

**RECONCILING THE REVOLUTION: RESOLVING
CONFLICT AND REBUILDING COMMUNITY IN THE
WAKE OF CIVIL WAR IN SOUTH CAROLINA, 1775-1860**

by

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To my loving family

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LIST OF ABBREVIATIONS

In the interests of space and clarity, major archival repositories and collections are identified by the following abbreviations in this work.

Confiscation Act	Act. No. 1153, "An Act for Disposing of Certain Estates, and Banishing Certain Persons, Therein Mentioned," 4: 516-23, 6: 629-32
Free Conference Comm. Hearings	Testimonies and Notes, Petitions for Relief from Confiscation 1783-1784, General Assembly Free Conference Committee, S 165035, Papers of the General Assembly, South Carolina Department of Archives and History
Free Conference Comm. Meeting	Testimony and Notes on Persons Seeking Relief from Confiscation or Desiring to Become Citizens 1783-1784, General Assembly Free Conference Committee Concerned with Petitions for Relief from the Confiscation Act of 1782, S 165035, South Carolina Department of Archives and History
GA Petitions	Petitions to the General Assembly, South Carolina Department of Archives and History
SCDAH	South Carolina Department of Archives and History
SCHS	South Carolina Historical Society, Charleston
SCL	South Caroliniana Library, University of South Carolina

ABSTRACT

RECONCILING THE REVOLUTION: RESOLVING CONFLICT AND REBUILDING COMMUNITY IN THE WAKE OF CIVIL WAR IN SOUTH CAROLINA, 1775-1860

by

Rebecca Nathan Brannon

Chair: Susan M. Juster

This dissertation examines a successful example of reconciliation between former enemies after civil war: South Carolina's reintegration of Loyalists. At the end of a bruising guerilla civil war, South Carolina's legislature, with the full support of the citizens, passed legislation confiscating the property of many prominent Loyalists and banishing them from the state, and putting an official imprimatur on the extralegal expulsion of others. Yet within two years, the General Assembly pardoned and readmitted the majority of proscribed Loyalists, despite some anti-Loyalist rioting.

This dissertation reincorporates Loyalists into the fabric of the new nation as subjects of discussion and historical actors, rather than absent people who posed no problem for the making of a new republic. For both South Carolina legislators and

ordinary South Carolinians, discussions of honor, conduct, loyalty, Republicanism, and citizenship did not take place in a conceptual vacuum, but were shaped by discussions about and with former Loyalists who sought to take their places in this new experiment. South Carolinians' understanding of citizenship and belonging was shaped by both their wartime experience with civil war and their decision to reincorporate many Loyalists into the body politic.

What actually makes reconciliation? In South Carolina's case, it was a combination of official government action through the main branch of government (the legislature), the influential and persuasive voices of a few individuals who could encourage public opinion, and the individual and neighborhood decisions of many hundreds of individuals who decided that reintegrating most, though not all, of the former Loyalists into their communities was more important than pursuing revenge and punishment. South Carolina's move towards reconciliation worked because there was support from below.

South Carolinians continued carefully to manage public discussions of Revolutionary conflict for generations in order to maintain peaceful relations, reintegrating Loyalist descendants into the elite while avoiding any recognition of their heritage.

This dissertation depends on extensive legislative records, including Loyalist petitions, as well as executive documents, family letters, church records, and newspapers to recreate the broader context of Loyalist reintegration in the crucial decades after the Revolution.

INTRODUCTION

This dissertation examines a successful example of reconciliation between former enemies after civil war. Noted historian John Shy once questioned “how a national polity so successful, and a society so relatively peaceful, could emerge from a war so full of bad behavior, including perhaps a fifth of the population actively treasonous (that is, loyal to Crown)...”¹ This work provides an answer.

South Carolinians successfully ‘buried the hatchet,’ moving from measures to exclude Loyalists and expel them from the state to incorporating them, protecting their property and persons, and reintegrating them into the fabric of everyday life. If you were predicting what group would offer clemency to Loyalists, it would not have been South Carolinians, since they experienced the extremes of civil war during the American Revolution. South Carolina was unique in that it was the only place where in whole districts Loyalists outnumbered Patriots. Yet, the General Assembly and ordinary South Carolinians united to create a stronger body politic by facing head-on the problem of former enemies living amongst them.

Scholars are now rediscovering the extent of violence in the American Revolution. While it has always been understood as a war, the focus on the years before the Revolution, and on the early campaigns in the New England colonies, have obscured

¹ John Shy, *A People Numerous & Armed: Reflections on the Military Struggle for American Independence*, rev. ed. (Ann Arbor, Mich. 1990) 23.

violence from the dominant narrative of the Revolution. On the one hand, a generation interested in rediscovering the voices of everyday people have alternately glorified the crowd actions of Boston's and Philadelphia's Sons of Liberty, or explained crowd actions as so controlled that what must have been terrifying displays of threatened violence to those unlucky enough to face the rage of the crowds, like Andrew Oliver, became sedate expressions of political norms. E. P. Thompson's starving English crowds, transferred through American historiography, become the well-controlled agents of political change. In our evocative descriptions of ritualized violence against property, we had lost the ways in which the violence could be very real.²

On the other hand, the conventional narrative of the Revolutionary war focuses on the campaign for New England and then for the Middle Colonies. While many of these campaigns were very destructive of life, the full brutality of repeated guerilla warfare by American militias was not clear until the campaign for the South, when men like Francis Marion (the Swamp Fox) and Thomas Sumpter (the Gamecock), along with many lesser known figures, turned the logic of Native American warfare, developed over two centuries in the American colonies, to war with British regulars and Loyalist militias and civilians. The result was a campaign of intimidation and a scorched-earth policy that ruined lives as well as taking many lives in a senseless orgy of bloodletting. Militias and barely organized small bands tortured and murdered men in woods and along roads. Countless homes were destroyed. In the interior of the Carolinas, it became impossible to

² Examples include Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville, Fla., 2001), Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America," *William and Mary Quarterly* 3rd. ser., 27 (1970): 3-35, Dirk Hoerder, "Boston Leaders and Boston Crowds, 1765-1776," in *Beyond the American Revolution: Explorations in the History of American Radicalism*, ed. Alfred Fabian Young (DeKalb, Ill., 1993). For the article that started it all, see E.P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past and Present*, No. 50 (Feb., 1971) 76-136.

simply be a bystander. Instead, desperate people were sucked into the war despite a general desire to avoid trouble. In contrast to the New England frontier, where a woman like Martha Ballard might rarely even notice the war impinging on her daily life, women in the Carolinas and Georgia were unable to live lives unaffected by the war in daily and intimate ways.³

Civilians were exposed to what they perceived as unacceptable violence. While home invasions happened in all colonies, they became routine in many parts of the South. At the same time, soldiers in the Southern militia campaigns were exposed to new threats as well. Within weeks of the surrender at Charleston, troops began to refuse to accept surrender attempts. Soldiers on both sides quickly realized that in most battles, their options were to fight or die, as surrender was not an option. Even in the cases where European rules of warfare prevailed and soldiers accepted the white flag of surrender, again and again militia members murdered prisoners of war in the day or two following the battle. Soldiers were well aware of this practice, heightening the fear.

It is vital to put the violence of the American Revolution back into the way we understand the period of the war, but also of the new nation. Instead of a bloodless battle of ideas about liberty and representative government, the Revolution was a complicated dance between ideology for some and violence and civil war for many. Reclaiming the violence of the Revolution also highlights the difficulties of the early national period in a new way. It is not enough to critic the Articles of Confederation as inadequate to a strong national government, for instance. We must also remember that for many Americans, and perhaps most Americans in the South, the Revolution in hearts and minds did not

³ Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York, 1991).

convert them into ideological proponents of liberty and equality. For them, the true mental Revolution was their (sometimes continuing) adjustment to violence, and often capricious violence. Civil wars are profoundly destructive to the bonds of trust that make societies work. An already fragile society, with tentative government structures and widespread populations, many far out of the reach of many daily government structures, also had to cope with the reality of strained relations and shattered confidence in each other, thanks to the pains of war. Many Americans were at least as concerned with the issue of how to reestablish critical social trust as were concerned with how to establish a strong national government. In the aftermath of civil war, rebuilding society took precedence.

I address the issue of legislative reconciliation between Loyalists and Patriots in the context of the larger cultural healing, both between enemies and within individual lives. Even victorious Patriots, such as Henry Laurens, had to deal with their own large emotional traumas from the war, and that trauma made reconciliation of any kind especially difficult. It is important to end the erasure of our violent Revolutionary past, a past probably forgotten because the startling success of the American state has blinded us to the fragility of that experiment, and the lasting effects on people who, while winning much, had also suffered much.

In addition, this work joins other recent writers to remind scholars that loyalty in war, even by combatants, is not only about conventional politics, but expresses personal loyalties to family and community. Many South Carolina loyalists understood their actions in terms of loyalty to neighborhood and community, and there were clear neighborhood-based ties that brought entire areas into volunteer militias on each side.

While religious and ethnic ties could also shape such loyalties, in a world governed by personal relations, personal loyalties, not political ideology, governed the choices of a majority of the combatants. It is important to remember that the Revolution may have started in ways that we can identify as driven by ideological loyalties, but it certainly didn't end that way.

Therefore, I begin with a consideration of the war itself as a civil war in South Carolina. The brutality and lawlessness of the war, especially in the backcountry, profoundly shaped the hopes and dreams of its participants. While the American Revolution could be fierce everywhere, contemporary historians agree with the judgment of those generals of the Southern theater that the war in the Southern backcountry was the fiercest civil conflict of the war. General Greene (commanding the Continental Army in the Southern Theater) famously lamented that “the Whigs and Tories pursue each other with the most relent[less] Fury killing and destroying each other wherever they meet.”⁴

In just one example, one man of the backcountry:

after the slaughter was over, [he] traversed the ground, where lay the dead and the dying, his former neighbours and old acquaintances, and as he saw signs of life in any of them, he run his sword through and dispatched them. Those already dead, he stabbed again. And where others seemingly without life, and who were pierced by his sword, gave involuntary convulsions from the pain, to these he gave new wounds.⁵

The violence was both endemic and done to personal friends and acquaintances.

While not replicating an extensive literature on the Southern campaign, I focus on actual violations of the European rules of war and the reaction to these uses of violence among the Loyalist and Patriot population. Participants on both sides turned to attacking

⁴ Nathanael Greene to General Robert Howe, Dec. 29, 1780, Richard K. Showman, ed., *The Papers of General Nathanael Greene*, 13 vols. (Chapel Hill, N.C., 1976) 7: 17.

⁵ Aedanus Burke to South Carolina Governor, Charleston, Dec. 14, 1784, Aedanus Burke Papers, SCL.

and destroying homes, threatening women, torturing soldiers and suspected spies, refusing surrender (and therefore butchering troops), and murdering prisoners of war.

Is there any war in which neither side has complained that their opponents have violated the rules of war? In this civil conflict, accusations of atrocities were not only a recruiting tool, but also a way in which each side was able to understand their experiences. Yet the rhetoric of wartime atrocities in fact outstripped both the actual atrocities (of which there were plenty) and the rules of war in practice in both the European and American theater. Atrocities there certainly were, but the rhetoric went far beyond the actual evidence. Given the conduct of war in the North American colonies, most of these acts seem brutal but hardly novel. Yet South Carolinians complained vociferously in the face of these violations, upset that tactics used against Native Americans were now being turned against white colonists by other white colonists. Further, participants on both sides recognized that these tactics violated fraying social connections that South Carolinians were trying to maintain in the face of civil war.

The second part of the puzzle is the immediate post-war reconciliation. In order to address this, I consider the ways in which South Carolinians used government policies to shape reconciliation in the 1780s (Chapters Two, Three, and Four.) Governmental action was necessary to ensure state-wide response, to remove the power of decision from local vigilante justice, and to assert the power of the newly independent state over the lives and property of those within its borders. Colonial assemblies were jealous of their power, and the brand-new state assemblies inherited that interest in protecting their rights and perogatives, and added it to their concern for establishing the power of the legislature in a newly independent government.

While most reconciliation efforts in today's world follow the example of South Africa, in which the national government gives its imprimatur to a system of reconciliation in order to give the process necessary authority, colonial South Carolina followed a very different strategy, in which local decision-making dominated and the state government gave its imprimature to the proceedings as much to solidify their own power as to ensure the legitimacy of the clemency.

The petition series of the General Assembly, on which my analysis depends, also offers a most moving and evocative access to the voices of Loyalists and their Patriot supporters. In the process of making their best case for legislative clemency, Loyalists and their supporters spoke about the war, their personal stakes in the war, their own losses, and their feelings on citizenship, neighborliness, the connections that society requires, and the importance of locality and identity in constructing society. By and large, Loyalists and Patriots agreed on the fundamental outlines of honorable belonging and societal ties, differing only on whether specific Loyalists had acted in accord with these shared understandings.

In 1782, when the General Assembly passed the Confiscation Act regulating the status of Loyalists by singling out some Loyalists for punishment, South Carolina was still at war. While the surrender at Yorktown had removed one source of British troops, skirmishing continued until the British evacuated at the end of 1782. In the meantime, the General Assembly met under the protection of the Continental Army of the South. While still under threat, they concentrated on laying the groundwork for a stable and prosperous independent state. Representatives also lobbied on behalf of their friends, and sought to destroy their enemies.

In order to secure these aims, the legislature took a page from the British occupiers and confiscated the estates of former Loyalists (as did, in one form or another, every state.) Confiscation took both estates and citizenship, banishing Loyalists from the state, and leaving dependent family members with minimal state support. In other cases, the Assembly amerced (took a one-time tax of 12% of the total value of the estate) from the Loyalists but guaranteed their citizenship, sometimes with limitations on voting rights. Only people prominent enough to have held an officer-level commission in the military or civilian occupation were named by these official acts. People of lower social status (who in eighteenth-century parlance, were not able to freely choose such affiliations) were not punished by the state. Within these parameters, personal relationships and reputation helped decide which Loyalists would be placed on the lists, and who would be spared.

Despite the seeming harshness of this legislation, in fact the General Assembly consistently used a series of carrots and sticks to get Loyalists to recommit to the state and to South Carolina society. Beginning with Governor Rutledge's Proclamation of 1781, which allowed Loyalists to return and reclaim their citizenship and standing in return for six months military service, the General Assembly tried to reclaim many Loyalists who were willing to put themselves forward and show themselves willing to undertake the active duties that citizenship required. Christopher Gadsden, Aedanus Burke, General Nathaniel Greene, and General Francis Marion provided critical leadership for those who favored clemency to Loyalists as an overarching policy.

The 1782 Confiscation list officially left no way open for those named on that list to change their fate. However, there was a long history of petitioning in Anglo-American

thought and practice, and Loyalists seized on it to advance their hopes for clemency. At the same time, all but the most Tory-baiting legislators expected that with the passage of time, the Assembly would consider appeals from at least a few “mislabeled” individuals and their families. At least two enterprising Loyalists began petitioning while the 1782 Assembly was still debating the terms of the original Confiscation Act! The wave of appeals in 1783 and 1784 from 70% of the Loyalists named by the Confiscation Act buried the legislature in work appraising individual Loyalist claims in detail through petitions and hearings, dominating the time and concerns of the most powerful branch of state government in the crucial post-war years. If for no other reason, we should take the problem of reconciliation with Loyalists seriously because South Carolinians took it seriously—seeing Loyalists and their relationship with the new state as a central concern of reestablishing independent government.

In 1784, a mere two years after the original Confiscation Act, the General Assembly passed a general clemency act that removed a majority of proscribed Loyalists from confiscation, usually leaving them with a small amercement instead. What is remarkable is the number of people who were offered relief and how quickly South Carolinians were able to be so generous to former enemies.

What did a typical Loyalist petitioner look like, and what made him successful? A typical petitioner was a male Loyalist who had served the British after Charleston’s occupation in 1780. These men took military and civilian posts in the occupational administration, but used their offices to uphold community safety rather than advance British aims for controlling South Carolina. If they led Loyalist militia groups, they required infrequent musters, never took troops into battle, and restrained others from

using force to harass local Patriots. If they worked in civilian justice posts, they tried to avoid arresting or harassing people for supporting America's drive for independence. Again and again, Loyalists and their supporters testified to continuing support for the needs of the local community. Most successful applicants had significant and outspoken support from Patriot neighbors, including supporting petitions from neighbors willing to testify to Loyalist good character and fitness for citizenship. Successful petitioners also produced character witnesses for committee hearings—men willing and able to appear before a legislative committee in Charleston. Local support was crucial in convincing the General Assembly to extend clemency to an individual. While such local support reassured leaders that hated former Loyalists would not be readmitted to the state only to be murdered by angry mobs, it also speaks to the continuing importance of local behavior in defining citizenship for early Americans. Petitioners and their supporters repeatedly defined citizenship in terms of neighborliness—care and attention to the day to day tasks of local support and connection that, undertaken over years of residence, testified to the good character and honor of men, which made them trustworthy and dependable citizens.

Even in cases that provoked debate, the General Assembly proved eager to find a way to reincorporate people into the community. In cases where initial petitions by men were turned down, their wives and daughters often petitioned for their dower and inheritance rights. Often, the assembly returned the estates to the female family members while continuing the banishment of the male Tories. They could and sometimes did choose to ignore dower rights, so I argue that they often used female property rights as a way to return property to families (and through them to male descendants) even when they did not feel they could allow certain individuals to return to the state.

Legislative clemency is only part of the answer, however. While the General Assembly did not want to move out ahead of the populace, they still sought evidence that the broader populace was willing to offer toleration, and eventually reconciliation to these former enemies. As historians, we also want to capture the more subtle textures of everyday, face to face reconciliation. How, in effect, did South Carolinians move from hatred, to clemency, to reconciliation?

Aedanus Burke, a judge and legislator, became the lonely extreme voice calling out in the wilderness for complete forgiveness, reasoning that anti-Tory legislation was destructive to the legal and moral framework of society and only likely to personally embitter people who would otherwise be loyal South Carolinians. Christopher Gadsden joined him in protesting the Confiscation Act publicly, while offering a more palatable middle way that allowed for punishing a few unredeemable Loyalists with confiscation to quell people's ardor for revenge, while readmitting most on favorable terms. Gadsden was willing to create a limited citizenship for some white male Loyalists, allowing them to live in South Carolina and retain their property while being excluded from political life. These forces for moderation were sometimes drowned out by organized artisan crowd actions, in which Charleston mobs threatened and whipped a few hated Loyalists. While the crowd actions certainly made a few individuals feel insecure indeed, such limited actions largely worked to release the anger and tension in the wake of the Revolution.

Similarly, the intensive discussion of Loyalists and their proper post-war fate, as enacted in state newspapers, suggests that most Patriot South Carolinians harbored a sizable reservoir of hate. They gloried in descriptions of Tory suffering—laughing to

read of Tories suffering, or their first crops in Nova Scotia failing. Yet, they also read of other states overturning confiscations and accepting Loyalists. In the end, just like with crowd actions, public discussions of Loyalism served as an escape valve for war tension, allowing people to work off steam rhetorically, in order to accept many Loyalists back into the society. In practice, churches and charitably-minded voluntary organizations accepted Loyalists into their ranks. When South Carolinians rebuilt their state, they rebuilt it with Loyalist contributions.

Often, after violent civil conflict, simmering hostilities boil over into confrontation for generations. South Carolina avoided this fate by masterfully managing public discussions of Loyalism in the next six decades in order to avoid stirring up old memories—and it worked very well. Public commemorative activity at battlefields and Independence Day celebrations avoided mentioning Loyalists and civil war until the 1850s, at which point speakers imagined that there were no descendants of Loyalists in their audiences. Meanwhile, the children of prominent Loyalists went on to have political careers and reap public honors. Loyalist grandchildren were attracted to historic preservation activities as a way to write themselves into the story of South Carolina, despite their own knowledge of their Loyalist ancestry. Ann Pamela Cunningham moved from defending her Loyalist forefathers to preserving Mount Vernon for the nation.

In conclusion, I use South Carolina to explore the way the untold story of how the effects of violence in the American Revolution still led to a successful choice to reincorporate Loyalists into the new body politic, giving many Loyalist men full citizenship and even political office. For those who succeeded, they achieved such stability that their children and grandchildren were able to lead lives free from stigma,

even becoming leaders in politics, religious life, and historic preservation. From such unpromising material (the destruction of large swaths of the state, divided population, atrocities, violence, and death), South Carolinians shaped a post-war society that was fair and generous to their vanquished enemies, whom they chose to see as vanquished friends.

CHAPTER ONE

“THEY PURSUE EACH OTHER WITH AS MUCH RELENTLESS FURY AS BEASTS OF PREY”: THE AMERICAN REVOLUTION AS CIVIL WAR IN SOUTH CAROLINA, 1775-1783

Moses Hall needed a new hat. A ruthless “blackjack” had stolen his, and while he rode towards battle, he scooped up the first hat he saw, which was lying next to a corpse. Without flinching, he scooped up the hat, but decided there was too much blood on the hat to be comfortable for wearing. Putting the first hat down, Hall looked for a second hat, and found one still attached to the head of a dead Loyalist. Taking the hat, he rode off towards battle. Luckily for him, a friend intercepted him and warned him that his hat had a “Tory sign” on it designed to identify the wearer as a Loyalist to other Loyalist troops. Hall of course removed that hat and saw the casual sign—a “red strap passing over the crown.” In the casualness of his approach, we see a battle-hardened soldier, but also a Carolinian who had learned to hate the enemy so much that he treated him with casual disrespect. Yet at the same time, locals were loose in self-identification (without uniforms) as to use identifying marks that Hall didn’t even notice at first. In this small incident we have signs of the larger civil war in the Carolinas.¹

¹ Moses Hall Veteran’s Pension Application, John C. Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* (Chicago, 1980) 204.

In this chapter, I show that South Carolina experienced a genuine civil war during the American Revolution. Without recreating the voluminous literature on the Revolution in the South, I will focus on a few key moments and engagements during the Revolution that point to critical features of the burgeoning civil war. Further, perhaps paradoxically, I will show that while there was a genuine civil war filled with bad behavior, the rhetoric of brutality went beyond actual practice. People complained about things that did not actually happen, and also complained bitterly about actions that were well within established Anglo-American ways of war. Military leaders and civilians alike often lost sight of the line between rhetoric and reality. In order to understand the reasons South Carolinians were relatively generous to defeated Loyalists, it helps to understand that the rhetoric of atrocities was blown way out of proportion during the war itself.²

² A brief survey of the literature on the war in the South might include: Russell Frank Weigley, *The Partisan War: The South Carolina Campaign of 1780-1782* (Columbia, S.C., 1970), Edward J. Cashin, *The King's Ranger: Thomas Brown and the American Revolution on the Southern Frontier* (Athens, Ga., 1989), Edward J. Cashin, *William Bartram and the American Revolution on the Southern Frontier* (Columbia, S.C., 2000), David K. Wilson, *The Southern Strategy: Britain's Conquest of South Carolina and Georgia, 1775-1780* (Columbia, S.C., 2005), Jeffrey J. Crow and Larry E. Tise, eds., *The Southern Experience in the American Revolution* (Chapel Hill, N.C., 1978), John Richard Alden, *The South in the Revolution, 1763-1789* (Baton Rouge, La., 1957), John Buchanan, *The Road to Guilford Courthouse: The American Revolution in the Carolinas* (New York, 1997), Robert Scott Davis, "Loyalist Trials and Ninety Six in 1779," *South Carolina Historical Magazine* 80 (1979): 172-81, Walter Edgar, *Partisans and Redcoats: The Southern Conflict That Turned the Tide of the American Revolution* (New York, 2001), John W. Gordon, *South Carolina and the American Revolution: A Battlefield History* (Columbia, S.C., 2003), Don Higginbotham, "Reflections on the War of Independence, Modern Guerilla Warfare, and the War in Vietnam," in *Arms and Independence: The Military Character of the American Revolution*, ed. Ronald Hoffman and Peter J. Albert (Charlottesville, Va., 1984), Ronald Hoffman, Thad W. Tate, and Peter J. Albert, eds., *An Uncivil War: The Southern Backcountry During the American Revolution* (Charlottesville, Va., 1985), Henry Lumpkin, *From Savannah to Yorktown: The American Revolution in the South* (Columbia, S.C., 1981), Jerome J. Nadelhaft, *The Disorders of War: The Revolution in South Carolina*, 1st ed. (Orono, Me., 1981), John S. Pancake, *This Destructive War: The British Campaign in the Carolinas, 1780-1782* (University, Ala., 1985). Some books are devoted to single battles, such as: Carl P. Borick, *A Gallant Defense: The Siege of Charleston, 1780* (Columbia, S.C., 2003), Hank Messick, *King's Mountain: The Epic of the Blue Ridge "Mountain Men" In the American Revolution* (Boston, 1976), and perhaps most illustriously, Lawrence E. Babits, *A Devil of a Whipping: The Battle of Cowpens* (Chapel Hill, N.C., 1998), which explained the surprising American victory. Of course, King's Mountain also wove a spell over historian Lyman Draper, who spent decades collecting materials for his eventual volume. Lyman Copeland

South Carolina had never been the most stable of the eighteenth-century colonial societies. Faced with a black majority in the Lowcountry, and a restive, large and well-organized Native American population to the west, South Carolina politics, and practical planning, revolved around ensuring a white majority in the state. Charleston's aristocratic elite controlled politics before the Seven Years War, often giving scant regard to the needs of the backcountry. (The backcountry is typically defined as a product of both geography and culture. Technically, the South Carolina backcountry begins at the point the inland rivers hit falls, making navigation difficult. At this point, the landscape also gives way from swamps and sandy soil to pine trees.) While South Carolina was the wealthiest colony on the eve of the American Revolution, life in the backcountry was rough, and very few men owned more than a few slaves.

The backcountry itself had only been settled for a generation on the eve of the Revolution, and some areas had only filled in the previous decade. White settlers came from Pennsylvania down the wagon trail, and up from the harbor at Charleston. These areas were often predominantly Scots-Irish (and Presbyterian), although religious and ethnic minorities of all sorts settled in the Carolina backcountry. Isolated geographically and culturally from Charleston, the men and women who lived in the backcountry hated (or at least distrusted) the Lowcountry ruling elite far more than the imperial administration, and they initially viewed the Revolution through that prism of distrust.

Even before the Revolution, the backcountry was roiled by rioting and political confrontation during the South Carolina Regulator Movement. In both North and South Carolina, Regulators sought to control rampant backcountry crime and discipline

Draper, *King's Mountain and Its Heroes: History of the Battle of King's Mountain, October 7th, 1780* (Cincinnati, Ohio, 1881).

marauders. In North Carolina, the Regulation turned into a genuinely populist rebellion against state authority (albeit one that ended very badly for the Regulators). In South Carolina, it became a chance for the rising backcountry elite to demonstrate their fitness for power, and their shared priorities with the Charleston elite. Nonetheless, the Regulation produced years of unrest in the backcountry, and several former Regulators did become Loyalists in the Revolution.³

Whigs and Tories Drew Blood in the Backcountry, 1775-1776

Indications of potential trouble in the Carolinas came quickly upon the beginning of armed conflict in America, and South Carolina's turn would come soon enough. British officials throughout the war were overly optimistic about the strength of Loyalist support, and they usually identified the American South as a potential stronghold of such support. They were not entirely wrong, but they also misunderstood the nature of that support. As they would discover, Americans preferred not to pay taxes or fight, and the number of upstanding citizens who were interested in long campaigning was quite small. (The number of people interested in plunder, unsurprisingly, was higher.) While the successful defense of Sullivan's Island (defending Charleston harbor) cheered South Carolinians, other events were much more unsettling.

³ Richard Maxwell Brown, *The South Carolina Regulators* (Cambridge, Mass., 1963), Marjoleine Kars, *Breaking Loose Together: The Regulator Rebellion in Pre-Revolutionary North Carolina* (Chapel Hill, N.C., 2002), Rachel N. Klein, *Unification of a Slave State: The Rise of the Planter Class in the South Carolina Backcountry, 1760-1808* (Chapel Hill, 1990).

Even before North Carolina's Loyalists fought local Patriots at the Battle of Moore's Creek Bridge, South Carolina Whigs and Tories had an initial showdown that indicated the potential for trouble in the backcountry. And across the colonies, early armed battles, with or without British regulars, prompted harsher measures to identify and control those who did not support the new Patriot government. In all the thirteen colonies, the Committees of Safety became the transitional government after the outbreak of hostilities. As such, they were responsible for ensuring political conformity. In order to ensure peace and quiet, the South Carolina Committee of Safety elected to send representatives into the backcountry to discover local support for the mostly Lowcountry Patriots. The goal was to identify and report on who showed signs of implacable opposition, and to encourage those aligned with the Patriots to stop wavering and become more active. As such, it was both a persuasive mission and an attempt to show force. As an attempt to strong-arm the backcountry into accepting independence, the mission failed.

At the same time in Charleston, the strong fervor for independence caused real distress to the local disaffected. One poor Loyalist received a "decent tarring and feathering, for one insolent speech he had made." He was paraded from house to house, the mob tarrying in front of the houses of other suspected Loyalists. Finally, they made the poor man drink to the Patriot cause, and offered to "charge the grog to the account of Lord North."⁴

Fueling the unrest were two problems. One, persistent rumors indicated a Cherokee war, with the support of the British. Patriot leaders hoped to use the threat

⁴ Timothy to Drayton, Charlestown, Aug. 13, 1775, Robert Wilson Gibbes, *Documentary History of the American Revolution*, 3 vols. (New York, 1971) 139.

of Native American war to the west to bind backcountry settlers to the American cause. Second, the royal governor of South Carolina was caught writing Loyalist leaders in the interior to persuade them to raise militias and lead them in a preemptive strike against the nascent Patriot forces. For both of these reasons, the Charleston Committee of Safety ordered representatives west. These men were deputized to raise Patriot forces and to undermine the position of the Loyalist leaders, but not to force a confrontation.

The de facto leader of this group was William Henry Drayton, an ambitious man in his thirties known for his oratorical skills. His compatriots on the mission were William Tennent, the grandson of William Tennent of Log College fame and so vocally Patriot that he was known as the “Firebrand Parson,” and Oliver Hart, a Baptist minister. The Committee hoped that sending a Presbyterian and a Baptist minister would help persuade backcountry residents, who were largely followers of those two persuasions. All three men set out for the backcountry, but they traveled separately, to better cover the vast geographic area. Drayton chose to take the most difficult areas himself, including the area between the Broad and Saluda Rivers, and the town of Ninety Six, both of which were Loyalist strongholds.⁵

The mission had limited success. In areas without powerful Loyalist leaders, Drayton managed to persuade many men to sign the Associations, and even to take up arms when called. In other areas, backcountry residents made it clear that they just

⁵ Keith Krawczynski, *William Henry Drayton: South Carolina Revolutionary Patriot* (Baton Rouge, La., 2001) 155-62. Chapter 7 of this book is an excellent account of the trip into the interior. Krawczynski does a good job in the book in explaining Drayton’s actions in general, which have often puzzled historians. Drayton appeared to make a 180 degree change from 1774 to 1775, moving from conservative supporter of the King to rabid Whig.

wanted to be left alone. But in areas with strong Loyalist leaders, the effort to persuade failed. Oliver Hart was intimidated by the Loyalists at a meeting at Fairforest Baptist Church who proclaimed they were hoping “1,000 Bostonians might be kill’d in Battle.” If this wasn’t bad enough, a local man warned him that there was the “greatest appearance of a Civil War” which perhaps only “Providence” could spare. Oliver Hart was so concerned for his personal safety while traveling in these Loyalist strongholds that he began to keep his journal in code.⁶

It was left to Drayton to confront an outspoken and powerful triumvirate of Loyalist leaders in South Carolina: Colonel Fletchall, Captain Robert Cunningham, and Thomas “Burnfoot” Brown. Thomas Brown was unpersuadable. Having already survived being tortured by Georgia Whigs, he was thirsty for revenge and determined to hold his ground. Robert Cunningham was a well-respected member of the community. By the time Drayton encountered him, he was an outspoken voice for the Loyalists, but there is some evidence that he initially took the Loyalist side in a fit of pique that the Patriots did not offer him a suitable commission. Fletchall tried to stake out an area of principled neutrality: to take up arms for neither side. The other two would not even agree to this. Drayton was keenly aware of the danger these outspoken leaders could present, telling the Council of Safety that if they allowed these leaders to remain free, “we shall be involved in a civil war.” Drayton believed that Loyalist support would quickly disappear if he arrested a few prominent leaders,

⁶ Krawczynski, *Drayton: Patriot* 170-72 (all quotes from Oliver Hart and William Drayton). After this journey, Oliver Hart retreated to Charleston and never again engaged in any active part in the war. Nonetheless, he was scared of retribution after the fall of Charleston and left South Carolina forever to take a church post in New Jersey.

while the Council of Safety was more cautious (and more insightful) in understanding that the leaders represented broad Loyalist support. Thankfully, in the first armed confrontation between Drayton's men and the Loyalists, both sides maneuvered diplomatically and militarily to avoid conflict. Drayton noted that peace was better than war because fighting would only "la[y] the foundation for lasting animosities" between South Carolinians. Unfortunately, the potential for lasting animosity was already being laid.⁷

Drayton and Fletchall signed the Treaty of Ninety Six, which affirmed the status quo. Those who had refused to sign the Association continued to avoid signing it. They promised not to aid the British and to avoid criticizing the new state government. In return, they could live peacefully. Cunningham and Brown refused to recognize the treaty, but some 2000 Loyalist and Patriot members of the militia breathed a sigh of relief and returned home. Each side was able to save face and avoid conflict.⁸

So far, it seemed that South Carolinians would be able to avoid bloodshed. But the Council of Safety, perhaps emboldened by their earlier success, was determined to arrest Robert Cunningham for seditious speech. Almost simultaneously, the Whig authorities decided to try to appease the Cherokees by shipping them a thousand pounds of powder. Perhaps unsurprisingly, the Loyalists

⁷ Cashin, *King's Ranger* 219. The Liberty Boys attacked Thomas Brown in 1775. Later, he would protest that while he did not commit atrocities, he would have been justified on the basis of the treatment he received. Andrew Pickens believed this was why Robert Cunningham "took to the other side of the Question." Krawczynski, *Drayton: Patriot* 158, 176, 182, 187.

⁸ John S. Pancake, *This Destructive War: The British Campaign in the Carolinas, 1780-1782* (University, AL, 1985) 75. For a general, if less authoritative, overview of the so-called Snow Campaign, see Robert D. Bass, *Ninety Six: The Struggle for the South Carolina Back Country* (Lexington, S.C., 1978).

regarded this as unacceptable provocation and moved to intercept the shipment. Patrick Cunningham, Robert's brother, managed to seize a shipment of powder intended for the Cherokees near the time his brother was arrested. This was like waving a red flag in front of a bull. Loyalist settlers in the backcountry were upset and afraid that the Whigs were arming the Native Americans (although the British were also trying to recruit Native American tribes). Enraged Loyalists rose in the area between the Saluda and Broad Rivers, and in response Patriot militias also came forward. Cunningham attacked the Whig forces at Ninety Six with vastly superior numbers, but the Whigs prevailed. These forces managed to come to a truce, and the Loyalist leaders fled into Cherokee territory, where many were later captured after a war against the Cherokee. This so-called Snow Campaign temporarily settled the question of the backcountry's loyalty, but only by enforcing neutrality.⁹

Col. Richardson, another local leader who was responsible for arresting Fletchall and Pearis, claimed them to be "offenders of such a nature that from the active part they have taken, it would be dangerous for me (however innocent they may appear before you) to let either of them go." To satisfy both military necessity and the Revolutionary enthusiasm for compacts and other written affirmations of support, Richardson also required Loyalist leaders, including the Cunninghams, to "sign an instrument of writing, which they did willingly with fear and trembling, by which they forfeit their estates, real and personal, if they ever take up arms against, or disquiet the peace and tranquility of the

⁹ Gordon, *South Carolina and the American Revolution: A Battlefield History* 29-31. Pancake, *Destructive War* 76. For just one example of frenzied communication between Tennent and Charleston, see Tennent to the Council of Safety in Savannah, St. Matthew's Parish, Sept. 10, 1775, Gibbes, *Documentary History of the American Revolution* 169. Tennent claimed that Loyalists openly boasted "that they are furnished with ammunition and that even artillery are at their service."

good people of this state.” Even in 1775, Loyalists were threatened with confiscation. Having once shown a decided (armed) preference for the British, Loyalists were threatened with personal ruin if they either armed again, or even too vocally expressed Loyalist feelings.¹⁰

Richardson sent at least eighteen men to the prison in Charleston, and a look at their names is revealing. The early arrestees included prominent leaders, but also a number of men known as former Regulators (often dubbed Scopholites, after a local bandit and Regulator target). William Hunt was noted as a “Scopholite Captain, Ninety-Six, Mulatto,” and Captain Jones was also a Scopholite captain and “Colored.” Low social standing marked men as potentially disaffected to the Lowcountry elite, and probably did steer men into the arms of backcountry Loyalism. Other arrestees included a militia captain “said to murder a prisoner” and another who while “an old man” was “bloody.” Another was confidently “deemed a bad man by both parties” although in reality that designation was very much in the eye of the beholder.¹¹

Moses Kirkland, who in later years would lead a Loyalist militia and find himself subject to confiscation and banishment (and would never find clemency), tried to explain why he refused to sign the compact, though he would not take up arms. Six of his horses had been seized and sold over his head, which alarmed him, but then one man threatened him that if he did not come out for militia duty he would “not be Suffered to Live in any part of America.” While loyal to the king, he expressed great distaste for civil war—

¹⁰ Col. Richardson to Laurens, Camp Liberty Hill, Dec. 16, 1775, Col. Richardson to Henry Laurens, Congarees, Jan. 2, 1776, Gibbes, *Documentary History of the American Revolution* 241, 247.

¹¹ Richardson to the Council of Safety, Congarees, Jan. 2, 1776, “Prisoners Sent to Charlestown”, Gibbes, *Documentary History of the American Revolution* 250-52. The Regulator Movement in South Carolina united dispossed free whites and blacks, in a movement that harkened back to Bacon’s Rebellion. The mixed-race nature of the assault on planter authority made it especially threatening.

distaste that was widely shared on the Loyalist side. He didn't want to "take up Arms" on either side, but since his "Relations and Best friends in the Government" were loyal, he was willing to join them so long as he could avoid any "Shedding...blood."¹²

Ninety Six District, the source of armed Loyalist strength in this uprising, was chastened by the Cherokee War. One Patriot military commander assured Charleston leaders that "Ninety-Six is now a frontier. Plantations lie desolate, and hopeful crops are going to ruin." Without relief, "famine will overspread our beautiful country." But the effort seemed worth it, as the "dread" of further Native American warfare would "deter" future uprisings against the new state government. And the Snow Campaign did assure peace for several years, and most disaffected leaders did not lift a finger to help the British subdue Charleston, only taking the Loyalist side when armed conflict began in earnest in the backcountry.¹³

The first blood had been spilled in the backcountry. The possibility for civil war was now apparent. Had anyone realized it, certain themes of the backcountry civil war had been previewed in this incident, most especially the potential for civil war.

¹² Moses Kirkland to Henry Laurens, Gaol at Philadelphia, Jan. 11, 1776, Gibbes, *Documentary History of the American Revolution* 254.

¹³ James Creswell to W. H. Drayton, Ninety Six, Aug. 22, 1776, Gibbes, *Documentary History of the American Revolution* 30-31.

The Interim Years: 1776-1780

South Carolina saw relative quiet after the brief engagements of 1775. The imprisoned men were released, and the war largely avoided the South. The Loyalists of the interior had not changed their minds, but in the absence of any fighting they were content to stay out of it. Thomas Fletchall, after all, had been willing to assure the Whigs during the negotiations for the Treaty of Ninety Six that he would remain peaceful and take up arms for neither side.

Further, the example of the Battle of Moore's Creek Bridge in North Carolina did not encourage South Carolina Loyalists to rise. In North Carolina, Loyalists answered the royal governor's call for troops and fought a bloody engagement at Moore's Creek Bridge in 1776. When the Highland Scots troops lost at Moore's Creek, enraged and emboldened Whigs combed the countryside enforcing political conformity through plunder and terror. Flora MacDonald, the wife of one of the Moore's Creek military leaders and the unofficial ceremonial mascot of the North Carolina Scots, wrote that she was "dayly oppressed with stragglings of plunderers...and night robbers." As would so often be the case in the civil war in the backcountry, these robbers wanted her money, as well as to terrify her. After the Highland Scots were defeated, many spent years hiding in the swamps, unable to return to their homes safely—certainly not a precedent South Carolina Loyalists, a largely non-ideological bunch, wanted to follow.¹⁴

¹⁴ Flora MacDonald as quoted in C. Brian Kelly, "Branded as a Rebel in Scotland, Flora Macdonald Became Embroiled in Another Rebellion in America," *Military History* 14, no. 3 (1997): 82. For more

The South Carolinians also successfully repulsed a British invasion attempt at the Battle of Sullivan's Island in June 1776. This victory saved South Carolina from serious battle with the British for four years. It also cheered South Carolina Patriots, who began celebrating the anniversary of the victory at Sullivan's Island as Palmetto Day the next year, and still celebrate the holiday today.

Revolutionary intrigues also provoked a Native American war between the Cherokees, aided by Loyalist agents, and the Patriot South Carolinians. This too was a mistake, as the terrified residents of the backcountry were once again caught in their nightmare. Further, the Cherokees made no real distinction between Whig and Loyalist-identified backcountry settlers, attacking indiscriminately. The war amply demonstrated the usual atrocities on both sides, culminating with the destruction of several Cherokee towns and the removal of Cherokees from South Carolina. By the end of 1776, peace had settled on South Carolina.

But it was an uneasy peace. Men who had stuck their neck out for the Loyalist cause were marked for persecution. In concert with other American states, South Carolinians moved to enforce political conformity and suppress dissent through legislative action (backed by militia force). In 1776, the General Assembly passed an act to "prevent sedition" in an effort to avoid "civil dissensions and animosities." Taking up arms against the state, or giving intelligence against the state, was now an offense subject to death, as a treasonous act. North Carolina similarly defined treason at length and made it a capital offense. Any Loyalist convicted under the sedition law

detailed information on the battle of Moore's Creek Bridge and the resulting actions of Whigs, see Hugh F. Rankin, "The Moore's Creek Bridge Campaign, 1776," *North Carolina Historical Review* 30, no. 1 (1953): 33-60. Buchanan, *Road to Guilford Courthouse* 5.

suffered estate confiscation, and individual Patriots could seek reimbursement for losses such as plunder from Loyalist estates (if they could prove that the said Loyalist was involved in the loss.)¹⁵

In 1777, the General Assembly passed an act requiring an oath of allegiance from all adult males, and reaffirmed it in 1778. The oath or affirmation of allegiance (the General Assembly did accommodate the Quaker resistance to oath-taking explicitly in the law) required that a man “bear true faith and allegiance to the State of South Carolina, and will faithfully support, maintain and defend the same against George the Third.” Men like Fletchall and the Cunninghams certainly could not pledge to take up arms against Britain in good faith, nor abjure their birth allegiance to the English monarch. The oath of allegiance was meant to force men out of neutrality, expecting that the large majority would take the oath, and therefore be bound more closely to the Patriot cause. Further, those who refused the oath identified themselves as Loyalists, and could then be monitored and controlled. (It is unlikely that Whig leaders were under any illusions that men who took the oath could actually be depended on to take up arms. That would be the ultimate triumph of hope over experience.)¹⁶

Men who took the oath were furnished with certificates of proof, which they could be periodically required to produce to prove their allegiance. Oath

¹⁵ Act. No. 1017 “An Act to Prevent Sedition and Punish Insurgents and Disturbers of the Public Peace,” Thomas Cooper and David J. McCord, eds., *Statutes at Large of South Carolina*, 10 vols. (Columbia, S.C., 1836-1841) 1: 343-46. DeMond, *N.C. Loyalists* 154-55. Despite reserving the right to arm slaves, South Carolinians never did, seeing the problems of arming slaves as insurmountable. Towards the end of the war, John Laurens repeatedly pushed a plan to arm a slave regiment to supplement waning Patriot forces, but he faced outspoken opposition.

¹⁶ “Act Enforcing an Assurance of Allegiance and Fidelity to the State” March 28, 1778, Cooper and McCord, eds., *Statutes of S.C.* 1: 147-151.

administrators were required to keep a register of everyone who took the oath, and everyone who did not, either by sickness or refusal. Copies of this list were sent to the sheriff yearly on Independence Day, so that he could harass those who had not taken the oath. Further, those who refused to take the oath were strongly encouraged to leave South Carolina. Non-oath takers were not allowed to follow their professions or buy or sell property. This restriction had little effect on backcountry Loyalists, who were largely agriculturalists, but was rather a direct attack on merchants and artisans in Charleston who refused to take the oath who chose to leave were allowed to dispose of their property at leisure.

In a clear attack on the Loyalists as a group, the oath also required that the oath-taker report “all plots and conspiracies that shall come to my knowledge against the said State, or any other of the United States of America.” While this does reflect a healthy fear of military intrigue, it also suggests an attempt to create a police state, in which neighbors were encouraged to report on each other as a fundamental requirement of citizenship.

When the British regained control, they also enforced oaths against the population. Moses Hall, a Patriot militiaman from North Carolina, recalled his militia going to break up such an effort. “Hearing that a number of persons were going through the country administering oaths of allegiance to [the] British cause” he and other volunteers pursued them for miles. All of this was before the British even gained control of Charleston!¹⁷

¹⁷ Moses Hall Pension Application, Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 199.

Property arrangements for fleeing Loyalists could get very complicated, especially when they depended on friends who later took British protection. Henry Peronneau, a resident of Charleston, left after refusing to take the oath of abjuration. He appointed two other men of Loyalist sympathies, but not under the same proscriptions to sell his property. Shortly thereafter, one of his two executors also fled the state. His remaining executor, Dr. Alexander Garden, was more circumspect in his beliefs and statements, but signed the address welcoming the British to Charleston and congratulating them on their victory. After the war, he fled to England, where he died. Henry Peronneau, on the other hand, returned to South Carolina and petitioned the General Assembly in 1783 to remove him from the confiscation list, which was successful. He died in South Carolina under amercement, and even that was lifted from his widow.¹⁸

The legislative record also shows a certain unseemly haste to confiscate Loyalist property. Col. John Thomas and Ezekiel Polk were so quick to sell Richard Pearis's property that they inadvertently sold several other people's property as well. The situation was so messy that the General Assembly passed an act in 1778 just to clean up the disaster.¹⁹

¹⁸ Act No. 1129 "An Ordinance to Impower Doctor Alexander Garden to Sell the Estate of Henry Peronneau, Esq.," Cooper and McCord, eds., *Statutes of S.C.* 1: 485. For more on the two executors and their post-war fates, see Committee Reports of the General Assembly, General Assembly Papers, SCDAH; Alexander Garden, 1783-248, Henry Peronneau, 1788-52, Petitions to the General Assembly (GA Petitions), SCDAH.

¹⁹ Act No. 1080 "An Act to Indemnify Col. John Thomas and Ezekiel Polk, for Seizing, Selling and Disposing of the Effects of Richard Pearis; and For Other Purposes Therein Mentioned," Cooper and McCord, eds., *Statutes of S.C.* 1: 425-26. Sufferings (Testimony) of Richard Pearis, Aug. 22, 1783, and supporting testimony from Malcolm Brown, June 17, 1786, Richard Pearis Loyalist Claims, 43/64, SCHS, originals in the Public Record Office.

Many South Carolinians simply ignored the oath of allegiance and abjuration. Despite the strong wording of the acts, it is clear that there was rampant disregard for the oath. In both October 1778 and February 1779, the General Assembly passed acts to extend the time limit for taking the oath, a sure sign that only a minority of adult men had bothered to comply.²⁰

None of this was unique to South Carolina, of course. Test acts, as they were called, were enacted in all the states. Between 1776 and 1779, all states moved to identify and control Loyalists, and oaths of allegiance and abjuration were the foremost tool for so doing. Oaths were popular with both sides for controlling the population; the British also used them in areas they controlled.²¹

The frustrated British began to plan a southern campaign in 1778. With little success in actually ending the war in the North, and with increasing international complications, the British were looking for a different, more promising front in America. After all, the British were able to capture every major American city, and yet were unable to win the war. Taking the wrong lesson from the armed struggles of Southerners in 1775-1776, the British decided that taking the Southern colonies would be easy because a majority of the population would be eager to see British authority return, and willing to aid the British in subduing their peers. The British always overestimated the degree of Loyalist support they had, and especially the eagerness of colonists to fight. In 1779, James Simpson, a former royal Attorney

²⁰ Act No. 1101 “An Act for Enlarging the Time for Taking the Oath of Allegiance and Fidelity; and for Other Purposes Therein Mentioned” and Act No. 1117 “An Act to Give Further Time for Taking the Oath of Affirmation of Fidelity and Allegiance to this State,” Cooper and McCord, eds., *Statutes of S.C.* 1: 450-52, 468-69.

²¹ Brown, *Good Americans* 37.

General for South Carolina, was sent into the backcountry to assess the degree of Loyalist support. Simpson's report would be especially important because unlike other British officers, Clinton tended to be dubious about the actual support he could expect from Loyalists. Simpson was supposed to not only discover the "disposition" (meaning the preferred allegiance) of the backcountry settlers, but also their "resolution" for armed engagement. Simpson reported that there was considerable, heated support for the King among the "people from the Back Country of Carolina" because they had been so mistreated by the Patriots, and wanted revenge. As he told Germain in 1779, the Loyalists who had come out in 1776 and 1777, or were even suspected of Loyalism, "have been the objects of almost unremitting persecution ever since." Bad feelings existed all around, as men who had supported the Loyalist cause in 1775 and then become more Whiggish had "become equally Tyrannical" to the Loyalists, creating more hostility. After touring the backcountry, Simpson was convinced that "there is such general resentment raised against most of the individuals who have composed the Congresses and Committees in the different Governments, and those who have been active in enforcing their Tyrianical Edicts" that a large number would gladly rise against the Whig government, given half a chance.²²

Simpson was actually describing two different kinds of resentment, which he was clearly aware of but which Germain may well have missed. The first was the historic resentment of the backcountry residents against the Rice Kings of the Lowcountry, who had for generations limited backcountry power and controlled the

²² James Simpson to Germain, New York, Aug. 28, 1779, as reprinted in Alan S. Brown, "James Simpson's Reports on the Carolina Loyalists, 1779-1780," *Journal of Southern History* 21, no. 4 (1955): 513-19, especially 514-18.

economy in ways harmful to the interior. Since the early Whig government was very much a Rice King product, resentment against the “individuals who have composed the Congresses and Committees” was resentment against the elite men leading the state, who were largely the same men who had led the state before the Revolution. The other resentment was against local Whigs who were “active in enforcing” the wishes of the Lowcountry Whigs. These Whigs were singled out for their “tyrannical” behavior in using their power to enforce at least the appearance of loyalty. Simpson dryly noted that the backcountry residents had become “most violent in their enmity to those by whom they had been oppressed.” He left unsaid what they were likely to do in their rage if given the chance, although he did note that they asked to be supplied with arms and ammunition. Simpson was certainly reassured by the level and enthusiasm of the support he saw, although he admitted he had not spoken to many families. Still, he was impressed not only by their words, but by the fact that so many openly welcomed him and his men, even though such aid was not “consistent with prudence—for which several are now Confined in Gaol and Prison ships at Charles Town” and others were plundered after he left. On the basis of this report, and the dance of optimism and need, the British made plans to invade the South, starting with Savannah. Desperate for any new way to win the war, the British ignored the warning in Simpson’s report about the “sanguine disposition” of the Loyalists, anxious for revenge.²³

But with hindsight, we can see the seeds of civil war in the backcountry in Simpson’s report. Backcountry Loyalists had suffered plunder and enforced

²³ Brown, "Simpson's Reports," 516-18.

conformity for years as a result of their support for the British. When they had the chance to turn the tables on both backcountry Whigs and Lowcountry Rice Kings, they intended to take it.

James Simpson said nothing about it at the time. But in his second report from the backcountry, sent a mere four days after the Americans had surrendered at Charleston, he was less optimistic. He had to admit that the Loyalists were “not so numerous as I expected.” Those who were in evidence chiefly spoke of revenge against South Carolina Whigs.

Elated with their present Triumph, and resentful for their past Injuries, they are clamourous for retributive Justice, and affirm that the Province will never be settled in Peace until those People whose persecuting spirit hath caused such calamities to their fellow subjects shall receive the punishment their Iniquities deserve.²⁴

James Simpson was now worried about the usefulness of allies who were more intent on “retributive Justice” than military aims. Further, the British were planning to offer generous terms to the South Carolinians in the hopes that Patriots would be convinced to give up the war and live peacefully, without the British having to commit large numbers of troops to control a restive civilian population. Loyalist anger could easily upset this plan if Loyalists persecuted Whigs in return.

The British were pleased to capture Charleston, and planned on sizable military support from South Carolina Loyalists to help them capture the rest of the South. They were doomed to disappointment.

²⁴ James Simpson to Henry Clinton, Charles Town, May 15, 1780, as printed in Brown, “Simpson’s Reports,” 519.

Charleston Falls: Loyalists Plunder the Lowcountry

In 1776, the British had attempted to take Charleston directly. At the battle of Sullivan's Island, they were defeated soundly and painfully. They would not make the same mistake again. Instead, they plotted an elaborate series of maneuvers to allow them to gradually command leading positions outside of Charleston and then lay siege to the city. The battle depended on both naval acumen in negotiating the swampy passages of the Lowcountry and the army's ability to gain and hold the Sea Islands in their quest up the coast from Savannah (which had fallen in 1779) to Charleston. Because of this strategy, the battle for Charleston may also be seen as a larger campaign. From the perspective of this story of civil war and reconciliation, the most important part of this story is two-fold. First, Charleston fell to the British, setting the occupation of the state in motion and the ensuing civil war. In the post-war history of the state, all legislation and thought divided the Revolutionary history of the state into before Charleston and after Charleston. Second, while it was mild compared to what came next, features of the battle for the Sea Islands presaged themes of the war for the backcountry.

The battle for Charleston was far more civilized than anything that would follow. British military planning largely followed classic eighteenth-century preparations for siege. Much of the battle depended on the British navy's careful maneuvering up the channels of the Lowcountry islands and the trench building in preparation for the siege.

The small amount of beef the Americans managed to obtain for the garrison turned out to be rotten. Once the garrison was cut off from the surrounding areas, they could no longer obtain the meat that was so plentiful outside of town. By the beginning of May, meat rations were half the usual amount, and a few days later the meat ran out entirely. One disconsolate soldier remarked that there were “Hungry guts in the Garrison.” Charleston would surrender within days. Meat was not the only reason, but it helped strip most Charlestonians of any desire to fight on. At least some locals suspected sabotage. James Mackey, a Charleston cooper, was employed to pack meat for the siege. He apparently “bragged off after the British had possession of the Town” that “he behaved in such a manner as to spoil all the meat,” thereby helping end the siege earlier. He and David Tayler were both accused after the war of trying to sabotage the provisions for the siege. Mackey was perhaps prideful in his boasting, or simply trying to curry favor with the British while they were in control.²⁵

Other than that one indication of Loyalist sabotage, the siege at Charleston was a fairly standard battle. After all, a siege was the military attempt to avoid a bloodbath, or what historian John Buchanan calls “the awful alternative of a fortified place being carried by assault, with its attendant butchery.” European military tradition decreed that a fortified place could honorably surrender after repulsing one attack. Should a city not be able to hold out until reinforced, such surrender was acceptable without bloodletting.²⁶

The British navy had outmaneuvered the Americans and made it to a good position commanding Charleston harbor, the first secret to breaking the city’s defenses.

²⁵ Borick, *Gallant Defense* 200. Vinegood for No. 59 James Mackey, No. 122 David Taylor, Testimonies and Notes, Petitions for Relief from Confiscation 1783-1784, General Assembly Free Conference Committee, General Assembly Papers, S 165035, SCDAH.

²⁶ Buchanan, *Road to Guilford Courthouse* 55.

They proceeded to build trenches, as was standard in such warfare. Resistance led to fierce, brutal hand to hand combat between small parties late at night, in fighting military historian John Gordon has compared to the “no-man’s land battles that would later be fought in World War I.” On March 30, 1780, after building trenches, the British moved their armaments within firing range of the city. They then proceeded to lay siege to the city for more than a month. The forces gradually got closer, and Clinton finally became impatient. He fired on the city itself on May 11, setting houses on fire with the shot. This property damage terrified the civilians and increased the pressure on General Lincoln’s defenders to end the now hopeless resistance. After furious firing, the Americans surrendered on May 12, 1780. Lincoln was able to negotiate some honor for the surrendering troops, who marched out of the defeated city with music and drums, but without their colors. The British were interested in reduction, not punishment, and they correspondingly allowed men in the militia to return to their homes under parole. Of course, as one Hessian officer dryly noted, the British also paroled the militia because they didn’t want to have to feed them. The Continental soldiers (from the Carolinas and Virginia) became prisoners. The British then tried to convince them to change allegiances and join the British army. Overall, while it was of course humiliating to surrender, much worse could have happened. The British were prepared to be magnanimous in victory.²⁷

Carl Borick, who has written an exhaustive account of the attack on Charleston, argues that despite its seemingly orderly nature, it too had signs of what was to come in the South Carolina civil war. Clinton was firmly against plunder and sought to use his

²⁷ Gordon, *South Carolina and the American Revolution: A Battlefield History* 80, 83-86. Captain Ewald noted that this “economy” was likely to come back to haunt the army. Borick, *Gallant Defense* 229-30.

power to control his troops, avoiding the traditional depredations of war. He did not want to give the civilian population any incentive to turn against him. However, there was a limit to what he could do, and how far he was willing to antagonize his own troops in order to maintain stability. He did not enforce such prohibitions on his troops occupying the South Carolina Sea Islands in preparation for the final siege at Charleston. Instead, he declared unoccupied property to be forfeit under the assumption that if the owner had fled, he must be with the American forces. (This too stimulated resentment since many had simply fled before the British advance.) He issued a proclamation allowing his troops to seize “all such Valuable Property as shall be found belonging to any person in Rebellion” for the armies’ use. Quickly, the local population turned against the British invaders. One astute captain noted that they “hated us from the bottom of their hearts because we carried off” their belongings.” Part of the problem was simply that the British had to eat, and therefore depended on provisioning from the surrounding area. This naturally excited resentment among the local population. Troops were supposed to distinguish between Patriots, Tories, and unaffiliated civilians, but often did not bother. One widow insisted that she was not associated with either side, but she was still plundered by British troops. A Lowcountry man who had refused to serve as a pilot for the British navy was plundered in revenge, and his plantation “laid waste.”²⁸

Despite all the complaining, plunder was an unavoidable part of war. Troops had to live off the land in large part, and therefore needed fresh meat and produce from the areas in which they were stationed. The line between outright appropriation and acceptable provisioning was thin at best. Civilians were infuriated no matter what. Nor were many people happy about having large numbers of semi-disciplined troops in the

²⁸ Borick, *Gallant Defense* 60, 99-100.

area. Further, the earlier five years of the war had taught all Americans, not merely those who had already been in the path of war, what war could do to hearth and home. In particular, women were well aware of the possibility of rape arising from war. Certain units already had the reputation as prolific rapists. Tarleton's Legion, raised from New York Loyalists, was infamous. His presence in the Lowcountry certainly encouraged women in the area to flee when possible. Eliza Wilkinson, a young woman living outside Charleston, worried about young women whose fathers could not remove them. She had heard not only the "most terrible accounts of the actions of the British troops at the northward," but also that when troops entered Georgia they "used the inhabitants cruelly, paying no respect to age or sex."²⁹

Observers on all sides did note the particular ferocity of Loyalist regiments, no matter what American state they were actually from. Brigadier General James Paterson, a British commander, was in charge of troops that were largely American Loyalists. For both strategic reasons and those of revenge, they were as likely simply to destroy property as take it for their own purposes, especially livestock. One lieutenant (who served under Patrick Ferguson, and therefore with a Loyalist regiment) commented that in order to "do his King and country justice" the troops "destroy[ed] furniture, br[oke] windows, etc." as they passed through. Major Andre, who had formulated an attack on plunder for Clinton while serving as his aide, wrote especially disapprovingly of the kind of soldier who would plunder for the "wanton pleasure of Spoil" only to "throw [it] aside an hour" later. Loyalist troops showed themselves to contain plenty of these men as soon as they arrived in South Carolina. John Lewis Gervais warned his friend Henry Laurens that the "Enemy certainly behaved very ill at Mepkin [Laurens's plantation]," breaking

²⁹ Caroline Gilman, ed., *Letters of Eliza Wilkinson* (New York, 1969) 10-12.

open “every trunk” and “carried off every thing they could carry without a Cart.” Further, his “poor” overseer was stripped of his watch, shirt and even his stockings, left half-naked by the troops. (While the watch had real value, the troops probably enjoyed the humiliation in forcing the man to take off his clothes, leaving him half-naked in front of his wife and the slaves he was responsible for overseeing.) To further the insult, they took his wife’s shoes as well, although a fast moving army probably had little use for women’s shoes. In the same neighborhood, they even took children’s clothes from Mary Motte. Gervais reported that she “took a little Baby in her Lap_ & begged to leave its Cloath” which they were not willing to do. Instead, they told her “they wish^d they had the Father, they w^d. rip his damnd rebel heart out.” Almost shuddering as he relayed this information, Gervais ended by exulting that his wife had gone ahead. Of course, it is human nature to exaggerate, and there is always a possibility that some of these claims are embroidered considerably. Nonetheless, it seems clear that both sides understood the power of plunder to also humiliate the opponent. Americans noticed that British and Loyalist forces were harshest towards the homesteads and wives of men serving in the American army, which was not accidental.³⁰

In these examples from the Lowcountry, we can see that plunder was for psychological pleasure as well as simple need, and was practiced as a weapon of terror against the civilian population. Psychological warfare works best when participants expect a reasonable chance of the worst outcome, but without certainty (i.e. terrible things happen often enough to convince the population that threats are real, but at times individual leaders do not perform terrible acts.) South Carolina’s war conformed to this

³⁰ Draper, *King's Mountain* 488. Borick, *Gallant Defense* 98, 152. John Lewis Gervais to Henry Laurens, Santee, SC May 13, 1780, Philip M. Hamer, ed., *The Papers of Henry Laurens*, 16 vols. (Columbia, S.C., 1968-) 15: 292.

standard, meaning sometimes plunder moved into humiliation and outright destruction (and often enough to make everyone afraid of such an outcome). There were also allegations of rape and physical assaults on women. Unsurprisingly, given the unit's prior reputation, these allegations center on a few men from Tarleton's Legion. Henry McDonough attacked one woman with his sword and tried to rape her, but she managed to stop him. He gave up, but not before liberating a jug of rum on his way out. They then went to another house, where they succeeded in raping a woman, and then "almost strangled her." The two men were caught and court-martialed, by an extremely angry British commander, Patrick Ferguson, but the damage was done. Further, while the British commanders did try to rein in such behavior, they allowed small raiding parties to continue, making it likely that such actions could occur. To be fair, it is important to mention that Tarleton himself had no sympathy with rapists, and wanted to hang the offender immediately. (The fact that this particular rapist attacked Loyalist women didn't help.)³¹

In the aftermath of the reduction of Charleston, most of the Patriot militia from outside the area took their paroles and set off with four days' provisions to see them home. At least one observer realized this leniency might have consequences. Captain Ewald was "convinced that most of these people will have guns in their hands again within a short time." He was right, but not necessarily for the reasons he supposed. Charlestonians took protection from the British. In late May, Clinton happily wrote, "over 1,500 have already been here with their arms, desiring to join us." Most of the "rebel grandees" were also seeking British protection. Rawlins Lowndes explained, after

³¹ Borick, *Gallant Defense* 153. For a spirited, if not entirely convincing, defense of Tarleton, but one that puts him in his proper context as a disciplined British officer, see Anthony J. Scott, *Brutal Virtue: The Myth and Reality of Banastre Tarleton* (Bowie, Md., 2002).

complaining of his losses from plunder, that a man “used hitherto to all the Comforts and Conveniences of Life, and now...in the most necessary Exigency” would simply have to seek protection, as he could not live under these conditions. Even such famous (and hotheaded) partisan leaders as Andrew Pickens and Andrew Williamson accepted paroles and headed back home. South Carolinians accepted British protection for two main reasons. One, there was little else most could reasonably do. The British controlled the major city, and lots of men had helped defend the city, and therefore had to surrender as soldiers. In order to go home, they had to agree to terms. Second, the British offered generous parole terms. Paroled persons were “secure...from being molested in their property by the British troops.” While accepting a parole required not fighting further for the American cause, the parole did not require active participation on the British side either. In effect, paroles guaranteed neutrality. Thousands of South Carolinians were sure they could simply accept paroles and sit out the rest of the war, and were happy to do so honorably. A small minority of prominent Patriot leaders became prisoners of war, but the vast majority found themselves comfortably settled. Prisoners of war were housed on prison ships in the harbor, or sent to St. Augustine.³²

Sir Henry Clinton, having accomplished the reduction of Charleston, hastened to secure his hold over the hinterlands. He was supremely confident that in capturing Charleston, he had conquered “both the Carolinas” and ensured British success with one of their biggest victories of the war. Having become convinced that there were plenty of Loyalists in the backcountry ready to rise up and join the victorious British troops, he turned his attention to preparing an administration for South Carolina, so that he could go

³² Borick, *Gallant Defense* 230-32, 252. Clinton to William Phillips, May 25, 1780. Clinton Papers, William Clements Library. Pancake, *Destructive War* 66-69.

back to New York and leave his subordinate, Lord Cornwallis, in his place. In preparation for his departure, he issued two proclamations, one alone and one with Arbuthnot, the naval commander. They were issued on May 22, 1780, and then a week and a half later on June 1, 1780. The May 22, 1780 proclamation tried to persuade South Carolinians to declare for the King. The proclamation warned anyone who harassed Loyalists or British troops would face the confiscation of their estate and probably court martial. But if rebellious South Carolinians would “immediately return to their allegiance” they would find “Mercy and forgiveness.” However, the forgiveness was not available to “those who are polluted with the Blood of their Fellow Citizens, most wantonly and inhumanly shed...” This line appears to have been added to assuage Loyalist leaders, who had been persecuted for the last five years at the hands of the now defeated Patriots. This might have given Clinton pause had he really thought about it. The Loyalists were itching for the chance at payback.³³

Clinton gave it to them by organizing local Loyalist militias to help pacify the interior. He allowed those with families to form local militias, and single men were called to travel away from home, but not further than North Carolina or Georgia. These Loyalists were drawn from outside Charleston, meaning they were disproportionately from the backcountry. (Clinton, no fool, was not yet ready to trust those against whom he had been fighting for months.) Further, in order to assure the loyalty of these troops, Clinton organized them under officers of long-known and proven loyalties.³⁴

By the beginning of June, Clinton was ready to return to New York, cheered by Tarleton’s victory at the Waxhaws (which is discussed in more detail in the next section).

³³ Borick, *Gallant Defense* 230-33, including quotes from the May 22 and June 1, 1780 Proclamations.

³⁴ Borick, *Gallant Defense* 235.

Before leaving, he issued one last proclamation that fatally revised his earlier position. On June 3, 1780, days after his more favorable command, he decided that neutrality from the defeated was not enough. The terms of the paroles and the previous proclamations had allowed men to simply stay home for the rest of the war. The June 3 proclamation changed the rules. Arguing that “it is fit and proper that all persons should take an active part in Settling and Securing his Majesty’s government,” he required all paroled prisoners to take up arms against their fellow Americans in support of the King. Those who failed to take up arms as ordered would be considered “Enemies and Rebels...and treated accordingly.” This would turn out to be an enormous mistake. It did encourage some to take the oath of allegiance who would not otherwise have done so, but many more instead broke their paroles and enlisted on the Patriot side. Americans argued that legally they were not even breaking parole, since they had accepted paroles under a set of legal circumstances no longer at play. As Wayne Lee has noted of the war in North Carolina, some men considered the parole binding, and went out of their way to avoid breaking it. Others considered it largely negotiable, and broke it with ease. Parole-breaking was regarded as a serious matter, but in this particular case, Clinton had largely voided the earlier parole by stating that those who did not come back and bear arms would be considered rebels. It was a different case than later in the war.³⁵

Even those who were not particularly interested in either cause were faced with an unpalatable choice. As Carl Borick has pointed out, the rumors of British mistreatment

³⁵ Borick, *Gallant Defense* 237-38. William Gilmore Simms made a great deal of defending the honor of those who broke parole after accepting it under Clinton’s initial terms, including in *The Partisan* (1835) and *Katherine Walton* (1851). Historian Walter Edgar has taken up this theme enthusiastically, but without considering that such eloquent defenses of parole-breaking were partly meant to cover up shame and concern about the honorability of actually breaking an oath. Edgar, *Partisan and Redcoats*. Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina: The Culture of Violence in Riot and War* (Gainesville, Fla., 2001) 191.

of Americans, spread from the North and fueled by British behavior on the Sea Islands during the conquest of Charleston, gave South Carolinians every reason to mistrust British promises of protection for their lives and property. Under the circumstances, many undecided people chose the American side under the assumption that the British could not or would not protect them under any circumstances. Clinton sailed away before the deadline under this last proclamation, leaving Cornwallis with the fall-out from his mistake. The fall-out would be considerable. Lord Rawdon quickly complained to Cornwallis “that unfortunate Proclamation of the 3rd of June has had very unfavorable consequences. The majority of the Inhabitants in the Frontier Districts, tho’ ill disposed to us, from circumstances were not actually up in arms against us.” After the proclamation, “nine out of ten of them are now embodied on the part of the Rebels.”³⁶

³⁶ Borick, *Gallant Defense* 242. Lord Rawdon to Lord Cornwallis, July 7, 1780, Michael C. Scoggins, *The Day It Rained Militia: Huck's Defeat and the Revolution in the South Carolina Backcountry May-July 1780* (Charleston, S.C., 2005) 196-97.

You Must Fight to the Death: The Logic of Buford's Massacre and Tarleton's Quarter

Clinton helped touch off a civil war in South Carolina with his negation of neutrality, but as we have seen, Loyalists and Patriots were itching to take revenge on each other. The Lowcountry campaign showed that the British were willing to use plunder and psychological terror to control the civilian population. Given these two trends, perhaps it was inevitable that the civil war in the Carolinas would quickly dissolve into military rules that more closely resembled the norms of Native American warfare than European war.³⁷

After taking Charleston, the British raced to consolidate their control over the colony, trying to quickly overawe the interior. Colonel Banastre Tarleton was sent to confront the last group of Continental soldiers in the state, in order to secure British victory. Those Continentals (of the Virginia Line), commanded by Colonel Alexander Buford, were fleeing from an earlier engagement with Tarleton's forces (Loyalists from northern states), racing for North Carolina in order to save the troops and reinvigorate the American army. Having never made it to Charleston, they very much wanted to avoid surrendering. Tarleton was equally committed to destroying this last remaining force.

Buford's Massacre occurred on May 29, 1780, less than three weeks after the main American forces had surrendered at Charlestown. After an extremely rapid march of 150 miles in 54 hours, Tarleton's force of New York-area Loyalists caught Buford's Virginia Patriots near Waxhaw Presbyterian Church, on the border with North Carolina.

³⁷ For a much longer explanation of the rules of war at play in colonial America for Native American warfare, a wonderful source is John E. Ferling, *A Wilderness of Miseries: War and Warriors in Early America* (Westport, Conn., 1980). See also Higginbotham, "Reflections on the War of Independence."

What happened next is the subject of heated dispute. Once firing began, the Patriot forces were rapidly overwhelmed. Worse yet, both sides were so close that no one could fire, and the fighting was hand-to-hand combat with bayonets. As such, the fighting was brutal, and the American forces were not well prepared. Evidence of this includes the frank assessment of one officer that the dead and wounded had an “average” of 16 wounds “to each man.” Within a few minutes, at least part of the American line tried to surrender, raising a white flag. At about the same time, at least according to his later (self-serving) memoir, Tarleton’s horse was shot out beneath him. The Legion could no longer see Tarleton, so they panicked, and continued firing on the American forces despite several attempts to raise the white flag of surrender. Americans, needless to say, charged Tarleton and his Legion with deliberately refusing to allow surrender. In later accounts, even one British writer felt that “the virtue of humanity was totally forgot.” Tarleton reported to Cornwallis that he had “Cut 170 Off’rs and Men to pieces, ” and the American losses were sizable: 113 killed, 150 wounded, and 53 prisoners, or about 80% of the Americans engaged in the battle.³⁸

Military historians have raced to defend Banastre Tarleton against his nineteenth-century sobriquet “Bloody Tarleton” or “Bloody Ban.” Anthony Scotti defends Tarleton’s men by explaining that the Americans may not have fully understood the European rules of war, by which if they turned down an offer of surrender under honorable terms they would accept death as the consequence of such “rash” behavior. Other historians, striving to show how many of the tales of atrocities could not have been

³⁸ J. Tracy Power, “the Virtue of Humanity Was Totally Forgot’: Buford’s Massacre, May 29, 1780,” *The South Carolina Historical and Genealogical Magazine* 93, no. 1 (1992): 5-14, especially 9-10, including a quote from Charles Stedman from his history of the American war, and Banastre Tarleton to Cornwallis. Pancake, *Destructive War* 70-71.

true, echo Scotti. But in the rush to explain why Buford's Massacre happened with explanations of slips, mistakes, misunderstandings, and fallen men, we have obscured the reasons why it happened and why it mattered so much to South Carolinians during the war and afterwards.³⁹

There is merit to these explanations, and I certainly have no reason to doubt them. But these explanations seek to understand Buford's Massacre as a true beginning to the viciousness of the cycle of retribution in the Carolina backcountry. In this conception, the mistakes of war led to the appearance of an uncontrolled slaughter, which then created a vicious cycle in which surrender became impossible. But I suggest Buford's Massacre was almost inevitable. The logic for such events had already been laid. It was probably too much to expect that Whigs and Tories who had spent the last five years sniping at each other to treat each other well. The logic of civil war had already been laid by the Whigs' relentless pursuit and harassment of Tories during the five years before the war came to South Carolina in earnest. It was laid in the use of partisan forces by both the Tories and the Whigs. It was laid in 1775 when Loyalist leaders such as Patrick and Robert Cunningham were forced to flee into Cherokee country for safety.

