

Walter G. Rödel und Helmut Schmahl (Hg.)

# **Menschen zwischen zwei Welten**

**Auswanderung, Ansiedlung,  
Akkulturation**

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## I. Migration und atlantische Welt

### "Smuggling Goods or Moving Households?"

#### The Legal Status of German-speaking Immigrants in the First British Empire

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Between 14 and 30 September 1736, Peter Evans, the collector of customs at the port of Philadelphia, confiscated the ship named *Princess Augusta*, with "all her Guns, Tackle, Furniture, Ammunition and Apparel" as well as a long list of "Goods, Wares & Merchandizes."<sup>1</sup> Among the forfeited items he listed were 596 scythes, 165 backs for chimneys, 120 pieces of cast iron, 103 large straw knives, fourteen drawing knives, a large number of iron and copper kitchen utensils, twenty-three dozen clasp knives, a variety of other hardware, two dozen printed linen caps, six pairs of worsted stockings, four pieces of striped cotton handkerchief, nineteen pieces of bed ticking, additional linens and dry goods, two dozen ivory combs, three dozen "spectacles" (eye glasses), thirty-two pocket looking glasses, and eight flutes. According to Evans, the confiscated merchandise had been illegally transported to Pennsylvania because its owners, all "foreign Protestants from Europe," had paid no customs or duties in England on the European wares.<sup>2</sup>

The German-speaking immigrants who had arrived on the ship insisted the items were their household goods. One immigrant argued that the settlers had exchanged their old, bulky, worn tools for new ones as they traveled down the Rhine River en route to Rotterdam.<sup>3</sup> Another German-speaking settler who had been in the colonies for twenty years painted shocking images in his letters home. He claimed that the "evil-doers" (customs officials) had taken away everything that was new from one ship and that they had held a watch on it day and night. On a second ship (the *Princess Augusta*), the officials were much worse. They waited until the men went to city hall to take their oaths of allegiance and then they went aboard the ship, searched through everything,

<sup>1</sup> *Records of the Court of Admiralty held in Philadelphia, PA*, vol. 1, 1735-1747, 65-107, Manuscript Division, Library of Congress, Washington, DC.

<sup>2</sup> Ibid.

<sup>3</sup> *Minutes of the Provincial Council of Pennsylvania*, vol. 4, *Containing the Proceedings of Council from February 7<sup>th</sup>, 1735-6, to October 15<sup>th</sup>, 1745* (Harrisburg, 1851), 171-2 (hereafter *MPC*).





## Naturalization and the Right to Own Land

The most complicating factor in the case of the *Princess Augusta* and one of the first challenges German-speaking immigrants encountered in moving to the colonies was their legal status within the British Empire. Continental European settlers were not British subjects. According to early modern political theory, English subjects owed their allegiance to the crown based on their position within the social hierarchy. Furthermore, only those born in England could enjoy the full rights of citizenship. All other subjects fell into three categories: aliens, denizens and naturalized citizens. English law prohibited aliens from holding property and, consequently, from bringing legal actions against others, exercising any franchises, or holding office. The monarch made foreigners his denizens through "letters patent." They could hold land but they enjoyed restricted legal rights and the King could withdraw their privileges at any time.<sup>7</sup> In contrast, naturalization was more stable; it offered aliens the same rights as natural-born subjects. Parliament conferred naturalization through two kinds of acts: general acts to specific occupational groups and private individual acts. Most commonly, aliens chose private naturalization acts as the way to become a British subject but obtaining the legislation was a costly and lengthy process.<sup>8</sup>

Throughout the seventeenth century, the overwhelming majority of settlers moving to the colonies were British subjects. They and their descendants were considered full-fledged members of the empire. Thus, naturalization was not a significant issue in the colonies. As England's surplus population began to diminish in the 1670s and 1680s, however, proprietors looked elsewhere for potential settlers. At the same time, contemporary colonial attitudes toward foreigners and allegiance began to diverge from those popular in the mother country. Colonizers desperately needed people to settle and work their land so proprietors and provincial governors promised special privileges to those who would move to America. Consequently, colonial ideas of naturalization increasingly represented a contract between aliens and the governments who adopted them rather than the traditional notion of conveying natural-born rights to establish the place of aliens within the social hierarchy. But the shift was gradual and attempts to fit colonial realities into English notions of executive denization and legislative naturalization resulted in uneven and confusing practices in the colonies.<sup>9</sup>

7 James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill, NC, 1978), 5-9; A. H. Carpenter, "Naturalization in England and the American Colonies," *American Historical Review*, 9 (1907), 290-1.

8 Kettner, *American Citizenship*, 66-72; Edward A. Hoyt, "Naturalization Under the American Colonies: Signs of a New Community," *Political Science Quarterly*, 67 (1952), 248-66.

9 Kettner, 8-9, 90-93; Hoyt, 262-4. Bernard Bailyn, in *The Peopling of British North America: An Introduction* (New York, NY, 1986), 60-88, discusses the importance of land speculation and labor shortages in settling the British American colonies. For specific land speculation schemes, see Bailyn, *Voyagers to the West: A Passage in the Peopling of America on the Eve of the Revolution* (New York, NY, 1986), 241-52. Attempts to use German immigrants as laborers in government

The most critical problem facing non-British immigrants was their ability to pass any land they purchased on to their heirs. The availability of land was one of the most important incentives for German-speaking settlers moving to British North America. The majority of them came from the Rhine Lands and Southwestern German states, where war, overpopulation and expanding state governments made owning property expensive and difficult. Building a significant legacy for one's children was even more challenging. The promise of inexpensive, fertile land, therefore, held wide appeal to potential immigrants.<sup>10</sup> But they would be no better off in the British colonies if their children could not inherit their property.

