his agents. See 2 Courts of Sussex County 670, 692-93 (Craig W. Horle ed. 1991) (court discusses whether their commissions are valid);

Perhaps most significantly for historians of American law, the Collection confirms the picture that early American law was sophisticated and that it followed closely English procedure. Since the early 1930s, it has become increasingly clear that seventeenth-century American law followed closely the local law of England.²⁰⁵ Given the small number of studies of procedure in England in the late seventeenth and early eighteenth centuries, Pastorius' treatise is particularly valuable in confirming the picture of American law's heavy reliance upon English treatises and English procedure. The Collection shows that seventeenth-century Americans self-consciously drew upon English law and followed English precedents. Some participants in the legal system may have been drawing upon their memory of proceedings in England, having brought their culture along with them as part of their baggage when crossing the Atlantic.²⁰⁶ Pastorius was

Brophy, supra note ? (discussing importance of symbols of power in early Pennsylvania courts). Moreover, when litigants failed to produce the proper writs at the proper time, they lost their substantive rights. See generally Shepherd, supra note 52 (study of administrative procedure in early Pennsylvania discussing importance of writs in authorizing courts to sit).

²⁰⁵ See, e.g., Goebel, supra note 77; William Smith, Justice in Colonial Massachusetts: The Pyncheon Court Record (1960). Cf. Cornelia Hughes Dayton, Turning Points and the Relevance of Colonial Legal History, 50 William & Mary Q. 7, 9-12 (1993) (suggesting that in the period 1680-1720 American law changed from communal to more modern, individual-oriented law); Hoffer, supra note 143, at 66 (suggesting that early Massachusetts judges relied upon solid common sense). Other historians have found a significant change in American law and particularly procedure in the years surrounding the American Revolution. See William Nelson, The Americanization of the Common Law chap. 5 (1975). The findings here that early American law was complex and modeled on English law are consistent with Nelson's findings that the law changed in the wake of the Revolution.

²⁰⁶ See generally Ross, supra note 13, at 36-38 (suggesting the need to study "patterns of legal knowledge and legal memory"); Allen, supra 12 (demonstrating that New England settlers distributed property in the same ways that they had in England); David Hackett Fischer, Albion's Seed: Four British Folkways in America (1989) (showing how folk habits in America followed habits established in Europe).

With Pastorius' treatise we have a clear picture of the the legal system of early Pennsylvania. Hence, we should be able to answer, in a detailed fashion, the question posed by

drawing directly out of law books, and it is becoming increasingly clear that other Pennsylvanians relied upon legal treatises as well. For those participants in the early American legal system, the law as it was in England--as well as the Bible--provided a firm guide.

Despite the importance of procedure, Quakers contributed to the idea that law included an element of substantive justice and Pastorius followed them in that area. In the ample Quaker writings on the importance of following just laws, from George Fox's pleas to abolish the death penalty for property crimes to Thomas Ellwood's pleas for narrow construction of criminal laws to William Penn's pleas for revival of ancient common law powers of the jury, Quakers sought to infuse a moral basis in the law. In Pennsylvania, grand jury charges suggested the need to follow the commands of the governors and maintain peace and security.²⁰⁷ Writing at the time that English subjects were aware of the abuses that people suffered because of the law and aware of the difficulties that arose when law failed to function, Penn, Pastorius and a host of English lawyers wanted to incorporate ideas of fairness.

Those general ideas about justice coalesced in Pennsylvania. They led to simple, clear statements of the criminal laws, broad powers in the jury and selection of jurors from wide segments of the population. It also resulted in relatively simple real property and contract law

Stanley Katz more than a decade ago: how did early American law operate. See Stanley Katz, The Problem of a Colonial Legal History, in Colonial British America: New Histories in the Early Modern Era 457, 476 (Jack Greene & J.R. Pole eds. 1984). And from there we can move to a further elaboration of Zechariah Chaffee's thesis that American law developed from English law and the settlers' social beliefs. See Zechariah Chaffee, Colonial Courts and the Common Law, 68 Massachusetts Hist. Soc. Proceedings 132-59 (1952). Based on Pastorius' treatise, it appears that English law accounts for a substantial amount of early Pennsylvania law.

²⁰⁷ See James Logan, Charge Delivered from the Bench to the Grand Jury (Philadelphia, 1723). Cf. James Logan, (Philadelphia, 1736); Samuel Jennings, A State of the Case 45 (London, 1693) (urging respect for magistracy).

and in the simplification of court procedure. In Pennsylvania, unlike England, anyone could plead their cause in court, using the basic forms provided for by statute. Pastorius' treatise seems to meet quite well the Quaker needs for justice. It provided a simple way of obtaining the forms that were necessary for proper operation of the courts and for orderly transfer of property and formation of contracts.