Buford's Massacre, while extreme, points to another rapidly evolving feature of the war in the Carolinas. It became a "war of the militias," where Patriot and Loyalist militias drawn from the state, and the South more generally, engaged each other in a series of guerilla fights. The militias depended on a style of warfare that had developed on the frontier, privileging dawn or dusk raids dependent on surprise. With limited

³⁹ Banastre Tarleton's written summons to Buford offered terms, but told him that if he was "rash enough to reject them, the blood shall be upon your head." Tarleton repeated this in his memoirs. Power, "Buford's Massacre," especially 7. A less sympathetic account of Tarleton can be found in Robert D. Bass, *The Green Dragoon: The Lives of Banastre Tarleton and Mary Robinson* (New York, 1957).

visibility, small troop numbers, and the dependence on ambush, it was almost inevitable that death tolls would rise, and that taking prisoners, or even seeing white surrender flags, would be difficult. The militias did rely on norms of violence and wartime behavior that restricted what they could honorably do on the field of battle, but with increasing rage, and pressure, those norms were superseded by another tradition: the tradition of retribution. Threatening retribution had long been an acceptable way to control unwanted behavior, but the pressures of civil war toppled Americans into applying what one historian has dubbed the “law of retaliation”: compulsory and expected retaliation, such that each side justified all actions, and expected to routinely violate the rules of war because the other side did it first. Further inflaming everyone was the presence of gangs of bandits, loosely identified with the Loyalist side, but actually interested only in personal plunder. Each side tended to blame their opponents for these actions. Of course, Buford’s Massacre itself involved Continental soldiers, but the mindset of each side was already in place.⁴⁰

The Patriot militia’s customary role during the previous five years was to enforce the appearance of political conformity and to control the disaffected. In their pursuit of that goal, they became accustomed to entering houses, harshly questioning people, and otherwise pursuing individuals, not armies. Unsurprisingly, they brought these habits with them to partisan warfare, targeting the homes and families of the disaffected.⁴¹

⁴⁰ Lee, *Crowds and Soldiers* 176-77. The phrase “law of retaliation” is used by Harold E. Selesky, “Colonial America,” in *The Laws of War: Constraints on Warfare in the Western World*, ed. Michael Howard, George J. Andreopoulos, and Mark R. Shulman (New Haven, Conn., 1994). I encountered it in Lee’s work.

⁴¹ Jeffrey J. Crow, “Liberty Men and Loyalists: Disorder and Disaffection in the North Carolina Backcountry,” in *An Uncivil War: The Southern Backcountry During the American Revolution*, ed. Ronald Hoffman, Thad W. Tate, and Peter J. Albert (Charlottesville, Va., 1985). Clyde R. Ferguson, “Functions of the Partisan-Militia in the South, During the American Revolution: An Interpretation,” in *The Revolutionary War in the South: Power, Conflict, and Leadership*, ed. W. Robert Higgins (Durham, N.C.,

Certainly, Buford's Massacre became the rallying cry in the Carolina backcountry, and in at least two different later engagements (King's Mountain, discussed below, and Haw's River), the American forces specifically invoked Buford's Massacre to encourage and justify cutting down Loyalists who tried to surrender. "Give them Buford's play" and "Tarleton's Quarter" (meaning no quarter at all) became rallying cries for militiamen determined to retaliate. Thankfully for the progress of the war, at a time when victory seemed unobtainable, a small engagement in the backcountry between Loyalists and Whigs gave hope to many.

Walter Edgar uses the engagement at Brattonsville (Huck's Defeat) as the central way to show the brutality of the civil war raging in the backcountry. His book revolves around this small skirmish because it encapsulates bigger themes at work in the rhetoric of guerilla warfare in the backcountry, especially the fratricidal nature of the war there.

Brattonsville was the tiny hamlet neighborhood centered on William Bratton's plantation. William Bratton was himself a substantial landowner by the standards of the area. And while his home was built with logs, he was the only man in the area who had glazed windows rather than wooden shutters. Brattonsville is in York County, South Carolina, or what was then known as the New Acquisition District, near Charlotte, North Carolina.⁴²

Cornwallis had authorized the attack on the area, since the mill also functioned as a source of shot for the Whigs. Huck's men had free rein to eat corn and burn the rest of the crop, but Cornwallis, as was his wont, "strictly" forbade "any act of cruelty to their

1979). A. Roger Ekirch, "Whig Authority and Public Order in Backcountry North Carolina, 1776-1783," in *An Uncivil War: The Southern Backcountry During the American Revolution*, ed. Ronald Hoffman, Thad W. Tate, and Peter J. Albert (Charlottesville, Va., 1985). Lee, *Crowds and Soldiers*.

⁴² Edgar, *Partisans and Redcoats* 39. Gordon, *South Carolina and the American Revolution: A Battlefield History* 89-90.

wives & children.” As we will see, Huck’s men partly ignored those recommendations. The day before the battle, Captain Huck moved to surprise the families of two prominent Patriot leaders in the New Acquisition District, which had the distinction of being the only entire district in which virtually no one took the oath of protection. (This claim is at least partly true, but was burnished too much by locals in the nineteenth century to be entirely believable. Nonetheless, very few men from the New Acquisition District were listed on post-war records of those who had fled the state.) Huck first surprised the family of Captain John McClure. McClure was not home, but Huck did catch his son and son-in-law melting down pewter dishes into bullets. This was a violation of any standard of neutrality. Further, both men were adults. (This incident is actually the source for the scene in *The Patriot*, where the young men become young boys melting down toy soldiers.) Both men were arrested and put under guard, to be hanged at sunrise the next day. Next, the troops moved down the road to the Bratton plantation, where Bratton’s wife and young son had been warned of the approach. She faced them down from her front porch, apparently trying to protect her home. Her insolence did not go unnoticed, according to family legend. A Loyalist grabbed a reaping hook from the wall and held it at her neck, threatening to kill her if she did not tell where her husband was. This incident has been read as an example of threatened atrocity. “Gentlemanly” it certainly was not, but threatening women to reveal their husbands’ whereabouts was certainly within the acceptable bounds of war. Further, it does not follow that the threat, however frightening, intended any follow-through. Unfortunately, Mrs. Bratton did understand the rules of engagement, and unrepentantly told the soldiers her husband was with Thomas Sumter’s army.⁴³

⁴³ Lord Cornwallis to Lieutenant Colonel Turnbull, June 16, 1780, as reprinted in Scoggins, *Day It Rained*

The British commander imprisoned the young men, and told them they would be hanged at daybreak. Mrs. Bratton was locked upstairs, and the Loyalists camped in the house and yard for the night. Someone sneaked out (family accounts disagree on exactly who that was) and under the cover of darkness rode several miles, finding the partisan camp where Bratton himself and his men were hiding. As John Buchanan notes, it was incredibly unwise that Huck “failed to keep note of the whereabouts of the people he had plundered that day.” They prepared to surprise the Loyalists at dawn (a typical guerilla strategy) and were able to use the advantage of surprise to overcome Huck’s forces, killing many. Captain Huck himself was killed, and only twelve dragoons and twelve militiamen survived.⁴⁴

While the battle itself was not of great importance, its psychological effect was huge. At a moment when it looked like the British could solidly control the state after the reduction of Charleston and Buford’s Massacre, Huck’s Defeat gave the Patriots hope. In the aftermath of the battle, Whigs flocked to join Thomas Sumter’s men, committing to militia duty. Even the British recognized Huck’s Defeat was a bad sign. Cornwallis wrote the Ninety Six commander to be watchful, stating that the defeat “has given me great uneasiness.”⁴⁵

Huck’s Defeat also showcases family divisions in the war. Edward Lacey was a commander with William Bratton’s forces, and an outspoken Whig. His aged father was a diehard Loyalist, while his brother was a Loyalist militiaman under Captain Huck. The

Militia 189-90. Edgar, *Partisans and Redcoats* 75-80. The story has been retold several times, including Edward McCrady, *The History of South Carolina in the Revolution, 1775-1780* (New York, 1901) 594, Thomas J. and Robert M. Kennedy Kirkland, *Historic Camden, Part One: Colonial and Revolutionary*, 2 vols., vol. 1 (Columbia, S.C., 1905) 281-82, and Elizabeth Ellet, *Women of the American Revolution*, 3 vols. (New York, 1856) 1: 240-42.

⁴⁴ Gordon, *South Carolina and the American Revolution: A Battlefield History* 89-90. Buchanan, *Road to Guilford Courthouse* 112-15,

⁴⁵ Lord Cornwallis to Nisbet Balfour, as quoted in Buchanan, *Road to Guilford Courthouse* 115.

night before the battle, Lacey and his men camped at Lacey's home, where his father was also living. His father was caught trying to escape from the house in order to warn the Loyalist forces. Lacey had to tie his father to the bed and post a guard on him for the rest of the night. And in some ways, Lacey's father was lucky. Had he not been a close blood relative and obviously aged, he could have been summarily executed. Neighbors also opposed neighbors, and for some it was the first time they discovered who their enemies really were. One Whig veteran later recalled killing several "acquaintances and men I have never suspected of toryism."⁴⁶

Huck's Defeat also was an early expression of viciousness in the civil war fighting. Bratton's young son, who spent much of the battle tied up in a corn crib, later remembered that his father and his men took pleasure in hacking a wounded Loyalist to death after the battle.⁴⁷

Throughout the summer and early fall, the backcountry, and increasingly the Lowcountry, saw numerous small skirmishes between partisan detachments. Between Huck's Defeat in July and King's Mountain in October, there were at least twenty-two such engagements in South Carolina, of which seventeen were in the backcountry. Partisan engagements were the only good news in the Southern theater, as General Gates had managed to lose a second American army of Continentals to British forces at the battle of Camden on August 16, 1780.⁴⁸

⁴⁶ Buchanan, *Road to Guilford Courthouse* 114. Edgar, *Partisans and Redcoats* 80. George Neely, Federal Pension Application S4613, as excerpted in Scoggins, *Day It Rained Militia* 174-75.

⁴⁷ Edgar, *Partisans and Redcoats* 84. McCrady, *The History of South Carolina in the Revolution, 1775-1780*.

⁴⁸ Gordon, *South Carolina and the American Revolution: A Battlefield History* 92-94. Edgar, *Partisans and Redcoats* 89.

Reassuringly for the Whig cause, General Francis Marion and his militia men, operating in the Lowcountry, began to break Loyalist support along the Pee Dee River with a series of victories, including at Blue Savannah and Black Mingo Creek. Almost a month after King's Mountain, Marion had a large victory at Tearcoat Swamp. Once again, he showed how he won the nickname the 'Swamp Fox,' winning and capturing much needed horses and arms before melting back into the swamps, to choose his next engagement.⁴⁹

King's Mountain: The Logic of No Quarter Finds Expression

As John Pancake so charmingly puts it, "The irregular forces on both sides fought the crucial battle of King's Mountain while Lord Cornwallis was less than thirty miles away in a haze of ignorance and General Gates was 150 miles away in a blanket of indifference." King's Mountain, unlike many of the partisan engagements, is a famous battle. It is famous because the American troops managed to actually win, defeating Patrick Ferguson, a popular British leader. King's Mountain itself was rather a large hill on the border between North and South Carolina, in York County, South Carolina (near Charlotte).⁵⁰

King's Mountain was a turning point in the partisan war, because it was such a crushing defeat for the Loyalists that it further emboldened the Patriots militarily, but also in their efforts to harass and crush local opposition. The disaster at King's Mountain

⁴⁹ Gordon, *South Carolina and the American Revolution: A Battlefield History* 105, 110-11, 117-19.

⁵⁰ Pancake, *Destructive War* 108.

guaranteed that most men of Loyalist sympathies who had not already made the decision to take up arms would not join the militia after this defeat.

Kings Mountain was distinctive as a major battle fought entirely by partisan forces raised in America. The only British person on the field that day was the commander of the Loyalists, Patrick Ferguson. Otherwise, it was Loyalist versus Patriot. Patrick Ferguson was a respected and feared commander who had spent the past few months touring the far western portions of the Carolinas in search of new recruits for the Loyalist forces. Further, he was to solidify British control over the interior, and use his forces to intimidate the “disaffected” sufficiently to stop them from harassing local Tories or joining the Patriot forces. In short, he was both a recruiter and a controller of the far west. In his efforts to “overawe[]” the disaffected, his troops plundered and attacked their way across the Blue Ridge Mountains. What to the British commanders in Charleston was a program of armed persuasion became, 300 miles west, a program of terror. Ferguson further incited Carolina Whigs with his public proclamation in late September 1780 threatening to “hang their [Patriot] leaders and lay their country waste with fire and sword.” Since his troops were already so doing, it hardly seemed an empty threat. Further, as John Pancake has noted, at the time Ferguson issued this incendiary threat, he could reach the Over Mountain men’s homes and families in a two-day march. The Over Mountain men, formerly residents of Georgia and the Carolinas who had moved to what is today East Tennessee at the beginning of the Revolution, responded to the threat, and decided to engage Ferguson and his men. Ferguson, for his part, was

leading Loyalist troops drawn from both New York and the surrounding local areas.

King's Mountain would indeed be a battle defining a civil war.⁵¹

Patrick Ferguson might have more sensibly avoided the battle entirely and raced to meet Cornwallis's troops, who were camped nearby. For reasons historians still argue about, instead he chose his (seriously flawed) ground and waited for the American partisan forces to come to him. Ferguson further inflamed the Whigs by issuing a direct challenge: with braggadocio he swore that once he had established himself on Kings Mountain, "God almighty himself could not drive him from it." Walter Edgar has made a lot of this challenge, seeing it as a direct affront to the religious sensibilities of the Scotch-Irish Presbyterians, but I think it was simply a general taunt to the Whigs.⁵²

The fighting was largely hand-to-hand combat. In such close conditions, it was hard to tell each side apart, especially since very few of the soldiers were actually in uniform. This closeness gave rise to easy confusion, and troops had to go to some lengths to tell each other apart on the battlefield. In the chaos of war, it was easy to get confused. Whigs had a verbal countersign (which I discuss later) to mark them, but as an additional precaution, Whigs put paper in their hats to mark themselves, and the Loyalists put twigs in theirs.⁵³

Most men dealt in a world of imperfect information. While on the most local level, many knew or suspected the allegiance of others by late 1780, since colonists of all persuasions were both Loyalists and Patriots, telling each other apart sometimes became

⁵¹ Pancake, *Destructive War* 116-17.

⁵² Pancake, *Destructive War* 118. Edgar, *Partisans and Redcoats* 116-20.

⁵³ Draper, *King's Mountain* 270. Such improvised signs were common. Moses Hall, a North Carolina militiaman, remembered that a friend came up to him warning he had a Tory sign on his hat. "It was a red strap passing over the crown. It would probably have caused me to be shot by the first of our troops who should have met me..." and he counted himself lucky his friend noticed he had not been careful enough when wearing the hat of a dead Loyalist soldier. Moses Hall Pension Application, Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 204.

a major problem. In a civil war, the discomfort of realizing the enemy looks and sounds like you must have been palpable. At times, it was also hair-raising. Joseph Kerr was a life-long cripple from Mecklenburg County, North Carolina, on the border with South Carolina's New Acquisition District, where he also had kin. He became a spy for the Patriots as early as 1778, during a period of routine skirmishing. By the time of the civil war in the Carolina backcountry, he was an experienced spy. Again and again he used his physical disabilities as a cover for his activities, posing as a Loyalist who could not serve. Just before the battle of Huck's Defeat, he was trying this routine again, when he got caught by near neighbors of his who really were Loyalists. He was "personally known to some of the Tories" who promptly denounced him as a "damned rebel spy." Captain Huck threatened to take his life then and there, but perhaps once again swayed by his crippled status, chose to merely imprison him until after the battle, leaving him tied in the bushes. Kerr managed to escape, and carried word to the Patriots of the conditions and strength of the Tories.⁵⁴

Other examples of mistaken and confused identity abound. James Fergus remembered gathering simple intelligence of troop movements. He and his fellow soldiers "pretended to be a party of loyalists from North Carolina coming to join the British" and fooled a woman, who happily told them that the Loyalists were "encamped about a half mile from us on the bank of the creek; that they were on their way to drive the rebels out of the forks and would make us very welcome" and finished by telling them her husband was with the Loyalists. Discrete she was not, but her confusion was understandable. Groups of men did try to find each other all the time before

⁵⁴ His pension application stated that he "has been a cripple since his infancy, properly termed an invalid, and not subject to military duty." Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 358.

engagements. In one horrifyingly telling episode of mistaken identity, Light Horse Henry Lee's dragoons encountered Pyle's Loyalist militia group. Lee's Dragoons wore light green jackets that were strikingly similar in coloring to those worn by Tarleton's Legion, a Loyalist force. Pyle, coming upon the green jackets, rushed up to join what he thought were Tarleton's forces. Lee's forces were quicker on the uptake and quickly slaughtered the foolish Loyalists, in the event that became known as Pyle's Massacre. The example also shows yet another episode in which many were slaughtered before the Whigs could be persuaded to take prisoners.⁵⁵

Several divided families participated in this battle. Family legend held that Thomas Robertson was using a tree for cover when a Loyalist neighbor called out to him by name, getting him to poke his head around long enough to be vulnerable to a shot. Luckily, it missed him, and he was able to kill his former neighbor. When his neighbor cursed him for killing him, his unsympathetic neighbor Robertson told him, "the devil help you." Another wounded Loyalist begged his Patriot brother-in-law for help. His brother-in-law contemptuously told him to "look to your friends for help." Another veteran described the aftermath of the battle, as the victorious Patriots camped within hearing range of the dying Loyalists still lying on the field. Benjamin Sharp remembered "pass[ing] the night amid groans and lamentations," which the Patriots did nothing to assuage. One veteran remembered voices "begging piteously for a little water" but "these cries, when emanating from the Tories, were little heeded."⁵⁶

⁵⁵ James Fergus Pension Application, Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 178-79.

⁵⁶ Draper, *King's Mountain* 265-66. Draper did have an ear for the romantic, and some stories of King's Mountain are undoubtedly embellished. Even the embellished ones, however, were convincing rumors at the time, and therefore have value as evidence of widespread belief about the fratricidal nature of the war.

To further the theme of civil war, legend had it that two separate pairs of brothers killed each other at the Battle of King's Mountain. Lyman Draper speculated that one such story might be about the Goforth family from Rutherford County, North Carolina. Two brothers fought for the Whigs, and two for the Tories, and all four were killed in the battle. Supposedly, two of them were shot so quickly that they died with one eye open and one eye closed, expert marksmen to the end. Legend had it that another North Carolinian unknowingly shot his own brother through a firing hole in the tree his brother was hiding behind, only discovering who he had killed after the battle. At least this brother felt remorse; he became "almost deranged" upon learning what he had done. These stories may be apocryphal, but even as apocryphal stories they relate a deeper truth about the partisan war in the Carolinas: it was indeed a brother's war, in which families and friends found themselves on opposite sides. And, as happens in such wars, some of the worst brutalities happened when people found themselves hardening themselves against the enemy they knew all too well. On both sides in the partisan war, the most intense hatred was reserved for American against American.⁵⁷

The entire battle took less than an hour. In that fateful hour, Ferguson's Loyalist troops were destroyed. Early in the battle, Ferguson and his horse went down, which further panicked his men, who realized the battle was going badly. As waves of Patriot forces made it to the summit, the battle became a "desperate melee." As in other battles in these months, many of the soldiers were unwilling to accept surrender. Isaac Shelby, a Patriot survivor, later suggested that the Patriots were in such confusion themselves "continually coming up" and being "scattered in the woods" that they could not stop

⁵⁷ Draper, *King's Mountain* 266, 314-15. This report is based on an anecdote published in the *North Carolina Historical Magazine* in 1867.

firing. But he also admitted that some men had “heard that at Buford’s defeat the British had refused quarters...[and] were willing to follow that bad example.” Other veterans remembered that the countersign word going into the battle was “Buford”. The countersign means the word the Patriots used to identify themselves to each other in the heat of battle. Choosing the name of a now infamous (at least in rhetoric) massacre before battle as the countersign signaled an otherwise unspoken determination to refuse quarter.⁵⁸

In the same way Americans would later use “Remember the Alamo” to rally troops to greater ferocity, “Buford’s play” or “Buford’s Quarter” was used by Patriot forces to muster ferocity. However, it did also have a specific meaning: to refuse surrender. By choosing “Buford” as the countersign, the Patriot forces made the decision not to accept surrenders from the Loyalists. Shelby admitted as much by mentioning that troops were willing to follow the British “bad example.” This decision was reinforced by the fact that the Patriots knew they were in a strong position going into the battle. Military historians question why Ferguson made a stand when he was outnumbered and near reinforcements, not why the Patriot forces engaged him. Seizing their chance for revenge, Whigs signaled their acceptance of a growing general practice: to refuse quarter. James Collins, a veteran of King’s Mountain, reflected that in the battle “death or victory was the only way to escape suffering.”⁵⁹

Having made the decision to kill the defeated enemy, Patriot forces moved to act on that decision. Charles Bowen cut down two men who raised the white flag, although a

⁵⁸ Pancake, *Destructive War* 120. Charles Bowen used the countersign to end a mistaken entanglement with another Patriot, according to his 1832 pension statement. Draper, *King's Mountain* 262-63.

⁵⁹ James P. Collins, "Autobiography of a Revolutionary Soldier," in *Sixty Years in the Nueces Valley, 1870 to 1930*, ed. S. G. Miller (San Antonio, Tex., 1930). 259.

third was finally able to get one aloft long enough for enough troops to respond. Joseph Sevier, who was especially enraged by (false) reports that his father had been killed in the battle, kept firing on Loyalists trying to surrender. He reportedly swore that “I’ll keep loading and shooting till I kill every son of a b__h of them.” One veteran testified that some troops were “crying out ‘Buford’s play’” as they ignored the white flags of surrender. Col. Shelby had to intervene personally, riding between his men and the Loyalists to convince his troops to quit firing. Casualties were high, but Shelby’s actions ended the slaughter, and the Patriots took over 700 Loyalist prisoners. The existence of those prisoners shows that despite the instincts to slaughter, there was a difference of opinion about such tactics in the Patriot ranks. Men with claims to honorable pretensions abhorred such behavior, although they were not necessarily merciful people.⁶⁰

In the aftermath of the battle, the Patriots stripped Patrick Ferguson’s body of his clothes and possessions. Later Carolinians tried to claim that his body was actually stripped by Tories. Then, depending on whether you believe the story about urination or not, his body was abused. (Persistent rumors, widely ignored by modern historians, suggested that the Over Mountain men all took turns urinating on his still-warm body.) Finally, in a mark of some respect, his body was wrapped in an animal skin and buried. He alone received this mark of care and attention, which was attributed to his status as a British officer. His Loyalist soldiers who had died in battle were quickly stacked in careless piles. They were covered haphazardly, in a way that did nothing to protect their corpses from the humiliation and abuse of serving as feed for animals. Survivors reported “all the hogs in the neighborhood gathered into the place to devour the flesh.” For days after the battle, Loyalist families picked through the pile of bodies, looking for

⁶⁰ John Long, Feb. 19, 1823, as reprinted in Draper, *King's Mountain* 578, also 281-82..

their husbands and fathers. Neither Patriot forces nor local civilians made any attempt to properly bury the bodies of their fellow Americans. Disrespect and weariness combined to create a complete lack of regard for human dignity in death.⁶¹

The aftermath of King's Mountain also proves another point about the role of partisan warfare in the Carolinas. The Patriot victory encouraged local Whigs, more of whom joined the partisan bands in the aftermath of the successful engagement. On the other hand, local Loyalists were visibly discouraged by King's Mountain. James Collins, a Patriot veteran, remembered that "for a short time every man could visit his home, or his neighbor without being afraid," because local Loyalists were too discouraged to plunder and harass the local population. Collins also noted with pleasure that many who had been neutral before the battle "shouldered their guns, and fell in the ranks; some of them making good soldiers." Lord Rawdon agreed that local Tories were discouraged, reporting "the defeat of Major Ferguson had so dispirited this part of the country."⁶²

In King's Mountain, we can see many of the themes of the war in the backcountry. There were, of course, many more engagements, but these few form an outline of important issues in the civil war.

As the war slowly turned to the Patriots' favor, the militia was not slow to seize the advantage. After the Battle of Guilford Courthouse, when the British won a narrow victory that largely destroyed their army (a fact many of their officers were painfully aware of even at the time), Carolinian Patriots were encouraged to press home their

⁶¹ Draper repeats this story of a local Tory acting "true to his plundering instincts," only being stopped by a virtuous Patriot. Draper, *King's Mountain* 291. Buchanan, *Road to Guilford Courthouse* 234. Pancake, *Destructive War* 120. James Collins later remembered the families searching for the dead Loyalist soldiers in "great numbers" who had been "thrown into convenient piles" and were being eaten by animals. A few weeks later he saw "all parts of the human frame, lying scattered in every direction." Collins, "Autobiography." 261.

⁶² Pancake, *Destructive War* 120-21. Collins, "Autobiography." 262.

advantage, as a broken British army abandoned much of the Carolinas for Virginia. James Collins and his militia group spent the time “ferreting out the Tories, and such as had been in the habit of plundering, burning and murdering.” While he insisted they differentiated between those who had been neutral (“pet Tories”) and those who had acted against war norms, in fact most Tories found themselves living in fear. When they targeted Loyalists, they pulled down their roofs and dismantled their house and any other buildings. Frightened “fellows, perhaps expecting instant death, would beg hard for life” and were promised their lives in return if “they would leave the country, within a specified time, and never return.” Collins felt this was the merciful and just response, and reflected happily that he didn’t know of any Loyalist who promised to leave under these circumstances who “failed to comply.” The militia lost no time in clearing the country of ideological opposition, although they became more merciful after the war was over. We shall examine the issue of return in later chapters, but it worth considering how Collins felt about it years later, as he remembered frightening Loyalists into leaving. While some went to Mississippi, Louisiana, Tennessee, and Kentucky, others “became good citizens, good neighbors, and men of respectability.” In later years he saw many men he had threatened, but all seemed to fail to recognize him.⁶³

⁶³ Buchanan, *Road to Guilford Courthouse* 378-83. Collins, "Autobiography." 270-72. John Pancake points out that in this period, the militia became more forward about murdering high-ranking prisoners. Colonel Grierson, a widely hated British officer considered especially vengeful to Patriots, was murdered before he could be parolled. Pancake, *Destructive War* 202.

The Uses of Wartime Rhetoric in the Carolina Backcountry

Finally, the last section of this chapter considers the issue of wartime atrocity and atrocity rhetoric more closely. Propaganda has long been a vital part of war, and American Revolutionaries were skilled and enthusiastic manipulators of propaganda long before the war made it to the Carolinas.⁶⁴

British troops, including Loyalists, came to the Sumter household a few weeks after the reduction of Charleston. Thomas Sumter was a well-known Patriot leader, but he had so far remained neutral in the wake of defeat, in the process becoming a recruiting target for both sides. In order to warn him off the Patriot side, but also to use him as an example of what happened to foes, the British sent troops to make an example of him. When they arrived, they found his crippled wife and housekeeper at his house, but Thomas Sumter was nowhere to be found. Making an example, they set out to destroy his house and fields. The women were on the front porch facing down the assembled troops. First, one Loyalist asked the women for the keys to the house. In defiance, the housekeeper offered up the keys by hurling them as far into the grass as she could. The man was undoubtedly irritated by this show of defiance, but it did not provoke him into violence against her. Instead, the troops spread out and burned the fields, destroyed farm implements, and ordered the women to leave the premises. Mrs. Sumter continued to face them down, and the men finally picked her up, chair and all, and deposited her on the lawn a safe distance from the house before burning it down. She and her housekeeper sat together watching their home burn to the ground, until only smoke remained.

⁶⁴ Carl Berger, *Broadsides and Bayonets: The Propaganda War of the American Revolution* (Philadelphia, 1961), Allen Bowman, *The Morale of the American Revolutionary Army* (Washington, D.C., 1943).

I tell you this story because it illustrates several features of atrocity rhetoric and how it was used in the backcountry struggle to cope with tensions over the rules of war. Practically, the attack on Sumter's house had the entirely predictable consequence of bringing him into the war for the Patriots, or as John Pancake put it, he joined with "predictable dispatch." Rather than discourage him, the attacks on his property guaranteed his commitment to the Patriot cause. The story of his female householders' resistance spread throughout South Carolina, cheering women and encouraging men. The story helped recruit militia members to fight under Sumter, and only added to the mystique of irascibility that helped earn him the nickname the Gamecock. Further, the story highlights the tension between the rules of war understood by the participants and their heated rhetoric of violation.⁶⁵

I will return to the Sumters, but first I want to start unpacking the relationship between war atrocity rhetoric and the actual rules of war. There is a disconnect between the rhetoric of war atrocities in the backcountry and the actual conduct of the war. I do not want to deny there were atrocities, for there certainly were. Loyalists and Patriots behaved very badly in the backcountry war, and it was genuinely a civil war where old feuds and new hatreds were worked out under the cover of idealistic allegiances. I wouldn't need to disentangle rhetoric from reality if there was not substance to the charges. Still, just because where there is smoke, there is usually fire, does not change the fact that sometimes all that smoke comes from a very small fire.

The rhetoric of wartime atrocities in the Carolina backcountry was heated. There certainly was some basis for this rhetoric—as legions of historians have noted, the conduct of war in the Southern backcountry was fraught, vicious, and frighteningly

⁶⁵ Pancake, *Destructive War* 71.

fraternal in nature. The war clearly unnerved civilians and military personnel alike. General Greene despaired that the “Whigs and Tories pursue each other with as much relentless fury as beasts of prey,” and British officers were no more enthused. Civilians complained bitterly. Even in the Lowcountry, Eliza Wilkinson was so terrified by rumors from Georgia that she wondered how “a nation so famed for humanity...should, in so short a time, divest themselves of even the least trace of what they once were.”⁶⁶

Rumors of war crimes and atrocities are a staple of almost every armed conflict, and the Revolution was no exception. In the years before the South became the battleground, rumors about the bad behavior of British troops had spread across the colonies as part of a broad propaganda campaign. Rumors of rape were so widespread that Lord Rawdon satirized them, commenting that women on Long Island could not “step into the bushes to pluck a rose without running the most imminent risk of being ravaged, and they are so little accustomed to these vigorous methods they do not bear them with the proper resignation, and of consequence we have the most entertaining court-martials every day.” The pump was already primed for propaganda to serve as a major force in the backcountry civil war.⁶⁷

However, investigation shows that certain kinds of claims were made over and over again in war atrocity rhetoric. Specifically, claims dwelt on certain actions that atrocity rhetoric argued was against the rules of war. These claims were violations of neutrality towards civilians (specifically women, minor children, and aged men),

⁶⁶ General Greene to Samuel Huntington, Camp on the Cheraws, Dec. 28, 1780, Showman, ed., *The Papers of General Nathanael Greene* 7: 9. Gilman, ed., *Letters of Eliza Wilkinson* 10.

⁶⁷ Robin May and Gary Embleton, *The British Army in North America 1775-1783* (Osprey Publishing, 1998) 16. For more on the general propaganda campaigns of the Revolution, see Bowman, *The Morale of the American Revolutionary Army*, Berger, *Broadsides and Bayonets: The Propaganda War of the American Revolution*.

violations of property and the sacredness of the homestead, and violations of the rules of battle conduct, specifically the right to an orderly surrender and to survival as a prisoner of war. In all cases, atrocity rhetoric claimed that the British and their Loyalist allies were committing unspeakable acts unknown in the annals of war, and unacceptable innovations of war. These were fine allegations for recruiting, but not true. Let's briefly consider some of these examples.

The entire mill of atrocity tales focused on threats to women. In addition to Mrs. Sumter being threatened by troops, we return to the story of Martha Bratton at the battle of Huck's Defeat. As the story circulating the backcountry went (becoming even more pronounced by the nineteenth century), in front of thirty some-odd men, one especially enraged Loyalist grabbed a reaping hook from her wall and held it against her neck, fiercely ordering her to disclose her husband's whereabouts. She proudly told this soldier that her husband was with Sumter, risking death while not giving him any of the practical information he was looking for—where Sumter's men were currently encamped. A Loyalist officer from Camden intervened, freeing Mrs. Bratton from her predicament, and chastising the other man for violating her. This story came to illustrate the threat against women on the homefront at the hands of undisciplined Loyalists. How dare they threaten Mrs. Bratton? And, the story also came to be a story of female patriotism and fervor, staring death in the face in order to protect American liberty and her husband's safety. Or at least, that is what people wanted to get out of the story. But the story suggests something else, something that makes it a story about the creation of atrocity rhetoric despite a widely shared understanding of the rules of war. Martha Bratton stared down her attacker and refused to give him what he wanted. If she was truly frightened for her

life, as the story purports, she very well might have behaved differently. Instead, she was saucy, even infuriating. She stared him down because she knew very well that he could not kill her in front of so many witnesses, including officers. Instead, both of them were behaving within accepted grounds. He may well have been angry, but he was performing a theatrical ritual of war. By threatening her, he hoped to create enough fear in her to get her to spill crucial information. She was in no danger under the circumstances. It is extremely doubtful that any collection of eighteenth-century Anglo-American men would have been willing to kill a woman in front of each other, let alone in front of officers, whose pretensions to gentility would have been pierced by such action. Instead, violence was part of an effort to intimidate, in hopes that Martha Bratton did not understand these realities as well as the troops did. Even in the case of rape, credible allegations in South Carolina were lodged against specific members of Tarleton's Legions in groups of one and two. Further, these men were prosecuted by a shocked officer corps.⁶⁸

As we know from the story, Martha Bratton understood the realities of the rules of war as well as the soldiers confronting her that morning. Her intransigence and hostility was a product of her assurance of her own safety, not a patriotism courting death. It was her nineteenth-century descendants who, in promoting the story, showed their lack of understanding of the actual conduct of war by believing the story. When we think about it this way, we can see that Mrs. Sumter's refusal to move off her porch, and her housekeeper's angry actions, were also born from this understanding that their persons were under no real threat. Therefore, the women could be saucy and resentful, letting the troops know how disgusted they were with what was about to happen—the destruction of

⁶⁸ Borick, *Gallant Defense* 152-53. Edgar, *Partisans and Redcoats* 51.

their property, including their home—and perhaps, ultimately, to shame soldiers into sparing some of their property.

Even when offering sexual insults, the threat was usually not violent. Captain Huck's men reportedly taunted Reverend Simpson's wife by trying on the reverend's clothes, mocking her that they looked better in her husband's clothes than he did. They then threatened that she would never see her husband alive again. But while they certainly threatened her sensibilities and his life, she was never in danger herself. And, her husband was already out in the field with the Patriots.⁶⁹

Native American warfare in the colonies had perfected the art of large-scale destruction of crops and farm implements on both sides as a means to enforce control over territory. Such violence against property, while preserving human life (not a major concern in Native American/colonist warfare, admittedly), ensured the destruction of families and communities. The same weapon was now being turned against each other. By destroying homesteads and the work of a lifetime, colonists on both sides turned the backcountry into a maelstrom while preserving the gentility of the protection of persons.

Further, as Wayne Lee has pointed out, traditional Anglo-American thought made the home itself a sacrosanct area of protection. In the seventeenth century, New Englanders viewed the home as the chief identifying mark distinguishing them from Native Americans and giving them an identity as Europeans, increasing their terror and despair when Native Americans destroyed their houses. House attacks also had their roots in crowd actions in England and America—skimmington-like displays in which early Americans targeted houses instead of bodies. In the case of the Boston crowd in the Stamp Act riots, the crowd attacked and demolished the houses of Andrew Oliver and

⁶⁹ Edgar, *Partisans and Redcoats* 75.

Thomas Hutchinson in a an attack seen as an attack on their persons as well as their property. With these traditions meeting, widespread home attacks in the Revolutionary war evoked strong emotions. While officers such as General Marion denied personal responsibility for house burning, seeing it as unacceptable conduct, it was understood as one of the real possibilities of war. People complained about being “turned out of doors,” but it took on a polished cadence, which I submit is a dead give-away that they expected the action. It was not an atrocity, but an accepted, if hated, feature of warfare in the American colonies. Nonetheless, it was a feature Patriots were determined to complain about, and choose when to see it as legitimate or illegitimate.⁷⁰

Officers learned the rules of war from popular manuals, including such classics of the genre reprinted in America as *The Art of War*. The Chevalier de la Valiere warned in his manual that “when the enemies are defeated, and fly full speed, the men must not be allowed to stay to plunder” as the enemy could take advantage. Instead, specific companies could be set to plunder, as “there are rules for plundering as well as for everything else.” De la Valiere was much franker on the subject of plunder than most military advice writers, who tended to disparage the practice. All saw it as something to be regulated for the good of the army. Thomas Simes correctly warned that plunder, while effective as a tool of “terror” (which was certainly true in the Revolution), inevitably made the populace hate the army when “desolation march[ed] before the camp.” Yet much of the official rules of war printed in such manuals avoided certain

⁷⁰ Wayne E. Lee, *Crowds and Soldiers in Revolutionary North Carolina : The Culture of Violence in Riot and War, Southern Dissent* (Gainesville, 2001) 191-93. See also Ferling, *Wilderness of Miseries* . Lee notes that Loyalist claims to the British government were also full of complaints that they and their families were turned out of doors. Jill Lepore, *The Name of War: King Philip's War and the Origins of American Identity* (New York, 1998) 74-79. Robert Blair St. George, *Conversing by Signs: Poetics of Implication in Colonial New England Culture* (Chapel Hill, N.C., 1998) 242-61.

aspects of the actual conduct of war practiced in the colonies. On the other hand, plunder was a major tool of psychological warfare in the Carolinas, as well as a central part of paying and supplying soldiers. General Greene lamented that his own men were “so addicted to plundering, that the Utmost Exertions of the Officers cannot restrain the Soldiers. Nor are the Inhabitants a Whit behind them.” Plunder was so extensive that “the great Bodies of Militia that have been in Service this year employed against the Enemy & in quelling the Tories have almost laid waste the Country.” Greene despaired that plunder in the backcountry had moved far beyond provisioning, as locales became so used to plunder, and plundered each other for retaliation so often that it seemed “that they think of nothing but plundering one another.” Plunder certainly helped inspire many to take up arms largely in self-defense, hoping that an affiliation with one side might at least mean only one side would plunder them.⁷¹

In Ninety Six District, where Loyalists outnumbered Patriots, George Park complained to his cousin that even after taking British protection, their neighbors “set to Rob us taking all our living, horses, Cows, Sheep, Clothing, of all Sorts, money, pewter, tins, knives, in fine Everything that sooted them. Untill we were Stript Naked.”⁷²

As we just saw, the first two classes of atrocity charges, those of violations against neutrals and of violations against homes, naturally went together, although violations against neutrals could happen in other settings. Moses Hall, a young soldier,

⁷¹ Chevalier de La Valiere, *The Art of War* (Philadelphia, 1776) 134-35. Thomas Simes, *The Military Guide for Young Officers*, 2 vols. (Philadelphia, 1776) 1: 108. In contrast to these two military writers, who explicitly acknowledged plunder as part of military provisioning and soldier compensation, Bennett Cuthbertson thought of plunder in terms of soldier theft, and considered it an affront to order that should be punished by throwing soldiers out of the force. Bennett Cuthbertson, *A System for the Complete Interior Management and Oeconomy of a Battalion of Infantry*, 2 ed. (London, 1779) 91. General Greene to General Robert Howe, Camp on the Peedee (S.C.), Dec. 29, 1780, Showman, ed., *The Papers of General Nathanael Greene* 7: 17.

⁷² Edgar, *Partisans and Redcoats* 71.

remembered years later with horror coming across a sixteen year old boy who “having come out to view the British through curiosity, for fear he might give information to our troops, they had run him through with a bayonet and left him for dead. Though able to speak, he was mortally wounded.” Moses Hall treated it as an atrocity that this young man had died, as if he were far too young to be a combatant, and was therefore clearly out of the fray. Yet men younger than he did fight in the backcountry war. Andrew Jackson at thirteen was only the most famous example of a young combatant. If boys of twelve and thirteen fought, a boy of sixteen was very much of fighting age. Once again, the rhetoric of atrocity does not match the facts. Young men who could possibly be soldiers should not hang around battlefields expecting no consequences. The British clearly figured this young man as a spy, and we know that all sorts of unlikely figures actually did serve as spies in the backcountry, including Joseph Kerr, a crippled man in his 20s.⁷³

The third kind of atrocity allegation concerned failure to accept surrender and the murder of prisoners of war, and here the story becomes muddy. There were incidents where each side refused to accept surrender attempts. As we saw above in the discussion of Buford’s Massacre and King’s Mountain, “Remember Buford” served as a ritual invocation encouraging soldiers not to accept surrender. Having discussed the battle above, I now want to consider its use as an atrocity tale. The story spread throughout the Carolinas and certainly helped recruiting efforts in the wake of the defeat at Charleston. The story, tying hatred of Banastre Tarleton to hatred for Loyalists (as the Legion was comprised of New York and New Jersey Loyalists, and over the course of the coming

⁷³ Moses Hall Pension Application, Joseph Kerr later applied for a federal veteran’s pension for his spy activities. His application is extracted in Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 203, 358.

months slowly filled in with South Carolina volunteers), provided the perfect expression of inhumanity in war. “Give ‘em Buford’s Quarter” became the rallying cry in the backcountry. While the logic of refusing surrender already existed in the backcountry, Buford’s Massacre justified such future refusals in the eyes of many Patriots. The legend of Buford’s Massacre became a recruiting tool, but even more it became an excuse to refuse surrender in the future, and a teaching tool to explain to each other why they should not accept surrender. We saw the utility of that decision at the Battle of King’s Mountain. Atrocity rhetoric helped ensure that whatever seemed like an atrocity would now be excused as reciprocity. Atrocity rhetoric in fact helped explain and justify what were the real rules of war. As Wayne Lee has pointed out, the very style of militia warfare, favoring night or dawn ambushes, made it hard to see and control the fighting, and made accepting quarter difficult. When the militia became used to not taking quarter in some settings, they tended to stop accepting quarter in almost all circumstances. Kings Mountain is just one example. Similarly, William Davie justified taking no prisoners during his daybreak ambush of a loyalist unit at Hanging Rock by arguing that the entire attack took place “under the eye of the whole British camp” so that “no prisoners could be safely taken.”⁷⁴

Buford’s Massacre was also used to justify executing prisoners of war. In some cases in the backcountry, quick courts martial were conducted before the unlucky prisoners were hanged in the field. But Moses Hall, a young soldier, described an incident after Pyle’s Massacre when some members of the Patriot militia suddenly went from milling around a group of Loyalist prisoners to attacking them after some men “cr[ie]d out ‘Remember Buford,’ and the prisoners were immediately hewed to pieces

⁷⁴ Lee, *Crowds and Soldiers* 389. William Davie is quoted in Pancake, *Destructive War* 83-85.

with broadswords.” Hall remembered the incident chiefly because it sickened him so much, filling him with “horror” and making him feel “overcome...by a distressing gloom.” This action struck him as an unwarranted atrocity. Yet, in relating the story, he focuses on his own revulsion, but admits he did nothing to stop it. He also gave no indication that anyone else in camp lifted a finger to stop the murders.⁷⁵

Atrocity rhetoric was so attractive in the backcountry war because it fulfilled several practical and emotional requirements. First, it served as a great recruiting tool, and encouraged men not only to sign up for a militia tour, but also continue to enlist again and again. William Gipson, one especially angry young man, signed up for additional terms of duty in the militia to exact revenge on the Tories who whipped his widowed mother, and destroyed their homestead while he was serving his first term of duty. He also used this event to justify later atrocities of his own. As Gipson’s experience suggests, and Moses Hall’s experience with Loyalist prisoners also suggests, atrocity rhetoric served to instruct men in the real rules of militia engagement by firing them up with the idea that the other side did it first.⁷⁶

Many men fought in loosely-organized bands on either side who chiefly operated to terrorize the opposing side and to dispense what they considered summary justice. Revenge motivated many. William Gipson spent over two years in such units during the war, over five sessions. His narrative clearly paints the way the cycle of revenge and retribution played out. In 1777, a roving band of Loyalists warned him of the consequences of his actions during his first six-month volunteer session. They “tied up

⁷⁵ Moses Hall’s Veterans Pension Application as extracted in Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 202.

⁷⁶ William Gipson, Pension Application, Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 187-89.

and whipped” his widowed mother, burned the house, and destroyed all the property. Gipson did not let this dissuade him from continuing to fight for the Patriots, but it certainly embittered him towards the Tories and made him eager for revenge. Perhaps the other lesson was, once the house and the crops were destroyed, what was left to stop an embittered man from doing his worst? In the aftermath of this destruction of “his home and patrimony,” Gipson joined “a small party of Whigs who had been more or less harassed and inspired by the disaffected.” Gipson indicates that many militia units were formed because of the desire of soldiers to fight with a body of men equally as committed to revenge as they were themselves. Such harassment was “inspir[ation]” to each side, giving them new reasons to fight, and new reasons to seek painful revenge, not merely advantage.⁷⁷

A year later, Gipson and his fellow partisans got their chance for revenge when they captured two unlucky Loyalists, Hugh McPherson and Campbell (identified only as one of a member of the copious Campbell family). They quickly dragged the two men, whom they captured at an individual’s home in Guilford County, North Carolina (backcountry North Carolina), fifteen miles to the Guilford Courthouse (later the scene of a pyrrhic victory for Cornwallis) where they convened an indecently hasty court martial. McPherson was sentenced to death and “shot in the presence of this applicant.”⁷⁸ Campbell was sentenced to torture, specifically “*to be spicketed.*”[emphasis in original] Gipson explained the torture device to the apparently fascinated person preparing his application: “that is, he was placed with one foot upon a sharp pin drove in a block, and was turned round by one Thomas Archer, to the best of his recollection, until the pin run

⁷⁷ William Gipson Pension Application, Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 185-88.

⁷⁸ Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 188.

through his foot.” Gipson felt moved to explain to his listeners in 1832 Indiana, far removed from the Revolution in the Carolinas, that while such torture might seem barbaric and inhumane now, in the context of that war it was perfectly understandable.

This applicant cannot forbear to relate that as cruel as this punishment might seem to be to those who never witnessed the unrelenting cruelties of the Tories of that day, yet he viewed the punishment of those two men with no little satisfaction, as they were then supposed to belong to the identical band who inhumanly inflicted corporal punishment upon his helpless parent, who had committed no other offense than that of earnestly exhorting her sons to be true to the cause of American liberty.⁷⁹

His mother may or may not have actually “exhort[ed] her sons to be true to the cause of American liberty,” but her body and possessions had been used as an instrument of social control, and that enraged her son. In his individual case, when he left to fight for the Patriots, he gave free rein to his feelings of revenge.

Atrocity rhetoric also sustained the home front. War is hell, and living amidst war makes that clear. Despite all the complaints against plundering, crop destruction and house burning, people understood that these were the inevitable consequences of war. Nonetheless, they were discouraging and infuriating to people actually subject to them. Therefore, atrocity rhetoric served two purposes in mustering enthusiasm on the home front. One purpose is that complaining about practices that were rampant but acceptable under the rules of war made people feel better—call it cathartic release. Think back to the story of the Sumters at the beginning of this section. Other women who lost their homes could at least be cheered that even Mrs. Sumter had suffered the same thing. There was solidarity in sacrifice in the backcountry war.

⁷⁹ Dann, *The Revolution Remembered: Eyewitness Accounts of the War for Independence* 189.

Finally, atrocity rhetoric served to work out terrific anxiety about the unsettling nature of American warfare. American colonials had spent two centuries developing a very brutal, nasty, and personal method of warfare with the Native Americans. Backcountry settlers were used to, if not resigned to, the terror of frontier war with Native Americans. But the Revolution unleashed these methods of fighting on a wide swath of the population of the Carolinas. Further, now instead of blaming Native Americans for barbarity, Americans were left with the psychic trauma of violence committed by each other. Atrocity rhetoric was a way to grapple with the complex feelings that arose from this painful reality.⁸⁰

Conclusion

In conclusion, the Revolution was a civil war full of bad behavior. The norms of Native American warfare were violated on each side by militias fed by local enlistments, all aware that losing would mean the loss of their lives, and complete ruin for their families. While each side was aware of norms of warfare, as Wayne Lee has shown, the logic of retaliation also had strong cultural backing. Further, the logic of retaliation extended to both militia activity in enforcing control, and battlefield activity. Each side grew increasingly hardened to denying quarter, and even to (unsanctioned) murder of prisoners. Militia tactics helped ensure these travesties, as ambushes in low light made it difficult to see much at all.

⁸⁰ Ferling, *Wilderness of Miseries* .

South Carolinians suffered much. In 1780, in the thick of the guerilla war in the South, approximately two thirds (65%) of the Patriot casualties were on South Carolina soil, and an astounding 90% of the wounded survivors got their battle scars in South Carolina. Overall, South Carolina alone accounted for at least 18% of the Patriot battle deaths throughout the Revolution, and more than 30% of the wounded. These estimates are very conservative, since they don't include the many tiny skirmishes, nor do they include Loyalists.⁸¹

We don't know the total economic value of the destruction of property—the sheer value of the crops and houses destroyed, or the number of homes destroyed. Yet we can gain a sense of the devastation in the haunting reports of those who looked around post-war South Carolina. Joseph Kershaw complained that British troops had burned “the greatest Part of the best Houses” in Camden, while Georgetown District saw almost one hundred houses burned in two waves of British fury. William Drayton claimed he could follow the British path through the state by following the chimnies, which were all the British had left standing.

Yet Americans also made much of the ways in which the war didn't play out like a nicely-published war manual. Propaganda was crucial to the American way of war, and the backcountry fighting was no exception. Both sides, but especially the Patriot side, actively used atrocity rhetoric to handle the strains of war. People who lost their homes or goods to plunder and retribution took sustenance in atrocity tales that made their losses

⁸¹ Nadelhaft, *Disorders of War* 61. Nadelhaft draws on figures compiled by Howard H. Peckham, ed., *The Toll of Independence: Engagements & Battle Casualties of the American Revolution* (Chicago, 1974). While much research went into these figures, they are still a ‘best guess,’ as casualty figures are hard to find for some of the smaller engagements. Further, these figures do not include Loyalist casualties, which were also considerable.

seem common. Men were trained by atrocity rhetoric to fight longer and harder, in order to avenge often imaginary misdeeds.

Perhaps the very importance of atrocity rhetoric helped Americans reconcile themselves to Loyalists after the war. While they were very invested in the rhetoric, the effort of making it seem real must have sometimes occurred to many. As long as individuals could later be separated from the imaginary image of the British myrmidon, they could be forgiven political bad choices. Men and women who knew that atrocity rhetoric was just that—rhetoric—could readjust their ideas after the Revolution to admit that Loyalists had not acted as savages.

CHAPTER TWO

HEADING OFF TROUBLE: THE CONFISCATION ACT AND THE PROBLEM OF POSTWAR NORMALCY, 1782

In 1782, after Yorktown but before the formal resolution of the Treaty of Paris, the South Carolina General Assembly met to lay the groundwork for the post-war state. This particular assembly became known as the Jacksonborough Assembly, which is the phrase I will use to designate the 1782 General Assembly meeting and its decisions. South Carolinians wanted a resolution of the status of Loyalists. The state was still in the midst of war. Hatred against Tories ran hot among all sorts of people, from enlisted men in the militia, to elite Patriot planters, to women of all ranks. In the backcountry and Lowcountry, people had suffered immensely. The war had been, and continued to be, violent. Many people did not want their former neighbors to return. Others were hoping to personally profit from the travails of the Loyalists. However, more positively, there were significant and enduring personal ties between people on both sides. Wartime sometimes drove people to solidify those ties despite the strains.

South Carolinians agreed that it was a bad idea to expel all former Loyalists. Among other reasons, if they expelled everyone who had ever cooperated with the British, they would have to expel most of the state. But they also agreed that some people had made themselves so notorious and obnoxious to their neighbors that they

could never be allowed to remain. Between these two poles was a wide range of possible actions. Legislators were especially concerned with two aspects: ensuring a satisfactory final end to the war, and heading off any move among citizens for vigilante justice.

In order to secure these aims, the legislature took a page from the British occupiers and confiscated Loyalist estates. The South Carolina legislature, along with seven other states, came to the conclusion that they should confiscate the estates of certain Loyalists deemed more criminal or incorrigible than most, and banish them from the state. In so doing, they treated Loyalists as traitors, not citizens. In other cases, they would amerce the estates (take a one time tax of 12% from the value of the entire estate) and allow Loyalists to remain citizens. Confiscation and amercement publicly punished prominent men who had used their power and authority to help the British cause. They were generally wealthy men, drawn from the merchant, planter, professional, and artisan elite. The General Assembly also moved to create a parallel system of justice for war crimes, which would be administered and decided by the restored criminal courts. As they would quickly discover, the devil is in the details.

But the final story was not about punishment. The General Assembly and the governors sought to encourage Loyalists to return to the Patriot side. In 1781, Governor Rutledge offered two different public proclamations to persuade Loyalists to leave occupied Charleston and serve in the Patriot militia. The Confiscation and Amercement Acts also worked to encourage Loyalists to leave British protection and cast their lot with the Americans. In fact, despite South Carolinians' rage at Loyalists and the British, they proved remarkably tolerant. Only 400 men, or perhaps 10% of the white people who registered to leave Charleston (without even counting those Loyalists who never left),

were subject to confiscation or amercement. South Carolinians, even at the moment when feelings were highest, were actually surprisingly tolerant of Loyalists.¹

A British Model: the Sequestration of Patriot Estates

The British were the first in the Revolution to use property seizure to punish their political and military opponents, following a known European model. In Charleston, Lord Cornwallis ordered the sequestration of over a hundred estates in September 1780, including the estates of such prominent Patriots as Christopher Gadsden, Francis Marion, Henry Laurens, and Governor John Rutledge. Sequestration removed estates from their owners, but allowed a portion of the estate's profits for the support of their families, though not the proscribed men. Cornwallis appointed John Cruden, a Loyalist from Wilmington, North Carolina, as the chief commissioner of sequestered estates. Bryan Cape, a Charleston merchant, was appointed the deputy commissioner. Unsurprisingly, Bryan Cape was named in the Confiscation Act in return for his acceptance of this particular commission. Other members of the Lowcountry establishment filled out the ranks of sequestered estate administrators. While these men often proved to be competent estate managers, they also were hated symbols of British authority and despotism to those whose estates were sequestered. While later petitions for clemency would show that South Carolinians preferred local administrators to British-imposed

¹ These figures are based on the British commander's counts of those who registered to leave Charleston on British convoys in the summer of 1782. Lambert, *South Carolina Loyalists in the American Revolution* 254.

officials, they did not extend this general preference to administrators of sequestered estates. These Commissioners of Sequestered Estates became prime candidates for confiscation themselves when the tide of war turned against them. Since many members of the Jacksonborough Assembly had been subject to sequestration, this is not surprising.²

Sequestered estates were worked to support and feed the British troops, so Patriots were aware that their land and their slaves were supporting the war effort against them. Jerome Nadelhaft has suggested that at least sequestered estates were protected from plunder and despoliation, because the British had every reason to keep the estate productive. If this was the case, it was small comfort to outraged Patriots, who were well aware how much they had lost, and were afraid of what they would find when they saw their properties again. Further, they alleged that the British had stolen their slaves for personal profit. (As Sylvia Frey and others have shown, South Carolina slaves used these opportunities to liberate themselves.) Further, there was substance to these claims. Again and again during the war, the British took slaves owned by Patriots, sometimes offering them freedom, but sometimes simply capturing such slaves and selling them into other British possessions like Jamaica. British evacuation from Charleston was held up for several months due to a dispute between British and American commanders over slave property.³

The British had also banished prominent Patriots from Charleston. Sixty-five prominent Patriot leaders were exiled to St. Augustine, where they spent several

² Walter Edgar, *South Carolina: A History* (Columbia, S.C., 1998) 238. Lambert, *South Carolina Loyalists in the American Revolution* 236. For a more detailed take on the sequestration administration and its consequences, see Jeffrey J. Crow, "What Price Loyalism? The Case of John Cruden, Commissioner of Sequestered Estates," *North Carolina Historical Review* 58 (1981): 215-33. I will explain what I mean by a local preference for self-chosen leadership under occupation at more length in Chapters Three and Four.

³ Nadelhaft, *Disorders of War* 66. Sylvia Frey, *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton, N.J., 1991). Lambert, *South Carolina Loyalists in the American Revolution* 242-44.

miserable months. Christopher Gadsden was perhaps the most famous of the St. Augustine exiles. They were eventually exchanged, but were still banished from South Carolina. In an additional insult, their wives and children were also banished from South Carolina. Most of the exiles and their families retreated to Philadelphia.⁴

South Carolina legislators were also no doubt aware that sequestration had been used in other colonies by the British, and that during the war other states had used sequestration as a model for denying Loyalists the use of their properties during the war. Massachusetts, for example, sequestered some estates, putting off final disposition of Loyalist estates while British troops were still in the area. Georgia Patriots, usually confined in the same prisons as South Carolinians, also faced sequestration of their property. In all cases, sequestration effaced the line between permanent confiscation and temporary deprivation, allowing each side to intend to make the arrangement permanent while holding out the idea that the arrangement could be changed.⁵

Sequestration and exile offered potential models for dealing with Loyalists. The 1782 General Assembly members had themselves suffered from each of these fates. In just one example, Henry Hughes, a member of the House of Representatives for St. James Santee in 1782, had his own estate sequestered by the British during the war. George Flagg, a delegate from St. James Goose Creek, had spent much of the war as an exile in St. Augustine. There was also a certain poetic justice in turning the situation around and doing to the Loyalists what the British had done to the Patriots.⁶

⁴ Lambert, *South Carolina Loyalists in the American Revolution* 195.

⁵ David E. Maas, *The Return of the Massachusetts Loyalists* (New York, 1989) 250-55. Robert S. Lambert, "The Confiscation of Loyalist Property in Georgia, 1782-1786," *William and Mary Quarterly* 3rd. ser., 20, no. 1 (1963): 80-94.

⁶ Walter B. Edgar and N. Louise Bailey, eds., *Biographical Directory of the South Carolina House of Representatives*, 4 vols. (Columbia, S.C., 1977) 3: 235-36, 356-57.

After the Confiscation Acts were passed, Henry Laurens defended them to a British friend by reminding him that “America will plead example; wherever Britain conquered or imaginarily conquered she sequestered, confiscated plundered & what she would not carry off, Savage-like she destroyed.” By turning to a scorched-earth policy, the British had ensured that Loyalists would be treated in the same way that the Patriots had been under British occupation. They had destroyed property, but also planned to “pay the Expence [of war], & the National debt out of forfeited Estates.” Now, the South Carolinians would turn the tables by using Loyalist estates to pay back the war debt, just as the British had planned to use Patriot estates.⁷

The British had provided a model for dealing with internal enemies when they sequestered estates and sent politically sensitive prisoners of war to St. Augustine, safely away from the colony. Further, they provided moral justification for victorious South Carolinians to act similarly to Loyalists. Sequestration was a part of war administration before the Revolution, but its use in South Carolina cemented it as a tool to punish recalcitrant internal enemies.

⁷ Henry Laurens to Richard Champion, Nantes, August 10, 1782, David R. Chesnut and C. James Taylor, ed., *The Papers of Henry Laurens*, 16 vols. (Columbia, S.C.) 15: 561.

“the Bill for disposing of Certain Estates and banishing Certain persons”: The South Carolina Confiscation Act of 1782⁸

On January 18, 1782, Governor John Rutledge formally addressed the South Carolina General Assembly. For Rutledge personally, it was a triumphant moment. Rutledge had been forced to flee the state somewhat ignominiously when it became clear that the British would take Charleston. Now free and at the head of a new independent state legislature, he thoroughly enjoyed the moment with a long welcoming address laying out the needs of the new state, while carefully deferring (as much as a proud man could) to the prerogatives of the Assembly.⁹

With unhidden pleasure in his tone, Governor Rutledge gave his lengthy address both to the legislators and the general public, rushing to publish his remarks to bolster public morale and paint himself as a far-sighted thinker. After waiting eagerly for the Assembly to finally reach a quorum, he opened with a reminder of the “Calamities of War,” especially the “Wanton and Savage manner” in which the British and Loyalists had prosecuted the war. (All of these phrases literally come from the first sentence.) Rehearsing a history of Southern, and especially South Carolinian, heroism during the harshest phase of the war, Rutledge bolstered the high emotions of a victorious people.

⁸ A. S. Salley, ed., *Journal of the Senate of South Carolina January 8, 1782--February 26, 1782* (Columbia, S.C., 1941) 83, among other places. This was the provisional title of the confiscation act as read three times in the House of Representatives. It then became Act. No. 1153, “An Act for Disposing of Certain Estates, and Banishing Certain Persons, Therein Mentioned,” Cooper and McCord, eds., *Statutes of S.C.* 4: 516-23, 6: 629-32, hereinafter referred to as the Confiscation Act.

⁹ Daniel J. McDonough, *Christopher Gadsden and Henry Laurens: The Parallel Lives of Two American Patriots* (Sellingsgrove, U.K., 2000) 243. For more on post-war opening addresses to the legislature in South Carolina, and the importance of them in ensuring harmonious, workable relationships between the governors and the legislature, see Christopher F. Lee, “The Transformation of the Executive in Post-Revolutionary South Carolina,” *South Carolina Historical and Genealogical Magazine* 93, no. 2 (1992): 85-100. Lee, I should note, makes the point that John Rutledge was a wartime governor, not a post-war governor, and begins the crux of his analysis with John Matthew’s address to the General Assembly in January 1783.

After lengthy remarks on the history of the war in South Carolina, the brutality of British and Loyalist conduct towards South Carolinians, and the current state of military affairs, Governor Rutledge offered his suggestions of legislative action. Action against Loyalists was at the top of the list, and Rutledge called for a specific set of policy directives for dealing with Loyalists.¹⁰

Opening the discussion on the fate of Loyalists, Rutledge suggested:

Another important matter for your deliberation, is the conduct of our Citizens as Voluntarily avowing their allegiance, and even glorifying in their professions of Loyalty and attachment to his Britannick Majesty, have offered their Congratulations on the Success of his Arms, prayed to be embodied as Royal Militia accepted Commissions in his Service, or endeavored to Subvert our Constitution, & re-establish his power in its' stead,--Of those who have return'd to this State in defiance of a Law, by which such Return was declared to be a Capital Offence, and have abetted the British Interest, and of such whose behavior has been so reprehensible that Justice and Policy forbid their free readmission to the rights and Privileges of Citizens.¹¹

In so doing, Rutledge not only called for punishing Loyalists, but also suggested very particular categories to guide the Assembly in their deliberations. Further, he gave a reason for those distinctions: the Assembly should single out those individuals who “Voluntarily avow[ed] their allegiance,” meaning they chose Loyalism. This was a complicated question, of course, as many of these people simply sought the best accommodation possible with the British after the independent state government fell. Still, despite the fact that this was a difficult category to defend in the context of individual choices, Rutledge signaled early that legislators and the public should and did

¹⁰ A. S. Salley, ed., *Journal of the House of Representatives of South Carolina, January 8, 1782-February 26, 1782* (Columbia, S.C., 1916) 10-12. For much more on John Rutledge's political career, including his sizable missteps, see James Haw, *John and Edward Rutledge of South Carolina* (Athens, Ga., 1997).

¹¹ Salley, *House J. 1782* 12. Versions are also available in The Governor's Messages (Rutledge Administration, Jan. 18, 1782) SCDAH, and published as John Rutledge, *The Speech of His Excellency John Rutledge, Esquire, Governor and Commander in Chief of the State of South-Carolina, to the General Assembly, Met at Jacksonburgh, on Friday the 18th Day of January, 1782* (Jacksonborough, S.C., 1782). (Early American Imprints Series)

draw distinctions between active involvement in the British cause of reducing South Carolina, and passive accommodation with occupation or outright Patriotism. For men, put bluntly, this was the difference between active and passive citizenship in war, a concept I will elaborate at greater length later. Rutledge was not the only voice calling for official sanctions against Loyalists, but he used his authority to argue for classifications that targeted certain actions and classes of people, and gave a wider theory of citizenship and duty to explain these distinctions. He enunciated a theory of unforgiveable conduct during war (voluntarily abdicating South Carolina citizenship, including the duty men owed the state) that explained why and how the Assembly should work.

Let's break down these specific categories of people. The crime that underlay everything from "voluntarily avowing their allegiance," "offering congratulations on the Success of his Arms," and "pray[ing] to be embodied as Royal Militia" was that these men used their public reputation to support the British cause. Rutledge argued that those who used their good names to help the British "Artfully seduce[]" other South Carolinians to join them should be signaled out for punishment. The purpose of these public addresses was to convince wavering Patriots to give up and accept British protection. In the depths of despair after the fall of Charleston, accommodation was common. Signing a congratulatory address to the British conquerors expressing warm wishes for the occupation was a step too far.¹²

John Rutledge's classification focused on prominent men drawn from the elite ranks of society. By focusing on men who had taken officer-level commissions in military forces or the civil administration of occupation, he eliminated most ordinary

¹² Salley, *House J. 1782* 11.

South Carolinians from those official deliberations. He also ensured that those Loyalists singled out for punishment were those who had been most public in their support of the British. In arguing for the inclusion of those who “accepted Commissions in his Service,” Rutledge lumped together holders of civil and military commissions. Those who had taken civil commissions, rather than being less culpable than those who had served as militia officers, had subverted the state constitution, and therefore the health of the nation, by serving in the civil administration. By so publicly acting for British government, they had signaled affiliation with the Loyalist cause at a time when South Carolina’s fortunes were at their lowest ebb. Therefore, they too needed to be punished and excluded as citizens.

Next, consider “those who have return’d to this State in defiance of a Law, by which such Return was declared to be a Capital Offence.” Rutledge here meant Loyalists who had taken an early and active part for the British before the events of 1780. These Loyalists had been forced to flee the state, and had been forbidden by law to return. When fortunes changed, some of them returned to occupied Charleston and served the British forces. (Others from the early group never returned to South Carolina.) Finally, he added a catch-all category for those “such whose behavior has been so reprehensible that Justice and Policy forbid their free readmission to the rights and Privileges of Citizens.” Rutledge was here speaking of anyone, regardless of rank or specific commission (or lack thereof) who had engaged in open plundering, violent harassment, or murder during the conduct of war. In a war where both allegations of atrocities and actual bad behavior were not hard to find, men with wide-ranging reputations for such behavior were not welcome in the newly independent state.

Unfortunately, the very nature of what behavior did violate honorable conduct was a fraught subject. Men on both sides of the conflict had participated in activities that violated the exclusions Rutledge had drawn in his proclamation. House burning, which was one such exclusion, was a deliberate policy of both sides in their efforts to control opposition. Plundering was widespread, and difficult to prove. Several Patriot militia leaders had also plundered extensively, sometimes notoriously so. Thomas Sumter's troops were such prolific plunderers that they caused a public outcry. Yet the General Assembly hoped to avoid too much public discussion of those uncomfortable facts. In addition, as members of the elite, they shared an implicit definition of Toryism, in which a few elite men chose Loyalism from principle or weakness, while legions of lesser men, lacking that economic independence that was the marker of gentleman status, were swayed by the lust for gain. These men were Loyalists because it offered a good chance for plunder (or so the reasoning went). Rutledge pointed to what kind of men he believed were often Loyalists earlier in his address when he reminded legislators that the British had employed "Indians, Slaves, and *desperate Banditti* of the most profligate characters" [emphasis added] to prosecute their war.¹³

Governor Rutledge also made explicit the calculations behind considerations of the status of Loyalists. In the governor's mind, but also in the minds of many citizens, these Loyalists were such men whom "Justice and policy forbid their free readmission to the rights and Privileges of Citizens." Citizenship was the hard-bought reward for the war. Citizens of a fragile new state needed to be reliable, upright persons, and by so

¹³ Salley, *House J. 1782* 10. This line about "desperate banditti" both characterized the way many thought about Loyalist military leaders and offered a possible escape. Gentlemen who had taken protection and acted honorably could not be construed as desperate banditti. This sets up the claims for honor in the petitions of Loyalists, who sought to show that they were not the desperate banditti of lore.

crassly falling to the knees before invading British forces and taking their side, Loyalists had proved themselves to be unworthy. Therefore, they must be excluded from citizenship in order to ensure a safe, prosperous and stable South Carolina. “Justice and policy” also demanded that the government make a public example of such men.

Governor Rutledge not only demanded public punishment, but also questioned what the proper balance between punishment and clemency for Loyalists should be. Congratulating South Carolinians on their generosity of spirit thus far, he noted that “the Extraordinary Lenity of this State has been remarkably conspicuous.” Rutledge gloried that “...we have forbore to take even the Profits of the Estates Of our most implacable enemies.” But now, in need of money, and anticipating final victory, John Rutledge thought the time had come for the “forfeiture and appropriation of their Property.” As an accomplished orator, Rutledge urged the General Assembly to remember that many Patriot citizens had lost life and property—Patriot anger must be assuaged. Rutledge pointedly reminded the Assembly that “...many of our firmest Friends have been reduced, for their inflexible Attachment to the Cause of their Country, from Opulence to inconceivable Distress, and if the Enemy’s Will and power had prevailed, would have been doomed to Indigence and Beggary.” The “firmest friends,” like General Marion, had not wavered after the fall of Charleston. They had shown an “inflexible attachment” that stood in marked contrast to the flexibility of Whigs who took British protection and went from supporting the American cause to signing congratulatory addresses to the British conquerors. Of course, Rutledge was also smoothing out the many shades of grey

with adroit oratory. Claims of justice required that people on the losing side pay for the pains of the winners.¹⁴

Governor Rutledge also anticipated the difficult question of how to treat Loyalists' dependants. If the legislature chose to confiscate the property of Loyalists, their families would be vulnerable. But if it allowed them to keep family property, male Loyalists could potentially reclaim their properties at a later date, or have their wives sell the property and join them abroad, bringing the proceeds to cushion the transition to a new life. How should competing goals be realized—the protection of women and children and the punishment of male Loyalists? Rutledge argued that provision would have to be made. “It will redound to the reputation of this State, to provide becoming support, for the families of those whom you may deprive of their Property.”¹⁵ As gentlemen, they should protect other men's dependants, while depriving their families of the greater part of their wealth.

After Rutledge so thoroughly laid out a plan for consideration, the General Assembly went through a lengthy process to determine its own strategy. Largely adopting the categories and assumptions that Rutledge proposed, the Jacksonborough Assembly enacted a Confiscation Act on February 26, 1782. The final legislation defended itself through a lengthy preamble that channeled Rutledge's words opening the Assembly. While other states also had acts designed to punish Loyalists, South Carolinians still felt it necessary to explain why they moved against Loyalists. They praised themselves for the great control the state showed in having “forborne even to

¹⁴ Salley, *House J. 1782* 13.

¹⁵ Salley, *House J. 1782* 13.

sequester the profits arising from the estates of British subjects, the enemy,” but rapidly moved on to confiscate those very estates.¹⁶

The Confiscation Act had several audiences and purposes. The primary audience was South Carolinians of all ranks. The General Assembly needed to “solve” the problem of the Loyalists in order to firmly assert their own authority. The legislators did genuinely want to punish the Loyalists, but they also needed to be seen as an effective legal body that was able to take charge in the state. While the actual work of the General Assembly was closed, it was no secret. Newspapers carried all the news they could find. The armed forces, which were still active and in which large numbers of South Carolina men were still enrolled, were involved in the preparations for the General Assembly, comprised the majority of the members of the Assembly, and large numbers of them were guarding the Jacksonborough Assembly. All of them were audiences. Loyalists were another audience. The *Royal Gazette* reported the lists of proscribed names in the confiscation act.¹⁷

The preamble to the Confiscation Act told a long and pitiable history of British infamy against South Carolina, justifying their actions by reiterating the history of British sequestration. South Carolina legislators pointedly reminded Loyalists and Britons that the British had first made it legal to confiscate Patriot property in 1775 as a means to subvert American aims. They also bitterly reminded the targets of the legislation that:

the enemy, in violation of the most solemn capitulations and public engagements, by which the property of individuals was secured to them, seized upon,

¹⁶ Cooper and McCord, eds., *Statutes of S.C.* 4: 516-23. This compulsion to justify was hardly unique to the Confiscation Act. Instead, like the lengthy defenses in the beginning of the Declaration of Independence, these defenses seem part and parcel of the Revolutionary mindset.