William Penn, one of the first proprietors to actively recruit continental European settlers, understood the legal dilemmas they encountered. Benjamin Furly, Penn's agent, pointed out that, if foreigners who purchased land died before they were naturalized, their property would revert back to the proprietor.<sup>11</sup> Penn addressed the issue directly in 1683 by guaranteeing that the heirs of alien landowners could retain the property in spite of the owner's legal status. He also ensured that the assembly passed a group naturalization act for all non-British inhabitants (mostly Dutch and Swedish) who were already living in the colony when he received his charter from the King.<sup>12</sup>

In spite of Penn's best efforts to secure their property, the status of his foreign settlers remained ambiguous. The culprit was a power struggle between the English crown and colonial governments. In 1700 the Pennsylvania assembly passed two laws to clarify the issue naturalization. One of the laws specified the procedure for naturalization and the privileges it conferred while the other protected all property owners and their heirs - regardless of their status as British subjects or aliens. However, the Crown rejected both laws because they granted Penn the power to naturalize foreigners that was not explicitly included in his grant from Charles II.<sup>13</sup>

The British crown's refusal to acknowledge the Pennsylvania laws created great concern among German-speaking immigrants in Germantown and Philadelphia. In 1704, eighty-two of the foreigners petitioned the Provincial Council and the Assembly for naturalization. When the act finally passed in 1709, its wording specified both the Germans' intent to secure their property and their awareness of the act's jurisdiction. The act was passed in order to remove any doubts that may have arisen "since the

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projects are discussed in Walter Knittle, *Early Eighteenth-Century Palatine Emigration: A British Government Redemptioner Project to Manufacture Naval Stores* (Philadelphia, PA, 1937).

10 Fertig, *Lokales Leben*, 38-56.

11 "Benjamin Furly's Criticism of the Frame of Government," [post May 1682], *The Papers of William Penn*, vol. 2, 1680-1684, eds. Richard S. Dunn and Mary Maples Dunn (Philadelphia, PA, 1989), 229-30.

12 Sally Schwartz, *"A Mixed Multitude": The Struggle for Toleration in Colonial Pennsylvania* (New York, NY, 1987), 26-9.

13 Schwarz, *"A Mixed Multitude"*, 23-9.

repeal of the late laws ... for encouragement of the peopling and settling of this colony" and it guaranteed that the petitioners could hold property as if they "were free and natural-born subjects and people of this **province**."<sup>14</sup> The Pennsylvania legislature acknowledged that its power to naturalize settlers extended only to its borders. Nevertheless, the Queen did not confirm the act until 1714, ten years after the initial petition was submitted.<sup>15</sup>

The first generation of German settlers not only persisted until they secured their property; they also sent information about their legal difficulties to their friends and family in Europe. Furly, who had recruited the Germantown immigrants, was linked to religious communication channels that connected the home villages of the early settlers. In the 1670s and early 1680s, he had worked closely with Penn to obtain religious toleration for Quakers in the Palatinate, many of whom had been Anabaptists (Mennonites). The first families to settle in Germantown arrived as a result of his efforts and continued to correspond with relatives and friends in the Rhine Valley.<sup>16</sup> When the earliest significant wave of German-speaking immigrants arrived in 1717, many of them were Anabaptists closely linked to one another and to wealthy Mennonites in the Netherlands.<sup>17</sup>

The 1717 Anabaptist immigrants were well informed about their status as aliens and the restrictions English law placed on their land ownership. Shortly after their arrival, they went to Penn's commissioners of property to obtain grants for the acreage they wanted to buy. The commissioners, "taking into Consideration the Circumstances of those People in Relation to their holding of Lands in the Dominions of great Britain," asked the immigrants "if they understood the disadvantage they were under by Reason of their being born Aliens." They pointed out that the settlers' children would be "incapable of inheriting what they purchased, according to English Laws." The immigrants replied that they already were aware of the regulations but were willing to buy

14 Emphasis added. James T. Mitchel and Henry Flanders, comps., *The Statutes at Large of Pennsylvania from 1682-1801* (Harrisburg, PA, 1896-1911), II, 298. For more information on this case, see William I. Hull, *Benjamin Furly and Quakerism in Rotterdam* (Lancaster, PA, 1941), 10-11; 59-60; Schwartz, "A Mixed Multitude", 26-9; MPC II, 241, 248, 480, 488, 494; *Lawmaking and Legislators in Pennsylvania: A Biographical Dictionary*, vol. 1, 1682-1709, eds. Craig Horle and Marianne Wokeck (Philadelphia, PA, 1991), 499, 586-90; *Votes and Proceedings of the House of Representatives of the Province of Pennsylvania* (Philadelphia, 1752), vol. I, part 2, 26, 47.

15 *Statutes at Large*, II, 298.

