

Religious Liberty in Early Pennsylvania

IN ADDITION TO his role in the founding of Pennsylvania, William Penn is commonly ranked among the heroes of American history for his contribution to religious freedom. Such an emphasis is eminently justified, for, as one historian recently argued, a consistent political theme in Penn's life was his opposition to persecution for religion, and his attempts to gain toleration.¹ The literature on Penn's political and religious ideas and efforts as a colonizer is immense, yet the history of religious liberty in colonial Pennsylvania has been strangely neglected. The best two discussions in the *Pennsylvania Magazine of History and Biography* came in 1885 and 1944, and no article has discussed the topic since the tercentenary of Penn's birth.² While there are numerous studies about Quakers, Anglicans, Lutherans, Presbyterians, Jews, and various Protestant sects in colonial Pennsylvania, no one has ever analyzed in detail the creation of the religious, political, and legal foundation for liberty of conscience.

The story of Pennsylvania begins with the early Quakers' struggle against persecution. In the 1670s Penn helped to transform that struggle politically and intellectually, and his contribution is prominent in the *Frame of Government* and early laws of Pennsylvania. But Penn only began the process, for the early history of religious freedom in the

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¹ Mary M. Dunn, *William Penn: Politics and Conscience* (Princeton, N.J., 1967), vii, 133-136.

² Charles Stille, "Religious Tests in Provincial Pennsylvania," *PMHB*, IX (1885), 365-406; Henry J. Cadbury, "Persecution and Religious Liberty: Then and Now," *PMHB*, LXVIII (1944), 359-371.

colony is a complicated story involving the proprietor, the English government, Quaker settlers, and adherents of other faiths.

The experiment in Pennsylvania shows that implementing religious liberty required complicated adjustments in ideas and institutions: the rights of a religious majority and minorities, the limits of moral legislation, property rights of churches, privileges of clergy, and relations among denominations. The theme of this article is that while Penn initiated religious freedom, circumstances as well as ideology created the final pattern.

Before 1660 the Quaker demand for an end to persecution rested upon the belief that the focus or seat of religion came from the conscience. True religion was very much an inward, though not subjective, matter. God alone was Lord of conscience and to erect any external authority would be to subject God to a lesser entity. The spiritual return of Christ meant for early Friends that any physical element in religion became a non-essential; therefore, any organic or corporal control of religious impulses by the state (or church) was of the devil.³ Spiritual impulses could be governed only by spiritual means.

A crucial issue for outsiders looking at early Friends was what did they mean by spiritual matters? The example of the Ranters was at hand, a group who started with essentially the same principles as Quakers, but ended by repudiating marriage, the moral law, and property because all actions were permitted to the elect under the governance of the spirit of God.⁴ From the beginnings of their movement, Friends repudiated the conclusions of Ranterism and insisted upon the necessity of moral actions and rights of property, but the Quaker critique of injustices in contemporary English society made conservatives suspicious. Even without the radicalism, Quaker ideas could gain acceptance only in a

³ Quaker terminology on "spirit" and "conscience" is difficult to interpret because the terms were used in different contexts. The Quaker discussions of sacraments brought the clearest formulations of the spiritual nature of religion. My interpretation of early Quaker thought is influenced by Pamela Oliver, "Quaker Testimony and the Lamb's War," Ph.D. diss., University of Melbourne, Australia, 1977; *Memorable Works of a Son of Thunder and Consolation*. . . Edward Burroughs (1672), 245-246, 257, 268, 346-347; Samuel Fisher, *The Testimony of Truth Exalted* (1674), 4, 13, 14; *The Works of the Long-Mournful and Sorely-Distressed Isaac Penington* (London, 1671), 230-232, 239-241, 306; George Fox, *Doctrinal Books*, III, *Works* (Philadelphia, 1831), VI, 273, 338-344.

⁴ Christopher Hill, *The World Turned Upside Down* (New York, 1972); Arthur Morton, *World of the Ranters* (London, 1970).

narrow range of sectarian thought. Any argument for toleration resting upon the purely spiritual nature of religion could not attract an Anglican or Presbyterian whose traditional doctrines included the necessity of such outward means of grace as preaching, sacraments, the authority of the visible church, and the linkage between church and commonwealth. If Quakers were to obtain the right to exist legally after 1660, they would have to find arguments based upon other sources.

Penn and other second generation Friends did not have to look far for wide-ranging discussions of religion and the state. Since the breakdown of royal authority and continuing through the entire period of the Commonwealth, religious and political leaders had conducted a debate on liberty of conscience.⁵ William Penn's contribution to the continuing debate was to combine several ideas whose sources cannot be isolated with any precision, and to express them vigorously in the pamphlet warfare.⁶ For our purposes the origins of his ideas are not as important as the result of his blending of theological, political, historical, and utilitarian arguments.

Like earlier Quakers, Penn found the focus of religion in direct revelations of God within the conscience, but he also saw conscience as the seat of intellect and reason. The result was a blurring of the distinction between the divine light *in* conscience and natural reason and thought which were products *of* conscience. The shift was subtle but crucial, for beliefs became not spiritual but mental products and toleration could be based upon intellectual freedom. Conscience cannot be coerced because reason and intellect cannot be. "A Christian implies a Man, and a Man implies conscience and understanding."⁷ Persecuting a person for reading and believing the Scripture was destructive of reason and Protestantism. By making spirit less theocentric, Penn linked toleration to an emerging rationalism.

Before 1660 Friends had not sought to play down their differences with other Protestants, but Penn embarked upon this policy in an effort

⁵ W. K. Jordan, *Development of Religious Toleration in England* (Cambridge, 1938), III.

⁶ Useful secondary sources dealing with Penn's political theory are Mary Dunn, *William Penn*; Hugh Barbour, "William Penn: Model of Protestant Liberalism," *Church History* 48 (1979), 156-157; Edward Beatty, *William Penn as Social Philosopher* (New York, 1939); William I. Hull, *William Penn: A Topical Biography* (London, 1939).

⁷ William Penn, *Select Works of William Penn*, (London, 1825), "An Address to Protestants," [1679] III, 126, 148-149; "Great Case of Liberty of Conscience," [1670] II, 135, 142.

to gain toleration. His goal required defining what was essential in religion and necessitated leaving out a great many beliefs and practices to arrive finally at a stripped-down model in the interest of peace. After the Restoration of Charles II, unity among Anglicans and Presbyterians in a comprehensive body appeared a realizable goal to many in each tradition, but neither church dreamed of asserting that Quakers were actually Christian.⁸ Penn's strategy was to list certain beliefs on which all Christians agreed, and to ignore such issues as sacraments, church government, and ritual upon which there could be no unity. For Penn, the essence of religion was reverence for scripture, faith in God and Christ, and virtuous or moral living.⁹ Proof for his reductionist model of religion came from scriptural citations and the postulates of reason and natural law, using the implicit assumption that the dictates of God, nature, and intellect must agree.

At first Penn was not inclined to grant the right of religious freedom to Roman Catholics since he believed that religion was based upon persecution, superstition, and popery and that such practices were incompatible with true Christianity. Penn did not mellow in his view of the perverted nature of Catholicism, but in the belief that peaceful adherents of that religion should have the right to worship. In 1678, before Parliament, when defending himself against the charge of being Catholic, Penn showed how broad his viewpoint of civil rights had become:

I would not be mistaken, I am far from thinking it fit that Papists should be whipped for their consciences, because I exclaim against the injustice of whipping Quakers for Papists: No, for though the hand, pretended to be lifted up against them, hath. . . lit heavy upon us, and we complain; yet we do not mean, that any should take a fresh aim at them, or that they must come in our room; for we must give the liberty we ask, and cannot be false to our prin-

⁸ Anne Whiteman, "The Restoration of the Church of England," in Owen Chadwick and Geoffrey F. Nuttall, eds., *From Uniformity to Unity* (London, 1962), 47-79.

⁹ Penn's assertion of identity of belief was coupled with a strong attack upon the inconsistency between other groups' ideas and practice. "This was the purport of their doctrine and ministry; which, for the most part, is what other professors of Christianity pretend to hold, in words and forms, but not in the power of Godliness; which generally speaking has long been lost. . ." quoted in Robert Proud, *History of Pennsylvania* (Philadelphia, 1797), I, 46; William Penn, Select Works "England's Present Interest," [1675] II, 314-319; "Persuasive to Moderation," [1686] II, 539; "Speeches to a Committee of Parliament," ed. *Papers of William Penn*, Richard Dunn and Mary Dunn (Philadelphia, 1981), I, 535.

ciples. . . for we would have none suffer for a truly sober and conscientious dissent on any hand.¹⁰

Citizenship was not only the birthright of all Englishmen, but a natural right for all who supported the government, lived peacefully, strengthened the realm by hard work, and agreed on fundamental Christian truths.¹¹ Government was instituted to protect property, but persecution for religion, which included fines and imprisonment, subverted the foundation of government by attacking property.¹² Property and liberty of conscience were natural rights, and, by a selective reading of English history and law, Penn proved that these two rights were inseparably linked.