The treatise, significantly, contains only one form for a private suit--a writ to recover seisin. In that way, it apparently conforms to Pastorius' belief that lawsuits should be minimized, because it fails to give the readers the means by which to prosecute lawsuits. Pastorius believed, with prominent Quakers in Pennsylvania, that "it was never against our principles to be concerned with outward government" and that "Quakers never destroy the relationship between prince and people;" therefore, Quakers could sue in the courts. He, nevertheless, wanted to limit the suits.²⁰⁸ Thus, the Collection concentrates its energies on providing readers with the means of transferring land and making contracts properly and providing the courts with the proper means for "execut[ing] a wrath upon evil Doers," so that good people "may lead a quiet and peaceable life in all goodness and honesty."²⁰⁹

The precedents in the Young Country Clerk's Collection added some form to the generalizations that Pastorius wrote on his law books and that he scattered in the Bee Hive. The prescription of the Golden Rule to "do unto others as you would have them do unto you," a seemingly ubiquitous phrase in Pastorius' writings as well as his contemporaries', proved hard to

²⁰⁸ Law Entry, Bee Hive, supra note 1; supra notes 123-124 (discussing controversy over suits).

²⁰⁹ Pastorius, New Primmer, supra note 17, at 34.

put into practice. By providing simple, accessible forms Pastorius apparently intended to make the law itself more amenable to his maxims. He did not attempt to rewrite the law from the ground up--not even the Quakers who had suffered imprisonment and sometimes death in England wanted the abolition of the legal system. Instead, he offered a book that made law accessible--and facilitated commercial transactions as well as individual wishes. Lay people, not just those who had spent thirty years mastering the "common" law,²¹⁰ could use the Collection to transfer land, form a partnership, sell their crops, cattle, and manufactures, hire workers, settle their disputes with an arbitrator, and, when the time came devise their property to their family. Once the appropriate legal forms were available, the need to resort to law suits was itself reduced.

Seventeenth-century Pennsylvanians were about as likely to resort to formal court proceedings as anyone in early America, however.²¹¹ Despite the institution of arbitration and despite exhortations such as William Penn's to "put an end to the restless heats and jars," and James Logan's admonition to a litigant that "though thy Purse should bleed as long as thou canst bear it to support thy Lawyers, whose livelihood depends upon Quarrels of Neighbors . . . [thy] will be left to bear the whole burden thy self and to pay a heavy reconing,"²¹² Pennsylvanians

²¹⁰ See Penn's Ancient Liberties, supra note 34, at 31 (arguing that common law implies that law is understandable by lay people, not only those who have spent thirty years studying it).

²¹¹ See Offutt, supra note 143 (describing litigiousness of early Pennsylvanians); Brophy, supra note 143 (comparing litigation rate in Sussex County to that of other parts of British America).

²¹² Penn to Provincial Council, Nov. 11, 1690, 3 PWP, supra note 72, at 288; James Logan, Letter to Mouns Justis (Philadelphia, 1722) Evans 3711. See also William Penn, The Fundamental Constitutions of Pennsylvania, 2 PWP supra note 72, at 141, 148 ("lawsuits . . . have so lamentably consumed the estates of many families in divers nations, as well as sown and

remained contentious. As the eighteenth century progressed, American law--and American society in general--became increasingly complex, which further hindered the attainment of Pastorius' vision of a peaceful, howling wilderness.²¹³

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Pastorius, living in the marchland of European settlement, brought extensive knowledge of civil law and pietism to Pennsylvania. One can imagine him sitting among more than 250 books in Germantown, quietly recording his thoughts on nature and religion in his manuscripts and then going off to tend his garden and teach school. In the interim he carefully transcribed several hundred pages of forms and precedents in order to help bring about the godly, peaceful land that he had sought to find in his youth. And so, having come to America to partake of a peaceful society, Pastorius recast English law to combine elements of the corrupt European world he left with his religious vision. In law his legacy is a treatise that is traditional in form and both traditional and innovative in substance and purpose. Pastorius himself acknowledged the role of his treatise in channeling human thought into legal form on the title page of the Collection with the phrase "Ingenium est Fateri per quos profeceris"--natural ability is improved through this source.

fixed perpetual hatred between neighbors and near kindred.").

²¹³ Professor Offutt has recently presented an alternative vision of the litigiousness of early Pennsylvania, suggesting that Quaker justices facilitated the attainment of harmonious society by deciding cases fairly. In turn, Offutt believes, the litigants then brought their cases to the justices. Litigation, thus, is part of a well-functioning society. Offutt, *Of Good Laws*; see also Konig. While willingness of litigants to submit their disputes to Quaker-dominated courts shows confidence in the decision-makers, it also shows at least a partial breakdown of the ability of the litigants to peacefully resolve disputes on their own.