16 Rosalind J. Beiler, "Distributing Aid to Believers in Need: The Religious Foundations of Transatlantic Migration," *Pennsylvania History* 64 Supplemental Issue (1997), 73-87. The communication channels of various Anabaptist groups in the Rhine Valley are outlined in the papers of the Dutch Mennonites' "Commissie voor de Buitenlandsche Nooden" (Commission for Foreign Need), Archives of the Dutch Mennonite Church, Gemeente Archief, Amsterdam (hereafter CFN).

17 Jan Gerrit Olijslager, Hoorn, to Albert Kriekeboom, Alkmaar, April 8 and 11, 1717, CFN, no. 2256; Report from Congregation at Rotterdam, April 16, 1717, CFN no. 256.

the land anyway. The commissioners then suggested that the settlers submit a petition to the assembly for naturalization.<sup>18</sup>

The 1717 immigrants may have understood the need for becoming naturalized citizens but they did not succeed in doing so until 1730. The delay resulted from Penn's death in 1718 and the legal battle that ensued over his estate that continued until the late 1720s. For more than a decade no one knew who legally owned the colony's charter, so the commissioners of property refrained from issuing patents.<sup>19</sup> As soon as Penn's legal heirs to the colony were established, the 1717 immigrants petitioned the assembly for citizenship. The explicit purpose of their naturalization was to "enjoy and be entitled to all rights, privileges and advantages of natural-born subjects as fully ... as any of his Majesty's natural-born subjects of this province can."<sup>20</sup>

German-speaking immigrants both persevered until they secured their property through naturalization and they worked the system to get around the provincial limits of the acts. Caspar Wistar, one of the 1717 arrivals in Pennsylvania, successfully petitioned the Pennsylvania legislature in 1724 for naturalization. Fifteen years later, when he established a glass manufactory in Salem County, New Jersey, the New Jersey assembly granted him citizenship for that colony.<sup>21</sup> Recognizing that the legal jurisdiction of the provincial governments did not extend beyond their individual colonies, Wistar took all precautions necessary to protect his property.

## The Navigation Acts and the Legal Status of German Immigrants

If their legal status and securing their land created challenges for foreign immigrants, so did the Navigation Acts. Next to improving and accumulating real estate, participating in the expanding Atlantic trade provided British colonists with the best opportunities to improve their standard of living. The Navigation Acts were intended to increase commerce and wealth within the empire and to exclude foreign states from encroaching on British trade. For foreign colonists, however, they raised additional legal barriers.

The Navigation Acts prohibited alien merchants from participating in transatlantic trade, placed duties on imports from Europe, and required all European goods to be

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18 *Pennsylvania Archives*, 2nd series, vol. 19, *Minutes of the Board of Property of the Province of Pennsylvania* (Harrisburg, 1876-93), 679. For a history of the Lancaster settlement, see Richard K. MacMaster, *Land, Piety, Peoplehood: The Establishment of Mennonite Communities in America, 1683-1790* (Scottsdale, PA, 1985), 81-5.

19 Alan Tully, *William Penn's Legacy: Politics and Social Structure in Provincial Pennsylvania, 1726-1755* (Baltimore, 1977), 3-7.

20 *Statutes at Large*, IV, 147-50.

21 Rosalind J. Beiler, "The Transatlantic World of Caspar Wistar: From Germany to America in the Eighteenth Century" (Ph. D. Diss., University of Pennsylvania, 1994), 213-16; Bernard Bush, ed. *New Jersey Archives*, series 3, *Laws of New Jersey*, (Trenton, NJ, 1982), II, 506.



imported through England, where customs officers collected the appropriate duties. Essentially, the Acts excluded German-speaking immigrants from overseas trade and limited their commercial activities to the colony where they lived. The privileges of **naturalized** foreigners, however, were much more complex. Presumably they held the same rights as other British subjects. But, once again, the metropolitan and provincial governments' struggle to assert their power created confusion and ambiguity. In the late seventeenth century when foreign colonists were arrested for illicit trade, the Board of Trade, the branch of the ministry that regulated imperial trade, refused to recognize their documents because colonial governments had issued their naturalization acts. Thus the Board's legal action set a precedent. Naturalized subjects could trade within the colony but they could not participate in transatlantic trade as full British subjects unless they had been naturalized in England. In short, they had no more right to trade than aliens.<sup>22</sup>

Many early German-speaking immigrants, however, were not fully aware of these limitations. Promotional literature stated relatively little about the restrictions the Navigation Acts placed on trade. Penn, who wrote to recruit English settlers but whose pamphlets were translated into German, said nothing about the restrictions for foreigners, in spite of touting the advantages of the colony for imperial trade.<sup>23</sup> Francis Daniel Pastorius, in *UMSTÄNDIGE GEOGRAPHISCHE BESCHREIBUNG ...* published in 1700, mentioned nothing about naturalization. He did suggest that Penn promised to give German immigrants special privileges, although he failed to specify their nature.<sup>24</sup> Josua (Harrsch) Kochertal, author of the widely circulated *AUßFÜHRLICH- UND UMSTÄNDLICHER BERICHT VON DER BERÜHMTEN LANDSCHAFT CAROLINA*, was also silent about potential limits to foreign trade, even though he included an entire chapter describing trade and commerce in Carolina.<sup>25</sup>

Daniel Falckner proved the exception to the rule among early promoters. He clearly specified foreigners' rights within the empire in his *CURIEUSE NACHRICHT* published in 1702. When referring to trade, he advised potential settlers that, "To be competent, the naturalization as well as citizenship should be acquired in London." With an

22 Kettner, *American Citizenship*, 83, 90-7; John J. McCusker and Russel R. Menard, *The Economy of British North America, 1607-1789* (Chapel Hill, NC, 1985), 46-50. For a comprehensive history of the navigation acts, see Lawrence Harper, *The English Navigation Laws: A Seventeenth-Century Experiment in Social Engineering* (New York, 1939; rep. 1973) and Thomas Barrow, *Trade and Empire: The British Customs Service in Colonial America, 1660-1775* (Cambridge, MA, 1967). See also Oliver M. Dickerson, *The Navigation Acts and the American Revolution* (Philadelphia, 1951), 1-30.