If the historical, scriptural, theological, and natural rights arguments failed to persuade, the utilitarian argument offered a different approach. It was based upon two experiences. One was that all the turmoil over religion and persecution of Quakers had not worked. The realm was still not united religiously and the Society of Friends continued to gain members. The other utilitarian argument looked at the contribution of dissenters to the wealth and prosperity of England. These people by their hard work and moral living strengthened the kingdom; persecution reduced their families to want and weakened the realm.¹³

Penn's tracts on toleration were designed for immediate problems of persecution of his fellow Quakers and did not settle or address the long-range issue of the role of religion in the state. He did not grapple, as had early Friends, with the possibility of granting civil rights to the heathen or doing away completely with an established church linked to the state, because such conditions did not appear to be realistic pos-

¹⁰ Penn quoted in Proud, I, 96.

¹¹ Penn argued that the disagreements between Anglicans and dissenters were religious, but the differences between Protestants and Catholics were primarily civil. Tests for loyalty should be taken annually by both Catholics and Protestants. Such tests did not infringe upon liberty of conscience because they were about political or worldly matters, the security of the state, and not spiritual affairs. William Penn, *Select Works One Project for the Good of England*, (1679) III 193, 202-204; *The Great Question to be Considered*, [ca. 1681], 5; "England's Present Interest Considered," II, 272, 284, 6, 293, 299; "The Great Case of Liberty of Conscience," II, 133.

¹² Penn, "An Address to Protestants," III, 132; "England's Present Interest Considered," II, 303-307.

¹³ Penn, "An Address to Protestants," III, 42.

sibilities. He advocated toleration, not separation of church and state or complete religious liberty, and undergirding his argument was the assumption—a commonplace in Reformed theology—that government was instituted by God and that fostering of piety and virtue were essential elements for both the church and government. Consequently, when confronted with the issues of the church and state in his new colony, Penn had never considered the implications stemming from his ideas.

When Penn provided for religion in Pennsylvania, he considered the wishes of various groups. The charter stipulated that the colony's laws were to be "consonant with reason" and "neare as conveniently" to the laws of England. It also required that when twenty people petitioned the Bishop of London, an Anglican Church could be founded.¹⁴ More important at first were the comments of a number of leading citizens, mostly Friends, about the contents of the *Frame of Government* and *Laws Agreed Upon in England*. We do not know everyone consulted or how thoughtfully their advice was considered, but in answering a critique of the Frame Penn listed such prominent Quakers as George Fox, George Whitehead, James Claypoole, and Christopher Taylor as the *Frame's* supporters, and added that more than one hundred Friends had approved of it.¹⁵ The final products—the *Frame of Government*, *Laws Agreed Upon in England*, and the Great Law drawn up in Chester in December, 1682—all had Penn's imprint, but also expressed the wishes of many Friends.

An analysis of these three documents will show the expectations and inconsistencies in the ideas of religious toleration. Buried in article 35 of the *Laws Agreed Upon in England*, but prominently displayed as Chapter 1 in the Great Law decided at Chester, was a provision for liberty of conscience.¹⁶ The law begins with a series of theological postulates: God is the "only Lord of Conscience" and "Author as well as Object of all divine Knowledge Faith and Worship," who "alone" can "Enlighten the Mind and perswade and Convince the Understanding

¹⁴ Gail McKnight Beckman, comp. *Statutes at Large of Pennsylvania*, (New York, 1976), I, 113. Stephen Webb, in a paper delivered on March 21, 1981, at the World of William Penn Conference, argued that the clause allowing an Anglican Church was designed to pave the way ultimately for an Anglican establishment in the colony.

¹⁵ William Penn to Jasper (Batt), Feb. 5, 1682/3, Penn Papers Reel 4, Frame 045 Microfilm Edition.

¹⁶ *Statutes at Large*, I, 124, 128.

of People." The assumptions here are clearly drawn from Quaker beliefs including the doctrine that all religious knowledge is centered in the mind, which only God can control. This language, however, could be interpreted in several ways. A Quaker could understand enlightening the mind and convincing the understanding as referring to the experience of the Inward Light of Christ. Here "all divine Knowledge" would refer to the entire Christian faith. An Anglican might see in the wording a series of clichés referring to rational religion or orthodox Christian doctrine. After all, God was in one sense, the "Author" of scripture. Or, the "all" might refer only to the doctrines of God derived from a study of nature.

After first insisting that all knowledge of God is from conscience and cannot be coerced, the law now required a confession of the being and attributes of God. Any individual living in the province who shall "Confess and acknowledge one Almighty God to be the Creator and Upholder and Ruler of the World" and who "Profeseth him or herself Obligated in Conscience to live Peaceable and Justly under the Civil Government" shall not be molested for "his or her Conscientious Perswasion or Practice" or obliged to support a place of worship or minister against his persuasion.

Penn might mitigate a seeming contradiction by insisting that the law here is requiring a confession based upon postulates of reason with which all right-thinking individuals could agree. But the disparity between the first use of conscience and acknowledging God's governance of the world is not resolved.

The law then proceeds to use conscience, which earlier could not be coerced but whose results have just been decreed, in two different, and perhaps incompatible, ways. The person is to oblige himself "in Conscience to Live peaceably and justly under the Civil Government." Here conscience means an unconditional mental assent, a purely intellectual assent. The law finally guarantees that no one shall be molested "for his or her Conscientious Perswasion or Practice" which may mean that permissible religious observances and customs include only those sincerely held and/or divinely inspired.

In England Penn had hoped that granting religious toleration would enable all Protestants to live peacefully together. His desire for religious harmony may have influenced the next clause in the law: that each person shall "freely and fully Enjoy his or her Christian Liberty

without any Interruption or reflection and if any Person shall abuse or deride an Other for his or her Diferent Perswasion and Practice in Matters of Religion Such shall be Lookt upon as a disturber of the Peace and be punished accordingly." What exactly does this mean? Could it mean that no controversial writing on religion would be allowed in Pennsylvania? Or that the generally Quaker population was not to be disturbed by other religious groups? Or that each religious group could worship in peace? Considering that Friends had used the right of conscience to criticize other religions, the phrase is a curious example of potential censorship in the law designed to deny anyone such a right. When the Quakers did experience the acrimonious Keithian schism in the 1690s, this phrase could have been used to imprison the dissenters. The phrase was at best vaguely worded, and Penn's later revisions of the law omitted it entirely. But the proprietor continued to insist that one function of government was to preserve peace among various religious groups, although his instructions to governors John Blackwell and John Evans did not specify how this was to be done.¹⁷

An unusual feature of the law is the emphasis upon the religious rights of both men and women. In several places the "his or her Conscientious Perswasion" emphasis is explicit. Quakers insisted on the religious equality of women who had the same spiritual gifts as men. Singling out women for special mention is probably an echo of the fact that women could be ministers, and Penn wanted to guarantee their equality under the law.

In the preamble to the first *Frame of Government*, Penn argued that government had a sacred function, not to bring men salvation, but to stop evil actions and to foster good habits. Government not only exercised a check on sin but could legislate acts of compassion and charity to aid virtuous men and women. "Christian and Civil Liberty" was juxtaposed against licentiousness and "Unjust Practices."¹⁸ The law on toleration concluded with an exhortation that liberty was not to be used as a cloak for "Looseness Irreligion and Atheism," and the means for preventing such were keeping the Sabbath (but not because it was a holy day) by refraining from toil, engaging in worship, and reading scriptures. The connection between Sunday observance and religious liberty

¹⁷ Edward Beatty, 126, 157.

¹⁸ *Statutes at Large*, I, 117, 128.

was tenuous and in both the *Laws Agreed Upon in England* and the 1705 statute on toleration such provisions were kept separate.¹⁹

The 1681 statute of toleration did not say that there could be no religious establishment, but only provided for liberty in worship and not paying taxes or tithes to a form of worship which one did not profess. Did Penn believe that a voluntary religious establishment was compatible with freedom of conscience? It would be unusual if he did not. English Friends and other dissenters after 1688 aimed at modifying the tithe law, but not dis-establishing the Church of England.²⁰ Until his illness in 1712, Penn worked in English Quaker lobbying activities and his controversies with the Crown over the legislative standing of Quaker practices give no indication that he ever understood the distinctiveness of Pennsylvania's religious pattern enough to create a new theory of the relationship of religion to the state. During negotiations with the Crown over selling the right to government of the colony, the Board of Trade asked Penn what "Liberty of Conscience" meant:

I mean, not only that relating to worship, but education, or Schools, a Coercive Ministerial maintenance, the Militia.²¹

In other documents, he added the right of Friends to "any Civill employment but Governor," "to Marry according to our way and method," "To be exempted from Militia Services and Charges thereof So as well watch and War in times of trouble," and the use of affirmations rather than oaths. Penn admitted that the Assembly could pass a law for support of ministers and churches but that "no person or persons shall

¹⁹ Benjamin Furly feared that those who believed that Sunday observances were a human invention would feel obliged in conscience to work on the first day. Furly also wanted servants to have liberty not to be forced to work on the Sabbath. *PMHB*, XIX, 302.