¹⁷ Lambert, *South Carolina Loyalists in the American Revolution* 240. Mar. 20, 27, 1782, *Royal Gazette*.

sequestered, and applied to their own use...and have committed the most wanton and wilful waste of property...to a very considerable amount.”¹⁸

British plunder, while matched tit for tat by American plundering, was invoked as a justification for all acts of revenge.

The most intense rhetorical anger was directed at the British for executing Col. Hayne. His case was the example of British perfidy towards Americans that justified the Confiscation Act. While never mentioned by name, his case was extensively explained in the Preamble:

and from the general tenor of the enemy’s conduct, in their wilful and wanton waste and destruction of property as aforesaid, committing to a cruel imprisonment, and even hanging, and otherwise putting to death in cold blood, and an ignominious manner, many good citizens who had surrendered as prisoners of war.¹⁹

The entire lengthy argument about the reasons behind the Confiscation Act served to justify the step of confiscating property, which suggests that both supporters and opponents of the bill shared a sense of unease about the legality of such a move, even if they were divided on the morality and practical necessity of it. They were so careful to muster not only a moral argument in favor of confiscation (meant to persuade citizens) but a legal argument to support taking property.

Despite misgivings, the Jacksonborough Assembly concluded after the lengthy recital of wrongs done them that “public justice and policy” demanded confiscation and banishment because to “afford protection any longer to the property of British subjects” would controvert public justice. Confiscation, in short, was a policy begun by the British

¹⁸ Cooper and McCord, eds., *Statutes of S.C.* 4: 516-17.

¹⁹ Cooper and McCord, eds., *Statutes of S.C.* 4: 517. For a more detailed history of the death of Hayne, see David K. Bowden, *The Execution of Isaac Hayne* (Lexington, S.C., 1977).

with great lust, and followed by the South Carolina General Assembly out of a desire for public justice, or so they claimed.²⁰

The Confiscation Act closely followed Governor Rutledge's categories, dividing the list of names into six categories, each with an explanation of why those individuals were singled out for punishment. Certain individuals could potentially belong in more than one category, but the Act assigned each person to one. The six categories went in rough order from least to most criminally culpable, just as Rutledge had finished with those who were "so reprehensible." In the Act, the first list was British citizens who held South Carolina property, and the final (sixth) list was composed of people whose actions were considered so hateful that their crimes were not explained, but were persons simply deemed "inveterate enemies."²¹

The first list was composed of people who were "known to be subjects of his Britannic Majesty." In practice, these sixty-three people, properties, and merchant firms were British citizens not resident in America (absentee landlords). They were not necessarily criminal themselves, but they were absentee landlords. The General Assembly did not bother to explain its rationale, perhaps because while cruel, such action only confiscated investment property not tied to people most knew well. The only well-known members were merchant firms, whose holdings were confiscated largely to protect American debtors. It was certainly the only list that named corporate entities as well as

²⁰ Cooper and McCord, eds., *Statutes of S.C.* 4: 517.

²¹ When the original editor of the compilation of historic codes treated the Confiscation Act, he chose to publish both the Confiscation Act and the Amercement Act without the list of names. The next editor rather snippily suggested, "the Editor had no discretion to make any such omission." He was concerned that the omission of those names could affect people researching court cases, but I am amused that the original editor (Thomas Cooper) missed the point of the act. While they explained themselves eloquently, the heart of the public message was in this long list of names in the act, named in public so that everyone who saw or heard of the act could check that their enemies had been punished. The names were published as Cooper and McCord, eds., *Statutes of S.C.* 6: 629-32. Confiscation Act quote from Cooper and McCord, eds., *Statutes of S.C.* 4: 518. Salley, *House J. 1782* 12-13.

legal individuals. The fact that corporate entities such as trading firms were organized under this classification suggests that absentee property holders were considered fair game because they lacked the protections of American citizenship. Charles Cotesworth Pinckney, a supporter of confiscation and Jacksonborough Assembly member, argued a year later in his capacity as an attorney for one deceased absentee (and minor son) that the General Assembly included many estates because “it was not known who were the Heirs or Devisees,” and it was easier to restore property later than to allow “our Enemies” to get their hands on the property for lack of care. More to the point, perhaps, the absentees were in a poor position to fight confiscation.²²

The second list was composed of people who were so “desirous of evincing their attachment to the king of Great Britain, [that they] congratulated Sir Henry Clinton and Mariot Arbuthnot, Esquire, on the reduction of [Charleston] fortress.” The third list confiscated land from people who, upon the fall of Charleston, publicly petitioned for positions in the royal militia, signaling their willingness to take up arms for the King (and against their fellow South Carolinians). The fourth list specified those who had signed congratulation to Earl Cornwallis on his success in conquering Camden, and by that, the interior. This Act characterized those who had signed such addresses as “so lost to the feelings of humanity” and so “thoroughly attached to the British interest” that they were willing to put their names to a document whose purpose was public persuasion. The Addressors, as they were called, were so harshly treated because they had used their names to help the British muster support. Thousands of men took allegiance oaths in the

²² Cooper and McCord, eds., *Statutes of S.C.* 4: 517. Charles Cotesworth Pinckney on behalf of Mrs. Burn, Widow of John Burn, Feb. 26, 1783, Petitions Received by Commissioners of Forfeited Estates, Folder 5, Box 5, Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, S 126170, SCDAH.

aftermath of the fall and took protection. But only some signed the official welcoming addresses. Robert Lambert called the signers “marked men.”²³ The primary crime of men in all three categories was to publicly support the British efforts with their names. These men used their power and influence on behalf of the British at a moment when the Americans were at their weakest. Practically, they also made their identities as Loyalists visible to everyone, leaving a record of their actions that was readily available to the Jacksonborough Assembly.

Public appearance and character was important to eighteenth-century Americans, with a sense of palpable urgency hard to recapture now. Merchants, for instance, worried that business failures, even those caused by currency shifts, commodity price swings, and other market actions, would be regarded as personal character flaws. They accused each other of moral failures, and of being unable to live up to the ideals of manly self-mastery. A “blot” on a man’s character reduced him from equality with other men, making the avoidance of disclosure very important. Real men were expected to step up to the plate in troubled times—the best proof of real virtue. Self-sacrifice was part of the code of honorable citizenship. Loyalists had failed at all the above. Personal reputation also depended on men continually proving that they could rise above the temptations of personal interest to act on behalf of the entire society. It was this quality that underlay the logic of patriarchy, and therefore society. Well-off and professional men who should have understood the necessity of resisting personal self-interest in their public

²³ Lambert, *South Carolina Loyalists in the American Revolution* 95.

roles as citizens had instead massively failed—lending their names to the destruction of their own government on behalf of their own self-interest.²⁴

Further, this insistence on the importance of personal reputation in oath-taking and signing addresses speaks to the eighteenth-century American insistence on a politics of personal, face-to-face relations. In a world where voting was by public voice affirmation at local gathering places, public political reputation was paramount. Even the act of signing a document was freighted with meaning—guaranteeing a contract, for instance. Personal reputation, as evidenced by public actions including public oaths, voting patterns, factional identification (however inappropriate under the norms of eighteenth-century political philosophy), and the dangerously shifting sands of public perception based on convenience, opinion, personal mannerism, dress, and deportment, was the essence of a man.²⁵

Nearer to home, and particular to the Revolution, Charleston's ferment over the Stamp Act and subsequent controversies marshaled the importance of public display and public oath-taking. Non-importation agreements provided the example of, and practice in, public reputation and allegiance, including signing such agreements, to an

²⁴ Toby L. Ditz, "Shipwrecked; or Masculinity Imperiled: Mercantile Representations of Failure and the Gendered Self in Eighteenth-Century Philadelphia," *Journal of American History* 81, no. 1 (1994): 51-80, especially 68. For more on the importance of honor as a marker of constancy in a world increasingly aware of the performativity of everyday life, see Jean Christophe Agnew, *Worlds Apart: The Market and the Theater in Anglo-American Thought, 1550-1750* (Cambridge, U.K., 1986), and for a different take on the chief components of the construction of merchant identity, see Phyllis Whitman Hunter, *Purchasing Identity in the Atlantic World: Massachusetts Merchants, 1670-1780* (Ithaca, N.Y., 2001). Ruth H. Bloch, "The Gendered Meanings of Virtue in Revolutionary America," *Signs* 13, no. 1, Women and the Political Process in the United States (1987): 37-58, especially 43. Jacob Katz Cogan, "The Reynolds Affair and the Politics of Character," *Journal of the Early Republic* 16, no. 3 (1996): 389-417, and on the importance of the denial of self-interest in properly-regulated masculinity, Mark E. Kann, *A Republic of Men: The American Founders, Gendered Language, and Patriarchal Politics* (New York, 1998) 45-47.

²⁵ For one example of voting practices in early America, see Richard R. Beeman, *The Evolution of the Southern Backcountry: A Case Study of Lunenburg County, Virginia, 1746-1832* (Philadelphia, 1984). For an interesting take on how the threads of personality and political attributes came together, see Patricia U. Bonomi, *The Lord Cornbury Scandal: The Politics of Reputation in British America* (Chapel Hill, N.C., 1998).

increasingly broad swath of the male population. Well-off artisans were drawn into the circle of those whose public affirmations of support were necessary and valuable.²⁶

Moving back to the confiscation categories, the fifth list was comprised of people who “still hold, or have held, commissions under his Britannic majesty, and are now with the enemy.” These were people who held prominent, officer-level positions in the royal militias or in the civil occupational administration. The military leaders on this list, such as Andrew, Robert, Patrick, William and John Cunningham, had used their positions to terrify people and enforce political conformity—i.e. force people to maintain an outward show of loyalty to Britain. While it might seem that people who took positions in the civil administration were less culpable or offensive, they also held positions of great influence, which they used to harass Patriot leaders. In just one (previous) example, Brian Cape landed on list no. 5 for his role as a commissioner of sequestered estates. Presumably, the General Assembly concluded that turnabout was fair play. Further, in justification of severely punishing these men, the act pointedly reminded that these offenses had been “declared to be capital” by the earlier sedition act.²⁷

Finally, the sixth list, with the fewest names, were people who were considered to be the most publicly egregious supporters of the British. The legislature argued that these persons “have not only voluntarily allowed their allegiance to his Britannic majesty, but

²⁶ Gary B. Nash, *The Urban Crucible: Social Change, Political Consciousness and the Origins of the American Revolution* (Cambridge, Mass., 1979), Pauline Maier, *From Resistance to Revolution: Colonial Radicals and the Development of American Opposition to Britain, 1765-1776* (New York, 1972), and Richard Walsh, *Charleston's Sons of Liberty: A Study of the Artisans 1763-1789* (Columbia, S.C., 1959) 49-55, 59-63.

²⁷ For a longer explication of the use of the militia as an arm of political enforcement in the Southern theater, see Crow, "Liberty Men and Loyalists." Cooper and McCord, eds., *Statutes of S.C.* 4: 519. The Sedition Act, Act No. 1017, “An Act to Prevent Sedition and Punish Insurgents and Disturbers of the Public Peace,” Cooper and McCord, eds., *Statutes of S.C.* 1: 343-46. These harsh terms were reiterated in Act. No. 1115, “An Ordinance to Empower the Governor or Commander-in-Chief of this State” to ensure quick trials for those suspected of sedition or insurrection. Cooper and McCord, eds., *Statutes of S.C.* 1: 463-65.

by the general tenor of their conduct manifested their attachment to the British government, and proved themselves inveterate enemies of this State.” People on list six were singled out for harsher treatment than any other group. According to the earlier sedition act, the offenses of those Loyalists were capital crimes. However, the state really had no interest after the war in executing these people. They wanted to “extend to those persons as much mercy as may be consistent with justice to the public” and avoid “sanguinary measures,” so they specifically exempted persons on lists 2-5 from execution. Figures on list 1, since they were residents of England during the war, were not subject to capital penalties. The people on list 6 were pointedly excluded from measures that changed Loyalism from a capital crime to a banishable offense. Their lives were still legally forfeit if they dared show their faces in the state. As people judged “inveterate enemies” to South Carolina, the General Assembly had already judged that they were beyond any redemption as citizens. In practice, these distinctions carried one important consequence: while all confiscees were ordered out of South Carolina, the lack of a death provision for some of them opened the door to efforts to return.

Finally, the publication of the names of Loyalists, regardless of the order in which they were arranged, was the major aim of the Confiscation Act. By passing and publishing the Confiscation Act, the Assembly made a public statement about how Loyalists would be treated. The published list reassured the public that some Loyalists would be punished. It explained why some people were singled out (and others not). It offered tangible proof in the number of names that some prominent individuals would suffer retribution for their wartime actions. The public nature of the list allowed every person with a particular grudge to check if his or her enemy was on that list.

South Carolina was certainly not the only state to enact confiscation and banishment legislation. During the war, especially in the early years, many states passed test acts to force Loyalists to take oaths of allegiance and abjuration. The Continental Congress strongly encouraged confiscation legislation in November 1777, following loud suggestions by Thomas Paine and others. By separate legislation or within the same act, many states also provided for banishing Loyalists who would not take the oath, and confiscating their estates. North Carolina passed a wartime confiscation act in April 1777 that defined treason (including military help to the British), required an oath of allegiance, and provided for the confiscation of the estates of traitors. In 1778, the legislature made confiscation the punishment for anyone evading or refusing the oath, although in practice far fewer North Carolinians eventually faced confiscation. Pennsylvania passed a confiscation law in 1778, as encouraged by the Continental Congress. (The Congress felt it was a wise policy to drive out determined Loyalists and use their property to pay for the war effort.) Only thirteen men were named in this confiscation act, but unlike the later South Carolina law, Pennsylvania provided a mechanism for identifying more Loyalists as the war progressed. Errant oath-takers were to be prosecuted by the Supreme Executive Council, enshrining the principle of trials for accused Loyalists (unlike in South Carolina, which provided no such provision). Practically, Pennsylvania also adopted this more flexible system to deal with wartime exigencies, and prosecute Loyalists as they became threats to the war effort. In practice, Pennsylvania's system sounded stricter than it actually was. Overall, through a series of proclamations by Committees of Safety and the official state government, Pennsylvania ended up subjecting 453 people to official confiscation.²⁸

²⁸ Brown, *Good Americans* 127. DeMond, *N.C. Loyalists* 155-58. Anne M. Ousterhout, *A State Divided*:

Georgia followed the path most similar to that of South Carolina, probably because the two shared very similar wartime experiences. Despite the waggish comment by Sir James Wright (the last royal governor of the colony) that Georgia would have avoided joining the war if only the Savannah River (the boundary with South Carolina) had been less “narrow,” Georgia did join in the war, and suffered the fall of her major city and capital, and vicious guerilla warfare across the state, much as did her northern neighbor. Georgia passed a preliminary wartime confiscation act in 1778 that named 117 people for treason, mandating confiscation and banishment as the punishment. The act was at least partially enforced before the British took Savannah, but obviously lapsed while the British controlled the state. With British withdrawal, Georgia joined South Carolina in passing a comprehensive confiscation and banishment act naming 277 people.²⁹

As merciful husbands and fathers, and as taxpayers, the South Carolina General Assembly members considered what to do with the dependent women and children who would lose their support if these men were deprived of their estates. Gov. Rutledge had called for the Assembly to consider their fate, and in the final act they did. The Commissioners of Forfeited Estates were empowered to “make such provision for the temporary support of such of the families...as shall appear to the said commissioners, or a majority of them, necessary” while arranging the sale of the estates. In some cases, these families would be allowed to remain on the properties while a sale was arranged. In order to avoid long-term support obligations that might burden the state or put the

Opposition in Pennsylvania to the American Revolution (New York, 1987) 162, 172-73. Wilbur H. Siebert, *The Loyalists of Pennsylvania* (Columbus, Ohio, 1920) 58.

²⁹ Brown, *King's Friends* 242, Brown, *Good Americans* 60. Lambert, "Loyalist Property in Georgia," 80, 82.

titles of confiscated estates at risk (and therefore depress their sales prices), the support due these families was time-limited until the disposition of the estate. The General Assembly promised to consider in 1783 or 1784 “what final provision” should be made for dependant families. They would not leave women and children to starve while final arrangements were negotiated, but they also needed to sell estates as quickly as possible to pay war debts. Taxpayers would be spared supporting the dependants of men who had opposed American independence.

The General Assembly were not just generous, however, but practical. If they had indulged their rage by turning women and minor children off estates without any way to eat, they would not only have seemed like very poor men, but they would have only ensured that individuals would be forced to support these people. Gentlemen, including many members of the General Assembly, would have quickly found these families, formerly associated with them in elaborate kin networks and local circles, camped on their doorsteps begging for support. As people with claims to gentility, in many cases they would have been unable to turn these Loyalist families away. By making the estates pay for their basic expenses they avoided having to personally support Loyalist families. They could control the level of expenses that Loyalist families were allowed, so that they were not in the streets, but also were not supported in the manner to which they had become accustomed. They were neither starving, nor of their former status.³⁰

By way of comparison, other states that passed earlier confiscation acts were generally more generous to wives and children. In Virginia, according to one Loyalist, his property and that of other male Loyalists was instantly given to wives and children as

³⁰ Mark Kann gives a wonderful exploration of academic thinking in recent years on the link between eighteenth-century masculinity, political citizenship, and the importance of the father and husband roles in Kann, *Republic of Men* 3-4, 79-104.

“if the Father was dead.” In practice, this law gave wives full control during the war, but legally wives had ownership but not control, as the property was sequestered until the end of the war. North Carolina’s 1778 confiscation legislation allowed women and minor children to hold property as if they had inherited it under intestate rules, much like Virginia. Yet in November 1779, when it became clear the British intended to take the South, they tightened confiscation considerably, including further restricting how much property women and minor children were entitled to. Under the new law, women would only receive one third of their rights under the previous law, in addition to a modest allowance for minor children. This might mean a woman was entitled to her traditional dower right (usually a lifetime right to the income from one third of the property), but it seems to mean she was entitled to one ninth of the property. Either way, it is evidence of increasing harshness towards Loyalist dependents as the war dragged on.³¹

The Confiscation Act established an infrastructure to manage the sales of Loyalist property. All real and personal estates held by persons named in the Act were “vested in five commissioners” who were elected by both houses of the General Assembly. These commissioners were charged with selling off all property at public auction as quickly as possible. The act arranged financing terms, allowed five years of credit for purchasers, provided for a standard interest rate, and provided that credit would be arranged through bonds, secured by other land in the state, for the purchase. The commissioners were to be compensated by the forfeited estates, rather than the (tiny) state treasury. Under the act, they were entitled to a one percent commission on the estates “in lieu of all demands against the public.” This was a standard method of paying public officials in the colonies,

³¹ Brown, *Good Americans* 129. Adele Hast, *Loyalism in Revolutionary Virginia: The Norfolk Area and the Eastern Shore* (Ann Arbor, Mich., 1982) 128-31. DeMond, *N.C. Loyalists* 158-59.

as it took away the responsibility for paying salaries from the state. This pay system also functioned as an incentive system, since commissioner pay depended on receiving the highest prices possible for all property, and encouraged prompt attention to duties, since timely pay depended on timely sales.³²

The credit arrangements allowed people to buy land through a combination of upfront payments and bonds payable over five years. While this meant that the new government could not immediately get their hands on the entire amount, it was a more practical method of financing such land sales. Other states arranged similar payment plans, allowing financing over time and often accepting state certificates, soldier's pay scrip, and depreciating state currency.³³

South Carolina, like other colonies, had a history of land troubles, especially in frontier areas. Large absentee landlords held huge tracts of land in the midlands and upcountry that they did not work themselves. Access to land, or more precisely, to good titles, was a flash point before the Revolution in the backcountry. In this light, it is not surprising that the Confiscation Act also tried to govern the disposition of Loyalist estates in order to limit the size of any individual tract and to encourage wider landholding. To try to increase such opportunities, the act required that the commissioners divide all lands into tracts between 200 and 500 acres, even if the original tract was much larger. By so doing, the Assembly argued they could "prevent the increase of the number of large and dangerous monopolizers of land." South Carolina legislators had every reason to encourage wide distribution of landholding in the backcountry, since the area functioned

³² Cooper and McCord, eds., *Statutes of S.C.* 4: 522.

³³ Georgia offered credit for 7 years for real property and 4 years for personal property at a generous interest rate. Lambert, "Loyalist Property in Georgia," 82. North Carolina revised its Confiscation law several times to make payment terms more generous, including letting people pay in soldiers' certificates and state currency. DeMond, *N.C. Loyalists* 168.

as the guarantor of a white majority population. The Lowcountry had a black majority, so in order to remain a white majority state, the General Assembly sought to encourage white farmers in the uplands. The relevant section explicitly acknowledged this problem, arguing the restrictions on land tracts were to “increase as much as may be the number of white inhabitants.”³⁴

While South Carolina’s aristocrats controlled their desire for easy pickings due to both a fear of a black majority and the increasing presence of artisans and middling sorts in the General Assembly itself, other states also required land to be sold in small tracts and on easy credit. Early this century, J. Franklin Jameson argued that legislators intended to use confiscated estate sales to democratize landholding across America, bringing new men into the stability and citizenship land ownership provided. There is ample evidence that the intention was there, but subsequent investigations on landholding in New York, New Jersey, and Massachusetts failed to find that confiscated estate sales democratized landownership in any way. The same people who already owned land bought more land, roughly in proportion to the amount they already owned. In short, wealthy men speculated, striving men acquired a little, and those who didn’t own land did not acquire a stake through confiscated estates. Limited investigations in South Carolina’s records reveal no evidence that South Carolina did any differently, and a brief glance through the records of slave sales in the confiscated estates shows a familiar list of purchasers, often purchasing ten slaves at one sale. Restrictions were well-intentioned, but did not change fundamental land ownership patterns in South Carolina.³⁵

³⁴ Cooper and McCord, eds., *Statutes of S.C.* 4: 521.

³⁵ J. Franklin Jameson, *The American Revolution Considered as a Social Movement* (New York, 1926). John Thomas Reilly, "The Confiscation and Sale of the Loyalist Estates and Its Effect Upon the Democratization of Landholding in New York State: 1799-1800" (Ph.D., Fordham University, 1974), Ruth

Savvy Loyalists had anticipated possible confiscation, and tried to arrange to sell or transfer their property to protect it from such acts. The General Assembly was well aware of these maneuvers and wrote the Confiscation Act accordingly. Any property sold after Charleston's fall to the British in May 1780 was not recognized as a valid transaction, and that property, regardless of whose name was on the title, was confiscated as the property of the Loyalist. Other land transactions that occurred before the fall of Charleston but after July 4, 1776 were subject to heavy scrutiny before they would be accepted as valid sales. In North Carolina, one enterprising Loyalist prepared to leave the state after an earlier, wartime confiscation act in 1777. He arranged to deed his property to his daughter while on board his outgoing ship. When he was handed an undated deed, he "hesitated and said he would look at the copy of a bill...for confiscating the property of all persons of his description." After perusing the bill (which he had on him), "he chose that the deed should bear the date on the 11th of the same month, being the day he arrived in the harbour of Newbern." His attempt to circumvent North Carolina's confiscation act by strategically pre-dating a deed later ended up in court, but his attempt to circumvent confiscation laws was hardly unusual.³⁶

Banishment was both a punishment for individual Loyalists and a way to control the state. The General Assembly wanted to get rid of people they considered treasonous troublemakers, and make sure they could never become a fifth column, undermining

M. Keesey, "Loyalty and Reprisal: The Loyalists of Bergen County, New Jersey and Their Estates" (PhD, Columbia University, 1957), Ruth M. Keesey, "Loyalism in Bergen County, New Jersey," *The William and Mary Quarterly* 18, no. 4 (1961): 558-76, Harry Beller Yoshpe, *The Disposition of Loyalist Estates in the Southern District of the State of New York* (New York, 1939), and Richard D. Brown, "The Confiscation and Disposition of Loyalists' Estates in Suffolk County, Massachusetts," *William and Mary Quarterly* 3rd ser., 21, no. 4 (1964): 534-50. For South Carolina, Kathy Roe Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" (University of South Carolina, 1987), David Duncan Wallace, *South Carolina: A Short History, 1520-1948* (Columbia, S.C., 1945).

³⁶ Cooper and McCord, eds., *Statutes of S.C.* 4: 520. *Bayard v. Singleton*, 3 N.C. 42, 7.

fragile independence. At the time the act was passed, most of the proscribed Loyalists were cowering in Charleston, and legal banishment was meant to speed them on their way out. In order to put teeth in the banishment order, the confiscation act provided that persons named in the act who stayed after passage, or who returned, would be jailed and then forcibly transported to some British-held territory. In order to stop people from trying to return again and again, the law provided that Loyalists who returned after transportation would be killed without benefit of clergy.³⁷

In conclusion, the Confiscation Act of 1782 drew up six lists of Loyalists, including individuals and corporations, whose South Carolina property, both real and personal, was confiscated. Those individuals were also banished from the state forever. Each category explained why the person had been so punished, and the banished persons were distinguished by their public advocacy of Loyalism in 1780-1781, including signing congratulatory addresses and taking commissions in the militia and civil occupational administration. Those who were chosen were therefore men of some substance, who had held officer-level positions, and whose signature on public acts was deemed noteworthy. The act provided no recourse or trial for accused Loyalists. Property was to be sold quickly, under generous financing terms, to purchasers at public auctions. Loyalists' wives and minor children who remained in South Carolina were entitled to basic maintenance, but nothing more. Banished Loyalists were warned that if they tried to stay, they would be transported, and repeat offenders killed.

³⁷ Cooper and McCord, eds., *Statutes of S.C.* 4: 519-20.

Below the Surface of the Confiscation Act: Wartime Exigencies and the Need for Both Carrots and Sticks for Dealing with Loyalists

Wags say you should never watch sausage or legislation being made. On the face of it, the Confiscation Act of 1782 was harsh and definitive. However, by unearthing the long process of enacting legislative confiscation, we can see it was a far more generous and multi-faceted process than the final act indicates.

Even before Governor Rutledge called for general elections to create the Jacksonborough Assembly of 1782, he made and published two proclamations intended to persuade Loyalists to rejoin the American side. At all times, South Carolina government officials used a system of inducements (carrots) and punishments (sticks) to persuade as many wavering Loyalist supporters as possible to rejoin the American side. This system evolved in an ad hoc way, but clearly always intended to persuade as well as punish.

In order to understand why this might be, it is necessary to understand that this was a result not only of mercy, but also of cold-hearted practicality. After the British surrender at Yorktown, Loyalists could see that the tide had turned, and the British position in America was weak at best. Yet it was not at all clear to either side that the war was truly over. Not only was there no peace treaty, but Patriot Americans were convinced the British would try to conquer again. Governor Rutledge argued to the legislature that it was “probable [Britain] will not only endeavor to keep possession of our Capital but make another attempt to subjugate the Country.”³⁸ South Carolinians still did not occupy their largest city and state capital of Charleston, which was firmly in

³⁸ Salley, *House J. 1782* 21.

British hands. In addition, Patriot forces still struggled to control the Lowcountry, and skirmished on a regular basis. Colonel John Laurens, son of Henry Laurens and leader of a spy ring, was killed in routine skirmishing in August of 1782, for example. General Nathanael Greene, commander of the Continentals in the Southern theater, was convinced that the British intended to keep Charleston as a permanent outpost, and would only sign a peace treaty that allowed them to keep all the property they held at the time the treaty was finalized. Despite the pain and sacrifices of the eight-year war, it was almost unthinkable to the victors that the British army and navy, the mightiest in the world, would give up their own colonies.³⁹

In garrison towns towards the end of the war, authorities on both sides ran out the families of the opposing side. One Patriot wrote the South Carolina Continental Congress representative that the Wilmington, North Carolina authorities “sent out the wives and families of those who had not joined them.” South Carolinians were therefore justified, he suggested, in “collecting the wives & families of the Tories to send in return, &c. &c.” Military officials on both sides were trying to secure the towns against the transmission of evidence and goods that porous borders allowed. Such forced evictions also deliberately increased the pressure on the opposing side by sending waves of panicked displaced persons into the opposing camps, where the other side had to relocate them. Maddeningly for those evicted, they could no longer protect their property from plunder. As an effort to secure garrison towns from the transmission of information and goods, it failed miserably. Aedanus Burke laughed at how the commandant at

³⁹ While the skirmish John Laurens was killed in was fairly routine, his own actions in it were not. Instead, he made foolhardy moves, displaying his customary bravery but also his customary brashness.

Charlestown “winks at a little traffick carried on by our people.” But it certainly increased pressure on the Loyalists.⁴⁰

Governor Rutledge was very hostile to Loyalists. In August 1781, he encouraged General Marion to refuse entry to Loyalists seeking to return to the Patriot side. He did not believe they were sincere in anything but a desire to save their own necks. He also forbade Loyalist-associated women who had gone to Charleston to return to their plantations, all in an effort to control the flow of information. Further increasing the pressure on South Carolina Loyalists, Rutledge ordered South Carolina officers to prepare lists of Loyalists from each district in preparation for efforts at confiscation. Yet, he also offered an official proclamation offering clemency to select Loyalists who were willing to meet his conditions. After consultation with most of his Privy Council, he decided to offer one chance for Loyalists to return to their allegiance in the aftermath of the Battle of Eutaw Springs. His proclamation was issued September 27, 1781, and spread through printed handbills distributed by the army.⁴¹

The proclamation offered clemency to Loyalists who had “borne arms” or given their allegiance to the British and were, at the time of the proclamation, either in Charleston or “lurking or concealing themselves in secret places in any Part of the State.” These Loyalists would be forgiven their efforts against their fellow South Carolinians in return for serving as privates in the South Carolina militia for six months, and their wives and children could leave Charleston and live “without molestation” on their properties.

⁴⁰ Aedanus Burke to Arthur Middleton, Petersburg, Nov. 18, 1781, Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782, Joseph W. Barnwell, ed., "Correspondence of Hon. Arthur Middleton, Signer of the Declaration of Independence," *South Carolina Historical and Genealogical Magazine* 26, no. 4 (Oct. 1925): 183-213, especially 191.

⁴¹ James Haw, *John & Edward Rutledge of South Carolina* (Athens, G.A., 1997) 159. Governor Rutledge instructed General Marion and others to see that the proclamation was “properly circulated.” Gov. Rutledge to General Marion, Sept. 26, 1781, Gibbes, *Documentary History of the American Revolution* 175.

Loyalists were given thirty days to make up their minds and cross back into Patriot lines if they wished to take the offer. The proclamation specifically exempted from pardon persons who were proscribed by laws predating the 1780 surrender at Charleston, persons who had signed the congratulatory addresses to either Cornwallis or Clinton, those who held civil and military commissions with the British, and those unspecified Loyalists deemed to be guilty of “infamous” conduct—all of which later became categories of confiscees in the Confiscation Act.

Practically, the proclamation was intended to increase troop strength to prepare to defend the state and drive the British out of Charleston. In addition, it was meant to scare Loyalists into returning, describing them as “unhappy men” who had “relied on false and specious hopes” and been “flattered with vain expectations.” Rutledge was quick to argue that the offer of pardon was undertaken from a position of strength, not as “timidity.” He offered the Loyalists a choice:

either to return to their allegiance and with their families be restored to the favor of their country and to their possessions, or to abandon their properties in this State forever and go with their wives and children whither, for what purpose, on whom to depend, or how to submit they know not, most probably to experience in some strange and distant land all the miseries and horrors of beggary, sickness and despair.⁴²

Rutledge sought to sweeten the bait by reminding Loyalists how unpalatable their future chances might be. He assured them that this proclamation was a one-time chance that would “never be renewed.” He sought to encourage as many Loyalists as possible to return immediately. Finally, he offered returnees redemption as “valuable members of the community.”⁴³

⁴² Gibbes, *Documentary History of the American Revolution* 176-78.

⁴³ Robert Wilson Gibbes, *Documentary History of the American Revolution, Eyewitness Accounts of the American Revolution. Series Iii.* ([New York], 1971) 177-78.

Governor Rutledge's strategy worked well. Aedanus Burke confidently told a friend that "above one hundred of their adherents (the inhab^{ts}. Of Cha^s. Town & the Country) have deserted over to us, and more are daily coming over their Lines." While there was officially a thirty-day deadline, in fact refugees trickled into American outposts up to the Jacksonborough Assembly. In the two months before the Jacksonborough Assembly met, Loyalists felt intense pressure to take the proclamation before it was too late—hence why Burke reported more than a hundred Loyalists had returned in January 1782.⁴⁴

Governor Rutledge had offered the Loyalists a carrot—now it was time for the stick. More importantly, it was vital to call a new General Assembly, restarting civilian government after years of enemy occupation. Governor John Rutledge had been functioning as the entire civil government of South Carolina for several years, including years in exile. Before Charleston fell, he fled somewhat ignominiously, leaving Christopher Gadsden to be arrested in his stead. After the surrender at Yorktown, he made his way back to South Carolina, as General Greene was able to hold South Carolina territory. Arriving in August 1781, he desired to reestablish civil government quickly, as he felt it "would have a great Effect, on our Affairs." As much as he enjoyed wielding power (and he had been strongly disciplined earlier for his autocratic tendencies), he understood that legislative power was the key to legitimacy in the post-Revolutionary world. Having fought a war for direct representational government, Americans were not willing to accept a strong executive. Jealous leaders were far more likely to support

⁴⁴ Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782. Barnwell, "Middleton Corr. Oct. 1925," 191.

legislative decisions that they had a part in creating, and voters had been conditioned to expect real representation on concrete local interests.⁴⁵

Actually holding elections, however, presented problems. Several prominent South Carolina Patriots were still in Philadelphia after their imprisonment in St. Augustine. John Rutledge wanted them to be able to vote, but more importantly, to serve in the upcoming legislature. An even more ticklish issue was ensuring the safety of elections, and the ability of all South Carolina citizens to cast their votes. Since the British still held about a third of the state, many citizens could not vote, and British troops and Loyalist raiding parties could make the election very unsafe if they wanted to. Rutledge called for elections in November 1781 to be held December 17 and 18, 1781, after Generals Greene and Marion were able to control more of the state and slowly box the British into Charleston. In this call for elections the Privy Council, whose members had slowly arrived throughout the fall and winter of 1781, joined him.

Given the fact that there were few votes from Charleston and parts of the Lowcountry (there was an attempt to allow Patriots to vote for Charleston parishes at safe polling places), the Assembly that was elected, unlike any before 1782, had low representation from the Lowcountry and sizable representation from the backcountry. Only seven of the nineteen senators represented Charleston District—which was previously unheard of. Charleston representatives had to be careful as well, as they were elected by very few voters. Embarrassingly, St. Andrew's parish sent six representatives and one senator, elected by a grand total of four voters—fewer than the elected officials. Charleston had fifteen voters total, who elected thirty representatives and two senators.

⁴⁵ Haw, *Rutledge* 160. Lee, "Transformation of the Executive,"

The General Assembly that would decide how to treat Loyalists would be heavily drawn from those areas that had suffered the most during the war.⁴⁶

In his call for elections, Governor Rutledge specifically excluded Loyalists from voting or serving in the new General Assembly. While this might seem obvious, it was not uncontested. This decision also meant that some districts were at a disadvantage, as they were majority Loyalist districts and most of their more prominent citizens, the usual choices for legislative bodies, were prohibited from service. A few months after the election, one Assembly member recalled that “the numbers thus excluded were considerable in some parishes, and they murmured exceedingly for a few days.”⁴⁷ This is a very interesting comment because it suggests that for many Loyalists, it was not obvious or appropriate that they should be excluded from voting for or serving in the South Carolina legislature. It is startling that Loyalists would even think that they might be allowed to serve in the General Assembly. It was the first sign that Loyalists did not concur that they had committed treason, and were thereby stripped of their citizenship. In the months and years to come, South Carolina Loyalists would continue to vigorously protest anything that suggested they were anything but full-fledged citizens.

Having been duly elected, the legislators chosen to this historic assembly began trickling into the small town of Jacksonborough in early January 1782. Governor Rutledge opened the meeting on the 18th by triumphantly proclaiming that “the Enemy, compelled to surrender or evacuate every post which they held in the Country, are

⁴⁶ Traditionally, Charleston District alone controlled the legislature, and they were far less powerful in this Assembly. Jerome J. Nadelhaft, "the Snarls of Invidious Animals': The Democratization of Revolutionary South Carolina," in *Sovereign States in an Age of Uncertainty*, ed. Ronald Hoffman and Peter J. Albert (Charlottesville, Va., 1981). 72.

⁴⁷ Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782. Barnwell, "Middleton Corr. Oct. 1925," 193.

obliged to take refuge under the Walls of Charles Town, and on Islands in its vicinity.”

This triumphant address was an optimistic way to state a less happy reality: while Patriots controlled the backcountry, Charleston was still in British hands. This General Assembly could not fairly claim to represent the entire geographic whole. A true wartime assembly, they were protected by Patriot troops, many of whom also served in the Assembly. Further, paying the troops was a pressing issue for the new state government, as hungry men eat (and plunder to get food if necessary).⁴⁸

While there had been another wartime assembly, this assembly was still facing new realities as yet undigested by the state’s political elite. Revolutionary mobilization brought new people into public life, and they gained representation in Revolutionary assemblies. Francis Kinloch shuddered that “butchers, bakers, [and] blacksmiths” now served as representatives. It was such an expansion of political authority for people who had never had it before that John Rutledge, an aristocrat to his toes, vetoed the 1778 constitution. Many members of the Jacksonborough Assembly were novices, and although they were sometimes hesitant to speak on the floor, they did not hesitate to vote against the well-spoken Lowcountry elite. The Revolutionary and post-war assemblies had 30% of their members from an average background, and another 40% were born outside of South Carolina and were of humble beginnings, breaking the pre-Revolutionary power of the Charleston elite definitively.⁴⁹

Previous assemblies had met in Charleston, but since it was still occupied, the Assembly had to find another meeting location. Governor Rutledge wanted to hold the

⁴⁸ Salley, ed., *Senate J. 1782 7*.

⁴⁹ Francis Kinloch to John Laurens, quoted in Nadelhaft, “the Snarls of Invidious Animals’: The Democratization of Revolutionary South Carolina.” 68, 70, 75. Jackson Turner Main, *Political Parties before the Constitution* (Chapel Hill, N.C., 1973) 271-73. One word of caution—these composition figures are based on the 1787-88 legislature.

Assembly in Camden, since it was geographically central, and therefore convenient for many delegates. It was also far from Charleston, and therefore far from the main British camp. Camden's Revolutionary reputation was also attractive, as it was the site of a major battle. However, General Greene was not sure he could protect Camden adequately, and recommended the small town of Jacksonborough, some thirty-six miles inland from Charleston, as a safer alternative. Rutledge was swayed by this practical consideration, since he was relying on Greene to protect the General Assembly from any British attempts to break up the meeting and arrest the legislators. Greene recommended Jacksonborough because he was already nearby. He moved his headquarters to Round O, outside of the small settlement at Jacksonborough, and prepared to protect the Assembly while also continuing his military campaign. Since the legislature was forced to meet in temporary conditions, there was no official building to hold them. This General Assembly had none of the official trappings of power—no mahogany chairs, no stately buildings, and, perhaps most disconcertingly, much less comfortable accommodations than Charleston could have offered. The House of Representatives, over seventy-five strong, met in the Masonic Lodge. The Senate, a smaller body, took two rooms in a local tavern for their meeting space. When both houses needed to meet together, they all crammed into the Lodge. It was not a setting that encouraged feelings of post-war normalcy in the legislators. Instead, it must have reminded them again of everything they had lost in the struggle, and how unsure South Carolina's future still was. Many of the legislators were military officers. By day, they debated civil policy. At night, they retired to their usual military accommodations. Civilian legislators took over the local

tavern, or sought accommodations with local families. The small settlement was far from able to house so many people. It must have been uncomfortable.⁵⁰

The Jacksonborough Assembly, in short, was a wartime legislature. South Carolinians still relied on an active duty army to protect their legislature from occupying forces thirty-six miles down the road. Their concerns were those of a people still at war. How were they to provide for troops? Pay those troops? Limit the economic damage of inflation and the ills of paper currency? Their concern with regulating the status of Loyalists must be viewed in this light. How were they to ensure that the war ended and South Carolina had a stable, prosperous future? They could not ignore the presence of enemies, who had retreated to Charleston but might very well expect to stay. Nor would their fellow South Carolinians let them forget their responsibilities.

Sitting amongst the men gathered on opening day were legislators who had lost significant wealth through the war. Colonel Joseph Kershaw was a member of the House of Representatives from the backcountry region known as the “District Eastward of the Wateree River.” (He represented Camden.) Benjamin Kilgore, a Representative from the Little River District, had been held prisoner by the British for part of the war, as had many other members of the General Assembly. The pain of war was not something that only existed outside of the legislative walls. Many General Assembly members were voted in precisely because of their war records. Colonel John Laurens was among

⁵⁰ Salley, ed., *Senate J. 1782* 5, 142. A.S. Salley claims that the House of Representatives met in a Masonic Lodge based in part on a note in the Senate journal manuscript that they “adjourn to the Lodge Room (the Senate House being too small) to receive the House of Representatives.” Salley, ed., *Senate J. 1782* 142. McCrady, writing early in the twentieth century, suggested that they must have met in the courthouse, as one of the only buildings in town. I suggest that it is possible the House of Representatives met in a local courthouse and the Senate met in the tavern. In either case, it was not an arrangement calculated to encourage a sense of post-war stability among the members.

several officers who were both sitting in the General Assembly and stationed with Greene's troops in the area.

The General Assembly agreed with Rutledge that punishing Loyalists was one of their most important tasks. Within days of convening, the House of Representatives, where most actions began, formed a committee to consider “what Estates in this Country are proper subjects of Confiscation and Sequestration, and to what purposes the Profits Arising from them may be best applied.” At this point, they were still modeling on British sequestration. I also note the necessity of passing an act was explicitly linked to the need for “profit”—monies to pay pressing state bills. The original seven-member committee was composed of Col. John Laurens, Edward Rutledge, Richard Hutson, John Ewing Calhoun, John Owen, John Kean, and John Parkison. The committee was dominated by people who had served long periods as war prisoners, either on the prison ships in Charleston harbor or in St. Augustine. Others had served, and were still serving in the South Carolina forces. Two of the seven were trained lawyers, and therefore logical choices to draft important legislation.⁵¹

Edward Rutledge (John Rutledge's brother) became the chief author of confiscation, and worked closely with his brother through his simultaneous seat on the Privy Council. He was one of the major proponents of the move to confiscate Loyalist property, in large part because it would shore up the state's shaky finances. His choice as committee head was an early sign the General Assembly would support John Rutledge's plans. Edward Rutledge also personally profited from his efforts, as he and his partner Charles Cotesworth Pinckney purchased two large estates made available by the Confiscation Act, adding over 3,500 acres to their holdings. Rutledge, like many others,

⁵¹ Salley, *House J. 1782* 21.

had also paid a price for his Patriot leanings, spending over eleven months as a prisoner after Charleston's fall.⁵²

Richard Hutson, like Rutledge, was a lawyer. He was distinguished enough to be voted Lieutenant Governor by the Assembly, as well as placed on the confiscation committee. He served in the Revolutionary militia in the defense of Charleston. Afterwards, he was exiled to St. Augustine and the British confiscated his personal estates. In addition, by the end of the war the South Carolina government owed him over £100,000. Because he had loaned so much money to the state for war expenses, his personal economic well-being was influenced by the ability of the state to pay him back. He was also unlikely to be sympathetic to Loyalists as Isaac Hayne's brother-in-law.⁵³

The many Johns were less distinctive, but they also fit the general outlines of the committee. John Owen, who served only one term in the General Assembly, was a Charleston merchant who spent time on one of the prison ships in Charleston harbor. John Kean, a fellow committee member, had been a prisoner on the same ship as John Owen. John Parkinson from Orangeburgh District represented the backcountry, and was elected to a subsequent term but declined. John Laurens was a military hero and still a member of the army during the time he served on the confiscation committee. His father, Henry Laurens, was still a prisoner in London who had been held in the Tower.⁵⁴

The distinguished committee made a partial report the next day (of which there is no record), highly recommending enlarging the committee. The House of Representatives agreed with alacrity, expanding the committee to incorporate "a Member from each Parish and District." This larger committee was more representative of the

⁵² Edgar and Bailey, eds., *Directory S.C. House Rep.* 2: 573-74.

⁵³ Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 364-65.

⁵⁴ Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 393, 529-30, 539.

state as a whole, and certainly dramatically expanded backcountry representation from one member to a majority of the committee. It ensured that more people would be responsible for the sizable workload involved in sifting through names and evaluating reputations. This decision to expand the committee to include members from every district also meant that the House of Representatives believed that local knowledge was crucial in determining the nature of Loyalists' actions.⁵⁵

Eighteenth-century assemblies turned to the committee system of lawmaking between 1750 and 1790, increasingly utilizing committees to handle the growing workload, as assemblies aggregated more power to themselves. Colonial assemblies adopted the use of standing committees from the British House of Commons, but came to make far more extensive use of them than the British do to this day. While upper houses shifted considerably in make-up, procedures, and mission during and after the Revolution, lower houses continued in well-established ways. The one major innovation was new ways to deal more efficiently and effectively with petitions. Small select committees were used before the war in most areas, and continued to be used in the post-war years, but quickly became burdensome. More assemblies moved to standing committees to deal with this work. State assemblies also quickly began to evolve ways and means standing committees to deal with the pressure of taxing and spending.⁵⁶

There are no records of committee deliberations, and the only records of the considerations of the full general Assembly include only the names of certain individuals who became items of contention late in the process. With these limited kinds of discussion, how can we understand the process of creating those acts? I will illuminate

⁵⁵ Salley, *House J. 1782* 22-23.

⁵⁶ Ralph Volney Harlow, *The History of Legislative Methods in the Period before 1825* (New Haven, Conn., 1917) ix, 3, 64, 70, 75.

the actual processes in two ways—letters and memoirs of legislators, and speculation based on the legislative record considered in the light of supplementary information.

As we have seen, the Confiscation Act was arranged into six lists, arranged in the categories John Rutledge had originally suggested. Why did the General Assembly organize and enact the Confiscation Act as a series of names? The terms of the general debate, and the way in which the committee was originally formed, did not call for such lists. The only reference to lists in letters and notes from participants refers to each individual's list, not categorized lists. The very existence of these carefully defined categories and their written justifications suggest certain debates among the committee in charge of creating the legislation. And, as we will see, it also suggests an involved process of discussion and horse-trading amongst the entire General Assembly. These names were the subject of considerable debate: did he deserve this? What had he done, and were there any extenuating circumstances? Could he be mistaken for someone else (and did anyone care)? Once the legislature itself had determined what offenses merited confiscation and banishment, they could organize their own work with lists of names by offense. Further, those lists helped everyone during debate, as individuals moved to strike some names and insert others. Using lists made the process more manageable for the legislature itself.

Aedanus Burke charged that the original list prepared in committee was “about seven hundred” and that another 240 were added after initial debate in the full house. His is the only estimate of the number of names originally considered. He might have

inflated the number somewhat, as a foe of the confiscation act, but his estimate seems reasonable.⁵⁷

Burke, among others, suspected that at least some people were interested in personal revenge, not the best interests of the state. He complained bitterly to Arthur Middleton that, “every one gives in a List of his own and the State’s Enemies.” Further, he charged his fellow legislators with passing a confiscation act chiefly with an eye to their own potential advantage. Burke claimed that discussions revolved not around “what he has done, as what Estate he has.” Such charges of personal mercenary instincts were not entirely without merit. Edward Rutledge, a prime proponent of the Confiscation Act, himself bought substantial additional property from the sales of confiscated estates. However, South Carolina legislators had a less corrupt reason to consider the relative value of estates. They needed to pay substantial war debts, and were depending on the profits from confiscated estates to pay. The total value of confiscated property was a matter of concern. Alexander Garden later told the perhaps apocryphal tale that when confiscation was discussed, members of the legislature would listen for certain names, calling out “a fat sheep—prick it! Prick it!” when the names of wealthy men were called.⁵⁸

Legislators may have had an eye for personal profit, but they were acting under a broader imperative. Enraged Patriots wanted to watch the Loyalists suffer. Aedanus Burke wrote a friend that “the inveterate hatred & spirit of Vengeance w^{ch}. they have

⁵⁷ Aedanus Burke to Arthur Middleton, Jan. 25, 1782, Barnwell, "Middleton Corr. Oct. 1925," 192. For more on his vocal opposition to the Confiscation Act, see the rest of this chapter, Chapter Five, and John C. Meleney, *The Public Life of Aedanus Burke: Revolutionary Republican in Post-Revolutionary South Carolina* (Columbia, S.C., 1989).

⁵⁸ Aedanus Burke to Arthur Middleton, Jacksonborough Jan. 25, 1782, Barnwell, "Middleton Corr. Oct. 1925," , Alexander Garden, *Anecdotes of the Revolutionary War in America, with Sketches of Character of Persons the Most Distinguished, in the Southern States, for Civil and Military Services* (Charleston, S.C., 1822) 179.

excited in the breasts of our Citizens is such as you can form no idea of. The very females talk as familiarly of shedding blood & destroying the Tories as the men do.”

Burke may have been chiefly horrified that women had sunk as low as men, but his sense of the popular sentiment for “destroying the Tories” was accurate. Burke himself admitted the “Love of Revenge natural to the mind of man” at the surrender at Yorktown, although he felt the need to restrain that impulse. Christopher Gadsden, one of the other opponents of the Confiscation Act, publicly spurned former friends of his the month before the Assembly. In December 1781, Elias and Thomas Horry, two Lowcountry Loyalist brothers, tried to take (late) advantage of Gov. Rutledge’s proclamation by leaving Charleston and joining the Patriot forces. Thomas Horry and Christopher Gadsden had once served on the Committee of Correspondence together. Horry evidently expected that Gadsden would greet him warmly, so he and his brother approached Gadsden and offered to shake hands. Instead of a positive reaction, “the little Fellow [Gadsden] grew warm & told them he did not shake Hands wth. Rascals.” When Elias Horry, who was surprised by the response, reminded him that they had come to give themselves up, Gadsden said that instead of serving the militia they would be “hang’d to be sure.” Apparently they were so worried by this response that they “took fright, jumped upon their Horses, & dashed off.” (They were then forcibly brought back to camp.) Burke heard men and women calling for the blood of Tories. If even the two most vocal opponents of the Confiscation Act expressed such visible outrage, how many others must have entered the first assembly bent on expressing that rage?⁵⁹

⁵⁹ Aedanus Burke to Arthur Middleton, Jacksonborough Jan. 25, 1782, Aedanus Burke to Arthur Middleton, Camp before York, Oct. 16, 1781, Edward Rutledge to Arthur Middleton, Dec. 12, 1781, Barnwell, "Middleton Corr. Oct. 1925," 187, 191-93, 208. Richard Walsh, ed., *The Writings of Christopher Gadsden, 1746-1805* (Columbia, S.C., 1966) 195 footnote 3. Rutledge described the incident at length to

The Jacksonborough Assembly was primarily composed of militia leaders, paroled prisoners, and other men who were battle-hardened and had suffered for their avowed Patriotism. Burke described some of his fellow representatives in that assembly as especially battle-hardened, and even coarse. "One of our Members of this present Assembly kept a tally of the number of men he has killed on the barrel of his pistol, and the notches amount to twenty-five. I know another who has killed his fourteen, &c. &c." Burke painted a picture of an assembly where people greeted each other by bragging about their war exploits. How much mercy could the Tories really expect from this crowd?⁶⁰

Yet, these men were not only brutes and soldiers. Edward Rutledge described his fellow Assembly members as "the Flower of the Country" and was pleased with the "Competent Appearance of the House." Burke admitted that the assembly was "composed of very respectable good men."⁶¹

In the debates, Aedanus Burke was one of the leading voices against the Confiscation Act. He had very little backing; he himself admitted "two only are in opposition to it in the whole." Yet on certain crucial questions, there was unanimity. Even Burke, the greatly vocal opponent of the Confiscation Act, thought "the men who are the objects of it should never be received into the bosom of this Country." He agreed with the goal of banishment for offensive Loyalists at this moment, but objected to depriving dependent families of property. He worried that such confiscation would

Middleton but identified the party as Gervais, not Gadsden. However, in later letters he indicated that Gadsden was actually the Patriot involved in the incident.

⁶⁰ Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782, Barnwell, "Middleton Corr. Oct. 1925," 183-213, 192.

⁶¹ Edward Rutledge to Arthur Middleton, Jacksonborough, Jan. 23, 1782, Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782. Barnwell, "Middleton Corr. Oct. 1925," 193, 210.

“bring so many families & their children to beggary & ruin, that I most devoutly detest it.” Crying in the wilderness, he also railed that confiscation would make all property insecure: “can Property be secure under a numerous democratic Assembly w^{ch} undertakes to dispose of the Property of the Citizen?” However, his complaints went unheeded, and he was certainly out of step with his peers.⁶²

Confiscation was part of a series of acts designed to invigorate the ongoing war effort. As discussed above, South Carolina still desperately needed troops to control and repel the British. How generous would they have to be in recruitment bounties to attract warm bodies?

The answer to the second question turned out to be—rather generous. The General Assembly promised a bounty of a slave per year served for two years of service, which Edward Rutledge felt was an “enormous Bounty.” He hoped that Congress would send troops and a fleet to drive the British from Charleston so that South Carolina could “save two Negroes out of three.” Given the need to provide these generous incentives, the state needed cash and slaves to pay these bounties—and slaves could come directly from confiscated estates, and cash as well.⁶³

Within a week, the confiscation committee had already created a list of 700 names, but reduced the list considerably before bringing it back to the floor. At some point over that weekend, the committee added another 240 names to the list. At that time, the list included several persons who would ultimately be amerced instead, or even

⁶² Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782. Barnwell, "Middleton Corr. Oct. 1925," 192-93.

⁶³ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 14, 1782, Joseph W. Barnwell, "Correspondence of Hon. Arthur Middleton," *The South Carolina Historical and Genealogical Magazine* 27, no. 1 (Jan. 1926): 1-29, see 5.

be relieved of all penalties, such Daniel Horry and Rawlins Lowndes. (There is no record of the entire list at that point, unfortunately.)⁶⁴

On Monday January 28th, the confiscation committee led a full house debate on the current list and wording of the confiscation act. The House of Representatives agreed to the list of names and all but one minor clause of the act's wording. There was then a weeklong break in which the committee went back into session and revised the act and list, although no discussion as to why. On Thursday Feb. 7th, the House brought in a revised list that was whittled to 118 names, much fewer than on previous lists. During the debates to agree on this list of names, the Assembly decided to create a new system of graded penalties for Loyalists that allowed them to impose a lesser penalty on some men, while not letting them off the hook. The official motion asked that instead of confiscation, amercement (taxation) should be a possibility for "Persons whose conduct [is] not considered Sufficiently criminal to merit Confiscation." This was the first mention of a lesser penalty, and it was quickly adopted. Its emergence at this point in negotiations suggests that it was a compromise measure for disputes about names. Rather than a stark choice between ruination and forgiveness, the House of Representatives opened a third option. Having an option might also have allowed a less contentious negotiating process, as each side could give more easily on any particular name.

The wording of the motion is also interesting because it suggests a process of discussion in both the committee and the full house floor that debated the relative criminality of each man's conduct. The distinction "sufficiently criminal" alerts us that each man's wartime record was a subject of discussion. The House members had a

⁶⁴ Aednaus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782, Barnwell, "Middleton Corr. Oct. 1925," 192-93.

mental standard of what actions were criminal enough to merit confiscation and banishment, although they did not agree on each individual.

At this point, the list (at least as recorded in the minutes) had no order. It was not in alphabetical order and it was not arranged by crime, as the list would be in the final version. Backcountry and lowcountry names were scattered throughout the list. However, Edward Rutledge, the primary author of the act, wrote his political ally and friend Arthur Middleton the next day. His letter makes it clear that the list followed Gov. John Rutledge's suggestions for what kind of acts would merit confiscation and banishment. At a time when "we were very deep in Confiscation" he told him "the plan stands at present thus—Some British Subjects by Name—Some of the Addressors—The Returned Exiles—Some who hold Commissions--& some others who have been guilty of extraordinary Offences." He made it clear that while the categories were set, most lists only contain "some" of the men who qualify in each group. The only new group was the "Returned Exiles": men who had been forced to leave the state after 1776, but who returned after the occupation of Charleston. The returning exiles had been exiled by law, and had taken the change in circumstances as a chance to return and profit.⁶⁵

Meanwhile, the House of Representatives was drafting and debating other legislation that was founded on the assumption that the Confiscation Act would pass, and that it would provide sizable monetary gain for the state. In between the reading of the first and second list, the House arranged to supply General Greene's troops with slave labor drawn from slaves owned by Loyalists. They planned to use 1200 slaves from the

⁶⁵ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 8, 1782, Barnwell, "Middleton Corr. Jan. 1926," 2-3.

confiscated estates for this purpose alone. The militia recruitment act bound South Carolina to pay a sizable bounty in slaves for new recruits. These slaves would also have to come from the confiscated estates. On the same day as the Senate began debating the confiscation act, the House was using profit from the confiscated estates to back notes for supplies troops took from South Carolina suppliers. Isaac Hayne's heirs attempted to get the use of fifty confiscated slaves to rebuild the Iron Works he had part owned in the New Acquisition District. Everyone intended to pay for his pet projects with money from Loyalist estates.⁶⁶

The Senate took up confiscation for the first time on February 9th. As a smaller body, the Senate was able to conduct their debates on the Confiscation bill as a body, rather than using committees. Within a week of first introduction of the bill, the Senate was debating a very specific schedule of names. By this time, the list was explicitly arranged into six categories covering the categories enshrined in the final Act. There was considerable reorganizing at this point in the negotiations. The Senate proposed an additional 291 names on Feb. 13th. They also added two crucial additions to the governing language. First, they explicitly made all debts collectible against confiscated estates, so that the government would not profit at the expense of individual citizens. The one exception was Loyalists, who were barred from collecting debts from confiscated estates. Second, the Senate added a proviso to dissuade South Carolinians from either stealing Loyalist property or helping Loyalists hide their property. They made it a capital felony to "remove aid or assist in the removal of any of the property hereby Confiscated." This had two purposes. First, slaves were a uniquely portable form of valuable property (at least from the perspective of white slaveowners). Several commanders, most notably

⁶⁶ Salley, *House J. 1782* 48-49, 57-58, 69, 77.

Thomas Sumter, had already taken slave property to use in the war effort. Other South Carolinians had caught runaway slaves from Loyalist estates and were keeping them on their own property. It would be temptingly easy to just keep such slaves, rather than turn them over to the state. In fact, after the war, the Governor published multiple appeals imploring people to turn in such slaves. These announcements alternately threatened and cajoled South Carolinians into giving up their ill-gotten slave wealth. The Senate anticipated this problem, and sought to control it with this legislative addition. This clause also was directed at relatives and friends of Loyalists named on the lists. The Senate wanted to discourage people from helping Loyalists hide their property so as to preserve some value.⁶⁷

The Senate sent the revised bill back to the House, where it quickly became apparent to both sides that they would need extensive negotiations to reach compromise. However, they tried to negotiate back and forth as full houses, rather than immediately creating a joint committee to negotiate the final bill. Perhaps this was because the subject was important and everyone wanted to weigh in on the names as long as there was substantial change possible. The legislature later did appoint a joint committee, but only when there were very few issues to iron out, and those issues were clearly identified. Meanwhile, the House and the Senate spent several days sending proposed changes back and forth daily.

The House of Representatives did not object to the language the Senate had added, but they did object to the schedule of names. Throughout the process of debate, it was the names, not the language of legislation and penalty, that required hard fought compromise. Both chambers and almost all members were in agreement about the need

⁶⁷ Salley, ed., *Senate J. 1782* 54, 74-80.

for a confiscation act. It was in the lists of individual names that ideological and personal debates were fought. This attention to the names, and the debate around them, shows that the main point of the act was indeed listing, classifying, and punishing select individuals.

Edward Rutledge was insulted by the changes the Senate wanted. The Senate had “increased the List to such an amazing Length & have added so many insignificant Characters that it must undergo very great alteration.” Probably some of those “insignificant characters” were men he was trying to protect. After fighting for several days, the house read a new report, and only one name caused controversy this time—John Wragg, Christopher Gadsden’s brother-in-law, and a merchant who had personal and business ties with most Lowcountry gentlemen. He was on the list as a signer of the congratulatory address to Clinton, but also, and even more damagingly, he had petitioned to be in the Royal Militia. Both of these actions were named offenses in the Confiscation Act. Perhaps the unknown Representative tried to save him because of personal ties, or perhaps because he was already an older man during the Revolution, and his health and age affected his ability to leave his plantation. The vote was very close, so Wragg had support, but in the end his name stayed on the Confiscation list. By Feb. 17th, nine days before the close of the session, the House and the Senate had come to enough agreement on the outlines of the confiscation bill that they established a joint committee to finish the negotiation.⁶⁸

By the 17th of February, an additional complication had emerged in negotiations. On the face of it, the Confiscation Act was intended to punish Loyalists. It determined who could (and could not) be a citizen of the newly independent South Carolina. But in

⁶⁸ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 14, 1782, Barnwell, "Middleton Corr. Jan. 1926," 4-5. Salley, *House J. 1782* 89.

fact the Confiscation Act, like the two pardon proclamations by Governor Rutledge, also functioned as a call to Loyalists to return to the Patriot fold. The General Assembly expected that some Loyalists, whose behavior was beyond the pale, would leave whenever the British finally evacuated Charleston. But others were meant to hear about the deliberations at Jacksonborough and consider their own position. Not every legislator felt this way, of course. Some simply wanted retribution. But others were well aware of the fact that Loyalists in Charleston knew the Jacksonborough assembly was considering their names. Further, some General Assembly members were trying to sway Loyalists they knew to come forward while they were still negotiating the Confiscation Act. Edward Rutledge and others wrote Charles Drayton, another well-connected fellow, during the assembly to do something that would convince others he had finally abandoned the neutrality he had claimed to uphold since he took protection from the British. Rutledge disgustingly told Drayton's brother-in-law that Drayton was "as inactive as ever, for which he has been placed on the Sequestration List. He has been written to repeatedly about the Matter, but all to no purpose—He stays at Home, & returns no answer."⁶⁹

Drayton might have stayed at home, but not everyone took this as calmly as he did. By the last week and a half of the Assembly, Loyalist petitions began arriving at the Assembly, and some were read and debated by committee and the entire body. A few individuals were concerned that they might be mistaken for someone else, and lose their

⁶⁹ Charles Drayton was a brother-in-law to both Arthur Middleton (serving as South Carolina's representative to Congress in 1781) and Charles Cotesworth Pinckney. After the fall of Charleston, he took British protection and lived on his plantation at Goose Creek for the rest of the war. In the end, he was neither confiscated nor amerced, and went on to serve multiple sessions in the House of Representatives after the Revolution, and was elected Lieutenant Governor in 1785. Walter B. Edgar and N. Louise Bailey, ed., *Biographical Directory of the South Carolina House of Representatives*, 4 vols., vol. 2 (Columbia, S.C., 1977) 2: 199-201. Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 14, 1782, Barnwell, "Middleton Corr. Jan. 1926," 5.

property in that way. Alexander Garden Jr., the son of a Loyalist, apparently spent the entire month and a half of the Assembly buttonholing acquaintances into protecting his interests. He annoyed Rutledge, who described him as “full of Trouble...lest we should touch *his* Plantation at Goosecreek.” He also tried to save his father’s estate from confiscation, but mostly so he could take it. He formally petitioned the Senate, asking that despite his father’s being “ranked among the persons falling under...” the confiscation act being debated, in light of his own “invariable attachment” to America, the legislature delay the sale of his father’s property. William Henry Harvey petitioned the Senate to give him his brother’s property rather than confiscate it. He proclaimed his own good conduct as a Patriot, and asked that he be given his brother’s estate in lieu of his brother’s debts to their father. Alexander Garden Jr.’s efforts were partially successful despite rubbing people the wrong way. Harvey showed little concern for his brother’s fate, but he was determined to do what he could to protect his own wealth.⁷⁰

Sarah Steward petitioned the Senate on behalf of her husband, a Loyalist. Steward’s name was on the confiscation list at that time, and he was the subject of disagreement between the Senate and the House. She told the Senate that “she is informed her Husbands Estate is likely to be Confiscated and himself Banished from this State, by a Bill now before this House.” Clearly, word had spread into Charleston, as she was endeavoring to persuade the General Assembly not to confiscate his property. Given that his name was the subject of considerable horse-trading during the session, it is likely

⁷⁰ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 14, 1782, Barnwell, "Middleton Corr. Jan. 1926," 5. A. S. Salley, *Journal of the Senate of South Carolina January 8, 1782--February 26, 1782* (Columbia, 1941)97-98, 101-02. The Loyalist brother was Alexander Harvey, a Charleston lawyer. He was mentally ill by this time, and his blood kin were Patriots who were more concerned with protecting their own property than saving his. Further, his relatives by marriage were largely Loyalists. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 110-13.

that a Steward ally wrote her, encouraging her to come forward to try to bolster efforts to keep Steward off the final confiscation list. In her efforts to persuade the General Assembly, she argued that she was already “distress’d” by the war, and would need her husband and his property to live after the war. Further, while not denying that her husband was living in England, she suggested that he had “always been a friend to the American cause,” he had “befriended many American prisoners,” and that if he was “restored to his Country” he would be appropriately grateful. In the end, her efforts, in addition to those of his supporters in the General Assembly, worked. Charles Augustus Steward was amerced 12%, not banished and subjected to confiscation.⁷¹

These petitions provoked a response from both houses of the Assembly. Each side made a motion that would allow a Patriot son, brother, or nephew of a Loyalist subject to confiscation to gain title to the otherwise confiscated property if he could show that he would otherwise have stood to inherit that property, or would have inherited that property if he had not displeased his Loyalist relative and been disinherited for his political stance. In the House of Representatives, this amendment was offered the day after Alexander Garden Jr.’s petition was read. In the Senate, it was introduced two days after William Henry Harvey’s petition was read. In both chambers, the measure failed. In the House, the vote was 51 against the amendment, and 36 in favor. Aedanus Burke led the votes in favor of the amendment—probably because he was opposed to the act in general, and strove to ensure that the list was as short as possible. Had the General Assembly passed this amendment, relatives might have claimed many of the confiscated estates. This would reduce the money available from confiscated estates to pay state debts. It would also have opened up a very large loophole in the law, which would have

⁷¹ Salley, ed., *Senate J. 1782* 103, 105.

allowed many people to come forward claiming estates. Confiscated estate sales would have been subject to great insecurity, as purchasers would not know whether they truly had good title. Such uncertainty would depress prices at auction and discourage potential purchasers from buying at all. In addition to these practical financial problems, this amendment would allow relatives to try to save property for Loyalists, and undermine the severity of punishment that the act intended. For all of these reasons, the amendment failed in both chambers.⁷²

Rather than offer a blanket exemption for all Patriot male relatives of Loyalists, the General Assembly offered narrowly tailored exemptions for petitioners. After several motions, they agreed to defer the sale of certain estates, largely those addressed by the petitioners, until the next meeting of the General Assembly (which, barring any crisis, would be January 1783). The act protected the real estate and the moveables, but not slaves. In that way, even this clemency was narrowly tailored so as to allow the General Assembly to use slave labor from these estates.⁷³

One other petitioner case is particularly instructive in understanding the forces at work in confiscation. Cornelius Dupont, Gideon Dupont Jr.'s brother, petitioned on behalf of his nephew to have the estate sale postponed. While not mentioned in the petition, the committee report makes it clear that Cornelius Dupont and his family were living on his brother Gideon's plantation at the time and depended on it to support them. The Senate committee reported favorably on his request, suggesting that the estate sale should be postponed. They made this recommendation despite their explicit recognition that his petition "militates against the whole Tenor of the Bill now under

⁷² Salley, ed., *Senate J. 1782* 111, Salley, *House J. 1782* 94.

⁷³ Salley, *Senate J. 1782* 114.

consideration.”⁷⁴ The Senate recognized that allowing Cornelius Dupont to use Gideon Dupont Jr.’s estate was against the spirit of the Confiscation Act, which sought to raise money through confiscated estates and to punish Loyalists by depriving them and their families of their wealth. This is an extraordinary statement. They were willing to undermine their own act in order to protect Cornelius Dupont. But, I suggest, that is the wrong way to consider it. What makes this statement extraordinary is that it suggests that a majority of the General Assembly were more concerned with passing a Confiscation Act than actually enforcing its provisions. The importance of the act was to publicly punish Loyalists and to encourage them to come back to the Patriot side. Despite heavy financial need, a majority of legislators were willing to undercut the confiscation bill before it was even passed. They were committed to the bill as an act of symbolic retribution that would reassure an anxious and angry population while disciplining Loyalists. As a body, they did not intend for it to stand unmodified, and they did not require that it be enforced against all parties.

In the last week of the legislature, the General Assembly worked to reconcile their two versions of the Confiscation Act. Both governing language and individual names were tossed back and forth between chambers. Sixteen names went back and forth between chambers in various iterations, with one house voting to strike and another voting to keep. Charles Augustus Steward, whose wife had petitioned on his behalf, had more supporters in the Senate than the House, as the House consistently put him back on the list and the Senate kept striking him from the list. Finally, they compromised by moving him to the Amercement Act list instead. Alexander Rose was in the same situation, as the Senate kept trying to remove him from the list. Unfortunately for Rose,

⁷⁴ Salley, *Senate J. 1782* 113.

Edward Rutledge, the author of the Confiscation Act, was implacable on the subject, and maintained pressure to keep him on the confiscation list. Rutledge claimed he had not “said anything against a single Person I recollect but Alex^r. Rose.” Rose, a Charleston merchant, had supplied property to the British for their use during the occupation of Charleston, and received handsome rents in return. His name stayed on the final list, and he was subject to confiscation. As we will see, he was later successful in petitioning to be relieved of confiscation and banishment, and ended up regaining his former position in Charleston society, despite the enmity of the Rutledge family.⁷⁵

The most controversial name between the two houses was William Blake. In this case, the roles of the two houses were reversed, as the Senate was determined to subject Blake to confiscation, and House members continued to try to save his citizenship and property. Edward Rutledge was one of Blake’s supporters, as was Arthur Middleton, his brother-in-law and one of South Carolina’s delegates to the Continental Congress. Edward Rutledge reassured Middleton several times that he was trying to save William Blake from confiscation, but that many were against him. On Feb. 14 he reminded Middleton that “I wrote you a few days ago...[and] told you that your friend Blake was in the Catalogue of Offenders: his Name is at present left out, but whether he will not be again added it is impossible to say.” Rutledge sought to reassure Middleton, who was far away from the action, that he was doing his best to save Blake from the folly of his actions, but he warned Middleton that he might not be able to keep Blake from confiscation. In fact, he was right to be worried. William Blake’s name went back and forth, coming down to the final meeting of the joint committee. On Feb. 22nd, the joint

⁷⁵ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 26, 1782, Barnwell, "Middleton Corr. Jan. 1926," 7.

committee met and agreed that the Senate would trade William Blake (meaning they would let his name be dropped, and moved to the amercement list) in return for changes they sought in the wording of two clauses of the text. (These specific changes sought to protect claimants against confiscated estates.) Edward Rutledge, as a member of the joint committee, presented the changes to the House of Representatives, which agreed and passed the act. Thanks to this effort, he was able to reassure Middleton on the last day of the Jacksonborough Assembly that “your old Friend, Billy Blake, has had a very narrow escape indeed.” The Senate “pushed excessive hard” against Blake, and Rutledge felt “many things were asserted against him which were not true.” He also defended the amercement, reminding Middleton that while he had protected Blake, Blake had been culpable.⁷⁶

At the same time as the Assembly was finalizing the names on the confiscation list, they were also moving forward on the amercement act. Having largely finalized the names on the Confiscation Act, they were able to finish listing names for the amercement act. As we just saw with William Blake, the amercement list also functioned as a release valve for pressure over the final names. Men like Charles Augustus Steward and Daniel Huger, whose names were passed back and forth from list to list, were taken off the confiscation schedule in the final week of negotiations and added to the amercement schedule. Even then, the Senate and House went back and forth on several names, including Daniel Huger, who was fortunate, as the House finally removed him from confiscation and amercement. Later in this chapter, I consider amercement at great

⁷⁶ Salley, *Senate J. 1782* 122. Salley, *House J. 1782* 110. Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 26, 1782, ed. Joseph W. Barnwell, "Correspondence of Hon. Arthur Middleton," *The South Carolina Historical and Genealogical Magazine* 27, no. 1 (Jan. 1926): 1-295-7.

length. For now, it is worth noting that amercement functioned as a halfway house for names in dispute between houses and within houses.⁷⁷

Jack P. Greene studied the “quest for power” of Southern colonial legislatures through their lower, more democratic houses in the eighteenth century. South Carolina’s colonial House of Commons was used to “ironclad control” over all local and colony governance. Greene argues that while lower houses steadily expanded their prerogatives of control, up until the Seven Years’ War, their expansion, and indeed their decisions, showed “spontaneity.” In dealing with Loyalists, South Carolina’s wartime assembly would continue to show spontaneity, concerned more with present uses of the legislation than longer-term outcomes. (In this case, two years later seemed to qualify as long-term.) This further suggests that most early state legislatures dealt with matters on an ad hoc basis.⁷⁸

So far, I have discussed legislative action on the confiscation and amercement acts, and related them to other acts concerned with financing state expenses and beefing up state military preparations. There were two other acts moving through the General Assembly that were also related to confiscation and amercement, and therefore bear mentioning. The General Assembly was trying to restart the court system after the disruptions of the war. The South Carolina court system had long left something to be desired, as the Regulation had shown. The backcountry suffered from a lack of local courts. The South Carolina General Assembly had attempted to expand the local court system before the Revolution, but many of the proposed courthouses had never been built. In order to establish post-war order, the General Assembly sought to reestablish the

⁷⁷ Salley, *Senate J. 1782* 124-25, 129, 136.

