ABSTRACT

LUCAS, JEFFERY P. Cooling by Degrees: Reintegration of Loyalists in North Carolina, 1776-1790. (Under the direction of Holly Brewer.)

Histories of Loyalists during the American Revolution frequently end with the Loyalists exiled to Great Britain, Canada, or some other British possession. While many Loyalists did indeed become refugees, it is statistically impossible that they all evacuated their homes at the end of the war. Indeed, the Revolution was a civil war, and in a civil war the defeated frequently reside on the same soil as the victors after the fighting ceases. This was surely the case in the American Civil War in 1865, and so it was in 1783 after the American Revolution. The War for American Independence, however, had no formal period of reconstruction that attempted to reassimilate the vanquished. Focusing solely on North Carolina, this paper seeks to discover what became of Loyalists who did not depart the state as well as those who wished to return after the war ended, and how North Carolina dealt with the issue of Loyalist reintegration.

Shortly following the beginning of the war, the General Assembly began to pass legislation requiring Oaths of Allegiance in order to determine an individual's loyalty. These first laws also included grants of amnesty for previous acts of loyalism. Reintegration, therefore, was a process that began in 1776. In the years between 1776 and 1790, the state legislature passed several laws seeking to punish Loyalists, most commonly through the Confiscation Acts, as well as those that granted leniency to the disaffected. An examination of the laws passed between 1776 and 1790 uncovers the state's attempts at both Loyalist punishment and reassimilation. Simultaneously, prominent North Carolinians worked on behalf of the Loyalists, arguing on the basis of legal precedent and from a desire to comply with the 1783 Treaty of Paris. These men recognized that the reputation of the United States

could suffer internationally if the nation did not work to live up to the ideals under which it began the war. Finally, the implementation of the laws in the Superior and County Courts as well as the petitions submitted to the General Assembly in the years following the war suggest that the state acknowledged Loyalist reassimilation, allowed former inimical citizens to live peaceably in the state, and no longer actively pursued punishments for loyalism. From 1776 to 1790, attitudes gradually softened towards reintegration, especially in the seven years following the 1783 Treaty of Peace.

COOLING BY DEGREES:
REINTEGRATON OF LOYALISTS IN NORTH CAROLINA, 1776-1790

by
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HISTORY

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BIOGRAPHY

Jeffery Lucas was born in 1974 in Sandusky, Ohio. His family moved to Statesboro, Georgia when he was young and he lived there for twelve years before returning to northern Ohio during his high school years. Jeffery remained in Ohio to attend the University of Dayton and graduated in 1996 with a Bachelor of Arts Degree in History. Immediately upon graduation, he was commissioned a Second Lieutenant in the United States Army. Jeffery remains on Active Duty and currently serves as a Major. He lives in Raleigh, North Carolina with his wife of five years, Lenore, and their two daughters, Elizabeth and Kathleen.

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LIST OF ABBREVIATIONS

CRNC	Saunders, William L. *The Colonial Records of North Carolina*. 10 Vols. Raleigh: State of North Carolina, 1886-1890.
DNCB	Powell, William S., ed. *Dictionary of North Carolina Biography*. 6 Vols. Chapel Hill, N.C.: University of North Carolina Press, 1979-1996.
PJI	Higginbotham, Don, ed. *The Papers of James Iredell*. 2 Vols. Raleigh, N.C.: North Carolina Department of Cultural Resources, 1976.
PJI3	Kelly, Donna and Lang Baradell, eds. *The Papers of James Iredell, 1784-1789*. Vol. 3. Raleigh, N.C.: North Carolina Department of Cultural Resources, 2003.
SHC	Southern Historical Collection. Wilson Library, University of North Carolina at Chapel Hill.
SRNC	Clark, Walter, ed. *The State Records of North Carolina*. 16 Vols. (Numbered 11-26). Winston and Goldsboro, N.C.: State of North Carolina, 1895-1907.

INTRODUCTION

> ". . . they in all human probability will chastise the present disaffection, long prevailing in some Counties of this State, by destroying, dispersing and capturing the ring-leaders and some of their adherents, but may not finally subdue and extirpate it from the Country while the families of these armed villains are suffered to remain among us uninterrupted, thereby nursing up serpents in our own bosom for our own destruction."[1]

Alexander Martin wrote these words shortly after being sworn in as the Governor of North Carolina during the Revolutionary War concerning the treatment that the state militia should give to loyalists. Because loyalists under the command of Colonel David Fanning captured Governor Thomas Burke and several other prominent individuals at Hillsborough in 1781, Martin was pressed into service and sworn in as the state's chief executive. Martin's feelings are especially significant when one considers the conditions under which he assumed the Governorship. The State of North Carolina was not only directly in the middle of campaigns between American and British forces, but also in the midst of an internal struggle among the state's patriots and loyalists. Such was the war in North Carolina during the conflict's final years. The sentiments that Governor Martin expressed towards loyalists during the war were not uncommon and demonstrated an issue that the victors would face during and after the war.

The years between the first engagement on the Lexington Green in Massachusetts and the signing of the Treaty of Paris in 1783 were times of significant change. The thirteen American colonies declared their independence from Great Britain, created the United States of America, defeated the world's premier eighteenth century superpower, and began the process of building a nation during and in the aftermath of war. Americans did not pick up the war-torn pieces of an established nation and reassemble them to re-create the old structure. Instead, the members of this fledgling nation began to engineer a new state

[1] Governor Alexander Martin to Governor's Council, 5 October 1781, SRNC, 19:871.

founded on the fundamental principles of liberty, freedom, and republicanism. At the time of the peace treaty, however, not every American had fought on the winning side. Those who stood with, or fought for, the Crown required a manner of treatment supportive of the cardinal ideals of the United States.

The American Revolution was in part a civil war, and like most civil wars, the vanquished resided on the same soil as the victorious when the hostilities ceased. As is common in most wars of this type, there were three major categories with which individuals could associate themselves during the Revolution: Patriot, neutral, or Loyalist (Tory). These categories include the willing and the non-willing as well as the coerced. In January 1777, New Yorker Peter Van Schaack wrote concerning allegiance that "every individual has still a right to choose the State of which he will become a member."[2] And, certainly, there were those who periodically assumed more than one of the three roles throughout the course of the war as the local political and military situation changed.[3]

But, who were the Loyalists? First, it is important to recognize that individuals did not become Loyalists. That is to say, being a revolutionary was not the normal condition at the outset of the conflict, and one did not become loyal to the Crown, but remained loyal. The burden to change men's minds belonged to the revolutionaries.[4] Historian Mary Beth Norton has argued that Loyalists were more ardent Whigs than the Patriots. Norton wrote that the American Revolution was in fact a struggle between different forms of Whigs and

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[2] Henry C. Van Shaack, *The Life of Peter Van Shaack…* (New York, 1842), 73; cited in James H. Kettner, *The Development of American Citzenship, 1608-1870* (Chapel Hill, N.C: The University of North Carolina Press, 1978), 189.

[3] Carole Watterson Troxler, *The Loyalist Experience in North Carolina* (Raleigh: North Carolina Department of Cultural Resources, 1976), 56.

[4] Claude H. Van Tyne, *The Loyalists in The American Revolution* (New York: The Macmillan Co., 1902), 2-3; Mary Beth Norton, *The British-Americans: The Loyalist Exiles in England, 1774-1789* (Boston: Little, Brown, and Co., 1972), 8.

that, politically, the contest was between Whiggery and Republicanism. Furthermore, the term "Tory" was not necessarily related to the Tories who hoped to perpetuate the Stuart monarchy in early eighteenth-century Britain, nor a pejorative given to them by the revolutionaries, nor utilized as a synonym for "conservative," but a name that they gave themselves.[5] There is no doubt, however, that some Loyalists did indeed meet those contemporary definitions of Tory. Likewise, Loyalists certainly did not fit into a one-size fits all category. No single class, occupation, religion, or region was significantly more loyal than the others. Loyalists were found among merchants, planters, artisans, farmers, multiple religious denominations, and in both cities and rural areas. They were geographically dispersed, although strong centers of Loyalist sentiment existed along the western frontier along the Middle Colonies' seaboard. If loyalists possessed one common trait, it was that they were minority groups that felt weak and vulnerable.[6]

Determining the number of Loyalists has proven to be almost as difficult as defining them. William H. Nelson moved away from the even distribution of one-third Loyalists, one-third Patriots, and one-third who wished to be left alone by allotting Loyalists one-third and Patriots two-thirds "of the politically active population of the colonies."[7] The term "politically active" provided some latitude in its definition, but excluded a significant portion of the population. Paul H. Smith's research in the late-1960s narrowed the approximation of the Loyalist population considerably. Smith began his research from the cumulative strength of loyalist regiments of the British army and extrapolated the total loyalist strength from the

[5] Mary Beth Norton, "The Loyalist Critique of the Revolution," in *The Development of a Revolutionary Mentality* (Washington: Library of Congress, 1972), 127-148.

[6] William H. Nelson, *The American Tory* (Oxford: The Clarendon Press, 1961), 85-88, 90-91.

[7] Ibid., 92.

information available on loyalist militia and several other collections and concluded that 19,000 loyalists participated in the war for Britain. Smith then compared his figure to Lorenzo Sabine's mid-nineteenth century biographical work which contained information on approximately 6,000 loyalists to conclude that more than 128,000 adult males remained loyal to the Crown. Using the approximate ratio of one adult male to four whole family members, he surmised that the total number of Loyalists was nearly 513,000, 16 per cent of the total population or 19.8 per cent of white Americans.[8]

Establishing the number of Loyalists in North Carolina has not been any easier than it has for the nation as a whole. Writing to Lord Dartmouth from the sloop *Cruizer* anchored off the mouth of the Cape Fear River in November 1775, Royal Governor Josiah Martin "believe[d] that loyal subjects yet abound and infinitely outnumber[ed] the seditious throughout all the very populous western counties of this Province." Governor Martin assured Dartmouth that he could raise a little more than thirty thousand "well-effected" men if necessary.[9] One historian suggested that North Carolina "probably contained a greater number of Loyalists in proportion to its population than did any other colony."[10] Unfortunately, the author provided neither statistical data nor a proposed estimate for such a claim. Isaac S. Harrell, on the other hand, attempted to quantify North Carolina's Loyalists by examining the number of people punished through confiscation. He concluded that the number of Loyalists "was smaller than is generally conceded," but he also declined to offer a

[8] Paul H. Smith, "The American Loyalists: Notes on Their Organization and Numerical Strength," *William and Mary Quarterly* 3d Series, Vol. 25 (Apr. 1968), 262, 262*n*7, 267-269.

[9] CRNC, 10: 46, 325. Accepting Smith's average as a viable percentage, and accepting the 1775 population of North Carolina at 200,000, there would have been estimably 50,000 Loyalists of all ages and both genders in the state. For the population data see Evarts B. Greene and Virginia D. Harrington, *American Population Before the Federal Census of 1790* (New York: Columbia University Press, 1932), 159.

[10] Robert O. DeMond, *The Loyalists in North Carolina During the Revolution* (Durham, N.C.: Duke University Press, 1940), vii.

numerical estimate or further comparison with other colonies.[11] Harrell's method was, unfortunately, a very narrow means from which to extrapolate any comparative data for analysis. Finally, in his study of the Loyalist claimants, Wallace Brown determined that North Carolina Loyalists were statistically in the middle of all thirteen colonies.[12] Numerous, marginal, or average: Despite the size of the population, the attempts to quantify the Loyalists suggest their impact within the state during the war.

Virtually every person in America was affected in some way by the Revolution, regardless of the person's status during the war. The impact was partially due to the length of the war, but also because the soldiers of both armies drew their supplies from and fought on the land of America. Americans had a front-row seat to the devastation and harsh realities of war.[13] The experiences of war impacted the relationship between the Patriots and the Loyalists in America during and after the war, and the process of reintegrating loyalists into the nation became an essential component of the war's termination.

North Carolina was similar to many of the other states in this regard. The fourth, fifth, and sixth articles of the peace treaty directly addressed the treatment of loyalists.[14] Since Congress did not possess sufficient power under the Articles of Confederation to guarantee that the states would follow the stipulations, the individual states had the latitude to deal with loyalists without significant interference. North Carolina was home to a substantial

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[11] Isaac S. Harrell, "North Carolina Loyalists," *The North Carolina Historical Review* 3 (Oct. 1926), 575-590. Harrell found two other categories, contemporary estimates and the amount of government opposition, less reliable than confiscation.

[12] Wallace Brown, *The King's Friends: The Composition and Motives of The American Loyalists Claimants* (Providence, RI: Brown University Press, 1965), 196.

[13] Allan Kulikoff, "Revolutionary Violence and the Origins of American Democracy," *The Journal of The Historical Society* II:2 (Spring 2002), 229-231.

[14] Lorenzo Sabine, *Biographical Sketches of the Loyalists of the American Revolution* (Port Washington, NY: Kennikat Press, 1966), 1:94-95.

population of inimical citizens and her inhabitants had either participated in or witnessed several bitter confrontations between patriots and loyalists.

North Carolina's experiences with the Revolution encompassed the full timeline of the conflict and ranged from the February 1776 battle at Moore's Creek Bridge, where a North Carolina, pro-rebel militia thwarted a loyalist militia's attempt to rendezvous with British naval and land forces south of Wilmington, to the violent engagements in the early 1780s at King's Mountain, Guilford Courthouse, and the Haw River. As historian Wayne Lee has demonstrated, even the so-called "'Peaceful' Years" of 1777-1779 in North Carolina witnessed concern over Loyalist conspiracies and uprisings. One such uprising actually occurred in Tryon County in 1779 when between 100 and 1,000 men joined Loyalist John Moore in committing several robberies and other acts of violence. With the surrender of American forces to the British at Charleston in May 1780, the British gained the advantage in the south and simultaneously reinvigorated North Carolina's Loyalists. The resultant upsurge in Loyalist inspiration, which was further emboldened by British Major James Craig's capture of Wilmington in 1781, sparked a dramatic increase in violence. "Violence seemed to spin out of control" between 1780 and 1782 as Whig and Loyalist Militias answered perceived atrocities with the "Law of Retaliation."[15]

In the early twentieth century, and again in the 1960s and 1970s as the bicentennial of the American Revolution approached, the period of the War for Independence received significant consideration. Much of the scholarship on the American Revolution detailed the accomplishments and ideologies of the patriots as well as the origins and outcomes

[15] Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville, Fla.: University Press of Florida, 2001), Chaps. 6 and 7 (quotations p. 177). For another Loyalist conspiracy, this one based on religion, see Jeffrey J. Crow, "Tory Plots and Anglican Loyalty: The Llewelyn Conspiracy of 1777," *North Carolina Historical Review* 55 (January 1978), 1-17.

of the war. Historians have also, albeit to a lesser degree, examined the political, religious, and moral motivations of those who remained neutral. Military historians, on the other hand, have written extensively on the battles, campaigns, and senior leaders of the war--the "drum and bugle" history of the Revolution. The loyalists of the Revolution also received new attention during the resurgence of historical writing on the period. Historians have asserted that loyalists did not only lose the war, but they have also lost its history. In an effort to rectify that error, histories written during that period set out to give attention to the loyalists and to examine them as thoroughly as the other participants of the Revolution.[16]

Two dominant elements of the loyalist experience were that their property was confiscated and/or they departed the country. Much of the work on loyalists, consequently, focuses on these two aspects of loyalism. It is true that many loyalists had their property confiscated. North Carolina enacted laws each year from 1777 to 1782 concerning confiscation, distribution, and sale of confiscated property.[17] Indeed, the state's seven Confiscation Commissioners reported some confiscated property in thirty-three of forty-eight counties. These land seizures accounted for 121,694 acres and 83 other town lots, from which the state generated £242,003 in sales revenue. No less than ninety-seven individuals had their property formally confiscated, of which less than one-quarter were specifically named in the confiscation acts.[18] These statistics only account for land, and do not include

[16] Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1967); Gordon S. Wood, *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1969); Don Higginbotham, Afterword, *Reconsiderations on the Revolutionary War: Selected Essays*, Don Higginbotham, ed., (Westport, CT: Greenwood Press, 1978), 158 (quotation); Paul H. Smith, *Loyalists and Redcoats: A Study in British Revolutionary Policy* (Chapel Hill: University of North Carolina Press, 1964), vii; DeMond, *Loyalists in North Carolina*, vii. Troxler, *The Loyalist Experience*, vii; Nelson, *American Tory*, v.

[17] SRNC, 24:11-12, 209-210, 263-268, 348-353, 376-77, 424-429.

[18] Harrell, "North Carolina Loyalists," 589.

other personal property that was seized and sold. Furthermore, these statistics do not account for any illegal confiscations that may have occurred and were never discovered or reported. The state did not allow property to be transferred in lieu of confiscation and several Loyalists attempted to circumvent the laws to avoid losing their property, some saved their property, and a smaller number had their seized property returned to them. Hence, while confiscation is an excellent category of analysis, it alone does not address the issue of the Loyalists' disposition in intra- or post-war North Carolina. The North Carolina Loyalist population was surely many thousands of people larger than confiscation numbers would indicate. Similarly, the idea that the disaffected departed the country for Canada, England, or the West Indies does not encompass the majority of Loyalists.[19] Although no definitive number of loyalists can be determined, it is safe to assume that many loyalists, specifically in North Carolina, were unable to secure transportation out of the country. We are left with what happened to those loyalists who remained in the state during and at the end of the war.

A third aspect that historians have examined is the causes or motivations of the Loyalists. This scholarship is the counterpart to similar work concerning the patriots and their ambitions. Historians have demonstrated why individuals remained loyal to the crown, and they have successfully argued that many of the justifications Loyalists espoused were rational acts for the period.[20] One shortcoming of these histories is that they tend to deal with prominent actors of the Revolution. Though these descriptions of Loyalists and definitions of loyalism do help to place the popular characters, and presumably those like them, into the context of the Revolution, they fail to explain, with the exception of a few notable figures,

[19] Troxler, *Loyalist Experience*, 37-55; DeMond, *Loyalists in North Carolina*, 181-201.

[20]Robert M. Calhoon, *The Loyalists in Revolutionary America, 1760-1781* (New York: Harcourt, Brace, Javonovich, Inc., 1973); Bernard Bailyn, *The Ordeal of Thomas Hutchinson* (Cambridge, Mass.: Harvard University Press, 1974); Norton, "The Loyalist Critique of the Revolution," 127-148.

their lives in America after the war. The lack of post-war material on these individuals seemingly validated the idea that these most prominent figures, out of necessity or otherwise, did leave the country. So, we are left to discern the experiences of the common loyalist and his re-assimilation into society.[21]

Reintegration was not, however, a process that happened only at the termination of the war. Instead, it occurred both during the conflict as well as after the war's conclusion. How did patriots go about the business of welcoming loyalists into the fold of the newly created nation? With these and other experiences fresh in the minds of North Carolinians, how were the state's disaffected citizens reintegrated into intra- and post-war society? This paper, therefore, seeks to examine how North Carolinians dealt with the issue of loyalist reintegration. Toward that end, the focal points are the laws of the State of North Carolina passed by the General Assembly between 1777 and 1790, the debates in the General Assembly, and private concerns of key individuals. The Colonial and State Records of North Carolina, and, to a more limited degree, the district and county court records concerning loyalists comprise the primary documents, as do various private papers, wills, and census records. All of these records are further examined in relation to the requirements set forth by the Treaty of Paris. The evidence suggests that there was a gradual change over time in the willingness to reintegrate loyalists. The most active years, between 1783 and 1787, were framed by the definitive Treaty of Peace and the creation of the U.S. Constitution. Furthermore, the state gave consideration to loyalist reintegration from the beginning of the War of Independence through the end of the 1780s. While the state certainly imposed

[21] Two articles, David E. Maas, "The Massachusetts Loyalists and the Problem of Amnesty, 1775-1790" and Joseph S. Tiedemann, "Patriots, Loyalists, and Conflict Resolution in New York, 1783-1787," in *Loyalists and Community in North America* Robert M. Calhoon et. al., eds, (Westport, CT: Greenwood Press), 64-74 and 75-88, provide two excellent models for regional Loyalist reintegration studies.

punishments, those punishments were moderately softened by the recognition of dower rights, leniency based on levels of disaffection, debate over the Treaty of Paris, and a seemingly general loss of zeal to actively pursue loyalists as the war moved farther into the past.