²⁰ The English Quaker effort aimed at freeing Friends from prosecution in ecclesiastical and chancery courts, not ending the tithe. David Hunt, *Two Early Political Associations* (Oxford, 1965), 62-71. In the aftermath of the law on toleration, the English government gradually worked out what privileges Friends and other dissenters were allowed. The London Meeting for Sufferings was involved in litigation on the validity of Quaker marriages, imprisonment of schoolmasters, tithes, and affirmations. Penn wanted to avoid such problems in Pennsylvania. London Meeting for Sufferings, Book of Cases, II (1698-1738), Ms. at Friends House, London.

²¹ William Penn Answers to Council of Trade, Jan. 11, 1704/5, Penn Papers Microfilm Reel II, Frame, 468.

be bound by the Act or Acts, Vote or Votes of any Majority but only by his her or their own free consent."²² Here Penn seems to be arguing that a non-coercive establishment of the Church of England in Pennsylvania was not incompatible with religious liberty. Unlike his sons, Penn never discussed the far-reaching implications required by the legality of churches.

When complaining that the government persecuted innocent Friends while ignoring the guilty evil-doers, Friends in England had postulated maxims for the foundation of laws. Robert Barclay insisted that no man pleading the right of conscience should be allowed to "do anything contrary to the moral and perpetual statutes generally acknowledged by all Christians."²³ Penn argued that certain crimes—murder, adultery, theft, and perjury—were against the ends of both government and religion. Such actions came under the magistrates' cognizance because they were "injurious to Civil Society" and "not upon the meer Religious account." The magistrate could foster religious observances, but his motivation should be civil, not spiritual growth.²⁴ On other occasions, in enumerating a series of "crimes," Penn blurred these distinctions:

to be Drunk, to Whore, to be Voluptuous, to Game, Swear, Curse, Blaspheme and Profane. . . These are Sins against Nature; and against Government, as well as against the Written Laws of God.²⁵

Only the concept of sin against government requires explanation. Penn argued that government was strengthened by hard work, the good health of subjects, and the wealth produced by such industrious and healthy citizens. Debauchery, however, led to illness, improvidence, and poverty requiring eventually charity and weakening the strength of the nation. It was in the "interest" of government to suppress vices.²⁶

In the *Laws Agreed Upon in England*, Penn had listed a number of moral offenses which would be punished. The Great Law drawn up in

²² William Penn Requests to the Queen at the Surrender, Sept. 1, 1705, Penn Papers Reel 12, Frame 221; Copy of the Draught of a New Patent, May 23, 1705, Board of Trade Papers, VIII, Part 1, #30.

²³ Robert Barclay, *Apology for the True Christian Divinity*, Prop. XIV, 1.

²⁴ Penn, "The Great Question to be Considered by the King and this Approaching Parliament" (ca. 1681).

²⁵ Penn, "Address to Protestants," III, 27.

²⁶ *Ibid.*, 28.

Chester in 1682 expanded this moral code. Commentators have often noticed the puritanical nature of early Pennsylvania laws; indeed, one of the sources for these statutes was the laws of New England which had influenced the statutes of New York.²⁷ The Great Law had strong statements against drinking, swearing, defamation, fighting, "rude and Riotus" sports including stage plays, bullbaiting and cockfights, and illegal pernicious games including "Cards, Dice Lotterys."²⁸

Neither Penn nor the colonists saw these laws as infringing upon freedom of conscience. Evidently, these laws were popular at least among the assemblymen, for they were passed again with only minor changes in 1700. When many were vetoed by the Crown in 1705, the assembly made the necessary adjustments and passed them again. After some further modifications in language, the Crown accepted most of them.

There were certain laws, however, whose consistency to religious toleration is more dubious. These laws had no analogue in the Duke of York's code, but grew out of Quaker testimonies. No oaths of any kind were permitted in the colony. English statutes forbade oaths in common speech, but Quakers had also refused to swear in court and, in Pennsylvania, made all testimony in trials and qualifications for citizenship and office-holding by a solemn declaration.²⁹ In England, Quakers had borne a testimony against the pagan names of the days of the week and months, and in Pennsylvania legislated that a scriptural or numerical listing would be used, although no penalty was given for non-observance. Quakers had a testimony against drinking of healths as leading to drunkenness and false praise, and this was made illegal. The Quaker marriage procedure was made standard practice. Marriages were to be accomplished by the couple who, in the presence of witnesses, took solemn vows. No provision for a minister was included.³⁰

Early Pennsylvania laws also omitted provisions that were normal English practice. There were no statutes allowing churches corporate existence; that is, the right of religious societies to hold property. None

²⁷ *Statutes at Large*, I, 18.

²⁸ *Ibid.*, 18, 131, J. Thomas Jable, "Blue Laws of 1779," *Pennsylvania History* XL (1973), 414-415.

²⁹ *Ibid.*, 128-129, 133.

³⁰ *Ibid.*, 130, 132.

of the criminal laws made any mention of benefit of clergy, a medieval right which allowed those who could read and write certain alleviations from punishment. Most significant, the early laws said nothing about fortifications or defense. A comparison with the 1683 laws of East Jersey shows the difference.

In the 1680s the proprietors of East Jersey included such Quakers as Penn, Barclay, Thomas Rudyard, Edward Billing, Robert Turner, and Ambrose Rigge and also non-Quakers. This division was also reflected in the pattern of settlement. The Fundamental Constitutions of 1683 attempted to allow pacifist Quakers and persons who believed in military force to exist together without the denial of rights to either group. Those who objected to bearing arms would not have to do so and would provide substitutes, but those who supported defense could do so in a legal manner.³¹ The government would form a committee of six proprietors and three freemen, all of whom believed in defense. This committee was to propose to the Great Council measures for keeping internal peace and external defense. Since the pacifists on the Great Council might obstruct all military matters, such proprietors could agree on defense issues by divorcing themselves from their Quakerism and "to speak after the manner of men, and abstractly from a man's perswasion in matters of religion." Operating in this fashion they would decide whether it was "convenient" and "suitable" for the inhabitants to build forts, etc., and whether such defense was necessary. Two-thirds of the Council and twelve of the proprietors had to agree. If they did, then the conduct of the military measures or war would be entrusted to the original committee who believed in defense. The pacifists would have no responsibility for the actual conduct of the war. The colonists who believed in military force would pay all its costs; those who were pacifists would then "bear so much in other charges, as may make up that portion in the general charge of the Province." The law was a fascinating attempt, however unworkable in practice, to guarantee the civil and religious liberties of two groups.

The contrast between East and West Jersey is striking. The West Jersey Concessions and Agreements ignores the subject of war and contains detailed instructions on conciliation of grievances. In 1676 a

³¹ Francis N. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* (Washington, 1909), V, 2576-2578.

statement by Penn and two other proprietors clarified any ambiguity on the possibility of using force to guarantee "liberty of conscience." While the proprietors would "never consent to any the least violence on conscience; yet it was never designed to encourage any to expect by force of arms to have liberty of conscience fenced against invaders thereof."³² West Jersey was founded and settled by people with scruples against war, and no provisions would be made for defense. The *Frame of Government* and early laws of Pennsylvania on this subject conform to the West Jersey, not the East Jersey, pattern of government. Pennsylvania would have no militia, no fortifications, and no war; inhabitants who thought otherwise would have to acquiesce to Quaker denomination.

Clearly, the case can be made that Quakers were transporting the English situation to America with certain modifications. There the Church of England was established and the laws required paying the tithes and military appropriations. In Pennsylvania, there would be no tithes or forced maintenance of any minister, but the Society of Friends would occupy a position comparable to that of the Church of England. Laws and government and the tone of the society would be established by Friends. Others would be welcome, but they would have to be governed by Quaker principles. The unwillingness of the inhabitants of Delaware to accede to such Quaker denomination was a factor in the separation of the two colonies.

The *Frame* and early laws provided for religious liberty, but the settlers had to define in practice the relation between the meeting and the state. Toleration would be tested and modified by the virtual Quaker monopoly of political power in the 1680s, a schism in the 1690s, Penn's temporary loss of the right to govern, the opposition by members of the Church of England, and the scrutiny of the English government.