23 William Penn, "Some Account of Pennsylvania, 1681", *Narratives of Early Pennsylvania, Wests New Jersey and Delaware, 1680-1707*, ed. Albert C. Myers (New York, 1912), 202-5.

24 Francis Daniel Pastorius, *Circumstantial Geographical Description of Pennsylvania*, By Francis Daniel Pastorius, 1700, *Narratives*, Myers, 381.

25 Josua (Harrsch) Kochertal, *AUßFÜHRLICH UND UMSTÄNDLICHER BERICHT VON DER BERÜHMTEN LANDSCHAFT CAROLINA IN DEM ENGELLÄNDISCHEN AMERICA GELEGEN* (Frankfurt am Mayn, 1709; reprinted in facsimile Neustadt an der Weinstraße, 1983).

imperial naturalization, immigrants could "trade free-handed, according to the English law, with London, Bristol, New York and all royal plantations." Distinguishing transatlantic from provincial trade, Falckner added that "Internal commerce every one pursues in his own province as well as he can."<sup>26</sup>

Promoters, in fact, encouraged immigrants to import merchandise. Responding to the lack of manufactured goods in the young colonies, promoters also included detailed lists of the kinds of tools and household goods potential settlers should take with them. Penn mentioned only that, "The Goods fit to take with them for use, or sell for profit, are all sorts of Apparel and Utensils for Husbandry and Building and Household Stuff."<sup>27</sup> Penn may have been vague but he specifically suggested importing goods to resell - an explicit breach of the Navigation Acts for foreigners. Pastorius recommended that immigrants take along some "great iron cooking-pots and nests of kettles. Also an iron stove, because the winter here is usually as cold as with you." At the end of his list, he added his own request: "Finally, if you would also send me some pieces of fustian and Osnabrück, linen cloth, it could be sold to good advantage."<sup>28</sup> Perhaps these authors did not view such imports as falling under the purview of the Navigation Acts since the immigrants were not participating regularly in trade. Whatever the case, most promoters were more concerned with supplying colonists than with the intricacies of imperial policy.

Once again, Falckner was the only author to specify the limits of the Navigation Acts. He topped his extensive list of items settlers should take along with "Dutch and Osnaburggish linen, about which one must first inquire from England, whether it can be shipped in Holland and how high the tariff is."<sup>29</sup> Most of the things he suggested were the kinds of wares found among the immigrants' chests on the *Princess Augusta* - farming implements and tools, hardware, and dry goods. He noted that a "family that expects to live in the country and cultivate the land" should pack their clothes and bedding in a barrel, "which could be entered at the customs in London as necessary household stuff, without (itemizing) among which can be packed two or three good hatchets, a broad axe, one or two hoes, three or four iron wedges, several iron rings, a door knocker, plough wheels and such."<sup>30</sup>

26 Daniel Falckner, "CURIEUSE NACHRICHT VON PENSYLVANIA IN NORDEN-AMERICA WELCHE AUF BEGEHREN GUTER FREUNDE UBER VORGELEGTE 103. FRAGEN BEY SEINER ABREIB AUS TEUTSCHLAND NACH OBIGEM LANDE ANNO 1700 ERTHEILET UND NUN ANNO 1702 IN DEN DRUCK GEGEBEN WORDEN", *Daniel Falckner's Curieuse Nachricht from Pennsylvania*, Julius F. Sachse (Lancaster, PA: The Pennsylvania German Society, 1905) ["Pennsylvania: The German Influence in its Settlement and Development," Part XIV], 195.

27 Myers, *Narratives*, 210.

28 Myers, *Narratives*, 408-9.

29 Falckner, *Curieuse Nachricht*, 239.

30 Falckner, *Curieuse Nachricht*, 241.

Each of these authors was writing in a period when the numbers of German-speaking immigrants were relatively low and the limits of the Navigation Acts had not been fully tested. The majority of the foreigners who arrived in the eighteenth century entered the colonies through the port of Philadelphia. Prior to 1720, they came sporadically in small numbers; 1041 people immigrated between 1683 and 1720. Throughout the next decade, a slow, steady trickle of immigrants (averaging fewer than 200 arrivals a year) disembarked in Pennsylvania. In 1727, however, 1198 German-speaking immigrants arrived, signaling a significant shift in migration patterns. From then until the mid 1750s the number of foreigners increased steadily with intermittent peaks in 1732, 1738 1759, and 1752 through 1754.<sup>31</sup> Thus, the ambiguous message early promoters sent reflected a lack of regulation and their interest in establishing flourishing settlements. The numbers of alien immigrants to the colonies were not high enough to pose significant breeches of the Navigation acts.