The majority of laws established during this period that dealt with loyalists concerned two issues: loyalty and property. Chapter one provides a chronological examination of the body of laws established between the years previously mentioned, the discussions surrounding them, and their implementation. The laws passed during this time sought to identify and clarify an individual's loyalty. With only two choices, either for the state or against it, neutrality was effectively removed as an option. Investigation of these codes provides a beginning point from which we can begin to assess how the citizens of North Carolina wrestled with the issues and processes of reintegration. Judging North Carolina's attitude towards loyalists by the laws passed during and after the war, the General Assembly not only attempted to guarantee the loyalty of the citizenry, but offered incentives and consolation to those inimical to the state. The legislation the assembly passed during the war, while often punitive in nature, served the dual purpose of attempting to minimize disaffection and providing benefits for the state. The harshest provisions were implemented after the war ended and when North Carolina was no longer threatened by British military forces. The enemy's withdrawal was not the only factor that encouraged post-war Loyalist punishment. The intent of the peace treaty's articles regarding Loyalists, property, and debts was to prohibit the very persecution some North Carolinians wished to inflict upon Loyalists. Anti-loyalists needed to act before the full applicability of the treaty's articles

were determined. The body of laws passed during this period at first provided for reintegration indirectly until the more overt conciliatory actions of the late-1780s.

The Treaty of Peace and the return of the Loyalists who had left the state amplified the disparate political factions in the state and Loyalists, or loyalism, as an issue was one of many that separated these groups. However, a band of men emerged who routinely argued either for Loyalist rights or against their arbitrary persecution. Chapter two presents the arguments these men offered on behalf of Loyalists in the General Assembly, in the court room, and in private correspondence. Men such as Archibald Maclaine, James Iredell, Samuel Johnston, and William Hooper became committed advocates for Loyalists in the post-war years. The central issue was confiscated property, but branched out to include individual rights, the collection and payment of debts, and compliance with the Treaty of Paris. Indeed, the treatment of the Loyalists was largely a state-level decision, but it carried national and potentially international consequences for the fledgling United States.

The final chapter assesses the level of adherence to established laws by the judiciary of the District Superior Courts and by the committees established in the General Assembly to address individual petitions, which included loyalist requests. Laws are only as effective as the populace's willingness to follow them and the judiciary's consistent enforcement of them. After the war, a third component of implementation became the perceived validity of the laws themselves. Unconstitutional laws were, by precedent, null and void and, consequently, invalid. The petitions reveal that the state judiciary occasionally corrected lower courts to maintain the letter and spirit of the law. Individual requests, often by neighbors on the Loyalists' behalf, were approved, especially in cases where moderate disaffection of mitigating circumstances permitted.

CHAPTER ONE

IDENTIFICATION AND EXCLUSION

> ". . . it is the policy of all wise states on the termination of civil wars to grant an act of pardon and oblivion for past offenses . . . ."[1]

The General Assembly first introduced legislation concerning Loyalists with the 1776 Ordinances of Convention when it required an oath of allegiance to the state.[2] The ordinance, though coercive in its title, was an initial offer of a general amnesty for loyalists. The ordinance applied not only to those who had actually taken up arms against the United States but also those who retained loyalty to the Crown, aided enemies of the state, or spoke against the state with the intent of creating disharmony. The hope was that loyalists would "become sensible of the Wickedness and Folly of endeavoring to subject their Country to Misery and Slavery" and would be contrite for having done so. The pardon was available for ninety days, after which time the punishments for not taking the oath became effective. Interestingly, even though the title of the ordinance acknowledged the United States, the person taking the oath swore to be faithful to the state and its government--for the sake of the state's independence--without mention of the United States.[3]

Those who failed to take the oath were not permitted to bring a case before any court and, if prosecuted, were not allowed to make a defense. Withholding allegiance also carried with it the denial of the privilege of purchasing or transferring property; furthermore, any

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[1] Preamble to the Act of Pardon and Oblivion, 1783, SRNC, 24:489.

[2] SRNC, 23:985. The lengthy title is "An Ordinance to empower the Governor to issue a Proclamation requiring all Persons who have at any Time, by taking Arms against the Liberty of America, adhering to , comforting, or abetting the Enemies thereof; or by Words disrespectful, or tending to prejudice the Independence of the United States of America, or of this State in particular, to come before a Certain Day therein mentioned, and take an Oath of Allegiance and make Submission, on Pain of being considered as Enemies, and treated accordingly."

[3] Ibid.

property that they owned became subject to confiscation after a jury's inquest. The only people exempted from the punitive clause were those outside the state, prisoners, the mentally incapable, or persons under the age of twenty one. The punishments were effective; however, if such people refused to take the oath after these "impediments" were removed. These impediments did not apply to anyone who was, or remained, in "open Enmity" to the state.[4] Though the punishments for failing to take the oath were harsh, this ordinance was an attempt to reconcile with those who strayed in their loyalties.

The ordinances of the 1776 convention also addressed the issues of treason and lesser misdemeanors against the state. The state assembly declared that, with the exception of prisoners of war, all persons who were, or may have come within the confines of North Carolina, owed allegiance to the state. The law excluded prisoners of war as they were subject to the procedures and protocols of military tribunals. Any civilians who engaged in combat against the state or the United States, or on behalf of the King of Great Britain, were guilty of high treason. The assembly extended the reach of the high treason clause to include those who provided aid to, engaged in correspondence with, or provided intelligence to the state's enemies. The punishment for high treason was the forfeiture of all property to the state and death.[5]

The lesser charge of treason, labeled misprision of treason, applied to persons who were aware of acts of treason and failed to report them, or for those who gave aid to traitors. The punishment for misprision was only marginally less severe than for that of high treason. For the lesser charge, the guilty party forfeited half of his property and was sent to prison "not to exceed the present War with Great Britain." The duration of the prison sentence

[4] Ibid.

[5] Ibid.

suggests less that the legislators wished to impose a brutal prison term, and more that few people expected the war to last another seven years. Additionally, the lengthy sentence provided a method to remove the threat posed by individual loyalists. A significant allowance in this ordinance was that the judge presiding over the case had the authority to allocate as much of the property as deemed necessary for the wife and children of the convicted person.[6] As we shall see below, the General Assembly did appear to honor this provision in subsequent acts.

A misdemeanor against the state constituted a third level of disaffection beneath high treason and the misprision of treason and was dealt with in the ordinance immediately following treason. The misdemeanor regulation was very broad in scope. The intent was to punish people who attempted to "propagate and spread sedition, Disaffection and Conspiracy" within the state. The range of this provision included anyone who denied that the people or their representatives had the authority to create and enforce state laws. A person was also guilty of a misdemeanor if he stated that King George, "or any other Foreign Prince, State or Potentate," maintained any rights within the state, acknowledged allegiance to any such entity, or suggested that taking up arms against their tyranny was unjust. The provision further stated that referring to anyone who took up arms against the Crown as a rebel, or implying that those who fought against Great Britain were criminals was an offense under this article. Ironically, in a war for independence and individual liberty, the state

[6] Ibid., 23:997-998. To add to the severity of the punishment of death for treason, the ordinance called for the execution to occur "without benefit of Clergy." A second conviction of Misprision of Treason was a felony—High Treason.

immediately imposed restrictions upon its citizens and limited their actions. Judges retained the discretion to fine or imprison anyone found guilty of a misdemeanor offense.[7]

The ordinances of the 1776 conventions manifested themselves into an official act that became Chapter Three of the 1777 state laws. The General Assembly ratified "An Act declaring what crimes and practices against the State shall be Treason and what shall be Misprison and Treason, and providing punishments adequate to Crimes of both classes, and preventing the dangers which may arise from the persons disaffected to the State" on 9 May 1777.[8] The act contained all of the provisions concerning treason, misprision of treason, and misdemeanors along with their corresponding punishments stated in the 1776 ordinances. For example, the charge of treason fell upon James Douthel in October 1777 for proposing toasts for "damnation to the States . . . good health to George over the water . . . and success to General How[e]," in a Surry County tavern. Douthel's crime must not have been too grave; the judge granted him recognizance on a £1,000 bond.[9]

The 1777 act did contain a few additions to the previous actions of the Provincial Congress. People who, in the last ten years, conducted trade with Great Britain or Ireland, or acted as storekeepers or agents in the United States or Ireland, were now required to take an oath of allegiance. The law required four religious sects, Quakers, Moravians, Mennonites, and Dunkards, to take an oath that excluded the requirement of defending the government. The punishment for failing to take the oath was expulsion within thirty days. After sixty days, the punishment was deportation to Europe or the West Indies at the offender's expense.

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[7] Ibid., 23:998-999.

[8] SRNC, 24:9.

[9] Salisbury District Court Records, Criminal Action Papers, DSCR 207.326.1. North Carolina Department of Archives and History, Raleigh (NCA).

Return to the state after departing under these auspices equated to treason, with its attendant punishments.[10]

The General Assembly amended the act regarding treason in December 1777 during the second session of the legislature held at New Bern. Section Eight of the amendment demonstrated both a pragmatic change to the earlier law as well as an increase of individual limitations. In the original act, the guilty party was responsible for obtaining his own transportation to depart the state. The inability to obtain sea transport, coupled with the high cost of transportation, precluded the intended execution of the 1776 act. The legislature adjusted the requirement, but also made it more restrictive. The revised act required all males sixteen years and older to take an oath of allegiance before a county court or justice of the peace. The act also obligated justices of the peace to keep a by-name roster of those who took the oath. Those who failed to take the oath were required to depart within sixty days, or at the court's discretion, were allowed to remain in the state.[11] Those who were permitted to stay were further limited by the Act's ninth section. This new provision in the Treason Act prevented guilty persons from holding public or military office; voting; acting as guardians, executors, or administrators of property; inheriting or transferring lands; or keeping weapons in their homes. Furthermore, after sixty days, departure required consent of the Governor and his Council.[12] The act passed by a margin of twelve votes to nine, and the lack of unanimity suggests that lawmakers wrestled over the act's provisions.[13]

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[10] Ibid., 10-12. DeMond, *The Loyalists in North Carolina During the Revolution* (Durham, N.C.: Duke University Press, 1940), 155-156.

[11] SRNC, 24:84-89.

[12] Ibid., 24:89.

[13] Ibid., 12: 252; DeMond, *Loyalists in North Carolina*, 156.

During this same session, the assembly passed the first overtly titled confiscation act. Chapter Seventeen of the laws of 1777 authorized the State to confiscate property from individuals who had either departed the state prior to 4 July 1776, departed since that date, or had given aid to the enemies of the United States. The law established a deadline of 1 October 1778 for admittance as a citizen of the state, i.e. to take the oath of allegiance. After taking the oath, the local authority would return all property and possessions in question to the owner.[14]

On 12 February 1779 the confiscation act and its punishments went into effect. Each county court appointed three commissioners to enforce the law. The law required the commissioners to take an oath themselves regarding the inventory of property confiscated. The act further empowered the commissioners to rent the land for up to one year in tracts no larger than 640 acres. Confiscated personal property was eligible for sale, the exception being the amount allocated for the subsistence of the family, which could include the aged mother or father of the "absentee" whose property the state confiscated. A stipulation allowed for "those not comprehended or included" in the act, but whose property had already been sold, to request compensation at the rate of sale plus six percent.[15] This provision appears to demonstrate a sense of equity (or at least the recognition that the assembly might be fallible) among the punitive sections of the act; however, its value became suspect in regard to staggering inflation and devalued currency during the war. This act nonetheless exemplified a carrot-and-stick approach to establish and guarantee loyalty to the state as well as bring the disaffected back into the fold.

[14] SRNC, 24:123-24.

[15] Ibid., 24:209-214.

As sentiments towards loyalists began to harden as the war stretched into its fifth year, the second session of the assembly that met in Halifax during the late fall of 1779 produced a more restrictive version of the confiscation acts. The second law established during the session contained a by-name list of whose property to confiscate. The act additionally provided for a ratio of $175 in North Carolina currency for every £100 British for debts owed to those whose property was subject to confiscation. The significant portion of this act was the restriction on the discretionary amount of property judges could give to the wives and families of loyalists. Under the new law, wives and widows were entitled to only one-third of the original property suggested in previous acts.[16] This act, originally suggested during the first session of the assembly early in the year, was defeated by a vote of thirty-two for and sixteen against. The change in sentiment of the assembly and the restriction of entitlements leaves no doubt that the feeling towards the state's Loyalists began to stiffen.[17]

By the time the General Assembly met at Hillsborough in 1780, the state was directly threatened by British forces operating in South Carolina and by Loyalist activities within the state. The British captured Charles Town in May and North Carolina's coast was threatened with its own landing of British naval forces. Under the conditions of imminent danger, the assembly at Hillsborough passed three laws concerning loyalty and property. The first act called for the "speedy Trial of all persons accused of Treason against this and the United States and for other purposes." In addition to the threat posed by the enemy, the jails in the state continued to hold men charged with treason who awaited trial. The law granted county judges the authority to pass sentence on and execute the punishments commensurate with

[16] Ibid., 24:263-268.

[17] Ibid., 13: 771; DeMond, *Loyalists in North Carolina*, 159.

treason, but the act failed to provide a suggested timeline under which the judges should operate.[18]

The extant recognizance documents for the 15 September 1780 session of the Salisbury District Court exemplify the vast number of charges concerning treason that awaited adjudication. Of the thirty records, twenty five were for treason or misprision of treason and the charges ranged from aiding the enemy to spying to simply being in the Tory camp. It is unclear if the four charges of robbery and the single charge of counterfeiting were also linked to any treasonous behavior. It appears that the most heinous offense was aiding the enemy. Thomas Dudley was charged with collaborating with the British and was held on a £100,000 bond—more than double the amount of the other offenders listed. The State charged thirteen men with either taking an oath to the King or accepting a British commission.[19] The fact that these men were released on bond for the crime of treason at time when the British actively campaigned close to the state could speak to the overcrowding of the jails, but it certainly demonstrates a high level of trust granted to even potential traitors during a time of war.

The second act passed during the Hillsborough session suspended the operations of the Confiscation Act. Due to significant fluctuations in the currency and the fact that the enemy currently operated in South Carolina with an eye towards moving north, the sale of confiscated lands was halted. The lawmakers felt that sale of the property at this time would not meet the intent of generating revenue, and holding the land for sale at another date would actually "establish a valuable and permanent fund" for the state.[20] Though this was not an

[18] SRNC, 24:348-349.

[19] Salisbury District Superior Court Records, Criminal Action Papers, CRX Box 76, NCA.

act of mercy by the Assembly, the delay may have prevented the alienation of individuals who were wavering in their loyalty. The moratorium on the sale of confiscated land did not affect loyalists in any positive manner, but it did make clear two purposes of wartime legislation: punishment and state benefit.

The third act passed in late-1780 indirectly concerned the loyalists. The patriots along with the Tories suffered loss of property, including slaves and sundry items such as kitchen utensils and clothes. The law reiterated that legal confiscation applied to those who joined the enemy in actions against the state. Furthermore, the county commissioner, or the sheriff or coroner in the commissioners' absence, remained the only agents authorized to carry out any act of confiscation. Some North Carolinians apparently brought property into the state that they seized in South Carolina, because the sixth section of the law addressed the "evil disposed persons" who unlawfully crossed the border and absconded with various types of personal property. The county sheriff drew responsibility for securing the property in question while awaiting a determination on the loyalty of the rightful owner. If the owner was a faithful citizen the property was returned; however, the property of "inimical citizens" was retained for the benefit of the state. The punishment for committing unlawful confiscation was severe. The first offense carried the sentence of thirty-nine lashes on the bare back, while the second offense was considered a felony punishable by death.[21] The concern over the legal confiscation of property further exemplifies the state's dual themes of punishment and benefit. At the same time, the law illustrates the premium that Americans in the Revolutionary period placed on personal property of all kinds.

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[20] SRNC, 24:352-353.

[21] Ibid., 24:350-351. The title of the act included "and other purposes" and Section Seven fits the title. This final section of the law exempted Georgia residents currently in the state, presumably escaping the British operating in Georgia and South Carolina, from taxes for one year.

The 1780 assembly met at Halifax for a third session in January 1781 and produced one act regarding property. The law stated that men who had previously been in arms against the state, but who were now loyal and in the service of the state, and remained so for eighteen months, their property "shall be suffered to be and remain in the Peaceable Possession of the respective families . . . ." Thus, benefit for the state under this provision was military service as opposed to financial gain. Those who had provided aid to the enemy since 1 June 1780 were denied the right to vote. The significant part of this act, however, was the indefinite extension of the Confiscation Acts until rescinded by the General Assembly.[22]

In June 1781, the state's lawmakers assembled in Wake County and began a new round of legislation that impacted the loyalists. In a message sent to the General Assembly in early July 1781, Governor Thomas Burke addressed his desires for the disposition of the state's loyalists. Governor Burke acknowledged the "peculiar distress" caused by "that Internal War" in some parts of the state and feared that the "ill-affected citizens" and their actions were "dangerous in their example to all good Government and cruelly fatal to individuals." His suggestion, however, was "to reclaim all that are reclaimable of our ill advised and deluded citizens, and expel the incorrigible by force or arms."[23] Governor Burke's advice to the assembly demonstrated a desire and willingness to accept the disaffected back into the fold. Those who chose to remain hostile to the state faced the full range of punitive measures available to the legislature and the militia.

The first of two laws passed during the initial session of 1781 called for the relief of individuals who had taken paroles from the British. Granting paroles to prisoners of war was a long-established military custom based on individual honor that was practiced

[22] Ibid., 24:376-78.

[23] Ibid., 22:1036.

during the war. In exchange for some amount of freedom from imprisonment, a man gave his word to abide by certain provisions, usually not to take up arms against his captors for a specified period of time, or to remain in a certain locale until the end of the war or until he was exchanged for another prisoner. The acceptance of parole was tantamount to accepting an oath. The law applied to people "who on reflection [were] becoming sensible of their misconduct" and were now willing to follow state laws. The assembly established 1 October 1781 as the date by which all persons were required to appear before the court, produce all copies of granted paroles, and take the state's oath of allegiance. After taking the oath, the men gained eligibility for all privileges of the state and liability for all duties. A portion of the punishment for not surrendering parole papers fell under the "other purposes" of the law's title. Failure to comply with the established deadline resulted in the man being deemed as a Continental soldier and, as an interesting consequence, required him to serve twelve months in the Continental Army. Despite this compulsory service, the parolee was still afforded the opportunity to send a legal substitute in his stead. This law recognized the practice and utility of paroles, but wanted the action stopped; therefore, anyone who accepted a parole after the ratification of this law was guilty of misprision of treason.[24]

The law regarding parole also contained an incentive. Anyone who turned in a "delinquent parole man" earned an exemption from one tour of militia duty. The relief from paroles not only returned the disaffected to the citizenry of the state, but it also increased the pool of eligible men for service in the militia or Continental Army. The reintegration of loyalists in this case directly benefited the state by increasing eligible military manpower.