Since Friends had no conception of a paid ministry, a member who was a minister—whose gift for speaking in meeting was recognized as fostering God's presence—could engage in any business or hold any position in government. Penn moved easily between his responsibilities as proprietor and minister. His first deputy governor, Thomas Lloyd,

³² Mary Maples Dunn and Richard Dunn, eds. *Papers of William Penn* (Philadelphia, 1981) I, 420-421.

was a minister as were several members of the Council including Samuel Jennings, Thomas Simcock, and Griffith Owen. Every early assembly included at least one recognized Quaker minister. Ministers and influential Friends played a disproportionate role in controlling the Society of Friends and the local government of Pennsylvania. The colony in its formative period was controlled by members of the religious group who had the only organized worship³³ and the overwhelming preponderance of the colonists as members. Those who were not Quakers had no choice but to follow Friends' practices. That the Council would even entertain the suggestion that all men be limited to two sorts of clothing, one kind for winter and another for summer wear, shows the presumption that the Quaker testimony on plain dress could be made universal.

During the first years of the colony, the Society of Friends appeared to have made the transition from England to America relatively easily. A structure of monthly, quarterly, and yearly meetings for men and women, a special meeting for ministers, and contacts with other meetings in England and America were institutionalized. The local meetings had mechanisms for punishing deviance by Quakers from a set of norms, some of which were also mandated by law.

In this period a schism erupted among Quakers which severely tested the concept of religious liberty and the relationship between the meeting and the magistrates. Before it ended, a substantial minority (perhaps one-fourth) of Friends in New Jersey and Pennsylvania declared disunity, a vigorous pamphlet war exposed several Quaker theological tenets and political practices to close scrutiny, and the bitter dispute shattered the religious unity of the colony. The disagreement began over a theological disagreement between George Keith, a well educated and prominent Quaker minister, and other less sophisticated Quakers.

The issue of religious liberty emerged when the magistrates arrested George Keith, his supporter John McComb, and Andrew Bradford, the only printer in the colony. The Society of Friends had contributed to

³³ There was a Lutheran minister in the colony who, a little later, was said to be destitute, blind, a drunk, and in need of relief. Israel Acrelius, *A History of New Sweden* (Philadelphia, 1874), 177, 180, 188. Morgan Edwards found two Baptist ministers in the colony by 1690, but is vague on whether they held services. *Materials Towards a History of the Baptists* (Philadelphia, 1770), I, 9, 11.

the purchase of Bradford's type and guaranteed the purchase of copies of tracts. Now Bradford was printing in opposition and there was no law of religious censorship in Pennsylvania. The Council had, however, previously warned Bradford against printing materials designed to cause religious controversy and had suppressed an almanac which referred to the proprietor as "Lord Penn."³⁴ There were laws against belittling magistrates, and so the magistrates seized Bradford's type (an effective method of silencing him) and charged Keith and McComb with seditious libel. The magistrates supposedly libeled were prominent ministers (also important politically) who had been active in opposing Keith; the spoken "libels" had occurred in a Friends' meeting, the printed one in religious pamphlets.³⁵

In the trial Keith claimed liberty of conscience, insisting that not only were the supposed libels true statements, but they were spoken against ministers in a religious dispute. According to Pennsylvania laws, the state had no jurisdiction in such a controversy. The prosecution cited a passage in a pamphlet where Samuel Jennings, a member of the Council but also a minister and clerk of both Philadelphia Monthly Meeting and the Meeting for Ministers, was accused of prideful insolence in his capacity as a judge.³⁶ Keith's strictures about the incompatibility of Quaker ministers acting as magistrates, notably in trying to seize a smuggler named Babbitt and in administering capital punishment, seemed to the prosecution to be destructive of the foundation of government. The magistrates insisted that the three men were not being tried for their religious views but for their political attacks.³⁷ Resurrecting a statute of Charles II ignored by Quakers in England and never used before or since in America, the magistrates indicated Bradford, the printer, because his pamphlet did not contain the name of its producer.³⁸ Whether or not Samuel Jennings actually served as one of the

³⁴ "Minutes of Provincial Council," *PMHB*, XI (1887), 156-159.

³⁵ "The Tryals of Peter Boss, George Keith, Thomas Budd and William Bradford," reprinted in J. W. Frost, ed., *The Keithian Controversy in Early Pennsylvania*, (Norwood, Pa., 1980), 172.

³⁶ *Ibid.*, 170, 180.

³⁷ Samuel Jennings, "State of the Case," reprinted in *The Keithian Controversy*, 268-281.

³⁸ *The Tryals*, 175. The law was useful, for it provided for seizing the press. English Quakers protested against a licensing law proposed in Parliament in 1702 or 1703, *Some Considerations Humbly Offered by the People Called Quakers Relating to the Bill for the Restraining the Licentiousness of the Press*.

judges, he was present and consulted with the other judges. The judges, jury, and prosecution contain Quakers, and Keith's attempts to challenge jurors who were Friends were overruled.³⁹ Keith's account of the trial reminds one of the Penn-Mead trial in England, only this time the Quakers came close to playing the role of religious persecutors. Keith and McComb were convicted and fined £5, which they do not appear to have paid; Bradford's jury, in spite of some attempts at coercion, could reach no verdict. Still, the government kept the press until Governor Benjamin Fletcher had it returned.

Keith soon returned to England and Bradford moved to New York. Fletcher's appointment as governor ended any further moves against the Keithians by magistrates. Friends in England rebuked Pennsylvania Quakers for their heavy-handed actions in civil court against religious opponents. The adherents of Keith went diverse ways. Some followed Keith eventually into the Church of England; others became Baptists; a few remained separatist or Christian Quakers; most eventually rejoined Friends. The colony of Pennsylvania was no longer a Quaker enclave, but now featured a wide variety of religious persuasions who claimed the rights of liberty of conscience.

In the Laws Agreed Upon in Chester, all officeholders had to profess belief in the divinity of Christ and the authority of Old and New Testaments.⁴⁰ While Jews were thereby excluded, all Christians were eligible including Roman Catholics. After the Revolution of 1688 drove out the Catholic James II, who entered into an alliance with the Catholic Louis XIV, the temper in England became rabidly anti-Catholic, and Parliament's Act of Toleration (1689) applied only to orthodox Protestants. The Crown's instructions to Governor Fletcher required that members of the Pennsylvania Assembly and Council declare their allegiance to the Protestant monarchs and abjuration of Roman Catholicism. In 1693 Fletcher allowed Quakers to affirm rather than to swear—not, he insisted, as a right but an act of grace.⁴¹

In 1696, the colonists drew up the second Frame of Government, and it limited service in government to Protestants.⁴² The law code of

³⁹ *The Tryals*, 177, 179.

⁴⁰ *Statutes at Large*, I, 128.

⁴¹ *Minutes of the Provincial Council, Colonial Records of Pennsylvania* (Harrisburg, 1838), I, 318, 324, 359-360.

⁴² *Statutes at Large*, I, 212.

1700/01 omitted the 1681 statute on religious qualifications for office holding. The law on attests specified the kinds of affirmations necessary for a wide variety of positions, but did not specify what kinds of oaths or affirmations were necessary for members of the Council and Assembly. Penn did not end the custom of requiring some kind of tests of Assemblymen and members of the Council, and he was present in 1701 when they were administered.⁴³ Charles Stillé argued that only declarations of loyalty to Penn and the Crown were required, and that, theoretically therefore, a Roman Catholic was still eligible for office.⁴⁴ Penn bitterly protested in 1703 when, after the death of Governor Andrew Hamilton, Colonel Robert Quarry persuaded or compelled members of the government to obey an Order in Council to make declarations of abjuration against Roman Catholicism and extended the English loyalty oaths to Pennsylvania. Penn's complaints did not mention the disqualification of Catholics from holding office (there were few Catholics in Pennsylvania at the time), but focused on the violation of charter rights.⁴⁵ Extending the stipulation on oaths contained in an act of Parliament not mentioning America and requiring more rigorous declarations of colonists than were required in England was a dubious interpretation of English prerogatives. But the colonists did not object and passed a law in 1705 requiring a renunciation of Roman Catholicism and a declaration of loyalty to the monarch which, with modification, remained in effect throughout the rest of the colonial period.⁴⁶

The power of the English government to shape the pattern of Pennsylvania's religious and moral customs was most vividly demonstrated in the reaction to the Pennsylvania laws of 1700/01. Penn's granting a new frame of government necessitated passing again a

⁴³ *Statutes at Large*, II, 39-42; *Colonial Records*, II, 30. It is questionable that any Catholic would have taken in 1701 "the Declaration appointed by the Parliament of England, of their abhorrence of that Damnable Doctrine and Position that Princes excommunicated by the Pope may be deposed or murder'd by their subjects &c."