⁷⁸ Jack P. Greene, *The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689-1776* (Chapel Hill, N.C., 1963) 5, 9.

courts, including building a workable system of local criminal and civil courts for the backcountry. This was a thankless task. Governor John Rutledge and a majority of the General Assembly saw the court system as a necessary second part of the effort to address Loyalist actions during the war. In this formulation, the General Assembly could pass legislation that addressed certain prominent Loyalists of relatively high status by either publicly punishing them, or offering them a blanket pardon. None of the acts offered pardon or shelter from war crimes charges, despite the fact that criminality was one of the factors in the Assembly's debates. Justice Aedanus Burke was implacably opposed to efforts to use the courts to prosecute Loyalists. I will detail these objections more thoroughly in Chapter Five, but it is worth mentioning that there was not unanimity on the courts. South Carolinians accepted the limited nature of the Confiscation Act in part because they expected that they could use the court system to prosecute war criminals. In jury trials, they could debate what defined such criminality. Burke was afraid of holding court, because he expected such courts "to be a tool to gratify the fierce revenge of the people; For you c^d. Not enter a Company that some do not talk of hanging many hundreds." Governor Mathews, who was elected as Governor Rutledge's replacement during the Jacksonborough Assembly, pushed to open special court sessions a few months after Jacksonborough in order to prosecute Loyalists. Burke commented that "Gov^f. Mathews now wants me to hold a special Court at Orangeburgh for tryal of about a hundred Scoffs w^{ch}. is the term we have for a Tory."⁷⁹

⁷⁹ Aedanus Burke to Arthur Middleton, May 14, 1782, Barnwell, "Middleton Corr. Oct. 1925," 201. Burke also argued that it was impossible to conduct such trials at a time when the state was still in arms, and he eventually used this excuse to avoid having to hold these courts in 1782. Barnwell, "Middleton Corr. Oct. 1925," 201-02. Aedanus Burke to Arthur Middleton, July 6, 1782, Barnwell, "Middleton Corr. Oct. 1925," 205-06. Scoffolite was a derisive term for Loyalists, referencing John Scofield, a leader of the anti-Regulators, and a Loyalist. Calling someone a Scoffolite was tantamount to calling him a bandit. Burke

In the spirit of extending the olive branch, the Jacksonborough Assembly also passed a pardon act meant to apply to most Loyalists. In the same week the Senate added more than two hundred names to the confiscation act, the House and Senate began debate on the pardon act. The Senate insisted that the pardon act explicitly offer no cover to acts regarded as impermissibly criminal even in war. To do this, they added a clause that the pardon did not extend to anyone who was accused of crimes such as “Robbery, House burning, House breaking or Murder.” Instead, the Senate called for these men to be “subject to trial, condemnation and Execution for the said offenses.” The House did not like the wording, and demanded a joint committee to resolve the issue. The Senate tried to make the pardon act explicitly about military actions, whereas the House kept taking the qualifier “Military” out of the legislation.⁸⁰

“a due discrimination should be made”: The Amercement Act, Pardons, Voting Rights, and Other Forms of Lesser Punishment⁸¹

In its initial considerations, the House of Representatives planned to sequester the estates of those who were guilty of less egregious behavior. In this, they were following the example of the British, who had sequestered the estates of prominent Patriots after the occupation of Charleston. Sequestration removed the income of the estate from the control of the person facing the punishment, but did not confiscate it. When the

did not want to hold trials, but he had no respect for the men he would have tried. He was concerned with his own reputation, as he did not want to go down in history as a hanging judge.

⁸⁰ Salley, *Senate J. 1782* 95, 97.

⁸¹ Act. No. 1155, “An Act for Amercing Certain Persons Therein Mentioned” (Hereinafter the Amercement Act), Cooper and McCord, eds., *Statutes of S.C.* 4: 523-525.

committee brought in the first full list of people subject to confiscation, they encouraged a motion to amerce (tax) the estates of “Persons whose conduct are not considered Sufficiently criminal to merit Confiscation.” The exact amount of the tax was negotiable, and not necessarily going to be the same amount for everyone. Amercement publicly punished some men, contributed to state coffers, but allowed Loyalists to preserve the bulk of their estate. Such personal control was essential to men’s standing as gentlemen as well as to their ability to maintain the value of their property.⁸²

Should every man be subject to the same level of taxation, or should a due discrimination be made within the act itself, with different levels of financial pain for men whose wartime acts deserved different penalties? As I have indicated earlier, the Amercement Act helped defuse tensions between houses over names on the confiscation list. But as a compromise measure, it also introduced a more nuanced system for dealing with Loyalists. It was no longer an all or nothing question, but one of graded penalties. The graded penalties also meant that the amercement act recognized that there were relative levels of criminal behavior even amongst men who had made the same public actions. Signatories of the official welcome and congratulation addresses to the British found themselves on the confiscation list, the amercement list, and on no list at all. Within chambers, the General Assembly was engaged in a spirited discussion of the relative criminality (was an action “Sufficiently criminal”) of each Loyalist.

The Amercement Act itself explained that a “due discrimination should be made” between men who had supported the Patriots in their hour of need and those who had instead taken protection and denied men and funds to the failing effort. But, just like the Confiscation Act, the Amercement Act explained that the forty-seven men singled out on

⁸² Salley, *House J. 1782* 62.

its list were those who while “bearing high and important trusts or commissions” for South Carolina, had withdrawn from the Patriot side and accepted British posts and protection. Both acts only went after public figures of some wealth, who used their good names to take officer-level positions. Amercees also had failed to take advantage of the mercy proclamations at an early enough date, stubbornly staying “within the lines of the enemy.” They had to be punished as an example to others, for their actions in refusing to submit to the authority of the governor meant they showed “contempt” to the “authority of the state” and offered “an evil example of society.” If the crime of men named in the Confiscation Act was that they aided the British and lent their reputations to the British cause, the crime of men named in the Amercement Act was that they had offered material aid to the British and offered a bad example. They were not considered ideological Loyalists, but opportunists. As a wartime government still trying to reassert its power, the General Assembly had to make sure that no one could be seen to be flouting them and getting away with it. However, by choosing to tax these men, but not banish them, the Assembly signaled it did not consider them real threats to the new state. They were to pay for their sins, but could ultimately be trusted as citizens. This was no small concern, since much of the justification for the Confiscation Act was that confiscees were untrustworthy as citizens and had to be banished for the safety of others. Yet many men who were considered for confiscation were ultimately placed on the amercement lists, suggesting that a good portion of those subject to confiscation and banishment were also not really regarded as threats. This also suggests that the Assembly was already open to action in later years to separate the confiscees into two categories: readmittable and admittable under no circumstances.

The General Assembly expected amerced persons to be recalcitrant in paying their ameracements, and designed the law to force such payments quickly. All amerced men owed 12% of the total value of their estates, both real and personal. The Commissioners of Forfeited Estates were required to inventory the estates of the amerced men for the purposes of setting the amercement, and they were the collectors. Should the amerced men not be able to come up with the money to pay their ameracements in a timely fashion, the Commissioners were to sell as much property as was required to pay the amercement due.

Just as with the Confiscation Act, the General Assembly made provision in the Amercement Act to foil attempts to evade such sanctions by transferring property. Any property sales by amerced persons after Sept. 27, 1781 (the date of the first Rutledge clemency proclamation) were void. The Act also provided for the death penalty for any persons caught and convicted of embezzling funds or property from amerced estates, in an effort (similar to the Confiscation Act) to recoup as much money as possible from these estates. Given the widespread theft of slaves and other moveable property, these restrictions were only so useful.

The Amercement Act also bundled in all those who had “subscribed or paid any sum or sums of money towards mounting, arming, or equipping, any troop or troops of cavalry or other military force, for the service of his Britannic Majesty, to act against this State, or against any other of the United States of America.” All of these men were publicly known, and originally considered for confiscation. The subscribers, as they were known, had not only paid money towards the British war effort, but publicly subscribed on widely-published lists. Subscribers needed to be publicly accused to a

local court official, and if one or more “credible witnesses” were willing to step forward against the Loyalist, he would become subject to a much stricter amercement. These amercees, unlike all the others, were subject to much more confiscatory 30% tax of the total value of their South Carolina real and personal property. Edward Rutledge bitterly suggested of one such man, “he will be amerced 30 per Cent, & justly too. Indeed I think every Man who voluntarily subscribed to raising that Corps deserves Banishment in the highest degree.”⁸³

Of course, by creating a system that encouraged accusations, the General Assembly opened a can of worms. It was bad enough that the 1782 session allowed individual legislators the opportunity to ruin their personal enemies through accusations of Loyalism. (Of course, they had to get others to go along with them. Still, they could ensure that their personal enemies who had engaged in Loyalist activities were on the Confiscation or Amercement Act lists.) Now, the General Assembly was opening the process of accusation to all South Carolinians who could be considered “credible”. While this standard did eliminate blacks and some poor white men, it potentially included the vast majority of white men in the state (and sizable numbers of white women). Further, the standard did not require multiple witnesses, so the testimony of a single witness could potentially be devastating. While the General Assembly did not go so far as to provide a bounty to witnesses, there are other motivations besides outright payment that could encourage people to testify, or even give false witness.⁸⁴

⁸³ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 26, 1782, Barnwell, "Middleton Corr. Jan. 1926," 8.

⁸⁴ It is not clear how many people actually accused others, partly because the court system continued in disarray for some time. (See Chapter Five for more on the reasons courts did not open quickly.) What is clear from the Commissioners of Forfeited Estates records is that some men were subject to the 30% penalty, and the Commissioners made an effort to actually collect that amount. Those amercements declined in later years with the general trend towards forgiveness I discuss in the next two chapters, and

Most amercees were subject to the 12% tax, but that percentage was a subject of negotiations. When first considered, the House set the amercement level at ten percent of the total value of the estate. Some senators attempted to reduce the amercement from ten percent to five percent, perhaps because they intended confiscation to take precedence. This motion was made the same day the Senate dramatically increased the size of the confiscation list. However, five percent seemed far too low for such a penalty, and other senators deflected this reduction effort. The Senate again changed the level of amercement later in the session, increasing the pain for Loyalists by moving for a twenty percent amercement (closer to the penalty for subscribers). The final bill compromised between the House of Representative's ten percent suggestion and the Senate's twenty percent suggestion by adopting a twelve percent amercement. This final resolution kept the penalty at a lower level, but was still sizable enough to ensure that amerced Loyalists would contribute significantly to the state's bottom line.⁸⁵

Despite these difficulties, amercement seemed fair to many legislators. They calculated that many amerced persons might end up paying less than Patriots had paid during the war. Edward Rutledge suggested that amerced men should be grateful because he did "not know one [Patriot] who would not be very glad to have lost no more than 25 per Cent^m." While this figure was inflated (and Edward Rutledge did well for himself after the Revolution), it did reflect the reality that sizable numbers of Patriots had risked their capital in the war. Their estates had been plundered. Many of their slaves had fled. The war itself had destroyed land and houses. Planting seasons were hopelessly out of whack. In this light, a twelve percent amercement to pay war expenses seemed fair

seem to have been converted to lower amercement amounts in those later years, in line with the 12% generally collected.

⁸⁵ Salley, ed., *Senate J. 1782* 124, 127.

indeed. Generally, legislators justified it as the cost of providing soldier substitutes, which Loyalists under protection had not done. Legislators also believed that some Loyalists had joined the British for pecuniary reasons, and the state was well within its rights to confiscate such ill-gotten profits. The General Assembly committee on appeals to confiscation later justified maintaining a penalty in James Duncan's case (a Charleston blacksmith) because we "think as he must have made large Profits by his Occupation during the British residence here, that he ought to pay Twelve per Cent."⁸⁶

The General Assembly also pursued other ways to define and regulate the status of Loyalists. Governor John Rutledge's Proclamation had offered pardons to Loyalists who rejoined the Patriots and served in the armed forces. The 1782 Jacksonborough Assembly enshrined the pardons into law with the Pardon Act, which defined what kinds of wartime behavior were worthy of a full pardon. In so doing, the General Assembly enforced the argument that Loyalism was a treasonous act requiring official pardon. The Pardon Act extended legislative control by insisting that South Carolina's government had the right to determine whether individuals were entitled to citizenship. Embodying the spirit of the 1781 clemency proclamation, it required men to serve nine months active duty in the militia in return for the pardon. For those lucky enough to own property, there was also an additional amercement of ten percent. This penalty was sizable, but still symbolically less than the penalties under amercement. The Commissioners of Forfeited Estates were instructed to value these estates and accept payment of the ten

⁸⁶ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 26, 1782, Joseph W. Barnwell, "Middleton Corr. Jan. 1926," 7. Theodora J. Thompson and Rosa S. Lumpkin, eds., *Journals of the House of Representatives, 1783-1784* (Columbia, S.C., 1977)221.

percent penalty. Should it not be forthcoming, they were authorized to sell enough property to equal the assessed value, just as in the other acts.⁸⁷

In the Pardon Act, the legislature did not create a list of names. Instead, they relied on a system in which the militia brigadiers sent in lists of the Loyalists who had come back over and were currently serving in their forces. One reason is that the General Assembly did not have this information at the time of their meeting for every force. Another reason is that the act gave cover for militia commanders to include men whose return they had accepted after the official deadlines. Men such as General Marion had allowed Loyalists to return under their protection after the September and December deadlines of 1781. And, since part of the point of debating these acts was to influence the remaining Loyalists, they wished to leave open the possibility that coming out during the Assembly might save men from confiscation. Edward Rutledge noted with a certain wry amusement that “since the Confiscation List has made its way into Town” (during the session), there had been “several broad Hints from our quondam Enemies wishing that we w^d. permit they would return to their *Countrymen*.” His amusement extended to sharing some of those names, especially amused that the “Tooth-Drawing Dr Clithere!” hoped to gain pardon. Despite the legal wording, the reliance on lists provided by military commanders months later allowed all of these returnees to come under the Pardon Act. This gave legal cover for commanders who had given their word to such

⁸⁷ Act No. 1157, “An Act for Pardoning the Persons Therein Described, on the Conditions Therein Mentioned”, Cooper and McCord, eds., *Statutes of S.C.* 4: 526-28. The act specifically pardoned persons who had taken the Dec. 17, 1781 or the Sept. 22, 1781 offers from Governor Rutledge.

men. The Pardon Act, by de facto extending the deadlines, also continued the policy of encouraging Loyalists to return to the Patriot side.⁸⁸

Unlike the Amercement Act, individuals affected by this act were given full pardons. There was one major exception, in the light of the atrocities and violence of the Revolution. The pardon specifically precluded any pardon to “persons who are or may be accused of counterfeiting money, plundering, robbery, house-burning, house-breaking, or murder.” Again and again, these offenses were singled out as unpardonable, and specifically exempted from any pardon. Anyone suspected of these offenses could still be taken to court and were “subject to trial, condemnation, and execution.” Plunder, murder, arson and stealing are readily recognizable wartime offenses. Counterfeiting may seem surprising, but was also used as a wartime strategy by the Loyalists to destabilize the currency.

The General Assembly specifically exempted actions that they defined as unacceptable actions in war. As the victors, they got to define war crimes. Citizenship was only available to men who had served honorably in war, and were likely to be upright citizens after the war.

The Pardon Act also envisioned that the newly reestablished courts would be used as war crimes tribunals. As we will see, many of the justices of these courts (some of whom were members of the Jacksonborough Assembly) were implacably opposed to using the criminal justice system to prosecute war issues. They were not at all convinced that citizens could be fair in using the courts to prosecute true war criminals without also using the courts to railroad all former Loyalists. The South Carolina justice system was

⁸⁸ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 14, 1782, Barnwell, "Middleton Corr. Jan. 1926," 5-6.

not strong enough to withstand such a potential miscarriage of justice. However, despite prominent jurists' abhorrence, the General Assembly clearly envisioned a parallel system of reconciliation and retribution. Their arm was a series of official proclamations and acts that offered clemency to a select group of Loyalists and punished another group. Ordinary South Carolinians could pursue retribution against a larger group of Loyalists through the courts. The Loyalists that the General Assembly addressed were from the economic and social elites of the state, as they were pre-selected as men who had held prominent posts in the civil and military efforts of the British. The court system would deal with men in lower positions. It also provided a mechanism for the prosecution of those specifically exempted from pardon. The court system could be employed to allow ordinary people to bring forth evidence not readily available to the General Assembly.

While South Carolina never ultimately used the court system to prosecute Loyalists, some other places did. In Virginia's eastern shore, though locals usually refused to testify in Richmond against local Loyalists in criminal suits designed to imprison them; they pursued civil cases for wartime damages against such Loyalists. Charges in these cases included false imprisonment, assault, and trespass. Virginians were successful in getting compensation through the civil courts. Adele Hast concludes that damage suits "provided a means for some degree of reconciliation." In North Carolina, locals also used the criminal courts to pursue Loyalists for wartime killings. Margaret Balfour was so angry that David Fanning's band killed her brother, she moved heaven and earth to testify against Frederick Smith, a member of the band, in 1783. Despite knowing that Smith had not actively participated in her brother's murder, she testified against him at length. "My story was so affecting that the court was willing to

give me every satisfaction in their power; and in order to do this they broke a little through the usual course, for they had the villain tried, condemned, and hung, all in the space of the court.” Further, these courts gave rise to the temptations of lynch law, which suited Margaret Balfour just fine. She happily noted that men in the courtroom hoped the jury would find Smith not guilty so “they might have the pleasure of putting the rascal to death with their own hands.” While Mrs. Balfour got a lot of satisfaction out of using the courts to pursue vengeance against Loyalists, the story does illustrate why more sober South Carolina leaders eventually rejected that solution.⁸⁹

“Due discrimination” could be shown in many ways. Voting rights were one area in which the Assembly drew distinctions between good citizens and Loyalists.

Americans believed that voting was central to any definition of citizenship, and widely expanded the franchise during the Revolution and Confederation periods. Most state constitutions deliberately expanded the electorate by sharply lowering property requirements. Some states even experimented with limited female suffrage, or suffrage by taxpaying status, or even the rights of free black men to vote, although generally only white men who met a minimal standard of property ownership had voting rights. Revolutionaries “increasingly viewed an individual who could not vote as unrepresented,” and saw the right to vote as central to the reason they fought the war to begin with. But at a time when state constitutions extended voting rights to more Americans than had every enjoyed them before, Loyalists were explicitly denied the vote.

⁸⁹ Hast, *Loyalism in Revolutionary Virginia* 123-24. For Margaret Balfour’s letter to her sister-in-law, see DeMond, *N.C. Loyalists* 123.

Given the increasing designation of suffrage as the most inherent right of citizenship, this meant Loyalists were not regarded as citizens.⁹⁰

In addition to the Confiscation, Amercement, and Pardon acts, the Assembly passed an act determining who had standing to vote in the upcoming elections for the 1783 Assembly. This act was careful to limit the voting rights of former Loyalists. Legislators argued that it was “repugnant to, the spirit, intent, and meaning of the constitution” that men who had “ withdrawn their allegiance to the State, and borne arms with or received protection from [or]... acknowledged themselves subjects of the king of Great Britain” should be able to vote for the legislature or serve in the legislature themselves. Voting was an integral part of republican citizenship. In restricting their voting rights, the General Assembly restricted their citizenship, instantly making them second-class citizens. (These voting restrictions were also motivated by political partisanship—in this case, a fear that former Loyalist voters could upset the balance of power. Aedanus Burke later accused John Rutledge of manipulating the 1782 Assembly in a quest for aristocratic power.) Nonetheless, while signaling that voting rights were a legitimate area of postwar distinction, even restriction, of citizenship, the Jacksonborough Assembly followed through on their policy of offering relatively generous pardons to Loyalists who crossed back over in response to Governor Rutledge’s 1781 proclamations, giving them full voting and office-holding rights.⁹¹

⁹⁰ Marc W. Kruman, *Between Authority & Liberty: State Constitution Making in Revolutionary America* (Chapel Hill, N.C., 1997) 88-92, 96-97, 98-103, 159-60. South Carolina was one of four states that adopted taxpayer status, not property, as the qualification for men to vote. This extension of the franchise did split voting rights from the right to hold office, at least for religious minorities such as Jews and Catholics. Kruman also astutely notes that the extension of the franchise with the provision that men had to take an oath of allegiance and abjuration helped sway those who wished to remain neutral into active participation on the Patriot side in order to secure the franchise.

⁹¹ Act No. 1147 “An Act for Settling the Qualification of the Electors and Elected, in the Next General Assembly,” Cooper and McCord, eds., *Statutes of S.C.* 4: 510-11.

Restrictions on voting and office-holding for former Loyalists were common in most new American states. North Carolina's wartime test acts stripped Loyalists of voting rights, office-holding rights, the ability to bring civil suits, purchase or sell land, or carry weapons. Pennsylvania also stripped those who refused oaths of allegiance of voting and holding office, as well as selling land and jury service. New York and Connecticut also had similar laws.⁹²

Restricting voting and office-holding also proved popular in South Carolina. Aedanus Burke approved the result, telling a friend that the "Tory dead weight" had been removed thanks to Gov. Rutledge's "good policy in excluding from voting all such persons as had not borne arms antecedent to the 27th September." This "Tory dead weight" had frustrated Charleston leaders in their early Revolutionary efforts, and they enjoyed the relative unanimity of purpose they had in 1782. Even Burke, who opposed most of the confiscation efforts, and completely opposed the amercements, did not feel it was appropriate to allow Loyalists to vote. As such, he too opposed full participatory citizenship for South Carolina's Loyalists, arguing it was "madness to allow men to influence our Elections who had borne arms against us without giving some Test of their attachm^t. to us." The 1782 act addressed this concern by requiring oaths for returning members, and requiring future oaths from Loyalists seeking to vote or serve in the Assembly. This issue went to the heart of trust. In a republic, men had to be able to trust each other's word. South Carolina Loyalists had pledged themselves to support the King.

⁹² DeMond, *N.C. Loyalists* 156. Ousterhout, *State Divided* 161-62. Siebert, *The Loyalists of Pennsylvania* 72, 88, 90. Siebert indicates these restrictions might have applied to half of male citizens (although that estimate seems high). Further, voting restrictions were not lifted until March 1789. Oscar Zeichner, "The Loyalist Problem in New York after the Revolution," *New York History* 21, no. 3 (1940): 284-302. Oscar Zeichner, "The Rehabilitation of Loyalists in Connecticut," *The New England Quarterly* 11, no. 2 (1938): 308-30.

Many had, at various times, promised themselves to both sides. The entire question of loyalty was fraught, and so was any individual's trustworthiness. By painting the issue as a hard and fast rule, South Carolinians papered over the inherently problematic matter of how many of them had swayed at one time or another during the Revolutionary strife.⁹³

In conclusion, the Confiscation Act on the surface was about punishment, but when we consider the larger frame of the negotiations in the Jacksonborough Assembly to fulfill competing priorities, we see that Confiscation was part of a larger strategy to co-opt and pardon many Loyalists, attracting those without much war action back into the American fold.

Do Not “Chafe the Survivors”: Popular Attitudes Towards the Loyalists, or the Mental World of Henry Laurens, South Carolinian and Peace Treaty Negotiator⁹⁴

Reconstructing popular attitudes in depth is difficult under the best of circumstances, and South Carolina records rarely offer the best of circumstances. Little correspondence for 1782 survives, and the only newspaper was in Loyalist hands. The court system was closed. Church records are non-existent. What letters do survive were written by a handful of prominent, politically connected South Carolinians in military and political positions. Yet with the correspondence of a few well-placed South Carolina elite men, it is possible to reconstruct how at least one swathe of South Carolina elite society perceived Loyalists, Loyalist character, and the proper treatment of Loyalists in

⁹³ Aedanus Burke to Arthur Middleton, Jacksonborough, Jan. 25, 1782. Barnwell, "Middleton Corr. Oct. 1925," 193.

⁹⁴ Hamer, ed., *Laurens Papers* 16: 67-68.

the first year after the Jacksonborough Assembly. Elite letters also preserve what must have been only a small amount of the correspondence sent by desperate yet hopeful Loyalists to former friends and acquaintances seeking help recovering their citizenship and property.

John Lewis Gervais, a leader in the General Assembly, bitterly complained of his own losses in letters to friends in 1782. In September, he was eagerly awaiting British withdrawal from Charleston, but fearful of what he would find.

They have a great Spleen against me particularly, I believe I am the only one in the State, whose whole property they have removed to Charles Town_ horses, Cattle & Stock of all Sorts they have either destroyed or carried off from the plantation, in a Word they have left me nothing but my Land, which thank God they could not carry away.⁹⁵

He especially blamed two South Carolina Loyalists, Andrew Williamson and Malcolm Brown, for “these kind offices.” This may help to explain why both men found themselves on the Confiscation List. Andrew Williamson was removed thanks to evidence from General Greene that he had spied for the Americans while holding a Loyalist commission, but perhaps thanks to Gervais’s implacable opposition, Malcolm Brown was subject to confiscation until 1791.

Friends of Gervais reported that he lost everything to the enemy, escaping with clothes and a single horse. Newly elected Governor John Mathews warned Arthur Middleton that “it is said they also burnt your father’s [house]” and possibly “carried off all his negroes” during the engagement in which John Laurens was killed. Ralph Izard complained to a friend that he received reports that “my house is in a very ruinous condition,” despite, he mused, his “beautiful & elegant plaster” lares (Roman figurine

⁹⁵ John Lewis Gervais to Henry Laurens, Philadelphia, September 27, 1781, Hamer, ed., *Laurens Papers* 16: 16, 31, also 31 footnote 13.

portraying a god of the household). Again and again, people worried about damages to their homes and property, reflecting on the very real price they had paid for independence. It was hard to be generous with Loyalists in the face of such genuine anxiety and loss. Slaveholders were especially hard-struck financially and emotionally by the loss of most of their slaves. In the face of such loss, it was especially galling to interact with Loyalists who had been spared confiscation, and flaunted themselves.⁹⁶

Edward Rutledge was disgusted with the men he and others dubbed the “protection Gentry”—those who had been spared confiscation, but had taken British protection. Knowing what a narrow escape some of them had, and how much of their luck was due to the interventions of personal friends, he could not help but feel they should conduct themselves more adroitly (or at least have the decency to look ashamed.) He complained that Charles Drayton continued “as usual” despite his near-miss, and that despite the clemency the Assembly showed him he continuing “doing no one thing for the good of the state.” Further, Drayton and his peers were “in the general highly offended if they receive the least Slight whatever” yet they refused to do militia duty. Charles Cotesworth Pinckney was also irritated with Drayton’s “constant trimming on both sides” which was “not an honorable part.” He reflected that Drayton himself seemed to think it was a “sure Game.”⁹⁷

Yet one man, whose extensive correspondence is preserved, offers an especially revealing look inside the contradictory emotions and attitudes of South Carolinians.

⁹⁶ John Mathews to Arthur Middleton, Uxbridge, S.C. Aug. 25, 1782, Ralph Izard to Arthur Middleton, Philadelphia, May 30, 1783. Joseph W. Barnwell, "Correspondence of Hon. Arthur Middleton," *The South Carolina Historical and Genealogical Magazine* 27, no. 2 (1926): 51-80, see 71, 78. Henry Laurens to Edward Bridgen, Nantes, Aug. 29, 1782, Hamer, ed., *Laurens Papers* 16: 601.

⁹⁷ Edward Rutledge to Arthur Middleton, April 14, 1782, Edward Rutledge 1749-1800 Papers, 43/506, SCHS. Charles Cotesworth Pinckney to Arthur Middleton, Camp near Bacon’s Bridge, April 24, 1782, Barnwell, "Middleton Corr. Apr. 1926," 61.

When the Confiscation Act passed, Henry Laurens was living in the Tower of London as a British prisoner of war, keeping up with the debates and actions of many state legislatures through a copious correspondence with his friends. As a prisoner, he suffered heavily for his patriotism, and worried about the extent of his own financial losses. He had an unusual double perspective on the problems of Loyalism, however, when he served as an American negotiator for the eventual peace treaty.

Some of his correspondents were especially well-placed. His son John Laurens was a member of the Jacksonborough Assembly and member of the confiscation committee. (Although by all reports, John Laurens was bored by confiscation and eager to get back in the field, and certainly did not write at length in this period). Other frequent correspondents included Benjamin Franklin, John Owen (another member of the confiscation committee), and John Lewis Gervais.

Laurens often expressed incredible anger at the British and Loyalists for the immense destruction the war caused. From his vantage point in London, he was unsure of how much of his wealth was salvageable. He was particularly likely to express this bitterness against British merchants who dunned him, or who sought his help in collecting debts from other Americans. When John Davies, a London merchant, wrote him asking about a previous order for fishing nets, Laurens exploded with frustration. He reminded Davies that “now the British forces have plunder’d him of all his property” it was ridiculous to ask about such things when he was unsure whether he still had “Fishing ponds & other water.” Further, he tried to shame Davies, suggesting he should be “too humane to tantalize me” under the circumstances. Similarly, when a distant relative wrote him asking for financial help, he reminded him that his estates had been “wickedly

plundered” and that it was morally deficient to even talk of “making provision, while our sources are in the hands of a violent & unjust Enemy.”⁹⁸

Laurens also reminded correspondents not to dun other South Carolina Patriots. For instance, he counseled his friend Edward Bridgen to avoid dunning John Lewis Gervais in 1782, warning him that he should “give a moments breathing time” to the man who had lost all of his account books in fleeing Charleston. “Do not chaff a man whom...your Country...I say whom you have injured.” So pressing an honorable American still struggling to reestablish himself would naturally “tend to excite resentment.” This resentment, which Laurens invoked time and time again, was a threat. Should Americans become too resentful, they would simply refuse to pay their British debts at all. Laurens used the threat of nonpayment to convince English creditors to delay payments.⁹⁹

Even when he was not using his losses and uncertainties to avoid creditors, he complained bitterly in letter after letter. When he wrote to William McCulloch in March 1782, he complained that “every Step of the British troops has been marked with barbarity, with cruel Murders Conflagrations, indiscriminate plunderings, Rapes & Ravishments.” He told George Appleby that in 1783 he was in “a state of uncertainty” that was “exceedingly disagreeable to a poor Man who has lost 30 or 40 thousand pounds sterling.” His own economic losses were often at the front of his mind when considering his own fate and the fates of Loyalists in South Carolina and London. His bitterness over his personal troubles and economic dislocations inevitably colored his perceptions of

⁹⁸ Henry Laurens to John Davies, London, Feb. 2, 1782, Henry Laurens to William Manning, Nantes, Aug. 3, 1782, Hamer, ed., *Laurens Papers* 15: 466, 545.

⁹⁹ Henry Laurens to Edward Bridgen, Nantes, August 29, 1782, Hamer, ed., *Laurens Papers* 15: 601-2.

Loyalists. He dismissed most Loyalists as dishonorable men who had been swayed by base motives, not principle.¹⁰⁰

Henry Laurens had greater chance to consider how Loyalists should be treated when he joined the negotiation team for the peace treaty. His letters from this period are especially interesting for understanding how he understood Loyalism. British officials were pushing for the Americans to accept Loyalists and restore their property, and the British negotiating team were repeatedly instructed not to settle without compensation and return for American Loyalists. In part, the British did this because many Loyalists preferred America, despite their losses, to poverty in London. But the British were also hoping that their own treasury could be spared if the Americans could be forced to support the Loyalists instead of the British. The Loyalists in England, of course, were desperate for support and angrily reminded the British government that they had lost everything in support of Britain, and therefore the British were morally obligated to help them now. Laurens told British merchant and friend Edward Bridgen that the Loyalist refuges should be supported by the crown, for “they are yours, maintain them; had they honestly remained with us, they would not have been beggars.” Notice his characterization of Loyalists as dishonest. He further suggested that no one should have very much sympathy for the vast majority of Loyalists, “the greater part of whom affected to be Loyal upon no other prospect but that of plunder, from no other motive but that hope of fattening upon forfeited Estates [meaning Patriot estates].” Laurens suggested that very few Loyalists were honorable men, but instead scoundrels motivated only by profit. Loyalists were base opportunists, not honest men of principle. Further,

¹⁰⁰ Henry Laurens to William McCulloch, Westminster, March 9, 1782, Henry Laurens to George Appleby, Bath, Feb. 18, 1783, Hamer, ed., *Laurens Papers* 15: 471-72, 16: 150.

they preyed on others, seeking to “fatten[.]” on others’ woes. Why should anyone sympathize? A further clue to the way Laurens saw the Loyalists is suggested by his dismissal of them as largely drawn from the lowest order of society. He argued at one point that “the whole amount of the Estates of those people would not defray one month’s Expence of the war, more probably not a week’s.” In part, this reflected just how costly the war was. But it also indicated a sense that Loyalists were men who were not from the gentleman class. They had become Loyalists in search of personal profit. It is also evidence he was beginning to separate the category ‘Loyalist’ from many of the people he actually knew. Lowcountry gentlemen who found themselves subject to confiscation were different from this imaginary, constructed idea of a Loyalist, who better embodied a foot soldier not subject to the Confiscation Act (and likely to have fled to Florida or Nova Scotia.)¹⁰¹

Henry Laurens, with the stock figure of the Loyalist in mind, did not expect that Loyalists had any right to demand anything from Americans. He imagined a Loyalist trying to make a case for monetary compensation: “I am a Loyalist, I used my utmost endeavours to get you all hanged to confiscate your Estates & beggar Your Wives & children, pray make a provision for me or let me enjoy my Estate?” Given how much damage Patriots’ estates had suffered (including Laurens’, of course), Laurens was simply enraged at the audacity of Loyalists seeking to keep their property. Still in the white heat of war anger, Laurens invoked the suffering of women and children to justify a scorched earth policy towards the defeated Loyalists. Laurens did give himself a back

¹⁰¹ Roberta Tansman Jacobs, "The Treaty and the Tories: The Ideological Reaction to the Return of the Loyalists, 1783-1787" (PhD, Cornell University, 1974). Henry Laurens to Edward Bridgen, Nantes, Aug. 10, 1782, Hamer, ed., *Laurens Papers* 15: 555. Of course, Laurens’ dismissal of Loyalists as people with small estates was not true, and if it had been, the General Assembly would not have seen confiscated estates as such a great way to pay their bills.

door to accept the claims of justice and humanity for a few Loyalists when he admitted to an English correspondent there were “a few among the Loyalists whose Cases I shall truly commiserate, but the number is very small,” but he had other neighbors in mind when he described what most Lowcountry Loyalists really were: those formerly “called a good sort of, or, good Men,” who had talked loudly of rebellion when it had been safe, but at the moment of decision, when “the day of danger” arrived, they had “shrunk from all [their] principles...[and] chose the strongest party.” To a man who had risked so much, this was galling, and he didn’t see how he could be expected to be sympathetic. To such cases, Laurens argued he could not “as an honest man say anything in Your favour.” While admitting that a few might be men of political principle and honorable action, he equated the vast majority of Loyalists with bandits. Those who were not criminals were men of weak moral standing who comprehended the superiority of America’s position, but abandoned principle for their own safety. With no moral claims on America, they could hardly expect to make successful appeals for their property.¹⁰²

He must have had his former South Carolina peers in mind when he told James Bourdieu that he should not have too tender a conscience for the loud squawking of the Loyalists in England, for many of them had in fact been “stigmatizers and persecutors of true Loyalists” who had “changed sides when their fears allarmed them for their persons and their little estates.” Here Laurens’s vilification of the Loyalists rose to new heights of anxiety. He recognized that many South Carolinians who had been Patriots accepted British protection after the state was occupied. In fact, many South Carolinians had little practical choice but to seek protection. They were powerless; even the South Carolina governor fled the state. Laurens turned this fact around, making the previous Patriot

¹⁰² Henry Laurens to Edward Bridgen, Nantes, August 10, 1782, Hamer, ed., *Laurens Papers* 15: 554-555.

activities of these men the pathetic acts of bullies always attacking the weakest side. Laurens just dripped distaste when he characterized them as little men with “their little estates.” He sneered that his enemy were now saddled with such worthless men. In typically paranoid eighteenth-century language, he characterized them as a “promiscuous body of Men dinning you [the British] under the cry of loyalty” but really only looking for a handout.¹⁰³

Merchants and gentlemen were judged on their personal character by their creditworthiness, and one way to really attack another man’s personal character was to suggest he was unconcerned with honoring his debts. Naturally, Laurens also accused the Loyalists of being financially unstable. In persuading merchant Edward Bridgen to relax his attempts to recover debts from Laurens’ friend John Lewis Gervais, he argued that South Carolina Patriots could not pay their debts because their assets were tied up in bonds and notes owed “chiefly in the name of those worthies called Loyalists” who would be unable or unwilling to pay their debts, leaving men like Gervais bankrupt.¹⁰⁴

Henry Laurens consistently viewed the Loyalists as profoundly different from himself. Despite knowing such men personally, he viewed them with fury, not understanding. Since he and his son had made very different choices, he hated those who had taken the easier path, and the idea that he would suffer financially and personally while they were made whole was unthinkable.

His reluctance to see Loyalists as sympathetic figures reached its apogee when he underestimated their numbers. Laurens denied claims that there were large numbers of Loyalists in Charleston and New York City awaiting transport away from America. In

¹⁰³ Henry Laurens to James Bourdieu, Bath, Feb. 1, 1783, Hamer, ed., *Laurens Papers* 16: 135-36.

¹⁰⁴ Henry Laurens to Edward Bridgen, Nantes, August 29, 1782, Hamer, ed., *Laurens Papers* 15: 601. For more on the link between creditworthiness and public character, see Ditz, "Shipwrecked," .

discussions in London and Nantes (site of peace treaty negotiations), the British were using the figure of 10,000 Loyalists clustered in New York and Charleston awaiting transportation to other British areas. Laurens disputed these numbers, telling Bridgen that “there is no such number nor any thing near it.” Of course, these seem like reasonable estimates to contemporary historians. But, as a Patriot South Carolinian, and as a member of the American negotiating team, Laurens had every reason to underestimate the number of American Loyalists.¹⁰⁵

As much as Laurens resisted any attempts to get Americans to pay any costs associated with supporting Loyalists, he was also surprised that the British proved so unwilling to support them. He told the Marquis de Lafayette that the British had been “shockingly displayed in their treatment of those deluded people called Loyalists in America...” While Laurens felt it was right and just that Americans should confiscate the property of Loyalists, he also believed that Britain had an obligation to support such men and their families. The cavalier attitude of Britain made him feel “shock[ed]”. It also put him, and other leaders, in a bad position. While it was fundamentally Britain’s job to support its friends, not America’s, someone would have to make provision for at least some of the Loyalists. This was a standoff, with both the British and Americans trying to force the other side to pay for Loyalist support. As a negotiator, but also as a spokesman for the way most Americans felt, Laurens needed to hold the line on any possible American financial provisions for Loyalists. Nor was he alone. Benjamin Franklin, among other Americans, believed Loyalists deserved confiscation and

¹⁰⁵ “2d. What shall be done with 10000 Loyalists who are at Charlestown & New York. Ministry would stipulate for them?

There is no such number nor any thing near it.” Henry Laurens to Edward Bridgen, Nantes, Aug. 10, 1782, Hamer, ed., *Laurens Papers* 15: 554-55. Of course, his denials obscured the truth that these were reasonable figures. 4,200 Loyalists registered for transport out of Charleston.

banishment, and the negotiating team was unified in its ideological, as well as practical, resistance to lifting confiscation.¹⁰⁶

This standoff continued as an official issue in the peace negotiations at Nantes. When he wrote fellow South Carolinians, he rushed to report on how Loyalists would be treated under the peace treaty. This indicates a high level of concern among South Carolinians on whether they would have to make financial provision for Loyalists. (Embedded in this anxiety was the separate issue of whether they would have to honor their debts.) As Roberta Jacobs found, Americans were largely united in 1782 and 1783 in resistance to allowing every Loyalist to return (always allowing the possibility that a few could), and the news that the peace treaty might permit such return stirred up riots and organized political resistance almost everywhere.

Of all the things that the peace treaty covered, in letters to friends, Laurens was sure to emphasize treatment of Loyalists. He told his relative James Laurens that a draft of the treaty called for “Congress to recommend to the several States restitution of Estates which had been confiscated” but reassured him that he should “observe tis to be a *recommendation*.”(emphasis added) He was signaling that the compromise was to be that the treaty would call for the Americans to restore the estates despite the fact that the Americans were not so inclined. But, since it was a recommendation, and not an order, Americans could refuse to play along. And, as the negotiators, they knew that state legislatures were unlikely to relinquish confiscated estates just because the Treaty of Paris called on them to do so. By agreeing to suggest a course of action without requiring it, both sides knew it was unlikely to have any influence. Yet, it allowed both sides to

¹⁰⁶ Henry Laurens to Marquis de Lafayette, Nantes, Sept. 3, 1782, Hamer, ed., *Laurens Papers* 16: 5. Jacobs, "Treaty and the Tories" .

save face. John Adams laughed to Laurens that “our countrymen love Buck Skins Beaver Skins, Tom Cod & Pine Trees too well, to hang their Ministers for accepting them, or even for purchasing them by a little too much ‘Reciprocity’ to the Tories.” As John Adams noted, securing the rights of trade was more important than denying Loyalist restoration on principle.¹⁰⁷

Americans negotiating the peace treaty were uniformly dismissive of the Loyalists in London as a group, and were determined to avoid financial responsibility for them. Benjamin Franklin thanked Laurens for his efforts to “say what ought to be said respecting the pretended Loyalists. Setting them in their true light must be of great Service.” Franklin agreed with Laurens that the Loyalists had no “Principle” but instead had chosen the stronger side, and sought to “secur[e] Safety with a Chance of Emolument & Plunder.” This view of Loyalists as unsavory characters bent on personal gain, and without the sound principles required of republican citizens, was widely shared. It was not unique to South Carolinians.¹⁰⁸

Unsurprisingly, Laurens supported confiscation. In one letter, he almost shook with anger when he told a merchant friend that he should remember it was not “unreasonable” to confiscate estates, since “many families in those States have been driven into the Woods reduc’d from affluence to the most extreme penury.” Confiscation was the natural outcome of the war. Yet despite this, he was willing to help some individuals appeal their cases. He correctly anticipated a process of appeal and adjustment in the post-war years that would remove some individuals from confiscation, while preserving the intent of driving out the most hated Loyalists. It was in this process

¹⁰⁷ Henry Laurens to James Laurens, Paris, Dec. 17, 1782, John Adams to Henry Laurens, Paris March 12, 1783, Hamer, ed., *Laurens Papers* 16: 84, 161.

¹⁰⁸ Benjamin Franklin to Henry Laurens, Passy, March 20, 1783, Hamer, ed., *Laurens Papers* 16: 167.

of sifting through individual cases where he began to separate his own acquaintances from his stock Loyalist figure, and to suspect that others from his class would do the same.¹⁰⁹

Henry Laurens' nephew, Elias Ball of Comingtee, was on the 1782 confiscation list. He wrote Laurens for aid, and Laurens obliged with an offer for his nephew to settle Laurens's lands in Georgia and work them if "the state of Georgia will receive you."¹¹⁰ Laurens reassured his attorney that he hoped that "the time is coming when I shall take [Elias Ball] again into my arms as a friend" but that until that time came he was content to help Ball settle at Laurens's own expense. Laurens' offer was generous, but not entirely without self-interest, as Ball could serve as his Georgia overseer, and would cultivate all the land with his own slaves, making profits for both men. Laurens did not directly support Ball's appeal to the South Carolina legislature, however. While Ball was removed from confiscation in 1784, it was not through Laurens' aid. Later, Laurens was pleased that his nephew at least offered him a personal apology for his actions with the British. Ball "discuss[ed] the matter of [his] political conduct & the part [he] took in the late cruel and unjust persecution of your Country" with "reflection." Laurens chided him that "you had not resolution to persevere in a cause which you had engaged in & knew to be righteous." Despite his disappointment at Ball's failure to "persevere," he felt Ball would "become a valuable Citizen" to the state of Georgia. Why in the world did Laurens think that a man, who had proven that, despite his adherence to republican principles in theory, he would not "persevere" when times were difficult, would make a good citizen? Part of his reasoning, which provides a window into the minds of many,

¹⁰⁹ Henry Laurens to Richard Champion, Nantes, August 10, 1782, Hamer, ed., *Laurens Papers* 15: 561.

¹¹⁰ Henry Laurens to Elias Ball. London, Sept. 11, 1783, Taylor, ed., *The Papers of Henry Laurens* v. 16, 336.

was a separation between what made a man a good Patriot, and what made him a useful member of peacetime society. Laurens was convinced that Ball would be a good plantation manager—a man of business. His personal life was circumspect. In all these ways he was a good citizen. Yet his political behavior was deeply upsetting to Laurens. With goodwill, Laurens tried to negotiate between these two poles by sending his nephew to another state, thereby unloading the problem.¹¹¹

Despite his pronounced distaste for Loyalists, and his approval of confiscation, he did agree to help non-relatives with their petitions for the restoration of their confiscated estates. Henry Laurens made some efforts on behalf of his friend and factor Edward Bridgen in the face of the North Carolina General Assembly's Confiscation Act. Bridgen's property in North Carolina was subject to confiscation under a 1779 act that confiscated the property of British absentee landlords. Laurens assured Bridgen in June 1782 that he would "write on that Subject to my friends in Congress & more largely respecting your Affairs in North Carolina which I hope will eventually feel the influence of Justice stimulated by Gratitude in your favor." Still, he supported Bridgen's claims because Bridgen was a British citizen, not a Loyalist. Bridgen had taken no military part in the war, had destroyed no property in America, and had, as the suggestions of "Gratitude" imply, made efforts on behalf of the American cause. Laurens did pursue efforts on Bridgen's part for years, although Bridgen ultimately had his property restored thanks to Benjamin Franklin's intercessions, not Laurens'.¹¹²

¹¹¹ Henry Laurens to John Owen, London, August 9, 1783, Henry Laurens to Elias Ball, London, Sept. 11, 1783, Hamer, ed., *Laurens Papers* 16: 260, 336.

¹¹² Henry Laurens to Edward Bridgen, Brussels, June 11, 1782, Hamer, ed., *Laurens Papers* 15: 531, and 531 footnote 9.

Archibald Simpson also maintained a correspondence with Henry Laurens in the hopes of help in having his property restored. He had served as a Presbyterian minister in the Lowcountry before returning to Scotland in 1772, and suffered confiscation as a British resident. He wrote Laurens in October 1782 to secure his aid in representing his case to the legislature, as part of his general preparations for visiting South Carolina in 1783 with an eye to restoring his property.¹¹³

Henry Laurens also supplied a character testament for William Blake to travel unmolested to South Carolina in order to pursue restoration of his property. William Blake, who shared a name with a well-known Loyalist who was on the Confiscation Act, approached Henry Laurens for a testament to his American citizenship for his passage back to South Carolina from England, which Laurens was willing to give him. Blake returned to South Carolina and became one of the 1783 petitioners to the General Assembly in order to ensure that his citizenship and property did not suffer from his absence in England and his unfortunate name.¹¹⁴

Henry Laurens encouraged friends and acquaintances to carefully consider the timing and tone of their attempts to reclaim their American property. He told backers of Lady Juliana Penn that she should refrain from pressing her suit anytime soon, for fear that “chaf[ing] the Survivors” would heighten resentment towards Loyalists and only ensure that no one’s property would be restored. Such Britons should “remember that the Minds of the People are sore & many of their Bodies too from Oppression and Grievances. Give them a decent Time for recovery and deliberation.” If Loyalists petitioned too early, they would suggest that they did not have “apparent Confidence in

¹¹³ Henry Laurens to Archibald Simpson, Bath, Feb. 16, 1783, Hamer, ed., *Laurens Papers* 16: 148.

¹¹⁴ Pass for William Blake, Henry Laurens, London, May 6, 1782, Hamer, ed., *Laurens Papers* 15: 498.

[Americans'] Justice and Consideration," and that lack of trust would be fatal. Laurens believed that Americans would naturally become more forgiving and less severe with the passage of time, and that it behooved petitioners to wait patiently for the right time. If they upset legislators by petitioning too early, they would leave a bad impression and be unable to get a better deal later. Laurens was very astute in understanding that only a few short years would make clemency much more palatable, as long as Loyalists conducted themselves in ways that were sufficiently modest, apologetic, yet upstanding, to merit mercy and inclusion.¹¹⁵

Laurens also anticipated later changes to the 1782 Confiscation Act in other ways. He cautioned his friend Richard Champion to be very cautious in buying confiscated estates in South Carolina, because he might purchase an unclear title that would be subject to years of litigation. Champion wanted to immigrate to America, and saw the sales of confiscated estates as an advantage. He never said why, but presumably he thought he could obtain more attractive, settled lands for a better price than he could under more normal circumstances. Laurens correctly perceived that estates might be subject to legal claims that Champion would then have to pay. In fact, as South Carolinians moved to recognize dower rights in later years for the wives of Loyalist exiles, purchasers were forced to pay those dower rights out of their purchases, lessening the value of what they had acquired. Further, the tension with dower rights meant that their titles were insecure for years.¹¹⁶

Henry Laurens correctly anticipated the way confiscation appeals would play out. He counseled a friend that the General Assembly would consider appeals, but those

¹¹⁵ Henry Laurens to William Manning, Parish, Dec. 4, 1782, Hamer, ed., *Laurens Papers* 16: 67-68. He cautioned others similarly.

¹¹⁶ Henry Laurens to Richard Champion, Nantes, August 10, 1782, Hamer, ed., *Laurens Papers* 15: 561.

appeals would have to be prepared carefully and submitted formally. Bridgen wanted to send messages through friends, in letters like the ones he had written to Laurens. Henry Laurens told him that was a poor way to pursue the return of his property. Rather than rely on the wrong friend, he suggested Bridgen “send a proper message to the House.” In part, Laurens did not want the responsibility of too close involvement, although Bridgen was a good friend. But he also sensed that the Assembly would pursue a formal reconsideration and appeals process in the intervening years. Laurens suggested that the Assembly would not want to consider each case separately, but:

besides it will be highly improper to repeal a Law upon the representation of a single letter; Every man has his friends & none of those, whose Estates have been justly forfeited, but may find a friend to pen a letter in his favor; let this Matter rest till the end of the War, We shall have other similar cases before us, which may be considered at the same time & one law if necessary passed for relieving the whole & not for a single ~~man~~ instance, which would occasion us a great deal of unnecessary trouble, without any real advantage to the parties.”¹¹⁷

We will see in the next two chapters that the General Assembly certainly considered how much support a man had, but depended on formal application to the Assembly, in part to preserve their own authority. Laurens also predicted the avalanche of forthcoming petitions. After all, “every man has his friends,” and almost every man could find someone to write the legislature. Further, it would be “highly improper” to depend solely on one letter. The General Assembly needed more evidence. He also understood that too much appearance of partiality would compromise the General Assembly’s standing. They needed to guard their reputation jealously.

Mary Stead, daughter of a Charleston merchant, wrote Laurens seeking help in her efforts to reclaim a share of her father’s confiscated Georgia estate. Her father had died in 1776, leaving his estate to his three children. His lands in Georgia were

¹¹⁷ Henry Laurens to Edward Bridgen, Bath, October 11, 1782, Hamer, ed., *Laurens Papers* 16: 37.

confiscated in 1782 by the Georgia legislature. Laurens assured Miss Stead he was willing to help her, but tried to reassure her that she should trust the honorable instincts of men in the legislature. He thought that they intended to provide for women like her, the “Female Orphan.” Again, he counseled patience, reminding her that while she sat in comfort in England, the “Georgians had been particularly maltreated by the British, but will not a moment for Reflexion arrive? Will not justice arise & command...in behalf of Injured Innocence?” Again and again, Laurens linked the pain caused by the British to confiscation, suggesting that when the legislatures had the leisure to consider cases more carefully, they would make provision for women and absentee landlords. His language did suggest that he thought that the haste and anger of war had swept people into confiscation who would be removed in the interests of “justice” when the fog of war lifted and everyone had time for “reflexion.” In defense of the legislature, he argued they had never confiscated property without “necessary & magnanimous reservation.” But, in a practical vein, he also told her family they would have more luck retrieving their property by going in person, rather than relying on letters from friends and counselors. Despite all the laws passed to get Loyalists to leave, physical presence made a real difference in the appeals process. For families like the Steads, who had been absent during the war, committing to America by moving helped to sway the legislature. This was not only a debate about property rights, but also a test of citizenship and belonging. Even women whose legal claims to dower and inheritance were persuasive needed to put a human face before the legislature.¹¹⁸

Henry Laurens was in a unique position to consider the dilemma of how to treat Loyalists. As a member of the peace treaty negotiating team, he had every reason to

¹¹⁸ Henry Laurens to Alice Delancey Izard, Paris, June 5, 1783, Hamer, ed., *Laurens Papers* 16: 204-05.

resist any attempt to restore Loyalist estates. As a South Carolina Patriot worried about his own property, he was keenly aware of the destruction the British and Loyalists had caused, and the need to pay it back. While he was not involved in creating legislative confiscation in South Carolina, he supported the idea, and his own beloved son was a member of the legislature that enacted it. Yet as a friend and kinsman, he helped numerous individuals affected by confiscation in their efforts to regain their property. He also understood that healing would take time, and that Loyalists had to prepare to give grieving Patriots enough time to consider their cases with the benefit of emotional distance after initial efforts to reestablish their own society after war.

He certainly understood loss. As he reflectively told one relative, when he started preparations for war, he was mourning one son (who died from a fall). “When I was called upon to sign the Preliminaries for Peace I was in deep mourning for that brave honest man, that good soldier and good Citizen, that dutiful Son and sincere friend” John Laurens. Yet despite his own tremendous anger and pain, he was able to see his way to forgiving certain individuals well-known to him, while hating the idea of a Loyalist. In this, he points the way to understanding how members of the South Carolina General Assembly would come to extend clemency to many Loyalists subject to confiscation and banishment in a short time.¹¹⁹

¹¹⁹ Henry Laurens to Mary Laurens, Paris, Dec. 30, 1782, Hamer, ed., *Laurens Papers* 16: 111.

Conclusion

To conclude, the Jacksonborough Assembly passed a comprehensive confiscation and banishment act that stripped some 400 South Carolina Loyalists of their property and citizenship. Other states also passed confiscations, but South Carolina's was harsh. Yet confiscation was only part of the picture. While the General Assembly overwhelmingly agreed with the idea of punishing Loyalists, the details mattered. Legislators endeavored to protect personal friends and relatives, while sometimes pursuing personal enemies. After intensive negotiation, the Assembly agreed on a list that singled out men who took officer-level commissions or signed public welcome addresses to the conquering British. Even this list might be regarded as merciful, for it comprised a small percentage of the total Loyalist population.

Confiscation, for all that it seems like a post-war activity, was actually shaped by the needs of a wartime legislature and a wartime society. At a time when the British still occupied the most important city, South Carolina's government used a system of carrots and sticks to try to persuade "protection men" (those who took protection, but had not pursued military activities very strongly, or taken plunder, or killed people off the field of battle) to rejoin the Patriot side and contribute money and time to the military effort. Confiscees were people who had ignored earlier attempts to get them to return. The General Assembly also pardoned many Loyalists, and subjected others to an amercement, as a way of creating a lesser penalty that still allowed Loyalists to have South Carolina citizenship.

As harsh as confiscation was, it could have been much worse. Given how angry most Patriot South Carolinians were after surviving a civil war, it was necessary to punish someone. Loyalists had chosen the wrong side in a civil war, and while atrocity rhetoric was certainly overheated, both sides committed unspeakable acts towards each other. Under these circumstances, confiscation was unavoidable, and what is surprising is the amount of true mercy the South Carolina government showed from the beginning. Confiscation makes even more sense when one realizes how broke the state really was, and how tempting it was to use confiscated estates to pay for at least some of the war debts.

CHAPTER THREE

LOBBYING FOR FORGIVENESS: THE CULTURE OF PETITIONING AND THE MOVE TO NORMALIZATION, 1782-1784

As we have seen in the previous chapter, the Jacksonborough Assembly of 1782 sought a comprehensive legislative solution to the problem of Loyalism. They passed a Confiscation Act and an Amercement Act that together prescribed public punishment for approximately 400 Loyalists who had held British officer-level commissions, had spent the war in England, had signed congratulatory addresses to the British upon the reduction of Charleston, or taken another highly public step in favor of the British. From the official perspective of the Jacksonborough Assembly, South Carolina was done with the problem of Loyalism. Some Loyalists would be punished, branded as traitors. Others would be allowed to remain in the state and remake their lives to the extent possible. Those who were banished would have to sail away with the British when they withdrew in December 1782. Men who might undermine the delicate process of building a strong independent state and nation were not welcome. Traitors had given up any legitimate claim to citizenship, having abandoned it and abused the honor and virtue that it required.

Yet it was clear from the moment the General Assembly passed the acts that it was not going to be that simple. Loyalists were petitioning for clemency before the ink was dry. Others immediately began planning their appeal, lining up supporters and

planning what angle might be best suited to winning official favor. Loyalists who were named in the Confiscation and Amercement Acts were not content to be excluded from the new state. While there were certainly Loyalists who did choose to leave (or were forced to leave), the overwhelming majority of those named in the Confiscation and Amercement Acts chose to petition the General Assembly for clemency.

Nothing in the 1782 acts had provided for any reconsideration. Loyalists overwhelmingly chose to create an alternative by petitioning the legislature, drawing on traditional understandings of petitioning and governmental power in a radically new situation. This chapter will consider the strategies that Loyalists used in creating petitions that were likely to persuade later General Assemblies to reconsider the decisions made at the Jacksonborough Assembly. In understanding the strategies of petitioners, we will understand the real beliefs about citizenship in the nascent Republic that were widely shared by individuals of many ranks, but not enshrined into law. Facing the issue of Loyalism forced South Carolinians to begin legally to define citizenship in a way that wrote into law what had been understood.

“The Confiscation Act Began to Work on Them Some Time Since”: Loyalists React to the Confiscation Act, Seeking Palatable Options¹

Aedanus Burke noted in May 1782, about two months after passage of the Confiscation Act, that the “Confiscation Act began to work on them [the Loyalists] some time since, and still continues to sweat them considerably.” Well aware of their

¹ Aedanus Burke to Arthur Middleton, May 14, 1782, Barnwell, "Middleton Corr. Oct. 1925," , 197.

vulnerable position, the Loyalists would “give the world now for an opportunity, even to cringe, like Spaniels” in the hopes of securing a place in post-war South Carolina.

Everywhere the Loyalists looked, signs were grim. In May 1782, Georgia also passed a confiscation law remarkably similar to South Carolina’s. A total of 277 Georgians were stripped of their citizenship and property. North Carolinians moved to sell confiscated property in April 1782. Archibald MacLaine, a member of the North Carolina Assembly, advised his Loyalist son-in-law, George Hooper, of the unstable situation in North Carolina while Hooper was living in Charleston. He advised Hooper that obtaining his property was likely to be fraught with difficulty. Nor was he the only correspondent filling Charleston with news worrying Loyalists.²

A certain hysteria, and palpable melancholy, filled the *Royal Gazette* in 1782. Published in occupied Charleston, the Loyalist newspaper reported rumors and printed letters that helped spread panic. Loyalists were well aware of the Confiscation Act through letters and circulars, but details also appeared in the Loyalist press. On July 9, 1782, shortly after Independence Day (not so happy a celebration for Loyalists), Charlestonians read that the confiscated property of “gentlemen who have remained firm to the engagements they entered into” with the British government had been sold. By implication, many men who had previously taken protection had fled Charleston in recent months, seeking an accommodation with the victorious Patriots. Angry Loyalists might have been cheered that “a party of our Dragoons” captured fifty slaves of Elias Ball of Wambaw before the Commissioners of Forfeited Estates could sell them, but the entire episode also reminded readers that their property would be rapidly auctioned. Even more

² Barnwell, "Middleton Corr. Oct. 1925," 197. Robert S. Lambert, "The Confiscation of Loyalist Property in Georgia, 1782-1786," *The William and Mary Quarterly* 20, no. 1 (1963): 80-94, 82. DeMond, *N.C. Loyalists* 162-66.

depressingly, in the late summer and early fall of 1782, the paper began to fill with official notices about convoys to St. Augustine.

Adding to the gloom were advertisements for businesses and homes that Loyalists hoped to sell before leaving. William Carson, who was banished before 1782 and therefore was not named on the Confiscation Act, was nevertheless still living in Charleston in 1782. He advertised that he intended to “leave this province with the first convoy to Europe or New York” and would consequently need to sell “ALL his HOUSEHOLD GOODS and FURNITURE” and a slave trained in the barbering profession. The sale was for “Cash only.” He did not sell his home, probably because no buyer would purchase a confiscated estate from a Loyalist well after the passage of the Confiscation Act. Doing so would certainly be a good way to lose money. Further, to whom was a Loyalist supposed to sell? Many were leaving, and others were more concerned with finding a way to preserve their own property. Patriot wives could enter the city, but men found transit more limited and were more likely to be the purchasers of such items.³

One Patriot spy reported to General Marion that in the last weeks before evacuation, “the lamentations of the Poor Going Away almost destitute of every Comfort of Life” filled the air as soldiers prepared the city for departure. Even the spy concluded the whole place was a “most Melancholy Scene” in a brief moment of sympathy.⁴

Even during the legislative debates on the Confiscation Act, Loyalists got news in Charleston of the process, and began trying to influence it. Edward Rutledge, one of the main architects of confiscation, noted that “since the Confiscation List has made its way

³ April 30, 1782, July 9, 1782, Aug. 13, 1782, Sept. 10, 1782, *Royal Gazette*.

⁴ 99/Secret Correspondent to General Marion, Charlestown, Nov. 13, 1782, Peter Horry Collection Letterbook, Peter Force Papers 1683-1789, David Library of the American Revolution.

into Town (which it did in a few days after the Commtee reported upon it) several broad Hints from our quondam Enemies wishing that we w^d permit they would return to their *Countrymen*” were sent. By late April, Rutledge reported that the “Tories in general seem heartily tired of their situation.” More to the point, around 40 had left Charleston within days and “returned to their own Homes: where I believe they will be permitted to remain if they are peaceably inclined.” Allowing them to return was not only merciful, but gave them a strong presumption of the right to stay permanently. Rutledge was aware of this problem, and did not want men named in the Confiscation Act to be able to take advantage of the situation. In June 1782, persistent rumors suggested the British would be evacuating within weeks. It was not true, but Loyalists in Charleston also believed it. They frantically sought accommodation. Rutledge discouraged men on the confiscation list from remaining. “Several of the Banished declare they are resolved to remain, of which neither the Lands or Policy of this State will admit.” Recognizing that some intended to remain no matter what he said, he warned, “I expect my Share of the Trouble” should they stay.⁵

At the same time that South Carolinians were strongly discouraging native sons who had taken positions with the British from living in the country, they were actively encouraging British soldiers to desert. The problem was with Loyalists, not with all members of the British forces.

Loyalists were not the only ones who presumed that petitioning would create a system for reviewing the decisions of the Jacksonborough Assembly. Many Patriot South Carolinians came to believe the same thing in the second half of 1782. Henry

⁵ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 14, 1782, Cane Acre April 23, 1782, Barnwell, "Middleton Corr. Jan. 1926," , 5-6, 14.

Laurens counseled one friend to “send a proper message to the House” since with “all Parliamentary probability” it would be accepted. For Laurens, the accepted legitimacy of petitioning guaranteed even Loyalist petitioners a hearing.⁶

Creating the Petitions

Having considered why so many Loyalists wanted to appeal to the General Assembly, let us consider how they intended to do so. Loyalist petitioners and their attorneys were primarily interested in petitioning as a means to an end. The majority of the petitioners sought to live in the state and keep most of their property for themselves and their families. Under the confiscation law, they would be banished and their estates forfeited not only for themselves, but also for their families. If the act were enforced, it meant starting over in a new, usually unknown place, with little or nothing of value to pay one’s way and ease the transition. As the words of one widely reprinted poem satirized the Loyalist dilemma: “To go or not to go, that is the question,” and continued with the query whether they should brave the unknowns of Nova Scotia or “stay among the rebels, /And by our stay rouse up their keenest rage.” The popularity of the poem certainly suggested that the “keenest rage” would make it difficult for Loyalists to secure safety and property in the new nation. Yet despite the departure of some 4,000 black and white Loyalists from Charleston, the majority stayed put. This latter group included many of the men named in the Confiscation Act, who played military and civilian leaders

⁶ For more on petitioning as an early American form of politics, see the next section. Henry Laurens to Edward Bridgen, Bath, Oct. 11, 1782, Hamer, ed., *Laurens Papers* .

against each other in their quest for passes to stay.⁷

For some very committed Loyalists, leaving was the only option. Local ties had much to do with this decision, just as we will see it influenced those who stayed. Some Loyalists were warned by their neighbors to leave or be killed. One John Wigfall wrote his friend saying he would come back to the American side and join General Marion's forces if he "could have the least assurance that his Life would not be taken." He was worried because someone else had sent him a letter threatening that if he returned they would "take his Life." Christopher Gadsden threatened a former friend that he would be "hang'd to be sure." This local heat convinced some Loyalists it was not safe ever to return. Accepting the informal trial and conviction by their neighbors, they fled forever. (Some refused to do that despite threats. As we will see in Chapter Five, one man stayed after being whipped by a hostile Charleston mob in 1784.) But for many South Carolinians, staying in their homes and regaining their estates was a far more appealing option. Many of these Loyalists were in fact people who had taken British protection when they had few choices. They were not politically committed to Britain. Several had been outspoken Whigs before the occupation of Charleston. South Carolina was their home, and they were willing to work hard to convince the General Assembly and their fellow citizens that they were good citizens, not the traitors they were branded.⁸

⁷ The Tory's Soliloquy, widely reprinted in American newspapers in 1783, including the *South Carolina Gazette*. For the full text, see Catherine S. Crary, ed., *The Price of Loyalty: Tory Writings from the Revolutionary Era, Bicentennial of the American Revolution* (New York, 1973) 391-92. General Greene and General Marion were particularly sympathetic to Loyalists, and issued several passes. For more on this, see Chapter 5.

⁸ Benjamin Quark for John Wigfall, Testimonies and Notes, General Assembly Free Conference Committee Petitions for Relief from Confiscation 1783-1784, S 165035 (hereinafter "Hearing Testimony"), South Carolina Department of Archives and History (hereinafter "SCDAH"). The story of Gadsden's threatening his former friend spread around South Carolina. Edward Rutledge gleefully reported this version in a letter to his friend Arthur Middleton. Dec. 12, 1781, printed in Barnwell, "Middleton Corr. Oct. 1925," 208.

While some South Carolina Loyalists withdrew and waited years to petition, the vast majority of Loyalists named in the official acts submitted petitions to the 1783 legislature, preparing petitions as the ink was drying on the Confiscation Act. Of 192 Loyalists whose petitions are easily located in the original series (as opposed to those who are recorded as petitioning in a legislative journal only, or who were recognized in later acts but for whom no petition can be found), 138 submitted petitions by the General Assembly meeting in 1784, when the Assembly passed an act removing many from confiscation. Put another way, some 70 % of these Loyalists targeted for punishment petitioned quickly for clemency.⁹

As the 1783 Assembly opening approached, the volume of petitions increased. In just one example, John and Patrick Cunningham's supporters signed petitions on October 18, 1782.¹⁰ By the end of January 1783 alone, the House of Representatives had processed 104 petitions pleading for relief from confiscation and amercement. Many of these people ignored the requirement to leave the state, staying in order to prosecute their cases. In one example, Philip Porcher stayed in his own Lowcountry home from 1782 until he was removed from the confiscation list in 1784. In August of 1782, Edward Rutledge noted that many merchants had already returned "petitions." Others petitioned from outside the state, relying on friends to ensure that petitions arrived in time. Still others hired lawyers the better to represent their cases in their absence. London-based

⁹ GA Petitions. I also checked my data against Appendix C, Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 503-07. Several Loyalists were later pardoned, yet there is no record of their petitioning. Perhaps the petitions were lost, or perhaps they simply wrote several legislators without any record's being kept of those transmissions. In any case, few men did not petition at all.

¹⁰ Petition of the Inhabitants on or near Saluda River in Ninety Six, 1783-87, 1783-89, Petitions to the General Assembly, 1782-1866, South Carolina Department of Archives and History. This petition series will subsequently be cited as GA Petitions.

merchants Baker and Linwood were among those who hired attorney John Deas to represent them.¹¹

Petitioning was a well-established political form by the eighteenth century, in both the American colonies and England. Petitioning was so embedded in early American political life that the right to petition was enshrined in the First Amendment to the Constitution (an often forgotten part of the first amendment today.) In the American colonies, the use of petitions was rooted in a tight local link between the petitioners and the legislature, in which the legislature had knowledge of the issues raised in petitions. For example, eighteenth-century Virginians used petitions to present local needs and grievances to the legislature before and after the Revolution. County divisions, one example of an intensely local concern, were begun and decided on the basis of petitions. While in colonial assemblies, petitions were the primary way that bills originated, petitioners and legislators assumed that people aware of local interests and relationships would handle petitions. Certainly the South Carolina General Assembly followed these practices in the post-war period. In the case of Loyalist legislation, petitions were read aloud by a member of the House of Representatives, or less commonly the Senate. Petitions were then referred to committee. Committees always had members from the same area as the petitioner, and usually, though not always, were also introduced by a local representative.¹²

¹¹ Stephen Mazyck to Peter Porcher, Charlestown, June 14, 1783. SCHS. Petition Mr. Linwood and William Baker, Theodora J. Thompson and Rosa S. Lumpkin, eds., *Journals of the House of Representatives 1783-1784* (Columbia, S.C., 1977) 82-83. Edward Rutledge to Arthur Middleton, August 1782, Barnwell, "Middleton Corr. Jan. 1926," 21.

¹² Anita Hodgekiss, "Petitioning and the Empowerment Theory of Practice," *The Yale Law Journal* 96, no. 3 (Jan., 1987): 569-92, 569-73. The relevant clause of the First Amendment protects the right to "petition the Government for a redress of grievances." The right to free speech was closely related to the more fundamental right to petition, rather than vice versa. Stephen A. Higginson, "A Short History of the Right to Petition Government for the Redress of Grievances," *The Yale Law Journal* 96, no. 1 (Nov., 1986): 142-

Further, the Anglo-American right to petition carried with it the duty of legislative consideration. Petitions were not just a request, but commanded the duty of formal legislative consideration, including a reading on the floor of the legislature and committee action. In this light, the behavior of Loyalist petitioners makes much more sense. By initiating a petition, they expected that the General Assembly would have to consider their case. Petitioning offered the chance to create a de facto trial for each petitioner on his individual case—something they had no other realistic way to accomplish. Petitioners had to shape their petitions to make their case in the best way. Certainly petitioners wanted to present themselves in the best light possible, but conventions of petitioning made this even more important. Petitioners expected their grievances to be subject to counter testimony, as the “act of petition... ‘call[ed] for due witness to be borne against it....” In Virginia, petitioners faced the possibility of counter-petitions. Raymond Bailey has termed these dueling petition exchanges a “polling device,” and has found that counter-petitions badly hurt the chance of success. Petition legally demanded an organized consideration of the grievance, including the right to a hearing or trial at which evidence on both sides could be reasonably given. In the early period of each colony, the right to petition effectively functioned as the court system.¹³

Further, petitioning was a form of public political action that was available to people who were otherwise blocked from the political arena. Americans who could not vote could petition their local legislature (at least as long as they could write or find

66 157. Raymond C. Bailey, *Popular Influence Upon Public Policy: Petitioning in Eighteenth-Century Virginia, Contributions in Legal Studies* (Westport, Conn., 1979) 23, 68-84, 166.

¹³ Higginson, "Right to Petition," 143, 148. Higginson refers to this as the “governmental duty to consider petitioner’s grievances.” 143, and 143 footnote 2. Raymond C. Bailey, *Popular Influence Upon Public Policy: Petitioning in Eighteenth-Century Virginia* (Westport, Conn., 1979)31.

someone who would write on their behalf). Colonial assemblies considered petitions from slaves, women, Native Americans, and convicted felons. Especially in the case of women and poor men, “the right to petition vested these groups with a minimum form of citizenship” and offered a route to political power for those denied the franchise.¹⁴ This “minimal citizenship” was based on recognition of shared investment in the outcome of political processes. Loyalists were no longer citizens, so petitioning was their only securely recognized option to exert political power. Further, since petitioning carried with it “minimum citizenship,” Loyalists’ use of the form created an assertion of citizenship, one that they vigorously exploited, as we will see.

Petitioning was not only available to the dispossessed, but also was utilized by a wide cross section of colonial and early national society. Petitions from poor people were not only accepted, but also granted. One convincing piece of evidence that people from lower backgrounds utilized petitions is the use of marks instead of signatures on petitions. While not always indicative of social class, in eighteenth-century Virginia and South Carolina, a mark is a good proxy for the limited social standing of some of those men making their marks. South Carolina signatories certainly used marks, usually with another writer filling in the full name beside or on top of the mark.¹⁵

Anglo-American petitions were outwardly polite, begging the attention of the legislature in formal, deferential language. Yet, because they carried a positive expectation of consideration, they also were demands. Pre-Revolutionary petitions were inherently written in the voice of dependence. In the Revolutionary period, petitioners,

¹⁴ Higginson, "Right to Petition," 153. Bailey, *Popular Influence* 6.