[24] Ibid., 24:394-95; Robert K. Showman et. al., *The Papers of Nathanael Greene*, 13 Vols. to date (Chapel Hill, N.C.: University of North Carolina Press, 1976-), 4:185*n*. The acceptance of paroles remains a serious matter in contemporary warfare. Article Three of the United States Military Code of Conduct states that an American prisoner "will accept neither parole nor personal favors from the enemy."

Shortage of eligible, or at least willing, recruits was evident in the next law passed during this session compelling the counties to fill their respective quotas for the Continental Army. Even though the number of battalions was lowered from six to four, the requisite number of men for service in the Southern Department and for defense of the state had not been raised.[25]

The assembly enacted a second law that now called for "a more speedy trial" for men charged with treason or misprision of treason. The Governor, under this act, granted his commission of oyer and terminer and general "gaol" delivery to any three persons in each district whom he felt were best qualified to act as judges. The law empowered the men selected to hold court for either category of treason. Moreover, the judges could hear, try, and make the final determination on treason cases. This law also furnished the county courts with the authority to determine cases regarding confiscated property. The county courts could re-examine previously decided cases and return confiscated property to the original owner if they deemed it necessary. If the courts discovered fraud of any kind, they were obligated to punish the guilty party under the 1780 act "securing the quiet inhabitants of the state . . . ."[26]

Governor Burke expressed his concerns to the Council over the ability of the selected judges to execute the sentences imposed under the law for treason. He felt that the act placed too much power in the hands of too few individuals and that it was in violation of not only established state laws, but also the state constitution. Governor Burke's concern was that selection of the judges at the "Will and Pleasure" of the Governor would create a judiciary dependent on himself, as the Governor, and the General Assembly. Burke feared the

[25] SRNC, 24:395-396.

[26] Ibid., 24:396-398.

precedent established by this law could open the state to a judiciary dependent on the legislature, which in turn could be coerced to execute "tyrannical laws" that would usurp civil liberties. Burke invoked the fourth section of the state declaration of rights which demanded a separation of the Legislative, Executive, and Judicial powers in the state government. Furthermore, the state constitution required the General Assembly to appoint judges by a joint ballot. The act, as proposed, did not guarantee the requisite separation of powers.[27]

The fact that the judges would exercise "the ultimate power of life and death" made the issue significantly more acute. The bottom line was that, if the Assembly could establish courts with the power to impose execution, even for the limited duration stated in the act, then no barrier existed to prevent the Assembly from making the courts "perpetual and making it high treason to dispute such usurped authority…." Burke declined the authority to grant men of his own choosing the commission of oyer and terminer as it was "repugnant to [his] principles as a Citizen of a free Republic" and would make him a "Tyrant." He recognized, however, the "great weight and urgency of the public affairs" and proposed to grant the required commission to Judges of the Land in accordance with established state law. The Council concurred with his decision.[28] Burke's concern over the legality of the act is significant because it demonstrates a hesitation over exercising arbitrary power—even power over enemies of the state.

On 19 October 1781, British General Lord Cornwallis surrendered his forces at Yorktown. The Battle of Yorktown was the last major battle of the Revolutionary war; however, the formal peace treaty would not be signed for another twenty-two months. In the

[27] Ibid., 19:862-863.

[28] Ibid., 19:863-865.

wake of the victory over the British, Governor Alexander Martin called a meeting of the Council at Halifax on 20 December 1781. Martin began the session by bestowing congratulations upon General George Washington and America's allies. He also expressed his pleasure over the evacuation of the British from the port town of Wilmington. Martin then turned to the issues at hand.[29]

One of the remaining concerns was the loyalists. Martin stated that "disaffected settlements abandoned to their own fate are chiefly now reduced to subjection." Even though peace appeared to be at hand, he warned it should "not put us off our guard and lull us into a security and languor, too often consequential of success, that may prove fatal." The enemy was capable of striking again, and while preparedness was essential, the hope was that through "prudence and good conduct, civil government [would] be restored." The enemy and the disaffected were certainly not the only problems remaining at the end of the war. The state faced a large public debt. Congress required an account of the "Continental" debt owed by North Carolina that, without immediate action, would sink the "State into difficulties from whence it may never be extricated, unless timely attention be paid thereto."[30] These were the circumstances facing the General Assembly as they began the 1782 session of the General Assembly.

The state legislature gathered in Hillsborough on 13 April 1782 and, on 12 May 1782, ratified the "Act directing the sale of Confiscated Property." The goal of the act was simply stated in section one: to raise revenue for the state. Section Two listed no less than sixty-eight names, by county, of individuals whose property was to be confiscated and sold. With the exception of the names provided in the act, anyone whose property was confiscated

[29] Ibid., 19:875-876.

[30] Ibid.

retained the right to appear before the county court and show cause against confiscation. Seven commissioners, one each for the districts of Wilmington, Edenton, New Bern, Halifax, Hillsboro, Salisbury, and Morgan, were appointed to monitor confiscation sales. The act directed the commissioners to hold sales at dates adequately separated so "those desirous of attending" could do so. The law authorized the commissioners to stop either the entire sale or the sale of any article "when it is evidently below it value." One stipulation of the act stated that any property unlawfully seized was to be turned in for sale. Unlawful seizure in this case did not mean that the property was not liable to confiscation. This was an attempt to both prohibit random seizure by individuals for personal gain and to ensure that the state received the money generated from the sale. The punishment for non-compliance was a fine three times the amount of the value of the unreturned property. The property of any residents who attached themselves to the enemy was subject to confiscation and any attempts through "bargains, wills and devices" to preclude the act were void. The final section of the act reiterated previous legislation concerning land proportioned to wives, widow, and children currently in the state.[31] Despite the requirement to conduct that sale of property before 1 January 1783, most sales of land occurred between 1784 and November 1787.[32]

The concern that loyalists in the state continued to pose a threat is evident in the final law passed in 1782: the "Act to oblige the Inhabitants of Bladen County to attend Public Meetings With their Arms." The disaffected people in the county, joined by loyalists from across the border with South Carolina, were deemed dangerous to the Bladen County citizens. The requirement, therefore, was for everyone attending "county courts, elections,

[31] Ibid., 24:424-429.

[32] DeMond, *Loyalists in North Carolina*, Appendix B, 240-250.

and all other public meetings" to bring a gun and six rounds of ammunition to fight off any surprise attacks. Failure to comply met with a ten shilling fine for each offense.[33] The need for such measures would prove to be short-lived.

The following year the assembly met again in Hillsborough and passed "An Act of Pardon and Oblivion." The act stated since "it is the policy of all wise states on the termination of civil wars," and since some inhabitants of the state "have become liable to great pains and penalties for offenses committed against the peace and government of the state," the assembly was "disposed to forgive offences rather than punish where the necessity for exemplary punishment has ceased." Treason and misprision of treason committed since 4 July 1776 was to be "pardoned, released, and put in total oblivion." The question then became: If the state pardoned all those inimical to the state, why was there any concern with Loyalist reintegration? One of the answers was that with the war at an end there was no need to blatantly punish Loyalists, but that some patriots still possessed an unquenched enmity toward Loyalists. Another, more powerful, answer was that the need for state benefit remained. War was an expensive endeavor, and North Carolina shared the financial burden with the other states. Additionally, the restrictions placed in the next section of the act significantly narrowed those who would actually qualify for the pardon.[34]

The third section of the act detailed the qualifications for pardon. First, anyone who accepted commissions or served as officers under the King was exempted. The next group denied the privileges of the law were the sixty-eight individuals listed in the 1782 Confiscation Act or anyone who "attached themselves" to British forces as well as those who had departed the state and had not returned in the twelve months prior to the May 1783 act.

[33] SRNC, 24:474.

[34] Ibid., 24:489-490.

Therefore, anyone not in the state in by May 1782 was not eligible for pardon under these provisions. The four crimes of "deliberate and willful murder, robbery, rape, or house burning" further exempted loyalists from pardon. Finally, three men, Peter Mallette, David Fanning, and Samuel Andrews, were denied pardon by name. A further punitive measure in the law was one that did not preclude a citizen of the state from attempting to recover "debts and other damages" through civil action. Thus, if one was not pardoned, he was still held liable for the debts he owed. Apparently, the need for "exemplary punishment" had not yet ceased to exist.[35]

The Treaty of Paris, signed in September 1783 and ratified by Congress in January 1784, officially brought an end to the war. The fourth, fifth, and sixth articles of the peace treaty related directly to the loyalists who remained in the United States. Article Four allowed creditors from both sides of the conflict to seek and accept payment for existing debts. For example, a British subject retained the right to collect on "bona fide" debts incurred by a United States citizen under a previous contract. The provision worked in both directions; loyalists remained obligated to pay debts owed to United States citizens.[36]

The fifth article instructed Congress to "earnestly recommend" to the state legislatures to return any confiscated property, or the sum gained through the sale of such property of "real British subjects," to the original owners. This paragraph also guaranteed loyalists who were in areas occupied by the British the freedom to move about any of the thirteen states for twelve months "unmolested" in order to restore their property. The treaty also obligated the Congress to further recommend that states review and revise all laws that

[35] Ibid. Peter Mallette did return to the state and was acquitted of any crime. Ironically, the Act of Pardon and Oblivion was cited in his defense. See Troxler, *Loyalist Experience*, 30.

[36] Ibid., 17:7-8.

were not "perfectly consistent, not only with justice and Equity, but that spirit of conciliation, which on the return of the blessings of peace should universally prevail." The sixth article halted any future confiscations or prosecutions against individuals for any actions taken during the war. This article also required the release of any person imprisoned and prevented the continuance of any legal actions regarding "the part he or they may have taken in the present War."[37] Unfortunately for the loyalists, Congress had no coercive authority over the state governments under the Articles of Confederation. North Carolina, as did other states, subsequently did not implement the fifth article. Congress only had recommendatory authority over the states; therefore, North Carolina as well as the other states retained a great deal of latitude regarding the implementation of the treaty's provisions.

With the peace treaty a little more than ninety days removed from ratification, the General Assembly of 1784 first met in Hillsborough from April to June and then again in New Bern from October to November. The conservative element in the General Assembly's House of Commons proposed a bill at the end of the second session to void and repeal all state laws that appeared inconsistent with the Treaty of Paris. The bill floundered as some members of the assembly had issue with the property rights granted to loyalists.[38]

The same assembly, interestingly, passed an act enabling Mary Dowd of Chatham County, wife of loyalist Conner Dowd, to retain the use of her property as well as all attendant rights and privileges. Of course, one of the privileges of ownership was that creditors could now seek restitution for her husband's debts.[39] Dowd gradually and grudgingly sold more than 1,000 acres of land over the next sixteen years to pay off debts,

[37] Ibid., 17:7.

[38] Ibid., 24:iv, 19:747.

[39] Ibid., 24:638-639, 25:46.

including some that were probably dubious. By 1800, she had sold or disposed of almost all of the property in order to escape debt.[40] The law concerning Mary Dowd was the first of several laws passed between 1783 and 1790 addressing individuals and concerning in various ways property ownership, the settlement of debt, and individual support. Discussed in greater detail in Chapter Three, these laws were an interesting mixture of amnesty, amity, and state-benefit pragmatism.

The majority of confiscated land, as previously mentioned, was sold in 1784 or later. The 1784 act directing the sale of land stated that the proceeds were to be used for the benefit of the state. The act also named each of the seven district commissioners responsible for the conduct of the sales, and increased their commission on sales from one percent to three percent. The commissioners operated under the previous guidelines regarding the execution of sales with the exception of advertisement. The requirement was that each sale be advertised three months in advance and in newspapers in North Carolina (if available), Virginia, and South Carolina.[41] In February 1786, Archibald Lytle, the commissioner of the Hillsborough District, announced two sales. They were scheduled to take place on the first and second Mondays in May at the Hillsborough and Randolph County Court Houses, respectively. The advertisements listed the amount of acreage for sale with a brief description of each parcel. Lytle did not provide any prices. The matter-of-fact tone of the announcement and lack of any patriotic language suggests that the sales were not necessarily viewed as punitive and were primarily for the state's use. Of course, the intent of the

[40] Troxler, *Loyalist Experience*, 32-35.

[41] Ibid., 24:661-664.

advertisement's bland tone may have been to hide any retaliatory motivations that precipitated the confiscations.[42]

In an effort both to reward loyal citizens and restrict the disaffected, the assembly enacted a law "to describe and ascertain such persons who owed Allegiance" to the state, and "to impose certain Disqualification on certain persons." The citizens of the state had "at the expense of much blood and treasure" endured the hardships of the war. On the other hand, there were those who should have been loyal to the state, but "were lost to a sense of the rights of mankind" and deserved punishment. Retribution came in the form of denial of public office, civil or military. The prohibited offices included upper echelon positions such as Governor, delegate to Congress or the General Assembly, Judge, and Justice of the Peace, as well as the county positions of sheriff, coroner, or clerk of court. The willingness of the state to fully reassimilate the loyalists only went so far for the law also stated that the intent was not to "encourage or permit the return to this state" any one who had not returned prior to the ratification of the peace treaty. Apparently, the law did not have the desired effect as the assembly felt obligated to pass an amendment in 1785 imposing a £500 fine on anyone found guilty of illegally holding a restricted position.[43] The idea that positions restricted by law required an amendment to bolster enforcement implies that, at least for the lower-echelon local positions, citizens advanced the process of reintegration at their level.

To be sure, ensuring loyalty remained a priority within the state. In the midst of the legislation concerning property, the legislature passed an act revising the oath of allegiance and fidelity. Great Britain acknowledged the sovereignty and independence of the United

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[42] *The North Carolina Gazette*, Thursday, February 6, 1782. Newspaper Reel: 18th Century-1, NCA. A portion of the advertisement is ripped, but the remaining text lists well over ten thousand acres of land for sale.

[43] SRNC, 24:683-684, 732-733.

States in the 1783 peace treaty and the oath; consequently, required revision. The separate oath for Quakers, Moravians, Menonists, and Dunkards, which excluded members of these groups from defending the state, remained from the previous version as did the general oath for all other citizens. The new version of the oath contained a third variant for any member of the General Assembly or for holding "any office of trust or profit." The oath, ironically, still did not contain any mention of the United States.[44] Even after the war, the need to guarantee loyalty to the state remained.

The General Assembly invoked the peace treaty that ended the war in several laws created during this period without adhering to the treaty's provisions. Significantly, forty-seven months passed between the treaty's Congressional ratification and its acceptance as the law of the land by the state in December 1787.[45] The legislature created a substantial body of laws by this time that even the recognition of the peace treaty did not invalidate. The acceptance of the treaty as the law of the land does demonstrate, however, at least in the legal structure of the state, the desire to advance from the hardships of war towards a more peaceful existence. The full recognition of the treaty of peace marked a turning point in the state's legal perception of its disaffected citizens.

The legislative attempts to grant amnesty at the outset of the war indicated that reintegration of loyalists began at the earliest stages of the war. The requirement of oaths served both to guarantee the citizens' loyalty to the state and identify potential enemies. As the war progressed, the state continued to refine its laws in regard to both exacting loyalty and administering punishment to those remaining inimical to the state. The punishment, largely in the form of confiscation, served not only to castigate the loyalists, but also to

[44] Ibid., 24:684-685.

[45] Ibid., 24:885.

benefit the state. Begun at the onset of the war, this pattern continued beyond the war's conclusion.

The military campaigns conducted in 1780 and 1781 brought the war to North Carolina's doorstep. The legislation passed during this period reflected the increased crystallization of feeling against loyalists. At the same time, the laws allowed for a reprieve from any misdeeds against the state—a return to the fold. Governor Burke's reticence over the implementation of the speedy trial act, for example, was indicative of the desire to retain the state's legitimacy in enforcing the law and to prevent disastrous ramifications after the war. Failure to comply with the law however, continued to bring harsh punishment. In one hand the state cautiously extended the olive branch, but it held the sword in the other.

The state marginally recognized the Treaty of Paris until its formal acceptance by the state in 1787. The years immediately following the end of the war witnessed an initial grant of pardon juxtaposed with the implementation of confiscation sales. The sales simultaneously punished loyalists and generated needed revenue for the state. The legislature concurrently returned some confiscated property both for the payment of debts but also for the benefit of the individuals involved. The revision of the allegiance oath was demonstrative of the enduring need to guarantee loyalty through a formal procedure. In sum, the post-war years continued the triad of loyalty, punishment, and benefit.

This chapter has begun to answer the question of how North Carolina reintegrated its disaffected citizens by examining the outer layer of patriot ideology as expressed through state law. The first step of judging North Carolina's attitude towards loyalists by the laws passed during and after the war years demonstrates that the General Assembly not only attempted to guarantee the loyalty of the citizenry, but offered incentives and consolation to

those inimical to the state. The legislation passed during the war and immediately after identified and classified individuals based on loyalty, and while often punitive in nature, served the dual purpose of minimizing disaffection and providing state benefit. The debates over and the implementation of these laws also revealed how North Carolinians proceeded to reintegrate their Loyalists. Of course, there were men who argued in favor of loyalist rights and privileges in other venues aside from the General Assembly. An examination of a few such men and their concerns further clarifies loyalist reassimilation during and after the war.

CHAPTER TWO

ON THEIR BEHALF

> "It is to be hoped this intemperate spirit will subside by degrees, but I am persuaded it will be a long time before any Persons, how respectable in private character soever, who are supposed to have taken any part in the war against America, can find that cordiality of reception among People in general in the Country without which no Gentleman who valued his peace of mind would wish to appear in it."[1]

The state laws were a manifestation of the debates and discussions held over the treatment of North Carolina's loyalists. The disposition of the state's loyalists, while certainly not the only concern during the years surrounding the War for Independence, occupied much public and private debate. Public deliberations concerning disaffected citizens revolved around punishments and allowances by what can best be described as political factions or interests, where two opposing sides battled over the treatment the loyalists. These public discussions spilled over into personal correspondence and other outlets for spreading ideology concerning not only loyalism, but the future of the state and nation. Focusing on those who consistently labored on the loyalists' behalf, this chapter suggests that from the beginning of the war through the 1780s, there were men concerned with the appropriate treatment of and eventual reintegration of persons once deemed inimical to the state. While their concern often began on behalf loyalists with whom they were personally related or possess mutual interests, their arguments were founded in larger legal precedents.