⁴⁴ Charles J. Stillé, "Religious Tests in Provincial Pennsylvania," *Votes of Assembly* I, 402. Robert Quarry mentioned that the oaths given to the Pennsylvania Council were not full oaths as were administered in New Jersey. Robert Quarry to the Board of Trade, Jan. 1704/5, Board of Trade Papers, vol. 8, #5.

⁴⁵ *Correspondence between William Penn and James Logan*, comp. Deborah Logan, ed., Edward Armstrong, *Memoirs of the Historical Society of Pennsylvania*, IX (Philadelphia, 1870), I, 248, 259, 38, 190-194, 224; *Votes of Assembly, Pennsylvania Archives*, Series 8, I, 402-403.

⁴⁶ *Statutes at Large*, IV, 428-429.

complete system of laws, and most of the 1682 Great Law of Chester was repassed. This time the newly formed Board of Trade insisted upon exercising the Charter provision that all of the colony's laws be reviewed within five years. In 1705 the Board acted and of the 114 laws passed (of which a few were not submitted), only thirty-eight survived. Many of those accepted concerned only local affairs such as the statutes on boats and canoes and selling lands to Indians.

The Board's objections were various: some statutes deviated too far from the laws of England, some were poorly worded, some were too strict, some were too liberal, some did not conform to Anglican religious standards. The Pennsylvania statute allowing divorce was disallowed because it did not conform to the ecclesiastical law of England; castration as a punishment for rape appeared "unreasonable" and was not a punishment used elsewhere. Requiring single persons guilty of fornication to marry "may be unreasonable, where young men may be drawn in by lewd women."⁴⁷ Specific Quaker customs like outlawing drinking of healths and use of the plain style of calendar were "insignificant and not fit to be laid before the Crown." The acts against riotous sports, plays, and games, were not only too vaguely drawn but prohibited "some innocent sports" without reason.⁴⁸

Penn's Act of Toleration, which he declared in 1700/01 a fundamental law which could not be revised, did not survive. The Attorney General complained that the law had "no regard" for the "Christian religion," did not specify the limits of allowable "conscientious practices," and ignored the English law requiring Quakers "to profess faith in God and in Jesus Christ his Eternal Son, the True God and in the Holy Spirit one God blessed for evermore, and to acknowledge the scriptures of old and new Testament."⁴⁹ One of the few laws approved by the English government was the provision against blasphemy.

Penn and his appointed governors advised remodeling the laws to take cognizance of the English objections. If the colony were to have any law code, drastic changes were a necessity. Even when the English Attorney General overstepped his boundaries, the colonists sometimes acquiesced. For example, the new statute of religious toleration incor-

⁴⁷ *Ibid.*, II, 490.

⁴⁸ *Ibid.*, 465, 489-490. The Council in 1734 asserted that the original Charter of Privileges was in force in Pennsylvania.

⁴⁹ *Ibid.*

porated the phrases insisted upon by the Attorney General. The preamble to the bill was the same as in the 1701 act, but only those willing to make the orthodox declaration of Christian faith were guaranteed religious liberty and freedom from compulsory tithes.⁵⁰ In England Quaker ministers had to accept such a test, but in Pennsylvania the statute applied to all persons. Quakers in England and America were too busy trying to prove that they were orthodox enough to qualify under the Act of Toleration to protest against the English impositions upon the liberal declarations of William Penn.⁵¹ Still, the 1705 act which allowed Christians freedom to worship meant that Roman Catholics were included and that Mass could be publicly celebrated in Pennsylvania.

The stringent moral code was refined, toned down slightly, and repassed without distinctive Quaker emphases. The English government was willing to accept most of the new laws, and the "puritanical" basis of the moral code was more important to the Assembly than liberal statutes which applied to Jews, Socinians, and free thinkers who probably did not live in Pennsylvania anyway.

A bitter and protracted controversy over religious toleration centered on Friends' refusal to swear. Quaker opposition to oaths influenced legislation on qualifications for office, naturalization, and courts.⁵² Under the initial laws no one was even allowed to take an oath, and in any instance where an oath might otherwise be required, the person had only to solemnly affirm or declare. In 1683 the law specified that if anyone was willing to "Solemnly Testifye as in the Sight of an All-seeing God" that he had been threatened with bodily harm, the person threatening could be bound to the peace. The same formula was used in the 1693 Petition of Right given to Governor Fletcher but a 1693 law on giving evidence did not mention the name of the deity.⁵³ Pamphlets

⁵⁰ *Ibid.* When the bill was first drawn up, the provision of worship did not specify only for Christians. The Council insisted upon adding that stipulation. Whether the Assembly was careless or motivated by liberal principles cannot be determined. *Colonial Records*, II, 229.

⁵¹ See George Whitehead et al., *The Christian Faith and Profession of the People commonly called Quakers, concerning the Divinity or Deity of the Son of God Asserted* (ca. 1693).

⁵² For a discussion of the basis and evolution of the Quaker testimony on oaths, see J. William Frost, "The Affirmation Controversy and Religious Liberty," paper delivered at World of William Penn Conference, March 21, 1981.

⁵³ *Statutes at Large*, I, 152, 188. Fletcher required the Council and Assembly members to affirm "in the presence of God." *Colonial Records*, I, 324.

written in England stated, however, that witnesses in Pennsylvania were required to affirm "in the presence of God."⁵⁴ In the law passed during Penn's second visit, the oath was made optional for those who desired it, if a person willing to administer it were available.

In England in the aftermath of the Glorious Revolution, Friends persuaded a reluctant Parliament, in 1696, to permit an affirmation in courts of chancery and exchequer, but such affirmations were not accepted for jury duty, in criminal cases, or as a qualification for public office. The wording of the affirmation, requiring a declaration "in the presence of God, the witness to the truth of what I say" was offensive to some Friends.⁵⁵ The provisions of the act did not, of course, extend to the colonies.

In Pennsylvania the dispute over the use of affirmations became complicated by the battles between the governors and the assemblies over establishing courts, and battles between Anglicans and Quakers over control of the colony. Pennsylvania Anglicans were few in number but had the backing of the Bishop of London and a revitalized Church of England as well as the support of royal officials in the colony and in London who were interested in strict enforcement of the Navigation Acts and tighter control of colonial governments. The resulting battle occasioned 25 years of intricate political maneuverings and threatened the existence of the unofficial Quaker establishment in Pennsylvania.⁵⁶

The conflict involved the meaning of religious liberty to two groups with diametrically opposed views on the necessity of oaths. The Quaker position was that courts could and should function without oaths. No Friend should be forced to take an oath, and, most important of all, no Quaker justice should be required to tender an oath. Yet Quakers, because they established the colony and were the most numerous religious group, had the right to serve on juries and to be justices. Since county courts operated with a minimum quota of three judges and most magistrates were Friends, particularly in Chester and Bucks counties, the Anglicans felt discriminated against.

⁵⁴ "The Tryals of Peter Boss," 174; *A Letter From a Satisfied to a Dissatisfied Friend, Concerning the Solemn Affirmation* (London, 1713), 4-5.

⁵⁵ *A Collection of Acts of Parliament. . . Relative To Those Protestant Dissenters. . . called. . . Quakers* (London, 1777), 57-59.

⁵⁶ The best narrative of the dispute remains Winfred Root, *Relations of Pennsylvania with the British Government 1696-1767* (1912, reprinted New York, 1970), 222-255.

The opposition's stance was complicated because, in addition to feeling dissatisfied with the quality of justice obtained in Quaker courts, some wished to use the issue to force Penn to surrender the government and to bar Quakers completely from government. Hostility was correlated with membership in the Church of England and petitions against affirmations came from the clergy and vestries of Anglican churches in Pennsylvania and, in one case, from Burlington, New Jersey. Anglicans saw the growth and prosperity of their church as requiring an establishment. They witnessed the disqualification of Friends from holding office in Maryland and the Carolinas by requiring an oath of office, and saw the close relationship between the loss of Quaker political power and laws establishing the Church of England in these colonies. Maryland (briefly) and New Jersey became royal colonies and Pennsylvania might be next.⁵⁷

Anglicans did not wish to establish the Church in Pennsylvania just for political purposes. Both Anglican clergy and laity, a few of whom were former Keithians or converted by Keith on his return in 1702, were not certain that Friends were really Christians. If Quakers were not papists (a persistent rumor in England which occasionally surfaced in Pennsylvania), maybe they were socinians or deists. None of these groups qualified for the benefits of the English act of toleration. Pennsylvania Anglicans believed in religious toleration equal to practices in England. There Quakers could worship, but not hold political office, and were required to pay tithes. Such Quaker idiosyncracies as affirmations were acceptable so long as the Anglicans experienced few inconveniences.

Pennsylvania Quakers and Anglicans accused each other of aiming at a religious establishment and attempting to bar the other from serving in government. Penn attempted to recruit a few Anglicans so there would be one non-Quaker justice in each county court, but this did not alleviate the opposition.⁵⁸ Quakers relied upon Penn's proven abilities as a lobbyist and they repassed laws similar to those vetoed in England.