As early German-speaking settlers sent letters to family and friends at home encouraging them to migrate, however, they suggested specific strategies about how to transport goods and circumvent the Navigation Acts. In 1724 Christopher Sauer glowingly reported to his friends in Europe that, "The Palatines have brought very many goods with them so that many a man has made up to 600 Florins by this trip for everything was free because it was not examined in England."<sup>32</sup> The following year he sent home recommendations for what to bring on the journey. In addition to plenty of food and drink, he advised enthusiastically that "When one sails here from Holland, one can bring along, of course, much merchandise, as all goods here cost twice as much as over there .... If examined by customs in England, it will be confiscated, because the merchants of England do not tolerate it." Rather abruptly he added: "They are not supposed to check in the bedsteads, however."<sup>33</sup>

In 1728, Johann Dietrich Fahnestock recommended to family members considering migration that they should bring merchandise along rather than money. There was still a significant shortage of finished goods in Pennsylvania. But, he cautioned against bringing too many commodities because "you will have to keep them concealed in England, and pack them into the bottom of the chests." He suggested that his relatives bring specific kinds of cloth, new handkerchiefs, new ribbons, scissors, pins, needles, and lace. He also wanted them to bring copper candlesticks, kitchen utensils, a cross-cut saw, and lots of clothing. Above all, however, he advised family members to bring along guns. "They must be long, with the barrel at least four feet to four and a half feet in length, and finely ornamented with copper. A gun that costs there five Reichsthaler

<sup>31</sup> Wokeck, *Trade in Strangers*, 45-6.

<sup>32</sup> R. W. Kelsey, "An Early Description of Pennsylvania," *Pennsylvania Magazine of History and Biography* 45 (1921): 243-54.

<sup>33</sup> Christopher Sauer, "Germantown, PA to friends and acquaintances in Schwarzenau, Berleburg, Laasphe, and Christianseck, August 1, 1725", *The Brethren in Colonial America: A Source Book on the Transplantation and Development of the Church of the Brethren in the Eighteenth Century*, ed. & trans. Donald Durnbaugh (Elgin, IL, 1967), 37.

will cost here fifteen Reichsthaler." Fahnenstock insisted that every male should bring along at least two guns; to reinforce his point, he added: "my father-in-law two, Wilhelm two, and Peter two."<sup>34</sup> German-speaking immigrants thought potential profits from illicitly imported goods were worth the risk of getting caught.

### Smuggling Goods and the Case of the *Princess Augusta*

By the 1730s, however, the transatlantic "trade" in continental European goods had grown into a regularized system for circumventing imperial policy. Increasingly, Pennsylvania German settlers and "newlanders" - those traveling back to their home villages - were using the immigrant ships (and the immigrants' luggage) for illegal trade. In a 1737 letter to a European friend, Wistar, the immigrant who had arrived in 1717, noted that he hardly knew what kinds of goods to recommend bringing along for sale because every year "so many newlanders leave from here and bring ... so many goods along back." That year Wistar knew of twenty-five newlanders who were traveling back to Europe. He suggested that a good strategy for determining colonial demand for goods was to watch what they were buying.<sup>35</sup> Clearly the German-speaking settlers were going beyond investing their capital wisely in trade goods that would earn a profit and help them become established in the colonies. They were setting up trade networks with Europe to fill specialized market niches.

Wistar himself was actively participating in illicit commerce with the continent. By the 1730s, he was a well-established brass button-maker and shopkeeper in Philadelphia. Clearly understanding the implications of the Navigation Acts, he had ensured that his 1724 Pennsylvania naturalization act included a special clause that declared him "free and fully able and capable to trade, traffic, load, freight and transport all and all manner of goods, wares and merchandises not by law prohibited to be imported or exported." But, most importantly, his act granted him these trade privileges as if he had been "of the natural liege people and subjects of the King of Great Britain born in this province of Pennsylvania."<sup>36</sup> The legislature intended for Wistar to participate legally in transatlantic trade. Nevertheless, he recognized the opportunities for earning high profits from passing off his goods as immigrants' household wares.

Sometime around 1730, Wistar began to order merchandise from continental Europe. In 1732, Georg Friederich Hölzer, his business partner from Neckargemünd, billed him for 10,000 large screws, 500 knives from Ulm or Speyer, seven and one half

34 Johann Dietrich Fahnestock to friends and relatives, Oct. 25, 1728, Fahnestock Family Papers, HSP.

35 Wistar to [Hölzer?], Sept. 25, 1737, Wistar Family Papers, HSP.

36 *Statutes at Large*, III, 424-6. Wistar's was the first PA naturalization act to include the trade clause. A note at the bottom of the page states that the act was passed May 9, 1724 but was "Apparently never submitted to the consideration of the Crown." In spite of Wistar's and the Pennsylvania legislature's best efforts, the legality of his transatlantic trade remained open to interpretation.



dozen ivory combs, six dozen silk handkerchiefs, thirteen dozen mirrors, three dozen fine spectacles (eye glasses) from Augsburg, fifteen dozen tobacco pipes and two copper tea kettles, along with custom made hunting rifles and additional goods.<sup>37</sup> These were precisely the kinds of things confiscated from the *Princess Augusta* just six years later.