In order to consider the North Carolinians whose arguments favored loyalists, it is useful to mention previous attempts to classify political divisions during this period. Jackson Turner Main identified two classifications of interests in his work on political parties during the Confederation Period. Main labeled one unit cosmopolitan and the other localist and

[1] James Iredell to Archibald Neilson, letter dated 15 June 1784, PJI3, 67.

based his groupings on residence, occupation, economic status, political experience, military service, education, and world view. Localists were "narrow-minded" antiloyalists, while cosmopolitans were "urbane men of broad views" who "could easily forgive loyalists." Borrowing a phrase from Alexander Hamilton, Main classified cosmopolitans as those who would "think continentally," and identified localists as those men who held local or no offices, either served only in the militia or not at all, or appeared not to have traveled from their home. In North Carolina, cosmopolitans resided east of a line drawn from just west of Halifax south to Wilmington and "clustered" in the Albemarle region where many lived within seventy miles of Edenton. These cosmopolitans were primarily lawyers, merchants, or in an occupation other than agriculture. North Carolina's localists claimed the piedmont interior where large farms and towns were scarce and farmers worked not far beyond the subsistence level and were significantly less wealthy than their eastern neighbors.[2]

A complementary, but more narrowly defined, work by Roberta Tansman Jacobs explored emerging political interests in regard to the reintegration of the loyalists and the 1783 Treaty of Peace. Jacobs identified her parties as nationalists and antiloyalists and chronicled their ideological debates over the immediate perceived "threat to the stability and security of the state" caused by returning loyalists. Antiloyalists were parochial in their outlook, favored local and state authority or confederate-level government, and feared that returning loyalists would undermine the new republic by serving as subversive enemies within. Nationalists, on the other hand, favored a more centralized government with an

[2] Jackson Turner Main, *Political Parties before the Constitution*, Chapel Hill, N.C.: University of North Carolina Press, 1973), 28-33, 315-317, 395; Martha Marshall Smith, "Loyalism as a Political Issue in Revolutionary North Carolina, 1775-1789" (M.A. Thesis, University of North Carolina, Chapel Hill, 1978), xi-xii.

emphasis on law and justice and viewed the antiloyalists as the gravest danger to the new republic, not the returning loyalists.[3]

In the final work considered regarding political divisions in the Revolutionary era, Martha Marshall Smith focused specifically on the issue of loyalism in North Carolina, and her research resulted in yet another reclassification of the opposing factions. Smith labeled one of her two groups antiloyalists, those who were vehemently opposed to loyalists and whose policies tended to promote harsh punishment and remove privileges normally associated with citizenship. Conversely the liberals, those whose attitudes toward loyalists possessed "careful reasoning, and open-minded and just policies," provided opposition to the antiloyalists by favoring less severe laws and recognizing degrees of disaffection.[4] However important these classifications may be, one should not misconstrue the separation of these camps for explanatory purposes as political blocks that always acted in concert. North Carolina politics were much more complicated.[5] The divisions imposed in previous scholarship help to not only sharpen our view upon those men who routinely favored lenient treatment of loyalists, but also to hone in on their fundamental arguments.

At its core then, the issue was less about cosmopolitans, nationalists, or liberals pitted against localists or antiloyalists for political supremacy, than it was the discussion of what to

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[3] Roberta Tansman Jacobs, "The Treaty and the Tories: The Ideological Reaction to the Return of the Loyalists, 1783-1787" (Ph.D. diss., Cornell University, 1974), 21-22, 90-139, 221-223; Smith, "Loyalism as a Political Issue," xii-xiii.

[4] Smith, "Loyalism as a Political Issue," xiii-xv. Smith's thesis proceeded topically from treason to confiscation to the Treaty of Paris to acceptance. The influence of her work on this chapter is great as it uses like sources, albeit with different interpretations and conclusions. Smith's argument centered on the geographic nature of the factions' political division. My thesis focuses on the arguments made for Loyalist reintegration.

[5] R. Don Higginbotham, "James Iredell and the Revolutionary Politics of North Carolina," in *The Revolutionary War in the South: Power, Conflict, and Leadership*, W. Robert Higgins, ed. (Durham, N.C.: Duke University Press, 1979), 84; Robert L. Ganyard, "Radicals and Conservatives in Revolutionary North Carolina: A Point at Issue, The October Election, 1776," *William and Mary Quarterly*, 3d Series, 24 (October 1967), 568-569, 586-587.

do with and how to treat the disaffected. The arguments brought forward by men in opposition to arbitrary measures against Loyalists served as the rationale for what would become reintegration.

Men who argued on behalf of Loyalists did so based on established legal precedent, and one such precedent can be found regarding treason in Sir William Blackstone's 1765 *Commentaries on the Laws of England*. Blackstone outlined seven categories of treason, which ranged from actions against the King or Queen to counterfeiting, none of which the Loyalists had committed against the state government. The two classes that Loyalists came even remotely closest to violating were levying war against the King (or the state in Revolutionary America), and giving aid or comfort to the King's (the state's) enemies in a time of war.[6] The precedents found in Blackstone, among others, served as the basis for the state's treason laws passed in 1777 and after. However, the Loyalists in question had neither engaged in open combat nor actively aided enemies of the state. The worst they had done was to refuse to take the Oath of Allegiance. Rejecting a loyalty oath, according to Blackstone, was a lesser crime of contempt. Contempt carried punishments that included the loss of voting privileges and the right to participate in the courts, means of deterrent found in the state's treason law. There was even a £500 fine associated with the crime, but confiscation of property was not one of the methods to punish the guilty. In fact, Loyalists who absented themselves from North Carolina had committed no crime, but had remained loyal to their obligations as the King's subjects. These men were "real British subjects," a term used in the Treaty of Peace to establish Loyalist rights and one that caused consternation and confusion in the debates surrounding rights and reintegration.

[6] William Blackstone, *Commentaries on the Laws of England*, 4 Vols. (Oxford: Clarendon Press, 1765), 4:74-93, 124.

Archibald Maclaine was one of the most ardent supporters of Loyalists in the state. Maclaine was born in Ireland, moved to Wilmington in his mid-twenties in 1752, and became a merchant and successful lawyer, often arguing on behalf of Loyalists. Maclaine was an ardent patriot, serving on the Wilmington District Committee of Safety from 1774 to 1776, and also serving in the General Assembly from 1780 to 1781 and again from 1783 through 1787. His affinity for the disaffected was perhaps due to the fact that his son-in-law, George Hooper, was a known loyalist, or he may have been motivated by a desire to protect his economic interests he acquired as a Wilmington merchant.[7] Maclaine especially objected to land confiscation based upon legal precedent as well as a diminishing confidence that the state system would generate the desired revenue.

As we have seen, the Confiscation Acts began in earnest after the British surrendered at Yorktown. Freed from having British troops campaigning through the state, members of the Assembly hoped to use sales from confiscated lands to finance the state's war debt. Maclaine, however, failed to see any public benefit generating from these sales as the law was written, but even though he was "no friend to absolute confiscations," some benefit may come from using the lands for returning soldiers or settling the public debt. Furthermore, the confiscation commissioners needed to act with acute attention to detail, which the current act did not require. "Precision" in seizing property was paramount because many men had departed "merely from their timidity and their fears of -----they knew not what."[8] To Maclaine at least, there existed degrees of loyalism and wholesale application of confiscation was not the answer. Those most offensive to the state certainly deserved punishment, but lesser offenders, those whose business interests necessitated departure for instance, should be

[7] DNCB, s.v. "Maclaine, Archibald".

[8] Maclaine to Governor Thomas Burke, letter dated 27 March 1782, SRNC 16:246-250.

granted leniency. In a letter to George Hooper, who had taken refuge in the British-occupied city of Charleston, Maclaine expressed his desire that those who merely departed would be granted a safe return, while those who had "done something to exasperate the people" could expect violence.[9]

Indeed, Maclaine was well aware of the violence brought about from supporting loyalists based upon an incident that was part of a larger series of actions known as the Bladen County Riots. A captain in the North Carolina Continental Line named Robert Raiford stormed the county court during the Fall Session of 1782 while Maclaine defended a deceased loyalist's property from confiscation. Raiford attacked Maclaine with a sword because "Maclaine had given him sometime before abusive language and was then defending a Tory." The attack left Maclaine "dangerously" wounded as the rioters proceeded to elect their own officials with the intent of "apprehending Tories." The Superior Court Judges issued a warrant for Captain Raiford to appear at the December court session, but after choosing to spend several weeks in the county after the incident, he had returned to service with General Greene's army. By the time General Greene received Governor Martin's request for Raiford's return, the December session had ended and Greene did not press Raiford to return immediately. Though Greene assured Martin that Raiford would appear before the court as requested, apparently nothing came of Raiford's indictment. Writing to his son-in-law the following winter, Maclaine lamented that "though the judges exclaimed loudly against Raiford's conduct, neither the court nor the council for the State thought proper to order a prosecution . . . . So much for Judicial proceedings."[10]

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[9] Maclaine to George Hooper, letter dated April 29th, 1783, SRNC, 16:956-958; DeMond, *The Loyalists in North Carolina During the Revolution* (Durham, N.C.: Duke University Press, 1940), 156, 164; Smith, "Loyalism as a Political Issue," 33.

The late fall and early winter of 1783 brought more important issues for Maclaine than his individual quarrel with Captain Raiford. The definitive Treaty of Peace was officially signed in September 1783 and ratified by Congress in January 1784. Maclaine hoped that the treaty would come before the April 1784 General Assembly at Hillsborough, but he was concerned about the reception it would receive, especially in light of the recommendatory provisions for the loyalists. Maclaine worried that unless a "different temper" existed for the majority in the assembly and unless he received more support than he had in the past, he would not be very successful and be "much better attending to my own private business." Maclaine feared taking any actions in the absence of the treaty which might violate its provisions and cast the State in a negative light. However, should the treaty appear before the assembly he wondered, "whether we will suffer anger and resentment so far to get the better of reason and sound policy as to render us infamous over all Europe." The consequences were dire, for "if we do not, as far as lies with us, recognize the articles of peace, we are undone forever." Maclaine was correct to worry. A bill presented to repeal all laws inconsistent with the fourth and sixth articles of the treaty received a narrow defeat in the House by a 37-32 vote, and, as noted in the previous chapter, the treaty was not officially read into state law until 1787.[11]

Maclaine protested the defeat of this bill as well as the passage of another that limited the ability of absentees and prohibited those named in the Confiscation Acts to claim debts through the courts. The bill limiting debt recovery was in direct opposition to the treaty's

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[10] Alexander Martin to Nathanael Greene, letter dated November 1782, SRNC, 16:720; Robert K. Showman et. al., *The Papers of Nathanael Greene*, 13 Vols. to date (Chapel Hill, N.C.: University of North Carolina Press, 1976-), 12:197, 258, 261, 370, 454; Maclaine to George Hooper, letter dated December 16th, 1783, SRNC, 19:991. Captain Raiford apparently did not suffer for his involvement in the riots. In 1787, he purchased over one thousand acres of confiscated land in Bladen County. DeMond, *Loyalists in North Carolina*, 241-242.

[11] Maclaine to James Iredell, letter dated 5 October 1783, PJI, 2:453; SRNC, 19:545-546, 674-675.

fourth article and carried potentially disastrous consequences. Maclaine was not naïve enough to expect a full resolution of debt recovery in this session, but he had anticipated an established framework allowing for such and in accordance with the treaty. At this point, Maclaine argued, defying the treaty was only a "little short of a declaration of War against Great Britain." His concerns in this debate were not only for the individual loyalist, but for North Carolina's reputation and, by extension, that of the United States. Failure to allow debt recovery carried potentially grave consequences as it "forbad all trading nations from coming" to the United States and would create a perception that the nation was full of "ignominious people, on whose promises no reliance can be had."[12] The proper treatment of returning loyalists, whether under the Act of Pardon and Oblivion or the peace treaty, carried significance that resonated far beyond North Carolina's borders.

During the following session of the General Assembly, William Hooper led a separate dissent over the failure to fully adopt the peace treaty, which echoed Maclaine's concerns. William Hooper was a Massachusetts-born, Harvard-educated lawyer who moved to Wilmington in the mid-1760s and was one of the three North Carolina delegates to sign the Declaration of Independence. Hooper routinely called for moderate treatment of Loyalists and, much like Archibald Maclaine, frequently took cases before the courts on their behalf. The letter submitted by Hooper and others vehemently called for compliance with the treaty of peace. Despite the fact that compliance may have "consequences prejudicial to individuals," that was no reason for "sacrificing . . . our national faith and the political character of the State." Private concerns paled in comparison to the weight of collective concerns potentially "involving ourselves and the other United States and allies in a new and

[12] SRNC, 19:349-350; Maclaine to George Hooper, letter dated 21 April 1784, in the George Hooper Papers #351, SHC; SRNC, 17:134-135.

destructive War."[13] Even though North Carolina's treatment of her loyalists began at the local level, the consequences of improper handling of this issue could have national and even international repercussions.

Much of the opposition to the peace treaty regarding Loyalists originated in disparate understandings of the terminology, especially "real British subjects." Hugh Williamson, a member of the North Carolina delegation in Congress, wrote to Governor Martin that the term was understood by both negotiating parties to mean "those who never incurred any blame as they had never owed any duty to the States." "Persons of any other description" included refugees, those who refused loyalty oaths, and those who fought with the British. Inherent in these descriptions were varying levels of disaffection. Names considered and rejected included Royal Governors William Tryon and Josiah Martin, Henry E. McCulloh, and Sir Nathaniel Duckinfield, all whom Griffith Rutherford referred to as "Imps of Hell." Ready to be done with the process, Samuel Johnston fumed that consideration for the treaty was met in the Assembly with "the most illiberal reception" and, feeling he was not positively affecting the procedure wished himself "away from this place." A frustrated William Hooper declared, "My hopes are at an end!" The day's deliberations demonstrated that there was "not a phrenzy of misguided political zeal—avarice cloaked in the cover of patriotism—or private passion and prejudice, under the pretence of revenging the wrongs of the country" that could surprise Hooper in the future.[14]

That Henry E. McCulloh was mentioned by name in this debate was no surprise. He was by far one of the largest landholders to have his lands confiscated and was in contact

[13] SRNC, 19:715-716; DNCB, s.v. "Hooper, William".

[14] Hugh Williamson to Alexander Martin, letter dated 19 March 1784, SRNC, 17:23; Samuel Johnston to James Iredell, letter dated May 1st, 1784, PJI3, 58-59; William Hooper to James Iredell, letter dated 1 May [1784], Ibid., 60-61; Jacobs, "Treaty and Tories," 57; Smith, "Loyalism as a Political Issue," 49-50. Maclaine was not engaged in this battle. He was laid up with gout.

from New York and London with numerous individuals who he thought might influence the Assembly on his behalf. He claimed to own 140,000 acres of land in North Carolina, and some speculated that it was his property that prompted the Confiscation Acts. One of the men McCulloh relied on to petition on his behalf was his cousin, James Iredell. Iredell was born in England and served successively as the comptroller then collector of the Port of Roanoke, a position arranged by McCulloh, before the beginning of the war. A few years before the hostilities with Great Britain, Iredell studied law under Samuel Johnston, Edenton's most prestigious individual, married Johnston's sister Hannah in 1773, and firmly entrenched himself among Edenton's town elite. In 1777, Iredell accepted a seat on the bench of the state's Superior Court. He resigned the following year but returned to public life in 1779 to serve for two years as the attorney general of North Carolina. Iredell displayed a keen analytical legal mind and his reputation spread well beyond North Carolina, earning him an appointment from President George Washington to serve on the United States Supreme Court in 1790. Thus, McCulloh wrote to Iredell several times in 1778 and 1779 expressing his desire to return to North Carolina, but not at the expense of his allegiance or principles. In January 1779, Iredell prepared an affidavit on McCulloh's behalf explaining his reasons for departure to England, but assuring the court that McCulloh was "a sincere Friend and Well wisher to the Freedom of America."[15] In the years that followed, McCulloh and Iredell corresponded regarding the rights and privileges due loyalists under the peace treaty.

Writing from the Carolina Coffee House in London in 1783, McCulloh noted the Treaty of Peace and hoped that he would soon be allowed to return to the state and restored

[15] DNCB, s.v. "Iredell, James Sr."; DeMond, *Loyalists in North Carolina*, 159-160, 174-175; Blackwell P. Robinson, "Willie Jones of Halifax," *North Carolina Historical Review* 18 (April 1941), 144-146; PJI, 2:70-71.

his rights. McCulloh felt that he absolutely qualified as a real British subject, because he had "never been concerned in anything hostil. or inimical to America," and therefore expected satisfaction based upon the treaty. He stood ready to return to North Carolina and even appear before the General Assembly to plead his case and submit himself to their "Wisdom and Goodness," hoping that the "Gates of Mercy" would not be shut upon him. Appalled by reading an advertisement for the sale of his lands in the Salisbury district after the date of peace, he nonetheless wished to "revisit [his] friends and everyone there" and be "a happy man." Trusting in Iredell, but not leaving anything to chance, McCulloh also sent copies of the letters to William Hooper, Archibald Maclaine, Richard Caswell, and others.[16]

Iredell dutifully petitioned the Assembly through Willie Jones, another prominent individual who fought on behalf of the loyalists, and one whose attitude changed over the course of the war. Jones, a planter with substantial land holdings, was well-known as the leader of the radical Whig faction in the state throughout the war, but had begun to separate from Whigs who continued to call for extreme measures after the peace treaty.[17] Iredell realized that the probability of getting McCulloh's land reinstated was very low, to say the least, and the best to be hoped for was a return of any unsold property, although that could not "be sanguinely expected." The problem was that McCulloh owned so much land that it was enough "to tempt both public and private avarice." Iredell urged McCulloh to return and submit a personal appeal as the "illiberality of People's sentiments" did not bode well for acceptance otherwise. McCulloh, however, never left England to make his case in person, while Iredell submitted the request as promised, after the men exchanged a few letters

[16] McCulloh to Iredell, letters dated 17th March and 28th March 1783, PJI, 2:380-385. On the use of coffeehouses in London by exiled Americans, see Mary Beth Norton, *The British-Americans: The Loyalist Exiles in England, 1774-1789* (Boston: Little, Brown, and Co., 1972), 67-68, 162.

[17] DNCB, s.v. "Jones, Willie".

tinkering with the petition's exact wording in order to increase their chances for success. In the summer of 1784, Iredell sent McCulloh the unfortunate news that the Assembly had rejected his request. Not only was the petition rejected, but very few men "of any consequence" supported it and the margin of defeat was so wide that Iredell counseled McCulloh, "I am persuaded all further application would be fruitless." Willie Jones and William Hooper supported McCulloh's claim, as well as those of others who desired the return of their confiscated property, with only "a great diminution of their influence and popularity" to show for it. By 1787 McCulloh resigned himself to the loss of his property and requested receipts of the sales to make his claim with the British Loyalist Claims Commission.[18]

Iredell's support for Loyalists originated in his willingness to help his friends and relatives regain their lost property, but it manifested itself in the espousal of individual rights, a desire for compliance with the peace treaty, and consent to the return of the disaffected. This is not to say that Iredell found a convenient precedent upon which to build his case to help his family members and cronies. Instead, it suggests the Iredell was committed to the rule of law and cognizant of the potential abuses of power should the confiscation laws proceed unchecked and the peace treaty ignored. Perhaps he was not as willing or able to openly engage the process as early as Archibald Maclaine, but he was no less committed than Maclaine and others to the fundamental issues at stake.