⁵⁷ The best secondary source on Anglicans in Pennsylvania is Deborah Mathias Gough, "Pluralism, Politics, and Power Struggles: The Church of England in Colonial Philadelphia 1695-1789," Ph.D. diss., University of Pennsylvania, 1978; the most convenient collection of primary materials is William Stevens Perry, ed., *Papers Relating to the History of the Church in Pennsylvania, a.d. 1680-1778* (n.p., 1871).

⁵⁸ *Minutes of the Provincial Council*, III, 143; *Votes of Assembly*, II, 1261.

Since there was a time interval of up to five years before laws had to be submitted to the Privy Council, Quaker justices could function, at least during these intervals. Anglicans who refused to accept an oath before one justice rather than the entire court attempted, successfully at times, to shut down the entire court system and then complained to England about the anarchy in the colony.⁵⁹

In 1711 the Assembly yielded enough to guarantee that all who wished an oath should be allowed to take one. In 1714 the Assembly passed two different affirmations, one using the name of God and one not, and the King did not veto the law using the name of God. Queen Anne in an Order in Council had permitted affirmations to be substituted for oaths in 1702. But now a new difficulty emerged. The English Quaker affirmation act had to be renewed periodically. In 1715, when the act was made perpetual, the House of Lords passed an amendment extending provisions to all plantations, and the Commons accepted it.⁶⁰ If the English standards had been enforced in Pennsylvania, no Quaker could have held office, served on a jury, or witnessed in a criminal case. In spite of attempts by Anglicans in England and Pennsylvania to apply the law, the Privy Council ignored its provisions.⁶¹

With the accession of Robert Walpole to power and the loss of strength in England of the Tories, English Quakers obtained in 1722

⁵⁹ The Assembly, led by David Lloyd, fought a bitter battle with the Governors and Council over the tenure of judges and responsibility for creating courts. When no agreement could be reached, the Governors established courts under the provisions of the charter. The leaders of the Assembly, without much success, attempted to undermine the legitimacy of these courts. Anglicans also were against the quality of justice given out by Pennsylvania courts, because witnesses who used only the affirmation supposedly lied. In a famous passage in *The Americans: The Colonial Experience* (New York, 1958) 47-48, Daniel Boorstin accused Friends of caring more about the affirmation than human life. In 1718 the Assembly passed a draconian law code, bringing Pennsylvania statutes into line with English laws. An attempt by two criminals, condemned to death, to gain freedom because of the affirmations used in their trials did not succeed. Boorstin would have been on sounder footing if he had seen the new codes as growing out of a fear of lawlessness and pressures by the British government to make Pennsylvania's laws closer to English practice. *Colonial Records*, III, 41-42; *Votes of Assembly*, III, 1257-1258; Roy Lokken, *David Lloyd: Colonial Lawmaker* (Seattle, 1959), 166-187, 198-199; Gary Nash, *Quakers and Politics* (Princeton, 1968), 248-272.

⁶⁰ The amendment had been defeated in 1701/02. *Journals of the House of Lords*, XVIII, I Geo. I (June 14, 1715), 168; *Journals of the House of Commons*, XVII, I Geo. I (May 26, June 2, 1715), 139, 161, 168.

⁶¹ The Assembly wished to ignore Parliament's declaration and rely upon an as yet unvetted Pennsylvania statute. Governor Gookin feared that any trials in Pennsylvania using affirmations would be illegal. *Colonial Records*, II, 649.

an affirmation act requiring no naming of God and not extending to the colonies. In 1724 the Pennsylvania assembly passed a statute using the same wording which was accepted, in spite of a token protest by churchmen. In practice, Quakers obtained their right to conduct justice by affirmations; Anglicans obtained the right to have their oaths required along with the oaths of those who were not Friends. County courts would be composed of representatives from several religious traditions. Even before 1724, neither side talked of miscarriages of justice by the custom of accepting affirmations.⁶² The affirmation controversy eased because the British government was not willing to force Friends out of office in Pennsylvania, and experience in the colony showed that few inconveniences resulted from the Quaker testimony.

Pacifists and proponents of the military used their rights to liberty of conscience in debates over the Quaker peace principles. Most of the fighting in the English civil war (though not the invasions of Ireland and Jamaica) ended before the birth of Friends in 1652, and circumstances did not prompt Quakers to arrive at a consistent policy of pacifism before the Restoration. Alan Cole and Wayne Spurrier have discovered many examples of militaristic Friends during the last years of the Commonwealth, but these should be balanced against the pronouncements by Fox and other leaders of the non-violent approach of Friends.⁶³ The Quaker peace testimony became indelible only in 1660 and the policies followed throughout the Restoration were non-resistance, support of established authority, and no Quaker service in the military. Friends paid taxes to the government during war as a tribute to Caesar and a few weighty Friends affirmed a state's right to self defense.⁶⁴

⁶² When the members of the Meeting for Sufferings thanked the King for his support and assent to the 1722 law, King George stated that the new law came because Quakers had not abused the privileges previously granted.

⁶³ Alan Cole, "Quakers and the English Revolution," *Past and Present* 10 (1956), 41; James Maclear, "Quakers and the End of the Interregnum," *Church History* XIX (Dec., 1950), 240-279; William Wayne Spurrier, "Persecution of the Quakers in England 1650-1714," Ph.D. diss., University of North Carolina, 1976, 44-51.

⁶⁴ The standard account of the peace testimony is Peter Brock, *Pioneers of the Peaceable Kingdom* (Princeton, New Jersey, 1968). While I believe that the interpretation by Herman Wellenreuther of early Friends' political attitudes is misleading, my understanding of events owes much to his article, "Political Dilemma of the Quakers in Pennsylvania, 1681-1748," *PMHB* XCIV

The charter to William Penn gave him responsibility to "Levy muster and traine" men, the rights of a "Captaine-generall of the army," and the "ability to make warr," but during the first years of the colony these provisions were ignored.⁶⁵ After the Glorious Revolution the imperial wars between England and France brought tensions to the New World, particularly to New England and New York. Penn lost his colony in 1693 partially because of its defenseless state, and he had to accept responsibility for military preparedness to regain his control of government. Except for Penn, all the colony's governors after 1688 were non-Quaker, and beginning with Lieutenant-Governor Blackwell (1688), each executive recommended to the Assembly the creation of a militia and appropriations for fortifications. In 1693 the Assembly's bill to create a militia passed through a second reading, but was defeated on the third reading. The Assembly, in 1696, 1709, and 1711 gave funds only in response to specific commands from the English government, and never as much as was requested.

Governor Fletcher promised that the colony's money would not be "dipt in blood," but that kind of promise and the Assembly's stipulations of using funds to buy gain or aid Indians were not legally binding.⁶⁶ In 1711 the Assembly entrusted the £2000 for the "Queen's use" to men instructed to make sure that no military expenditures resulted, and the funds had not been spent at the end of the war. The Assembly consistently refused to send quotas of men to help invade Canada, to create a militia, and to erect fortifications of any kind. The attempts of Governors Hamilton and Evans to recruit a voluntary militia without statutory authority, based upon the powers granted by the charter, were not particularly successful.⁶⁷ The Assembly refused to grant an exemption from participating in the watch as an incentive to volunteer, and few people showed up for drill. Evans' attempts in 1706 to frighten Quakers by spreading a rumor of a French invasion and in 1707 to establish a fort in non-Quaker Delaware on the river and then to tax Philadelphia's shippers to pay for it were total failures.⁶⁸

(1970), 135-172. See also Robert L. Davidson, *War Comes to Quaker Pennsylvania* (New York, 1957) and Isaac Sharpless, *A Quaker Experiment in Government* (Philadelphia, 1898).

⁶⁵ *Statutes at Large*, I, 115.

⁶⁶ *Papers of Governors, Pennsylvania Archives*, Series 4, I, 157, 171; Wellenreuther, 147-155.

⁶⁷ *Colonial Records*, II, 68, 154-155, 198, 211; *Papers of the Governors*, I, 288, 302; *Penn-Logan Correspondence*, I, 88, 124, 152, 299-300, 317-318.

⁶⁸ *Colonial Records*, II, 251-252, 373, 395. *Votes of Assembly*, I, 743-746, 748-750.

The Assembly's refusal to provide for any kind of defense for Pennsylvania occasioned a vigorous debate on the relationship of religion to government.⁶⁹ Thoughtful expositions came from various governors who attempted to persuade the Assembly to create a militia.