Technically, Wistar's naturalization granted him the right to import these goods as long as he transported them on a British or colonial ship and paid duties on them in England. He met the legal requirements of importing his merchandise on British-owned ships. Several companies based in London and Philadelphia dominated the immigrant transportation system in the 1730s and Wistar relied on those ships to carry his goods.<sup>38</sup> From Hölzer's bill, however, it is difficult to tell whether Wistar paid the appropriate English customs on his merchandise. Hölzer billed him for bridge tolls and for shipping his goods overland to the Rhine River. But from there, one of the newlanders Wistar had hired as an agent probably took over transporting his goods.<sup>39</sup> Wistar likely avoided paying extra duties on the goods by having Hölzer pack them with the belongings of immigrants arriving in the fall of 1732. His brother, who had arrived in 1727, no doubt brought merchandise with him and Wistar later imported rifles in the trunks of his sisters' families.<sup>40</sup> Whatever the case, Wistar was very conscious of the risks involved in importing European merchandise illegally. In an early letter to Hölzer, he commented that the "dangers are first in England, in that one is not supposed to bring such goods from other places, and secondly the great danger of the big sea."<sup>41</sup>

Wistar's subsequent correspondence indicates that he was, indeed, importing European goods illegally. In early 1733, Bastian Graff (a newlander) carried another order for merchandise to Hölzer. Wistar sent additional money and letters to Europe that fall

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37 Hölzer to Wistar, May 4, 1732, Wistar Family Papers, HSP.

38 Wokeck, *Trade in Strangers*, 59-112.

39 Hölzer to Wistar, May 4, 1732, Wistar Family Papers, HSP.

40 For evidence of Wistar shipping goods with family members, see Wistar to Baltasar Langhaer, Nov. 25, 1736; Wistar to Hölzer, Oct. 1, 1737; Hölzer to Wistar, May 10, 1742. Wistar may also have shipped goods with Jacob Schnebele in 1731. The bill Hölzer sent Wistar in 1732 is unclear but includes charges from merchandise shipped in 1731 and includes charges to deliver goods to Schnebele's house. A Jacob Schnebele arrived on the ship *Snow Lowther* in October 1731. *Pennsylvania German Pioneers: A Publication of the Original Lists of Arrivals In the Port of Philadelphia from 1727 to 1808*, vol. 1, 1727-1775, eds. Ralph Strassburger, William Hinke (Norristown, PA, 1934; rep. 1992), 54-7.

41 Wistar to [Hölzer], [n.d.], Wistar Family Papers, HSP.

dozen ivory combs, six dozen silk handkerchiefs, thirteen dozen mirrors, three dozen fine spectacles (eye glasses) from Augsburg, fifteen dozen tobacco pipes and two copper tea kettles, along with custom made hunting rifles and additional goods.<sup>37</sup> These were precisely the kinds of things confiscated from the *Princess Augusta* just six years later.

Technically, Wistar's naturalization granted him the right to import these goods as long as he transported them on a British or colonial ship and paid duties on them in England. He met the legal requirements of importing his merchandise on British-owned ships. Several companies based in London and Philadelphia dominated the immigrant transportation system in the 1730s and Wistar relied on those ships to carry his goods.<sup>38</sup> From Hölzer's bill, however, it is difficult to tell whether Wistar paid the appropriate English customs on his merchandise. Hölzer billed him for bridge tolls and for shipping his goods overland to the Rhine River. But from there, one of the newlanders Wistar had hired as an agent probably took over transporting his goods.<sup>39</sup> Wistar likely avoided paying extra duties on the goods by having Hölzer pack them with the belongings of immigrants arriving in the fall of 1732. His brother, who had arrived in 1727, no doubt brought merchandise with him and Wistar later imported rifles in the trunks of his sisters' families.<sup>40</sup> Whatever the case, Wistar was very conscious of the risks involved in importing European merchandise illegally. In an early letter to Hölzer, he commented that the "dangers are first in England, in that one is not supposed to bring such goods from other places, and secondly the great danger of the big sea."<sup>41</sup>

Wistar's subsequent correspondence indicates that he was, indeed, importing European goods illegally. In early 1733, Bastian Graff (a newlander) carried another order for merchandise to Hölzer. Wistar sent additional money and letters to Europe that fall

<sup>37</sup> Hölzer to Wistar, May 4, 1732, Wistar Family Papers, HSP.

<sup>38</sup> Wokeck, *Trade in Strangers*, 59-112.

<sup>39</sup> Hölzer to Wistar, May 4, 1732, Wistar Family Papers, HSP.

<sup>40</sup> For evidence of Wistar shipping goods with family members, see Wistar to Baltasar Langhaer, Nov. 25, 1736; Wistar to Hölzer, Oct. 1, 1737; Hölzer to Wistar, May 10, 1742. Wistar may also have shipped goods with Jacob Schnebele in 1731. The bill Hölzer sent Wistar in 1732 is unclear but includes charges from merchandise shipped in 1731 and includes charges to deliver goods to Schnebele's house. A Jacob Schnebele arrived on the ship *Snow Lowther* in October 1731. *Pennsylvania German Pioneers: A Publication of the Original Lists of Arrivals in the Port of Philadelphia from 1727 to 1808*, vol. 1, 1727-1775, eds. Ralph Strassburger, William Hinke (Norristown, PA, 1934; rep. 1992), 54-7.