Iredell's concerns regarding Loyalists brought him at least some praise. Pierce Butler, a longtime friend and experienced politician from Charleston, S.C., was overjoyed

[18] Iredell to McCulloh, letter dated November 28, 1783, PJI 2:467-469; Iredell to McCulloh, letter dated June 15th, 1784, PJI3, 68-73; McCulloh to Iredell, letter dated 10th April 1787, PJI3, 264-267. McCulloh was granted the largest individual amount in North Carolina by the Loyalist Commission, £11,747.16; he requested £54,265. In 1788, McCulloh represented the state's exiles in London as part of a board formed to petition the Claims Commission. See DeMond, *Loyalists in North Carolina*, 207, 253 and Norton, *British-Americans*, 305*n*.

that he and Iredell shared the same conciliatory views regarding "the treatment of the wretched, deluded refugees" as he did. Butler felt Iredell's sentiments demonstrated his "greatness of mind, generosity, and general philanthropy" and identified him as "the generous and forgiving enemy." Butler was concerned that America's early history would be "sullied by an unbecoming greediness" stemming from mistreatment of Loyalists. He noted that his own state had removed a significant number of names from their confiscation lists and allowed all individuals to return to vindicate themselves. Iredell was grateful for the praise laid upon him by Butler, noting he had "long despise[d] that sort of popularity which is to be gained by flattering the passions of the multitude." He would not change his position, as giving in was not only "dishonest" but "weak and impolitic."[19]

Perhaps the best explanation of Iredell's thoughts on the matter came in correspondence with Archibald Neilson, with whom Iredell resumed writing only after the war. Neilson, a native of Scotland, originally served as Governor Josiah Martin's secretary in 1771 before holding several government positions and then working as a merchant. He fled to England in 1775 before returning to his home in Dundee, Scotland and did not communicate with Iredell during the war. Both men anticipated a general warming of relations between old foes and looked forward to reestablishing contacts. Glad to resume contact with Neilson, Iredell had hoped the end of the war would bring a return to old friendships, but was distressed by the "extreme violent spirit" shown to returning Loyalists which precluded any possibilities current possibilities for reintegration. The gradual decrease in animosity Iredell expected was, unfortunately, not forthcoming. In no uncertain terms Iredell declared that his "opinions remain[ed] unaltered—that no Man is either good or bad,

[19] Pierce Butler to Iredell, letter dated February 4th, 1784, PJI3, 13-15; Iredell to Butler, letter dated March 14th, 1784, PJI3, 35-36. Underlining in the original.

merely for his opinions—that in political questions there is room for almost an infinite diversity of sentiment . . . and that no Man in a civil war is justly censurable for any thing but insincerity in chusing his side, or fidelity in adhering to it . . . ." He wished the end of the war was greeted with a full omission of offenses, but knew that war was conducted in such a way that created a suffering which made his sort of peace at least temporarily unobtainable.[20]

The 1783 Act of Pardon and Oblivion also provided Archibald Maclaine the opportunity to labor on behalf of the state's loyalists. Maclaine wrote to George Hooper prior to the General Assembly session that created the pardon act and expressed a cautiously optimistic tone regarding the upcoming meeting He was buoyed by the lenient attitude expressed by the legislatures in Georgia and South Carolina concerning loyalists and expected "a powerful effect" and that peace would "cure all of our political calamities." Maclaine not only hoped that his fellow North Carolinians would follow the lead of their neighbors to the south, but also thought he was witnessing a subtle change in the temper of the people. Attempting to assuage Hooper's concerns over his self-imposed banishment in South Carolina, Maclaine wrote, "the public has been grossly robbed and abused" and "many sensible and moderate men" were elected for the upcoming assembly. Individuals with impeccable character had been maltreated and, as a consequence, even those who were most adamantly opposed to loyalists had shifted away from advocating naked persecution.[21] Unfortunately for Maclaine, the act's stringent provisions demonstrated that he had overestimated the people's desire for change and had underestimated his colleagues' appetite for vengeance.

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[20] James Iredell to Archibald Neilson, letter dated 15 June 1784, PJI3, 67-68, 68*n*.

[21] Maclaine to George Hooper, letters dated 25th February 1783 and 12th March 1783, in the George Hooper Papers #351, SHC; SRNC, 16:940-941, 943-946.

Defeated in his attempts to make the Act of Pardon and Oblivion a compliant tool of the treaty and therefore amenable to reintegration, a frustrated Maclaine advised Hooper to become a citizen of South Carolina. Once debate began on the bill, Maclaine recognized that the only way it could gain a majority vote was with too many exceptions. Meaning, the bill would pass, but only after so many limitations were implemented that very few of the people the bill was supposed to pardon would even be eligible. Despite his maneuvering to insert two clauses to "lessen the evil," he intended for the bill to fail with the anticipation that a fresh start on a new bill would be more to his liking. The bill that passed into law did not even remotely resemble the one which Maclaine submitted. Instead of mounting a serious defense, he was advised "to let the violent cool by degrees." He felt the preamble to the act was a sham; it claimed to honor the Treaty of Peace, but then systematically denied the treaty with exceptions in the body of the law.[22] Iredell was not pleased with the outcome either. He wrote his wife that not "only the most wonton injury had been done to Individuals, but the national Character [was] disgraced" by ignoring the articles of the peace treaty. If this flagrant disregard continued, Iredell believed that "this will not be a country to live in . . . ."[23]

The issue which William Hooper, Maclaine, and Iredell felt most strongly about was essentially the preservation of certain fundamental rights. The right to property and trial by jury were two specific individual privileges they thought were violated by disregarding the peace treaty. An anonymous pamphlet appeared in 1787, *The Independent Citizen*, which took the North Carolina legislature to task for the confiscation laws and others that denied the right to trial by jury. Specifically, the author criticized the assembly for a law which raised

[22] Maclaine to George Hooper, letters dated 29th April 1783, 29th May 1783, and 12th June 1783, in the George Hooper Papers #351, SHC; SRNC, 16:956-958, 962-963, 965-967.

[23] Iredell to Hannah Iredell, letter dated May 31st, 1783, PJI, 2:415.

the claim amount a single justice could try without a jury regarding claims on confiscated property from £10 to £20. The author dedicated the pamphlet to William R. Davie, a North Carolina politician and lawyer who frequently accepted loyalist cases and called for their moderate treatment, while he was in Philadelphia representing the state at the Federal Convention. Declaring to Davie that, "THOU ART THE MAN who can save us from destruction," the author hoped to put an end to what he perceived to be the abuses of legislative power.[24]

The *Citizen's* intent was to demonstrate to Davie and the people at large the illegal foundations and "ruinous" consequences of the Assembly's actions. It was every individual's right, especially in matters of public safety, to inspect the law, and, in instances of perceived injustice, to oppose it. Citing precedents found in the *Magna Carta* and the state's constitution, as well as in the writings of Lord Coke and Sir William Blackstone, the author demanded that the due process of law and trial by jury were guaranteed rights that the legislature could not abrogate. The author hoped the readers would find these arguments familiar, as they were essentially the same as those made by patriots to justify their split with Great Britain. If those views were logical then, then the logic associated with them should not have diminished with time. The author did not deny that some men deserved punishment, but there existed both levels of offense and potentially mitigating circumstances. To engage in open combat against the state, for example, was more egregious than merely accepting a parole to protect ones family and property. "In the rage of war . . . examples may be made, with some shew of justice . . . but in the hour of peace . . . such acts were tyrannical

[24] William K. Boyd, "Some North Carolina Tracts of the Eighteenth Century: XII and XIII," *North Carolina Historical Review* 4 (January 1927), 50-52, 54. The subtitle was "Or the MAJESTY of the PEOPLE asserted against the USERPATIONS of the LEGISLATURE of NORTH CAROLINA, in several acts of Assembly, passed in the years 1783, 1785, 1786, and 1787." The nameless wordsmith, though never identified, was probably Archibald Maclaine based on the argument's style and word choice.

and argued a depravity of principle . . . ." In a direct challenge to his fellow citizens, he presumed that had the English won, she "never would have so *immodestly* offended the rights of men." Failure to act justly in accordance with the treaty, and by extension the loyalists, was dangerous, because "unless justice be legally and properly administered . . . a door is opened for every degree of wrong, turpitude and prostitution."[25]

The danger perceived by the *Citizen* was the unchecked power of the judiciary granted them by acts of the legislature. Any acts of the Assembly contrary to precedent and in violation of fundamental rights were, also by precedent, null and void. Under the guise of a fictitious legislator, the pamphleteer mocked the Assembly's "imaginary omnipotence" in regard to the provision which allowed for the repayment of confiscated property in certificates that were steadily declining in value. The politician urged those who received the worthless payments to "leave your homes and attend the movements of our political balloon, guided by the God of error . . . . We politicians in directing the mighty machine of government cannot stop to regard the little things." And lest the citizen should forget the purpose of government exercised in this way, the faux politician reminded all "*that private interest is always to give way to the general good*." Keeping a clear head and recognizing the just course was paramount, especially in turbulent times. Loyalists did not deserve wholesale punishment. The *Citizen* recognized that and refused to be a "dupe to popular opinion," would follow the spirit of the law, and would "not admit that from the necessity of the thing there [were] matters so slight and trifling as not to deserve the dignity of a court of justice," or other guaranteed fundamental rights.[26] Indeed, the *Citizen* believed that each case, each individual, deserved the right to trial, and that that trial should consider the facts at

[25] Ibid., 55-62.

[26] Ibid., 65-66, 70, 74-76, 79. Italics in the original.

hand and not be guided by the intensity of the times. All loyalists were not cut from the same cloth. Surely, those who raped, murdered, and stole where not the same as those who merely absented themselves from the state or refused an oath.

Loyalists and loyalism were only two of the many concerns facing the politicians of the late-1770s and 1780s, though these issues proved to be significantly divisive in North Carolina politics. Their supporters primarily hailed from along the eastern portion of the state and from the merchant and lawyer classes. The argument that antiloyalists desired strict prohibitions on returning loyalists for individual concerns or gains, although true, should not entirely exclude those who supported reintegrating loyalists from having similar concerns. Indeed, Archibald Maclaine, Samuel Johnston, William Hooper, and James Iredell lobbied on behalf of Loyalists, men who were also their relatives and business associates. None of these men doubted that some punishment was deserved, but they all recognized both levels of disaffection and the steadily declining value of punishment after the war concluded. The greater concern for these men was conformity with the Treaty of Paris, especially its provisions regarding Loyalists and the acknowledgement and application of fundamental rights to property, as well as the potential interstate and international consequences of dismissing the accord. Similarly, the *Independent Citizen* did not deny the state's ability to castigate the inimical, but called for adherence to the principles of the Revolution and the peace treaty, as well as recognition of guaranteed fundamental rights. Laws and Loyalist supporters leave the story of reassimilation only partially complete; therefore, the next chapter seeks to describe reintegration in practice.

CHAPTER THREE

IMPLEMENTATION

> "Whereas Allegiance and Protection are in their Nature reciprocal, and the one should of Right be refused when the other is withdrawn."[1]

> "In my judicial character I am righteous and therefore bold."[2]

To a certain degree, a society can be judged by its laws as the legal corpus under which the population operates says a great deal about community values and desires. North Carolina laws during and after the war regarding loyalists intended to eradicate, or at least significantly diminish, internal disaffection while at the same time providing state benefit. Both loyalty and state benefit in North Carolina were pursued through coercion either by the threat of punishment or by implementing punitive measures, most often in the form of property confiscation and the denial of other privileges of citizenship—the ability to hold office, vote, pay taxes, and participate in the court system. The effectiveness of such laws is often difficult to assess, but enforcement of the law, or even the condoned disregard of it, is even more explanatory in the search to gain a more complete understanding of the practice of loyalist reintegration. Towards that goal, this chapter provides an examination of the implementation of, the adherence to, and the occasional, consensual disregard for the law in light of reincorporating North Carolina's loyalists through three legal cases, several acts of the General Assembly, and several individual petitions either from, or on behalf of, loyalists seeking clemency. The evidence suggests that while the state rarely returned confiscated property, it did make concessions allowing individuals to participate in the courts and

[1] Preamble to the 1776 North Carolina Constitution, SRNC, 23:980.

[2] Judge Samuel Ashe to the General Assembly, letter dated December 14th, 1786, SRNC, 18:137.

frequently to remain in the state, especially when the local community felt reintegration was in their best interests.

The question of citizenship was important because an individual's status determined his ability to participate in society. Citizenship provided answers about whom the laws applied to and how it applied to individuals, but who determined citizenship? Historian James H. Kettner's exposition of the concept of volitional allegiance illuminates the controversy over citizenship in the years surrounding the War for Independence. By the onset of the war, Americans refuted the notion that individuals were perpetual subjects to the British monarchy as contemporary political thought suggested that governments owed individuals the protection of their rights in exchange for faithfulness. This exchange of loyalty for protection was essentially a contract, and contracts could be broken. If allegiance was an individual choice, then what was to be done with those members of the colonies who retained their allegiance to the crown and resisted citizenship in the nation? Dealt with by various measures during the war years as evidenced by the laws passed requiring loyalty oaths, confiscating property, and defining treason, the situation came to the fore in the years immediately following, as the articles in the Treaty of Peace provided for debt recovery and the cessation of property confiscations, the latter of which often hinged on the definition of citizenship. The result of the struggle to deal with these issues was the concept of volitional allegiance—the idea that individuals had the right to choose their own loyalty. Certainly a creation of the Revolution, this discourse produced the "American citizen." The choice between citizenship and alienage was ultimately an individual one, a matter of right

and consent. Indeed, the choice of loyalty was regulated, but it was not denied.[3] Citizenship, alienage, and allegiance played an important role in the court cases discussed below.

In 1787 the New Bern District Superior Court considered the case of *Bayard v Singleton*, the state's most famous post-war legal case involving loyalists, and one that hinged upon the concepts of alienage and citizenship. The case began as an ejectment suit for the recovery of a house, lot, and wharf in New Bern originally owned by Samuel Cornell. Cornell was a well-known friend of the Royal Government and possibly the wealthiest man in North Carolina; he loaned the colonial Treasury the money to build what would become Tryon Palace. Shortly after the beginning of the war Cornell left the State with the British, but returned to New Bern in December 1777 under a flag of truce. Cornell came back in order to give the land to his daughter Elizabeth, who was then only fifteen years old, under a Deed of Gifts. Cornell thought that he had successfully transferred the property and registered the new deed. He departed for New York and took young Elizabeth with him. Matters became complicated when, prior to his departure, Cornell leased the land to Spiers Singleton. The winter 1777 session of the General Assembly was convened at New Bern during this time, and Cornell was offered, and declined, the Oath of Allegiance. The state eventually confiscated the land, which Singleton purchased in 1782 for £2,160.[4]

Elizabeth Cornell Bayard returned from New York City in 1785 and sought her title to the land. Actually, Elizabeth and her sisters had initiated twenty-seven other suits for their father's vast holdings between 1785 and 1787. One of Singleton's lawyers, Abner Nash, moved to have the case dismissed in 1786 under the 1785 act which prevented "vexatious"

[3] Kettner, *American Citizenship*, 173-209.

[4] State v Singleton, Special Verdict 1779, New Bern DSCR, Misc. Records, 1756-1807, DSCR 206.928.2, NCA; Oath of Spiers Singleton, Ibid.

lawsuits against purchasers of confiscated land. The judges, Samuel Ashe, Samuel Spencer, and John Williams noted that the state constitution guaranteed citizens the right to a trial by jury for a decision regarding property. Judge Ashe wrote the following opinion:

> That at the time of our separation from Great Britain, we were thrown into a similar situation with a set of people ship wrecked and cast on a maroon'd island—without laws, without magistrates, without government, or any legal authority—that being thus circumstanced, the people of this country, with a general union of sentiment, by their delegates, met in Congress, and formed that system or those fundamental principles comprised in the constitution, dividing powers of government into separate and distinct branches, to wit: the legislative, the judicial and executive, and assigning to each, several and distinct powers . . . .[5]

Ashe intended to make it clear that judges did have the power to invalidate laws passed by the General Assembly. This clarification of judicial authority, coupled with the privileges guaranteed in the state constitution, led the judges to declare the 1785 act unconstitutional and void. The judges surmised that if the Legislature could take away the right to trial by jury, "it might with as much authority require his life to be taken away" in the same manner and "he should be condemned to die." Elizabeth Bayard, as a citizen of the United States and the State of North Carolina, would receive her day in court.[6]

The court heard *Bayard v Singleton* in November 1787, but unfortunately for Elizabeth Bayard, the jury found in Singleton's favor. The court's opinion noted that the case "turned chiefly on the point of alienage." Samuel Cornell had since birth been a British subject, and as such, owed his allegiance to the King of Great Britain; therefore he was never a citizen of the United States, though he could have claimed United States citizenship by signing the oath offered him in December 1777. Cornell remained a British subject by his own volition. Furthermore, it was the "policy of all Nations and States that the lands within their government should not be held by foreigners." Since Cornell owed no allegiance to the

[5] Bayard v Singleton, 1 N.C. 5, 1 Martin 48 (Nov 1787), 6.

[6] Ibid., 5, 7.

state, he possessed no capacity to own property.[7] Cornell's alienage denied Elizabeth and her sisters the reclamation of the property, but Elizabeth's citizenship guaranteed her a trial by jury. More importantly, this instance of judicial review guaranteed that North Carolina's laws would not be arbitrary and that even loyalists would be granted due process.

Controversy surrounding confiscated land continued into the new century. A second Loyalist case, *Stringer v Phillis*, also hinged on the issue of alienage. The state Superior Court heard the case in 1802, and much like *Bayard*, *Stringer* began as an ejectment, but unlike the previous case, the land in question had belonged to the plaintiff's mother. Francis Stringer claimed the land as the heir at law of Thomas Stringer, who died in 1795, but who had inherited the land from Ralph Stringer. Ralph, had inherited the property from his mother, had lived in Europe at the time of his inheritance and had died there before the war. Phillis' attorney argued on the established precedent that Thomas and Ralph became citizens at the time of the Declaration of Independence, while Stringer's lawyer proposed that "men not born aliens could not become so by a separation of empire." Judge Samuel Johnston, who worked on behalf of Elizabeth Bayard fifteen years earlier, noted that the state constitution declared that all lands within the state's boundaries belonged to the collective body, freemen, and not British subjects. The state offered means for those who wished to become citizens "and to join their efforts for the common defence" by taking the loyalty oath. Indeed, absentees could have returned as late as October 1778 and claimed United States citizenship, but in this case they did not.[8] The land was, therefore, rightly confiscated and used for the state's benefit.

[7] Ibid., 9-10. The decision in this case swept the twenty-seven other cases with similar circumstances off of the docket.

In 1792, the North Carolina Supreme Court adjudicated a different kind of loyalist suit that involved pre-war debt and the Loyalists' ability to recover money owed them. John Eaton was indebted to John and Archibald Hamilton, New Bern merchants who owned the firm of Archibald Hamilton and Company, for the sum of £800. Eaton incurred the obligation in 1776 and signed a writ verifying the same, but denied that he remained obligated to pay since the Hamiltons departed North Carolina for England in 1777, after the state assembly passed the legislation requiring merchants to take the Oath of Allegiance within sixty days. When the Hamiltons absented themselves, Eaton felt that he was freed from the debt when the state confiscated the Hamilton's property, which also implied a confiscation of the debt. The plaintiffs argued that the Treaty of Paris guaranteed their debt regardless of their allegiances during the late war and that the debt remained unfulfilled. Fortunately for the Hamiltons, Circuit Judge Oliver Ellsworth saw matters the same way.[9]

In his opinion Ellsworth wrote, "debts contracted to an alien are not extinguished by the intervention of a war with this nation," and the Hamiltons alienage was certainly not in question. During the grace period established by the Assembly, they chose not to take the Oath of Allegiance and sailed for England. Furthermore, the fourth article of the peace treaty acknowledged "bona fide" debts and prohibited impediments to their recovery. Ellsworth trounced the defense's argument regarding the legitimacy of the state confiscation acts by invoking the treaty's supremacy. Not only had the state passed a law in 1787 making the treaty state law, but North Carolina's ratification of the United States Constitution ensured that treaties made on behalf of the United states were "the supreme law of the land."