The governors relied upon a variety of arguments, both military and theological. Militarily, they pointed to the aggressiveness of the French, the rumors of French infiltration of neighboring Indian tribes, the numbers of foreigners living in Pennsylvania, the need to help English colonists elsewhere, the ease with which French or pirate ships could sail up the Delaware, the contributions of other colonies, and the lawfulness of the demands of the Crown. Self defense was a natural right and the first duty of any government, even mentioned in the charter, was to provide for the protection of subjects. No governor objected to the conscientious scruples of Friends, but all insisted that Friends did not have the right to impose their practices and beliefs upon others. Anglicans argued that since Pennsylvania was a mixed colony and Delaware did not even have a Quaker majority, Friends had in essence denied religious freedom to others. Such a denial was not over a small issue, but the protection of human life and rights of property.⁷⁰ The Assembly's failure to provide for defense was an infringement of an Anglican's liberty of conscience.

Occasionally, a governor would attack the Assembly's stubbornness upon theological grounds. There were a variety of Old and New Testament texts which justified war and required obedience to governing authorities, in this case the English Crown. The golden rule required helping one's neighbor. But the Quakers rather than helping their neighbors who lived in exposed frontiers, only left them more exposed to Indian attacks.⁷¹ The best way to ensure peace was to have a

⁶⁹ Pennsylvania's skepticism about the utility of a militia was echoed in England. The leading historian of the English militia labels the period from 1670 to 1757 as eighty years of decay. The militia was not an effective fighting force and few expected it to defeat a force of regulars. Its main use was to provide internal security when the regular army was engaged in fighting external enemies. For members of Parliament, the militia provided a cheap means of demonstrating concern for the security of the realm. By 1745 the militia could not be used to enforce the law nor to suppress smugglers. After the seventeenth century, the English did not introduce a militia bill before 1746 and, until convinced of the danger of a French invasion, Parliament did not pass a law until 1755-1756. J.R. Western, *The English Militia in the Eighteenth Century* (London, 1965).

⁷⁰ *Colonial Records*, I, 265-267, 269, 361-363, II, 431-437, 441, 471, 481-482.

⁷¹ *Ibid.*, II, 78, 496.

strong defense. The logical corollary of the governors' positions, not drawn by them but insisted upon by Anglican leaders and agreed to by such Friends as James Logan, was the incompatibility of Quaker principles with the necessities of government.⁷²

The Assembly, controlled by Quakers throughout the period, answered the contentions of defense-minded opponents but never created a systematic definition of the Quaker peace testimony. First, Friends attempted to refute military arguments. A fort on the Delaware, in addition to being expensive for such a poor colony to build and maintain, would not stop ships from sailing around it. From Cape Henlopen to Philadelphia was a distance of over one hundred miles, and even a series of forts would not protect that area. The Delaware Valley needed to be defended by sea, and providing ships was the responsibility of the home government. Penn's charter did not give him admiralty jurisdiction and the right to command or outfit ships on the high seas. Militia forces were not needed to protect the colony from hostile Indians, because the Indians near Pennsylvania were friendly and the Assembly was willing to provide funds to keep them happy. A voluntary militia could be formed under provisions of the charter, and no legislative authority was necessary. Since few settlers were willing to join, the Assembly found no strong desire by the inhabitants for such an institution. Besides, if pirates sailed up the river, it would be better if the inhabitants fled to the hinterlands rather than attempting to battle an armed vessel. Quakers in the Assembly accepted the necessity of providing money in response to the Queen's commands, but complained on numerous occasions that other colonies which did not provide quotas of men and money seemed little concerned about the terrible scenarios predicted by the governors.⁷³

The official response by Friends generally relied upon utilitarian reasons. It is plausible that Quakers knew that their peace testimony irritated the Crown and they deliberately kept it in the background. Still, on occasion, the religious underpinnings, were made explicit.⁷⁴ Charles II knew when giving Penn the charter, and William and Mary

⁷² *Penn-Logan*, I, 147.

⁷³ *Colonial Records*, I, 264-265, 267-268, II, 252, 432-433, 438-440, 472, 478-479, 482-484; *Votes of Assembly*, I, 280, 573-576.

⁷⁴ In the dispute over affirmation, the Assembly often invoked the distinctive principles of Friends. The difference with the peace testimony is striking.

also recognized when restoring the province to Penn, that Quakers had scruples against fighting in wars.⁷⁵ Pennsylvania was created as a haven for Quakers, and the first settlers had staked their lives and fortunes upon creating a place where their distinctive principles could be put into practice. The Assembly could not authorize the erection of forts nor create a militia without making Quakers dissenters in their own colony.⁷⁶

When William Markham informed Governor Blackwell in 1689 that the colony's constitution forbade defense, he may have been thinking of the provision for liberty of conscience.⁷⁷ Blackwell tried to pressure the Council into making provisions for defense, but the members first played down the seriousness of the situation, then advocated keeping a low profile, and finally insisted that, if the English government persisted in requiring a militia, the settlers were prepared to "suffer" the consequences.⁷⁸ War and peace were not determined by secular arguments but by God's providence. Prayer and just treatment of the Indians would preserve Pennsylvania's Quakers from war. Outsiders could either accept Quaker principles or form a voluntary militia or leave.

The Assembly's willingness to vote funds for the "Queen's use" and the failure of any immediate threat from French or Indians allowed Friends to preserve the peace testimony within the colony. The coming of peace in 1713 removed the problem until the 1740s. But Anglicans and those who believed in the compatibility of Christianity and war never accepted the Quaker understanding of religious freedom on this issue. The affirmation issue could be compromised, because the court system functioned successfully. Neither Quaker nor opponent worked out a satisfactory arrangement for defense like that proposed in the East Jersey constitution of 1683.

A colony accepting religious toleration needed to define the legal status of churches and clergy. The *Frame* and early laws ignored the subject. Official recognition that liberty of conscience had resulted in more than one religious group came slowly. In 1690 and 1701 the Assembly provided that the records of "any Religious society" (notice

⁷⁵ Penn quoted in Brock, p. 85

⁷⁶ *Colonial Records*, I, 265.

⁷⁷ *Ibid.*, 258.

⁷⁸ *Ibid.*, I, 264-265; II, 198.

the avoidance of the word church) could serve as a legal record of birth, marriage, and death.⁷⁹ In 1693 Governor Fletcher objected to a statute regulating clandestine marriages as discriminating against Anglicans (there was at this date no organized Anglican church in Pennsylvania or Delaware). The revised marriage law required the posting of notice or banns, recognized the existence of "men" (not ministers) who could "presume to marry or to Joyne any in marriage," and specifically allowed Anglican priests to follow English rather than Pennsylvania statutes aimed at controlling secret marriages.⁸⁰ In 1697 this exemption was reworded to permit duly registered members of every religious society to marry, if the intended wedding received due publicity. A redrafted law in 1701 continued the exemption, but provided for a one-month notification of parents, etc., before the ceremony.⁸¹ In spite of Anglican objectives, the Privy Council accepted this law.

In neither the 1681 nor 1701 codes of laws was any provision made for the ownership of church property. Meeting houses and churches were built and the lands and buildings controlled by trustees acting on behalf of religious groups, but no legal foundation existed for control of the property by the organization. When a special institution like the Quaker school in Philadelphia formed, William Penn granted it a special charter. In 1705 the Assembly, worried that the property of dissenters needed the same protection as that of Anglicans, passed a bill empowering religious societies to "hold, buy and sell Lands," but the Governor refused his assent because of adverse comment by local Anglicans, though it may have been sent to England for comment. The Assembly repeatedly requested the Governor to pass the bill to no avail. In 1712 the Assembly framed another law which attempted to meet previous objections. It applied only to religious societies and left out earlier clauses giving power to sell and alter title. Until 1714 the Assembly and Governor could not agree, and when the bill did pass in Pennsylvania it was vetoed in England as potentially interfering with the rights of property. When the Assembly drew up another bill, the Governor returned it, saying that the previous act was vetoed in England and he could not pass it here.⁸²

⁷⁹ *Statutes at Large*, I, 175, II, 91.

⁸⁰ *Ibid.*, I, 195.

⁸¹ *Ibid.*, II, 161.