<sup>41</sup> Wistar to [Hölzer], [n.d.], Wistar Family Papers, HSP.

with Heinrich Zimmerman and Nicolas Thönes, two newlanders.<sup>42</sup> By winter, however, Wistar received news that war had broken out in the Rhine Valley. Between then and 1736, he heard nothing from Hölzer or his European family members. The longer the silence, the more frantic his letters became and the more frequently he requested Hölzer to use the money he had sent for merchandise to move his family to safety.<sup>43</sup> In 1735, Wistar received a letter from Hölzer written two years earlier but no other correspondence or goods arrived. Recognizing the growing risk of importing goods, he sent a warning to Hölzer that, if possible, Hölzer should not send all of his goods with one person. Instead, Wistar wanted him to divide up the rifles and place them in several immigrants' trunks. He offered to pay the new settlers for helping him. Wistar noted that these precautions were necessary because "our evil-doers [customs officials] are much worse than they were."<sup>44</sup>

The following September the *Princess Augusta* arrived carrying Graff, Tönes, and Jacob Meyer. Both Graff and Tönes were the newlanders with whom Wistar had sent money and letters to Europe a few years earlier.<sup>45</sup> On Nov. 20, Wistar reported to Hölzer that he had received all of the merchandise Hölzer had sent him except for the four largest mirrors, which he feared he would not recover.<sup>46</sup> Within the next five days, Wistar received his mirrors as well. Meyer, who had managed somehow to remove them from the ship, delivered them along with some letters from relatives in Krefeld. Evidently the majority of Wistar's merchandise had been delayed, first, because Wistar's sisters, who were to transport the goods, did not come as planned. Then the wares sat in Holland because the first two ships to sail reportedly had no extra space for his goods. Finally, Captain John Stedman, who knew Wistar well, picked them up and transported them to Pennsylvania after paying the appropriate duties.<sup>47</sup> Wistar was relieved that Stedman had transported his goods. According to his report, "on the rest of the ships the evil-doers were so bad that they took away everything that was new."<sup>48</sup>

<sup>42</sup> Wistar to [Hölzer], Oct. 28, 1733; Wistar to Hölzer, Nov. 8, 1733, Wistar Family Papers, HSP.

<sup>43</sup> Wistar to [Hölzer], Feb. 15, 1734; Wistar to his mother, brother, and sisters, Waldhilsbach, Feb. 16, 1734; Wistar to Hölzer, June 19, 1734; Wistar to Andreas Weynert and Jan van Emrath, Krefeld, Nov. 6, 1734; Wistar to Hölzer, Nov. 7, 1734; Wistar to his mother, brother and sisters, Waldhilsbach, Nov. 10, 1735; Wistar to [Hölzer], Nov. 10, 1735; Wistar to Hölzer, Nov. 20, 1736, Wistar Family Papers, HSP.

<sup>44</sup> "unser fieselthäter sein viel schlimer als sie wahren." Wistar to Hölzer, Nov. 10, 1735, Wistar Family Papers, HSP.

<sup>45</sup> Strassburger & Hinke, *Pennsylvania German Pioneers*, I, 162, 164-5; Wistar to [Hölzer], Oct. 28, 1733; Wistar to [Hölzer], Feb. 16, 1734; Wistar to Hölzer, June 19, 1734; Wistar to Hölzer, Nov. 7, 1734; Wistar to his family, Nov. 10, 1735, Wistar Family Papers, HSP.

<sup>46</sup> Wistar to Hölzer, Nov. 20, 1736, Wistar Family Papers, HSP.

<sup>47</sup> Wistar to Baltes Langhaer, Krefeld, Nov. 25, 1736, Wistar Family Papers, HSP.

<sup>48</sup> "am resten schief, da wahren die fieselthäter so schlim das sie alles weg genohmen habe was ney wahr." Wistar to Baltes Langhaer, Nov. 25, 1736, Wistar Family Papers, HSP.

Indeed, whether the tools and merchandise on the ship were new or used was one of the key points of argument in the case of the *Princess Augusta*. Marchant, the ship's captain, claimed in his opening statement that the confiscated wares were for the immigrants' private use, not for sale. He was "greviously vexed" because he believed that the crown, "in Compassion to the manifold suffering of the Protestant Subjects of Foreign Princes professing the Roman Catholick Religion have not only allowed but encouraged ... the transportation of foreign Protestants from Europe into the British Colonies." In the past, Marchant claimed, they had "allways been allowed to carry with them their Household Goods and Utensils fit and necessary for their getting a Livelihood in the Plantations." Furthermore, he argued, the immigrants provided a beneficial buffer between British colonists and the French and increased wealth in the empire by raising commodities for trade. Since the king encouraged migration to the colonies where "Goods & Utensils are scarce to be had," Marchant hoped that his laws would not prohibit them from "carrying with them a small Quantity of Utensils & working Tools for getting a Livelihood."<sup>49</sup>