¹⁵ Bailey, *Popular Influence* 41-44. Just one example of a South Carolina petition with marks should suffice: the inhabitants of Fairfield County petitioned for debt relief and the staying of payments. Economic distress certainly attracted its share of petitioners of lower economic status. Three signers used marks on that one petition. Petition of the Inhabitants of Fairfield County, 1788-9, GA Petitions.

especially white men with some property, “became less obsequious” in their language and demands. Phrases such as “obedient and faithful Subjects” slowly gave way to phrases that incorporated citizenship. This was especially true in the petitions of militiamen and veterans, who demanded action on the basis of their own contributions as citizens. One group of Delaware citizens reminded their legislature of their own republican status by petitioning “the Honorable the REPRESENTATIVES of the FREEMEN of the *Delaware State*.” One typical 1780s South Carolina petition seeking a new road was addressed to “the Honourable Speaker and the Honorable Members of the Senate In the State of South Carolina.” Address showed respect for republican representation, not just status.¹⁶

Yet despite the increasing forthrightness and even stridency in the language of post-Revolution petitions, petitions still were “an appeal to the good will of officials” and therefore careful to maintain language and claims that were as inoffensive-sounding as possible. Petitioners claimed rights, but made appeals for specific, immediate actions.¹⁷ Colonial assemblies had long used petitioning to expand their own powers. With the end of colonial rule, legislatures no longer had the implicit threat of appeals over their heads to the King. In Virginia, the number of petitions sent to the lower house of the legislature increased steadily in the second half of the eighteenth-century, and after the Revolution petitions to the executive or council fell drastically, leaving the elected representatives as

¹⁶ Ruth Bogin, "Petitioning and the New Moral Economy of Post-Revolutionary America," *WMQ* 45, no. 3 (1988): 391-425 420-21. Petition of the Sundry Inhabitants Residing on the North & Southside of Saludy River In Lexington County, 1789-8, GA Petitions. Petitioning had a long history in Britain as well, and was one of the rights guaranteed by British constitutionalism. Petitioning was a popular response to worries about the American Revolution on the British side as well. For a longer discussion of British petitioning and the American Revolution, see James E. Bradley, *Popular Politics and the American Revolution in England: Petitions, the Crown, and Public Opinion* (Macon, Ga., 1986).

¹⁷ Ruth Bogin, "Petitioning and the New Moral Economy of Post-Revolutionary America," *William and Mary Quarterly* 3d. ser., 45, no. 3 (1988): 391-425, 422-23.

the most popular forum for adjudicating citizen needs. The South Carolina General Assembly was jealous of its powers and concerned with establishing itself as the central authority in the newly independent state. As such, it faced a dilemma with Loyalist petitions. On the one hand, as the sole authority, the Assembly could safely turn them away. On the other hand, there was strong legal justification and a strong tradition of hearing petitions.¹⁸

While ordinary people could and did write their own petitions, it was quite common to use a lawyer. Among petitions submitted to the United States Congress in the 1790s, many were drafted and presented by attorneys. Even people of modest means hired legal help. Orange County, New York farmers hired an attorney to petition for them in their efforts to be fairly reimbursed for wood seized from them during the war by Revolutionary troopmasters. South Carolinians certainly hired lawyers to help them appeal their confiscation. Petitioners not currently in South Carolina were especially likely to need to hire help in marshalling their case.¹⁹

Yet petitioning was a problematic form for Loyalists named on the confiscation and amercement lists, despite its long history. While a non-citizen's right to petition was well recognized, that right was understood to exist because he was a member, however marginal, of the same society. South Carolinians disagreed on whether Loyalists really were members of the same society with those entitlements. Given that confiscated Loyalists were legally deemed traitors, it was not clear they had a right to petition.

Women and African Americans could petition because their lack of political citizenship

¹⁸ Higginson, "Right to Petition," 150-51. See also Greene, *Quest for Power* 14-16. Bailey, *Popular Influence* 25.

¹⁹ Jeffrey L. Pasley, "Private Access and Public Power: Gentility and Lobbying in the Early Congress," in *The House and the Senate in the 1790s: Petitioning, Lobbying, and Institutional Development*, ed. Kenneth R. Bowling and Donald R. Kennon (Athens, Ohio, 2002). 62.

was clearly understood, but white male confisceses were in an entirely different position. The duty of the legislature to respond was based on that recognition of shared involvement, not just legislative power. Despite the legitimacy of petitioning as a form, the General Assembly would have been within their rights to refuse all Loyalist petitions.

Loyalist petitioners therefore faced a problem. The history of petitioning offered them models of how to proceed, but did not guarantee that they could fit into those models. Yet the Loyalist petitioners, given the way in which the Confiscation Act had been constructed, were overwhelmingly white affluent men (or at least they had been affluent before the war). As such, they were not non-entities, but were used to all the prerogatives of citizenship. How should they approach the legislature? Should they simply assert themselves as they were once wont to do? Should they approach with even more submissive language, in recognition of their chancy position? Or should they blaze confidently forward, asserting their citizenship rights even in the language of their petition?

In fact, what is surprising and noticeable about the petitions of the Loyalists seeking to be removed from the Confiscation Act is that despite all the potential reasons for them to be more deferential in their language than other petitioners, they were rather matter of fact when addressing the legislature. Richard Bohun Baker merely addressed his “humble Petition” to “the Honorable John Lloyd Esquire President and the Members of the Honourable the Senate in General Assembly.”²⁰ Almost all petitions in this period were cast as “humble petitions.”²¹ The language of the demands was even less

²⁰ Richard Bohun Baker, 1783-35, GA Petitions.

²¹ For example, in 1791 the inhabitants of Fairfield County submitted a “humble petition” to the General Assembly arguing against other petitions seeking the closure of the circuit courts. Petition of the Inhabitants of Fairfield County, 1791-25, GA Petitions.

deferential. While the Loyalists were respectful, they also used forthright language. Despite the difficulties of their position, they uniformly chose to address the General Assembly in the terms other men of their pre-war status would use. They did not recognize an alternative status (as traitors) for themselves, but in the very language of their address and demand, they asserted their citizenship.

Wives and minor children of the men on the Confiscation Act were on firmer ground. They were not deemed traitors. They held claim to the minimal citizenship that the culture of petitioning had always recognized. As women, they were expected to couch their requests in the polite, humbling language that had been popular before Revolutionary fervor changed the language of petitioning. And their petitions to the South Carolina Assembly reflected this unproblematic access to the relief of petition. The language they used was polite and customary. Further, their petitions for financial support and relief fell into the usual category of women's petitions: petitions for financial support. They were not making novel requests.²²

Loyalist petitioners subject to the Amercement Act were not considered traitors. As citizens, their theoretical access to petitioning as an outlet for their concerns was intact. Even for those amerced Loyalists who were banned from the franchise, they still had "minimal citizenship" that supported the right to petition. For those 47 individuals, petitioning was a clear option. But these men still faced thorny questions about how to craft the language of their petition. Should they recognize their limited stature rhetorically, or plunge linguistically ahead in asserting their full equality before the law? In practice, Loyalists petitioning for relief from the Confiscation and the Amercement Acts adopted forthright language that was deferential only in the ways of other 1780s

²² Bailey, *Popular Influence* 44.

petitions. The petitioners did not grovel more than other petitioners, either in the language of address or in their demands. They believed in their equality of citizenship, and it showed in the very language of their petitions. We will examine petitions for clemency from amercement at more length in Chapter Four.

Having addressed these petitions as a group, we must remind ourselves that Loyalist petitioning was an individual act. Loyalists submitted petitions on their own behalf. Supporting petitions spoke in the names of many, but always for one particular Loyalist. In most cases, supporting petitions from “sundry persons” or “the Inhabitants of” various parishes seem to have been written by the petitioner or with the consultation of the petitioner. Those petitions also submitted similar types of claims and either reiterated information contained in the individual’s petition or provided new kinds of claims that were easier for friends to make. Since petitions were generally presented as a packet to the General Assembly, with supporting materials included, it is not surprising that rather than being spontaneous outpourings of support, they were more often carefully marshaled initial applications. A few petitioners also submitted signed affidavits and letters of support as part of their petitions.²³

Did Loyalist petitioners really think these petitions might work? Evidence from the petitions themselves suggests that petitioners and their networks expected their efforts to pressure the General Assembly into further considering each individual case in the light of past behavior. After all, while the value of the property was worth some effort to retrieve, why invest the energy in petitioning if such efforts had no reasonable chance of success? The very volume of petitions, which occupied a majority of the legislature’s

²³ See for example, Petition of William Burt, 1783-7, GA Petitions, also excerpted in *House J.* Jan. 22 1783, p. 17. William Burt claimed he “has an affidavit to prove the books and papers were taken by Major Cochran....”

time and energy in 1783, pressured the General Assembly to consider those petitions seriously and remit penalties for at least some individuals. Petitioners used their petitions not only to present their case, but also to argue for a hearing or trial in which they could present a more complete case. John Wragg pointedly reminded the House of Representatives “he could prove [his claims] if he was allowed a hearing.” John Gaillard complained that he had been so unfortunate as to have his property confiscated “without a trial.”²⁴ William Burt angrily asserted “every other report prejudicial to his political Character he can prove to be void of truth if he is permitted a hearing before a Committee of this House.”²⁵ Supporters also called upon the legislature to reconsider. “The Sundry Inhabitants of Christ Church Parish,” writing to support Robert J. Murrell, told legislators that “they believe him innocent of the charges that induced the late General Assembly to put his Name on the Confiscation Act.”²⁶ Given that early American petitions carried the expectation of legislative investigation, Loyalists signaled that they expected the chance to mount a defense.

Excuses, Excuses: the Paranoid Style of Politics and Loyalist Petitions

Loyalists also suggested in their petitions that they suffered the punishment of confiscation or amercement not because they had really acted inappropriately, but because they were the victims of fraud. Therefore, it was incumbent on the General

²⁴ John Wragg, 1783-83, GA Petitions.

²⁵ William Burt, 1783-7, GA Petitions.

²⁶ Sundry Inhabitants of Christ Church Parish in support of Robert J. Murrell, petition excerpted in *House J.* Jan. 25, 1783 p. 39.

Assembly to correct the wrongdoing they had suffered. In this argument, they offer a textbook example of the prevalence of conspiracy theories in the mental framework of early Americans.²⁷

William Burt argued that the belief he was South Carolina's assailant "must be owing to erroneous opinions formed from reports of his being an Enemy to America which are destitute of foundation." Further, he indicated that any reports that he had delivered important books to the British Navy in order to curry favor in the immediate aftermath of Charleston's fall were "prejudicial." (Apparently, the General Assembly did not believe him. He did not return to South Carolina, although part of his property was eventually given to his family.) Andrew Hibben was convinced he was punished "owing to the misrepresentation of Some unkind person, that he is not conscious of any Crime to deserve such punishment." Thomas Radcliffe Junior thought "if his Conduct had been properly represented to the last General Assembly, his Estate would not have been Amerced, as he never did one Act prejudicial to the cause of America."²⁸

The Jacksonborough Assembly had worked in privacy, and opponents suggested that some legislators had used the cover of secrecy to confiscate the property of their own personal enemies on trumped-up charges. Certainly, some legislators agreed that people had on occasion given "way to private resentment." Now, in peacetime, the General

²⁷ Many historians have noticed the popularity of conspiracy theories in American history. The most famous work is Richard Hofstadter, *The Paranoid Style in American Politics, and Other Essays* (New York, 1965). In early American history, Gordon Wood has persuasively argued that conspiracy theories were not paranoid, but convincing ways of understanding political power. Gordon S. Wood, "Conspiracy and the Paranoid Style: Causality and Deceit in the Eighteenth Century," *William and Mary Quarterly* 3rd. ser., 39, no. 3 (1982): 401-41. Other works include David Brion Davis, *The Fear of Conspiracy: Images of Un-American Subversion from the Revolution to the Present* (Ithaca, N.Y., 1971), David Brion Davis, *The Slave Power Conspiracy and the Paranoid Style* (Baton Rouge, La., 1970), Jeffrey L. Pasley, "Conspiracy Theory and American Exceptionalism from the Revolution to Roswell," in *Sometimes an Art: A Symposium in Celebration of Bernard Bailyn's Fifty Years of Teaching and Beyond* (Harvard University: 2000).

²⁸ William Burt, 1783-7, Andrew Hibben, 1783-34, GA Petitions. Thomas Radcliffe Jun, Feb. 6, 1783 Thompson and Lumpkin, eds., *House J. 1783-1784* 99.

Assembly of a free country should hold its deliberations publicly. Loyalists and their supporters expected that they were entitled to public consideration. Petitioning had always encompassed the expectation of a public hearing in response. Loyalists felt it was no more than their due. Hearings allowed Loyalists to present evidence and character witnesses. They could marshal a more detailed and nuanced case than a two or three page petition allowed.²⁹

Theoretically, this meant that Loyalists without friends in the legislature could persuade on the basis of other things. In practice, having connections among the elites who made up the General Assembly helped. James Gordon told legislators that he would “on the Contrary Appeal[] to his Neighbors, to prove the Services he has rendered many of them” if given the chance. Maurice Simmons made the plea for a hearing very clearly, saying that “from a long Experience of the Justice and lenity of his Countrymen [he] is well convinced that they were not possessed of a true State of his Conduct while in the British Lines.” Simmons claimed “if he were allowed a hearing he will be able to Explain his Conduct and Situation (Supported by good Evidences) to the Satisfaction of his Countrymen.” A hearing would allow him to present his case with evidence, whereas the Jacksonborough Assembly did not know “the true State of his Conduct” and did not examine all available evidence.³⁰

In the world of eighteenth-century America, these claims had weight and power. While the language of petitions was deferential, the charge that a public trial would lead to a different fate was explosive. This was perilously close to reiterating the persistent

²⁹ Edward Rutledge to Arthur Middleton, Jacksonborough, Feb. 6, 1782, Barnwell, "Middleton Corr. Jan. 1926," 3.

³⁰ James Gordon, 1783-54, GA Petitions. Maurice Simons, Salley, *House J. 1782* 135, also in Senate Journal (engrossed manuscript) Feb. 15, 1783, South Carolina Department of Archives and History.

rumors that some men were listed in the Confiscation Act because they were personal enemies of members of the Jacksonborough Assembly, not genuinely problematic Loyalists. The right to a trial was one of the glorious traditional rights of Englishmen that American Whiggery had pledged to uphold. When John Gaillard reminded the General Assembly that his property has been taken without the benefit of trial, he accused the previous General Assembly of having acted in a way unbecoming a free state under the rule of law. Even Loyalists should be given the benefit of the doubt. Further, in practice Loyalists had been denied the use of the court system. Legislative fiat, however determined, had decided the fates of the men named in the Confiscation and Amercement Acts. Loyalists created a system that showcased their own drive to maintain South Carolina citizenship. By petitioning, they came forward and proactively identified themselves as worthy potential citizens. They showed themselves ready and willing to reach accommodation with the state.

When not denying culpability altogether, Loyalist petitioners tried to explain their wartime actions. Of course, they wanted to put the best face possible on the decisions they had made. Many explained that they had made the decision to become Loyalists for practical reasons, not ideological ones. Some petitioners argued that at least part of the reason they had supported the Loyalist cause derived from individual circumstances, including physical debility. Thomas Eustace "being advanced in life, and infirm for many Years," took British protection because he was unable to leave Charleston after occupation. John Walters Gibbs argued that he had been forced to sign both addresses welcoming the British to Charleston by dint of "a bad State of health." He further indicated that he was unable to cooperate with Governor Rutledge's proclamation (that

allowed Loyalists who left the city to receive official pardons if they left before the British withdrew) because “he had lost the use of his limbs by the Gout and Rheumatism.” Doctor Lynah, a younger man, tried to convince the General Assembly that a series of riding misadventures required him to stay in Charleston for his health and “rendered him incapable (by Bodily infirmities) to take the benefit of his Excellency Governor Rutledges Proclamation.” These excuses explained political loyalties as secondary to pragmatic concerns. In citing their age and infirmities, these men argued that they did not possess the necessary freedom of action to make the choices that a republic demanded of its citizens. They essentially argued for diminished capacity, and accepted appearing pathetic as the price necessary to win back their property. Republican theory did recognize that some men were hindered in their ability to shoulder all the burdens of citizenship. Practically, some Patriots had made similar claims to the British authorities during the war, including the posthumously illustrious Isaac Hayne.³¹

Other Loyalists offered not their own health as an excuse, but the insecurity of their families. As good fathers and husbands, how could they abandon their families or take steps that would leave them destitute? Christopher Williman took protection because of a “numerous young family.” James Clitherall claimed “That he was obliged to remove with his family from the Country to town by reason of Sickness” as a way to explain why he moved into occupied Charleston. Bryan Cape had a “large family and

³¹ Thomas Eustace, Thompson and Lumpkin, eds., *House J. 1783-1784* 35. John Walter Gibbs, 1783-19, GA Petitions. While I find the excuse both comical and pathetic, gout certainly was a trial for many gentlemen of the period. Henry Laurens, the South Carolina Patriot, also complained bitterly of his gout attacks. Laurens complained to his daughter that “the Gout” was a “painful Visitor assailant” that kept him a “close prisoner.” Henry Laurens to Martha Laurens, Ostend, May 18, 1782, David R. Chesnut and C. James Taylor, *The Papers of Henry Laurens*, 16 vols. (Columbia, S.C., 2000) 15: 507. Lynah argued that he had two separate falls from his horse that broke his arm, shoulder, and three ribs, since which he “had not one weeks perfect Health.” Doctor James Lynah, petition excerpted in Thompson and Lumpkin, eds., *House J. 1783-1784* 47.

low Circumstances,” and when “he observed the Country Exposed to the Mercy of British forces, that he then took their protection to save his Family and property.” Cape here explicitly linked his seemingly selfish desire to protect his considerable wealth to his honorable desire to properly protect his family. How else could he protect his family if he could not assure them a comfortable subsistence? Other Loyalists also suggested they took actions allying themselves with the British in order to provide for their dependants’ financial needs. Both Jacob Deveaux and James Brisbane claimed that they took civil commissions under the British occupying administration because they needed a steady source of income to support their families. Brisbane put it most eloquently when he suggested “he was obliged to apply to the British for Some place by which he might be enabled to Support a Numerous family.” (Brisbane himself, however, was unable to convince South Carolinians that this was his true reason for taking the office of sheriff to the Charleston police under the occupation.) One petitioner, Alexander Rose, struck a sour note when he admitted that he made common cause with the Loyalists in order “to save a large Quantity of Indico.” He failed to link his economic decisions to any desire to protect others.³²

Of course, other men had left their wives alone while they put their own lives on the line to fight. Yet the petitioners had their finger on something: care of dependents was important to honorable masculinity. Men needed to provide for their wives and children. Men who “failed to measure up to marital manhood were unworthy of liberty

³² Christopher Williman, 1783-60, James Clitherall, 1783-189, Bryan Cape, 1783-23, Jacob Deveaux, 1783-86, James Brisbane, 1783-70, GA Petitions. Gregory Palmer, *Biographical Sketches of Loyalists of the American Revolution* (Westport, Ct., 1984) 93. The Committee recommended that “he [James Brisbane] had taken the most early opportunity to evince his attachment to the British cause, that he had been rewarded for it by being appointed to a lucrative office under the police established in Charles Town, that he acted so as to obtain the thanks of that truly honourable Board, and therefore they recommend him to remain where he is and enjoy the favours of his beloved masters.” Alexander Rose, petition excerpted in Thompson and Lumpkin, eds., *House J. 1783-1784* 15.

and citizenship.” And fatherhood was a central marker of adult status for men. In properly governing vulnerable children incapable of consent, and caring for their moral, economic, and emotional needs, adult men showed their understanding of the needs of the Republic and their attention to the most important needs of community.³³

These claims can work as maudlin sentimentality or rank whininess at their most clumsy, but I do not think that is why many petitioners included such complaints. One reason they did so was a palpable sense of rage and despair at what the war had cost them. Just as many of the Patriot legislators had paid heavily for the war in many personal ways, so had the Loyalists. In short, they proved they were sufficiently chastened by losing. They too were victims as well as actors in the drama of the Revolution. But these complaints served to underscore another point for the Loyalist petitioners. When Charleston fell and South Carolina was subdued, everyone faced a choice. Should they accept British protection and keep it even after the price became active involvement in the British occupation? What they did, anyone might have done. They sought to remind their listeners that they could be standing in the Loyalists’ shoes.

Refreshingly, some petitioners made outright apologies for their actions in taking the British side. John Wagner hoped “he may be pardoned the Errors he has Committed.” William Rees apologized, stating that he “is truly sensible of the Errors he has been guilty of.” David Guerard “acknowledges his fault in taking protection.” Supporters of Richard Wayne apologized for him, arguing they were now convinced that he had “express[ed] a

³³ Kann, *Republic of Men* 3, 6, 30. For a much longer discussion of the link between marital behavior and masculine status, see Thomas A. Foster, *Sex and the Eighteenth-Century Man: Massachusetts and the History of Sexuality in America* (Boston, 2006). Holly Brewer shows the transition from children being marked by their status to children being marked by age in her perceptive analysis of the evolution of rational consent. She further shows the importance of fatherhood to new Enlightenment notions of patriarchal authority. Holly Brewer, *By Birth or Consent: Children, Law, & the Anglo-American Revolution in Authority* (Chapel Hill, N.C., 2005).

Sincere penitence for the part he acted in behalf of the British since the fall of Charles Town.” These apologies were lacking in any specifics. No one apologized for actions against neighbors or citizens. While Guerard apologized for taking protection, he did not mention any specific wartime actions. (After all, Guerard was one of eleven people who were singled out in the confiscation act as “obnoxious persons” deserving censure.) No one admitted to any war crimes, although the Charleston merchant William Glen came close when he argued “That altho’ he might have been Guilty of some Improperities [he] hopes it does not amount to Criminalities.” These people gambled that a show of remorse would put their listeners in the proper frame of mind to offer them clemency. However, only a minority did apologize for their actions in these petitions. Honesty was not necessarily the order of the day.³⁴

Even fewer admitted a real political preference in their petitions. Edward Fenwick was unusually honest when he admitted that “during the late contest between these United States and Great Britain your Petitioner unhappily engaged in the service of the latter; in consequence of which he acknowledges that the Resentment of his Countrymen hath been justly shewn against him.”³⁵ What is missing in almost all petitions is any discussion of political loyalties during the war. Loyalist petitioners scrupulously avoided claiming any preference for the British or the Loyalist persuasion. And, while they vocally proclaimed their support for America, they also expressed little

³⁴ John Wagner, Thompson and Lumpkin, eds., *House J. 1783-1784* 15-16. This petition is also found in the Senate engrossed manuscript, but the original is not in the GA Petition series. David Guerard, 1783-71, Supporters of Richard Wayne, 1783-369, William Glen, 1783-53, GA Petitions.

³⁵ Edward Fenwick, Accounts Audited of Claims Arising from the American Revolution, Account No. 2345, excerpted in Lark Emerson Adams and Rosa Stoney Lumpkin, eds., *Journals of the House of Representatives 1785-1786* (Columbia, S.C., 1979) 24.

political ideology in support of independence. Petitioners steered clear of discussing political philosophy.

While some Loyalists apologized, others tried to excuse their actions by blaming their decisions on bad or false information. John Harth blamed his decision to sign the congratulatory address to Clinton on “his Ignorance and advice of Some who he thought his friends.” Edmund Petrie complained that “having been misled by the artifices of designing Men has become the object of the Confiscation Act.” James Mackey also signed the address (for which he faced confiscation and banishment) because of false arguments. He pretended he did not know the true nature of what he signed, because “the address was fabricated by artfull & designing men....many persons were invited and persuaded to sign the same who were totally ignorant of the Nature or contents thereof,” presumably including Mackey. William Cameron, a Charleston cooper, argued that he signed the fatal petition because in his more humble situation, he depended on the advice of men who were of higher standing. “His signing the address, was occasioned by the example of Men, he thought more Capable of judging in political affairs than One of his narrow understanding.” All of these men relied on widely shared eighteenth-century understandings of political causation, which historians from Richard Hofstadter to Gordon Wood have called the “paranoid style.” They appealed to a shared belief that conspiracy lay behind political action, especially such nefarious activities as the British occupation. However, in showing themselves as victims of conspiracy, they also left their own wisdom as political actors open to question. How many times would conspirators take them in?³⁶

³⁶ John Harth, 1783-15, Edmund Petrie, 1783-405, GA Petitions. James Mackey, Jan. 23, 1783, William Cameron, Jan. 24, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 25, 35. Gordon S. Wood,

Other Loyalists argued that they had not in fact even signed the addresses, but that through fraud their names appeared among the signers. Aaron Loocock complained “while on his parole at Camden, some person inserted his name in an Address to Sir Henry Clinton, he believes contrary to his Knowledge or Consent.” Not only did Loocock disclaim signing the petition; he pointed out he had not even been in Charleston at the time the petition was circulated. Thomas Buckle went further and accused a specific person of committing fraud by signing his name to the welcome without his permission. “His nephew Thomas Buckle Junior did Sign his name to an Address to Sir Henry Clinton and Arbuthnot, Contrary to his Knowledge...” Buckle offered two explanations: fraud and potential mistaken identity. In either case, he did not really sign the address, and therefore should be removed from the confiscation list.³⁷

All of these cases showcase the importance of the paranoid style of politics in eighteenth-century political understanding, as it was one major way Loyalists strove to explain their actions to otherwise unsympathetic listeners. Yet these excuses, mired in the practical details of ordinary life, privileged the very real constraints of interpersonal relationships that made up the network of dependency obligations that governed the lives of seemingly independent men of honor.

“Causality and the Paranoid Style: Causality and Deceit in the Eighteenth Century,” *WMQ*, 3rd ser., 39, no. 3 (July 1982). See also Pasley, “Conspiracy Theory and American Exceptionalism from the Revolution to Roswell.” Hofstadter, *The Paranoid Style in American Politics, and Other Essays*.

³⁷ Aaron Loocock, 1783-273, Thomas Buckle, 1783-350, GA Petitions.

“At the Earnest Request of his Neighbours”: Honor and Citizenship as Neighborliness³⁸

South Carolina needed good citizens for its experiment in republican government. Loyalists strove to show fellow residents and legislators through their petitioning that they could be those good citizens. Men should be honorable citizens with upright conduct. One way that they could display their command of these traits was to show that they were linked to local networks that could vouch for them. In the creation and maintenance of those networks, they could demonstrate a history of honorable service. In this argument, we can see that neighborliness, as defined by actions over time that spoke to personal reputation as seen through community interactions, was a primary determinant of citizenship for eighteenth-century Americans, despite legal definitions concerned with oaths of allegiance and birth. Citizenship was an active entity, and one dependent on the norms of a face-to-face society.

Many things went into making a man honorable and upright. Such a man was a good husband, father, soldier, and neighbor/community member. He was upright in business dealings and his word was dependable in business, politics, and conversation. Honorable men needed and worked for the respect of other men. While the categories of honorable manhood can be separated in discussion, in practice they were mutually reinforcing. If a man fell short in any of the categories, it put his entire character at risk.³⁹

³⁸ John Adamson, 1783-40, GA Petitions.

³⁹ Kann, *Republic of Men*

As Joanne Freedman has pointed out, in uncertain times the grammar of honor “was a source of stability.” Gentlemen were expected to speak honestly, making only promises they would actually keep. “A man without honor was no man at all,” she argues. Frustratingly for eighteenth-century men, honor was also entirely validated by the outside world—making public reputation vital to individual self-esteem and community standing.⁴⁰

To understand the role of petitioning in Loyalist strategies for reconciliation, we need to understand evolving American and British notions of citizenship—understandings that took on new life in the American Revolution. During the Revolution, implicit understandings of citizenship were tested against new realities.

Implicit in the American understanding of citizenship was that citizenship was the product of voluntary choice, not unwavering birth allegiance. American states had long offered generous naturalizations as part of their efforts to attract migrants, making their system of citizenship quite different from Great Britain’s, which carefully controlled naturalization. James Kettner has established that traditional early modern British legal and popular understanding of citizenship held that citizenship was unchangeable. Citizens owed allegiance to the king by birth, and they could not choose to change such allegiance. But colonial Americans had been developing a different version of citizenship, one that defined citizenship as voluntary and changeable.⁴¹ South Carolina continued to try to attract white immigrants up to the Revolution, and therefore had a history of generous citizenship to those white men who chose voluntarily to join South

⁴⁰ Joanne B. Freedman, *Affairs of Honor: National Politics in the New Republic* (New Haven, 2001) xv-xvi.

⁴¹ James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill, N.C., 1978) For a rather different take: Catherine A. Holland, *The Body Politic: Foundings, Citizenship, and Difference in the American Political Imagination* (New York, 2001).

Carolina and take a basic oath to their new state. Further, implicit in the widespread colonial definitions of male citizenship was a standard of basic landownership that the vast majority of white South Carolinian males met. Men who had arrived from other colonies had no trouble establishing themselves as South Carolina citizens upon the acquisition of land. Almost universal male citizenship without muss and fuss is a good description of the actual norms in what was still a relatively new immigrant colony on the eve of the Revolution.

England did allow non-citizens to gain citizenship through naturalization, but the practice was very unusual. To become naturalized, men had to be made citizens by a special act of the Parliament. In practice, only a few wealthy and determined men became naturalized citizens. In the American colonies, naturalization quickly became readily more obtainable, as the colonies sought to attract people who did not hold English citizenship. A 1740 act of Parliament specifically authorized American colonies to create British citizens through their own naturalization procedures. American naturalizations allowed all rights of citizenship, including the right to hold public office, ensuring that naturalized citizens in America truly enjoyed all the privileges of citizenship despite their birth. English law vigorously enforced exclusions on voting and office-holding on naturalized citizens and aliens. Colonists were generally unconcerned about these distinctions. Further, they eagerly welcomed white immigrants, whose labor helped to build the economy. Colonists came to believe that “aliens who chose to commit their efforts and resources to the common good justly deserved an equal share of the rights of membership.” The stance toward aliens was helpful, not confrontational and limiting. Naturalizations continued apace after the American Revolution. South Carolinians

continued their practice of making new citizens. These new citizens had to take an oath of allegiance to the state of South Carolina with a local court official, who then recorded the oaths with the House of Representatives. Naturalizations did not require a specific legislative act. In fact, a perusal of the 1780s oathtakers in the legislative journals and records shows that many defecting British soldiers were warmly welcomed as new South Carolina citizens with all the rights of native-born Americans.⁴²

Over time, with the rise of easy naturalization and the logic of an immigrant-friendly society, Americans had come to understand citizenship as based on the desire to be a citizen of the locality. In so doing, they came to understand citizenship as defined by the volitional actions and attitudes of individuals, not birth allegiance. They followed the instincts of political philosophers like John Locke, rather than established English or American law. During and after the Revolution, Americans began to confront the tensions inherent in the differences between the way they saw citizenship and the way the law defined it. Loyalists created major problems for understanding American citizenship.⁴³

The American Revolution offered Americans the chance to define citizenship for themselves, but Loyalism, and the way assemblies dealt with Loyalists, actually defined in broad terms the challenges posed by any notion of citizenship. While perhaps 2/5 of the white male population were Loyalists of some stripe, American Revolutionaries could not tolerate dissent on this point. Internal dissenters threatened the war effort, and also sapped enthusiasm and the image of unity. Yet a society that believed that citizenship

⁴² Kettner, *The Development of American Citizenship, 1608-1870* 74, 122, 127.

⁴³ Locke actually was far more radical in his insistence on citizenship as a choice than eighteenth-century Americans (or even twenty-first century Americans) were. Locke denied birth citizenship entirely. Rogers S. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, Conn., 1997) 78-79.

was a voluntary choice faced a dilemma. Republican theory held that governments gained their legitimacy from the consent of the governed. Loyalists chose not to be part of that governmental compact. How could they be forced to choose American citizenship? Majorities could rule, but Americans were creating a new contract. Further complicating the legal position, there was no such thing as United States citizenship until 1787. Citizenship came through state citizenship, and states controlled the definition of who was a citizen.

During the war, state governments papered over the legal and moral dilemmas arising from Loyalists' rejection of American citizenship, since wartime made toleration of open dissent impossible. Congress and individual states enacted laws to control Loyalists, branding them traitors and banishing open dissenters from the states. Congress and individual states claimed that so long as men had been citizens in 1776, and claimed protection from the United States, they were obliged to become American citizens by virtue of a majority decision by each state to join the United States. Yet if Americans were truly committed to the idea that individuals chose their own loyalties, this position could not stand. During the war, the point was somewhat moot both because war exigencies obscured legal problems, and because states had the clear right from English practice to sequester estates, regardless of whether the property belonged to a treasonous citizen or an enemy alien. Even during the war, it was difficult to convict Loyalists for treason because their allegiance was openly to another entity. Juries and judges were careful because treason was a capital crime, and a hanging cannot be reversed. South Carolinians legally treated Loyalists as traitors under wartime legislation, culminating in the Confiscation Act. Even the eventual peace treaty distinguished between British

residents and American citizens in determining how each side should proceed in honoring property claims.⁴⁴

After the war, South Carolina and other states had more breathing room to be merciful towards the Loyalists. Wartime assemblies in all the colonies had plastered over incompatibilities between legal definitions of citizenship, inherited from English law, and an American understanding of citizenship, that took shape in a growing colonial society. After the Revolution, with the immediate threat past, Americans had time to work through the nature and definition of citizenship more carefully. If citizenship was an individual choice, what choice had Loyalists made? If they switched sides, which decision was binding? And, having made the choice for the British, could they argue that they were still American citizens? Further, did Loyalists choose to be British subjects, or were they always American citizens entitled to all the protections of that status? The Confiscation Act of 1782 declared most Loyalists non-citizens. But in the ensuing years, Americans began to soften this stand.

This was a messy bundle of issues for South Carolinians, as so many of the Loyalists petitioning to be removed from confiscation had switched sides at least once. They were long-term residents of South Carolina. Further, many of them had only taken protection from the British after the state was conquered. As the commissioners pointed out in recommending clemency on John Deas's petition, the punishment was "too large an Imposition for doing no more than what the Bulk of the Citizens had done before him."⁴⁵ Legally and morally, conquered people did not change their citizenship by

⁴⁴ Kettner, *The Development of American Citizenship, 1608-1870* 174, 180-81. Smith, *Civic Ideals* 93.

⁴⁵ Report of the Commissioners on the Petition of John Deas, Esq., enclosed with Oct. 1783 letter to Commissioners, Box 4, Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, S 126170, SCDAH.

coming to terms with an invader. Under monarchical rule, making terms with the invading prince did not mean that individuals had forsaken their obligations to the monarch. Similarly, South Carolina's independent Patriot government could not protect its citizens in the wake of the fall of Charleston. Making terms with the British invaders in no way made people traitors, but simply normal people trying to protect themselves when their government no longer could. Partly to combat this problem, and partly to assuage competing interests in the caucus itself, the General Assembly singled out people who had taken highly public actions in favor of the British, such as using their names to congratulate the conquerors, and taking commissions as officers of Loyalist militia units. In this way, they selected people who had arguably done more than simply accept British protection. In practice, even this was a problematic distinction, as the British occupational administration had increasingly required that men under protection fight for the British, or work in the administration. During the war, it became increasingly difficult to maintain anything approaching neutrality.

In short, there was some legal precedent for the actions the South Carolina General Assembly took against prominent Loyalists in 1782, but there were also legal counterarguments based on European law. While several members of the 1782 General Assembly were lawyers, the Assembly as a whole was working with an implicit definition of citizenship widely shared by South Carolinians, but not reflected in law. Loyalist South Carolinians came from the same background and shared the same assumptions about citizenship. By seeing how they defined citizenship in their outreach to the General Assembly, we can see what those underlying beliefs were. As the first group to enunciate a defense of volitional citizenship based on honorable neighborliness,

the Loyalists pushed Patriot South Carolinians into defining citizenship for all in a way that included Loyalists. A majority of Loyalists subject to confiscation and banishment had their citizenship and the bulk of their property restored by 1785, a mere three years after the passage of the original act. Therefore, we must take the Loyalist arguments about citizenship seriously, for they were successful.

Now, what were those arguments on behalf of lived citizenship—what we might call neighborly citizenship? Many Loyalists cited their care for others during the war as evidence of the uprightness of their conduct. Part of proving one's stature as an honorable man was to show that one had acted in a sympathetic way during the war. The violence and endless cycles of revenge that were endemic to both sides in the war were incompatible with the figure of the honorable man, versed in codes of war and sympathetic behavior. While wartime participation and bravery were essential to honor, the kinds of brutal behavior that actually occurred in much of the guerilla fighting were harder to square with honor. Burning houses, for instance, hurt dependent women and children that honorable men were pledged to protect. Americans also painted the Loyalists and British in a very harsh light in wartime atrocity propaganda, arguing that they had committed the worst of offenses against mankind. Loyalists had to show that their own wartime conduct met the highest standards of honor, and was completely separate from the picture of frenzied destruction that was front and center in the minds of most Patriots. Some Loyalists (ironically) were able to show their essential honorableness through their conduct in the very offices that had landed them on the confiscation and amercement lists to begin with. Others were unable to rely on that, and so they offered other explanations of their wartime conduct that showed them as men of

humanity. Several Loyalists were quick to point out that they were now caring for orphaned children of Patriot soldiers. Three women who petitioned in support of John Hartz applauded him for keeping “an Orphan child of a deceased American soldier, which he has and does now treat as his Own.” Mary Inglis defended her husband Alexander as a “Man of Integrity” who “has under his Care, Several Minors and Orphan Children.” In the absence of orphanages, individuals stepped forward to care for and protect vulnerable children. Taking on the paternal role for other men was a sign of neighborly investment.⁴⁶

Taking care of orphans was well and good, but a man’s conduct towards adults was also important. Loyalists who lived in or entered occupied Charleston were in a good position to help Patriot prisoners of war being held in the city. Loyalists who fled to East Florida had the chance to offer their services to American prisoners of war held there. Many Loyalist petitioners cited their service to American prisoners in their attempt to portray themselves as honorable men. Charles Johnston simply argued that he had “endeavored to alleviate the distresses of many,” but he also submitted a petition from Benjamin Villeponteaux, a prominent Charleston merchant, testifying that “Mr. Johnston has rendered him great Services while a prisoner.” Alexander Rose “assisted American citizens in distress.” This honorable action put him at risk, because his efforts to help Patriots “occasioned the British to use every means to Injure him.” Actually, the British usually did not interfere with efforts to make prisoners of war more comfortable, but public sympathy with prisoners certainly might mark someone as determined to stand above the divisions of civil war. Patrick Hindes, who pleaded poor health as his reason

⁴⁶ Petition of Sarah Clark, Ann Smith and Sarah Clement on behalf of John Hartz, Mary Inglis on behalf of Alexander Inglis, excerpted in Thompson and Lumpkin, eds., *House J. 1783-1784* 20, 127.

for staying in occupied Charleston, had “assisted prisoners with Necessaries since the Capitulation.” Richard Wayne also “made it his Study to relieve the distresses of the American prisoners in Town” while he was living in occupied Charleston. John Hartz’s supporters were careful to testify that he not only assisted prisoners, but also put his money where his mouth was by offering monetary assistance as well as his company. Sarah Clark claimed he “relieved the distresses of the American prisoners, on Board the prison Ships and Hospitals in this Town by supplying them with Money and Necessarys.” He also exposed himself to rampant infectious disease when ministering to prisoners on board the prison ships in Charleston harbor. Giving money and donating supplies was common.⁴⁷

While anyone could help prisoners, doctors were especially likely to trumpet their professional services on behalf of American patriots when possible. (Of the doctors on the confiscation list, some had served the British for long periods in their professional capacity, and therefore chose to minimize such professional activities as much as possible in their own petitions. But others had taken protection and aided prisoners, rather than serve the British forces as a surgeon.) Dr. Charles Fyffe, who served the Americans as a field surgeon before the fall of Charleston, took British protection afterwards. He emphasized “that while in the hospital he got Several Wounded and Sick Americans there and attended them untill they recovered and was also attentive to the North Carolina Officers.” As a man of honor, he continued to use his professional skills to aid America. Further, he was subtly emphasizing that while he took protection, he did not accept a

⁴⁷ Charles Johnston, 1783-95 GA Petitions, Benjamin Villepontoux on behalf of Charles Johnston, 1783-335, GA Petitions. Richard Wayne, 1783-106, GA Petitions. Alexander Rose, Patrick Hindes, Petition of Sarah Clark, Ann Smith and Sarah Clement on behalf of John Hartz, excerpted in Thompson and Lumpkin, eds., *House J. 1783-1784* 15-16, 20.

position as a surgeon to British troops. His skills were in hot demand, and all doctors were encouraged to take positions as troop doctors. He did not do so, but merely accepted protection. Soldiers of all ranks appreciated the efforts of doctors and sought out medical care, making their skills popular. Loyalist doctors had a skill vital to both sides. Perhaps in recognition of that fact, the 1784 Assembly chose to relieve from confiscation almost all the doctors who petitioned. (James Fraser was never relieved, probably because he had joined the British well before the reduction of Charleston, and participated in British military activities as early as 1779.) Relieved doctors went on to practice medicine in the state, ensuring that valuable skills largely held by foreigners remained available to South Carolinians.⁴⁸

John Scott took another tack in promoting himself as an honorable man who put himself at some risk in order to protect Americans and American interests. He assured the legislature that “he was particularly Active in promoting a petition in favour of Colonel Hayne.” Colonel Hayne’s case was a cause célèbre for South Carolinians, memorialized across generations as an example of British perfidy. Hayne was a Lowcountry planter and the owner of a major iron works in York County in the backcountry. He was captured in action, brought to Charleston, and then publicly executed without trial as a traitor to the crown. His death was meant to be a warning to other Patriots who had taken oaths of allegiance to the British government or might not

⁴⁸ Dr. Charles Fyffe, Thompson and Lumpkin, eds., *House J. 1783-1784* 22. Caroline Cox, *A Proper Sense of Honor: Service and Sacrifice in George Washington's Army* (Chapel Hill, N.C., 2004). See Act. No. 1229, Cooper and McCord, eds., *Statutes of S.C.* . Kathy Roe Coker argues that professionals were much more likely to be Whigs, which made Loyalist professionals unusual. This was much truer for lawyers than doctors, however, perhaps because most doctors received training abroad, and all but one of the Loyalist doctors in South Carolina were foreign-born. As to James Fraser, he did not bother to petition the South Carolina General Assembly until 1797. By that time, he had already received money from the Loyalist Claims Commission in Britain. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 125-73. James Fraser, 1797-66, Mary Fraser for James Fraser, 1796-26, GA Petitions.

be strictly honoring the terms of their paroles. Instead, his death caused furious comment on both sides of the Atlantic, as many British observers considered it an outrage just as the Americans did. Isaac Hayne claimed to be a man of honor who had been released from his oath of allegiance to the British, and was therefore perfectly free to resume his actions on behalf of the Americans. In either case, anyone who had pushed a petition to save Hayne would not have been popular with the British authorities, although he would have been respected by many Loyalists. Sarah Scott also referenced Hayne's case when she pleaded for her husband's return. "Also the part he took in the affairs of Colonel Hayne and Captain Lining will manifest how Sincerely he was affected by the distresses of his Countrymen."⁴⁹

A significant subset of petitioners claimed that they had accepted commissions at the instigation of neighbors as a combined neighborhood strategy to avoid the worst excesses of the war. John Adamson "accepted of it [the commission] at the Earnest request of his Neighbours (now Subjects of this State) to prevent its falling into the hands of a person whose intentions was well known to oppress them." He took his post in collusion with his neighbors. His neighbors believed he was an honorable man based on his previous actions, and therefore he was a reliable choice to hold office. Of course, they also recognized his personal stake in taking a commission in order to protect his own family and property. (As a merchant, that was sizable.) While many Lowcountry

⁴⁹ John Scott, Jan. 24, 1783, Sarah Scott, Feb. 1, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 35, 76-77. Senate J. Feb. 3, 1783, SCDAH. For a brief discussion of Isaac Hayne's capture and execution, see Bowden, *The Execution of Isaac Hayne*. Isaac Hayne's case was similar to the much more famous execution of John André after Benedict Arnold's betrayal at West Point. Historians often point to the popularity of the case in the officer's imaginations, and as a continuing drama in revolutionary memory. Michael G. Kammen, *A Season of Youth: The American Revolution and the Historical Imagination* (New York, 1978) 105-06. Robert E. Cray, Jr., "Major John Andre and the Three Captors: Class Dynamics and Revolutionary Memory Wars in the Early Republic, 1780-1831," *Journal of the Early Republic* 17, no. 3 (1997): 371-97, Larry J. Reynolds, "Patriot and Criminals, Criminal and Patriots: Representations of the Case of Major Andre," *South Central Review* 9, no. 1, *Historicizing Literary Contexts* (1992): 57-84.

planters made these claims with the support of their neighbors, Adamson's claim is unusual because he was a Camden landowner and merchant. Even his backcountry neighbors were willing to accept divided loyalties in the greater interests of local harmony. His supporters agreed that he had taken the commission with Patriot support, indicating "he used all the Influence he had with the British in favour of Such persons as avowed their attachment to the American cause." Certainly good men would protect their neighbors, thus subverting British administrative aims. However, the extent of Adamson's "Influence" might pose a problem. If he had considerable influence with the British, he could certainly do his neighbors good, but he would very likely not have had such influence unless he had committed openly to his Loyalist beliefs. Men who had "Influence" usually had reassured the British of their zealousness in persecuting and controlling Patriots. John Adamson's case was actually complicated because he was a lieutenant in a Loyalist regiment in Camden that strove to enforce conformity. While Adamson's own behavior was circumspect, he did take an active military role in the war. His close association with Joseph Kershaw and John Chesnut, who worked to protect him with the General Assembly, saved him. Adamson was related to several other Loyalist militia leaders, suggesting he not only took protection to save himself but out of personal conviction. Twenty-three Camden residents signed his petition, which suggests that Kershaw's protection healed his position in Camden by early 1783.⁵⁰

Joseph Seabrook also was "prevailed upon by his neighbors to take a Militia Command under the British Government in order to prevent plundering." Plundering was rampant in South Carolina, and was one of the most infuriating common wartime

⁵⁰ John Adamson, 1783-40, GA Petitions. Supporters of John Adamson, Jan. 28, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 53-54.

experiences for most of the population. If he could actually succeed, this would be a good excuse for his wartime conduct. Seabrook argued that he only took it after a committee of concerned neighbors “prevailed upon” him to do so. This argument did have some validity, but it also became a popular gambit among petitioners. James Casells, a Lowcountry planter, also defended his actions by arguing he protected “the persons and properties of his neighbors from violence and plunder.” Yet Cassells did not receive a pardon in 1784 while Adamson and Seabrook did, largely because his conduct as a Loyalist leader was so dedicated that Balfour dubbed him more “manly, & worthy of credit” than any other militia leader. Yet despite Cassells’ Loyalism, he probably did try to protect his neighbors as much as possible. Unlike others, he did not claim he took a commission on the entreaties of the community.⁵¹

Military service had long been considered a vital part of manly citizenship. Adult able-bodied men were required to serve in the militia until they were in late middle age. Militia service, while often avoided, was crucial in cementing individual citizens’ standing as free men. In war, men could prove their bravery. In the more quotidian experience of peacetime, men could show their adeptness at following the many rules of military mustering. Linda Kerber has also confirmed that military service was a vital part of what defined men as manly members of their community. Militia service was legally required, but it was expected as well as a part of one’s community contribution. Men who did not face up to their military duties chose to shirk their vital duties of community defense, and the community could rightly choose to doubt their commitment. Such men were not good community members, and not good citizens. Loyalists had avoided their

⁵¹ Joseph Seabrook, 1783-240, James Cassells, 1784-36, GA Petitions. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 214-16.

militia duties to South Carolina after taking protection, and in other cases had actively taken militia positions with the British. As such, they had failed one of the most important tests of male dedication to citizenship, in some cases twisting it (in Patriot eyes) by undertaking important duties for the wrong side. Loyalists who invoked military service for the British cause faced a conundrum, for they needed to show they were honorable in their devotion to military service, while not emphasizing wartime activities that had hurt individual Patriots and the Patriot cause.⁵²

Henry Rugeley also argued that he “only did [take the commission] in Compliance with the request of some principle Neighbours (now Subjects of this State) to prevent its falling into the hands of a person, who would have distressed them...”⁵³ Following the pattern, he argued that he was upholding community norms in his performance in office, but also in his officeholding. Adding a new wrinkle, he suggested that communities drew a distinction between likely candidates for a Loyalist commission, and endeavored to get local choices in office. Rugeley’s neighbors felt they knew him well enough to be sure his conduct would be well-regulated; presumably, he would protect their community instead of using the Loyalist militia as an arm of political control. The other, unnamed party was suspected of a desire to enforce conformity. Rugeley also made a point of mentioning that those neighbors who encouraged him to take a British commission were “now Subjects of this State” rather than fellow Loyalists. Benjamin Rees’s sixty-five supporters contended that:

whereupon the Inhabitants did of their own freewill and accord, Solicit and request Mr. Benjamin Rees to take upon him the Charge of a Company of Militia,

⁵² For much more on military service for enlisted men and officers in the Revolution, see Cox, *Sense of Honor*. Linda K. Kerber, *Women of the Republic: Intellect & Ideology in Revolutionary America* (Chapel Hill, N.C., 1980).

⁵³ Henry Rugeley, Thompson and Lumpkin, eds., *House J. 1783-1784* 66.

in which capacity he acted with lenity and moderation; and many of your Petitioners can testify, that he was ready and willing at all times, to do what services he could to all those that were dignified with the name of Rebels.

Here we see the formula elaborated at length. He was known to act in all areas of life with “moderation” and therefore was elected by committee. He used his own position at some peril to himself to perform “services” to Patriots. Rather than truly being a military commander seeking to support British rule in America, he was a glorified sheriff, maintaining social order so that everyone else could get on with the business of life. Should the legislature have any doubts that this upright behavior entitled him to clemency since it proved his fitness as a citizen, his supporters drove the point home, “not doubting that his future conduct will merit the favour and protection of his Countrymen.”⁵⁴

A longer example from a backcountry Loyalist will show how these different claims of honorable wartime conduct came together. Patrick Muckle Murray of Cracker Neck “ever had the goodwill of his neighbours in particular, and others in general” during his sixteen years as a South Carolina settler. Presumably it was because of that reputation that he was chosen by his neighbors to take a British commission. He explained thusly:

during which time Oppressive and violent measures were Carrying on in other districts by the British owing to men being put into Commission not known to the Inhabitants, by reason of which your Petitioner by the entreaties of the Inhabitants of the district aforesaid (known friends to the American Cause) was induced purely to serve them, and with no other motive accepted of an appointment from the Inhabitants to act as their Commander. That during the time your Petitioner Acted as aforesaid, he never fired a Gun against his Countrymen, and made use of every means in his power to secure peace to the Settlement aforesaid nor did he ever make use of any arbitrary or oppressive measure against the Inhabitants thereof, but on the Contrary did every thing in his power to Serve them.⁵⁵

⁵⁴ Inhabitants of St. Marks Parish in behalf of Benjamin Rees, excerpted in Jan. 23, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 21.

⁵⁵ Patrick Muckle Murray, Feb. 3, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 81-82. This petition is accompanied by a petition from 40 residents of Cracker Neck in support of Murray. The petition in the original series (SCDAH) is misspelled as Elmurray.

Once again, we see that this Loyalist took a position as a military commander not through ideology, but as part of a concerted neighborhood action to minimize the negative aspects of occupation and ongoing war. South Carolinians felt that the presence of local leadership was the difference between oppression and safety. An outsider was a man whose primary allegiance was to the British. A local leader who was selected by the community would put local interests ahead of British military aims. Murray took the position but served honorably, never “fir[ing] a Gun against his Countrymen” and “secur[ing] peace to the Settlement.” In other words, he controlled looting and kept the militia from being used as a tool of political enforcement, all the while avoiding active involvement in the conflict for both himself and other members of the militia.⁵⁶ How do we know he sought to avoid using the militia as an arm of political enforcement? Because he made no use of “any arbitrary or oppressive measure against the Inhabitants thereof.”

We can see the logic of neighborly citizenship in the phrase, “did everything in his power to Serve them.” As a planter, he was obliged to protect more vulnerable men of lesser position. In an area swamped by civil war, his duty included protecting them from political intrigues they had no power to affect.

There was a surprising number of petitioners who argued that they took commissions in the British militia or civilian occupation in order to protect their

⁵⁶ Crackers Neck appears to be named after Crackers Neck Swamp in Orangeburg County, South Carolina. Cracker was a jocular name for people of Scots-Irish descent by the late eighteenth century. Both the location (Orangeburg County) and the name, coupled with the name of the petitioner, suggest that Murray represented a backcountry district of Scot-Irish settlers. There are other reports of backcountry Loyalist militias that were organized more for appearances than for actual partisan warfare. One backcountry Loyalist militia became infamous for always arriving at the battle a day late, thereby missing the action.

neighbors. Equally surprising is the number of supporters who would indicate that they encouraged people to take commissions. The frequency of the claims, coupled with the fact that supporters were willing to testify to them, suggests that at least some of these claims should be taken seriously. These claims are evidence of collusion across political lines. Faced with difficult choices, communities sought to have representatives of local interests on both sides of the conflict. That way, whoever won, they would still be protected.⁵⁷

If that was the case, however, what did South Carolinians expect holders of commissions to do in their posts? What were the limits of such posts, if a person indeed took one for the interests of the collective? James Smyth's supporters pledged that he "in many instances Interested Himself in behalf of those suffering under British tyranny and Oppression." He claimed that "to lessen the distress of the people he was induced to take the Command of St. Thomas's Company." But after taking the commission at the behest of his neighbors he was disappointed in the practical limits of his ability to change the essential nature of partisan warfare. "That his Expectations of Serving his countrymen not being as effectual as he had hoped he resigned the command, having held it three months."⁵⁸ If a man took a command for honorable reasons, at the behest of his local community, he still needed to administer that office in an honorable way. Holding office meant a duty to protect. If a gentleman could not uphold that sacred duty, he must step down. In war, many discovered that it was not possible to protect their dissenting

⁵⁷ Families sought to hedge their bets occasionally by having members on each side of the fight, but others were split by the war. Communities were the same way; some deliberately tried to protect themselves from outsiders by ensuring local control in all cases. Most, however, were engaged in something more ad hoc. People who were determined to fight on for the Patriots would. Those who wanted to take protection could find an honorable way to do so by exerting themselves to protect their neighbors.

⁵⁸ Inhabitants of Various Parishes on behalf of James Smyth, 1783-368, GA Petitions.

neighbors. British commanders were all too well aware of how few of their commission-holders were willing to press home the British advantage against their fellow Americans.

Loyalist petitioners also differentiated between active and passive participation in the war on the British side. For many, it was acceptable to protect family and community by taking a commission or signing an address, but not by taking up arms. Remember, Patrick Muckle Murray was quick to make the distinction that he “never fired a Gun against his Countrymen.” The original terms of peace after the fall of Charleston made a similar distinction. Cornwallis required South Carolinians to lay down their arms and cease fighting. He did not originally require them to take up arms against their fellow Americans. The unraveling of South Carolina began when Cornwallis changed the terms of the occupation to require people under British protection to become actively involved in the war, meaning they were required to participate in military action against Patriots in South Carolina and other American colonies. This was a culturally meaningful distinction for all concerned. Petitioners drew the distinction in their own actions and expected the legislature to recognize that distinction. Even men who took militia commissions made a distinction between gathering the militia as they might in peacetime, and actually taking up arms and requiring other men to march to a battle.⁵⁹

John Wigfall "...did accept of a Commission under the British, at a time when he thought no effectual opposition could be made in defence of the State, and that he never expected to be Called upon to Act against his Fellow Citizens." While he hoped that he

⁵⁹ Early Americans did not have a theory of active versus passive citizenship like that which became famous and problematic in France. Abbe Sieyas, the French Revolutionary political philosopher, first formulated a notion of active versus passive citizenship that aimed to differentiate between citizenship at the bare minimum and those who had enough at stake in society to be electable to public office. In this case, we see a different formulation of active and passive citizenship being argued. Active wartime conduct was opposed to neutrality. Neutrality is being construed to allow commission-holding, so long as the actions of the officeholder only included those the role would have had in peacetime.

would never have to act against other Americans, in the end he obviously did, for he felt the need to explain he did so only under duress. "If he Acted with any Severity against his Country men, it was not done with any evil disposition of his, but by the Express Orders of his Superior officers." Once he found that his initial assumption that he could only take a passive part in the war was wrong, he resigned his commission when "he found he was liable to Act against his Country." David Bruce, a printer, also crowed that "he has never taken up Arms, or acted in any post against America." This distinction between active and passive wartime action seems to depend on how men acted after taking commissions. If commission holders only acted in ways they would during peacetime, then their conduct was acceptable. The crucial distinction was to avoid taking bellicose actions.⁶⁰

I want to turn briefly to one other piece of evidence that suggests that South Carolinians understood citizenship to be based on neighborliness. This evidence deals with Loyalists and the effects of Loyalism on South Carolina, but does not come from legislative records. William Henry Drayton made a leisurely tour of the backcountry in April and May of 1784. He was no stranger to the extremes of backcountry Loyalism; he had travelled on a barnstorming tour for the Patriot cause in the uncertain days of 1775, trying to muster support and buy off potential Loyalists. When he went back in 1784, he stayed with one landlord who cheerfully reported that he would be leaving soon, as he had killed two neighbors. Drayton was moved to record in his diary that this was another "unhappy consequence of the late war" which had so destroyed society that it had

⁶⁰ John Wigfall, 1783-370, David Bruce, 1783-63, GA Petitions.

“dissolv’d not only the Ties of Friendship & Neighborhood, but even of Humanity.”⁶¹

Notice that Drayton explicitly defined the ties that bound South Carolina together as those of “Friendship & Neighborhood,” or precisely those ties that Loyalists worked so hard to cultivate after the Revolution, and that the General Assembly considered in deciding how to deal with individual Loyalists. Drayton was an educated lawyer, able to make explicit his underlying assumptions. If a lawyer trained at England’s famed Middle Temple considered the ties of belonging that held society together to rest at heart in “Friendship & Neighborhood,” despite training in the legal bases for citizenship, how much more so must have ordinary people.

Drayton was reacting to one man who had demonstrated his lack of neighborliness by killing two men as “coolly...as if they had been Bucks or Wolves.” His neighbors also reacted by threatening to “haul him over the coals” and then hang him.⁶² In this case, all concerned, outsiders and locals, lawyers and ordinary people, agreed that local control over citizenship was important (because Drayton made no move to protect his landlord), and that citizenship depended on neighborly behavior, even in the context of war.

⁶¹ Keith Krawczynski, ed., “William Drayton's Journal of a 1784 Tour of the South Carolina Backcountry,” *South Carolina Historical Magazine* 97, no. 3 (1996): 182-205 190.

⁶² Krawczynski, “1784 Tour of Backcountry,” 190.

Loyalty and Honor

The first rhetorical bar for Loyalists was to show that they were Americans, willing to make common cause with their community. If they succeeded in convincing their neighbors and the General Assembly of their fundamental patriotism, the next step was to reassure these audiences that they would continue to support America in the future.

Claims of loyalty to America came in many different forms, depending on the ability of each petitioner to realistically claim that he had been loyal to the nation if not the Patriot cause. Christopher Williman claimed he had always been “warmly attached to this Country” while Gilbert Chalmers argued that he had “always been a friend to the United States.” Philip Porcher’s neighbors believed (or at least were willing to argue in public) that he “always appeared to be a friend to his Country.” Of course, the word “appeared” does suggest his neighbors were a bit tentative about his true loyalties. John Harth, who signed the address to Clinton, claimed that when he did it “he had no design of Injuring the American cause, for which he has the highest Veneration.” James Mackey “never harbored or entertained a single thought or most remote wish prejudicial to the Welfare & Interest of America or Repugnant to the Independance thereof.” (One does wonder how members of the legislature avoided laughing at these claims, given these men’s active involvement in the British administration.) Benjamin Rees’s supporters were more circumspect, only certifying that “he has always conducted himself to the best of our Knowledge as a good friend to the American cause until the Enemy got possession of this part of our State.” Further, these supporters recognized that his loyalty could only

be reasonably supported for those years before the fall of Charleston. Many other Loyalists fell into this category. Their supporters emphasized their active efforts for American independence before the fall of Charleston. Doctor Lynah's supporters reminded the legislators that he "took an early and active part in the American Cause" and despite his taking a commission "they look on him as a Steady Friend to America."⁶³

A few petitioners were able to argue that their attachment to the American cause could be shown through their actions, despite their ending up on the confiscation list. This could be more persuasive. After all, actions do speak louder than words, especially to members of the legislature, many of whom had risked much themselves in order to secure American liberty during the Revolution. Andrew Hibben claimed "that he has been plundered and robbed by them [the British] for avowing Sentiments favorable to America" while he was living in occupied territory. In this way, he tried to show that he was so vocally loyal to American independence that he had come to the attention of British authorities looking for Patriots. Edward Hare "evince[d] his attachment to the American Cause [by going] to Bermuda and purchas[ing] a Sloop and Cargo of Salt" for the American cause. Paul Hamilton could at least point out "that he has refused any place under the British Government, from the Love to his Country." All of these men showed that they had continued to support the American cause in the crucial period after the fall of Charleston and the beginning of civil war. Edward Fenwick and Edmund Petrie both presented evidence that while in British service, they had sent valuable military information to American commanders. As American spies, they showed their

⁶³ Inhabitants of St. Stephens Parish on behalf of Philip Porcher, 1783-10, John Harth, 1783-15, GA Petitions. Christopher Williman, Jan. 22, 1783, Gilbert Chalmers, Jan. 22, 1783, James Mackey, Inhabitants of St. Marks Parish in behalf of Benjamin Rees, Jan. 23, 1783, excerpted in Jan. 23, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 13-14, 21, 25. Inhabitants of S.C. in behalf of James Lynah, 1783-394, GA Petitions.

willingness to risk their own lives for the American cause. However, spying could also be the mark of someone completely untrustworthy. Eighteenth-century gentlemen were not spies, after all. Spies were men who responded to money, not honor. Petrie and Fenwick therefore marshaled their arguments carefully, framing their activities as evidence of their ongoing attachment to America, not as spying. Their rhetorical problems also framed a very practical problem; both were part of a spy ring run by Colonel John Laurens, who managed to get himself killed in minor skirmishing in August 1782. Since he was dead, and he had deliberately kept no records of his spies' identities, their membership was difficult for them to prove.⁶⁴

Loyalty to America was important for potential citizens of the new nation. South Carolinians were looking for both new citizens and reintegrated former Loyalists to show their dependability as citizens. If a petitioner could prove his loyalty to the satisfaction of neighbors and legislators, then he could be depended on to support the new state. The underlying fear was that Loyalists would comprise a fifth column within South Carolina, outwardly interested only in personal gain but actually working against America. This fear was not entirely unjustified. The 1783 General Assembly were simultaneously approving changes to the confiscation lists and approving a bounty to hunt down Loyalist vigilantes who were terrorizing parts of the backcountry.⁶⁵

By putting themselves in danger to aid America, petitioners had shown where their truest sympathies lay. In addition, this claim served to mollify critics who had themselves risked everything in the struggle for American independence. After all, some

⁶⁴ Andrew Hibben, 1783-34, GA Petitions. Edward Hare, Jan. 23, 1783, Paul Hamilton, Jan. 25, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 22, 40.

⁶⁵ William Cunningham was one of the brigands for whom the General Assembly approved a bounty in the hopes of bringing stability and peace to the backcountry. March 4, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 215.

of these petitioners had taken protection to guard their estates and families. These were understandable goals, but it was hard for Patriots who had suffered as a result of not taking protection to sympathize. By citing their own risky endeavors on behalf of American independence (however far they might be from those of the heroes of the Revolution), they allied themselves with those members of the legislature who had also shared in the pains and trials of the independence struggle. These Loyalists positioned themselves as fellow victims of the British occupation, also worried about being dispossessed and imprisoned.

Loyalty was an essential test for citizens of the newly independent nation. Assurances of loyalty, however well worded, might simply be glib promises that a man would once again fail to keep. How could Loyalists persuade the legislature that their loyalties could be trusted? What else went into making the dependable citizen South Carolina sought?

Regardless of their relative social and economic status, free men had been forced into the public theater by the war. Choosing alliances made people into visible political actors in a way that voting had not. In this new climate, many more men were now judged by standards for honorable conduct that had originally been forged for elite men. Widespread propaganda about wartime conduct and the proper rules of engagement (often honored in the breach) focused on discussions of honor. Honor thus became one of the fundamental qualifications of citizenship for free men of the Republic.

Male honor was fundamental to the founding of the republic. To be truly a citizen, one would have to be a man of honor. America was to be a republic of virtue, where democracy depended on the predictability of right action. Joanne Freeman

explains that while American historians conventionally believe honor to have been an overriding concern only for men of property in the antebellum South, in fact “it was integral to the 18th century mindset—part of a larger body of pervasive cultural assumptions.”⁶⁶ Honor was an essential part of politics. A person’s character and reputation established him in the hierarchy of meaning that determined how others should treat him. Honor is more than that, however. It was a fundamental part of how people saw themselves. Men had to manage honor, making sure that they convinced themselves and others of their possession of this important quality. Most of the Loyalist petitioners were men who had once been people of clear character and reputation. In taking militia commissions, they had accepted positions relative to their rank. Had the British won, their honor would not have been harmed. However, by choosing the losing side, their actions were laid bare for scrutiny. Their honor was not assured.

Character had a specific meaning to the eighteenth-century Anglo-American. Character was not only one’s personality, but one’s moral standing in the public eye. Honor also involved moral decisions in respect to all aspects of a man’s public status, including his credit, social rank, personal habits, and known character. Honor and reputation were actually used interchangeably. Further, honor was part of Republican citizenship, which was intrinsically gendered.⁶⁷

Therefore, the Loyalist petitioners strove to refashion their honor, both to themselves and to their intended audiences. Who were those intended audiences? One potential audience was their own neighbors. Petitions that they and their lawyers drew up

⁶⁶ Joanne B. Freeman, “Dueling as Politics: Reinterpreting the Burr-Hamilton Duel,” *WMQ* 3rd ser. Vol. 53, No. 2. (Apr., 1996) 295-96 footnote 19.

⁶⁷ Joanne B. Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven, Conn., 2001) xx. For more about gender as a primary part of eighteenth-century American understanding of republican citizenship, see Bloch, “The Gendered Meanings of Virtue in Revolutionary America,” .

for their neighbors to sign are the most direct evidence that assertions of honor worked to reassure their neighbors. In encouraging their neighbors to support their petitions, Loyalists were not only depending on the good will and previous ties from before, and in some cases during, the war, but on their own willingness to reach out to them now. By seeking the signatures of their neighbors, they showed that they were willing to become good neighbors again. Reaching out established their interest in maintaining the social networks on which these localities depended. It also put them in a position of vulnerability to their neighbors. The General Assembly might be required to hear their petitions, but other citizens were certainly not required to affix their signatures to the documents. Loyalists' citizenship and property depended on their ability to persuade their neighbors to support them as much as it depended on the goodwill of the legislature.

Loyalist petitioners and their supporters filled their claims with assertions of honor. These men made claims for their honor in different ways. One way was simply to show that a man's public character was honorable. David Bruce was proud that he "has maintained an honest Character." Robert Murrell's supporters "believe him to be an honest, industrious and inoffensive Man." William Glen argued that in 56 years of South Carolina residence he had always had "the reputation of an Honest man." Honesty spoke to a man's public credit—the assurance that he could make good on his financial promises, but also other kinds of promises. Honesty meant that a man's assurances were worth something. David Bruce went the furthest when he asserted his "honest Character," as character meant the sum of public actions. Others made the link between a reputation for honesty and a public honorable conduct more explicit. Philip Porcher's supporters felt "in private life he is an honest Man and in public character, a friend to his

Country.” Philip Porcher had taken a commission, but his “public character” spoke to his years of good behavior and moral conduct, all of which suggested that he would continue to behave in the ways good citizens needed to. Robert Beard’s mother-in-law was “hoping from his public Character...that he may be allowed to return and enjoy his former liberties.” She made the connection between public honorable reputation and the ability to resume citizenship explicit. Isaac Delyon himself made the connection between honorable character and citizenship when he said in his own defense that he had “always maintained the Character of a good Citizen.” George Cooke also drew that connection explicitly when he pointed out that during all the troubles he “hath preserved a fair Character as a quiet and peaceable Citizen.” Cooke’s claim is interesting because he linked character to passive qualities: “quiet” and “peaceable” behavior rather than active striving on behalf of the republic. We think often of republican citizenship as requiring the virtues that make a good leader. But as a former Loyalist, Cooke wanted to play down activity. Passive citizenship seemed a better route to inclusion. George Cooke in large part argued that he had all the public qualities that made a good follower, not a good leader.⁶⁸

Suspected Loyalists claimed other kinds of honor as well. If public character was one marker of honor, wartime conduct could also show a man’s essential honorable nature. After all, officers learned the intricate art of waging war, including plenty of rules of gentlemanly war conduct, from books on war. In a war filled with bad behavior, petitioning Loyalists sought to portray themselves as people whose conduct was above

⁶⁸ David Bruce, 1783-63, GA Petitions. Sundry Inhabitants of Christ Church Parish in support of Robert J. Murrell, William Glen, Jan. 25, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 39, 41. Inhabitants of St. Stephens Parish on behalf of Philip Porcher, 1783-10 GA Petitions. Robert Beard’s mother in law Mrs. Elizabeth Colles for Robert Beard, Jan. 28, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 53. Isaac Delyon, 1783-359, George Cooke, 1783-194, GA Petitions.

reproach, even if they had taken the losing side. Given the reality of atrocities, and the even more inflated rhetoric about those atrocities, Loyalists worked to explain their war conduct as distinct from the image of British warfare embedded in the most emotional parts of the Patriot psyche. John Walters Gibbs asserted that “while a British citizen he acted with humanity and moderation, and even avoided the Converse of those who acted otherwise, which occasioned him to be Suspected.” As a gentleman, his social behavior was a sign of his feelings and motivations. By displaying his public character as an avoider of more brutal Loyalists, he signaled (or so he suggested) his true American sentiments. James Brisbane also argued that while “in his office he acted with Moderation” which at one time “lost him *f*251.17.1 Sterling.” Both of these men asserted that their behavior, despite taking protection, was so in favor of the American cause that the British noticed and punished them for it.⁶⁹

Supporters were willing to commit their own reputations based on their perceptions of the honorability of an individual Loyalist’s wartime conduct. That fact in and of itself argues that wartime conduct was important in determining the honor of Loyalists, and by that their fitness as citizens. John Wigfall’s supporters suggested “he acted with moderation, abstained from acts of Malice.” James Smyth’s supporters argued that he “behaved with lenity, [and] abstained from acts of Malice.” In each case, Loyalists painted themselves as men who behaved without “Malice,” which seems to mean that they treated individuals under law and did not use their power to pursue

⁶⁹ Examples include La Valiere, *The Art of War*, Simes, *The Military Guide for Young Officers*, and Anonymous, *The Gentleman's Compleat Military Dictionary, Containing the Military Art* (Boston, 1759). John Walter Gibbs, 1783-19, GA Petitions. James Brisbane, Jan. 30, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 65.

personal enemies or enforce political conformity on unwilling victims. In addition, their “lenity” included not personally profiting from plunder.⁷⁰

The striking similarity in these claims is not an accident, nor is it an example of one copying the other. Instead, the similarity of these claims speaks to the shared understanding among petitioners and their supporters about what the traits of a good citizen were and what Loyalists would need to reassure their neighbors and fellow citizens about in order to be seen as good citizens instead of traitors. Edward Fenwick made the connection between wartime conduct and honor most explicit when he argued that he used his position in the British service to “lessen the horrors of war by every office of Humanity and attention towards the Persons and property of those who fell within his Power.” His “humanity” in a position of great power guaranteed his continuing honorable conduct. Rather than seek revenge, he paid “attention towards the...property of those who fell within his Power.” Fenwick understood the concerns of his fellow South Carolinians and used them to frame his own claims for legislative clemency.⁷¹

These Loyalist petitioners were responding to new concerns about honor in the context of the brutality of the war. They shared with their fellow South Carolinians a horrified sense that the war had exceeded the norms of honorable behavior. Given a tendency by the winners to blame all atrocities on the Loyalists and the British, Loyalist petitioners faced heightened concerns about the boundaries and definitions of honorable conduct. Time and time again they strove to show their own behavior as clearly within

⁷⁰ John Wigfall, 1783-370, GA Petitions. James Smyth, Jan. 23, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 24.

⁷¹ Edward Fenwick, Jun. 26, 1785, Lark Emerson Adams and Rosa S. Lumpkin, eds., *Journals of the House of Representatives, 1785-1786* (Columbia, S.C., 1979) 24.

the boundaries of honorable conduct. They proposed that, in contrast to a standard of wartime behavior that concerned itself with military strategy first and foremost, they privileged “Humanity” in their actions over specific aims.