⁸² Pennsylvania Anglicans said the law departed from English practice since the colonial

For fifteen years after 1715 there was no discussion of a bill entitling religious societies to own land. In 1730 the issue again became important, and involved Anglican and dissenters' property rights, only this time the conflict was with the Baptists. Originally in 1695 Baptists and Presbyterians worshipped together in Philadelphia but, growing in strength, the Presbyterians managed to gain control of the building and insisted on using it alone. The Baptists had to be content with renting Anthony Morris' brew house. The Baptists were invited in 1707 to use the structure originally built for the Keithian or Christian Quakers. Title to this meetinghouse was vested in four of the Keithians, but there were no longer enough Christian Quakers to meet separately. The Baptists had used the building for over twenty years and made no effort to clarify their title. All of the original trustees but one had died, and he had become a member of Christ Church. Upon his death, it was discovered that his will deeded the property to the Anglicans. The Baptists charged that the Anglican Rector had influenced the dying trustee to change his will and in 1730 they appealed to the Assembly for redress, claiming that the original trustees had all wished the Baptists to have the church. Perhaps because the Anglicans recognized that the Quaker-dominated Assembly and courts would not be sympathetic and would use the issue against them, or because they wanted to avoid litigation, they offered to give up their claim for £50.⁸³

The significance of the affair for religious liberty is this: in 1730/31 the Assembly again took up the issue of the property rights of churches. Though the bill did not essentially change from what had been previously desired, this time it passed in Pennsylvania and England. For the first time, all Protestant religious societies were vested with rights, and, in essence, declared legally equal.⁸⁴

churches could sell lands, but the Church of England could not. David Lloyd in 1709 insisted that dissenters in Pennsylvania could have no protection against the English statute of mortmain, a medieval statute forbidding the gift of property to the Church. The Quakers in the Assembly may have been trying to establish protection for property of dissenters in case Penn sold the right of government. No Pennsylvania statute mentioned mortmain. *Votes of Assembly*, II, 90, 558, 566, 579, 654, 665, 797, 890, 901, 910, 918, 960-974, 1010, 1012, 1017, 1034, 1091, 1119, 1129, 1137-1138; III, 2052, 2068-2069, 2081-2086; *Papers of Governors*, I, 317; *Statutes at Large*, II, 424-425.

⁸³ Morgan Edwards, *Materials Towards a History of the Baptists in Pennsylvania*, I, 45-46; William Keen, *First Baptist Church of Philadelphia* (Philadelphia, 1899), 29-30.

⁸⁴ *Votes of Assembly*, III, 2069, 2081-2084; *Statutes at Large*, IV, 208-210. The law was a major departure from English practices. In England an Anglican clergyman owned his living as

If all churches were legally equal, were clergymen subject to the same jurisdiction as other citizens? The medieval concept of "benefit of clergy," which had long lost its clerical content, was taken over from English law and incorporated in the 1718 criminal code. But the Bishop of London claimed jurisdiction over offenses committed by Anglican clergy in America. The case which raised this issue involved the rector of Christ Church.⁸⁵ On a Sunday morning in 1714 the good Anglicans of Philadelphia arrived at church to learn the distressing news that their minister was in jail. He had been imprisoned upon the complaint of two prominent Anglicans who had learned of his boast to two other men that he had seduced a Council member's wife, the Collector of Customs' daughter, and another gentleman's wife. Later the Rector denied all charges and claimed that it was not credible that he would have told such a tale to two men he scarcely knew. By statute, the case should have been tried in Pennsylvania by a civil jury, but Governor Gookin, an Anglican and political opponent of the Council member and Collector of Customs released the Rector from jail, suppressed the trial, and agreed with the clergyman's assertion that ecclesiastical courts had jurisdiction.⁸⁶ The Pennsylvania Assembly protested that the Governor had acted improperly.⁸⁷ No ecclesiastical court had any jurisdiction over a citizen of Pennsylvania in a criminal case. All citizens, including clergy, were equal before the law.

a freehold, although there were many restrictions on his disposing of the property without consent of the bishop or ordinary. He even owned the church, though the parish had the right of use and the duty of repair. Property could be given to a church only with the permission of the Crown; otherwise, the statute of mortmain applied. Dissenting meeting houses were owned by trustees whose relationship to congregations, higher ecclesiastical authorities, or creedal standards was ill-defined. Friends gained exemption from paying taxes on structures built for worship and used for no other purpose, but not on buildings rented and used for worship. Richard Grey, *A System of English Ecclesiastical Law*, 4th ed. (London, 1743), p. 72, 183-184; Meeting for Sufferings. Book of Cases, II (1700), 60-61, 99-101. For counsel's opinions on the problems of incorporation, 75; on the legal status of an English vestry, 43-44.

⁸⁵ Ecclesiastical courts would have had jurisdiction if the offense had been perpetrated in England because the case involved adultery and solicitation of chastity. In addition, while clergyman could be tried under common law for some kind of felonies, this kind of matter had first to be disposed of in church courts. Benefit of clergy meant that there could be no force on the person. Richard Grey, *A System of English Ecclesiastical Law*, 14-18, 429-432.

⁸⁶ Deborah Mathias Gough, "Pluralism, Politics, and Power Struggles," 78-92; William Stevens Perry, ed. *Papers Relating to the History of the Church in Pennsylvania, 1680-1778*, 81-98.

⁸⁷ *Colonial Records*, II, 626.

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William Penn's experience of persecution prompted him to make religious liberty a salient feature of his new colony. For Penn and the first settlers toleration required the abolition of such British practices as tithes, oaths, and church courts. Freedom of conscience also meant that distinctive Quaker customs on oaths, peace, marriage, and morality would receive the sanction of law. Ignoring other churches and any diversity of sentiment by Swedish settlers, the Proprietor and his government created a refuge for Quakers. The result was a non-coercive Quaker establishment.

The Keithian schism, the founding of Anglican churches, and pressures from the Crown toned down the Quaker domination. The English government required restrictions on holding office, limitations on acceptable religion, oaths for those wanting to swear, and revision of stringent moral legislation. The Crown failed to obtain a militia act but resisted local Anglican efforts to force Friends out of office. Quakers in the Assembly attempted to defend their distinctive testimonies in a series of statutes protecting the right of diversity and the equality of all Protestant churches. By 1725 the outlines of the Pennsylvania pattern of church and state were clear and accepted as a given by virtually all denominations.

Writings on the rise of religious toleration and separation of church and state in America concentrate on New England and Virginia.⁸⁸ In New England the Great Awakening helped to break down the alliance of magistrate and minister and fostered an evangelical piety which eased barriers among denominations. In Virginia during the period just preceding and during the Revolution an alliance between pietists (Baptists) and rationalists (Jefferson and Madison) resulted in disestablishment and religious freedom. Jefferson was as revolutionary in Virginia as Isaac Backus in Massachusetts when, after 1776, both insisted upon the legal equality of religions. In Pennsylvania legal equality of religion and the separation of the institutional church from the state had been operating successfully for at least fifty years. When Virginians and New Englanders looked for a new pattern on religion in

⁸⁸ William McLoughlin, *New England Dissent, 1630-1833* (Cambridge, Mass., 1971), I; Isaac Backus and the American Pietistic Tradition (Boston, 1967); Richard Bushman, *From Puritan to Yankee* (Cambridge, Mass., 1971); Sidney E. Mead, *The Lively Experiment: The Shaping of Christianity in America* (New York, 1963); Thomas Buckley, *Church and State in Revolutionary Virginia, 1776-1787*, (Charlottesville, University of Virginia, 1977).

1776, they saw in Pennsylvania the successful operation of religious freedom, not just toleration.

The Pennsylvania pattern began with the theories of William Penn. There remained a Quaker tone to the government, but this rested upon the free election of Friends to the Assembly. There were no feast or fast days proclaimed by the Assembly (when the Governors proclaimed special days, Friends refused to observe them) and, unlike New England, no election sermons discussed the religious or political significance of the colony. The government remained vigilant against a wide variety of moral offenses, because a dissolute people could preserve neither religious nor civil liberties. All denominations were legally equal; all had property rights; all were supposed to keep registers of births and deaths and marriages. Because of royal restrictions, liberty of conscience was limited to Protestants. Roman Catholics could not legally become naturalized and hold property, but they could worship openly. Discriminations remained at the level of English policy, but in practice in Pennsylvania even Catholic priests owned property.

Why had Pennsylvania become the most tolerant colony in the new world? The Quaker heritage was important. Friends experienced persecution in England and were determined to found a land where such sufferings would not be repeated. Penn, more cosmopolitan than most other Quakers, became the founding father and his ideas became the heritage of generations of immigrants. To those who cherished his memory in the mid-eighteenth century, like Isaac Norris I and Christopher Sauer, Penn stood for both civil and religious liberty. The Quakers' battles among themselves and with the Church of England also broke down restrictions. Friends learned to accept limitations on their power and Anglicans came to accept a minority status. By the 1720s both denominations agreed to live with each other, to cooperate on certain issues, and to assert their differences in the context of a broader agreement on the function of religious values within the society. The British government, paranoid over Roman Catholics, but sympathetic to Anglican and Quaker pressures, also helped foster the pattern of Protestant freedoms by balancing the demands of both groups. Finally, least important in the creation of toleration but of great ultimate significance in preserving such liberty, was the bewildering variety of religious sects and churches which populated eighteenth-century Pennsylvania. Attracted by toleration and enthusiastic about

freedom, the laity created churches which enforced moral standards, trumpeted distinctive doctrines and practices, and rejoiced in the conditions of civil and religious liberty.

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