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[8] Stringer v Phillis, 3 N.C. 342, 2 Haywood 158 (Jan 1802), 342-344; DeMond, *Loyalists in North Carolina*, 171; Kettner, *American Citizenship*, 197.

[9] Hamilton et al. v Eaton, 11 F. Cas.336, 2 Martin 1 (Jun 1792), 336-338.

The treaty was unquestionably the law of the land and any state law not in compliance was subsequently void; Ellsworth ordered Eaton to pay the Hamiltons the debt he owed.[10] Interestingly in this case, it was the Hamiltons' alienage and Eaton's citizenship that helped solidify their respective positions in the case. The fact that the war had been over for nine years and that the U.S. Constitution had been in effect for three years surely helped the Hamiltons. Regardless of their loyalism and in compliance with the law, the Hamiltons won the suit.

Between 1784 and 1790, Loyalists and their families received leniency from several laws passed by the General Assembly. For example, a 1784 law granted Patrick Cleary property rights from land seized under the confiscation acts. The state confiscated the lands bequeathed to Simon Cleary, Patrick Cleary, and others from their brother Timothy, who died in September 1775. Timothy Cleary lived in New Bern at the time of his death and owned land in Craven County; however, his heirs lived in Ireland. Since Timothy's successors did not live in the United States, the state confiscated the lands in accordance with the 1777 Confiscation Act. Patrick Cleary, empowered by his siblings and co-heirs to act on their behalf, petitioned the General Assembly for permission to take ownership of the property. Cleary convinced the Assembly of his efforts to leave Ireland and that his attempts to return were "thwarted by privateers" multiple times and this prevented him from reaching North Carolina during the war. After demonstrating to the satisfaction of the Assembly that he sincerely attempted to reach the state, he received full authority over the property that remained unsold. Furthermore, the state paid Cleary from the public treasury the money, with interest, generated from the sale of the confiscated property. From the passage of the original bill in 1784 until June 1787, Cleary received no less than ten payments totaling

[10] Ibid., 339-340.

£2,214.19.7. Patrick Cleary died in New Bern in January 1788. North Carolina finally settled the account with the Cleary family in January 1794 with a final payment of £986.14.10.[11]

Two laws passed in 1785 further demonstrate the General Assembly's willingness to provide relief to Loyalist families, especially minor orphans. Mary Alston Bell received some relief from the confiscation acts by the legislature when, in 1785, the General Assembly passed a law that granted her 270 acres in Granville County. The acreage came from a portion of land owned by a Loyalist named in the 1782 Confiscation Act, George Alston. Bell was granted rights to the property in fee simple.[12] Similarly, the legislature distributed the unsold lands of Ralph McNair to Edward Hall as the executor of McNair's estate on behalf of his three orphans in the same year.[13] McNair had petitioned Governor Martin in January 1784, with an endorsement from General Nathanael Greene attached, to be allowed to return to North Carolina and reclaim his property. Martin began by politely noting that he was "sorry," but that the law prohibited him from granting the request. Not so politely, Martin then admonished McNair, writing that it was "not my business to criminate you on the part you have taken . . .—but only to suggest that you have been decisive in the choice." Martin intended to make it clear that the predicament in which McNair found himself was of his own making. Martin suggested that McNair petition the General

[11] SRNC, 24:696-697, 889-890; Treasurer's and Comptroller's Papers: Lands, Estates, Boundaries, and Surveys, NCA.

[12] Ibid., 24:759. Fee simple is similar to the way one owns land in modern times. For definitions and examples of different forms of ownership and their importance see Holly Brewer, "Entailing Aristocracy in Colonial Virginia: 'Ancient Feudal Restraints' and Revolutionary Reform," *William and Mary Quarterly*, 3d Series, 25 (April 1997), 311-315.

[13] Ibid., 24:761.

Assembly for approval, which Martin doubted it would provide, despite the work McNair had done on Long Island helping prisoners of war.[14]

Mercy Bedford, wife of loyalist Jonas Bedford, was yet another recipient of legislation that provided aid to the family of a known Loyalist. The legislature granted the Bedford estate to Mercy so she could pay her husband's debts, and gave her the remainder of the property in fee simple.[15] Mercy originally petitioned the Assembly in November 1785, but after swift concurrence to her request in the Senate, the House Committee of Propositions and Grievances rejected it, albeit temporarily upon reconsideration. James Gillispie, chairman of the committee, supported the recommendation and proposed that the property be vested in Bedford's heirs, male and female. The House rejected Gillispie's proposal and again called for reconsideration of the petition. On December 22, Gillispie noted that "after mature deliberation," and despite the fact that the petition fell within the Confiscation Act's scope, Mercy Bedford's case was "singular and very distressed." The significant change in this recommendation was not in Mercy's ownership of, disposal of, or profit from the sale of the property, but with the heirs. The final version removed the female heirs and provided for males only. The House passed the proposal on the first reading during the next day's session.[16] It appears that the committee granted the request with the legal practice of coverture in mind. Coverture was the system that reassigned a woman's civic identity to that of her husband at marriage. That the version approved granted only the male heirs also

[14] Alexander Martin to Ralph McNair, letter dated 21 January 1784, Ibid., 17:10.

[15] Ibid., 24:761-762.

[16] Ibid., 17:294, 347, 20:56, 63, 84-85, 105.

suggested that committee felt that Bedford's female heirs could receive land either under dower rights or through inheritance of any future gains Mercy might make.[17]

The Assembly's decision regarding Bedford is noteworthy less because it showed evidence of the state attempting conciliatory measures to a Loyalist family by making a concerted effort to implement the appropriate balance of penalty, profit, and clemency, but more because Jonas Bedford had been such a steadfast Loyalist and had returned to North Carolina in 1790. Jonas was born in New Jersey in 1745 and was a farmer by trade. He served in the colonial militia fighting against Indians during the 1750s and claimed to have been wounded thirteen times. Bedford also helped to repress the Regulator Movement in 1768, leading a company of men over 220 miles to rendezvous with Royal Governor William Tryon. The Revolutionary War was certainly not Jonas's first experience with war or rebellion. For his dedicated service against the Regulators, Bedford received commissions as

[17] The 1805 case of *Martin v Massachusetts*, for example, revolved around the issues of coverture and women's citizenship. The suit originated when, in 1801, James Martin appealed to the Supreme Court of Massachusetts for the return of property confiscated from his mother near the end of the war. James's mother, Anna Gordon, was the daughter of a wealthy Boston merchant named James Gordon, and had married William Martin, an English-born veteran of the Seven Years' War who remained in Massachusetts following the 1763 Treaty of Paris. Once the War of Independence began, Martin moved his family to Halifax Nova Scotia and then to New York City. They remained in New York until the British evacuated the city in 1783 and then departed for England. When James Gordon died in 1770, Anna inherited approximately 844 acres of land in New Hampshire and Massachusetts. Since the Martins had departed with the British, the state confiscated all of the property. Massachusetts was similar to North Carolina in its acknowledgement of dower property in its confiscation acts, but only for women who stayed in America; however, the land Martin desired was not his mother's dower, but hers in her own right. The plaintiffs argued that while Anna Martin was an inhabitant of the state, she was not a member of the same, and that she possessed no more political relation to the state than did an alien. Finding precedents in British common law, Martin's lawyer quoted the common law rule that "as a woman is supposed to have acted under the coercion of the husband," she was normally excused for illegal acts committed by him. If the "husband commanded [withdrawal from the state], she was bound to obey him." The defense on the other hand, argued that the law read "any person" who departed the stated faced confiscation. Moreover, the dower privilege in the confiscation act implied that women did indeed have a choice, the "power of remaining or withdrawing, as they pleased." This argument stripped away any ambiguity regarding the citizenship of women and provided them with individual agency to make their own choices. In the end, the four Supreme Court judges supported Martin's claim to his mother's property. One judge's written opinion read, "A wife who left the country in the company of her husband did not withdraw herself—but was . . . withdrawn by him." The "paradox," as Linda Kerber called it, was that recognition of Anna Martin as a member of the state meant that she and her heirs would have lost the property to confiscation. See Linda K Kerber, "The Paradox of Women's Citizenship in the Early Republic: The Case of *Martin v. Massachusetts*, 1805," *American Historical Review* 97 (April 1992), 349-378.

both a militia officer and justice of the peace. He later claimed to have professed, "I have been Sworn as an Officer and Magistrate under my lawful Sovereign. I never will turn my back to my King's cause and perjure myself. I shall remain a loyal Honest Subject during my life to my King and My Country." Jonas left his wife and eight children in Rutherford County to fight with the British army in 1780. It was not surprising that the State's official version, that Bedford abandoned his family, did not reconcile with Bedford's version. Bedford appeared content to remain neutral until 1780 when, according to his version of events, local Whigs threatened to burn his home. He was driven by his neighbors into serving the British, which he did through the end of the war. Bedford fought with the British at King's Mountain, in the King's Carolina Rangers, and with John Moore's regiment of loyalist militia in the Carolinas. By September 1782, Private Bedford was a refugee in Charleston, South Carolina. He eventually made his way to England and petitioned the Loyalists Claims Commission for redress of his losses. He sought £6,837 and the Commission awarded him £413. In addition to his claim, Bedford apparently qualified for further British support evidenced by his appearance on the 1790 quarterly pension roll when he was granted £20. By 1790, however, Bedford had returned to his home in North Carolina, where he died in 1823. He bequeathed his remaining land to his married eldest daughter and gave his six remaining children varying amounts of money.[18]

Edward Bridgin, a Loyalist specifically named in the 1782 confiscation law, was granted a return of all of his unsold confiscated property and was "entitled to every

[18] Robert Scott Davis, "Lessons from Kettle Creek: Patriotism and Loyalism at Askance on the Southern Frontier," *Journal of Backcountry Studies* Vol. 1:1 (May 2006), 10-11; Brown, *King's Friends*, 209 (quotation); Carolyn Murfree Backstrom, "Mercy Raymond Bedford of North Carolina, Patriot," *Mayflower Quarterly* 44 (Aug 1978): 80-82; Murtie June Clark, *Loyalists in the Southern Campaign of the Revolutionary War* (3 Vols., Baltimore, MD: Genealogical Publishing Co., 1981) 1:410, 525; DeMond, *Loyalists in North Carolina*, 251, 256-257; *First Census of the United States, 1790: North Carolina* (Baltimore, MD: Genealogical Publishing Co., 1973), 118; Rutherford County Record of Wills, Book D, 10-11, NCA.

indulgence of the legislature." Furthermore, the assembly authorized the treasury to pay Bridgin any money generated from the sale of his property. The leniency granted Bridgin by the Assembly was understandable when one considers who made the request on his behalf. On August 5, 1782, Benjamin Franklin dispatched a letter from Passy, France to Governor Martin requesting that Martin reconsider the inclusion of Bridgin's property in the Confiscation Act. Bridgin was, according to Franklin, not only a personal friend but also a "zealous one of the American cause." Without actually having seen the laws himself, Franklin expressed his desire that exceptions could be made for friends who "uniformly, openly and firmly, espoused the interest of our Country." Just how Mr. Bridgin, a London merchant, championed the American cause in England is not known, but Franklin's testimony was sufficient for the Assembly to reconsider their previous decision.[19]

Besides Edward Bridgin, Hugh Ross was the only other person granted the return of his own individual confiscated property, when the assembly passed the law in his favor in January 1787. Ross's case is even more interesting because he had supposedly attached himself "to the British arms." In fact Ross fled to Charleston, where he worked as a tailor, until he was permitted to leave the city and return to his Anson County home. He denied ever bearing arms for the British.[20] In December 1786, Ross petitioned the Assembly and the Committee of Petitions and Memorials reviewed his request. John Tipton, chairman of the

[19] SRNC, 24:762, 16:388-389 (quotations), and Sabine, *Loyalists of the American Revolution*, 255. In December1787, Bridgen applied, through his lawyer in the United States, for further compensation from the money generated from the sale of Elizabeth Catherine DeRossett's house in Wilmington. DeRossett, who died in 1778, was Bridgen's sister. The Committee of Petitions and Grievances declined Bridgen's request to abridge the law. SRNC, 20:420; Petition of Edward Bridgen, General Assembly Papers, Session Records (hereinafter cited as GASR), Nov-Dec 1787, Box 1, NCA. The following year the persistent Bridgen appealed to the assembly again, this time arguing that the certificates received as payment were of such little value that they had "ceased to be an article of traffic." The committee rejected this petition as well, Petition of Edward Bridgen, GASR, Nov-Dec 1788, Box 2, NCA.

[20] Ibid., 24:928. Petition of Hugh Ross, GASR, Nov 1786-Jan 1787, Box 2, NCA.

committee, explained that Ross was scared away from his home by two men who tied him up and whipped him under the suspicion of being a Tory. The scene described by Tipton was similar to the one Jonas Bedford described in that each man, Ross and Bedford, were driven into the arms of the British by their over-zealous neighbors. Tipton explained that Ross, "being a poor ignorant man," should have his property restored. Ross's petition passed quickly through both houses of the Assembly, ultimately becoming law in 1787. In addition to the return of his unsold land in Anson County, the law granted Ross the sum of those lands that state had already sold.[21] The petition demonstrated that it was more probable that Ross was driven to the British rather than simply attaching himself to them. His desire to return to North Carolina was presumably in his own best interest, but the willingness of the Assembly to allow his return confirmed a willingness to reintegrate those who were at one time disaffected. Ross remained in Anson County through the end of 1800.[22]

Loyalist John Colson, on the other hand, drew a fate similar to Mary Dowd, who received her Loyalist husband's land and then sold it to pay his debts, when he was allowed to return to North Carolina from England in 1790 by an act of the General Assembly. Before he joined the British, Colson left 351 acres, without a deed, to his son William, who then passed the land on to his son, also named John. The assembly granted the land to the younger John Colson and his heirs "forever" in 1786. The burden of paying off the elder Colson's debts proved to be a great hardship on the younger Colson. The elder Colson then petitioned the General Assembly for the authorization to return from Europe to settle his debts. The legislature granted his request with the condition that he take the oath of

[21] SRNC, 18:146, 202, 20:164, 172, 187, 195, 202, 345.

[22] *First Census of the United States, 1790: North Carolina*, 35, and *1800 North Carolina Census: Anson County* (Tullahoma, TN: Dorothy Williams Potter, 1975), 44. The 1790 Census shows seven free white adults and one slave. By 1800, the household included Hugh, his wife, and four slaves.

allegiance and fidelity prior to entering into any civil matters. Colson complied, returned to the state, and, in 1790, took the required oath in Anson County. Even though Colson was now a recognized citizen of the state, his status did not exclude past nor preclude future sales of his confiscated property.[23]

Examples of reintegration are not confined to the allowances made to Loyalists in the superior courts and by acts of the General Assembly, but are also found in how individuals and state agencies adhered to established laws and procedures. Much like the legal cases and state laws, these patterns of reintegration occurred relative to the definitive Treaty of Peace in 1783. Although in these instances, it was related to the treaty's preliminary articles, as news from the treaty commission routinely arrived well in advance of the treaty itself being formally completed. Shortly before the treaty was officially signed Paris, the State of North Carolina took legal action against the Jones County Court. The case centered on Durham Leigh of Duplin County, whose land the state confiscated as a consequence of his loyalism. Elisha Blackshear of Jones County bought Leigh's impounded property in 1782. In accordance with the legal provision to ensure a livelihood for the remaining family, Leigh's wife, Mary, retained the house, some furniture, two hundred acres, two slaves, five cows and calves, one steer, two hogs, four sheep, and one horse. Matters became more complicated when, in 1782, Durham Leigh returned to his property--now owned by Blackshear--and "through force and arms" removed one slave, "sundry kitchen utensils, two mares, [and]one colt with sundry other articles" valued at £551. Blackshear presented his claim before the Jones County Court and the court ruled in his favor for £283.16.[24] If accountability or the

[23] SRNC, 24:883, 993-994, 25:102-103.

[24] *State v Jones County Court*, New Bern DSCR, Misc. Records, 1756-1807, DSCR 206.928.2, NCA. The deed could not be located in the Treasurer's & Comptroller' papers, and the case file did not contain the date of sale.

desire to establish some semblance of equity did not exist, Blackshear's victory would have been the end of the matter. Fortunately for Mary Leigh, that was not the case.

Shortly after the 1783 verdict in favor of Blackshear, the state brought suit against the Jones County Court on Mary's behalf because the case contained several irregularities. The result was the addition of permanent exceptions to the conviction on the record. The final exceptions had five parts. The first issue was that "no legal measures for rendering the said estate confiscated had been attempted." The county commissioner of confiscated estates had not followed the established legal procedure. Second, that the conviction notice from the court served on the Commissioners in Duplin County (where Mary lived) was served two days before the sitting of the court in Jones County. Not only did this failure to follow procedure invalidate the notice, but the judges of the Jones County Court could not expect Mary, who lived 50 miles away, and was "poor, aged, and infirm," to make her appearance in court. The third provision cited Section Nineteen of the 1782 Confiscation Act, which provided for debts justly due, and not "as a remedy for mere personal torts or injuries arising from the fortune of war." The fact that Durham Leigh had not been, previous to either judgment, legally convicted of any crime by which state laws could affect forfeiture was the fourth condition. In short, whatever he may have been guilty of did not necessitate confiscation. Finally, the state argued that the adjudication was in direct violation of the provision in the law that provided for "humane provisions" and left Mary in "extreme wretchedness and distress."[25] The state's intervention in this case caused the revocation of

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That the sale came under the purview of the Confiscation Act passed in May 1782 and that Blackshear owned the property when Leigh returned in 1782 makes it appear that these events took place very close to each other in 1782.

[25] Ibid. Other amounts of Durham Leigh's property were the subject of an act passed by the General Assembly. Howel Brown purchased two hundred acres of land from Durham Leigh in 1779, but Leigh departed North

Blackshear's award. Interestingly, this case would not by the only one involving the Jones County Court.

The civil case of *Charles Saunders v Samuel Albertson*, similar to the Leigh case, prompted the state to intervene because of the court's failure to follow procedure. A significant difference between the Albertson case and the Leigh case was that Albertson was a suspected Loyalist. This case was not about providing for the family of a Loyalist but for the disaffected citizen himself. Saunders claimed that Albertson committed trespass upon his property and had done damage in the amount of £350. Knowing that Albertson had joined the enemy and presuming that his estate was liable to seizure, Saunders requested that the money he sought in damages come from Albertson's property. The jury quickly found for the plaintiff, though for the lesser amount of £294.10.4. It is noteworthy that the jurors ignored a petition on Albertson's behalf, written by nineteen of Albertson's neighbors, who appealed to the court to demonstrate their support for him. The petitioners knew that Albertson participated with the enemy against the state, but felt that his actions while doing so were nonetheless admirable. He "did not do any private injury to individuals" nor did he plunder or murder. In fact, Albertson was a restraining force against such actions. According to his neighbors, he "actually was the means of preventing the property & houses of sundry of the good people of [the] state from being burned and plundered, if not saving their lives."[26] As in the Leigh case, Albertson was fortunate that the litigation did not end with the jury's original verdict.

Carolina before submitting the sale to the land office. A 1786 law granted the land in question to Brown and his heirs in fee simple, SRNC 24:872-73.

[26] *Charles Saunders v Samuel Albertson*, New Bern DSCR, Misc. Records, 1756-1807, DSCR 206.928.3, NCA.