Evans, the collector who confiscated the ship, replied that the crown had certainly not encouraged "any Foreigners to transport their Goods, Merchandizes or any other Effects, contrary to the Laws of Trade." He contended that all of the immigrants "old Household Goods wearing Apparel, working Tools and other used Utensils" had been delivered to their respective owners. In fact, the confiscated goods were "altogether new and unused and never were Reported, Entered or Landed in any part of Great Britain or the Rates and Duties for the same paid." Furthermore, Evans claimed that the newcomers were not solely responsible for the illegally transported goods but that "Germans and Hollanders who have for several years been Residents of the said Province" often traveled to and from the continent and "under the specious pretence of Passengers working Tools & Utensils clandestinely and illegally import great quantities of Iron and other Manufactures of Germany & Holland into the said Province."<sup>50</sup>

Responding to Marchant's image of customs officials depriving poor, persecuted Protestant foreigners of their livelihood, Evans also maintained that the Germans were "sufficiently recompenced for any benefit or advantage accruing thereby to Great Britain, by their being admitted into the Franchises, Liberties & privileges, Religious & Civil which British Subjects enjoy in the Plantations And the profit of their Labour & Industry is their private advantage equal to any of his Majesties Subjects residing there." In fact, he argued, by allowing the foreigners to import new European goods without paying duties, they would have "greater Privileges in his Majesties Colonies than the natural born Subjects of Great Britain." Clearly, Evans believed, that was not the crown's intent!<sup>51</sup>

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<sup>49</sup> *Court of Admiralty*, 1, 65-107.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*



In the testimonies that followed, the preponderance of evidence supported Evans' actions in confiscating the ship's cargo. Officials who had inventoried the immigrants' belongings reported that the new tools, bed-ticking and iron stove backs had been packed separately in bundles rather than in the chests with old household goods. Furthermore, they caught passengers carrying off wares hidden under their coats and smuggling them onto smaller boats at night. In fact, one deponent may have referred to Wistar's merchandise when he noted that, "a Dutchman carried overboard into a Boat a bundle of Looking-Glasses." He added that the "said Dutchman by his cleanliness seemed to be one who came on board to see his Friends."<sup>52</sup>

Those arguing on behalf of Marchant and the passengers relied mostly on claims that previous immigrants had imported new merchandise without punishment and without harming British trade. Several deponents referred to a confiscation case in 1717 in which the customs collector had returned the wares to passengers after holding them for a year while he checked with officials in London about proper procedure. Several ship captains testified that customs officials in England had never required immigrants to pay duties on new tools in the past. Local merchants claimed that the new "Dutch" tools and iron implements did nothing to hurt trade or the fledgling colonial iron manufacture. One claimed that, "Dutch Tools are of much less value [than English-made tools], and are generally used by the Dutch themselves, (the English rarely using them)."<sup>53</sup>

In spite of claims that previous immigrants had imported new tools duty-free and that such imports actually helped rather than hindered British trade, Read, the admiralty judge hearing the case, found for the prosecution and on Nov. 15, 1736 ordered the confiscated goods sold. His decision signaled imperial efforts to stem the flow of illicit trade that had evolved under the guise of immigrants transporting their households to the colonies.

Whether or not intensified efforts to stop smuggling were successful remains uncertain. In his letter to Hölzer on Nov. 20, 1736, five days after Read's decision, Wistar told him how to mark the barrels that contained his goods so that when they arrived in Holland, Captain Stedman, "who is my good friend" could pick them up and pay the duties on them.<sup>54</sup> The following year, however, Wistar asked Hölzer to instruct the rifle maker not to mark his rifles with "CW" (his initials). He also wanted Hölzer, if possible, to divide them up and send them with different people and to pay the costs for their shipment to Holland. Wistar did not want his name associated with the goods until after they had arrived safely in Pennsylvania, which suggests that he continued to import them illegally.<sup>55</sup> Furthermore, the cases of later forfeited ships suggest that

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<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Wistar to Hölzer, Nov. 20, 1736, Wistar Family Papers, HSP.

<sup>55</sup> Wistar to Hölzer, Oct. 1, 1737, Wistar Family Papers, HSP.

German-speaking immigrants, newlanders and Pennsylvania Germans continued to import European goods illicitly.<sup>56</sup>

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The debate over whether German-speaking immigrants were transporting their household goods or engaging in smuggling suggests that, by the 1730s, the newcomers had found creative ways to work the imperial system that threatened to marginalize them. They recognized that their status as aliens and the Navigation Acts prohibited them from enjoying the same privileges as Anglo-American colonists. In response, many sought naturalization in their attempts to protect their real estate. Some also tried to maximize their profits by illicitly importing new merchandise as legally transported household goods. During the earliest years of European migration when the number of German-speaking arrivals was relatively small, imperial officials tended to overlook illegal imports. After all, new settlers needed supplies in order to establish new colonies. As the increasing numbers of newcomers stepped ashore and as those who knew the colonies returned home to transact business, officials became more wary.

We will never know the extent of the smuggling that took place on the immigrant ships from Europe. What is clear, however, is that German-speaking settlers who were well established in the British colonies understood the limitations of their naturalization as British subjects and the Navigation Acts. They were naturalized foreigners caught in the middle of a power struggle between the imperial and provincial governments. Rather than refraining from participating in transatlantic commerce, however, they used their immigrant status to cover their illicit trade. Whenever possible, they imported merchandise as household goods so that they could circumnavigate the higher duties they had to pay as foreigners or naturalized British subjects. Doing so may have created new risks but in the process, German-speaking immigrants claimed for themselves the same rights their English neighbors enjoyed.

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<sup>56</sup> Wokeck, *Trade in Strangers*, 87-9.