Edward Fenwick’s claim of honor based on his behavior towards “the Persons...who fell within his Power” is not unusual. Many Loyalists made claims that argued that their wartime conduct towards vulnerable Americans showed their honor and their fitness as citizens. Good conduct in the face of opportunities for petty revenge and plunder was one marker of honor. Another was one’s actual conduct towards neighbors. If the ultimate test Loyalists had to meet in their efforts to re-secure their estates was to show that they were fit citizens of an independent state, then they had to prove that they had acted in an upright manner. In a world of local ties, service to one’s neighbors was also used to show that indefinable thing: the content of one’s heart. Legislators wanted to know why each Loyalist took a commission or protection. Did they take those positions because they were firmly attached to Britain and a foe of American independence, or because they were base opportunists? Or was it really because the Loyalist was upright and saw a chance to aid other people? Loyalist petitioners tried to claim that their motive in taking British positions was really to serve their neighbors. Christopher Williman’s “constant attention was for the relief of his fellow Citizens in Distress.”⁷² James Gordon “took a British Commission with a View to Act with Lenity”—in other words, to protect people’s safety and property.⁷³ Again, we see a practical, shared understanding of citizenship as attention to mutual duties as a neighbor, at work in the claims of Loyalist petitioners.

⁷² Christopher Williman, Jan. 22, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 13-14.

⁷³ James Gordon, 1783-54, GA Petitions.

Female Petitioners

Margaret Colleton, an absentee British landowner, was the only woman named in the Confiscation Act. Nonetheless, some fifty women who were married to Loyalist men or otherwise dependent on them were involved in cases in the 1780s. Many of them petitioned the General Assembly directly, representing their husband's case. Others represented only their own interests, asking for support or property for themselves.

Anglo-American women were subject to coverture (the legal construction that subsumed adult married women under the legal personhood of their husband). While women technically owned no property, the legal system did recognize specific kinds of female claims on property. Widows were customarily entitled to one third of the real property their husband owned. A widow could use the income for life, and at her death the property passed to her sons or other male heirs. Widows of childless men were entitled to a higher share of the estate. Dower was assured by law; a man could not disinherit his wife of that share. Dower rights recognized the sacrifice women made in giving up their own property at marriage, and allowed women and minor children a basis of support outside of the government. South Carolina women were entitled to this as a matter of law, but many families also used wills, jointures and marriage settlements to ensure that women received more property. In wealthy families, women inherited property in slaves outright. Women often received slaves as marriage portions, and fathers worked to ensure their daughters retained this property all their lives, using trusts and other legal strategies to circumvent the assumptions of coverture. Dower rights

superseded debts, although increasingly in the late eighteenth century courts sold dowered property to satisfy such debts.⁷⁴

The Confiscation Act had deliberately taken property from entire families, undoing the protections of dower for women connected to Loyalists. There was a provision for minimal, temporary support for women and minor children, but that support was far less than the dower value in property. Yet women expected the General Assembly to recognize their need for support. Many prominent South Carolinians were sympathetic to their claims. Henry Laurens reassured one woman that Southern legislators would surely “reserve in favor of a Female Orphan” after the war, even if in the “Pell Mell” they had confiscated her property. This “reserve” would be the customary third share of the estate, designed to support dependents handsomely. He told Anne Burn, the wife of a British official in South Carolina, that “in honor to my Country I cannot believe that the property of the innocent Widow & Children” should be taken. If the property was to be sold, it was “impossible” that a “proper Reservation in favor of his family” would not be made. All of Laurens’ customary expectations held that women were entitled to a share of their husband’s estates, and he could not imagine that a more confiscatory policy would be pursued. (He also realized, as his other letters make clear, that the General Assembly would reconsider the harshest decisions after the war was over and the British actually withdrew.) He held this idea not just because women were customarily entitled to the dower share, but also because women were not considered political beings with the necessity of making a political choice that could then be held

⁷⁴ Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill, N.C., 1986) 141-42, 156-60, 165-72. South Carolina courts moved to change the laws in the 1790s, allowing widows to be paid in cash for their dower rather than given a life estate. This change allowed property to be sold without encumbrance, but did not offer women the same security.

against them. He deemed Anne Burn “innocent.” Despite her second marriage to a British official, she was still considered not to be political. Her choice of a mate was not indicative of her loyalties. Not only were women not held responsible for their husband’s actions, but their choices of mates even during the war, while sometimes unacceptable to their families, was not considered a political choice. Women who married British soldiers and British officials often were treated more favorably than women married to Loyalists, as their own property was still protected.⁷⁵

Linda Kerber shows that while women could be considered traitors, most states did not otherwise recognize women as political actors. Women’s political wills were subsumed by their husbands’, just as coverture also covered women’s property. During the war, women were allowed free passage to join their Loyalist husbands because their own political participation was not at issue. Only two states explicitly required women married to Loyalists to make a public choice of their own political loyalty. Massachusetts and Virginia only protected women’s property rights, including dower, for women who stayed in their respective states, regardless of where their husbands moved. In practice, many Loyalist women across America adopted this strategy, staying on their properties after their husbands had fled for British lines. Grace Galloway, the wife of an outspoken Pennsylvania Loyalist writer, was loud in her own Tory views. Yet she stayed on her family property, fully expecting that she would prevail in her efforts to keep it long after her husband had been driven out of the state. She did not see that her political opinions mattered as women’s opinions were just that, opinions. (In her case, she was

⁷⁵ Henry Laurens to Alice Delancey Izard, Paris, June 5, 1783, Henry Laurens to Anne Burn, London, Aug. 8, 1783, Hamer, ed., *Laurens Papers* 16: 204-05, 247.

overly optimistic. Her notoriety, coupled with her husband's, guaranteed that she would be removed from Philadelphia.)⁷⁶

The original South Carolina Confiscation Act was harsher to women than those of other states. South Carolina recognized the need to provide some temporary support for Loyalist wives, but explicitly did not recognize women's dower rights. In contrast, North Carolina was more generous in guaranteeing dower rights to women. For Loyalist families after the war, this was a pressing concern. South Carolina certainly did move in later years to recognize the majority of dependent women's claims, especially when they could be considered claims of dower, marriage portions, or separate marriage settlements. (Women's success rate in claiming inheritances from their fathers and brothers was lower, but still sizable.) Why was the General Assembly originally so harsh, when in later years it became so generous? It certainly was not because they changed their views on the status of women and women's political agency. Legislators protected the right to temporary support from the beginning, and the language of the Confiscation Act also explicitly recognized legal property transactions undertaken before 1776, which protected most women's marriage settlements. The Assembly never specifically addressed why they were unusually harsh to women, but given the texture of all their decisions, one reason stands out. Condemning all women's property at first gave them the power and prerogative to decide which women to protect. It certainly forced women to join the throngs petitioning the Assembly. Over and over again, the General Assembly preferred

⁷⁶ Kerber, *Women of the Republic* 124-26, 74-76.

to deal with Loyalists in general terms as a unified group, and thus present a public image of South Carolina unity in dealing harshly with the many Loyalists.⁷⁷

Years later, Margaret Mondin's case went to the high courts. Mondin was the remarried widow of Richard Pendarvis, who lost his property under the Confiscation Act. She asserted her own dower rights on behalf of herself and her heirs. Her husband's property had not only been confiscated, but also given to a male relative who badgered the General Assembly into giving it to him. She began petitioning in 1785, but her case did not come to the courts until 1789. At that time, Attorney General Alexander Moultrie argued that if the General Assembly had intended to protect women's dower rights from the process of confiscation, they would have said so. Correctly noting what indeed did happen as a result of the piecemeal recognition of dower rights in intervening years, he pointed out that acknowledging dower rights detracted from otherwise secure property claims. In a novel legal argument, he tried to convince the courts that South Carolinians had deliberately taken away Loyalist wives' dower rights "upon the idea, that husbands are oftentimes influenced and governed by the sentiment and conduct of their wives." For Moultrie, women did have political identities that could be determined by their behavior, as expressed through their own public behavior and the behavior of their husbands.⁷⁸

Stepping back from this argument a moment, I wish to emphasize that the court rejected Moultrie's claim. The judge concluded that the state could never have intended

⁷⁷ Article 12 of the Confiscation Act intended to protect real property transactions undertaken for purposes other than protecting property in the name of proscribed Loyalists. The language protected "all grants, devises, sales, and conveyances" made by Loyalists before 1776 or during the war that were truly for "valuable consideration." Marriage settlements were conveyances. Act No. 1153, An Act for Disposing of Certain Estates, and Banishing Certain Persons, Therein Mentioned," Cooper and McCord, eds., *Statutes of S.C.* 520.

⁷⁸ Kerber, *Women of the Republic* 129. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 416-17.

to “deprive the widow of a common law right, when the act itself is silent on the subject.” Alexander Moultrie’s views are interesting, nonetheless, because he was a member of both the Jacksonborough Assembly and the subsequent assemblies that lifted confiscation from so many. He was involved in the debates. Of course, as the defender of the state’s interest, he had to create some sort of persuasive argument for the court, whether or not anyone else really believed it. His argument that women’s political beliefs could be fairly suggested by their husband’s behavior (while having a certain common sense appeal) was explicitly rejected by the court. Yet he was present at the creation of the relevant clauses, which did not recognize a dower right. Sales advertisements did not mention that part of any property might be reserved. People certainly bought property with the guarantee it was unencumbered. Given all of this, I think we can safely conclude that at least a sizable minority of the Jacksonborough Assembly really did intend to deprive women tied to Loyalists of family property. Practically, this made complete sense. If a banished Loyalist man could leave for England after having sold his wife’s third of the property, the whole family would have a way to start anew with a hefty portion of their assets. Denial of dower portions was a sensible policy if the Assembly sought to insure pitelessness.⁷⁹

Petitioners therefore strove to show that they were worthy objects of governmental clemency. While some women wrote seeking mercy for their husbands, others (with whom I deal in this section) argued on their own behalf. Ann Legge, for instance, hoped that her husband Edward Legge would be pardoned. But she made a parallel argument supporting her own claim in the event her husband was not pardoned.

⁷⁹ Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 416-17. Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 515-17.

(In fact, he was relieved from confiscation but was subject to amercement without the right to vote for many years.) Admitting that public policy might be construed to “dictate a refusal to this part of her prayer,” she then asked for support on her own behalf so her “poor inscent children” would not be left penniless. Practically, she pushed the General Assembly to “vest” property in her own name.⁸⁰

Women also made legal arguments to support their interest in getting possession of at least some of their husband’s confiscated property. Dower rights were most commonly mentioned in the 1783 and 1784 petitions. As we will see in Chapter Four, petitions in later years invoked not only dower rights, but also marriage settlements and complicated inheritances. In 1783, Florence Cook argued that the legislature had “deprived [her] of her right of dower.” Ann McGillivray argued that since her dower property had come to her from her father, it was really her property, not her husband’s. “The greatest part was given her in Marriage by her Father....” A recognition of dower rights also provided the General Assembly with a potential escape hatch. They could return property to women and children, restoring family wealth, while still banishing Loyalist men who could not be depended on to be honorable, upright citizens. Further, if they withheld action for several years after the war, they could encourage men to leave and start new lives elsewhere while leaving their wives to manage family affairs in South Carolina. Women who petitioned for separate property arrangements on behalf of themselves and their children were more likely to stay and use that money for themselves and a new South Carolina generation. Isabella Kingsley understood this in her own petitioning strategy. She asked for her husband’s estate to be vested in her children for

⁸⁰ Coker finds several of these women, including Elizabeth Clitherall and Edith Rose. Coker, “The Punishment of Revolutionary War Loyalists in South Carolina” 406 footnote 12. Ann Legge, 1783-336, GA Petitions.

their support, especially since “most of them [are] natives of this Country and citizens of the State.”⁸¹

Some women appealed directly to men’s pocketbooks. If their husbands were deprived of their estates, and those estates were also off-limits to women and children, who was going to support these men’s dependents? Were they to starve in the streets? Even if they were the spawn of hated Loyalists, could honorable men watch that happen? Were the local taxpayers supposed to support them as indigents when there were private resources available for their support? Mary Cape reminded legislators that she was the mother of “Innocent Children” who had not themselves taken part in the war. Eleanor Mackey, an older childless woman, appealed to the tender hearts of legislators. If the confiscation was maintained in force, she would “be completely wretched & deplorable cast forlorn on the wide World, friendless & hopeless destitute of all resource & Subsistence with a mind preyed upon by Sorrow and a Body weaken’d by care and the approaches of age.” How unconscionable would it be for the legislature to leave an old woman without any support? Sarah Scott worried about her children turning into an “incumbrance” to the community without secure support.⁸²

Ann Legge reminded the legislature that she was “left with three helpless Children... That if wholly deprived of her property, which the Act directs, She and her family must be reduced to a situation truly distressing.” Sarah Glen wondered what would happen to her “six Children in a distressed Situation.” Ann McGillivray, a widow, pleaded with the legislature “if the Laws should take the Estate, she must be reduced to

⁸¹ Florence Cook, Jan. 23, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 22. Ann McGillivray, Jan. 28, 1783 Thompson and Lumpkin, eds., *House J. 1783-1784* 53, Senate Jan. 25, 1783. Isabella Kingsley, 1783-343, GA Petitions.

⁸² Mary Cape, 1783-263, Sarah Scott, 1783-186, GA Petitions. Eleanor Mackey, Jan. 29, 1784, Thompson and Lumpkin, eds., *House J. 1783-1784* 387-88.

the necessity of Soliciting the Bounty of her friends or the Officers of the Parish, for the support of herself and her Children.” She put the problem (and the threat) in a nutshell: if she was deprived of the property, she would be cast on the parish for support, which meant that the local taxpayers would have to support her. Practically, South Carolinians did not want to do this. Such claims also struck another cord: that of honorable caretaking. As Henry Laurens had claimed, of course men would take care of the “Female Orphan.” Men expected to support their own wives and children. Having made it impossible for Loyalist men to fulfill these duties, they had emasculated them. As long as the General Assembly could ensure that mercy was only extended to dependents, they could bask in the warm self-regard formed by protecting such dependents when their own husbands were too unmanly to do the job.⁸³

A few women asserted their own Patriot credentials. Even if their husbands had been Loyalists, they had favored the Americans. As loyal Americans, they and their children should be able to stay in South Carolina and enjoy their husbands’ property. Florence Cook tried to get James Cook’s property back without mentioning his own conduct during the war. Instead, she emphasized that she “is a Sincere friend to her Country” who had “always endeavord to inculcate...the love of Liberty of this her Native Country” in her own daughter. Florence Cook positioned herself as the ideal Republican mother, training her own child in the “love of Liberty.” Republican motherhood promised that women would serve a vital role in the American republic by inculcating

⁸³ Ann Legge, Jan. 22, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 15. Sarah Glen, Jan 25, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 40. Her mother also filed a petition in support, citing her inability to support her grandchildren due to losing two sons to the American cause. Sarah Jones on behalf of John Glen, Jan. 25, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 40. Ann McGillivray, Jan. 28, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 53. Kann, *Republic of Men* 15-16, 31, 73.

Republican virtue in their children, especially their sons, and training them as useful, self-denying citizens. In this respect, she exemplified the ideal qualities of a female citizen of the new Republic. Unfortunately for her, she was the mother of only a daughter, but her petition shows she understood the equation of Republican motherhood. “If providence had blessed her with a number of Sons,” she would have worked to “render them fit for the defence and Support of their Country.” Despite that, she gave her only child “a Confirmed aversion to our enemies.” She did not entirely avoid the subject of her husband, arguing that he had no choice but to take protection. Just as male petitioners portrayed themselves as good citizens of South Carolina, Florence Cook made a case for herself as the right kind of woman for the new republican South Carolina, and therefore as someone who should be welcome in the new order.⁸⁴

Margaret Brisbane also reassured the legislature that “her Sentiments with respect to the present Contest, ha[ve] always differed from her husbands...” Brisbane and Cook were the only two women to address their own political beliefs specifically. Yet Margaret Brisbane certainly did not let her appeal hang only on her own political beliefs. She also reminded the General Assembly that the political opinions of women didn’t matter. “From their Sphere in Life” they could not be considered “promoters of the War” or “disadvantageous to the Contest.” Further, women’s opinions “do not frequently operate, on the Judgment of Men.” Margaret Brisbane did share another similarity with Florence Cook: both women were married to men who were unlikely to receive

⁸⁴ Florence Cook, Jan. 23, 1783, Thompson and Lumpkin, eds., *House J. 1783-1784* 22. Linda Kerber used Florence Cook’s case at length in her own evocation of Republican motherhood and the trials of independent women’s political loyalties during the war. She is impressed by Cook’s evocative claims. I am more skeptical. Florence Cook did make some unusual claims on her own behalf, but I suspect they were largely a function of who her husband was, which is a detail Linda Kerber never addressed. Cook was more than usually hated, largely due to allegations that he pushed a policy prohibiting men from working without signing addresses to the conquering British or taking protection. For more on James Cook’s own behavior, see Chapter 5. Kerber, *Women of the Republic* 127-29.

clemency. In fact, the Brisbanes were never removed from confiscation and both ended up living abroad for the rest of their lives.⁸⁵

Other women did use less obvious gambits to promote their own political loyalties. Susanna Smyth subtly positioned herself as the ideal Republican Wife. She told the legislature that “she can venture to declare he [her husband] is Weaned from every attachment to the British Crown, from thorough Conviction...” How could she be so sure if she did not discuss political opinions with her husband? Republican motherhood could also be the ideal for mothers of older children. Elizabeth Mitchell argued that “herself and the heirs of Said Deceased are well affected to this state” and that her son “tho’ a Youth of tender Years hath lately turned out a Volunteer in the State Service....” After the war, these questions became more pressing for Tory families. South Carolina put women in the situation of needing to prove they did participate in their family’s political opinions.⁸⁶

Overall, female petitioners used tropes of women’s dependence and apolitical status to convince the General Assembly to fulfill their customary obligations as honorable men in supporting dependent women and children. The only two women who made a claim for independent political opinions did so because they were married to hated men who stood little chance of returning to South Carolina themselves. In all cases, clemency to women worked on an individual basis, requiring women to petition for help and to have each case judged individually by the Assembly. This made women’s cases like all others. The Assembly favored individual control.

⁸⁵ Margaret Brisbane, 1783-261, GA Petitions. Linda Kerber pioneered the concept of Republican motherhood. Kerber, *Women of the Republic* 11-12, 127-28.

⁸⁶ Susanna Smyth, 1783-286, GA Petitions. For an argument on Republican wifehood, see Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic," *William and Mary Quarterly* 3rd. ser., 44 (1987): 689-721. Elizabeth Mitchell, 1783-246, GA Petitions.

A System of Local Control

Thus far, we have seen how male Loyalist petitioners used discussions of honor and neighborliness to present themselves as fit citizens of the newly independent state, and how female petitioners presented themselves as dependents in need of care. In short, we have paid attention to the rhetorical strategies of petitioners. But there is another side of the coin. What were legislators looking for in these petitions, and how did they expect to evaluate them? We have also seen that neighborliness was a major claim in favor of citizenship. Loyalist petitioners understood their local knowledge and networks of relations as crucial to citizenship. Did the Assembly concur?

The General Assembly had punished Loyalists in an effort to ensure social stability and peace after the war. What they did not want, at almost any cost, was a continuation of the reign of mob violence and vigilantism that had characterized large sections of the interior during the war. If Loyalists were to be permitted to remain in the state, the state needed to ensure that they could not undermine South Carolina from within. The Confiscation Act presumed that ordinary South Carolinians needed a target to assuage ordinary people's anger at the Loyalists for the pain, destruction and death they had wreaked on the populace. If they were going to overturn their decisions in individual cases, legislators needed to be assured that these individuals had intact social networks. They needed proof that their neighbors wanted them back.

Edward Rutledge, one of the chief architects of the Confiscation Act, recognized the principle of local control early on. After passage of the act, he wrote approvingly of Loyalist "deserters" who left Charleston in 1782 and went back to their homes, despite

the fact that some were subject to confiscation. He thought they would be allowed to live there if “peaceably inclined,” but if they were not peaceful, “the People in that part of the State will soon make their Situation very uncomfortable.”⁸⁷

As it turns out, the most important thing a Loyalist petitioner could do to increase his chances of success was to submit evidence of local support. The more members of a community who were willing to sign their names to a petition in support of a Loyalist application, the more convinced legislators could be that the Loyalist had a wide base of support in his own community. Such petitions were evidence that Loyalists had enduring local ties. A significant minority of 1783 petitioners submitted supporting petitions signed by anywhere from 13 to 114 people. As we have seen previously, even those who did not give such evidence argued that they could produce support from their neighbors, and often did so at the 1784 hearings (discussed in the next chapter).

Raymond Bailey’s study of petitioning in eighteenth-century Virginia suggests how petitions were generally circulated for signatures. Petitions were often posted at county courthouses. This might have worked well in South Carolina’s coastal regions, but in the backcountry courthouses were rare. In Virginia, petitions also were posted at churches, militia mustering areas, stores, and anywhere else people gathered. Occasionally, petitions were advertised in newspapers. Petitions of very local concern were hand carried from residence to residence within the community, either circulated by the most interested individual or simply passed from one signatory to the next. While the question of what to do with Loyalists was a statewide question, Loyalist petitions were a

⁸⁷ Edward Rutledge to Arthur Middleton, Cane Acre, April 23, 1782, Barnwell, "Middleton Corr. Jan. 1926," 14.

local matter. Signatories were from the same area. It is reasonable to suppose that they were therefore carried around or posted at a local church or store.⁸⁸

The General Assembly did respond to this pressure. They referred individual petitions to a committee of at least two legislators from the same area as the applicant. The standing committee for Charleston had many more members to handle the large workload for that region. The schedule of hearings was published in the Charleston newspapers. Individual Loyalists were given the chance to prepare and present evidence on their behalf, including producing multiple character witnesses. The entire system worked to take a statewide matter and put the decisions about it into local hands. If a Loyalist could prove that his neighbors supported him publicly both as petitioners and as personal character witnesses, and he could convince legislators from his own area that he would be a trustworthy citizen, then he had made a persuasive case. His neighbors had already proved they would not lynch him, and by approving his application, local legislators had backed his claims. Further, committees with local members were aware of community ties and personal relationships that are hard for contemporary historians to reconstruct. In short, they were in a much better position to analyze the names on each petition than we are. Still, they were swayed more by the profusion of names than the identity of each individual name, with the proviso that having prominent supporters never hurt.

Two objections could be posed to the locally-based system of clemency. One, what if only some neighbors were willing to forgive wartime loyalties? Perhaps the citizens who stepped forward were a minority who could not speak for the mind of the community. How could the legislature measure the minds and hearts of those who did

⁸⁸ Bailey, *Popular Influence* 26-27.

not sign the petitions? Second, what if the Loyalist had engaged in unforgivable behavior during the war, which made him a poor prospect for citizenship and a target for outrage and vigilantism, but his own immediate neighbors were not themselves the victims of this behavior, and hence were not the ones whose decision potentially really mattered?

The evolving ad-hoc system actually provided a working system of checks and balances that addressed these concerns. There were in practice two kinds of checks built into this system. The first check was the opportunity for those who did not trust the former Loyalists to make their opinions known. The legislature set up evening hearings open to the public to hear testimony from the Loyalists and their supporters. These hearings were announced ahead of time in the Charleston newspapers, which served as the newspapers of record for the entire state. In a few isolated cases, people did go out of their way to present testimony that certain individuals were not fit to be given clemency. While unusual, these moments caused consternation, leading to a breakdown in the hearing.

The committee itself provided the other check. Committees were composed of local members. Local legislators sitting on the committees were in a better position to know more about the petitioner and the people who had signed supporting petitions. Unfortunately, the hearing records do not preserve debate, and the committee records are limited to the final report. But the committee must have considered whether the signers represented a reasonable cross-section of the landed members of the community. Were there any prominent people whose signatures did not appear? Were their closest neighbors signatories? Were the signatories Patriots themselves, or as in one case, were all the signatories actually people who had fought with the Loyalists?

By handing what had been statewide judgments off to a system of local decision making on an individual basis, the legislature bowed to the greater knowledge of the localities while preserving their own ultimate prerogative of control. In making these decisions based on local opinion, they guaranteed that pardoned Loyalists had shown that their communities welcomed them. These were people with enduring ties who would indeed make good citizens.

For Loyalist petitioners, petitioning was a way to refashion their honorable character and reputation as upstanding men who had once been and would now again be the kinds of citizens their neighbors and the state wanted most to build a new, strong social, economic and political order. The rhetoric of the petition package itself allowed former Loyalists to shape an image of themselves as worthy men, not the traitors that the confiscation and amercement acts had labeled them. But proving oneself an honorable person (and by extension loyal and trustworthy), while essential, was not enough. Petitioners also strove to show that they were acceptable, even desired, members of their local community. The importance of proving local ties cannot be overstated. Both the General Assembly and ordinary citizens were concerned with the question of whether former Loyalists could and should be integrated, full-fledged members of the community. As will be shown by their later actions, they were willing to be moved on the subject of leniency towards the Loyalists. However, they did not increase leniency unilaterally. Instead, they responded to pressure and appeals from South Carolina citizens who sought to allow the legal return of former Loyalists to their property and citizenship. Despite all the hostility and bad feeling, sizable numbers of South Carolinians agreed that post-war stability depended on integrating a large majority of former Loyalists into the body

politic. Rather than the legislature's pushing normalization from above, we can see that the actions and words of South Carolinians encouraged the General Assembly in that direction. Rather than the leaders leading, the leaders followed.

Conclusion

I have been taking the reader through some of the very interesting rhetorical strategies that Loyalists and their supporters used to regain their citizenship and property. The large number of these claims and the willingness of supporters to back such claims suggest that they reflected widespread belief that the local bounds of community defined the reliability of a citizen. Citizenship might legally be defined in terms of state allegiance, but people understood citizenship as an outgrowth of honorable character, that was demonstrated by everyday actions. But none of this would matter if these claims were not recognized by the General Assembly. In fact, the General Assembly endorsed this way of understanding citizenship by giving the majority of petitioners what they wanted: the return of their citizenship and property.

South Carolinians were not alone in reconciling their folk ideas of citizenship with the idea of volitional allegiance, in ways that benefited Loyalists by the late 1780s. While we have been considering citizenship as it was understood during the period when ordinary people were trying to work it out, jurists had the chance to consider the issue of Loyalists' standing as American citizens with the benefit of years of peace. Most of the cases arose as Loyalist descendants attempted to reclaim estates. The cases were

therefore based on the least lucky Loyalists: those who did not return home. In North Carolina, the Supreme Court reasoned in *Bayard v. Singleton* (1787) that when the United States separated from Great Britain, Americans were like a “people ship-wrecked and cast on a maroon’d island—without laws, without magistrates, without government.” As such, citizenship began anew, and only for those who voluntarily joined the new political community. In the North Carolina case, the Loyalist was deemed never to have taken citizenship in America, but to have remained a British subject traveling under a British flag. A New Jersey court considered the issue of whether a Loyalist could forfeit a declared allegiance at a later date during the war. In that case, one Coxe had accepted the privileges of New Jersey citizenship, and therefore could not make a change and become a British citizen. In his case, he was deemed entitled to the privileges of citizenship; the state was forced to recognize his rights.⁸⁹

Loyalists compellingly communicated their enduring neighborhood ties, and their willingness to put those ties above the demands of armies. In so doing, they defined citizenship as a demonstration of neighborliness, not ideology. Patriotism was demonstrated by lived service to community and state. This definition was shared by Loyalists and Patriots, and became the basis upon which Loyalists were allowed to return to South Carolina and live without legal stigma.

I suspect that South Carolinians simply came to this understanding earlier than other states because they were forced by their situation to confront their definition of

⁸⁹ *Bayard v. Singleton*, 3 N.C. 42 (Accessed through Lexis-Nexis). Although I discuss the case in terms of its implications for Loyalist citizenship, it is more commonly cited by legal scholars as an early case of judicial review over legislative decisions. The case brought into question North Carolina’s Confiscation Act, although the only part the court overruled was the interpretation that later generations had no standing to contest Loyalist property losses despite the citizenship of the later generations. Kettner, *The Development of American Citizenship, 1608-1870* 201.

citizenship. Throughout the early national period, Americans continued to understand citizenship as local and character-based, just as they continued to identify with their state over the nation. The grand claims of American universal democratic citizenship, despite James Madison's theories, were in practice based on the comforts possible in a face-to-face society. The rise of universal male voting, and the fraught abolitionist politics of the antebellum period redefined citizenship again, but Americans made it through the crucial early years of this nation with a notion of citizenship based on the local and the character-driven.

Just as John Murrin has argued that the early Republic had a "roof without walls," meaning that our Founding Fathers erected the roof, a Constitution, with no national identity (the walls) to support it, here we find a case where the implicit early modern notion of citizenship endured well into the early nineteenth century, waiting for the reality of everyday understanding to catch up to the grand words of the founders. Once again, with other scholars, I find evidence that the early republic in fact depended for its existence on the persistence of early modern ways of thinking, and that they bridged the crucial gap that existed because there was no genuine, strong sense of national identity to make an American citizenship based on documents and ideology at all coherent.⁹⁰

⁹⁰ John M. Murrin, "A Roof without Walls: The Dilemma of American National Identity," in *Beyond Confederation: Origins of the Constitution and American National Identity* ed. Richard R. Beeman (Chapel Hill, N.C., 1987).

CHAPTER FOUR

ACHIEVING LEGISLATIVE RECONCILIATION: LEGISLATIVE GIVE-AND-TAKE AND MASS CLEMENCY FOR LOYALISTS, 1783-1800

In the summer of 1783, Stephen Mazyck wrote his young nephew Peter Porcher, who was studying in England. Porcher's father "was fully determined to stay in this Country notwithstanding his Estate was confiscated." Philip Porcher, Peter's father, understood well that despite the harsh tone of the Confiscation Act, he and other elite men who had changed sides during the war, but not committed violent acts, were likely to find increasing sympathy. Even those with more problematic histories hoped to find favor with the new state government. Gambling on his understanding of the situation, Philip "stayed at Santee" on his family's property throughout 1782 and 1783, going up to Charleston for the meeting of the Assembly and hearings. Even then, he lived freely in the city at the Mazyck home. Stephen Mazyck was optimistic about Philip Porcher's chances, and soothed his nephew that "your Father amongst others having a great many Powerful Friends" and being known for his "Universal good character," would gain legislative favor. The legislative committee on Loyalist petitions recommended removing Porcher from the Confiscation Act. Porcher, along with many others, was relieved from confiscation and banishment in 1784, although he became subject to an

amercement. Meanwhile, Porcher benefited from a temporary protection law that allowed him to live freely in South Carolina on his own property. The same law stayed the sale of his property. While the situation was no doubt unsettling for Philip Porcher, it was a very comfortable purgatory. Mazyck reassured his nephew that his father lived on his own property “as usual very quiet and you need not be the least uneasy about him.” (He also rushed to reassure his nephew that the property he would one day inherit would also be restored.)¹

Philip Porcher’s experience is representative of Lowcountry Loyalists, and to a lesser extent, backcountry Loyalists. He was originally a supporter of American independence. As such, he was elected to the First and Second Provincial Congresses, and to the General Assembly. When Charleston fell to the British, he made the decision to accept protection, and took a British commission. In his own defense, he told the General Assembly in his 1783 petition that he first laid “whole nights in Santee River Swamp” hiding from the British, giving up in fear after a few very uncomfortable weeks. In addition, Porcher made his decision to take a commission as a lieutenant in the militia after hearing persistent rumors that every member of the legislature would be “apprehend[ed]” and imprisoned on an island outside Charleston. Given the smallpox outbreak, Porcher pleaded that imprisonment seemed “certain Death.” Forty-some members of his parish filed a supporting petition on his behalf. His character was “that of a man attentive to the Duties of his Station” and “beloved and respected.” He explained that he took the commission hoping that he would only have to run slave patrols, not participate in the war. When he realized that combat training was required, he resigned the commission, and his neighbors seconded this. He was the perfect picture

¹ Stephen Mazyck to Peter Porcher, Charlestown, June 14, 1783. 49/509, Porcher Family Papers, SCHS.

of many of these Loyalists: a supporter of American independence who made the best accommodation he could with the British after they took Charleston. He tried to protect his family and his property without actually harming the American cause. Maintaining good relationships throughout the war with neighbors and kin, he had warm ties to augment his own direct appeal to the General Assembly. And for the Assembly, those ties were solid proof of his honor and fitness for the responsibilities of citizenship.²

In his case, supporters must have worried that questions lingered about his conduct, for they offered another petition later in 1783 that tried to answer more specific questions about Porcher's wartime conduct. Any "inconsistency of Conduct into which he may have been betrayed" came from his efforts to protect his family by appearing complicit with British aims.³ Porcher did not join the American forces in response to Governor Rutledge's 1781 proclamation, but he did look for ways to rejoin the American side. He sought and secured help from General Francis Marion in returning home. Marion approached Governor Mathews (his successor) on his behalf and he was allowed to return to his plantation until the legislature met to consider Loyalist petitions.

The General Assembly recommended removing him from the confiscation list in February 1783, but like other Loyalists, he did not receive official relief until 1784. At that time, he was restored to his estate and citizenship, but he was still subject to an amercement of 12% and a several-year ban on holding public office. In the economic downturn of 1785, one year after he received clemency from the General Assembly, he again petitioned for relief, this time from paying his amercement. He continued petitioning for relief from amercement through 1788, finally gaining some limited

² Philip Porcher, April 1782, 3-1782-3, GA Petitions. Edgar and Bailey, eds., *Directory S.C. House Rep.* 2: 534. Inhabitants of St. Stephen's Parish in Support of Philip Porcher, 1783-10, GA Petitions.

³ Inhabitants of St. Stephen's Parish and Others, 1783-59, GA Petitions.

success. In 1788, he was granted permission to use otherwise very devalued bonds to reduce his outstanding amercement, although he still had to pay part in current money. Peter Porcher died on his own plantation in 1800, fully restored as a citizen. His son Peter Porcher returned to South Carolina, where he served eight terms in the General Assembly. His political ambitions were aided by his father's recovered wealth, and unharmed by his father's Loyalism. Today, Philip Porcher's home in Charleston is a pricy bed and breakfast in the heart of the Historic District. Advertising materials and guidebooks make no mention of his Loyalist status. By convenient silence, he has become just another Revolutionary Patriot.⁴

This chapter considers what happened in the wake of Loyalist petitioning in 1783. The General Assembly began revising laws, considering how to deal with individual Loyalists. Limited records of hearings, complete with occasional witness testimony, give insight into the process of negotiations between the South Carolina Assembly and former Loyalists who sought official reentry into society. I will show how these negotiations led to increasing clemency for Loyalists. Further, I will show that the hearings continued the discussion of character, honor, and citizenship in a new nation that Loyalist petitioners began. Loyalists were largely successful in their efforts, leading to an omnibus bill in 1784 that moved a majority of Loyalist petitioners from the confiscation list to the amercement list, freeing them to live and prosper in the state. In the aftermath of that bill, only a few others were able to obtain official legislative clemency in later years. To illustrate the fluidity of the process, I detail the trials of administering the confiscated estates. Finally, this chapter concludes a discussion of legislative reconciliation with a

⁴ Philip Porcher 1785-39, 1785-29, 1788-62, GA Petitions. Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 568-69. Philip Porcher Inn, <http://bbonline.com/sc/porcher/>. Darwin Porter and Danforth Prince, *Frommer's Portable Charleston* (New York, 2003) 54-56.

consideration of the uses of amercement and the ways in which pardoned Loyalists also tried to evade paying amercements.

“Fully determined to stay in this country:” Loyalist Strategies for Safe and Legal Alternatives to Flight⁵

When the British finally evacuated Charleston, they took many Loyalists with them. Loyalists living in occupied Charleston had months to decide what to do. The local Loyalist newspaper published the Confiscation Act, and those on it knew they were banished from the state at pain of death (at least legally). Others, not listed on the Act, also knew, through their own sense or through pointed threats delivered to them by women in Charleston or by letter, that their neighbors did not want them and would kill them if they returned. Some 4,000 white people left Charleston with the British, comprising South Carolina families as well as Georgians and North Carolinians. Yet sizable numbers of Loyalists banished under the Confiscation Act stayed in South Carolina in order to facilitate their petitions. Others left their families and withdrew to East Florida, from where they marshaled their applications. In a spirit of practical generosity, the General Assembly recognized these complications. Having decided to accept and consider the petitions just as they would any other address, they tacitly

⁵ Stephen Mazyck to Peter Porcher, Charlestown, June 14, 1783. 49/509. Porcher Family Papers, SCHS.

recognized these petitioners as entitled to the protections of citizenship. In so doing, they began to undermine the logic of the Act itself.⁶

In 1783, the General Assembly recognized and codified the growing tolerance towards former Loyalists that was already practiced, especially by military leaders. Generals Marion and Greene led a movement to release many former Loyalists, like Philip Porcher, back to their own estates under military passes. As military leaders they dealt with the intricacies of individual needs all the time, and did not see issuing civilian passes to former Loyalists barred by legal authorities as so different from the myriad other passes they routinely issued to civilians on both sides. In addition, both were supporters of greater clemency to Loyalists. In Charleston, the sheriff took charge of Loyalists, releasing some under bail and confining others (such as John Wragg) in gaol until the General Assembly would decide their fate.⁷

Loyalists were well aware that possession was nine tenths of the law. Loyalists across America strove to maintain a stake in their property by leaving family members on the property during the war, even in the face of considerable danger. South Carolinians left their wives on family estates, as did other Americans in similar situations. This strategy had varying success. In Virginia's eastern shore, women and children stayed behind while their husbands fled, but their slaves were taken away and the properties sequestered anyway. Still, the Virginia legislature recognized this tactic by letting women 'inherit' those properties as though their husbands were dead. Adele Hast found in her study of Virginia's eastern shore that only one group of Loyalists could not achieve

⁶ Lambert, *South Carolina Loyalists in the American Revolution* 254. 4, 200 Loyalists registered to leave with the convoys by the middle of August 1782, according to British military records and the correspondence of British commanders in Charleston.

⁷ Stephen Mazyck to Peter Porcher, Charlestown, June 14, 1783. 49/509. Porcher Family Papers, SCHS.

“reconciliation and reintegration”—those who left Virginia during the war and then tried to return. Pennsylvania Loyalists also tried to remain in the state, or leave their wives, in order to protect their property. In South Carolina, Margaret Cunningham, a Loyalist widow, demonstrated the importance of squatter’s rights when she strategically continued living in her home while appealing her husband’s (and therefore her) confiscation. While she lost some of his land, the General Assembly relented and gave her “the Tract of Land on Rayburnes Creek Containing Two Hundred Acres, whereon she formerly lived.”⁸

In all of these cases, Loyalists who were named on the confiscation list actually were still residing in the state after the date they were supposed to flee. In recognition of this reality, the General Assembly acquiesced to the situation by regularizing the status of such men. Several days before the end of the 1783 session, the General Assembly passed an act lifting the death penalty for Loyalists who stayed after the forty-day deadline the previous year. Recognizing that:

notwithstanding the said Act [the Confiscation Act], on the evacuation of the garrison of Charlestown by the British forces, many persons whose names are mentioned in the lists annexed to the said Act, relying on the lenity of the American government and the mercy of their fellow citizens, did remain and continue in Charlestown,

the General Assembly allowed them to stay legally. Judges and justices of the peace across the state were bidden to take these named Loyalists into custody and determine whether and how much bail was appropriate to their situation. For their part, Loyalists

⁸ Hast, *Loyalism in Revolutionary Virginia* 127, 131, 169. Ousterhout, *State Divided* 218-20. Margaret Cunningham, 1785-6, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 78, 167-68, 188. Andrew Cunningham Plat for 1,000 acres in Berkeley County, Colonial Plat Books (Copy Series), vol. 9, pg. 208, Andrew Cunningham Plat for 100 acres in Berkeley County, Colonial Plat Books (Copy Series), vol. 11, pg. 373, other plats recorded in other counties. Andrew Cunningham, File No. 1686B, Reel 29, Frames 488-, Accounts Audited of Claims Growing out of the Revolution in South Carolina, 1775-1856, SCDAH. For just one of his many legal claims before the Revolution, see Gov. Charles Montagu v. Andrew Cunningham, Box 96A, Judgment Roll of the South Carolina Court of Common Pleas (Charleston), SCDAH.

were bidden to “keep the peace, and be of good behavior towards all and every the good citizens of the said state” and other Americans. This emphasized that while the General Assembly had chosen to relent in allowing proscribed Loyalists to stay in South Carolina pending a final hearing on their fate, they were not to presume this mercy guaranteed a favorably outcome in their cases. As people living on sufferance, they should act accordingly meek.⁹

The General Assembly explained that on further examination they would favor Loyalists who had voluntarily “surrender[ed] and submit[ed] themselves” to legitimate authority figures of the independent state of South Carolina, by staying their sentences and allowing them time to pursue appeals to the Assembly. By so doing, the General Assembly both regularized Loyalist activity that was technically illegal, and accepted the demands of Loyalists for individual trials or hearings in order to present evidence and contest charges.¹⁰

In addition, the act stayed the sale of Loyalist property until “the final determination” on each petitioner. There is some evidence that the Commissioners of Forfeited Estates were already holding back some property. In fairness and sympathy, the Assembly extended this ad-hoc understanding to all Loyalist petitioners. This provision only covered the Loyalist petitioners, who were listed by name. Loyalists who had not submitted petitions by early 1783 were left out of these protections. On the face of it, this rewarded people who had not played by the rules—people who had pushed the boundaries of the law by staying and petitioning for redress. In practice, what it did was recognize that those who stayed and petitioned early were more likely to be men accepted

⁹ Act No. 1176, “An Act to Alter and Amend An Act Entitled ‘An Act for disposing of certain Estates and banishing certain persons therein mentioned,’” Cooper and McCord, eds., *Statutes of S.C.* 1: 553-54.

¹⁰ Act No. 1176, Cooper and McCord, eds., *Statutes of S.C.* 1: 553-54.

by their neighbors, with stable communities and families wishing their return. Those lacking these essential protections and markers of good citizenship were less likely to have stayed. This act separated Loyalists likely to be pardoned from those much less likely to receive clemency on the same essential bases as would eventually decide the fate of individual petitioners. This acquiescence to Loyalist petitioners also made it almost certain that the Assembly would pass an act forgiving most of the petitioners.

Patting itself on the back for their “accustomed lenity,” the Assembly moved to enshrine the right to a “trial at law” for all accused Loyalists, regardless of what law confiscated their citizenship and property. Act No. 1189 guaranteed “all such person or persons who have withdrawn themselves” the right to such trials if they returned to stand trial within six months of the close of the winter 1783 General Assembly session. (The Assembly closed at the end of March, so Loyalists hoping for a trial needed to return by late September 1783 to qualify. Of course, given the obvious tendency of the General Assembly to extend deadlines after the fact, no one probably worried too much about these deadlines.) Still, such deadlines worked to incorporate Loyalists whose neighbors were sanguine enough about their conduct to allow them to live unmolested in 1783, in the recent wake of the war.¹¹

All of these were efforts to deal with the reality of proscribed Loyalists still living in South Carolina. They legitimated the presence of people who were outlawed in the recent statute, and served as notice that the General Assembly was prepared to be

¹¹ Ibid. Act No. 1189, “An Ordinance for Disposing of the Estates of Certain Persons, Subjects and Adherents of the British Government; and for Other Purposes Therein Mentioned,” March 17, 1783, Cooper and McCord, eds., *Statutes of S.C.* 1: 568-70. No one was put to death for returning, but there is some evidence from post-1784 petitions that returning Loyalists after that date were careful to request permission from Charleston city officials and/or port officials as they entered the harbor. For instance, see Mary Champneys on behalf of her husband, 1787-39, John Champneys, 1785-38, GA Petitions.

generous. It was in this atmosphere that hearings began for accused Loyalists proscribed by the Confiscation Act.

Presenting the Case: Loyalist Hearings and the Committee Deliberation Process

Loyalist petitioners claimed the right to a hearing or trial at which they would be able to present exculpatory evidence. As we saw in Chapter Three, the right to petition carried with it the affirmative right to consideration. In the spirit of that right, the Assembly moved to a committee system dedicated to examining the specific claims of the petitioners. As we have seen, in 1783 those committees convened with local members to consider carefully the evidence Loyalists presented. However, the advantages of a more formal trial setting quickly became clear. In addition to the high-minded ideals of protecting liberty that trials represented, the work of sorting through Loyalist evidence quickly overwhelmed the committees. In the interests of justice and efficiency, the Assembly moved to consolidate hearings into one series, all held in Charleston, and in the same time frame. While it is not entirely clear when each hearing took place, they were held between March 1783 (the end of one Assembly session) and January 1784 (the beginning of another general session). These hearings were especially encouraged because while the General Assembly committees met and made reports on many Loyalist cases during the 1783 session, they did not act on those decisions. Pushing the entire issue back a year, they bought time for more extensive fact-finding.

These hearing dates were advertised in local papers well in advance of the actual date, although plenty of petitioners still did not make it to their hearing. Some, like Alexander MacBeth, probably didn't appear because they were not in the state at the time, and could not find anyone to testify favorably on their behalf. In his case, three men testified against him after he failed to appear at his hearing. Others simply did not show—especially women appearing on their husbands' behalf. Edith Rose and Elizabeth Atkins, both petitioning for male relatives, did not appear. The clerk noted in both cases (with some apparent irritation) “she not attending agreeable to Advertisement nor any other persons for her, the Committee proceeded to form their Judgment.”¹²

Petitioners brought their own witnesses when possible. In other cases, certain committee members and other locals testified repeatedly, and especially against petitioners who did not appear. In reading the testimony, it becomes clear that certain Loyalists were put on the confiscation act for very specific acts against the American war effort, regardless of the relatively benign particulars specified in the Confiscation Act.

Well-advertised hearings alerted petitioners and their supporters to prepare for and attend the evening sessions, but it also alerted enemies. These hearings offered Loyalists a chance to present character witnesses and letters of support, both testaments and evidence. But it also opened the door to contrary accusations. On the other hand, the Free Conference Committee also received letters of support for petitioners. John Floyd wrote a letter in February 1783 in support of Dr. James Clitherall's petition, reiterating important themes about how Clitherall actually performed in his capacity as a Loyalist commander in the Lowcountry. Floyd, and Clitherall, felt that he had to make his points

¹² No. 61 McBeth [probably Alexander MacBeth], No. 53 Mary Philip, No. 54 Edith Rose, Testimonies and Notes, Petitions for Relief from Confiscation 1783-1784, General Assembly Free Conference Committee, S 165035, Papers of the General Assembly, SCDAH. (Hereinafter, Free Conference Comm. Hearings)

more explicit: Clitherall did no “injuries to the inhabitants of the Country” and only served in his Loyalist military capacity once, when he appeared at the “Horseshoe Field to see the militia enrolled.”¹³

Just as in many aspects of life, showing up was half the battle. The Free Conference Committee was much more impressed with those who produced witnesses, even if they were the lawyers representing them, than those who could not find anyone to speak for them. In some cases, this may have been because those who did not appear were those living abroad who feared for their safety—in other words, real offenders. Not attending was a hazard in itself, signaling all sorts of unpleasant possibilities to the legislators staffing the Free Conference Committee.¹⁴

Men who did not appear usually had their reputations undermined by negative testimony. Andrew Deveaux did not appear, and in his absence, both Colonel Harden and a member of the Dupont family testified that he was “an Active man against America” and always regarded as a British adherent. When Samuel Bonsall failed to appear, a witness testified that Bonsall had been such an early, outspoken Loyalist that he “was sent off this state formerly when he was Exiled for not taking the Oaths.” What he meant was that Bonsall had refused to take the oath of allegiance in 1777 and was already banished from the state by that earlier legislation—evidence of a more ideological commitment to Loyalism.¹⁵

¹³ John Floyd to Honorable Gibbes, Feb. 14, 1783, Folder: Forfeited Estates, Miscellaneous, Box 4, Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Series 126170, Comptroller General Papers, SCDAH.

¹⁴ No. 54 Edith Rose, No. 58 Elizabeth Atkins, No. 55 Nicholas Laffilie, Free Conference Comm. Hearings.

¹⁵ No. 56 Andrew Deveaux, No. 60 Samuel Bondsall, No. 59 James Mackie, Free Conference Comm. Hearings.

Putting in an appearance was clearly very important. But just arriving was not enough. The point was to produce additional exculpatory evidence with character witnesses and any additional evidence. These witnesses offered what they thought would be important, and the committee also questioned them, sometimes more fiercely than others. Positive witnesses were motivated to do a good job. Mr. Fraser, testifying for Dr. James Clitherall, felt he had not been persuasive enough, so he wrote the committee the next day to give them “one Circumstance...which escaped him last Night.” (The actual new evidence was not that impressive, but it does speak to Fraser’s desire to be the best possible witness.)¹⁶

All of this confirms my argument in the previous chapter: the most important factor influencing whether a Loyalist would receive clemency from the General Assembly was whether he had sizable local support. Everything else derived from that crucial qualification. Here, if a petitioner appeared and offered personal witnesses willing to devote an evening to linking his reputation to the Loyalist’s reputation, he was likely to convince the Free Conference Committee to recommend restoration of his property and citizenship. Personal ties were important, but they were important as evidence of character and community belonging, not simply favoritism.

Petitions tell one side of the story. They were carefully marshaled arguments couched in the traditionally humble language of petition. But Loyalists were not able to control hearings as carefully. In the hearings, petitioners might lose control of their story. While their character witnesses were prepared to defend them, the language they would use was not as easily controlled. The language certainly had rote attributes (especially in

¹⁶ Fraser to Gibbs, Feb. 15, 1783, Box 4, Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, S 126170, SCDAH.

the ways the notetaker chose to record testimony), but sometimes witnesses said things that an editing process would have eliminated.

Three individuals were grilled on whether they sabotaged food supplies in 1780. In preparation for the siege at Charleston, local authorities laid in food supplies for the garrison. Much of the meat spoiled to the point it was inedible. At the time, people alleged that certain individuals had deliberately allowed the meat to spoil in order to undermine Patriot defenses and cause the city to fall into British hands faster. James Mackey, a Charleston cooper, was accused of “behav[ing] in such a manner as to spoil all the meat.” Even worse, witnesses claimed he “bragged off” about it after “the British had possession of Town.” David Taylor was also accused of spoiling meat. William Logan, testifying on David Taylor’s behalf, admitted that Taylor was responsible for curing meat for the Charleston garrison but that the meat in question was “spoilt before he says it [was] in his hands.” The committee questioned Taylor’s witnesses very carefully, asking two “Did you know anything of his Conduct respecting the Care of Meats for the Garrison of Ch. Town”? King assured them that Taylor “had not it in his power either to cure or spoil the meat” as he was “only Employed to Cooper” the stores. Dillon also rushed to defend Taylor, arguing that it was not “his particular business to cure the meat.” A third witness corroborated these statements. William McKinney, another cooper, also came under suspicion for spoiling the meat. He didn’t bother to attend the hearing, but Loveday testified against him that he “spoiled the meat” and further that he “knows nothing good of him.” In these cases, men had deliberately worked from a position of trust to destroy the American effort to save Charleston. Such double-dealing (if it really

took place) was good proof of both committed Loyalism and less than honorable conduct.¹⁷

Several artisans harbored Loyalist tendencies at a time when Patriot artisans exerted great control over Charleston and state politics. These “Friends of Government” were justifiably eager to punish the radical artisans who had made their lives difficult, and also to find ways to profit by the British position. James Cook and Gilbert Chambers started a petition denying Patriot artisans the right to pursue their trades—a position that would cause some to starve. They requested that such artisans “not be suffered to carry on their trades & Occupations to the detriment of British subjects” who needed the work. These Loyalist mechanics pointed out that it was in the British interest to help them, as without such a prohibition Whigs did not have “proper encouragement to return to their allegiance.” James Ruge was later accused of being one of these men, which is probably why he was placed on the confiscation list. (He was officially punished among those who volunteered in the Royal militia.) In his hearing, he tried to claim that he took his position solely for the “preservation of the property” of citizens, but witnesses vigorously protested that claim. While one focused on the practical objections (his own goods were stolen by the British while Ruge had care of them), another zeroed in on Ruge’s efforts to entrap Charlestonians into taking protection. “He was one of the men who petitioned to the Commandant to prevent every person from following their Employment without taking protection, which was carried in Effect.” The joint legislative committee on Loyalist petitions was also unimpressed with Ruge’s sincerity as a petitioner. In March 1783 they concluded that he had “given undeniable proofs of

¹⁷ No. 59 James Mackie, No. 122 David Saylor recommitted, No. 104 William McKinney, Free Conference Comm. Hearings. James Mackie was known as a dissident to the radical artisans organization long before the fall of Charleston. Walsh, *Sons of Liberty* 92 footnote 9.

his Preference of the British to the American Government” on “many Occasions.”

Further, his persistent Loyalism mixed with his actual conduct made him “a Subject very improper for the Support [of] a Republic.” He was not relieved from confiscation in 1784.¹⁸

Hearings also focused on other specifics of wartime conduct. In some cases, witnesses volunteered explanations of behavior, and in others committee members asked pointed questions. John Wigfall was apparently careful to “give Orders not to plunder.” Further, his supporters testified that he often “Express[ed] his Abhorrence against Burning houses & plundering.” He was “as moderate as possible” in his public behavior while holding a British commission, and instructed his underlings to “take no Notice of anything to be molested.” John Deas (subject to amercement himself) defended Henry Peronneau by claiming he always “Expressed himself in favour of America.” Verbal affirmations of the rightness of the American cause were popular. Archibald Brown “often reprobated the conduct of the British”—presumably plunder, amongst others. In contrast, Andrew Deveaux was accused of being a “henchman” to the British.¹⁹

We saw in Chapter Three that several petitioners claimed that they took commissions at the instigation of their local communities, and supporters were willing to back those claims. Witnesses at the hearings also frequently testified to this community collusion. John Wigfall’s supporter Benjamin Quark agreed that he took the commission to “prevent its being fallen in other hands which may have in their power to use the people in the District ill.” Henry Rugeley, a Loyalist from Camden who led a local

¹⁸ Walsh, *Sons of Liberty* 97-98. No 70 James Rugge, Free Conference Comm. Hearings. Thompson and Lumpkin, eds., *House J. 1783-1784* 221.

¹⁹ No 40 John Wigfall, No 51 Henry Peronneau, No 52 Archibald Brown, No 56 Andrew Deveaux, Free Conference Comm. Hearings.

militia company, found a supporter willing to testify that Col. Joseph Kershaw “Persuaded [Rugeley] to take the Commission” to “prevent any Others from distressing the Inhabitants.” Captain Struther testified on Archibald Brown’s behalf that he accepted a commission to “keep out a bad man.” Another supporter for Brown concurred that he took the commission due to “the Solicitation of his Neighbors.”²⁰

The importance of how a man came to take a commission becomes clear from the negative evidence. One witness testified against John Forsyth that he “was not solicited to take Commission, but offered himself to that Command.” James Gordon took a British commission from “principle” in the eyes of one witness, but General Marion testified against him that he was very earnest in hamstringing the Patriot military operations while he was in charge of a Loyalist militia. In fact, Marion rather bitterly remembered he “acted in Conjunction to keep the Little Pede [sic] men in arms against us.” Mr. Vineyard testified against John Forsyth that he “heated his men” as Captain of the Grenadiers and was “very active” against the Americans.²¹

Wartime conduct in offices was also important to the Free Conference Committee. As we saw in Chapter Three, Loyalist petitioners strove to paint themselves as honorable victims of circumstance: they took commissions because they had to, and served honorably, helping Americans while not doing anything useful for the British war effort. Witness testimony and the pointed questions committee members sometimes raised make it clear that these concerns were central to the decision-making process.

John Wigfall’s witnesses testified he often “Express[ed] his Abhorrence against Burning Houses & plundering.” Further, he protested British commander Major

²⁰ No. 40 John Wigfall, No. 44 Henry Rugeley, No 52 Archibald Brown, Free Conference Comm. Hearings.

²¹ No. 68 John Forsyth, No 71 James Gordon, Free Conference Comm. Hearings.

Muncrief's decision to burn houses in Georgetown. When Wigfall sent out his militia company to John Wragg's plantation on the Black River, supposedly to seize his stores, he ordered his men to "be as moderate as possible, & to take no Notice of anything to be molested." By contrast, John Rose Drayton's case was complicated by witnesses happy to report second-hand gossip that he was "accused of being the Means of Cusack being hanged" in addition to rampant plundering and destruction of houses.²²

Moderate men took commissions under necessity, but resigned them when it became clear that they would have to act against America. We saw this distinction in the previous chapter, and witnesses upheld it in the hearings. Archibald Brown's witness thought he had "resigned his Commission" after he was ordered to "send down the old members of the Assembly to town." Robert Quark testified for one petitioner that he held his commission for a "short time" and was careful to "Indulge[]" his men in not "appearing in Arms."²³

Questioners specifically asked if accused Loyalists had participated actively in British military aims. One witness for David Guerard was asked "did you know if he ever took up Arms against Am[erica]?" His brief, to the point answer: "No." Another witness shored this presumption up by asserting that David Guerard also "made it a point to Inform him when the British had any advice against him [the witness]."²⁴

Political principles also mattered, but witnesses drew a distinction between those principles and the way they were expressed. James Brisbane was "confirm[ed an] Enemy

²² No. 40 John Wigfall, No 52 Archibald Brown, Free Conference Comm. Hearings. On the burning at Georgetown, and the context of the American efforts to take and hold the town, see Gordon, *South Carolina and the American Revolution: A Battlefield History* 154, 158.

²³ No 52 Archibald Brown, No 64 John Rose Drayton, No 62 James Smyth, Free Conference Comm. Hearings.

²⁴ No 75 David Guerard, Free Conference Comm. Hearings.

to America” by “several persons,” which explains why he was not included in the 1784 clemency. Alexander MacBeth was judged “a strict adherent of the British” but never “active for or against us [the Patriot cause].” Further, his Loyalism was excused by his youth. (Another witness was less forgiving, arguing he went out of Charleston in order to march back in with the British.) William Harleston testified that James Smyth was a “peaceable good man” whose “Disposition Inclined him to favour the British.” James Duncan was seen as having no particular principles, but was a “very weak man which [sic] can be largely frightened to any thing.” Similarly, General Francis Marion judged Robert Muncrief Junior to be a “passive Character,” and in the same vein David Taylor was judged “as to his political principles he had none.” By contrast, Andrew Inglis was judged “always...inimical to America.”²⁵

Of course, there were pathetic excuses as well. Witnesses agreed that John Wagoner took protection because he was incapable of independent action since he “took to Drink & was scarcely ever Sober.”²⁶

John Forsyth’s hearing is an excellent example of mixed testimony at the hearings. His own witnesses testified to his positive qualities and upright conduct, as expected. But others testified against him, undermining every assertion of upright conduct and adherence to America. James Smith testified that Forsyth was “an upright Dealer & honest man” and therefore a man of good character. Another supporter testified that Forsyth took the commission out of despair that the Americans could not control the

²⁵ No 43 James Brisbane, No 46 Florence Cook, No 61 McBeth, No 62 James Smyth, No 63 James Duncan, No 66 Robert Muncrief Jun., No 65 Alexander Inglis, No 122 David Taylor recommitted, No 116 George Duncan, Free Conference Comm. Hearings.

²⁶ No 123 John Wagoner recommitted, Free Conference Comm. Hearings. This reminds me of the petitions on behalf of Alexander Harvey, whose sister claimed he was insane and was finally committed by an English doctor. Mary Champneys on behalf of her brother Alexander Harvey, 1785-56, GA Petitions.

country after the defeat at Charleston, but was a supporter of the Americans. He had become a supporter of the American cause because he was “Deceived” by the British, and “abhorred the proceedings of the British Government.” Further, Forsyth’s witness painted him as justly deferential to the power of the General Assembly and the moral fitness of the American people. He “acknowledged the Justness of the Confiscation Act, & that the British would do just the same by the Americans had they prevailed.” (In contrast, other Loyalists went out of their way to protest the legality and morality of the Confiscation Act.) Captain William Buhundun suggested enthusiasm and flexibility when he suggested Forsyth “would be happy to become a Citizen on any terms....without the Expectation of his Property being restor’d.” This was more than a bit disingenuous, as all of the Loyalists did seek the return of both their citizenship and their property. Legal citizenship carried with it stringent protections on property, and a restoration of citizenship without at least a nod to the restoration of property would be legally suspect and corrosive to the entire system of property. Still, it did suggest a becoming modesty of aim in the petitioner. This suggestion also pointed the way to an acceptance of partial property restoration. In this case, Forsyth might quietly disclaim any property already sold by the Commissioners of Forfeited Estates while recovering property not yet sold.

However, Forsyth’s application stirred considerable negative testimony as well. While Captain Buhundun had argued Forsyth accepted a commission under some duress (as countless others had claimed), Atkins argued that Forsyth “was not solicited to take Commission, but offer’d himself to that Command.” Atkins accepted the arguments that were made in several of these cases that men had taken military commissions under the British at the behest of their neighbors, but angrily asserted that Forsyth was not one of

those men. He had put himself forward seeking a commission, in an act displaying both his true political loyalties and his self-promotion (never an ideal trait for a gentleman). To make it worse, he not only eagerly sought a commission, but also was energetic in executing his duties under it. He “had them [his troops] Drilled & offered the Commandant to march out with his Comp.[any]” and indeed led his men in a “victory gained by the British.”²⁷ All of his activities argued that he was truly a committed Loyalist who had taken an active part against America, and that decision and his actions were entirely voluntary. This negative testimony was especially important, because while Atkins testified in two other cases, this was the only one in which he was negative about the claimant.²⁸

Two other witnesses came forward to reinforce this negative portrayal. Ferguson agreed with Atkins that Forsyth had “always appeared forward in the duty of his Commission.” Vineyard agreed that Forsyth had shown great ardor in carrying out his duties as a leader of the Grenadiers, as he “heated his men” and “was very active.”

Loyalists worked to secure their own futures in other ways as well. John Deas, an amerced Loyalist who also represented several confiscated Loyalists, petitioned to have his amercement lifted in 1783. The committee agreed that he should be relieved, but his case was tabled with everyone else’s until 1784. since he did nothing but take protection. In October 1783, Deas wrote a letter to the Commissioners of Forfeited Estates enclosing a copy of the favorable report by the legislative committee. He also pleaded with them personally, adding that so “severe a Fine” was especially harsh on someone who was already “cruelly amerc’d by British Depredations.” There is no evidence that this letter

²⁷ No. 68 John Forsyth, Free Conference Comm. Hearings.

²⁸ No. 60 Samuel Bondsell, No. 61 McBeth, Free Conference Comm. Hearings.

changed anything—he still had to wait until March of 1784 for any help. Still, he obviously thought keeping his case fresh in the minds of people with the power to influence it was a good thing, and if anyone subject to either confiscation or amercement had reason to understand the process, it was attorney John Deas. He never missed an opportunity to put his case before authorities, as he also brought witnesses to support him in front of the Free Conference Committee when they held hearings for amerced persons in late February and early March of 1784.²⁹

In January 1784, the General Assembly convened again, spending a great deal of energy on the question of Loyalist clemency. When the committee met throughout early February to determine each individual case, they recalled some Loyalists and gave them another chance to clarify issues and present new witness testimony. In most of these cases, these Loyalists were subject to disagreements between the House and Senate over whether to remove them from the confiscation list. At the initial meeting on Feb. 3, 1784, things started off cleanly for the free conference committee, a joint committee of both legislative chambers. After agreeing on the order of discussion (people everyone agreed on, followed by people who only one house wanted to forgive), they read and voted on each case. Most of the time, they agreed to relieve each man of confiscation and banishment, and then amerce them 12%. Occasionally, disagreements led to efforts to change the default option, by setting amercement at a lower level or by lifting confiscation but not banishment. On the fourth day of deliberations, they moved to call

²⁹ Report of the Comm. on the Petition of John Deas Esq. enclosed with letter from John Deas to Commissioners of Forfeited Estates, Charleston, Oct. 1783, Letters Received by Commissioners of Forfeited Estates, Box 4, Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH. No. 7 Deas (On Amercement), Testimony and Notes on Persons Seeking Relief from Confiscation or Desiring to Become Citizens 1783-1784, General Assembly Free Conference Committee Concerned with Petitions for Relief from the Confiscation Act of 1782, S 165035, SCDAH. (Hereinafter Free Conference Comm. Meeting.) John Deas continually emphasized he only took protection, but did not hold “any place of profit Honors or Employment.”

back Edward Legge Jr. to “Answer to such Questions as may be ask’d.” He was merely the first allowed a second chance. At least he wasn’t kept cooling his heels in a waiting room, like John Gaillard. “As Mr Gaillard was in the Lobby that he be call’d in to know if he was ready to take his Tryal as ch was unanimously agreed to” but they voted to adjourn instead. Nor did Gaillard get a chance the next day.³⁰

Sometimes these reconsiderations helped, but sometimes they did no good. In some cases, it had been months since the hearings, and with rumors circulating about who might be forgiven, there was plenty of time for people to present evidence against Loyalists. When the committee reconsidered Edmund Ellis’s case on Feb. 13, 1784, they announced that “several new & oppressive Acts appeared he was guilty of” had arisen. John Gaillard had similiar problems, as “a paper contain[ing] heavy Accusations ag John Gaillard” was sent to the committee.³¹

All of this set the stage for a reevaluation of the position of Loyalists—a reevaluation that was bound to be favorable for many of them, given the notable warming trend towards Loyalists in the General Assembly from 1782 to 1784. Those two years were crucial. The war had ended, the British had withdrawn, and a peace treaty was signed. South Carolinians had two years to watch and evaluate former Loyalists in their midst, and watch their behavior as neighbors and potential citizens. They were in a very different position than they had been in 1782, when the original Confiscation Act was passed. Further, Loyalist petitions and hearings were not only legislative work, but part

³⁰ Feb. 7, 1784, No. 35 Thomas Eustace, No. 39 John Gaillard. For an example of changes to amercement accounts, see Thomas Corbell. etc., including John Laroche “granted at 10 pr Ct,” John Martinsdonald “Granted at 5 pCent.” Free Conference Comm. Meeting.

³¹ No. 50 Edmund Ellis Reconsidered, Feb. 13, 1784, Feb. 14, 1784, Free Conference Comm. Meeting. John Gaillard must have known the contents of the letter, for in his hearing he countered them one by one. John Gaillard, Feb. 14, 1784, Feb. 23, 1784, Feb. 24, 1784, Free Conference Comm. Meeting.

and parcel of the process of reconciliation. For Loyalists to find reconciliation, the entire society had to find some peace with the horrors of internecine war. The careful process of legislative reconciliation gave many a chance to work out their own tricky and tortured feelings about the war itself. In discussing wartime behavior, South Carolinians had a chance to consider complicated emotions about all wartime conduct.

Mass Clemency: General Assembly Moved for Generous Public Reconciliation, 1784

The Confiscation Act passed at Jacksonborough in 1782 was harsh. Yet, as we have seen, torrents of petitions quickly led to long committee sessions, and a system of hearings for accused Loyalists. This process took a year, from the beginning of January 1783 (through a mid-year meeting) to the General Assembly meeting in 1784, where the Assembly had a chance to consider the committee reports and hearing testimony generated in the previous year. This also gave many other Loyalists an opportunity to submit petitions that were read on the floor of the House of Representatives in January and February of 1784. Petitioners whose petitions were read in 1784 had sent them throughout 1783, but largely in the last few months of the year. Many of them show greater use of lawyers and legal arguments than previous petitions. After all, they had the advantage of an additional year to discover what sorts of arguments were more persuasive. Later petitioners were also, by and large, more problematic cases, and probably recognized they needed the advice of a lawyer. For example, James Nassau Colleton argued that he received a punishment meant for those who “took an active part

in opposition to this Country” which was unfair to do to people who “by absenting themselves and standing Neuter” were labeled enemies. This strikes me as a very legalistic argument made by someone versed in arguments about citizenship. His petition picks up the popular theme of active citizenship, in which a person did or did not act against the country, but then invoked a new principle of studied neutrality. His entire discussion of active and passive citizenship is much more sophisticated than the largely inchoate notions at work in the 1783 petitions.³²

Governor Guerard also encouraged the spirit of reconciliation in his annual address to the combined houses. He argued that to “effectually and acceptably put into practice” South Carolina’s new independence, they must begin by “forgiving and pitying our enemies.” They could do this by planning “to remit (upon principles of impartial justice) the amercements and confiscations that have taken place on certain Characters, guilty of no other crime than taking British protection, and remaining within their lines.” This act of generosity was also one of “impartial justice,” for as Governor Guerard was willing to say aloud in 1784, taking protection was something “which many of their fellow Citizens were also constrained to do.” Of course, he still encouraged the Assembly to make distinctions between various acts during the war.³³

Unfortunately, little remains of committee deliberations on individual Loyalists. In some cases, the full text of the final report survives, and in other cases we have only the evidence of the final act. What is clear is that the General Assembly, the Governor,

³² Jan. 29, 1784, Thompson and Lumpkin, eds., *House J. 1783-1784* 383-84.

³³ Thompson and Lumpkin, eds., *House J. 1783-1784* 400-402. I want to add an important caveat about Governor Guerard as a political leader. He was unusually outspoken, and seemed to take delight in nagging, satirizing, and provoking the General Assembly. (All of this helps to explain why despite widespread agreement on his brilliance, he didn’t serve very long.) His pronouncements certainly cannot always be taken as evidence of widespread legislative agreement, since many of them hated him. Still, given the circumstances, in this he was not far apart from the General Assembly.

and many ordinary South Carolinians regarded the reevaluation process as a chance to separate the wheat from the chaff. Resolving to ameliorate conditions for Loyalist petitioners and their families, the Assembly considered each petition alone, but handled all the petitions as a group, neatly devising group solutions tailored to degrees of clemency, and local attitudes.

In 1784, the General Assembly spent a lot of time renegotiating the terms of confiscation. Ultimately, there was a groundswell of support for removing many petitioners from the strains of banishment and confiscation. At first, individual legislators pushed for special bills for one friend or another, but given the number of individuals and the effort going into hearings and committee reports, the General Assembly decided to make a blanket law covering everyone. In restoring estates, they again made use of a system of lists, creating three categories for Loyalists removed from the penalty of confiscation and banishment. The luckiest people were placed on list two, in which they received a full lifting of all penalties for themselves and their heirs. Their property was restored, although in some cases it had already been sold. If that was the case, as the Commissioners of Forfeited Estates received payments on the properties, they turned those monies over to the pardoned Loyalist. Purchasers of property often complained that they paid inflated prices, but Loyalists who had lost their property did not agree.³⁴

People on list one were moved from confiscation to amercement, pledged to a standard 12% amercement. If their estate had been sold, the amercement came out of the funds before they were reimbursed. People on list three were also subject to amercement

³⁴ Act No. 1299, "An Act for Restoring to Certain Persons, Therein Mentioned, Their Estates, Both Real and Personal, and for Permitting The Said Persons to Return to this State," March 26, 1783, Cooper and McCord, eds., *Statutes of S.C.* 1: 624-26.

in the place of confiscation, but they were still considered fundamentally untrustworthy at some level. They were “disqualified from being elected” governor, lieutenant governor, privy council, or to either house of the legislature, or “of holding any office or place of trust” in South Carolina for seven years. What made these men pardonable but still unworthy of public trust? This fate was reserved for men who had taken military commissions during the war. This was not targeted only at men who had taken British military commissions, but at men who held posts of responsibility and trust in the Patriot forces and then took British commissions. Finally, anyone who had petitioned the General Assembly already and was not already granted relief in this bill, but had at least one house favorably inclined to their case, could live in freedom and not have their property sold until the next meeting of the Assembly.³⁵

In practice, the seven-year restriction on voting ended a year early, when South Carolina passed a new constitution that struck down those voting restrictions. At least one Loyalist on the list of amercees who couldn’t vote or hold office was quickly returned to the General Assembly himself after the 1790 constitution came into being.³⁶

How did South Carolina’s move for amelioration for Loyalists compare to other states? Historians have long suggested that New York and South Carolina stood out for the harshness with which they dealt with former Loyalists, and there is certainly something to that. Nonetheless, as we have seen in Chapter Two, South Carolina’s legal strategy towards Loyalists resembled that of Georgia and North Carolina much more than the legal regimes of other states, largely because Southern states formulated laws in reaction to the Southern war effort, which was timed very differently than New York’s or

³⁵ Act No. 1299, Cooper and McCord, eds., *Statutes of S.C.* 1: 624-26.

³⁶ Edgar and Bailey, eds., *Directory S.C. House Rep.* 4: 139-40.