Albertson's petition to the Superior Court shed more light on what seemed to be a fairly straightforward case. According to Albertson's deposition, he was unable to travel from his Duplin County home to the Jones County Court. Instead, he sent Windell Davis, his son, with instructions to obtain the services of Richard Caswell for his defense. Albertson received the summons on 23 September and dispatched Davis, who arrived at the court two days later, only to find that the judgment had already been made. To add insult to injury, Saunders secured Caswell to represent him in the case, though Davis claimed that Caswell sent his apologies to Albertson. The trespass Saunders claimed originated when British troops passed through the area, and not from any act of Albertson himself. Albertson adamantly denied having taken up arms with the British, but could not deny that he was "a few days with them for personal safety" as he was surrounded by horsemen who threatened to shoot him. The bottom line, according to Albertson, was that Saunders had no cause to make, much less receive, a claim against him or his estate.[27]

The reprimand that the county court received from the state in May 1783 noted that there were "manifest errors" in the judgment against Albertson. For example, the defendant had not received notification that his property was liable to seizure, which should not have been difficult as Albertson resided "openly within the jurisdiction of the court" and was "amenable" to the process. The state did not refute, nor did it expound upon the issue of Albertsons' participation with the British, other than to repeat Albertson's plea that he did not fight for the Crown. Regardless of Albertson's actions in this case, the law did not provide for personal award for "injuries done by forces of the enemy or by their adherents who were in arms." Moreover, the state had not yet impounded Albertson's property and the

[27] Ibid.

judgment against him was, as a consequence, improper.[28] The willingness of the district superior court to properly implement the law regardless of the claims against Albertson's loyalty was significant. Punishment of the Loyalists could be both rehabilitative and beneficial to the state, but it could not be arbitrary.

Petitions to the General Assembly serve as the final category of analysis and provide further examples of Loyalist reintegration in North Carolina as known or suspected Loyalists received varying degrees of clemency. Individuals submitted the petitions on their own behalf or, occasionally, the neighbors of the accused intervened to seek clemency. Much like the previous three categories, the petitions approved by the various committees that received these requests fell between 1783 and the end of the decade. The Kerr family of Rowan County provides an interesting view on the reintegration process. In 1783, Archibald Kerr petitioned the Assembly for land given to him by his father, James. James Kerr had "unhappily taken an active part with said enemies of this state." When James bought the half-lot in Salisbury, he promised to deed it to Archibald when he came to the age of discretion. Archibald made improvements to the land, built a dwelling upon it, rented it, and received profits. Archibald assured the committee that he was "firmly attached to the Liberties of America [and] hath served several Tours of Duty in defence of his Country." In fact, Archibald's company commander, James Craige, attested that he "was a faithful soldier in defence of amiraca against the Charoke Nation . . . and saved two towans against the British Army . . . ."[29] While Archibald's loyalty was not in question, his father's loyalty was another matter.

[28] *State v Justices of Jones County*, New Bern DSCR, Misc. Records, 1756-1807, DSCR 206.928.3, NCA.

[29] Petition of Archibald Kerr, GASR, Apr-May 1783, Box 1, NCA.

Archibald Kerr's father, James Kerr, was accused of being a Loyalist. James Kerr petitioned the Assembly in May 1784 regarding his duties as the Commissioner of Rowan County. In late-1780, the County Court selected James Kerr to serve as the commissioner over another man. The issue at hand concerned two warrants issued by the Board of War in December 1780 for the collection of five hundred bushels of salt for the army. Kerr apparently borrowed the salt from local farmers with the intent of paying for the goods later instead of impressing it. The problem was that he could not borrow the five hundred bushels and, consequently, could not comply with his warrants. He was also responsible for collecting tax from locals, which he did, though not by taking the specific articles as directed by law. Instead he accepted the receipts provided by the locals that they had received from "marching parties of troops." Kerr's intent was to prevent what amounted to double taxation for his neighbors; however, his improvisation also guaranteed that the required articles did not make it to the state coffers. The committee recommended that James be allowed monetary disbursement to repay those from whom he borrowed salt and beef. The committee deemed his conduct "irregular" but felt that there was no reason to "suspect him of dishonesty." James Kerr was elected to represent Rowan County at the next session of the General Assembly. On 25 October 1784, the Assembly qualified his selection and he took his seat.[30]

In 1785, the Rowan County Sheriff received a statement accusing James Kerr of treason by "attach[ing] himself to the British until after the definitive Treaty of Peace," and that he returned to the state without permission. Based upon this charge, the Commissioner of Confiscated Estates seized his land in September 1786, and it was sold to no less than eight individuals for £771.5. Kerr sought redress at the Salisbury District Superior Court,

[30] Memorial of James Kerr, GASR, Apr-Jun 1784, Box 2, NCA; SRNC, 19:619-620, 720.

where the judges determined that his land was improperly confiscated and was not forfeited to the state. The Assembly upheld the judges' decision in December 1789 and directed the Treasury to repay the money to the purchasers of Kerr's property.[31]

The extant records support the notion that James Kerr's real crime was that he was a poor commissioner, but not necessarily that he was a Loyalist. Kerr showed compassion to his neighbors during a time of immense hardship, and it appears as if his sincerity to the Revolution suffered as a result. Kerr's inability to meet the demands of the position created an opportunity for his enemies to level charges of treason against him. That his neighbors brought forward such a claim may speak to their motives and desires more than it does to Kerr's supposed loyalism. Regardless of the charges' origins, the Assembly's vindication of Kerr demonstrated both the desire to faithfully investigate allegations of treason and loyalism, and the willingness to fully exonerate those who were not found guilty.

The General Assembly's Committee of Petitions and Grievances considered two petitions in 1784 regarding Justices of the Peace in New Hanover County and their violation of the law prohibiting taking a parole from the enemy. The first petition was written on behalf of Benjamin Roberson, Justice of the Peace for the Black River area of the county, by twenty-five of his neighbors. According to the petition, the state suspended Roberson from duties because he accepted a parole from the British after the 1781 law which prohibited such an act. Roberson's petitioners felt that his suspension was too harsh and they wrote that his "taking parole from the enemy which we justly believe[d] was not owing to any disaffection to his country but occasioned by his local circumstances." There was no doubt in the

[31] Salisbury DSCR, Criminal Action Papers, DSCR 207.326.2, NCA; Petition of Lewis Beard and others, GASR, Nov-Dec 1790, Box 2, NCA; SRNC, 21:416, 26:1051. During the same 1789 session where Kerr received his land back, he submitted a petition in his capacity as the administrator for Gilbreath Falls's estate. Kerr found several receipts in Falls's papers that showed Brigadier General Rutherford owed various amounts of money to the Treasury, totaling £1,549.2. The Assembly agreed with Kerr's submission, found the General's debts valid, and debited the General's account accordingly, SRNC, 21:409-410.

petitioners' minds that Roberson's act was necessary and that he never intended, nor did he participate, in any actions against the state. In fact, he continued to give intelligence to his countrymen "at the risque of his life." Adherence to the provisions of a parole was based upon personal honor and by violating his parole in aiding the patriots, Roberson risked his honor as well as his personal safety. Roberson was forced to abandon his home and live in the woods prior to taking the parole. Given the circumstances, that his capitulation was unintentional and he risked his life to aid his country, the Committee of Petitions and Grievances restored Roberson to his position on 28 May 1784 because, "taking a parole from the Enemy was the consequence of an involuntary capture of his person."[32]

The second request the committee considered regarding New Hanover Justices of the Peace came from eight magistrates writing on their own behalf. Frederick Jones, William Purviance, James Giekie, Sampson Moseley, Samuel Swann, Thomas Davis, John Ashe, and Frederick Simpson all asked for reinstatement in the same petition. The petition was very sophisticated in its argument as the authors were well-versed in state law and demonstrated a mature understanding of both the letter and the spirit of the law. Regardless, the committee originally rejected it, possibly being put-off by the language, form, and implications of the request itself.[33]

The Revolution in North Carolina at this time was largely a partisan war, where Patriot and Loyalist militias struggled with each other for superiority, and where loyalty to one side or the other was often a choice based on individual safety. The petition of the eight former justices began by noting that prior to the arrival of the British at Wilmington in 1781, the region around the Cape Fear River "either as less unworthy of the attention of the

[32] Petition on behalf of Benjamin Roberson, GASR, April-June 1784, Box 2, NCA.

[33] Petition for Magistrates of New Hanover County, GASR, April-June 1784, Box 2, NCA.

government, or as not being as unable, was left entirely unprotected." The militia departed for operations in the western part of the state and took with them weapons and other military stores that may prove valuable to the inbound British. Once the British arrived, these eight petitioners claimed to have "exerted themselves to the utmost of their power," despite being "wholly abandoned by the Militia." Some were immediately taken prisoner by the British while attempting to remove their families. In order to give their families relief, the men accepted parole and received a warning that, if they violated their pact, the British would destroy "all that was dear to them." These men were, consequently, "under the inevitable necessity of submitting to superior force." They felt that the only alternative to surrender was to "wander to distant parts of the country on foot" and eke out a "precarious existence amongst strangers." After all, the petitioners maintained, the Executive power was "annihilated" and even the "General of the Militia . . . thought it necessary to secure himself and his property" by removing himself.[34]

The New Hanover petitioners couched their actions in such a way that made their actions appear to be born out of necessity and not from any pro-British fervor. North Carolina was in the midst of significant civil, military, and social upheaval. Loyalist Militia Colonel David Fanning had captured Governor Thomas Burke at Hillsborough in 1781, the state leadership was in flux, British General Lord Cornwallis had just finished campaigning in North Carolina before moving on to Virginia, and the state struggled with an internal partisan war that witnessed frequently brutal militia versus militia engagements as well as militia versus civilian actions.[35]

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[34] Ibid.

[35] For two differing views on the struggle for supremacy in North Carolina, see A Roger Ekirch, "Whig Authority and Public Order in Backcountry North Carolina, 1776-1783," in Ronald Hoffman et. al., eds.,

Jones and his co-authors then turned to the legal aspect of their claim. The memorialists continued and cited the 1781 law concerning parolees and made the distinction that the act applied to "voluntary" prisoners, which these men claimed not to be. By excluding themselves from those who easily accepted parole, these men implied their capitulation came as an absolute last resort. Moreover, compared to Duplin and Halifax counties, where the petitioners charged that "numbers crowded themselves to surrender themselves to the British General," none were found in New Hanover County "who showed so much depravity"—those who took shelter in Wilmington excepted. The act also required a trial by jury, "the undoubted Right of every Citizen," and one that they did not receive. They could not travel to the Assembly in the time period required not only due to the distances and expense involved, but because they were still held prisoner.[36]

The petitioners further cited the fourth section of the Act of Pardon and Oblivion, which authorized suspended office holders to appear at "some future Assembly." These men received advice that the first act was temporary while the second was not, and were given assurance that the "sages of the law" would agree. Even though they were "unconscious of any guilt they cannot so far sacrifice their own rights, and the rights of their fellow citizens, as to enter into a defence of their conduct before an extra-judicial tribunal and where there is no Criminal Accusation against themselves nor can they submit to take upon themselves the burthen of proof which the Constitution throws upon the State." Depsite the Acts' "intentions, they manifestly involve[d] the innocent with the guilty." The men acknowledged that, had they committed or should they be found guilty of a crime, they would gladly accept

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An Uncivil War: The Southern Backcountry during the American Revolution (Charlottesville, Va.: University Press of Virginia, 1985), 99-124, and Jeffrey J. Crow, "Liberty Men and Loyalists: Disorder and Disaffection in the North Carolina Backcountry," in Ibid., 125-178.

[36] Petition for Magistrates of New Hanover County, GASR, April-June 1784, Box 2, NCA. Underlining in the original.

the decision; however, they knew they had commited no crime "but that of being Prisoner of War."[37]

The former New Hanover Justices were confident in their request; however, they reminded the committee they knew of men who had accepted parole who had been elected to "offices of trust and profit," including seats in the General Assembly. Perhaps this final comment was less from confidence and more from desperation. Even though the committee originally rejected their request, the final judgment reinstated them all.[38] This petition was different from Benjamin Roberson's in one very important aspect--authorship. Both requests argued that taking parole was a necessity during the British occupation of Wilmington and that the men had not ever intended to aid the enemy. Roberson's request came from his neighbors on his behalf, while Jones and the others wrote their own. Despite the condescending tone and mild threats of the latter request, having others vouch for your loyalty surely carried more weight than self-avowal. Indeed, even known loyalists might receive a reprieve for their conduct during the war.

The petition on behalf of Doctor Daniel McNeill further demonstrated the power of community action in generating leniency for known Loyalists. Dr. McNeill, a resident of Bladen County and a known Loyalist, returned to his home in 1783 after learning of the preliminary articles of peace then emanating from the treaty commission. He expected to return and remain in North Carolina peacefully. Eight "sundry inhabitants" of Bladen County submitted the petition on McNeill's behalf on 23 December 1785. McNeill's petitioners found him "peaceful and conformable to the laws" and many of them had been

[37] Ibid. Underlining in the original.

[38] Ibid.; SRNC 17:687-688.

"witness of his skill as a physician."[39] McNeill's acceptance by his neighbors was not only based on his willingness to live peaceably but also on his abilities as a physician and thus his contributions to the community. In the case of Dr. McNeill, the community providing support was much larger than that of his immediate neighbors.

Prior to the McNeill Petition, the judges of the District Superior Court (Ashe, Spencer, and Williams) banished him and one other man, Francis Brice, from the state in 1785; each man was released on £1000 bond and ordered to depart within sixty days. The banishment order prompted Archibald Maclaine and others to bring charges against the judges during the November 1786-January 1787 General Assembly. The accusations included, among others, that the judges personally took money from levied recognizances and fees, they failed to attend the Morgan District Court, they constantly disagreed amongst one another, creating delays and wasting time, and that they habitually arrived late to scheduled sessions and departed early, thereby creating a backlog of cases awaiting adjudication. The specific charge relating to Brice and McNeill claimed that banishment was not a recognized state law, and that the judges had no authority to punish the men in that manner. The Senate Committee referred the matter to a committee of both houses for decision.[40]

Judge Ashe, claiming to be too old and infirm to make the trip to the Assembly and appear in person, instead sent a letter in his defense. He felt that charges against him were "malicious and groundless" and indeed warranted the Assembly's inquiry. "In my Judicial Character," wrote Ashe, "I am righteous and bold. Malice may accuse" but through an investigation "truth will be developed and shine forth like the morning light." Ashe justified

[39] Petition of Doctor Daniel McNeill, GASR, Nov-Dec 1785, Box 1, NCA.

[40] SRNC, 18:213-217, 420-425.

his actions to answer each of the general charges. Specifically regarding McNeill and Brice, he noted that McNeill returned to walk the streets "with an air of defiance" and received word from a few prominent citizens of Wilmington, but for respect for the Court, McNeill would have been "knocked down in the streets." Ashe charged them both with a violation of the peace treaty and issued his banishment order. Regardless, McNeill remained while he questioned the validity of such a verdict. As for Brice, his "character [was] too well known" and after appearing for his recognizance hearing, he left the state. Ashe claimed that the judges' decision was necessary for peace in the community and justified by both the law and the peace treaty.[41]

The committee of both houses found the judges not guilty of malpractice in the case of McNeill's and Brice's banishment in January 1787. Furthermore, the Assembly exonerated the judges of any negligence charged by Maclaine. This complete absolution of the judges and their conduct prompted William Hooper to lead a contingent of six men in a formal protest presented to the House. Their dissent was less about the judges themselves, who they felt were led into an error of judgment by the "Obnoxious character of the culprits, the Clamour of the people, and their own Zeal," but more to clearly state "that banishment is a punishment unknown to the Laws, and that no Judicial power of this State have a right to adjudge the same against any of the free Citizens thereof." Simultaneously, Maclaine individually protested the Assembly's ruling with a lengthy dissent. For McNeill's and Brice's expulsion, Maclaine was most enraged with the judges' invocation of article five of

[41] Ibid., 18: 137-142; Wilmington DSCR, Minutes: 1760-1783, 1785-1806, Mf C.208.30001, NCA. Ashe's letter exuded confidence, justification, and spite for his accuser before ending on a humble note, reminding the Assembly that to err is human. For an example of his vindictiveness, Ashe directly attacked Maclaine, without mentioning him by name, when he acknowledged the court's slow pace. The reason the court proceeded slowly, according to Ashe, was not the Bar, but the Bench. Defense lawyers spent too much time 'in unnecessary long and rambling harangues, calculated only to amuse the client, and pay him in empty words for the extravagance of the fee." While this issue did concern Loyalists and the law, it was personal as well.

the Treaty of Paris as the law of the land. Maclaine argued that the article was only recommendatory and neither bound the judges nor granted them authority to act as they had.[42] This argument was the inverse of the previous debates concerning the treaty and confiscation, where antiloyalists desired to continue confiscation because the accord was recommendatory and not law. The final act regarding Dr. McNeill was resolved in December 1789 when the Committee of Finance released him and Brice from their recognizance bonds because the "judgment was incompatible with the principles of the Constitution and unwarranted by any law of this State. . . ."[43] In the end, Dr. McNeill's neighbors and his supporters in the Assembly were victorious, the former loyalists received permission to return and remain unmolested in North Carolina.

While the degree of loyalism actually or presumably committed by the New Hanover Justices of the Peace or Dr. McNeill may have been in doubt, the same cannot be said for William Field of Randolph County. Field and his sons, Jeremiah and Robert, were known loyalists. Nonetheless, they petitioned the General Assembly for leniency. That Field had the audacity to request amnesty suggested that he also had a reasonable expectation that the Assembly would grant his request. Field's petition was remarkably candid. He originally submitted the request in 1783 on his own behalf to the Randolph County Court and requested reinstatement of his property and admission as a recognized citizen of the state.[44]

Field admitted in his petition that he was once a Regulator and was compelled by then-Governor William Tryon to take an Oath of Allegiance to the King of his "then country," although he now considered that oath non-binding as it was not taken voluntarily.

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[42] Ibid., 18:428, 477-483.

[43] Ibid., 21:349.

[44] Petition of William Field, GASR, Nov-Dec 1785, Box1, NCA.

At the onset of the war, his "scruples of tender conscience . . . at the time of the British-American contest" led him to serve on behalf of the King under restriction and compliance of his oath, and in accordance with orders given by Governor Josiah Martin. He gathered together a band of "Royalists" with the intent of marching to Wilmington to link up with British forces due to assault North Carolina's coast in February 1776. He never arrived at his destination. Field disbanded his group in Chatham County because his son's wife, Ann, passed along information that if he and his men surrendered at Guilford Courthouse, then no harm would come to them. He complied with the amnesty offer, but upon his surrender, the local Committee of Safety required him to sign a letter of association stating his loyalty to North Carolina. He declined based on his previous oath to the Crown and promptly ended up in the Guilford jail.[45]

Field did not remain in Guilford long; his journey was just beginning. From Guilford Field went to Fredericktown, Maryland, by way of Halifax, North Carolina. After a year in prison in Maryland, he was sent to the British army and accepted a Lieutenant Colonel's commission. He served in the British line and was taken prisoner in Hillsborough while marching on campaign with Lord Cornwallis' army. He received a parole from General Nathanael Greene, which was followed approximately twelve months later by Governor Alexander Martin's parole allowing him to return to his home. Field received notification to travel to Charleston to be exchanged for Lieutenant Colonel Selby Harney, a North Carolinian serving with the Continentals. While in Charleston, Field resigned his commission and applied for and received a passport from the South Carolina Assembly to return to North Carolina. He begged forgiveness for having "hurried down the stream of opposition to his country without proper and mature reflection for the consequences."