Pennsylvania's experience, for instance. Georgia also halted sales of confiscated property in 1783 while debating mass clemency, although they did not enact a comprehensive clemency. In North Carolina, one legislative faction introduced bills starting in 1784 for years in an effort to repeal confiscation, but it continually failed. The closest North Carolina came was a rash of individual acts, mostly in 1784 and 1785, to benefit particular Loyalists subject to confiscation. Most of these clemency moves were directed towards Loyalist wives and children, not the proscribed Loyalist. North Carolina did not pass a general revision of the laws on confiscation until after the Constitution, which was part of a movement among the growing nationalist coalition to finally honor the Treaty of Paris.³⁷

More northerly states also took steps towards clemency, revising laws passed earlier, but mass clemency was rare. In the fall of 1782, Pennsylvania began considering individual petitions for forgiveness from confiscation, banishment, and disenfranchisement. In some cases, individual Loyalists were given trials and/or legislative hearings, but most failed to achieve clemency. Pennsylvania also avoided enacting a mass clemency. In 1790, in the wake of enactment of the new Constitution, the Pennsylvania legislature considered a general pardon for all those still subject to confiscation and banishment, but its unpopularity led to continual postponement, and

³⁷ Brown, *Good Americans* 228-29. Joseph S. Tiedemann, "Patriots, Loyalists, and Conflict Resolution in New York, 1783-1787," in *Loyalists and Community in North America*, ed. Robert M. Calhoon, Timothy M. Barnes, and George A. Rawlyk (Westport, Conn., 1994). Lambert, "Loyalist Property in Georgia," . DeMond, *N.C. Loyalists* 166-68. Nationalists argued that Americans needed to obey all aspects of the Peace Treaty in order to gain credit on the world stage. Since Articles 5 and 6 required readmitting Loyalists and providing restitution, and open collection of pre-war debts, these men supported the repeal of all confiscation and test acts. For a longer, more involved discussion of nationalist orientation, Loyalism, and the move away from Confederation, see Jacobs, "Treaty and the Tories" . Much of this research was stimulated by Jackson Turner Main's work on the Confederation period, and strove to further elucidate his theories of political party behavior in all Confederation states. Main dwelt at length on debates on paper money, debt repayment, and land prices, but also included divisions between parties on treatment of Loyalists. Main, *Political Parties* .

Pennsylvania never passed a general amnesty despite considerable pressure from nationalists seeking world credit for the new Constitution and federal government. The most Pennsylvanians were willing to do was revise the test laws in order to allow former neutrals, and Loyalists who never took up arms or sought safety within British lines, to take a new, post-war oath of allegiance that struck out the customary abjuration of King George's authority. Even this act was controversial, taking more than two years to find enough supporters for final passage in 1786, two years after South Carolina's clemency. Test acts were finally overturned in 1789, but those who had been convicted of treason or otherwise became subject to confiscation (usually termed attainted in this state) never had any recourse besides individual petitions, dealt with strictly individually.³⁸

In another contrast, New Yorkers actually passed new anti-Loyalist legislation in 1784, at the same time South Carolinians moved to void large numbers of confiscations. The Voting Act of 1784 reiterated that Loyalists were disenfranchised. Loyalists subject to confiscation did find individual relief, but most people subject to confiscation were rebuffed. New York also passed a restoration act in 1784, but it only restored the estates of twenty-seven individuals. Only thirty Loyalists total achieved such clemency in New York by 1790. Advocates of restoration finally achieved a partial victory in 1792 when all banished Loyalists were given the legal right to return, but only with their explicit recognition that their confiscated property was irretrievably lost to them and their families forever.³⁹

³⁸ Ousterhout, *State Divided* 217, 219. Siebert, *The Loyalists of Pennsylvania* 86, 88-90. Pennsylvania's new test act also fulfilled a second important function: it allowed young men who had been minors during the war to take the oath, and therefore secure their own voting and office-holding rights.

³⁹ Tiedemann, "Patriots, Loyalists in New York." 80. Zeichner, "Loyalist Problem New York," especially 298. In New York, treatment of Loyalists became a major issue between political factions. Organized and implacable hostility towards Loyalists surfaced in 1783 and 1784, including public meetings and county petitions to the legislature demanding that body not readmit Loyalists.

Massachusetts also debated amnesty for Loyalists in 1784, but strictly distinguished between neutrals, who were passive during the war, and those who had done military service or been officeholders in the British administration. Debating amnesty actually hardened what had been a rather ad-hoc series of town decisions. Massachusetts did differ in that, according to David Maas, 86.6% of Loyalist real estate had never been legally confiscated, and so it was easy to allow the vast majority of Loyalists to return. In many cases, that real estate was vested in the control of family members. In contrast, South Carolina did offer clemency to those who saw military service or served in the occupation administration. Part of the difference lies in the timing—most Massachusetts Loyalists who were subject to confiscation had fled in 1776, when few Massachusetts residents were committed Loyalists. They were not survivors of a civil war in the way South Carolina Loyalists were. That makes it more remarkable, I argue, that South Carolina offered restoration to those who had clearly taken up arms against America.⁴⁰

Perhaps the most generous Northern state was Connecticut, which repealed most anti-Tory wartime acts in May 1783, at the instigation of conservatives in the legislature. While this did not automatically rehabilitate all Loyalists, it went a long way. Towns, which held considerable sway, were less uniformly positive. Nonetheless, New Haven's town meeting set up a committee in March 1784 to consider which former Loyalists should be readmitted, based on their character and usefulness to the community. The committee enthusiastically reported back the same day, while denying readmission to Loyalists who had plundered and murdered. Once again, in the midst of clemency, we

⁴⁰ David E. Maas, "The Massachusetts Loyalists and the Problem of Amnesty, 1775-1790," in *Loyalists and Community in North America*, ed. Robert M. Calhoon, Timothy M. Barnes, and George A. Rawlyck (Westport, Conn., 1994). See also Maas, *Return of Mass. Loyalists* 318.

see that plunder and murder provided an easy rhetorical and practical dividing line to distinguish between ‘bad’ and ‘good’ Loyalists. In South Carolina, these distinctions were not so easy.⁴¹

South Carolina Loyalists who were left out of this mass clemency were understandably upset. Some recognized that this meant their chances for forgiveness were slim, and they waited years to try again. (As we will see in a subsequent section, several people tried in later years.) Others used the 1784 legislation as a building block for their own appeal, trying to show that their cases were similar to those of recently pardoned men. Charles Atkins put it clearly when he spoke of being “encouraged by the Humanity of the late Legislature, in restoring to their former happy Condition, several of his Country men in a similar situation with himself.” His petition was not successful.⁴²

An Honor Better Forgone: The Trials of the Commissioners of Forfeited Estates

The original legislation at Jacksonborough appointed five commissioners of forfeited estates to oversee the collection, auditing, selling, and accounting of estates confiscated, as well as collecting amercements. This was a large task. In order to ensure that the commissioners performed honestly, they were required to post sizable personal bonds to guarantee their fiduciary duty. This was a standard requirement of the period for offices involving financial transactions, but it was a personally onerous requirement that practically limited such offices to wealthy men. The original commissioners did not

⁴¹ Zeichner, "The Rehabilitation of Loyalists in Connecticut," , especially 319-20, 328.

⁴² Charles Atkins, 1785-34, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 135-36.

realize what a burden the confiscated estates would become. In fairness, the General Assembly also didn't realize it at the time.⁴³

The job was already huge. The Commissioners had to survey property (or rather, hire surveyors), check plats and land titles, advertise and organize public sales designed to bring in the largest number of potential purchasers possible, and keep impeccable accounts of all of the above. The real estate was one problem, but moveable property was another. Slaves were valuable property, and easily saleable at good prices. After the mass migration of African Americans out of South Carolina during the war, South Carolinians were eager to replace their slaves in order to rebuild their own plantations. But slaves were often scattered around, and accounting for them was difficult. Other valuable moveable property, such as plate, had the misfortune that it was moveable—and therefore hard to account for. It was also often stolen during the war. In the aftermath of the war, plate was property families could easily hide.

“Missing” slaves from confiscated estates were worth a lot of money to which the General Assembly wanted access. In order to regularize the process of retrieving this property, the Assembly passed Act No. 1160 in late March 1783 “obliging” all persons who controlled property in slaves, horses, cattle, other livestock, household furniture, and other easily moveable property to give a written return of the property they held to the local justice of the peace within three months (by the end of June 1783). The justice of the peace was responsible for publishing an advertisement describing the property in at least one Charleston-area newspaper. Property owners could then claim their property after reimbursing advertisement fees and a small fee for the justice's trouble. More

⁴³ Act No. 1153, “An Act for Disposing of Certain Estates, and Banishing Certain Persons, Therein Mentioned,” Cooper and McCord, eds., *Statutes of S.C.* 1: 516-21, especially articles 13, 14, 16, 17, and 20.

importantly, the law had teeth—harsh punishments for people who knowingly strove to “secret and convert” property. If found guilty, offenders forfeited double the value of the original stolen property. In a pointed barb at some troops, the order was read in front of all militia companies in the state. Thomas Sumter’s troops had, with his permission, paid themselves in confiscated slaves when ready pay was not forthcoming from the legislature. Such “payments” caused problems for the Commissioners of Forfeited Estates for years. Thomas Waring, one of the more stalwart Commissioners, complained in 1788 that certain articles on the books were never “Exposed to Sale” and explained the only way that seemed possible was that the items were “taken for the use of the Army & by Persons who were not Legally Authorized in so doing” which he reflected was “much practiced during the War.”⁴⁴

Collusion in families didn’t help matters. The records of the Commissioners, along with other sources, make it clear that families tried to preserve property for banished Loyalists (or at least keep it in the family). Stephen Deveaux kept at least seven of his brother’s slaves. He alerted the Commissioners he had them in Sept. 1783, a few months before the General Assembly moved Andrew Deveaux from the confiscation list to the amercement list. He claimed he reported them “agreeable to an Advertisement, I very lately saw in the newspaper,” but the timing suggests he suspected he had held them long enough to ensure either he or his brother would be able to keep them. Similarly,

⁴⁴ More evidence suggests that the Commissioners spent time trying to establish precisely what Loyalist property had been given to troops, even after the General Assembly acted to curtail future claims and guarantee those troops title to the property. Act No. 1160, “An Act to Oblige Persons Having Negroes or Other Effects, Not Their Own Property, in Their Possession,” Cooper and McCord, eds., *Statutes of S.C.* 1: 539-40. General Sumter, Congareers July 5, 1785, Box 2, Thomas Waring Sr. Charleston Aug. 14, 1788, Returns of Estates Campbell, McCartan-Clitherall, James, Box 3, Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH.

Elias Ball of Comingtee aided his cousin Elias Ball of Wambaw in keeping several slaves, and recruited the help of another Loyalist subject to confiscation to help.⁴⁵

In an effort to control these problems, the General Assembly continued to push for public advertisements. These laws were widely reprinted in local newspapers to ensure that everyone knew to whom they were supposed to turn in such property. Authorities also ran regular warnings that if people did not return the property, they would be prosecuted for stealing. Some people really did turn in slaves. Major William Mellwe proudly advertised that he possessed a “Negro man named Dick” whose owner was unknown. Mellwe added that he had captured this slave from William “Bloody Bill” Cunningham’s unit when Cunningham “murdered” a local Patriot party. For him, this was good self-advertising. Someone else turned in a slave named Boston (in Orangeburg District, South Carolina) to the local justice of the peace, as required. Another Justice of the Peace advertised two slaves of different masters. Others corresponded with the Commissioners of Forfeited Estates directly. James Moore wrote in May 1784 with some irritation asking “what you wou’d have me Do with the Confiscated Property (say A Brown & Aaron Loocock Negroes that I have in my hands).” His irritation becomes clear in the next sentence, when he pointed out he had “Expected an Order for them some Months Past, they Plague me.” A few honest souls even reported stray furniture, such as a “plain double Chest of Drawers, with brass furniture” left in one house in Charleston after the evacuation.⁴⁶

⁴⁵ Return of Stephen Deveaux, Sept. 17, 1783, Returns of Estates Campbell, McCartan-Clitherall, James, Box 3, Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH. Elias Ball to Elias Ball of Wambaw, Kensington, May 15, 1784, Ball Family Papers, 11-516-7, SCHS. John Gaillard helped Elias Ball with the slaves.

⁴⁶ March 11, 1784, Sept. 23, 1783, Nov. 11, 1783, Dec. 9, 1783, May 17, 1783, June 10, 1783, *South Carolina Gazette and General Advertiser*. James Moore to the Commissioners of Forfeited Estates, May 19, 1784, Forfeited Estates, Returns of Estates Campbell, McCartan-Clitherall, James, Box 3,

Commissioners were charged with surveying and selling the properties as expeditiously and profitably as possible. Both were big jobs. Land sales were widely advertised in local publications, and as broadsheets passed around and left in public places. In June 1783, the *South Carolina Gazette* carried advertisements for land sales in Camden and Ninety Six. To drum up interest, they reminded potential purchasers that they could use state indents to ‘discount’ the auction price. Advertisements also reminded those living in confiscated houses that they were legally required to move out within a month of the sale. To make life more complicated, they also reassured Loyalist families (and warned potential purchasers) that a new 1783 understanding allowed “families (say wives and children)” to stay until forty days after the next meeting of the General Assembly, at that time some six months away. And, just to add to the nightmare, on top of land and slaves (spread across the state), there were other odd bits of property to be disposed of. At various times, the Commissioners tried to sell pews, such as the “pew in the fourth ile of St. Michael’s Church” in Charleston. “Stock of different kinds” was also on offer at the auctions.⁴⁷

And those were just the problems that were immediately obvious! As the General Assembly moved to moderate the enforcement of the Confiscation Act, the Commissioners faced new complications. When the 1783 Assembly stayed the sale of confiscated properties belonging to persons who had petitioned for redress, it was the Commissioners who had to segregate their properties. When the Assembly moved more

Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH.

⁴⁷ June 24, 1783, *South Carolina Gazette and General Advertiser*. Circulars, Commissioners of Forfeited Estates, Folder 2, Box 5, Misc. Papers Relating to Forfeited Estates, Comptroller General Papers, S 126170, SCDAH. (Circulars are all over the varied collections of papers relating to the confiscated estates, but these are a representative sample.) St. Michael’s is an Anglican church in Charleston, and the pew was the property of Loyalist Thomas Phoepoe.

than 70 more Loyalists from the confiscation list to the amercement lists in 1784, the Commissioners were the ones who inherited the headache of supervising the transition. Just to make it worse, they had already sold some property that now was restored. While the statute recognized this, it provided that the Commissioners trade indents and bonds for the estates. All of this created a real administrative problem. Restoring previously sold estates also opened the Commissioners to complaints from Loyalists that their estates had not been valued correctly in the first place. John Gaillard, a very self-empowered complainer in later years, petitioned the General Assembly complaining the Commissioners had sold twenty-five slaves at “only about a third of their value.”⁴⁸

At the same time, frustrated authorities revisited the provisions affecting the sale of Loyalist properties. Notice of upcoming property sales was extended for two months before the sale, and commissioners were required to leave plats in the “neighborhood of the place where they are to be sold” with enough advance notice that residents could peruse them. They clarified their intentions to provide generous terms for financing these purchases, including two years’ credit with some secure bond. In addition, they arranged to allow any provable debts on the public to be discounted from the cost of confiscated property. All of these actions were intended to encourage buyers, and get the sales moving quickly.⁴⁹

The 1784 General Assembly also spent time trying to clean up the mess that the confiscated estates accounts were becoming. In 1783, legislation limited the time in

⁴⁸ John Gaillard, 1787-42, GA Petitions. Michael E. Stevens and Christine M. Allen, eds., *Journals of the House of Representatives, 1787-1788* (Columbia, S.C., 1981) 123-24. Entire sections of the confiscated estates accounting was devoted to “account currents respecting Restored Estates,” making the situation ever more complicated. For just one example, see the restored estate of Robert Wells, Restored Property, Box 1, Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, S 126170, SCDAH.

⁴⁹ Act. No. 1177, “An Act to Amend an Act Entitled ‘An Act for disposing of certain estates, and banishing certain persons, therein mentioned,’” Cooper and McCord, eds., *Statutes of S.C.* 1: 555-57.

which creditors could submit accounts against confiscated estates, while at the same time guaranteeing their right to such payments. Amidst fervent complaints, the time was extended again in 1784 for one more year, making the new deadline March 1785. (Predictably, some people would continue to make new claims after this date, but they were less successful.) The accounts were also getting confused because some people bought properties but never put up the money for them. The General Assembly took action in 1784 to make sure property buyers who had not made payment arrangements would see their properties sold again. They also settled a nasty dispute between two buyers by name who had each contracted for the same property. All of this goes to show what a nightmare running the confiscated estates was becoming.⁵⁰

Just to make it worse, the easy credit terms the Assembly provided in order to encourage widespread participation in land sales (allowing men of limited means to gain property) also ensured confusion. Purchasers were allowed to make small down payments, often guaranteed by other property. They then had five years to pay the rest of their debt. Buyers were supposed to deposit bonds with the Commissioners that were redeemable every year. These bonds added a lot of paperwork to the accounting—and that assumes they were paid on time. Instead, buyers neglected to deposit bonds at all, or stopped paying them. Collecting payment became an irritating and impossible job. In September 1783 the Commissioners ran an advertisement in the *South Carolina Gazette* not-so-gently reminding delinquent debtors that if they didn't pay by the first of November, the law would be "strictly in force." A stellar lack of success led them to

⁵⁰ All accounts were to be rendered by July 1783 under Act No. 1177, Cooper and McCord, eds., *Statutes of S.C.* 1: 556. Act No. 1222, "An Act for Allowing a Further Time to Render in a State and Proofs of any Demands Against the Confiscated Estates," March 26, 1784, Cooper and McCord, eds., *Statutes of S.C.* 1: 620. Act No. 1236, "An Ordinance for Amending and Explaining the Confiscation Act," March 26, 1784, Cooper and McCord, eds., *Statutes of S.C.* 1: 639-40.

continue badgering the public through advertisements in 1784. “Urg[ing]” purchasers to make bond seemed to be all they could do.⁵¹

Purchasers of confiscated estates often found they had paid too much for the properties. In the confusion of such a giant undertaking, some properties were not as represented in the advertisement. Others fell behind in payments, or stopped paying interest. Some of these purchasers quietly disappeared, but others petitioned the legislature for new terms of payment. Moses Glover was disappointed in his purchases from Gideon Dupont’s estate. He found two tracts of land not to his liking, and petitioned the General Assembly to release him from the contract (without losing his deposit). Others tried to quickly flip confiscated estates to new buyers, either because they couldn’t pay for the lands, or because they were looking for a quick profit. The Commissioners ended up recording and organizing those transactions as well. For example, Thomas Hallum purchased a confiscated estate from John Crumb, who had purchased it at a confiscated estate auction. The Commissioners recorded it in their records in 1784.⁵²

Amerced estates had their own complications. Amercement required the Commissioners to take an account of the entire estate in order to fairly decide the property value. Amercement was a flat percentage of the total value of the estate. As we

⁵¹ Sept. 23, 1783, Jan. 17, 1784, *South Carolina Gazette and General Advertiser*. To put it into perspective, every branch of government was having trouble getting people to pay their debts, or even record them. The Commissioners of the Treasury also resorted to threatening public notices to collect taxes. One notice complained that “very little regard” had been shown to previous requests. May 13, 1784, *South Carolina Gazette and General Advertiser*.

⁵² Stevens and Allen, eds., *House J. 1787-1788* 327. John Crumb, Sept. 18, 1784, Returns of Estates Campbell, McCartan-Clietherall, James, Box 3, Miscellaneous Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH. This group of records contains many other instances of transfers of confiscated estates, all for money. Examples include Richard Jones, Peter Taylor, Reubin Coleman, Martha Robertson, and Douglas Stark. While much of the Loyalist petitioner activity was generated by Lowcountry figures, land transfers favored the backcountry, especially the Loyalist-rich Ninety-Six District.

will see, amerced persons often disagreed with the valuation of their property. Further complicating matters, while most estates were subject to a 12% amercement, some were subject to a 30% rate. In later years, after many Loyalists were moved from confiscation to amercement, a few individuals were subject to different amercement amounts, further complicating the bookkeeping.

Like any other high office, being a Commissioner of Forfeited Estates was an honor. But the office very quickly became a burden for the officeholders, and they began to drop out one by one. Further, it became clear to the Commissioners that the situation wasn't going to improve.

Managing and selling confiscated estates was an irritating business in other states as well. But only South Carolina and Georgia faced the sheer volume of estate sales, and South Carolina still stood out for the number of official and unofficial reversals in policy that made keeping the books so maddening. Several studies of the sales of confiscated estates in Northern states indicate that most estates were sizable, and owned by absentees or committed Loyalists who ran off early in the war. Confiscated estate sales actually generated a sizable, if brief, historical literature as a way of testing the thesis that the sales of confiscated estates democratized landholding in the new United States, thereby spreading democracy. Certainly, most states devised relatively liberal payment terms for estate sales, balancing the desire to appease democratic interests seeking a chance for new landowners to enter the market with the ever-present need for ready money to fund new state governments faced with pressing financial needs, and a notoriously tax-averse population. A wave of historical studies quickly showed that in fact, confiscated estate sales did not lead to greater distribution of land across classes. Wealthy people lost large

estates, and despite caps on how much land could be sold as a parcel, wealthy people speculated in land.⁵³

In Georgia, confiscated estate sales got off to a robust start, with eight sales (events, not properties) by October 1782, a mere six months after the passage of their confiscation act. These sales raised almost £345,000. Like South Carolina buyers, however, many paid too much, and much more than their incomes could really support. Buyers were often unable to fulfill the purchase terms, and land ended up back in the hands of the Georgia Commissioners of Forfeited Estates, who had the saving grace of sharing the load among thirteen people, not five. (The down side was, thirteen people had to meet at the same time and agree with each other, which is why Georgia reduced the size of the board the following year.) But in early 1783, at the same time the South Carolina General Assembly began to halt confiscated estate sales, the Georgia Assembly also halted such sales. After pardoning several Loyalists and returning their estates, the commissioners continued to try to sell the remaining estates, as well as getting rid of all the estates that the Georgia legislature allowed over-extended purchasers to return and get their money back. Commissioners in Georgia, like those in South Carolina, also sometimes made individual judgments to suspend sales pending later legislative consideration.⁵⁴

⁵³ Examples include: Keeseey, "Loyalty and Reprisal: The Loyalists of Bergen County, New Jersey and Their Estates" , Brown, "The Confiscation and Disposition of Loyalists' Estates in Suffolk County, Massachusetts," , Yoshpe, *The Disposition of Loyalist Estates in the Southern District of the State of New York* , and Staughton Lynd, "Who Should Rule at Home? Dutchess County, New York in the American Revolution," *William and Mary Quarterly* 3rd. ser., 18, no. 3 (1961): 330-59. This line of inquiry originated in response to J. Franklin Jameson, who argued that banishing Loyalists helped end the iron grip of the colonial aristocracy, including through the democratization of land ownership. Jameson, *The American Revolution Considered as a Social Movement* .

⁵⁴ Lambert, "Loyalist Property in Georgia," 83-86, 89.

North Carolina's problems with confiscated estates also echo similar complaints. North Carolina, like South Carolina, lumped in two kinds of confisces: those who were named in a confiscation act, and those subject to confiscation under the Act of Pardon and Oblivion, which made those who had fled and not returned within a year subject to the provisions of the confiscation act. This complicated the books in North Carolina. North Carolina also had trouble keeping sales moving in later years, passing acts in 1784 and 1785 to compel sales of assets still on the books, and liberalizing payment terms (especially accepting state currency and soldier's pay certificates) in order to find new purchasers. Still, like South Carolina and Georgia, early sales did net North Carolina serious money to fund short-term needs.⁵⁵

Pennsylvania also used an organized system to sell confiscated estates, but instead of commissioners they used a standing committee of the legislature itself. Perhaps sharing the pain of administration with people in a direct position to complain about it and change it helped. It certainly didn't help make sales more timely, however. Unlike in North and South Carolina and Georgia, sales were slow at first, perhaps because the war was still in progress. Like South Carolina, however, sales continued for years, and the estate books show properties still being sold in 1790.⁵⁶

Plunder and fraud also complicated efforts to control forfeited estates in Massachusetts. While Massachusetts actually confiscated few estates, during the uncertain war years, residents and government officials took advantage of Loyalist

⁵⁵ DeMond, *N.C. Loyalists* 165-66, 173. By November of 1783, the North Carolina confiscated estates had generated more than £100,000 for the state's use.

⁵⁶ Siebert, *The Loyalists of Pennsylvania* 92-94.

absence and chaos to plunder estates. Unlike South Carolina, this did not later become a problem for formal administration, as few estates were later sold.⁵⁷

New complications arose in South Carolina in later years. Both the courts and the General Assembly began to recognize encumbrances on property, such as widow's and dower portions. (Georgia followed suit.) Women were able to recover property that had been sold under those legal terms. In some cases, courts ordered people who had purchased confiscated estates at auction to reimburse women, or divide the property. In either case, aggrieved purchasers discovered their new estates were worth much less than they had paid for them. Mary Miller sued in the Court of Chancery to recover her dower rights in the property due to a complicated situation in which her deceased husband was not the Loyalist in question, but had engaged in transactions with him during the prohibited time. When the court ruled in her favor, she sought to recover her share of the property from Samuel Beekman. Beekman had purchased the house and lot on Church Street in Charleston at a confiscated estate sale, expecting clear title. Aggrieved, he petitioned the General Assembly for help. Reminding them that he "bought the said House & Lott of land free from all incumbrance or any claim whatever," he asked for relief. The Court ordered him to pay her dowry at 420 pounds plus interest from November 1783, which was a "heavy charge" that was more than he had paid for the property.⁵⁸

Other kinds of claims also put the Commissioners of Forfeited Estates in the middle. Fenwicke Bull died during the war, and his estate was confiscated. His will left his property to his children. Some of his grandchildren by one daughter sought the

⁵⁷ Maas, *Return of Mass. Loyalists* 270-91, 313. Generally, the only estates that were sold were a few highly influential, well-known early, committed Loyalists.

⁵⁸ Adams and Lumpkin, eds., *House J. 1785-1786* 83-84. Lambert, "Loyalist Property in Georgia," 87.

property in 1785. Jacob Willeman had already purchased the property at auction because while the Commissioners were aware of the situation, they “did not deem themselves at Liberty to Stay the sale of the property of Fenwicke Bull, without having the authority of the Legislature.” The General Assembly did return the bonds to the grandchildren, in part because the “Fathers of the Children to whom this property now devolves, have by their faithful Services to this Country during the late War Suffered much in their property.” The Commissioners of Forfeited Estates were unfortunately involved at every step along the way, from the initial approach of the family, to providing the indents and bonds to the family after the legislature returned the property.⁵⁹

Joseph Adair was also upset to learn that property he bought in Ninety Six District (on which he wanted to live) for £75 from the Commissioners was legally claimed by the Loyalist’s son James White. James White informed him he owned the property under his father’s will. After “Consult[ing] Council” and discovering he had paid for a property he had no legal claim over, he petitioned the General Assembly for a refund of his purchase price and his expenses.⁶⁰

James Nassau Colleton was restored to his property in 1784, but still owed an amercement. He complained he could not pay the amercement until the Commissioners paid him for his property that had already been sold. The Commissioners didn’t pay him because he had made no move to pay his amercement, and they didn’t release bonds until they were satisfied it would end the account. Richard Dennis made similar complaints. The Commissioners never gave him bonds for his sold property, and even canceled some of the indents they had already given him. Squabbles between purchasers and other

⁵⁹ Adams and Lumpkin, eds., *House J. 1785-1786* 129.

⁶⁰ Joseph Adair, 1788-20, GA Petitions.

interested parties also made the confiscated estates accounts chaotic. In the backcountry, some of the confiscated estates were actually speculative claims purchased by Lowcountry Loyalists. In one case, the Loyalist speculator James Simpson gave casual verbal assurances to settlers on his property that they could settle, improve the land, and then buy the title on easy terms. Simpson's Tract, in Abbeville County, was confiscated as Simpson's property, to the great distress of the settlers.⁶¹

Even a cursory examination of the records of the Commissioners of Forfeited Estates indicates how large the task became. For instance, the records contain five boxes of plat records alone, recording the dimensions of each estate in order to sell it. Moses Kirkland commanded the Ninety Six Loyalist regiment and was named on the confiscation act as a person disowned for holding a British commission and being with the enemy (the second worst offense, as we saw in Chapter 2). He had good reason to believe that he might be hated for his Loyalist activities, as he actively engaged in military planning and operations well before the British took Charleston. He was especially reviled for planning Native American actions against the Patriots. He evacuated with the British and moved to Jamaica. He did not file a petition with the General Assembly, instead pursuing a claim with the British for his losses. Tragically for him, he died in 1787 on the journey to England to appear at a hearing for his losses. Moses Kirkland's estates had no clear encumbrances or any chance of them, and should have been sold immediately. Parts of it were certainly sold in the first two years, but his accounts were included in a later (1790) 'cleaning up' of accounts.⁶²

⁶¹ James Nassau Colleton, 1785-27, GA Petitions. Stevens and Allen, eds., *House J. 1787-1788* 168. Adams and Lumpkin, eds., *House J. 1785-1786* 325-26.

⁶² Plat of Moses Kirkland, Forfeited Estates Plats, Comptroller General Papers, S126102, SCDAH. Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, S

By 1786, the forfeited estates accounts lay in such disarray that a frustrated General Assembly ordered the Commissioners to “lay before this House an exact Account of all the Confiscated property sold by them” and otherwise account for all their transactions. Less than a month later, an evidently irritated Ways and Means committee reported that the forfeited estates had “large balances remaining unsettled which Very much embaras [sic] the Finances of this State,” and advised the legislature that “the said Commissioners be called in in the most pressing terms to have their accounts closed with all possible expedition.” In response, the General Assembly appointed a five-member committee to “examine the Accounts of the Commissioners of Forfeited Estates.” The committee reported that the account books were “so deranged by property being returned &ca.” that they could not make a full report. The committee of the General Assembly particularly complained in 1786 of people who had never given in bonds for their purchases, thereby depriving the state of years’ worth of interest. Further, by March of 1786, only 2 of 5 commissioners were actually serving, as others had stepped down without ever being replaced. The General Assembly again moved to fill at least one of those three spots, in an effort to regularize the accounts. The Assembly also recognized that being a Commissioner of Forfeited Estates was “very Troublesome.”⁶³

In 1787, the Commissioners reported on their books, and the General Assembly concluded they were now the picture of “neatness and propriety.” The books were deposited with the General Assembly and the Commissioners (both those currently serving and original members who had stopped) were finally paid fees owed them,

126170, Box 5, Folder 1, SCDAH. Edgar and Bailey, eds., *Directory S.C. House Rep.* 2: 380-82. Gregory Palmer, *Biographical Sketches of Loyalists of the American Revolution* (Westport, Conn., 1984) 466-67.

⁶³ Lark Emerson Adams, ed., *Journals of the House of Representatives, 1785-1786* (Columbia, S.C., 1979) 402, 462-63, 497, 517-18.

totaling more than two thousand pounds. Yet that did not close the matter. The impatient General Assembly gave the remaining commissioners a one-year deadline in 1788. Yet the records of the Commissioners of Forfeited Estates make it clear that attempts to settle and clear the accounts continued for more than a decade. The Commissioners found the indents for restored property especially trying. From 1788 to 1795, consistent entries in the accounts show payments for interest and bonds on properties sold in the heated days of 1782-1783. James Clitherall was still eagerly collecting interest in 1794, long after he had been forgiven even his amercement. David Guerard finally settled his claims with the Commissioners in March 1799. He paid off his amercement with interest only when forced. Cases that went to court took even longer. Even selling property took well into the late 1780s, with one sale in 1788 covering land and property from all over the state.⁶⁴

Managing the forfeited estates turned out to be a bigger job than anyone ever realized. The convoluted ways in which the General Assembly managed the task of punishing, and then forgiving, Loyalists made the job difficult. By examining these records and the experiences of the Commissioners of Confiscated Estates, we can see how chaotic and ad hoc the process of reconciliation really was.

⁶⁴ Stevens and Allen, eds., *House J. 1787-1788* 291, 364. Forfeited Estates, Restored Property, Indents and Receipts, Box 1, Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH. Circular Dec. 25, 1787, Commissioners of Forfeited Estates, Folder 2, Box 5, Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, SCDAH. Further testament to the trials of settling and even understanding the state of the confiscated estates accounts can be found in the records of a commission to adjust public accounts in the 1790s, which spent considerable time trying to reconcile these records. Letterbook, Commission to Adjust Public Accounts, S 126106, Comptroller General Papers, SCDAH.

Try, Try Again: Petitioning for Removal from Confiscation, 1785-1810

What happened to Loyalists who were still subject to confiscation after the 1784 restoration legislation? Since the mass legislation in 1784 that offered clemency to many former Loyalists was meant to be the final decision, the General Assembly handled far less Loyalist business later. Clearly, Loyalists did occasionally receive clemency in later years, but these cases were few and far between. From 1785 on, only six men still living had their names removed from the confiscation and banishment list by official act. (Another handful of estates received relief on behalf of family members, but no other Loyalist profited from those arrangements, as these arrangements favored sons and widows of deceased persons in most cases.) A few other Loyalists gained some official legislative amelioration in official reports or readings of bills that were not enshrined in official acts. For instance, Benjamin Wofford and “inhabitants of Spartanburg County” petitioned in 1789 for Wofford’s return. Wofford himself was originally from Maryland, but he served in Robert Cunningham’s Ninety Six Brigade in the heat of the civil war in the backcountry. At some point after the Revolution, he moved to Spartanburg County, South Carolina, where he established himself as a good neighbor—a good citizen in the daily interactions that defined this for most Americans. The 1790 census indicates he owned nine slaves—a substantial stakeholder in white society. Despite official banishment, he felt safe enough to acquire new property in the state. In 1792, he openly wrote that “your Petitioner Never left the State but Returned to his family where he now lives” and chose to rely on the “Merccy of his Contry.” Once upon a time this sort of admission would have inflamed a General Assembly jealous of its new, post-Revolution

authority, but now it served to reassure. The committee concluded his status should be regularized, but for whatever reason the law was never published. Perhaps it was merely an oversight, or perhaps since he had been content to live for so many years without legal status, the Assembly felt it was better to let the situation continue without official comment.⁶⁵

While in 1784, Loyalist petitioners were handled as a group, after 1785 the General Assembly used individual acts to enact clemency—a sign that the Assembly had no intention of offering clemency to very many people. These individual acts were sometimes fine-tuned to allow property restoration or citizenship, but not both. For instance, Edward Fenwicke was relieved from confiscation by a special act in 1785. While he was given his property, he was not returned to citizenship, but given twelve months to resolve his affairs and leave. (Fenwicke had very powerful supporters, and chose to petition again in 1786, at which time he was also granted the right to reside in South Carolina.) James Nassau Colleton slipped into the midst of an act regulating continuing financial problems for the confiscated estates accounts in 1786.⁶⁶

⁶⁵ Benjamin Wofford petitioned in 1789 and 1792 for clemency. In 1789, the General Assembly favored him by reading a bill lifting confiscation, but it disappeared after only one reading, never becoming law. In 1792, he was more successful. Michael E. Stevens and Christine M. Allen, eds., *Journals of the House of Representatives, 1789-1790* (Columbia, S.C., 1984) 196. Benjamin Wofford and inhabitants of Spartanburg, 1789-110, 1792-99, 1792-162, GA Petitions. Michael E. Stevens, ed., *Journals of the House of Representatives, 1792-1794* (Columbia, S.C., 1988) 108, 120. Dec. 11, 1782, Committee Report 1792-100, Committee Reports, Papers of the General Assembly, SCDAH. United States. Bureau of the Census. and United States. Census Office. 1st census 1790., *Heads of Families at the First Census of the United States Taken in the Year 1790: South Carolina* (Baltimore, 1966) 86.

⁶⁶ Feb. 5 and 9, 1785, Governor's Messages, Records of the General Assembly, SCDAH. Edward Fenwicke, 1786-54, GA Petitions. Committee Report on Edward Fenwicke's Petition, 1786-11, GA Petitions. Act No. 1302, "An Act to Exempt Lachlan Mackintosh from the Amercement of Twelve Per Cent," March 11, 1786, Cooper and McCord, eds., *Statutes of S.C.* 1: 721. Act No. 1378, "An Act to Exempt William Bull from the Pains and Penalties to Which He is Liable by Several Acts of the General Assembly," March 28, 1787, Cooper and McCord, eds., *Statutes of S.C.* 5: 44. Act No. 1338, "An Act to Amend the Confiscation Act; and for Other Purposes Therein Mentioned," March 22, 1786, Cooper and McCord, eds., *Statutes of S.C.* 1: 758. Act No. 1519, "An Act to Exempt John Fisher and Malcolm Brown from the Pains and Penalties of Confiscation and Banishment," Cooper and McCord, eds., *Statutes of S.C.* 5: 184-85.

John Champneys petitioned repeatedly for clemency and economic restoration, using new strategies each time, until he finally was given the right to return to the state in 1789. In 1785, he asserted his right to twelve months' safe passage under the "Definitive Treaty of Peace." He was also entitled to return in order to seek a trial under post-Revolutionary law. He asked for clemency and citizenship, insisting he was "desirous of passing the remainder of his days amongst his Family and Friends, in a Country to which he wishes to be bound in future by the strictest ties of Allegiance." In his quest for citizenship, he favored personal ties over political loyalties, seeking to make his home among "Family and Friends" whom, with the experience of loss and war, he understood to be worthy of the "strictest ties of Allegiance." Since he left before Charleston was occupied, he had sold most of his property before leaving, limiting the amount the state had confiscated and therefore the amount they would lose by pardoning him. He did lose a wharf, which he did ask to get back. In 1787, his wife petitioned on his behalf, this time using a different strategy. She requested that he be allowed to return long enough to settle his affairs and escort her and their children back to England. Despite her request only for safe passage, she made an argument for his widely recognized good character. "Several Members of your Honorable House can testify his return will be agreeable to Nine tenths of the Good Citizens of the State who know him." She submitted petitions from individuals willing to support his petition. Since the petition no longer exists, there is no way to know how many individuals supported it, but there is a committee report on "the petition of many citizens" the following year. John Champneys finally got some relief in 1789. Newly empowered, and confident of his persuasive powers, he

immediately began another multi-year petition drive to settle bonds for a slave confiscated in another man's estate.⁶⁷

By the 1790s, the generosity of the General Assembly in pardoning and restoring property gave rise to expectations from men who had been very active in the Loyalist cause. John Wells, a Charleston artisan, was an active, committed Loyalist (which is why he ended up on the confiscation list). When the British occupied Charleston, John Wells harassed and intimidated several fellow artisans into signing the congratulatory address to Clinton and Arbuthnot. Thomas Elfe, for instance, testified in his petition for clemency that he only signed the address after "being Severely threatened by John Wells." John Wells fled for England at the end of the war, and pursued claims with the British Loyalists Claims Commission. When he claimed compensation from the British, he asserted he had "embraced the earliest opportunity of manifesting his Attachment to his Majestys Government" and took a commission under Col. Balfour. He didn't bother to

⁶⁷ Adams and Lumpkin, eds., *House J. 1785-1786* 118. Stevens and Allen, eds., *House J. 1787-1788* 155. John Champneys, 1785-38, 1789-83, 1789-31, Mary Champneys, 1787-39, GA Petitions. Committee Report on the Petitions of Many Citizens on Behalf of John Champneys, 1788-164, General Assembly Committee Reports, Records of the General Assembly, SCDAH. His wife purchased a slave from Alexander Harvey, who was confiscated as Loyalist property. She managed to keep the slave in her possession for years, not petitioning until 1790. In 1793 they received title to the slave. John Champneys, 1790-20, John and Mary Champneys, 1793-20, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 83. William Greenwood, 1785-18, 1786-55, 56-1789, 1791-114, GA Petitions. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 338-40. Adams and Lumpkin, eds., *House J. 1785-1786* 235-36. Palmer, *Loyalist Biographies* 340. "Fat sheep" refers to a comment by Alexander Garden, who claimed that members of the General Assembly cried upon hearing some wealthy names "a fat sheep. Prick it!" A General Assembly committee actually approved allowing Greenwood to return for 12 months in 1789, but the larger legislature did not approve full clemency until 1791. General Assembly Committee Reports, 1789-41, S165005, SCDAH. Michael E. Stevens and Christine M. Allen, eds., *Journals of the House of Representatives, 1791* (Columbia, S.C., 1985) 300. For other examples of these strategies, see James Carsan, James Keith, Charles Atkins and Zephaniah Kingsley. Petitions of James Carsan, 55-1785, 51-1786, 85-1787, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 235-36. Stevens and Allen, eds., *House J. 1787-1788* 130-31. James Keith, 1783-145, 1785-19, William Keith, 1784-3, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 82-83. Charles Atkins, 1785-34, Elizabeth Atkins for Charles Atkins, 1783-348, GA Petitions. Zephaniah Kingsley, Adams and Lumpkin, eds., *House J. 1785-1786* 157-58, 440. Benjamin Legare to Commissioners of Forfeited Estates, March 5, 1785, Box 4, Misc. Papers Relating to Claims on Estates, Commissioners of Forfeited Estates, Comptroller General Papers, S 126170, SCDAH.

submit a petition for clemency in South Carolina, and he was not included in the 1784 act. He finally petitioned in 1791 and 1792, asking for permission to return. He didn't even apologize and did not try to explain away his Loyalism. In fact, he did not address it directly, merely admitting his name was on the list, but the "same Reason" no longer existed for this punishment. One historian of the petitions calls this an "audacious request," but apparently the General Assembly did not find it so very audacious. They allowed him to return to the state without comment, but did not restore his property, splitting the difference.⁶⁸

Paying Just Debts?: Petitioning Away Amercement, 1783-1810

As we saw in the beginning of this chapter, Philip Porcher tried to get out of paying his amercement within a year of his removal from confiscation. One might think that having been restored to the bulk of his property, he would cheerfully pay a 12% tax in order to resolve his situation. Yet he, and many others like him, did not. Despite being a wealthy man recently blessed by the forgiveness of his peers, he worked hard to get out of paying his amercement. In February of 1785, he told the General Assembly that due to "the scarcity of Coin" and the "General Calamity at Santee" (crop losses), he was unable to pay his amercement "without reducing his Family to the greatest Distress."

⁶⁸ Senate Journal Jan. 28, 1783, SCDAH. Thomas Elfe, 1783-43, GA Petitions. Patrick Hinds made similar allegations in his petition. Patrick Hinds, 1783-9, GA Petitions. Loyalist Transcripts as quoted in Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 92. John Wells, 1791-231, 1792-83, GA Petitions. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 91-92. Act No. 1571, "An Act for Relieving and Exempting John Wells from Banishment," Dec. 21, 1792, Cooper and McCord, eds., *Statutes of S.C.* 5: 224.

He offered that he had “been Endeavoring” to gather the money in time to meet the March 1785 deadline, but was unable to do so. In his defense, he reminded the legislature that in 1777 and 1778 he lent the state more money than he currently owed. Out of motives of kindness, might they not “allow him a Discount” on his full penalty, or find some other “Relief”? They offered to reduce his outstanding penalty by the amount of his indents from 1777-78.⁶⁹

Amercement was intended as a lesser penalty for prominent Loyalists who had committed offenses against South Carolina. Originally, just over 15% of those mentioned by name were amerced. Officially, the Assembly distinguished between passive support for the British (leading to amercement) and active support for the British (leading to confiscation), although the actual difference was much less clear. (By this, I mean that people ended up on one list or another, or none at all, for the same official actions, as we saw in Chapter Two.) Over seventy men were moved from the confiscation list to the amercement list in 1784, bringing the total number of men subject to amercement to more than one hundred and thirty. The Commissioners of Forfeited Estates had already sold some property of men in this group, making their financial fate more difficult than simple amercement. In addition, while the majority of amerced men faced a 12% payment, a few faced more confiscatory rates between 25% and 30%. In a few other cases, the Assembly carefully tailored the rates to the offense (or to the ferocity of personal support each Loyalist could muster). Colonel John Harleston was listed in some sources as being subject to a 12% amercement, but the Senate actually only amerced him 5%. (He was a difficult subject for the House of Representatives because

⁶⁹ Adams and Lumpkin, eds., *House J. 1785-1786* 107-08, 134. Stevens and Allen, eds., *House J. 1787-1788* 487.

one of his daughters married Edward Rutledge, Speaker of the House at Jacksonborough.)⁷⁰

Men newly subject to amercement under the 1784 law, as well as those who had always been subject, were given until March 1785 to pay their amercements in full with specie. South Carolina faced an economic recession in 1785. A series of crop failures, changes in the world market, and the usual colonial crises of specie availability conspired to make this deadline difficult. Debtors (most South Carolinians) faced a situation where they could not pay back their debt in specie. Angry debtors closed courts to stop them from issuing judgments and forcing the sale of properties. In this atmosphere, paying debts was genuinely hard. However, there was a cynical and opportunistic edge to Loyalist appeals to be spared amercement. Many of these men had joined other planters in rapidly replacing their slave work force, entailing a dramatic expansion of their debt to foreign merchant houses. Some appealed every year trying to find a way out of paying anything on their amercement, using one tactic after another.⁷¹

Amercement laws were intended to raise money from Loyalists while sparing them the bulk of their wealth. They were not intended to be so modest as to require no pain. Loyalist petitioners were unwilling to sell any property to satisfy their

⁷⁰ Adams and Lumpkin, eds., *House J. 1785-1786* 187. Palmer, *Loyalist Biographies* 307, 485-86. Benjamin Mathews' case makes little sense, as he was imprisoned by the British for 13 months after the fall of Charleston, yet was amerced anyway. Perhaps part of the explanation lies in the fact that he violated the Non-importation Agreement quite publicly in 1770. For differing amercements, see Free Conference Comm. Hearings.

⁷¹ Act No. 1299, "An Act for Restoring to Certain Persons, Therein Mentioned, Their Estates, Both Real and Personal, and for Permitting the Said Persons to Return to this State," Cooper and McCord, eds., *Statutes of S.C.* 1: 624-26. In 1785 and again in 1787, the General Assembly passed stringent temporary measures to stop the collection of debts, protecting debtors who could not pay in specie. The 1785 act kept creditors from using the courts to collect debts, and the 1787 act allowed debtors to pay in installments over three years. In 1785, the General Assembly opened county courts in the backcountry, as they had been planning to do since the end of the Regulator movement. However, the timing ensured that the courts opened just in time for massive debtor prosecutions, and many county residents promptly moved to close the new courts. Klein, *Unification of a Slave State* 126-39.

ameracements, regarding their payments as negotiable. In March of 1787 an aggrieved General Assembly appointed a member to look into whether anyone, including the Commissioners of Forfeited Estates, was pursuing and prosecuting people who hadn't paid their ameracements. William Valentine, who was moved from confiscation to ameracement in 1784, was quite taken aback to be arrested in December of 1787 for not paying his ameracement.⁷²

Of the approximately fifty individuals originally subject to ameracement, at least sixteen (or 30%) petitioned the General Assembly in 1783 to have their ameracements dropped. Unlike petitioners subject to confiscation, who petitioned in a steady stream throughout 1783 and 1784, only one more individual petitioned for relief from ameracement in 1784. While this represents an appreciable number, it is significantly less than the percentage of confiscated men who petitioned for clemency. This suggests that men on the ameracement list largely recognized that they had been spared, since many of them were in fact given that punishment as a compromise position.⁷³

The other fact that stands out is that only one of the sixteen submitted a petition from supporters. "Sundry Inhabitants of Johns Island" petitioned on behalf of John Freer. They reiterated they knew "of no Act that he has Committed whereby to deserve, Amercement, unless his having taken British protection." He did get a chance to present evidence at the winter meetings of the Free Conference Committee.⁷⁴

⁷² Stevens and Allen, eds., *House J. 1787-1788* 196, 324-25. William Valentine, 1788-17, GA Petitions.

⁷³ Isaac Rippon petitioned in both 1783 and 1784, and was the only ameracement petitioner in 1784. Isaac Rippon, 1783-185, 1784-44, GA Petitions.

⁷⁴ Inhabitants of Johns Island on behalf of John Freer, 1783-270. Thompson and Lumpkin, eds., *House J. 1783-1784* 160, 72. John Freer, 1783-125, GA Petitions. No. 3 John Freer (On the Amercement), Free Conference Comm. Meeting.

William Price petitioned for relief from amercement without spelling out what kind of relief would be acceptable. He attempted to explain two things: why he took protection to begin with, and why he failed to take advantage of Governor Rutledge's 1781 offers to come back to the American side. He had been a Patriot before the reduction of Charleston, serving as a member of the General Assembly in 1779 and 1780. Like other prominent Patriots, he was a target of the British, and he succumbed. He did point out that he was initially refused British protection thanks to his "attachment" to the American cause, and that he would not have taken protection "but for the Example of the greater part of the Citizens of this State, Especially Some who had held high offices therein." Very few people dared to make claims like this in 1783 when petitioning for redress from confiscation, but amercement petitioners felt much bolder. However, arguing that some high officers had also taken protection was true, but risky. Like confiscation petitioners, he addressed his own "Violent fitt of Sickness" as an excuse, but for not coming out under Gov. Rutledge's proclamation, not as an excuse for taking protection. Knowing that one justification for the Amercement Act was to recoup money that Patriots had spent on war demands, he rushed to emphasize that he "Complied with the Law in furnishing a Substitute."⁷⁵

Given the claims of amercement petitioners, it becomes clear that many of them found their way to the amercement list because they did come back to the American side before the evacuation at Charleston, but later than the time specified in Gov. Rutledge's 1781 Proclamation. In some cases, they came out after the Jacksonborough Assembly,

⁷⁵ William Price, 1783-75, GA Petitions. Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 584-85. For another example, see John Wells, 1783-346, GA Petitions. William Price's lead witness later testified that he lived as a "Recluse" to avoid the company of the British. No. 8 Price (on Amercement), [not clear whether William or Thomas], Free Conference Comm. Meeting.

and used that action to protest a right to be removed from amercement (while beefing it up with other claims). James Bentham came out on Aug. 7, 1782 under “Gov. Mathew’s protection And has since been doing duty on Edisto Island.” At other times, petitioners argued that their amercements should be lifted because they had fulfilled the terms of the original proclamation. Thomas Radcliffe Junior argued that because he had “availed himself of the Governors proclamation, and Joined his Countrymen in August last,” he should be “relieved from the pains & penalties” of the Amercement Act.⁷⁶

In early March 1785, the committee concluded that while forty-eight people were originally amerced, eighteen had already been released from their amercements by the previous session. To regularize the process, the committee suggested lifting the amercement on all individuals who were subject to it by 1782 legislation, since the two groups did “not appear to be distinguished” except by some “being more fortunate in obtaining a decision on their Cases.” The committee read aloud the names of the thirty-one men still subject to amercement (including Daniel Horry). After the reading, the House of Representatives rejected the committee’s decision by a 66-39 vote—a dramatic victory for those who still wished to punish Loyalists.⁷⁷

At first, the General Assembly drew sharp distinctions between those men who had always been amercees and those who came to that punishment as a relief from confiscation. Both the committee and the entire House of Representatives agreed that “it would be inexpedient to grant them [former subjects of confiscation] any farther indulgence” except to grant all of them an extension for paying. Some men who held state debt would be allowed to settle their accounts with that debt, but otherwise the 1785

⁷⁶ Thompson and Lumpkin, eds., *House J. 1783-1784* 98-99. William Doughty, 1783-117, John Harleston, 1783-378, GA Petitions.

⁷⁷ Adams and Lumpkin, eds., *House J. 1785-1786* 186-88.

General Assembly held the line on greater forgiveness. And yet, they still exempted a few petitioners from even this amercement, while insisting that they would not. The Assembly gave themselves rhetorical immunity by asserting that these men had been “amerced by wrong information, or the want of information,” but this seemed to be as much a ruse to get the bill to pass over the objections of members who wanted to punish Loyalists than a real reason.⁷⁸

In the light of the increasing warmth of the General Assembly towards former Loyalists, several Loyalists who had been moved from the penalty of confiscation to the penalty of amercement tried again after 1785. Even as unlikely a figure as John Cunningham, a member of the infamous Cunningham family, petitioned for removal from confiscation in 1786. He had the decency to at least rhetorically acknowledge the “lenity and goodness” the body had already shown him in “makeing him only liable to a small Emercement.” Still, he argued that no punishment was really fair, since his only “misfortune was, that he was Brother to and nearly related to several men of the same name, who were very active against this country.”⁷⁹ In 1783, his petition for clemency from confiscation was turned down flat by the legislature. With the general warming, he succeeded in getting clemency in 1784, and then waited a mere two years before beginning his campaign to get out of paying his amercement.⁸⁰

Robert Murrell Jr. petitioned for the legislature to “Relieve him from the Pains and Penalties of the Amercement he now lies under” less than a year after he was

⁷⁸ Adams and Lumpkin, eds., *House J. 1785-1786* 186-88., 230-31.

⁷⁹ John Cunningham, 1787-51, 1786-25, 1786-27, 1789-19, 1791-99, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 436. Stevens and Allen, eds., *House J. 1787-1788* 153, 458. Lorenzo Sabine suggests he was a commissary. John Cunningham, like others with weak cases, also made application to the British Loyalist Claims Commission for his losses, claiming £2,316 sterling. Lorenzo Sabine, *The American Loyalists, or Biographical Sketches of Adherents to the British Crown in the War of the Revolution* (Boston, 1847) 235. Palmer, *Loyalist Biographies* 195.

⁸⁰

removed from the confiscation list. He lamented the injustice that he was “punished with disgrace” by such public disapproval, but he suggested that had his case been fairly known, the 1784 General Assembly would have removed him from any penalty. He argued that his actions during the war had been “Misrepresented” and that he had now managed to convince his local representative to the Jacksonborough Assembly of this error. His supporters concurred that he was innocent of the charges. Further, he charged that a local member of the committee who knew his “Character & Conduct” was unable to attend his hearing. Given these facts, forty-eight supporters wished the legislature would not “let the Innocent suffer with the Guilty.” In the growing spirit of generosity, the General Assembly lifted his amercement.⁸¹

Some petitioners spent years in complicated legal and economic maneuverings trying to get out of their amercements. James Clitherall was unusually determined and obnoxious in his constant appeals to the General Assembly. Having gotten out of confiscation, he then petitioned the General Assembly to remit the duty on slaves he was bringing back into South Carolina from St. Augustine. Then, he wrote a querulous petition seeking to offset his amercement with payment for confiscated property that had already been sold, and with a revaluation of his slaves. He complained that his slaves were being valued at three times as much as his seized slaves had been sold for. In short, he didn’t sound like a penitent at all, but rather like a lawyered-up businessman pressing home his advantage. By 1786 and 1787 he was trying to get indents from the Commissioners of Forfeited Estates before paying his amercement. In 1787, he sought the money from twenty-seven slaves who were sold by the Commissioners, along with copious personal items. He further continually argued that his property should be valued

⁸¹ Adams and Lumpkin, eds., *House J. 1785-1786* 106-07, 228, 235.

at the rate it was sold for in 1783 and 1784, rather than current prices. James Clitherall continued to petition over his confiscated property values and amercement problems through the 1790s.⁸²

Overall, amercement was a halfway house solution that enabled the General Assembly to punish former Loyalists while allowing them to live freely in the state and rebuild their lives. Amercement was also intended to fill state coffers, if less quickly than confiscation could. Yet despite efforts to hold the line on amercements, many people were eventually able to get away with paying nothing at all. Others harassed the General Assembly with one specific request after another, conspiring to reduce the amount they eventually had to pay through a series of individual recalculations of their debt.

The Special Case of Women: Gallantry Meets the Desire for Clemency with Deniability

As I discussed in Chapters Two and Three, the original Confiscation Act deliberately took property without regard to the claims of women or subsequent generations. The intent was to disown children and strip entire families of wealth as a punishment for their sins. Further, this made titles more secure and increased the total amount of property available for sale to benefit the state. The original intent of the act, as written on paper, seems clear. Women and minor children were entitled to basic maintenance in lieu of their property, so that no one would starve (or have to support

⁸² James Clitherall, 1783-189, 1785-66, 1785-75, 1785-47, 1786-34, 1787-34, 1791-92, 1792-185, 1793-67, 1794-22, 1794-137, 1794-111, 1798-30, GA Petitions.

them). They were entitled to nothing further. Yet very quickly, sympathy for women caught by the act worked on the consciences of the legislature. And with the mass restoration of property in 1784 to a majority of petitioners, it became more difficult to deny the claims of women.

Some members of the elite had reservations about complete family confiscation from the beginning. Arthur Middleton, South Carolina's representative to Congress, mourned the "inhuman Sentence of visiting the Sins of the Fathers upon the guiltless women, [and] Children." As we saw in Chapter Three, women were not considered to be political actors required to choose, and therefore had committed no crime. "Reducing a whole family for the Sin of one" was unconscionable. It also might be expensive, as women were cast onto their friends and relations for support.⁸³

In a move to ameliorate the conditions for Loyalist families, the General Assembly also codified more generous arrangements for them into law in 1783. Household goods, clothing, household (but not field) slaves and carriages and horses to draw them were guaranteed for these families. This was far more generous than the Confiscation Act, which had merely suggested a modest pension for such families. It is likely that in practice, women and children were already being allowed such niceties, and that this law codified a growing practice. Still, it was a definite loosening of the idea behind total confiscation: punish entire families and drive them out of South Carolina in retribution for the sins of Loyalist fathers and husbands. This new recognition of limited property reservations for Loyalist families is suggestive. First, for wealthy families, this property was worth a sizable amount. Property in slaves was valuable, and horses and carriages were the trappings of a very comfortable life. Wealthy families provided their

⁸³ Arthur Middleton to Aedanus Burke, April 7, 1783, Barnwell, "Middleton Corr. Jan. 1926," 29.

daughters with slaves in marriage petitions and inheritances. The bill also protected “plate.” Household plate, linens, and clothing were traditionally female-owned property in early America. In less wealthy households, women’s moveables might be worth as much as the real estate, which was men’s property. Moveables were passed through the female line as part of women’s dower and marriage portion, and were recognized as women’s property. Historians of colonial New England have found that specific objects such as silver cups and chests were emblazoned with women’s initials and passed through the family line mother to daughter. This understanding fueled the General Assembly’s backtracking on confiscating property from the entire family.⁸⁴

Loyalist families deliberately left women living on family estates after the male householder fled, knowing that their presence would discourage sales. Margaret Cunningham stayed behind to guard her family’s property, ultimately successfully petitioning to protect “the Tract of Land on Rayburnes Creek Containing Two Hundred Acres, whereon she formerly lived.” The Assembly gave the imprimatur in 1785 to a situation they had tolerated unofficially for three years previously. Margaret Cunningham’s case proves the importance of ‘squatter’s rights.’⁸⁵

⁸⁴ Thompson and Lumpkin, eds., *House J. 1783-1784* 382. Act. No. 1177, “An Act to Amend an Act Entitled ‘An Act for disposing of certain estates, and banishing certain persons, therein mentioned,’” March 16, 1783, Cooper and McCord, eds., *Statutes of S.C.* 1: 555-57. Laurel Thatcher Ulrich, “Hannah Barnard’s Cupboard: Female Property and Identity in Eighteenth-Century New England,” in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, ed. Ronald Hoffman, Mechal Sobel, and Fredericka J. Teute (Chapel Hill, N.C., 1997). 251-63, 271. In colonial New England, the stock of moveables was growing along with the consumer revolution in goods. South Carolinians were the wealthiest colony on the eve of the Revolution, and the Confiscation Act favored wealthy individuals. The total value of the plate, linens, furniture, and other female property must have been sizable.

⁸⁵ Margaret Cunningham, 1785-6, GA Petitions. Adams and Lumpkin, eds., *House J. 1785-1786* 78, 167-68, 188. Andrew Cunningham Plat for 1,000 acres in Berkeley County, Colonial Plat Books (Copy Series), vol. 9, pg. 208, Andrew Cunningham Plat for 100 acres in Berkeley County, Colonial Plat Books (Copy Series), vol. 11, pg. 373, other plats recorded in other counties. Andrew Cunningham, File No. 1686B, Reel 29, Frames 488-, Accounts Audited of Claims Growing out of the Revolution in South Carolina, 1775-1856, SCDAH. For just one of his many legal claims before the Revolution, see Gov. Charles

Henry Laurens tried to help several women of his acquaintance regain family property in South Carolina and Georgia. In helping Elizabeth Stead Izard regain Georgia property (after a fortuitous marriage saved her South Carolina estates), Laurens opined it was not possible that any American legislature intended to hurt the “Female Orphan.” In the “Pell Mell, [the General Assembly] confiscated every thing that could be denominated British” but would think the better of it later. He pledged to “do or attempt” anything that would help the family regain at least a share of the property.⁸⁶

Anne Burn, the widow of merchant John Burn, also sought Laurens’s help. He tried to get her to find another advocate, but did opine, “I cannot believe that the property of the innocent Widow & Children of a Man who was also unoffending has been wrested from them.” He counseled that surely some provision would be made for dependents. He termed it a “proper Reservation in favor of the Family” but did not detail what percentage of the estate that might be. Some applicants echoed Laurens’s objection to punishing one individual for the crimes of another. Charles and Elizabeth Atkins were able to collect property from South Carolina (at the same time as Charles received a British pension) in part due to her argument that it was never “the Intention of the Legislature to reduce to abject Poverty, a Wife, or Child, for the Conduct of a Husband, or a Father.”⁸⁷

Montagu v. Andrew Cunningham, Box 96A, Judgment Roll of the South Carolina Court of Common Pleas (Charleston), SCDAH.

⁸⁶ Laurens to Alice Delancey Izard, Paris, June 5, 1783, Henry Laurens et al., *The Papers of Henry Laurens*, 16 vols. (Columbia, 1968-) 16: 204-05. Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 373-75. Izard’s efforts to regain her property were also complicated by the fact that the Georgia property was sold by early January 1783.

⁸⁷ Laurens to Anne Burns, London, Aug. 8, 1783, Laurens et al., *The Papers of Henry Laurens* 16: 247. *House J. 1785-1786*, 158, 252. The only petitions from her in the petition series are in 1783 (1783-124, 1783-348, Petitions to the General Assembly, SCDAH), and they are very similar in wording to the one introduced on Feb. 28, 1785. Her husband petitioned separately for the right to return and enjoy all of his

Later generations of jurists also were uneasy with the original decision to affix families with the sins of the father. The North Carolina Supreme Court concluded in 1787 that “such disabilities in their nature were merely personal” and not properly transferred to others “by descent.” Loyalist descendants were entitled to the right to sue for possession of property they would otherwise have inherited because otherwise they would lose their own guaranteed right to trial by jury. Interestingly, North Carolinians decided this despite a 1785 North Carolina law establishing “secure” possession of purchased confiscated estates for their new purchasers.⁸⁸

Very few women actually claimed dower rights in the first wave of petitioning that took place in 1782 and 1783. Women submitted petitions for their husbands or other male relatives, but rarely made specific claims for their separate property rights. In the first round, families tried to get everything back. Florence Cook was unusual in trying a strategy that cut her husband out so early and even she was not willing to do so entirely. It was in later rounds that women, often with the help of paid legal talent, made claims based on their separate property rights. This timing is proof that women’s separate property rights were a way to get around the intent of the law. Women offered the argument in their petitions, and the legislature was pleased to seize the opportunity to give back some property while still punishing male Loyalists.

Wealthier women also asserted their property rights as daughters and sisters whose traditional portions and marriage settlements became prey to the insecurities of confiscation. Coverture, the traditional legal belief that women’s legal identity was subsumed in their husband’s after marriage, already had limits in South Carolina.

property. Charles Atkins, 1785-34, GA Petitions.. Adams and Lumpkin, eds., *House J. 1785-1786* 135-36. Palmer, *Loyalist Biographies* 28.

⁸⁸ *Bayard v. Singleton*, 3 N.C. 42.

Wealthy fathers wanted to ensure that their daughter's sizable marriage portions and inheritances protected them, and therefore were willing to recognize protections for women's property under law. Jane Villepontoux petitioned the 1786 General Assembly to regain her inheritance from an uncle. Her brother Gideon Dupont Jr. was a Loyalist whose estate had been confiscated. He was also her guardian at the time she inherited, and her inheritance became mixed up in her brother's affairs. She hoped the legislature would pay her the value of her inheritance out of the proceeds of her brother's forfeited estate, which had already been sold for more than £10,000. Since she was able to produce a bond from her brother dated before the Revolution (although it was sent from England years later), she was able to obtain restitution from bonds on the Commissioners of Forfeited Estates.⁸⁹

Women's property rights also might be used as a way to retitle assets during war. John Tunno, a Loyalist merchant in Charleston, fought with the British from early in the war. While he was living in Charleston in 1781 under British rule, he married Margaret Rose, whose father John Rose was also a Loyalist. Rose offered a sizable marriage portion by bond on October 21, 1781, but due to "the Situation this Country has been in" was not able to offer cash. John Rose left the city in late 1782 with the British transports. John Tunno and his new wife Margaret also prepared to leave the city, and signed the bond over to William Blacklock for consideration. Blacklock first pestered the Commissioners of Forfeited Estates to pay up, then turned to the Assembly in 1786 after repeated denials. Despite the usual protections for women's property, this case had the problem that Margaret Rose was not the petitioner, and she lived in England. Accordingly, a joint Senate-House committee rejected the request because "it

⁸⁹ Adams and Lumpkin, eds., *House J. 1785-1786* 433, 470.

appears...the Petitioner is only made a party for the Purpose of Recovering from the Sales of the Confiscated Estate of John Rose.” And it probably was so. It certainly was not the only time Loyalists tried to arrange property before they left in order to preserve value or title to it in the name of relatives and friends.⁹⁰

A few points are in order here. Women’s property rights were recognized, but largely after the initial sorting decision on male Loyalists. That is to say, once men had their chance to regain their estates through petitioning, those men who did not succeed in convincing the General Assembly to pardon them by 1784 used their wives and daughters to regain at least some of their American assets. While sympathy was one reason to give property back to women, it was a parallel, lesser system. Florence Cook got property because James Cook could not.

The General Assembly also recognized family interest in properties for men. While the General Assembly was often concerned with the ability of wives and children to pay for their upkeep, they also sometimes restored Loyalist property to grown male relatives. As we saw in Chapter Two, even at Jacksonborough there was an effort to allow Patriot male relatives to acquire the property of Loyalist relations. Needless to say, a healthy number of sons, cousins, and nephews sought this way of increasing their wealth. This was one reason the Assembly was loath to enshrine a right to property transfer among male relatives into law. Instead, they evaluated cases one by one (much as they did everything else).

George Barksdale even succeeded in having the amercement lifted from Andrew Hibben’s estate as the adoptive father of Hibben’s three children. He worried that paying the amercement would deplete the estate too much to properly provide for the “Education

⁹⁰ Palmer, *Loyalist Biographies* 873, 745. Adams and Lumpkin, eds., *House J. 1785-1786* 431-33, 458.

and Support” of the Children. Like other South Carolinians, he argued that it was unfair and unwise to visit the sins of the father on the children. In his own formulation, “whatever Political Errors the Parent May have been guilty of, the Children then very young, must have been perfectly innocent.”⁹¹

Perhaps the most movingly written demand for help for children came from Andrew Williamson’s children. Williamson had been moved from the confiscation list to the amercement list already, which was a minor miracle. A planter from Ninety Six, Andrew Williamson earned the sobriquet the ‘Benedict Arnold’ of South Carolina. He received clemency from confiscation in 1784 largely through the personal intervention of General Nathanael Greene. In 1789, his children petitioned for relief from amercement after his death. In order to pay his amercement, they would need to sell “all the active and moveable Property.” “Your petitioners entreat this Honorable House not to think them importunate. Necessity & fear will inspire the weakest hearts with courage.” But with the “dread of impending ruin,” they sought help. They put the argument at its starkest while being polite: “Humanity surely would never suffer the Paternal Bread to be torn from the hands of innocent children.” Loyalist families saw no reason they should suffer along with their male household head, and increasingly a forgiving Assembly agreed with them.⁹²

⁹¹ George Barksdale, 1785-27, GA Petitions.

⁹² Stevens and Allen, eds., *House J. 1789-1790* 66-67.

Conclusion

Loyalists inundated the South Carolina General Assembly with petitions seeking a way out of confiscation. Within two years, the Assembly acquiesced to the continued presence of Loyalists in the state, gradually legalizing their status. For their part, Loyalists had to take several public, proactive steps that defined their own active interest in South Carolina citizenship and their fitness for that role. By petitioning, showing up for hearings, and producing visible support from neighbors at all points in the petition process, Loyalists convincingly demonstrated local support—the best marker of fitness for citizenship, and also the best marker that they were peacefully accepted. The General Assembly worked to put the stamp of state-wide authority on what were really local decisions. Hearings and committee decisions depended on local General Assembly members, and local Patriot supporters. Decisions depended on local support, and were then put into state laws that grouped individuals, with widely-varying cases, into the organization of state-wide laws covering groups.

While the Jacksonborough Assembly moved harshly, the lived reality for many Loyalists was quickly far more kind, and far less universally hostile to reconciliation. Loyalists lived in Charleston and the rest of the state in their own (confiscated) properties, and both the Assembly and the Commissioners of Forfeited Estates recognized and accommodated this. While the Commissioners sold some estates, sales of properties women and male petitioners were living on were stayed in 1783 to await the judgment of the legislature in the next year. In more than a year of hearings, the General Assembly heard and reviewed cases, sometimes calling men to testify repeatedly. These

hearings spread the widest net possible, to allow interested parties pro and con the chance to weigh in on the debate through in-person testimony and letters.

After this intensive one-year investigation into the specifics of individual Loyalist cases, the General Assembly relieved more than seventy proscribed Loyalists from the penalties of confiscation and banishment. Moreover, they joined fifty other men on the amercement list. Some of those men were deprived of voting rights for seven years, but all gained citizenship and property. With this mass clemency, the Assembly largely hoped to end the question of Loyalism.

Yet Loyalists continued to petition in later years, and some (though far fewer) were successful in getting off the confiscation list. Women who had petitioned for their husbands in 1783 tried other tacks after the 1784 legislation, looking to keep family property in their own names, if their husbands could not regain it in their own names. This tactic was often very successful, and the General Assembly moved to be much more generous to the family members of Loyalists. In this way, they could show mercy to the family while still punishing specific Loyalist men.

Any examination of the move to legislate clemency to Loyalists makes clear that the process was ad hoc and shaky, lurching from one position to another. What allowed the General Assembly to become more generous to Loyalist petitioners in 1784 than they had been in 1782 was the passage of time, with all the healing that time provides.

CHAPTER FIVE

UNEASY NEIGHBORS: TENSION OVER THE PLACE OF FORMER LOYALISTS IN SOUTH CAROLINA

William “Bloody Bill” Cunningham and his men were a guerilla band of Loyalists loosely associated with the British forces. Shortly after receiving news of the British defeat at Yorktown, Cunningham and his men fought an engagement near Edgefield, South Carolina. After the American troops surrendered, Cunningham and his followers hanged the American leaders, and summarily executed the other American soldiers. The killing was brutal enough, but (as we saw earlier) Matthew Love, one of Cunningham’s men, went further.¹

After the slaughter was over, Love traversed the ground, where lay the dead and dying, his former neighbors and acquaintances, and as he saw signs of life in any of them, he ran his sword through and dispatched them. Those already dead, he stabbed again. And where others seemingly without life, and who were pierced with his sword, gave involuntary convulsions from the pain, to these he gave new wounds.²

Love therefore crossed a line—the bounds of civilized warfare. By running through dying men with his sword, he reveled in causing additional pain to those dying soldiers who had opposed him. This further disfigured corpses, including “those already dead,” whom he repeatedly stabbed. Those who watched him were convinced he did it

¹Gordon, *South Carolina and the American Revolution: A Battlefield History* 171-72.

²Justice Aedanus Burke to Governor Benjamin Guerard, Dec. 14, 1784, Aedanus Burke Papers, South Caroliniana Library.

out of wanton hatred to those he knew. By the judgment of his former neighbors, he was “held in universal execration.”³ In late 1784, as it became clear that the General Assembly was pardoning many prominent Loyalists (as we have already seen), Love gambled that the growing spirit of reconciliation would include him. He returned to Ninety Six, apparently intending to return to his pre-war life. But Love, unlike so many other Loyalists who did succeed at establishing reconciliation, made a fatal miscalculation. He did not understand that for reconciliation to be possible, his neighbors had to think he was trustworthy.

When Love arrived back in Ninety Six, his neighbors seized and incarcerated him. The local authorities cooperated, reasoning “so barbarous a man did not come under the treaty of peace, so as to be sheltered from prosecution.” When Justice Aedanus Burke arrived to hold court in the district, he found Love under trial for these wartime actions. Love’s prosecution attracted a large number of men of “good character,” including the “fathers, sons, brothers and friends of the slain prisoners.” When Burke told them that it wasn’t possible to prosecute Love for his actions during the war, the men in the courtroom seized Love and took him about a mile away, in the woods, where they “arriving under a tree, to the arm of which they tied one end of a rope, with the other around his neck, and bid him prepare to die.” He protested that it was unjust to kill him without a trial, and the crowd angrily retorted, “that he should have thought of that when he was slaughtering their kinsman.” Finally, they sat Love on a horse with the rope around his neck, and scared off the horse, leaving him hanging from the tree. The crowd “dispers[ed] into town, all was quiet.”⁴

³ Ibid.

⁴ Ibid.

What does this vivid story tell us about reconciliation in the backcountry, or indeed anywhere in South Carolina? On the face of it, this is a story about lawless disorder, and a profound distaste for anything smacking of reconciliation with Loyalists. It is tempting to read it as evidence of ongoing disorder and anger. Yet Aedanus Burke, the judge and letter writer, did not see it that way. In writing Governor Guerard, he rushed to emphasize that despite “whatever appearance this transaction may have,” in fact “the people of Ninety Six appear very desirous to forget the injuries, and settle the government.” It was not that backcountry settlers were uniformly hostile to Loyalists, but that they drew a distinction between former neighbors they wanted to settle with, and men who were not likely to be peaceful, likeable neighbors. As we have seen in earlier chapters, this was the crucial dividing line between Loyalists who were admitted freely and those who faced implacable opposition. While outside commentators spread the story as one of backcountry rednecks with whom one could never live in a civilized manner, Burke emphasized that they understood the importance of “settl[ing] the government.” Backcountry residents were as fully rational as the Lowcountry elites, and that focus on the future, with a stable government and a state under the rule of law, mandated a settlement with Loyalists. All sides understood this fact.