[45] Ibid.

Throwing himself on the Assembly's mercy, he assured them that he conducted himself in a soldierly manner and neither participated in nor ordered robbery, murder, or house burning and fought only "as an open enemy and not [as] the disguised villain ready to betray when occasion offered." Furthermore, he claimed never to have conducted "any duty or exercise" for the British within the limits of the state. That claim of course was not true as evidenced by his capture in Hillsborough. He only wished that the "generosity of the brave and victorious Americans . . . may be extended to an old man who prays to be reconciled to his country."[46]

The County Court approved Field's request, but in November 1785, the Committee of Petitions and Grievances rejected it as his land was under the purview of the Confiscation Act. Nonetheless, the Assembly permitted Field to remain in the state and he did so peaceably, but without the reinstatement of his confiscated land. The remedy for Field's land issue came under the request submitted by his children. In November 1787, Robert Field's wife, Ann, requested that the grievance committee grant her husband authorization to return to the state. Ann Field claimed that her family suffered from the deprivation wrought by the absence of the head of her family. The committee found the facts of her petition well supported and approved her request; however, that very same committee considered, and rejected, Jeremiah and Robert Field's petition for ownership of 640 acres of land given to them by their father prior to confiscation. Even the disapproval expressed hope for the Fields, though the information submitted did not warrant acceptance, "in all probability it [would] at a future day." True to the committee's prognostication, the next Assembly passed

[46] Ibid. Colonel Selby Harney's record corroborates Field's claim of prisoner exchange, see Francis B. Hietman, ed., *Historical Register of Officers of the Continental Army during The War of the Revolution* (Washington, D.C., 1914. Reprint, Baltimore, MD: Genealogical Publishing Co., 1973), 275. Selby entered the war as a Major and was promoted to Lieutenant Colonel on 6 November 1777. He was taken prisoner at Charleston 12 May 1780 and later exchanged (no date provided). He obtained the rank of Colonel by the end of the war.

legislation in 1789 granting Robert and Jeremiah Field ownership of some of the property that their father deeded to them before the confiscation acts came into effect. In 1790, William Field and his sons continued to live in Randolph County.[47]

Peter Mallette was another individual whose loyalty was not in question, but one who also received exculpation for his loyalist activities. The fact that Mallette was one of three men excluded by name from the Act of Pardon and Oblivion made his return to North Carolina more remarkable. Mallette arrived on a sloop from Charleston under a flag of truce at Wilmington on 25 January 1782. Shortly after he disembarked at the port Mallette wrote to Thomas Burke regarding the possibility of his reintegration into the state. Burke warned Mallette that he was unsure "that Flags can protect citizens who may be obnoxious to the Laws," and that Mallette was, therefore "at liberty to depart under the protection" of the same. The message was clear: If Mallette remained in the state; then he did so at his own peril. Burke concluded the letter by wishing him well and expressing hope that Mallette's attention to North Carolina's "unfortunate Countrymen, prisoners with the Enemy" in Charleston would be considered. A few days later Mallette's return correspondence was a mixture of hope and frustration. He did not complain about his treatment by the garrison commander at Wilmington as his own "folly deserve[d] it all;" however, he could not "believe that the officer here pursues the laws of the country."[48] Mallette was correct to concern himself with the state's laws. A little more then fifteen months after this correspondence with Burke, the General Assembly passed the Act of Pardon and Oblivion, from which Mallette was excluded by name.

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[47] Field Petition, GASR; Petition of Ann Field, GASR, Nov-Dec 1787, Box 1, NCA; SRNC, 20:440; Petition of Jeremiah and Robert Field, GASR, Nov-Dec 1787, Box 2, NCA; *1790 Census*, 98; SRNC, 21:269-279; DeMond, *Loyalists in North Carolina*, 48, 179.

[48] SRNC, 22:609, 16:188-90.

By the time the Wilmington District Superior Court assembled for their May 1782 session, the state had decided to charge Mallette with treason. He was indicted for the same and appeared before the court at the appointed time and the judges released him on a recognizance bond with instructions to show at the May 1783 court session. True to his bond, Mallette appeared before the court during the first week of June 1783. When his trial finally began, two significant, exclusive actions had occurred. The first was the passage of the Act of Pardon of Oblivion, and the second was Mallette's by-name exclusion contained in it. The court session during which Mallette appeared witnessed eight treason cases adjudicated under the new Act of Pardon and Oblivion—the law appeared to have the desired effect. Mallette's case was the last one of the term, and following suit with the other indictments for treason; he also pled the pardon act. Remarkably, the jury approved his plea and found him not guilty.[49]

Even though Mallette was not guilty of treason, his status as a citizen, specifically the right to bring suit in court remained unclear, and, in 1785, the New Hanover County Court questioned his ability to do so. The confusion must have bewildered Mallette who had been active earlier in the same year in the district court where he won two suits—one against Samuel Reid and the other against Thomas Hams. Mallette subsequently petitioned the Assembly as to his rights regarding his ability to participate in the legal system in order finally settle the matter. In 1787, The Committee of Propositions and Grievances considered his request and suggested that Mallette was granted "all the Privileges of a Citizen" under the jury's 1783 verdict. The Assembly concurred that Mallette could sue in the Court of Law

[49] May Term 1783, Wilmington DSCR, Minutes, 1760-1783, 1785-1806, Mf C.208.30001, NCA. One treason case, *State v John London*, was held over until a later date. The court released London on £1000 bond and when he appeared in court on 15 December 1785, the judge discharged him for good behavior.

and Equity. In the years immediately following the Assembly's decision, Mallette remained active in the local courts.[50]

Some individuals who were known, or at least suspected, by their neighbors to have loyalist sympathies simply reemerged in their communities as members in good standing. All loyalists were not as obvious in their allegiances as the Field family or Peter Mallette. John Goodbread of Rutherford County was one such loyalist. Goodbread entered the stage through the petition of James Miller, the Rutherford County Commissioner of Confiscated Property. In addition to serving as the commissioner, one of Miller's additional duties during the war was to procure supplies from the county for the Continental army and state militia. In 1780 Miller, finding provisions in the area scarce due to the fact that Lord Cornwallis's army campaigned nearby and laboring under a "desire to promote the common weal," accepted from Mrs. Mary Potts cattle valued equal to the amount of a bond that she owed to John Goodbread. Mrs. Potts, the widow of John Potts, owed Goodbread for her husband's debt of £48.6.3. Since Goodbread had departed to "participate in the arms of the enemy," Miller assumed that Goodbread's property would eventually be confiscated for public use. He was wrong.[51]

John Goodbread returned to Rutherford County sometime between the end of the war and 1786, presumably under the Act of Pardon and Oblivion. He was active in civil court; he lost as the plaintiff in one suit decided in 1786. In July 1788, he brought a suit against Mrs. Potts, and won a settlement for the debt as well as court costs. The decision against Mrs. Potts obligated Miller to pay the total sum to Mrs. Potts, which in turn generated his request

[50] December Term 1785, Ibid.; SRNC 18:213-217, 420-425; Wilmington DSCR, Records and Accounts, 1786-1791, DSCR 12.034, NCA. Mallette's petition was considered as part of the McNeill-Superior Court Judge controversy previously discussed.

[51] Petition of James Miller, GASR, Nov-Dec 1789, Box 1, NCA; SRNC 21:657, 814.

to the state. The 1789 Assembly agreed that the state should pay Miller, but held the action until the next year's session. The 1790 Assembly concurred with their predecessors' assessment and ordered the Treasury to pay Miller the total amount. In this instance everyone received what they asked for: Goodbread received his debt from Mrs. Potts; Mrs. Potts paid her debt to Goodbread and supplied the army in their time of need; Miller met his charge to furnish provisions without personal expense; and the state paid for what amounted to be the cost of the cattle provided for the army's use. If Goodbread's loyalties were not forgotten, they at least seem to have been forgiven. John Goodbread remained in Rutherford County for the remainder of his life, and when he died in 1814, he bequeathed several head of various livestock and over seven hundred acres of land and other property to his wife and surviving children.[52]

Of course, not all of the petitions requesting leniency or absolution were successful. If the rejections contained one common trait, it was brevity. These memorials simply did not pass and received nominal, if any, debate. For example, in a petition originally prepared in October 1783 and submitted the following year, Elizabeth Torrence of Dobbs County asked the Assembly to forgive her husband, Thomas Torrence, for departing under the "persuasion and instigation" of the British and begged that he be allowed to return to his family. After all, he was only a "passive offender against the laws of his country." Elizabeth needed her husband's help to care for her seven young children and her "distressed, and at present unhappy family." The Committee rejected her petition on 20 May 1784 on the grounds that Thomas willingly left with the enemy. The decision to deny Thomas authorization to return

[52] Rutherford County Court Records, Court of Pleas and Quarter Sessions Minutes, 1779-1798, NCA; SRNC 21:814; Petition in favor of James Miller, GASR, Nov-Dec 1790, Box 2, NCA; *1790 Census*, 116; Rutherford County Record of Wills, Book C, 15-16, NCA. Mary Potts was active in the courts as well; in 1787 she initiated another suit for which she received £114.

did not mean that Elizabeth Torrence would be left to suffer. In November 1786, a House Bill called for the administration of Elizabeth's share of the lands by three trustees for her and her children's benefit. The bill passed easily through the Assembly and was signed into law in January 1787.[53]

Former British Lieutenant Donald Shaw took a different approach, one more akin to William Field, when he was very forthcoming in the letter that he submitted directly to Governor Richard Caswell in November 1786. Lieutenant Shaw had emigrated to North Carolina in 1773, but readily received and willingly accepted a commission from the British in 1776. In fact, Shaw was retired on half-pay from the Crown in recognition of his service during the war. His family had remained in North Carolina during the war and he wished to stay and live quietly with them. Shaw's request garnered no favor from Caswell, who forwarded Shaw's letter and one other request to the General Assembly the following day with a bland note and a cold recommendation to "take such order on them as you think proper." That Shaw asked for nothing for his family hints that it was likely that they did not suffer for his loyalty during the war. The Senate rejected his request on 26 November 1786.[54] Unlike Elizabeth Torrence, Shaw received no further consideration.

When the committee denied a request, it often seemed fickle. For example, the same committee that approved Hugh Ross's petition denied one that John McNeal submitted. McNeal lost three hundred acres in Moore County to confiscation and sought to reclaim his land. McNeal claimed to be "of that class of scotchmen who misguided took that part with the mother country" at the beginning of the war, but returned well before its conclusion.

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[53] Petition of Elizabeth Torrence, GASR, Apr-Jun 1784, Box 1, NCA; SRNC 18:146, 378-379, 392; 24:870-871.

[54] Petition of Donald Shaw, GASR, Nov 1786-Jan 1787, Box 1, NCA.

George Glasscock, a Justice of the Peace, endorsed McNeal's petition as did five other men, but to no avail. McNeal even claimed the Act of Pardon and Oblivion in his request, but that too did not sway the committee. The committee rejected his request for the land, but did not force expulsion on McNeal.[55]

The implementation of laws regarding Loyalists was certainly not as one-sided as one might think. North Carolinians were very conscious of both the state laws and their rights as citizens, and that citizenship was indeed a matter of individual choice. Since loyalty was a private decision, to what extent could a loyalist be punished for his disaffection?, and Did that punishment have a statute of limitations? The legal cases examined in this chapter centered on citizenship and alienage. Elizabeth Bayard's status was central to her case, because even though the Bayards lost the case, the fact that the court heard the suit was recognition of the privileges due a citizen and a check on the potential abuse of legislative power. That this restraint against the state came under the rubric of a disaffect person showed a willingness to reintroduce loyalists to society. Alienage turned out to be the saving grace for the Hamilton Company in their suit for against John Eaton. When the state checked the Jones County Court, the message was clear that arbitrary enforcement of the law would not be tolerated. Again, the state enforced legislation guaranteeing the protection of men once deemed inimical to the state.

The petitions submitted by, or on behalf of Loyalists, were definite pleas for reintegration. In many cases, confiscated land was not returned though the individual was permitted to remain peaceably in the state. Some men accused of loyalism were overt in their complicity: men like Peter Mallette and William, Robert, and Jeremiah Field. The accusations against others were more questionable, such as in the case of the New Hanover

[55] Petition of John McNeal, GASR, Nov 1786-Jan 1787, Box 2, NCA.

Justices of the Peace, for example. In these instances where disaffection was at least questionable, loyalism was defined as their taking of paroles in violation of state law. Their requests highlighted participation with the enemy as a matter of necessity and personal safety. The approval of these and other requests when coupled with some of the denials uncovered a tacit understanding of the varying degrees of loyalism and their corresponding levels of clemency. Even Judge Ashe, who questioned legislative power in the Bayard case, had his own authority queried in his decision regarding Francis Brice and Dr. McNeill. McNeill's neighbors forgave his transgressions and valued his abilities as a physician. His petition and others like those of Hugh Ross and John Goodbread suggested that reintegration was largely a local affair. Loyalists did not always win their legal cases, nor were they guaranteed leniency for their actions every time; nonetheless, the adherence to law and procedure and the readiness to vouch for those accused of disaffection established a protocol for reintegrating the state's loyalists that steadily gained momentum between 1783 and 1790.

CONCLUSION

"Oh! Tis excellent, to have giants strength, but 'tis tyrannous to use it like a Giant."[1]

From the very onset of the war between Great Britain and her former North American colonies, Loyalists emerged as a group to be reckoned with. Governor Josiah Martin's attempt to rally Loyalist troops around the King's standard in the hopes of completing a rendezvous with inbound British soldiers made the presence of inimical citizens in North Carolina blatantly obvious. Though many of the men who fought for the Crown at the Battle of Moore's Creek Bridge were Scots Highlanders, the presence of William Field's band in the backcountry headed for the coast suggested that Loyalists could be found across North Carolina. Certainly some departed the state for England, Canada, Florida, or other Loyalist havens such as Charleston or New York. Still others fought with the British, in Loyalist militia, or in partisan bands, and were removed from the state through the exigencies of war or death. Yet, during the war and in the years immediately following its conclusion, many, if not most, Loyalists remained in North Carolina.

Almost immediately, the state leadership began the process of reassimilation with the promises of amnesty captured in the various Oaths of Allegiance. Denying neutrality as potential third option between revolt and loyalty, the oaths attempted to identify and classify those for the cause and those against it. Laws passed during the early war years were a progressive set of ever more stringent limitations against Loyalists; however, the fullest application of these measures came only after the British departed the state, when North Carolinians felt safe to punish with assumed impunity. The years between 1783 and 1790 witnessed the relaxation of the intra-war laws, with the notable exception of the

[1] William Shakespeare, quoted in *The Independent Citizen* (1787); cited in William K. Boyd, "Some North Carolina Tracts of the Eighteenth Century: XII and XIII," *North Carolina Historical Review* 4 (January 1927), 61.

Confiscation Acts. While some still felt the need to severely punish all Loyalists, most agreed that there were varying degrees of loyalism which could be handled with appropriately corresponding punishment. The state's need to pay war debts, however, caused a general unwillingness to pass a wholesale revocation of the Confiscation Acts.

Motivated by business interests or familial obligations, the men who pushed for fair treatment of the Loyalists used the very ideals of the Revolution to further their cause. The Treaty of Paris granted Loyalists rights under the fourth, fifth, and sixth articles, but the recommendatory nature of those provisions left the individual states with interpretive discretion. At the same time, the treaty proved to be a turning point in the reintegration process. Those who wished to continue to disavow the Loyalists did not share the same broad-minded vision as those who supported the disaffected. Indeed, failure to reintegrate Loyalists carried potentially disastrous results for the new nation. Individual rights, the right to trial by jury for example, were more important than the desire to crush Loyalists out of vengeance or a desire for personal gain. In the end, the Loyalists always retained advocates for their return.

Choosing one's allegiance during the Revolution was often a difficult decision. For every ardent Patriot and devout Loyalist, there existed probably many more that were at best lukewarm in their convictions. The partisan war in North Carolina in the years between 1780 and 1782 only served to exacerbate the situation. As we have seen in the petitions to the General Assembly, there were times when allegiances shifted based on personal safety or individual interest. The taking of paroles to protect one's family or to save individual property was not uncommon. In fact, it was such a problem that the Assembly passed a law which forbade accepting paroles from the British. Ironically, taking an oath with the British

was legally negated by taking a similar oath with the state. How could loyalty to either side be obtained when mutually exclusive oaths were administered and accepted? This question highlights the fact that the war in North Carolina was to a significant degree a struggle for allegiance. It appeared as though Peter Van Schaack was correct about the individual's right to choose his allegiance.[2] Moreover, it appeared as if choosing allegiance received more than tacit understanding from the committees adjudicating reintegration requests. The collaborative actions of the New Hanover Justices of the Peace, for example, were more pardonable than was British Lieutenant Donald Shaw's overt adherence to the Crown.

The period between 1783 and 1790 witnessed a gradual change in the desire to reintegrate disaffected citizens. Adherence to the laws was often carried out as a process of individual decisions. If a neighbor was willing to forgive old loyalties, then the chances seemed good that they would be absolved. Certainly a comment credited to Catherine the Great that laws were not written on paper, but on "human skin," applied to North Carolinians' reintegration activities.[3] In many instances, individuals were welcome to return, but without the return of their previously sold and confiscated land. Those who illegally took paroles were forgiven as having done so out of necessity and not political conviction.

This thesis has provided only a beginning in the search for a definitive answer to Loyalist reassimilation in North Carolina. The State and Colonial Records, in conjunction with the session records of the General Assembly, uncovered the uppermost layer of Loyalist reintegration. Certainly more evidence lies undetected in the strata beneath these sources. There were seven administrative/military districts in North Carolina during this period, and

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[2] See page 2.

[3] Louis Philippe, Comte de Segur, *Memoires, ou souvenirs et anecdotes*, 5th ed., 2 Vols. (Paris, 1844), 2: 127; cited in Robert Olwell, *Masters, Slaves and Subjects: The Culture of Power in the South Carolina Low Country, 1740-1790* (Ithaca, N.Y.: Cornell University Press, 1998), 99.

most of the evidence presented here came from the New Bern, Salisbury, and Wilmington Districts; therefore, the records of the Edenton, Halifax, Hillsborough, and Morgan districts surely deserve a thorough examination. Likewise, more work remains in all of the forty-eight individual county court records to assess the presence or absence of litigation over land as it relates to Loyalists. Doing so may just uncover more men like Jonas Bedford, whose loyalism was never in doubt, but who was allowed to live out his years in peace and die a man of substance. Or others may emerge, individuals like John Goodbread, who seemed to reappear in their former communities as functioning members of society.

Historian Robert Calhoon once wrote that a study of reintegration suggested that "patriots made a considerable effort . . . in lodging the opponents of the Revolution securely in the new American social order."[4] That appears to be the case in North Carolina where the laws recognized some traditional precedents, where loyalism was treated with decreasing severity, and where communities and individuals petitioned on behalf of their neighbors, especially during the first seven years after the 1783 Treaty of Peace. The punishment of North Carolina Loyalists had indeed cooled by degrees.

[4] Robert Calhoon, *The Loyalist Perception and Other Essays* (Columbia, S.C: University of South Carolina Press, 1989), xviii.

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