Burke himself noted that residents of Ninety Six wanted Loyalists back “provided those do not return among them who have committed wanton acts of barbarity.” Ninety Six now counted among the post-war citizens “many plunderers and other mischievous people, who had taken part with the enemy, now set down among them without molestation.” Plunderers, who were understood to be people who took advantage of circumstance for personal profit due to low economic and social circumstances, lived at

peace in the district. Further, Burke emphasized that men who had served the Loyalist cause with honor “act[ing] like a soldier...kill[ing] their friends in fair open action” were accepted without rancor. They met the test of honorable men, who engaged in reputable warfare. Burke claimed that many such men were already quietly living in Ninety Six without comment. Burke was a defender of the backcountry against the Lowcountry, and certainly wanted to paint the region in the best light possible. But he was correct in understanding that even outside legislative clemency, South Carolinians desired reconciliation, but had mental categories of what sort of man was reclaimable (or not.) Matthew Love had seriously misunderstood how his neighbors really felt about him, and in what category his actions placed him.

Further, a close look at the timing of Love’s act helps to explain partly why he did it and why it was truly beyond the bounds of acceptable practice. The specific battle he was later prosecuted for took place after the surrender at Yorktown. The rage he felt after the battle, which he apparently directed at his neighbors and relations, was that of a confused loser. But by so seriously violating norms of behavior as to kill defenseless men whom he knew personally, after the war was in large part decided, was an unforgiveable act. (Especially since he was on the losing side. There were persistent stories that William Bratton, a well-regarded Patriot leader, committed similar acts in the aftermath of the Battle at Brattonsville without censure.) What did Love think he was doing by returning? He obviously thought the warming trend towards Loyalists would include him, and yet he was very wrong. Burke wondered with irritation how Love could “be so infatuated as to return?” Yet Burke saw the whole event with hindsight. Matthew Love probably saw the stream of former members of Cunningham’s band, and other local

Loyalists, trickling back to the area, and thought he was in the same group. The plunderers and soldiers living in Ninety Six included men much like Love in wartime service and allegiance.

The Treaty of Paris which that ended the American Revolution forbade criminal prosecutions of Loyalists for their wartime conduct, although this story clearly shows that ordinary people, and the local justice of the peace, felt that war prosecutions were still possible for extreme acts of violence that exceeded norms of civilized warfare. (I discuss the Treaty of Paris's provisions regulating Loyalists later in this chapter.) Matthew Love may well have been banking on his fellow South Carolinians' strictly adhering to the letter of the peace treaty. Alternatively, he may have disagreed with them that his wartime actions were so truly "barbarous." And perhaps he mainly came back because he didn't know what else to do. He was a very ordinary man, without great wealth. Florida, where Cunningham's men had fled, was about to be ceded to the Spanish, forcing all the Loyalists who had sought refuge there to move again. Perhaps he felt that his best financial option was to return. Still, he thought he could return to South Carolina and keep his life. Many others clearly made the same decision without paying the ultimate penalty.

While on the surface, Love's experience suggests hatred towards the Loyalists, this event is actually the exception that proves the rule. Justice Aedanus Burke wrote the letter that immortalized the incident for historians because the governor had already heard rumors about the events. This vigilantism was unusual, which is why it was such a popular story.

Backcountry Trouble: Banditry, Loyalists, and the Desire for Revenge

Matthew Love's murder was one shameful event in a series of problems in the backcountry after the Revolution. As we will see later in this chapter, Charleston also saw crowd action and occasional mob violence against selected Loyalists. But the backcountry had much larger problems of public order. Loyalists were a large part of this problem, as Loyalist bands continued to sweep through the region, wreaking terror on individuals traveling or living in isolated homes. The problems that led to the Regulator movement were being reenacted again, with the merest overlay of ideology.

South Carolina had a long history of instability and violence in the backcountry. The South Carolina Regulators drew strength from their promises to enforce order on a fractious region. Horse thieves and other opportunistic bandits roamed the region before the Revolution, helping to spark the Regulation in response to a wave of crime in the 1760s. Bandits organized into multi-racial, mixed-sex gangs. In so doing, they upset the social system and served as symbols of disorder (as well as actual proponents of disorder).⁵

During the Revolution (as we saw in Chapter One), Loyalist guerrillas swept across the backcountry wreaking havoc on property as well as persons. As Nathanael Greene angrily pointed out to the President of the Continental Congress, he couldn't give him good news of the war in the South in large part because the "spirit of plundering which prevails among the Inhabitants adds not a little to our difficulties." If that wasn't bad enough, "people ... are frequently murdered as they ride along the road, and also

⁵ Klein, *Unification of a Slave State* 47-49, 61-64. See also Brown, *Sc Regulators* 113-35.

between this and Cross Creek, Guilford Courthouse and Hillsborough in which extent of Country great numbers of Tories are way laying the roads.” Nathanael Greene concurred with popular opinion that linked Tories with bandits. During the war, Loyalist forces patrolled the roads in an effort to control the movement of people and goods—a legitimate military goal. However, in practice this meant their main action was to interrogate and irritate a large cross section of the civilian population, giving rise to the idea that all Loyalists were bandits disrupting trade. Of course, both sides also routinely plundered in an effort to keep troops supplied. It is a truism of war that armies eat, and Greene also noted the difficulty. “You may as well attempt to bail the sea dry as to think of farming and equipping the whole Militia of this Country” and the attempt “will lay waste a whole Country.” Extensive plunder was a problem on both sides, but the winners conveniently blamed the losers for all of it.⁶

Further inflaming backcountry sensibilities, there were genuine links between Loyalists and banditry. Joseph Coffel, who led a faction of backcountry settlers opposed to the Regulators, headed a mixed-race gang who fought for the British cause as early as 1775. Patriots across the state began to refer to Loyalists as scoffolites “after their leader” Coffel. Coffel’s gang concentrated on plundering, giving all appearances of using political labels as a cover for individual greed. David Ramsey, an early South Carolina historian of the Revolution, considered backcountry Tories to be nothing but “ignorant unprincipled banditti...horse thieves and others whose crimes had exiled themselves from society.” Other known bandits joined the British cause, looking for plundering opportunity. The Orangeburg Hutto family was one such clan. William Lee

⁶ Greene to Samuel Huntington, Camp at the Cheraws, Dec. 28, 1780, Greene to General Ezekial Cornell, Camp on the Pedee, Dec. 29, 1780, Showman, ed., *The Papers of General Nathanael Greene* 7: 9, 21.

was condemned to death for stealing horses and cattle in 1763, but his sentence was reprieved. He joined William “Bloody Bill” Cunningham’s men. It is easy to find example after example of backcountry bandits who were loosely associated with the Loyalists.⁷

After Yorktown, the war in South Carolina continued, including aggressive Loyalist incursions designed to cause pain and anguish as much as to advance military goals. “Bloody Bill” earned his sobriquet by forcing his men to participate in wholesale slaughter of prisoners in small engagements after Yorktown, in order to force them from militia unit to guerilla resistance fighters. Aedanus Burke complained in May 1782 that, “the Country is ravaged by small armed parties, who retiring in swamps, make cruel excursions on the inhan^{ts}. The Outlyers sally from their swamps, & destroy our people in Cold blood.” For some Loyalist bands, the end of the war made little difference. Cunningham’s men continued their raids on the interior well into 1784. These bands were a constant irritant to rural people and fueled continuing rage against Loyalists.⁸

Plunder was especially frustrating to backcountry denizens because the region had been so reduced by the war that poverty and desperation were widespread. William Drayton described a region still so stricken by poverty in 1784 that children went without shoes, and many adults were “half naked Beings.” On his tour of the backcountry, he “was deprived of the Pleasure of seeing Wynnes-borough” because the nearby roads were so unsafe, thanks to marauders. Life in the backcountry was worse for those members of society already living at the margins, and the backcountry was now full of them. Ninety Six District had 1,400 widows and orphans at the end of the war. While the Lowcountry

⁷ Klein, *Unification of a Slave State* 95-98. David Ramsay, *History of South Carolina: From Its First Settlement in 1670 to the Year 1808* (Newberry, S. C., 1959) 1: 259.

⁸ Burke to Middleton, May 14, 1782, Barnwell, "Middleton Corr. Oct. 1925," , see 201.

had many more adult men than youthful ones (under sixteen), all of the counties in Camden and Ninety Six districts had the reverse. As late as 1788, residents of Ninety Six District were only able to pay $\frac{1}{4}$ of the previous year's tax allotment. Rachel Klein points out that conditions were very similar to those that provoked the Regulation, and backcountry grand juries repeatedly complained of disorder and vagrancy.⁹

Of course, sometimes the rumors of disorder in the backcountry outstripped even the reality. Charlestonians read in alarm that ruffians near Camden murdered a man on his way from North Carolina to Charleston. Four days later, the paper rushed to reassure readers that this had been a mistake, and that his happy family removed their mourning attire. Yet given the reputation of backcountry roads, readers easily accepted the premise that a traveler had been murdered.¹⁰

The tensions were very real. Newspapers nervously reported that David Fanning, hated leader of North Carolina Loyalist forces, and William Cunningham joined forces in the immediate aftermath of the British evacuation of Charleston to harass settlers in the backcountry. They attacked Col. Thompson's home and harassed others, "plundering and destroying all that opposed them". Military leaders sent gangs after them, to no avail. In March 1783, the South Carolina Senate approved a request for a ranger group to capture or kill "such notorious offenders who disturb the peace, tranquility and harmony" of the interior. Both William Cunningham and his follower William Lee were singled out by name. The General Assembly also authorized a three hundred guinea reward to apprehend William Cunningham and two of his followers for their part in "sundry Murders, Robberies, and other offences in the back parts of this State." Frustratingly,

⁹ Nadelhaft, *Disorders of War* 127, 129-30. Krawczynski, "1784 Tour of Backcountry," , see 197. Klein, *Unification of a Slave State* 114-15.

¹⁰ *South Carolina Gazette and General Advertiser*, Nov. 4 and Nov. 8, 1783.

Cunningham was hard to catch because he was “harbored by wretches as unprincipled and unfeeling” as he was. To sweeten the pot, the reward included a full pardon to any Loyalist who turned him in. The General Assembly seems to have been right that the backcountry still had many quiet Loyalist supporters who helped Cunningham evade justice, as they had to approve another reward for him in 1785. This time, his adversaries plaintively noted that he was perhaps the “most noted of the banditti who have so long infested the district of Ninety Six.”¹¹

Cunningham was the most famous bandit, but not the only one. One gentleman in Charleston was so frustrated by his losses at the hands of the self-styled Florida Scouts that he offered a personal reward of twenty guineas for the conviction of the thieves, plus a bounty for each horse recovered. Governor Guerard issued a large reward for the apprehension of James Booth and his “small party of Ruffians” after they murdered Dr. Orr on his way through the swamps between Savannah and the ferry. James Booth was not yet twenty years old when he was finally captured and came before Aedanus Burke for a robbery charge. A jury showed him mercy by banishing him forever from the continent but sparing his life, largely because he had not fought for the British cause but instead turned to a life of crime out of need. Governor Guerard eventually signed off on his pardon, despite the earlier reward. Perhaps he was eventually cleared of the murder.¹²

Even Aedanus Burke decided it was necessary to crack down on bandits, given the uproar. He told Governor Guerard he would give horse thieves no mercy. He

¹¹ *The South-Carolina Weekly Advertiser*, Feb. 19, 1783, April 2, 1783. South Carolina Senate Journal, Mar. 6, 1783, SCDAH. Theodora J. Thompson and Rosa S. Lumpkin, eds., *Journals of the House of Representatives, 1783-1784* (Columbia, S.C., 1977)215. Adams and Lumpkin, eds., *House J. 1785-1786* 198. Klein, *Unification of a Slave State* 97-100.

¹² *South Carolina Gazette and General Advertiser*, Oct. 18, 1783. *The South-Carolina Weekly Advertiser*, Feb. 26, 1783. Burke to Guerard, Nov. 11 and 17, 1784, Governor’s Messages, Feb. 2, 1785, Records of the General Assembly, SCDAH. Nadelhaft, *Disorders of War* 128-32.

worried that people were “half ruined by a set of horse thieves” and could not even protect their crop shipments to Charleston. Backcountry residents continued to petition the General Assembly for rewards for local bandits. For example, in 1784 the residents of Little River petitioned for relief from a “desperate set of Outlaws.” A gang of six robbers robbed Andrew Pickens, the legendary partisan leader, of four wagons in 1786, prompting more complaints.¹³

Further, one Lowcountry attack suggests that Loyalist bands did sometimes target Patriot leaders deliberately. Thomas Waring, a Lowcountry merchant and an author of the Confiscation Act, was attacked by ruffians who plundered him in 1783 at a plantation in Cane Acre (in the Lowcountry). Perhaps he became a target because of his well-known activities in favor of retribution. Andrew Pickens’ misfortunes may not have been accidental either.¹⁴

Backcountry residents did fight back against the intrusions. In addition to petitioning the General Assembly repeatedly for military and economic aid, locals organized themselves. However, in a suspicious society, this also led to trouble. In some districts, locals suspected their own as potential harborers of Loyalists. In the New Acquisition District (today York County), James Simril led a group of Whigs to harass local men suspected of harboring or aiding Tories. Simril even accused local war hero Col. Lacey, calling him “a protector of horse-thieves and tories.” Lacey was a hero of the Battle of Brattonsville, but his father was an ardent, if infirm, Loyalist. The story went that he had to tie his father to the bedstead the night before the battle to keep him from

¹³Burke to Guerard, Dec. 14, 1784, Governor’s Messages, Papers of the General Assembly, SCDAH. Petition of the Inhabitants of Little River, March 7, 1785, 105-1785, Petitions to the General Assembly, SCDAH. For other petitions, see the petition series. Klein, *Unification of a Slave State* 117.

¹⁴*South Carolina Gazette and General Advertiser*, Oct. 18, 1783.

warning the Loyalist forces. Perhaps it was this family connection that made Simril suspect Lacey, or perhaps Lacey protected law-abiding men associated with Loyalism in his position as county leader. Given that Lacey was a local bigwig, serving as a judge, sheriff, representative to the General Assembly, and militia leader, and was happily litigious, this was a mistake. Lacey was so angry at the charges that he took Simril to court and publicized the decision in the papers, but harm was already done.¹⁵

Other backcountry denizens turned to more legal (if sometimes less effective) methods to voice their hostility to the return of some Loyalists. Repeatedly, backcountry districts remonstrated with the General Assembly to hold the line against Loyalist return through petitions and grand jury presentments. Signatories from the “upper part” of St. George’s Parish admitted to being “greatly allarmed” about widespread reports that the legislature was entertaining petitions from “the most atrocious offenders.” They strongly urged the committee to never pardon Loyalists subject to penalties. How could the legislature “rank the worthy Cytizens of this, or any of the United States, with such a set of Miscriants[?]” Here we see clear evidence that ordinary South Carolinians saw the issue in terms of citizenship. These petitioners went on to reinforce the reasons Loyalists should never be readmitted, after a long list of ways in which they had deceived their fellow South Carolinians. They reminded the Assembly “from Experience that there is no confidence to be put in such an unprincipal set of men,” and that whatever assurances they made now in petitions, nobody should believe they would uphold any promises.

¹⁵ *South Carolina Gazette and General Advertiser*, June 5, 1784. Walter Edgar, *Partisans and Redcoats: The Southern Conflict That Turned the Tide of the American Revolution* (New York, 2001) 80. William Moultrie Concerning Appointment of Sheriffs and Commissioners of the Roads, Oct. 7, 1785, Governors Messages, SCDAH. York County, Minutes of the Proceedings of the County and Intermediate Court, Journals, WPA Transcripts (990) Book A, SCDAH. Edgar and Bailey, eds., *Directory S.C. House Rep.* 3: 410-11.

After all, these were the same men who “Receieved the Enemy with open arms. . . . Numbers who ware in arms with us Ran over again to the Enemy and headed parties, and ware our most invetered and Merciless Enemy.” Offering a final policy prescription, these petitioners “hope[d] that instead of Granting them Pardon or doing away [with] the Confiscation Act that it may be supported and Strengthned with additions of Severity...” They also called for laws prohibiting any Loyalists from voting or holding office. Clearly, there was resistance to clemency for Loyalists, especially so recently after the end of the war.¹⁶

Residents of Ninety Six were also very unpleased with any hint of legislative clemency for Loyalists who were subject to official legislative punishment. Invoking the “misery of this State to be infested with many Internal Enemys who have revolted from the allegiance due the State,” the petitioners cautioned the legislature to ignore the blandishments of the Loyalist petitioners. They asked the legislature to instead speed the sale of Loyalist estates, so that there was no hope of reclamation. Ninety Six residents certainly believed that Loyalists subject to confiscation had already been given several chances, and had refused them all.¹⁷

Complaints continued after the General Assembly passed the 1784 revision of the confiscation law, relieving many of the worst penalties, but these complaints focused on enforcing the remaining restrictions on Loyalists, not overturning the Assembly’s clemency. The Ninety Six Grand Jury complained that despite voting prohibitions, former Loyalists were still voting. Other Ninety Six residents from the Little River area

¹⁶ St. George was a Lowcountry parish, but these petitioners were careful to signal that they were from the region near the fall line, and I am therefore including their concerns with the backcountry. Inhabitants of the upper Part of Prince George’s Parish, Thompson and Lumpkin, eds., *House J. 1783-1784* 92-93.

¹⁷ Subscribers of Ninety Six Distr. & Town, Thompson and Lumpkin, eds., *House J. 1783-1784* 242-43 footnote 2. (The petition may or may not have been read on the floor.)

protested the return of many “whose characters were obnoxious.” They reminded the legislature to consider the desires of the “many citizens who were plundered and their Friends murdered” who still “entertained resentments” and would produce “disquiet” in the area if Loyalists roamed freely. Yet despite being nervous, Little River residents actually wanted the General Assembly to solve current problems, not overturn clemency legislation. They sought government reward money to aid their efforts to capture the remaining bandits.¹⁸

Some backcountry communities and individuals had long memories, especially where tax money was concerned. While by the 1790s, many Loyalists were readmitted, Philemon Waters, a veteran of the Revolution and a member of the Jacksonborough and clemency-granting General Assemblies, discovered that Lydia Miller, a Loyalist widow, had collected a fifty-pound pension for her husband. Waters wrote the treasurers to show that Henry Miller had “died in the service of the British,” and further intimated that three justices of the peace had helped her gain money she wasn’t supposed to have. During the investigation, authorities discovered two more former Loyalists drawing military pensions, including one who had been a prisoner of the American forces during the time he claimed American service. On the one hand, this suggests some people had short memories, as it took a particularly well-connected and determined foe to expose these pensioners. On the other hand, when it did come to official attention, the General Assembly recommended that the justices of the peace and Lydia Miller, the false claimant, be prosecuted.¹⁹

¹⁸ Sundry Inhabitants of Little River in the District of Ninety Six, Adams and Lumpkin, eds., *House J. 1785-1786* 195. Klein, *Unification of a Slave State* 122.

¹⁹ Philemon Waters, Dec. 1783, Report, 1794, in the case of Henry Miller, Accounts Audited of Claims Arising from the Revolution, SCDAH. Stevens, ed., *House J. 1792-1794* 523, 550. Edgar and Bailey,

As will become clear in the next section, backcountry residents often reacted to this continual provocation by threatening revenge against Loyalists, especially prominent ones. Yet the continued disorder also gave rise to the desire for stability and some way to move ahead. Aside from the occasional outburst, South Carolinians confined themselves to murmured threats, not actual violence.

**To Settle the Peace of the Country by “moderation, and reconciling principles”:
Aedanus Burke, Increasingly Vocal Opponent of Anti-Loyalist Measures²⁰**

As we have seen in Chapter Two, Aedanus Burke worked against the Confiscation and Amercement Acts as a member of the Jacksonborough Assembly in 1782. His opposition to the acts hardened in the latter part of 1782, and by 1783 he moved from frenzied letter writing in opposition to increasingly public pronouncements against any government-backed measures against Loyalists. In so doing, he also organized against a faction of Lowcountry planters and lawyers whom he saw as self-aggrandizing petty tyrants. His public campaign against government discrimination against Loyalists culminated in a series of grand jury addresses where he used his position as a justice to further his cause. In addition, he published a lengthy argument against the Acts under the pseudonym Cassius, which pseudonym appeared to fool almost nobody. His 1784 letter explaining the Matthew Love case can therefore be seen

eds., *Directory S.C. House Rep.* 3: 752-53. The justices of the peace may have filed a fraudulent application for personal profit, not sympathy with Lydia Miller. Mrs. Miller rapidly endorsed her pension certificate to a man in Fairfield District, who actually collected the money.

²⁰ Judge Aedanus Burke’s Charge to the Grand Jury of Ninety Six District, Nov. 26, 1783, as reprinted in the *South Carolina Gazette and General Advertiser*, Dec. 18, 1783.

as a part of a series of interventions in this public argument, in which Aedanus Burke consistently staked out a position more extreme than his fellow advocates. This was certainly in keeping with his reputation as a hot-head devoted to the delights of argumentiveness above almost all else.

As we saw in Chapter Two, Burke hated the Loyalists as much as any other victorious Patriot in late 1781, when he admitted he was moved by “a Love of Revenge natural to the mind of man.” Yet concern for the well-being of the state quickly tempered his judgment. By May of 1782, he felt that the Confiscation Act was a “punishment [Loyalists] justly merit” because of their “deep, dark malice,” but that a better idea for the greater cause of continued independent democracy was to not create such a “pernicious” precedent. Burke’s legal training asserted itself, as he worried that the Confiscation Act created a trial without jury, where the General Assembly tried Loyalists in absentia and found them guilty without jury or a chance to muster evidence in their favor. As we saw in Chapter Three, this was a point that Loyalist petitioners also made repeatedly in their attempts to persuade the General Assembly to create a system of hearings or trials for accused Loyalists.²¹

Burke also complained that the Confiscation Act was illegal as an *ex post facto* law (a law punishing actions taken before the actions became illegal). Both of these complaints, which he formulated in a private letter in spring 1782, would become part of his later public addresses in 1783. He was even more opposed to the Amercement Act, unlike most of his allies against Confiscation. South Carolinians could “make them our Friends by Pardoning,” but if they pursued amercement, the amerced would “feel

²¹ Burke to Middleton, Camp before York, Oct. 16, 1781, Burke to Middleton, May 14, 1782, Barnwell, “Middleton Corr. Oct. 1925,” 187, 197-98.

themselves injured” and join factions, work against the public good, and hand on this orientation to their children. Instead of passing such harsh laws, the state would be better served by a general act of oblivion. Burke recognized the strong desire for revenge, and suggested the act of oblivion might have “some exceptions to satisfy publick justice, and as you would throw a Tub to a whale to satisfy the vengeance of those who have suffered.” Like other members of the Assembly, he did accept that the legislature needed to slake the thirst for revenge to maintain order, but he hoped they could get away with only a few token individuals.²²

As early as 1782, Aedanus Burke made one major move against efforts to use government controls to punish Loyalists outside of the safety of letters. As we saw in Chapter Two, Governor Rutledge and the General Assembly envisioned two parallel tracks of punishments for former Loyalists. Certain prominent or notorious Loyalists who came from higher social circles were dealt with by name by the Jacksonborough Assembly. Loyalists who were less prominent were dealt with in two ways. Local officials cataloged those who fled their homes at the end of the war and their names were forwarded to the governor. Inclusion on the list subjected people to inclusion in the penalties of the Confiscation Act: namely banishment and complete confiscation of their estate. Loyalists who stayed in their communities but who were alleged to have committed a crime would be tried in the newly reopened criminal courts. It was this last way to punish Loyalists that gave Aedanus Burke his opportunity. When Governor John Rutledge tried to reopen the courts, Burke, newly appointed a justice, defied him.

“Holding Courts at present is a farce, a mockery on Justice.” Cases could not be fairly

²² Barnwell, "Middleton Corr. Oct. 1925," 200. His full quote on the Amercement Act: “holding him up as an Enemy, w^{ch}. effectively makes him one, & then keep him in your Country, to thwart public measures, form parties, join some dangerous faction out of mischief, & malice, w^{ch}. he transmits to his children.”

decided when “you c^d. not enter a Company that some do not talk of hanging many hundreds.” Burke had no wish to become a hanging judge, and his worries were not unfounded. One London newspaper angrily reported that in Georgetown, the foreman of the Grand Jury amended his oath to render justice impartially, instead “*hop[ing] his Honour admitted an EXCEPTION in the case of Tories.*” Burke’s keen sense of justice was also offended at the probable unevenness of such prosecutions, for “if the Law of the Land was enforced for every violation of such crimes [except capital crimes, which he explicitly excluded], I may venture to affirm, there are not one thousand men in the Country who c^d. escape the Gallows.” Burke also vigorously resisted Governor Mathews’s 1783 suggestion that he convene a special session to try some one hundred Loyalists in Orangeburgh.²³

Practical considerations allowed him to refuse as well. Bandits captured Justice Pendleton on his way to hold court, and Burke complained of having to ride hard and fast to stay ahead of a party after him. With all of these tactics, he succeeded in avoiding opening the courts for a year. His experiences with Matthew Love certainly suggest he was right not to open the courts earlier, as people certainly would have used them to prosecute Loyalists. Other states did use courts to prosecute Loyalists.

In Virginia the use of courts helped the cause of reconciliation, because they were used to settle claims arising from wartime plunder, rather than criminal actions. Virginia intended citizens to use both the criminal and civil courts against Loyalists after the war, but at least in the coastal regions, citizens avoided using the criminal courts (the courts Burke was afraid of) but made extensive use of the civil courts in 1783 to sue Loyalists

²³ Barnwell, "Middleton Corr. Oct. 1925," 200-202. *South Carolina Gazette and General Advertiser*, May 22, 1784.

for wartime property damage. Adele Hast has concluded that such damage suits “provided a means for some degree of reconciliation.” Of course, in those regions, courts operated through most of the war, whereas in South Carolina they were closed for several years, and never operated in regions where conflict between locals was greatest.²⁴

In North Carolina, courts functioned to impede reconciliation, not aid it. Matthew Love was not the only Loyalist prosecuted and killed by angry backcountry folks. In Hillsborough, North Carolina, Frederick Smith was prosecuted in 1783 for the wartime murder of a Patriot man. Despite evidence he wasn't the guilty party, but simply a member of the band (leaving aside the fact that by this late in the war, both sides were routinely murdering prisoners), “no lawyer spoke one word in his favor,” perhaps due to the fervor of the crowd. In this case, the court found Smith guilty of murder, despite the doubtful legality of such charges, and hanged him right away. If the court had not been willing to prosecute and convict Smith, the crowd would have turned to vigilante justice as did the crowd in the Love incident. One court observer recounted that “if the jury had not brought him in guilty, I am sure they would have killed the wretch before he could have gotten out of the house,” especially since other courtroom observers were overheard “wishing...they might have the pleasure of putting the rascal to death with their own hands.” In short, Aedanus Burke knew his audience, and knew what would happen if the courts opened too early; it happened in North Carolina.²⁵

But the courts could not stay closed forever. Burke tried to convince himself in July 1782 that the “minds of men are growing more cool,” though he also reported that backcountry people had warned him if he held court, he could not let Loyalists have

²⁴ Hast, *Loyalism in Revolutionary Virginia* 123-24, 135.

²⁵ DeMond, *N.C. Loyalists* 123.

lawyers, lest the men punish Burke for favoring Loyalists.²⁶ Burke enjoyed his role as a devil's advocate, but he also simply distrusted letting emotion, rather than logic, rule government action. Further, time and time again he argued that turning the other cheek was the best policy. Anything else would continually fan the flames of civil insecurity, promoting endless rounds of civil war.

Burke made this point in his letter on Love's execution. He worried about how this event might have stirred up bad feelings in the population that would better lie dormant. If other men like Love returned "to keep alive the remembrance of past calamities, and this prevent a restoration of public tranquility," what would become of South Carolina? Love managed to unleash popular resentment that was otherwise dormant. In this vein, good government demanded a quick, even and well-expressed solution to the problem of Loyalism that would resolve the issue permanently. Too much continual conversation and provocation would, instead of making people feel better, only make things worse. The "remembrance of past calamities" was in itself dangerous to the security and peace of South Carolina, and solutions should be framed around this principle.²⁷

In 1783, Burke was ready to participate in opening the courts again. He continued to oppose using the courts to punish Loyalists, a point he quickly made clear in his addresses to the Grand Juries of Charleston and Ninety Six. In his widely reprinted charge to the grand jury for the Charleston district, he called for reconciliation with Loyalists for the good of the whole state. First, he reminded his listeners that the British, not Loyalists, were their true enemies. South Carolinians had no nearby "foes, unless we

²⁶ Burke to Middleton, July 6, 1782. Barnwell, "Middleton Corr. Oct. 1925," 205.

²⁷ *Ibid.*

ourselves should make them by our internal dissensions.” Loyalists were natural citizens by dint of their attachment to the state, and South Carolinians had a unique chance to cement their natural affections.²⁸

Burke lectured the grand jurymen that the civil war allowed the population to get used to settling arguments through extralegal means, yet the stability of post-war society required that they turn away from these understandable, yet unacceptable habits. The war unleashed the “spirit of private revenge.” As such, their job was to make sure that private revenge ceased, returning to the “liberal and humane” spirit that they were known for before the British arrived. (It is, of course, doubtful that South Carolinians were ever known for calmness and an avoidance of extralegal means, especially in the backcountry, but Burke saw a chance to sugarcoat his message by persuading Carolinians of their better nature.) The purpose of the courts was to serve justice through written law, and South Carolina must turn back to law in order to build a lasting future.

Burke eloquently painted a picture of what society would be like if they did not do so:

Yet we fear that without a very forceable exertion of the judicial authority, the high temper of men will for some time, like the waves of the sea, after the storm has ceased, continue to move with mischievous tumult and impetuosity. . . . Our citizens from a habit of putting their enemies to death, have reconciled their minds to the killing of each other; and it is too true, I fear, that man by custom may be so brutalized, as to relish human blood the more he has shed of it.²⁹

More subtly, Burke indicated that war brutalizes those who have to take life, and makes men less likely to appreciate the difference between legal and extralegal action, in the same way the actual fighting of the Revolution in South Carolina helped erase

²⁸ Charge to the Grand Jury June 9, 1783, reprinted in the *South Carolina Gazette and General Advertiser*, June 10, 1783.

²⁹ *Ibid.*

distinctions in many people's minds between the battlefield and civilian life. Burke warned, "*Private revenge* may truly be called *the demon of civil discord*, and should be banished from the land as if it were a pestilence." Should Carolinians continue to pursue war hurts, they would create more civil war, and destroy their independent nation before it ever had time to exist. In so doing, South Carolinians would accomplish the aims of European nations for them—for Britain to see that they "had succeeded in setting us together by the ears."³⁰

Burke also tried to persuade the Grand Jury of the merits of clemency and mercy for everyone—reconciliation as a matter of self-interest. If Grand Jury rose to the occasion by "burying in oblivion past injuries, and past errors, a disposition of benevolence may go out through the land, and connect our citizens in ties of harmony and common brotherhood." Burke went so far as to call Loyalists "our citizens." That emphasis on citizenship was not beside the point—rather it emphasized that there was no acceptable status for white men in South Carolina except citizen in this new Republic. To create 'damaged citizens' was to destroy the state.³¹

Burke's words carried power because he argued about very real concerns. Matthew Love's murder was not the only example of vigilantism or riot against Loyalists in the state. While the incidents (which I discuss in this chapter) were surprisingly few, such incidents struck fear into the hearts of both former Loyalists and other South Carolinians worried about stability. Burke carefully alluded to some of these incidents in his attempts to persuade grand juries to follow his lead. In addition to "the many assassinations in the country" (referencing backcountry vigilantism), "no less than four

³⁰ Ibid.

³¹ Ibid.

men have been slain in Charleston” (where he was giving this speech) and other men “libel and assault each other, in the very face and defiance of the Magistrate.” The Grand Jury in particular, but society in general, must make stability under the rule of law the highest priority, or risk cascading back into civil war. As a Grand Jury, he was warning them to apply justice impartially, or risk the court losing its legitimacy to the street.

Men should not be called Tory or Patriot, for such post-war distinctions made by people who “call themselves Whigs” really meant to “keep the Republick in perpetual distraction” and “act the part of an incendiary.” Such “incendiaries” would keep conflict alive for generations. Should South Carolinians wish vengeance for the harm wrought by the cruel war, could they not be satisfied with the Loyalist families split apart, the families sent to live on “the inhospitable shores of Nova Scotia” and others who were now “deeply plunged...in wretchedness[?]”³²

Aedanus Burke and his audience agreed about long-term goals. The most important thing was to establish South Carolina as a free, independent, economically self-sufficient and republican state. What he tried to persuade them was the only way to do this was “by moderation, and reconciling principles.” It was most important to “forgiv[e] what past during the late troubles” and focus on the future. Only “reconciling principles” offered a sure way forward for peace.³³

He received a respectful hearing, but did not convince anyone. The Ninety Six Grand Jury applauded his forthrightness but found “the doctrine of reconciliation unexpected” and “unpopular.” Such reproach was especially startling since grand juries usually rubber-stamped such addresses. Instead, this Grand Jury disassociated from the

³² Aedanus Burke’s Charge to the Grand Jury of Ninety Six District, Nov. 26, 1783, as reprinted in the *South Carolina Gazette and General Advertiser*, Dec. 18, 1783..

³³ *Ibid.*

“doctrine of reconciliation.” Judge Burke could not order reconciliation into the hearts and minds of South Carolinians. But by speaking out, he could plant the seed of doubt in their heads, and persuade like-minded individuals to use his words as cover for more moderate actions in favor of clemency towards former Loyalists.

Aedanus Burke was a unique voice in favor of not using the courts in any way against former Loyalists, but other jurists cautioned against using courts for retribution. Justice John Fauchereau Grimké (father of Angelina and Sarah Grimké, the famous Southern abolitionists), another early judge of independent South Carolina, rushed to persuade the Grand Jury of Cheraws and Camden (roughly the more settled areas of the backcountry) to turn from retaliation to “affirming the reins of Justice” lest they “sacrifice the dignity of our country” by stooping to the tactics of the enemy. Grimké and Burke agreed that vigilante justice must be ended now that courts were sitting. Rhetorically, Grimké whipped up his hearers, trotting out the usual staples of wartime propaganda, such as atrocities, the whipping of women, home burning, and the execution of Isaac Hayne. While during the war it was “necessary and politic” to draw distinctions between Whigs and Tories that hurt Tories, such distinctions were no longer appropriate. “The terms of Whig and Tory are no longer useful” and must be abandoned in dealing with people coming before the court.³⁴

Unlike Burke, however, Grimké believed using the courts to prosecute some Loyalists was appropriate. Any man who had joined the British after the occupation of Charleston and used British power as a cover to “exercise[] a wild and brutal dominion over his fellow-citizens,” stealing property and sometimes murdering people, should be

³⁴ Justice Grimké’s Address to the Court of General Sessions, Cheraws and Camden, Nov. 1783 (Charleston, 1783). Accessed through Early American Imprints, 44457.

routinely hated and prosecuted. Grimké believed that prosecuting genuine crimes, regardless of when they were committed, was much more likely to make people use and trust the courts. The important thing was that the court treated offenders the same despite their political labels. “If any man commits murder, or robs a citizen, or perpetrates any other enormous offense, let him be apprehended” and tried. Grimké assured grand juries that the court properly had power to prosecute wartime offenders, despite the Treaty of Paris:

But here I must beg leave to assure you, that if any citizen has been injured during the late British usurpation over the country, although I will discountenance any man’s arrogating satisfaction to himself by force of arms, that I will give every encouragement within my power to bring the offender to trial, and cause him to make exemplary compensation for the injury.³⁵

While Aedanus Burke repeatedly argued (including to the assembled crowds wishing to try Matthew Love for murder) that the Treaty of Paris ruled out any use of the courts, Grimké pointedly disagreed. Further, he believed that the General Assembly also intended for the courts to prosecute war criminals. “For the pardon, which such men *may* have received from the Legislature, extends only to offenses against the government, and by no means to injuries done to individuals.” Therefore, the coast was clear to prosecute war crimes off the field of battle. Further, Grimké told these backcountry leaders that the General Assembly had been careful to limit pardons against Loyalists to political actions, not only allowing, but expecting the courts to pursue Loyalists for criminal behavior. This was true, at least in terms of the fact that General Assembly did intend to use the courts to punish Loyalists of ordinary status.

³⁵ Ibid.

Judge Grimké did agree with Burke that the courts must not rely on political labels in adjudging guilt. It was all too easy to fall into the trap of believing that “none but Tories could commit crimes” and that actions done by Tories were crimes while actions committed by Patriots were “not only pardonable but commendable.” Yet this was untrue and indefensible. Further, Grimké reminded his hearers that “many of the persons hitherto designated by the title of Tories, and remaining amongst us, have thrown themselves upon the mercy of their country, and are intitled to the benefit of our laws.”

Understanding Judge Grimké’s position helps show how unusual Aedanus Burke’s arguments were. While all jurists agreed that it was important to promote the court system as a means to stability, they disagreed on whether Loyalists should be prosecuted for war crimes. Burke went further in urging a “spirit of reconciliation” on the community. But he became frustrated with how little effect he seemed to be having, and moved to more incendiary comments in a pamphlet published under a pseudonym.

Losing Patience: Cassius Speaks Out for Aedanus Burke

Wishing to lay out his arguments at length, yet looking for plausible deniability, Aedanus Burke followed his barrage of grand jury charges and letters to government leaders with a widely distributed publication “An Address to the Freemen of the State of South-Carolina,” making arguments in favor of widespread reconciliation with former Loyalists. In this address he reiterated the legal arguments he had been making in letters

and grand jury statements, as well as lobbying very specific charges of factionalism and personal profit at the political leaders who had led the move for the Confiscation Act.³⁶

The address was printed under the pseudonym “Cassius,” invoking the Roman senator who led the assassination plot against Caesar in order to save the Republic from dictatorship. Cassius was a hero in his effort to save republican government from a potential tyrant. Aedanus Burke believed that John Rutledge, the wartime governor of South Carolina, was a petty tyrant in the making. He charged that much of the anti-Loyalist legislation was orchestrated by John Rutledge and his conservative supporters, who sought to gain solid political control over the state by whatever means possible. By eliminating a large number of potential voters, they could narrow the pool to a small enough number that they could prevail.

Burke focused considerable attention on Governor Rutledge’s Proclamation of Sept. 1781 for the first time, largely to link Rutledge to all the ills of revenge against Loyalists. As we saw in an earlier chapter, this proclamation offered an amnesty to Loyalists who had not committed any crimes and who abandoned the British, came to the American lines, and served six months with the South Carolina armed forces. As I have argued before, the proclamation was intended to recruit more soldiers and isolate the British by bringing Loyalists back to the American side. It was also intended to offer amnesty to Loyalists in return for forcing them to make some positive affirmation for the American side. In the wake of American victory, the measure intended to offer Loyalists a fresh start only if they were willing to share the costs the Patriots were already paying. Aedanus Burke saw it differently. Given that he argued Loyalists did nothing wrong

³⁶ Aedanus Burke, *An Address to the Freemen of the State of South-Carolina* (Philadelphia, 1783). Accessed through Early American Imprints.

legally to take British protection after the fall of Charleston, there was no reason why they should have to take steps to regain citizenship they never lost. Instead, there must be more nefarious reasons for the proclamation: it was “calculated for no other end but to sow the poisonous seeds of faction and party, . . . , and throw the whole weight and powers of government out of the people into a few families.” He then described those few families as “a fierce and jealous aristocracy” that used the war to gain power. Since Governor John Rutledge had made the proclamation, Burke’s allegation against designing men seeking to create an aristocracy was clearly an attack on Rutledge and his supporters. Burke was lobbing well-identified bombs. In his insistence on seeing politics he did not like as the product of illicit private aims by designing men, he was a product of the late eighteenth century, when threatening differences of opinion were the product of intrigue.³⁷

Rutledge thereby wasted an ideal opportunity for clemency, for had he made positive overtures, “a proclamation would have had a happy tendency to bury in oblivion what was past” and “unite the affections of all.”³⁸ Instead, by legally excluding Loyalists, Rutledge put men so defined “under such disabilities as degraded them below the rank of freemen.” Here we begin to see what so angered Aedanus Burke. When Rutledge used his executive powers to define some men as less than freemen, he stripped them of their citizenship. In making them “less than freemen,” Rutledge violated the guarantees of citizenship that underlay the entire system. Dangerously, creating a class of sub-citizens who were white men laboring under permanent legal constraints undermined white citizenship for all. Setting white men against each other might destroy

³⁷ Burke, *Address* 10. Gordon S. Wood, "Conspiracy and the Paranoid Style: Causality and Deceit in the Eighteenth Century," *William and Mary Quarterly* 39, no. 3 (1982): 401-41

³⁸ Burke, *Address* 11.

the system of racial harmony on which South Carolina depended. Burke could only imagine one reason that anyone would want to do something so seemingly perverse: that Rutledge, the author of the proclamation, sought to destroy democracy and rule as the head of a small aristocratic faction.

In so doing, Rutledge disqualified a large number of voters, and made other former Loyalists dependent on him. Only men who had complied with the 1781 gubernatorial proclamation that Burke so detested were allowed to vote. In Burke's words, Rutledge bended all to "*packing an Assembly*."³⁹

Burke elaborated his position that Loyalists had not committed treason because the government did not exist at the time they made their decisions. When the British took over Charleston, the independent government of South Carolina could no longer protect citizens. European precedent and legal scholars agreed "the obligation of subjects to the State is understood to last so long, and no longer than the power lasts by which it is able to protect them." When the British took the city, the government could no longer protect them and therefore it was permissible to take British protection, regardless of the terms. Burke then linked this principle directly to the issue of signing congratulatory addresses, for which almost half of the men named on the Confiscation Act were being punished. If "they thought they could secure better treatment, or alleviate their calamity by congratulations, they had an undoubted right to do it. It did not show much political wisdom, I allow; but let the matter be as it will, they did not commit any crimes against the laws or government, for neither law nor government existed."⁴⁰

³⁹ Burke, *Address* 14.

⁴⁰ Burke, *Address* 7.

Therefore, the Confiscation, Amercement, and Exclusion Acts were illegal under international law, since they depended on men having renounced their citizenship by taking part in British efforts to subdue and rule the state. Loyalists who were allowed to stay in the state but stripped of voting rights were “*ruled and taxed without their consent*” in opposition to “every privilege we have been contending for these seven years past.” Burke acknowledged the intense feelings civil war created, but admonished his fellow South Carolinians for succumbing to “retaliation.” In giving into retaliation, they made their own position dangerous. Ex post facto laws, once begun, might come back to bite South Carolinians. “If so obscure a man as *Paddy Hinds*, or so obnoxious a one as *Bob Williams*, can be banished, amerced, or put to death without trial, hearing, or examination; whence comes security to you, or even to J_ R_ himself.”⁴¹

The Amercement Act was unjustified for the same legal and moral reasons. But in addition to being indefensible, the Amercement Act was also incredibly short-sighted. (In Burke’s words, “the most impolitic [act] that could be devised.”)⁴²

But the divisions and heart-burnings which those ameracements will leave behind, would turn out a bitter misfortune to us, and go as an inheritance to our children. It will irritate one half of the people against the other, and disgrace both. It will also serve to keep alive the memory of the troubles of the present day, which should be buried in oblivion.⁴³

The Amercement Act guaranteed that the divisions of war would never cease—the worst possible resolution. While other legislators saw amercement as a merciful (lesser)

⁴¹ As I explain in other chapters, the Confiscation Act named some 250 Loyalists as subject to banishment from the state forever, and the complete confiscation of their estates from themselves and their families. The Amercement Act took in another 60 or so Loyalists considered lesser offenders, who paid a one-time tax of 12% of the value of their estates to the state. Finally, the Exclusion Act controlled voting rights among former Loyalists who were allowed to stay and keep their estates, but were kept from voting or running for public office for several years. Burke, *Address* 16-17, 24. The first two men’s names are imaginary. The third is clearly John Rutledge himself.

⁴² Burke, *Address* 25.

⁴³ Burke, *Address*, 25.

punishment, keeping people in a permanent lesser state guaranteed resentment. Why in the world would any sane people want to keep a perpetual white underclass, who would turn their attentions to undercutting society? South Carolinians put legal restrictions on Loyalists for two reasons: to punish them, and to guarantee they could not act as a fifth column destroying the state. The Amercement Act would guarantee that former Loyalists would become a fifth column, exactly what the legislature was hoping to avoid.⁴⁴

All of these acts subverted efforts to establish a peaceful government, which we have seen Burke reiterate time and time again. He argued that Oliver Cromwell, the hated dictator of interregnum England, had come to power because of a “spirit of discord” that was not healed after the first phases of the English Civil War. Should South Carolinians follow in this path, they too might end up paying by losing the republic. The only clear way forward was to enact a general act of oblivion, which would forever pardon former Loyalists for their wartime allegiances. Burke suggested that both Machiavelli and Charles II had promoted amnesties as the best solution to civil war. Practically, an act of amnesty should have as few exceptions as possible, and those who found themselves on the list of exceptions should have a clear process of trial to remove themselves from that condition.⁴⁵

Aedanus Burke was unusual in his outspoken opposition to confiscation, but he had a few allies across the United States, if none in South Carolina. Alexander Hamilton was opposed to rough treatment of Loyalists, both as a matter of law, and because he was afraid capital would leave the country if Americans proved unwilling to pay their debts

⁴⁴ Burke, *Address*, 27. Practically, many loopholes in the law seemed designed (at least to Burke) to anger former Loyalists. Amerced men could not appeal the valuation of their estate, and “it is said by good judges, that some estates have been appraised at upwards of twice their real value.” Since they were paying at least a 1/10 share of the valuation, overestimates cost Loyalists a great deal of money

⁴⁵ Burke, *Address*, 28-32.

and protect Loyalist property rights. In March of 1784, as anti-Tory hysteria was at its peak, he spoke out against it as “Phocion” (an Athenian statesman known for his honesty, and also for his frequent isolation as the only opposition) in the New York newspapers, just as Aedanus Burke and Christopher Gadsden wrote under barely-concealed pseudonyms in South Carolina newspaper wars. Robert Livingston attacked the motives of New York politicians trying to persecute Loyalists, arguing that “one wishes to possess the house of some wretched Tory, another fears him as a rival in his trade, a fourth wishes to get rid of his debts...,” but only Hamilton took his attack public, daring to suggest that his opponents were not true Whigs, because they failed to protect the right of trial. (Hamilton, unlike Burke, faced charges of self-interest, since he was paid for legal representation by at least forty-four Loyalists between 1784 and 1791.) Hamilton, like Burke, argued that harsh punishments against Loyalists would ensure that they remained committed enemies to America, while a show of protection and friendship would make them government supporters. Further, Hamilton argued that the Loyalists would be a very small minority anyway, and therefore could not pose a real threat to the new government (the reason for excluding Loyalists in the first place).⁴⁶

Others in other states also opposed continuation of confiscation and other retaliatory laws against former Loyalists, but were content to address the issue in the legislative arena, not the public one. Arthur Lee, a Virginian in the Continental Congress, worried that pursuing confiscation would “wound[] our national character, by holding us up as a vindictive, persecuting People,” but he kept that opinion to personal correspondence. Alexander Hamilton and Aedanus Burke were unusually outspoken

⁴⁶ Willard Sterne Randall, *Alexander Hamilton: A Life* (New York, 2003) 260, 295-304. Jacobs, "Treaty and the Tories" 124-30.

against confiscation, and largely agreed, as two lawyers, on the problems with such acts: that they were *ex post facto* laws, that they stripped people due the rights of citizenship of those protections without a trial, and that anti-Loyalist legislation was likely to make permanent enemies out of people who actually would otherwise be trustworthy and enthusiastic Americans. It was not a majority opinion, but in speaking out they did begin to change the conversation, and gave cover to more moderate parties who shared the ideal of limiting or ending confiscation.⁴⁷

“the public peace was yesterday greatly interrupted”: Organized Opposition to Loyalists in Charleston⁴⁸

Aedanus Burke was reacting to real problems in post-war South Carolina. Charleston, the capital and largest city, saw several disturbances in the years after the war. Riots that at first blush might have seemed spontaneous sometimes turned out to be the product of organized opposition to Loyalists. These disorders brought home to many South Carolinians the real dangers of continuing to punish former Loyalists, as the resulting disorder, while perhaps exhilarating to those who mourned the excitement of the Stamp Act actions, was an indictment of the Revolution to others.

Independence Day celebrations in Charleston in 1783 were marked with special joy, as this was the first celebration of Independence Day in South Carolina’s capital city since the British had finally withdrawn in December 1782. “The city was grandly

⁴⁷ Arthur Lee as quoted by Jacobs, "Treaty and the Tories" 140.

⁴⁸ *South Carolina Gazette and General Advertiser*, July 8, 1783.

illuminated, and the day ended with great happiness and pleasure.” It is important to understand that this first truly independent Independence Day celebration was important in celebrating the recovery of Charleston from British forces. But, as Len Travers pointed out in his study of Independence Day celebrations, with no way to take out their anger on the British, South Carolinians could only turn on each other. In the midst of the revelry, there is some indication that important organizers were worried about the potential for discord and trouble. One of the toasts wished that “the harmony of the day be not interrupted with quarrels, tumult, or licentiousness.” Some of this was pro-forma—imploping celebrants to avoid customary drunken fighting and large-scale games. But calling attention to the need for peace in the streets also suggested uneasiness with the potential for “tumult” among the white population. And, as always, white South Carolinians were afraid that their slaves would use Independence Day as an opportunity for revolt.⁴⁹

Charlestonians were right to be worried. Less than a week later, a public spat turned into several nights of brawling in the streets. Independence Day was celebrated on a Friday. The following Tuesday, Thomas Barron, a British merchant, accosted and insulted a French soldier living in Charleston, calling him a “French rebel” and abusing him. The two men exchanged blows, and the Frenchman was taken away, while rumors spread into the crowd that he was dying. In response, crowds gathered looking for Mr. Barron and whipped him. One local newspaper termed this action “marked vengeance” against enemies of free South Carolina. An editorialist crowed that “those who call themselves the friends of a particular description of people, are very ill advised when

⁴⁹ Len Travers, *Celebrating the Fourth: Independence Day and the Rites of Nationalism in the Early Republic* (Amherst, M.A., 1997) 39-41. *South Carolina Gazette and General Advertiser*, July 5, 1783.

they attempt to irritate—the present temper of the people will not bear it.” Baron himself was a British merchant who had stayed in Charleston under a controversial arrangement with Governor Mathews that gave British merchants who came to Charleston during the occupation twelve months to wrap up their business affairs unmolested. This coddling of British merchants with no claim to roots in South Carolina was especially galling to many. The paper crowed that this riot would “teach certain persons a little more civility.”⁵⁰

This initial incident touched off several nights of rioting in Charleston. These subsequent riots make it clearer that the continued presence of Loyalists was the issue. Rioting continued on Wednesday and Thursday nights. The crowd was more organized on Thursday than the previous two evenings, and probably also larger. Excitedly, the crowd planned to “pump” certain offenders, and actually attacked at least five people. Pumping was a punishment enforced by mobs acting for the magistrate in extra-legal action against the targets. Targets were usually agreed upon by the crowd as examples of behavior deemed illegal, so that the crowd acted on behalf of civil authorities. Such crowd action was time-honored before the Revolution in both the American colonies and Great Britain, but the Revolution changed the meaning and actions of the crowd. Crowd action made sense in a pre-Revolutionary world, but Americans sharply divided on the legality and acceptability of crowd action after the Revolution. When a wide number of adult men had the chance to vote for representatives in an independent government, was there still a role for the crowd? This debate over the proper way to partake in the political process had implications that resonated strongly in South Carolina, a place with a noticeable population of former Loyalists. Was it appropriate for the crowd to discipline

⁵⁰ *South Carolina Gazette and General Advertiser*, July 8, 1783.

former Loyalists, when the crowd differed with the General Assembly on the proper punishment? Crowd action was not legitimate in the absence of civil authority's condoning the underlying reason for the action. The crowd was supposed to act as the arm of the law, not to circumvent the law.⁵¹

The *South Carolina Gazette and General Advertiser* complained that the pumpers were without authority, as "a legal remedy is at hand." The crowd dared to act when the Speaker of the House, the President of the Senate, and many members of the General Assembly were in town. What before the Revolution was seen as acceptable was now "disgraceful to good government." In response, several members of the General Assembly rushed to the governor to encourage him to take a stand in order to end the rioting. Further, they were horrified by the threat to general order, as the crowds became bigger every night. On Friday, July 11, one week after Independence Day, Governor Guerard proclaimed that any future rioting would be severely prosecuted: "all good citizens" were called on to "surpress[] and discourag[e]" rioting. In a brief nod to the sensibilities of the crowd and their supporters, the proclamation recognized that Thomas Barron had "impudently and grossly insult[ed] a Citizen." This characterization also suggests a problem. Did Barron drastically overstep the boundaries of good sense by insulting a man at a time of great tension for Loyalists and British merchants? Or did he feel perfectly entitled to all liberties of the street because of the agreement, coupled with the General Assembly's hearings for clemency of Loyalists in 1783?⁵²

⁵¹ See Pauline Maier, "Popular Uprisings and Civil Authority in Eighteenth-Century America," *William and Mary Quarterly* 27 (1970): 3-35. Barbara Clark Smith, "Food Rioters and the American Revolution," *The William and Mary Quarterly* 3rd. ser., 51, no. 1 (1994): 3-38, Dirk Hoerder, "Boston Leaders and Boston Crowds, 1765-1776," in *Beyond the American Revolution: Explorations in the History of American Radicalism*, ed. Alfred Fabian Young (DeKalb, Ill., 1993).

⁵² *South Carolina Gazette and General Advertiser*, July 12, and July 29, 1783. Walsh, *Sons of Liberty* 113-17. Nadelhaft, *Disorders of War* 97-98, 109-10.

Rioting ended after the Governor's Proclamation, but public comment continued for a few weeks. Elite defenders of the British merchants strove to differentiate the merchants from other Loyalists. "A Patriot" blamed the riots on "faction," "a contempt for government," and the "ambition" of a few men. Another writer blamed "the daring affronts" on people seeking "private revenge, in defiance of law and a wise policy." In defending the British merchants, he argued they were different from Loyalists, and would make far better citizens than Loyalists because they "offer to become good Citizens." Choosing American citizenship showed a positive allegiance that defined the status. Further, unlike a Loyalist who "stabs you privately," the British merchants took public action. Even those incensed by a "few contemptible" Loyalists should exempt the whole. Interestingly, the anonymous writer rushed to state his *bona fides*, saying he had "no Tory relations who I wish to screen, nor Tory connections I wish to serve." This would set him apart from many members of the General Assembly, who were intimately connected with Loyalists subject to confiscation. Within the month, a crowd attacked a newspaper publisher for publishing handbills in favor of allowing the British merchants to stay.⁵³

Another writer complained that the mechanics leading the charge against the British merchants were now "noisy patriots," but recently hid "in silent corners, remote from danger." This was almost certainly a reference to Alexander Gillon, who was promoting the riots, but had a very checkered Revolutionary past. He spent much of the post-Revolutionary years trying to get paid for a ship seized by several different governments.

In angry response, an "anti-Tory" wrote to the papers attacking Wells (the printer) in particular, and Loyalists in general. "That person whose heart is fraught with the

⁵³ *South Carolina Gazette and General Advertiser*, Aug. 2, 1783, July 15, 1783.

principles of toryism, I consider as having bid an eternal farewell to honour, or indeed to common honesty.” Such people had no right to continued existence in South Carolina, and the mob was perfectly justified in chasing out such men. The Independence Day tumult of 1783 finally died down, but the fundamental quarrel continued.⁵⁴

One reason public tumult finally died down was a deliberate change in the governing structure of Charleston. More conservative factions, alarmed by the rise of artisan power in the city, moved to incorporate the city. The artisans had long been proponents of this move, so in many ways it was an attempt to buy them off. Under incorporation, a city council and intendant (like a mayor today) controlled most government functions of the city, giving artisans a stronger voice in city government than they had in the overall General Assembly. But this system of government also came with checks on the power of the crowd, for elected members of the city government posted bonds for good order. In this way, city government aligned the economic interests of the top of the artisan class with stability. But while city incorporation strengthened city government, it didn't stop outspoken opposition to the return of Loyalists.⁵⁵

Trouble in the Charleston streets began again in March 1784. The 1784 General Assembly met from the beginning of January to the end of March. On March 26, 1784, they passed an act restoring at least 35 confiscated estates outright and transferring 95 men from the confiscation list to the amercement list, overall changing the status of almost half of the men subject to confiscation. (The numbers are a matter of a small controversy since they moved men based on their category of offense, and some of the names are in doubt from version to version.) John Lewis Gervais, a member of the

⁵⁴ *South Carolina Gazette and General Advertiser*, Aug. 12, 1783.

⁵⁵ Walsh, *Sons of Liberty* 117-18.

General Assembly, was right to worry that “in some cases we have been too lenient, some are permitted to return which I am afraid will not contribute to establish peace and good order among us.” While there was sizable quiet support for the General Assembly’s actions, there was also discontent, and the mass lifting of confiscation from prominent Loyalists set off the Charleston crowds.⁵⁶

Remnants of the Charleston Sons of Liberty, along with Alexander Gillon, a local planter and seaman, and James Fallon, a transplant from Georgia, took over a small anti-smoking society and renamed it the Marine Anti-Britannic Society. This society became the locus for anger against Loyalists, and against General Assembly members that supported clemency. While the legislature was in session, the Society tried to dissuade them from efforts to ameliorate the status of prominent Loyalists by a barrage of newspaper editorials and waggish poems. Before the General Assembly even adjourned, Captain William Thompson, a local tavern keeper, insulted John Rutledge, the author of confiscation. The growing spat got so out of hand that Rutledge had Thompson hauled in before the Assembly to answer charges of insubordination, and then had him arrested for “gross insult” to Rutledge. Thompson was eventually released on a sizable bail, but continued to attack the ‘aristocratic faction’ in the papers.⁵⁷

In April 1784, Charleston saw increasing violence in rhetoric, and then in crowd action. The Marine Anti-Britannic Society helped marshal organized opposition, but certainly called on more generalized discontent. Efforts by Intendant Hutson (who had

⁵⁶ Act. No. 1229, “An Act Restoring to Certain Persons, Therein Mentioned, Their Estates, Both Real and Personal,” Thomas Cooper and David J. McCord, ed., *Statutes at Large of South Carolina*, 10 vols. (Columbia, S.C., 1836-1841) 1: 624-26. John Lewis Gervais to Henry Laurens, Charleston, April 15, 1784, Taylor, ed., *The Papers of Henry Laurens* 16: 430.

⁵⁷ For a longer discussion of this incident, see Walsh, *Sons of Liberty* 118-20. For the General Assembly proceedings against Thompson, including a heated exchange of letters, see Theodora J. Thompson and Rosa S. Lumpkin, ed., *Journals of the House of Representatives, 1783-1784* (Columbia, S.C., 1977) 579-82.

defeated Gillon, the Marine Anti-Britannic Society President, in the previous election) to control the crowds turned into what historian Richard Walsh termed “an invitation to a general fray.” At the time the legislature adjourned, one crowd threatened recently returned and pardoned Loyalist James Cook. James Cook was a carpenter from Charleston who, by all evidence, was a Loyalist by conviction. He not only took protection, but also authored and pushed a petition to the British commander prohibiting tradesmen who did not take protection from following their trade. This would have bankrupted the artisan class, as well as day workers. Fortunately, the British moderated this policy, but hatred towards Cook ran deep, especially among the members of the Marine Anti-Britannic Society.⁵⁸

In response, a crowd “Lampooned” the General Assembly, and ran Cook out of town. Then they hanged him in effigy, carrying the effigy throughout the town in a warning to other Loyalists. Finally, the crowd marched to Christopher Gadsden’s wharf with the now-burning effigy, as Gadsden had become a prominent supporter of clemency towards Loyalists. (I will discuss this at greater length in the next section.) James Cook evidently took the warning, and never again tried to live in South Carolina. In the aftermath of this successful demonstration against Cook, a secret committee posted increasingly threatening handbills across the city, culminating in a widely-distributed handbill warning off thirteen Loyalists by name. They were told to leave the state or risk their lives. While Governor Guerard responded quickly by offering a thousand dollar

⁵⁸ Walsh, *Sons of Liberty* 120. For more on the petition to keep Charlestonians from following their trade, see Chapter Four.

reward to anyone who would identify and testify against the perpetrators, unrest continued.⁵⁹

Twelve of the thirteen men ordered to leave South Carolina forever were former Loyalists who had been subject to confiscation and banishment under the 1782 act, but who the General Assembly removed from the lists in 1784. The final man was a British merchant who fell under the agreement. The Marine Anti-Britannic Society had support, as evidenced by their ability to draw a crowd, from people who resented the sudden easing on Loyalists, especially well-off Loyalists. But their organization in the wake of the General Assembly's move towards reconciliation with Loyalists also suggests that they represented a minority view, and their desperation was what led them to increasingly public threats against Loyalists. Private threats had no effect on the thirteen men, who continued living in Charleston. Publishing that handbill smacks of desperation: an attempt for publicity to make Charlestonians realize the enemy in their midst. Further evidence for the relative equanimity towards toleration for former Loyalists is the peacefulness of the riots. With few exceptions, there was no violence towards persons, only threats. In only a few, extreme, cases were Loyalists whipped.⁶⁰

Angrily responding to the Governor's reward offer, the secret committee ordered away another twenty-six men. Yet while "most people expect[ed] great Commotions in Town," "every thing [wa]s peaceable." The crowd did take action against one other man in May 1784, but he, like James Cook, was an unusually divisive figure. William Rees, an officer in the Loyalist militia, found himself on the confiscation list largely due to his

⁵⁹ Hamer, ed., *Laurens Papers* 16: 431. Nadelhaft, *Disorders of War* 110. Hamer, ed., *Laurens Papers* 16: 499-51. Walsh, *Sons of Liberty* 114-21. *South Carolina Gazette and General Advertiser*, April 29, 1784.

⁶⁰ John Champneys, the Loyalist merchant who was warned off in 1784, would not be removed from the Confiscation Act until 1789. Act. No. 1435, McCord, ed., *Statutes of S.C.* 5: 94.

ferocity in backcountry fighting. He personally oversaw the hanging of a captured rebel, earning him the lasting enmity of the Patriot militia. When the General Assembly removed him from confiscation (still requiring amercement) and he dared show his face in South Carolina, people reacted. Backcountry sympathizers in Charleston chased him through the streets and up to his roof, where they caught him and gave him fifty lashes. They threatened to whip him again and more severely if he did not leave the state forever within three weeks. Further, the secret committee proudly published the names of the entire group in one local anti-Loyalist newspaper, taking credit for the whipping.⁶¹

John Gervais reported the incident with some amusement, saying that the backcountry settlers termed whipping “the Juice of Hickory,” and had applied such “juice” to Rees. Gervais believed the commotions about such hated men proved his point that “if at first only those had been admitted that were least obnoxious, every body would have been Satisfied, and in a Year or two” the others might have returned quietly. Rees toughed it out, continuing to live in South Carolina. There is no indication he was ever whipped a second time. Despite the popularity of attacking Rees, there was limited support for anti-Loyalist activity beyond a few notorious offenders. An opponent of the Anti-Marine Society crowed that the society which “formerly boasted 620” at meetings could no longer find more than forty people willing to attend.⁶²

While peace descended on the city after this incident, the authorities took no chances. The 1784 Independence Day celebrations were tightly controlled, and the governor banned illuminating houses. This was partly due to the fire risk in a drought year, and also because of the ever-present risk of arson from slaves, but it also was due to

⁶¹ Hamer, ed., *Laurens Papers* 16: 450. *Gazette of the State of South Carolina*, April 29, 1784. Nadelhaft, *Disorders of War* 110.

⁶² Hamer, ed., *Laurens Papers* 16: 450. *South Carolina Gazette and General Advertiser*, May 11, 1784.

nervousness about Charleston's ability to get through a celebration without riots.

Authorities were right to be nervous, as shortly after the celebrations a new round of tension hit the city. Reading the newspapers for July and August 1784, one might think the city was engulfed in tension. Pro- and anti-Loyalist writers argued about who had started the riots and which faction had broken the law first. Yet however heated the war of words, actual violence was very limited. The Charleston Intendant did send a small group to break up a tiny (not more than 20 men) crowd of sailors and others parading around town with the American colors. The crowd broke up peacefully, if in irritation. Writers later claimed that the men breaking up the crowd included Loyalists and British merchants, but it is not clear that was true.⁶³

This crowd, like those before, carefully selected targets. The crowd did threaten James Cook and his family, telling Mrs. Cook that her husband "should be hanged on his return as his effigy lately was." In order to demonstrate the seriousness of this threat, one man, a tailor, identified himself by name. Another crowd entered merchant John Wagner's home and beat him and destroyed his household furniture. With the exception of these three incidents, there is no evidence of widespread rioting. Instead, even opponents had to admit that no damage was done. Certainly, precipitous action by the Privy Council helped control problems by authorizing the militia to take action against rioters. These actions were part of a united effort to keep peace in the city. Alexander Gillon, the President of the Marine Anti-Britannic Society, sat on the Privy Council and

⁶³ South Carolina Gazette and General Advertiser, July 6, 1784, July 10, 1784. Nadelhaft, *Disorders of War* 109.

helped pass the order for the militia unanimously. He understood the will of the majority: some protest, but peaceful.⁶⁴

Some Loyalists certainly took proper precautions to avoid further trouble. Elias Ball Jr., who was removed from the confiscation list by the 1784 General Assembly, wished to “avoid [Charleston] on account of grate disturbances there with Mobbs.” No doubt others also decided to retire to their restored properties outside of the city for at least a year.⁶⁵

In short, while there was tension and violence in Charleston in the aftermath of General Assembly moves towards reconciliation with former Loyalists, it was carefully controlled and largely peaceful. Crowd action focused on a few hated Loyalists who had gone far beyond taking protection to active, ruthless, and often cruel responses to Patriots during the war. As unwilling as most Charlestonians were to live with James Cook, they were willing to live with a wide number of former Loyalists. Gervais was correct that “the people in General are very well Satisfied with every part of [torn] to the return of those that were in opposition & oppressed them in their distresses” and were willing to treat the British merchants with “kindness.”⁶⁶ Part of the reason South Carolinians were willing to do so was the influence of advocates for the Loyalists who were far more moderate than Aedanus Burke.

⁶⁴ Adele Stanton Edwards, *Journals of the Privy Council, 1783-1789* (Columbia, 1971) 117. Nadelhaft, *Disorders of War* 110. Edwards, *Privy Council Journals* 117-22.

⁶⁵ Elias Ball to John Ball, Limerick, July 25, 1784, 11/516/52, Ball Family Papers, SCHS.

⁶⁶ Hamer, ed., *Laurens Papers* 16: 450.

“he that forgets and forgives most...is the best citizen:” Christopher Gadsden and a Middle Way Against Confiscation⁶⁷

Christopher Gadsden was also a vocal opponent of the Confiscation and Amercement Acts. However, he and General Francis Marion, the partisan leader, tried to use their influence within the General Assembly and with other South Carolina leaders to effect a move away from harsh measures towards former Loyalists to a much more inclusive policy that removed official recriminations from all but a symbolic handful of men. Gadsden had opposed the Confiscation and Amercement Acts during the Jacksonborough Assembly. His opposition to these measures might have something to do with why Arthur Middleton told a friend that while he was glad the Jacksonborough Assembly paid Gadsden the “compliment” of being the next governor, he was also glad he did not take the position. (Obviously, personal squabbles also influenced this distaste.)⁶⁸

He was no friend to Loyalists ideologically. He had suffered at least as much as other members of the Jacksonborough Assembly who were in favor of confiscation. As a prominent voice for the Patriot cause, including outspoken opposition to the Stamp Act, he was imprisoned after the fall of Charleston. He had the humiliation of surrendering the city itself on May 12, 1780 as Lieutenant Governor, since Governor John Rutledge had fled the city. (This must have been especially galling to Gadsden, since Rutledge was earlier willing to hand over the city without much of a fight.) Shortly after capitulation, he was imprisoned in a surprise move by the British and sent to St.

⁶⁷ Christopher Gadsden to General Francis Marion, Nov. 17, 1782, Walsh, ed., *Gadsden Writings* 197.

⁶⁸ Walsh, ed., *Gadsden Writings* 197 footnote 1.

Augustine. He spent eleven months in captivity in San Marcos Castle where he complained that he never saw the sun. He was later granted a prisoner exchange and sent to Philadelphia for the duration of the war, where he mingled with other American prisoners. Like many wealthy and middling South Carolinians, he was well aware that repairing his fortunes from the destruction of the war might be his life's work.⁶⁹

In 1782, Gadsden wanted to offer clemency to some Loyalists, but he also wanted to stand up for American interests against British interests. In so doing, he campaigned against the 1782 agreement with British merchants, feeling that it favored recently arrived British merchants far beyond any advantage to the state as a whole. While trade was important, the real reason Governor Mathews had created this agreement was to secure the return of slaves captured by British forces from Lowcountry plantations. Governor Mathews was in negotiations with General Leslie, who was using slaves as a bargaining tool—a very persuasive bargaining tool, as it turned out. Gadsden objected strenuously, arguing that it was a terrible move, only favoring men who had done the least to support the Revolution. “The inhabitants near the sea are principally concerned in negroes; has their conduct during this campaign been so meritorious?” Should the rhetorical not be enough, Gadsden went on to point out that the Lowcountry slaveowners had been “the most backward in the State during these critical Times to turn out” for militia duty.⁷⁰ This agreement with British merchants became a flashpoint with the Charleston artisans, as the most visible symbol of favor to the most hated Loyalists—those who were not even South Carolinians, but merchants who had arrived under British

⁶⁹ Walsh, ed., *Gadsden Writings* xxv. For more on his wartime career, see E. Stanley Godbold and Robert H. Woody, *Christopher Gadsden and the American Revolution*, 1st ed. (Knoxville, 1982) Another interesting treatment is McDonough, *Gadsden and Laurens* .

⁷⁰ Christopher Gadsden to Governor John Mathews, Oct. 16, 1782 (letter also copied to General Marion), Walsh, ed., *Gadsden Writings* 181-83.

protection after Charleston's fall in order to profit under the subjugation of South Carolina.

Gadsden complained loudly against the Confiscation and Amercement Acts, but not in the way Aedanus Burke did. Some of his clearest statements against these anti-Loyalist actions were pursued in semi-private letters to his ally General Francis Marion. In late 1782 he tried to explain his own thinking about his actions during the Jacksonborough Assembly after the fact. As we saw in Chapter Two, while he was opposed to the acts, he had not always been a friend to Loyalists. He had, in fact, threatened two friends who took Governor Rutledge's 1781 Proclamation offer with death when they arrived in the camps. Yet in the waning days of 1782, he patted himself on the back for his forthright opposition to confiscation within legislative chambers, telling Marion he "ha[d] met with continual rebukes from my friends, and not a few gross affronts" for his efforts to "restrain and to mitigate their rage and impetuosity." The Confiscation Act and Amercement Act encouraged the "vindictive spirit," making post-war stability harder to achieve. Despite attacks by General Assembly members he termed "the violent confiscation men" (he probably meant Edward Rutledge and his faction), he "fought it through, inch by inch, as unjust, impolitic, cruel, premature, oppressing numbers of innocent for one man supposed to be guilty, formerly signing a paper, when visibly under the power and restraint of a known cruel, oppressive and tyrannical enemy." Strong words, indeed. Gadsden objected to the aura of revenge in the Assembly just as much as Aedanus Burke, but he was more concerned with the "impolitic" nature of confiscation. Alienating well-off men who could support a fragile new state, especially by promoting much-needed trade, was a bad move. In order to stop the

Confiscation Act, he apparently (or so he claimed later) grandiloquently threatened to cut off both his hands before voting for such a proposal.⁷¹

Christopher Gadsden, while an ardent Patriot himself, certainly had personal reasons to support clemency to Loyalists. Numerous relatives were Loyalists or were tied emotionally and financially to Loyalists. His wife's father, merchant John Wragg, was on the confiscation list. In 1783, Gadsden himself introduced Wragg's petition into the General Assembly, thereby putting his weight behind it. This pressure helped ensure Wragg's success, and he was moved from the confiscation list to the amercement list in 1784. These efforts paid off for Gadsden as well, as when Wragg died in 1796 he owned 336 prime acres in Charleston, a plantation with 76 slaves, and a schooner complete with a slave crew. Gadsden's daughter, Ann Gadsden Lord, was the widow of a Loyalist merchant whose entire estate was confiscated in 1782. His daughter eventually reclaimed property worth more than 6000 pounds sterling. Gadsden also had a son whose wife came from a prominent Loyalist family, and they petitioned for clemency as well. Gadsden never directly interfered in that case, but his allegiance to the family was well known. His own personal allegiances influenced his public efforts against anti-Loyalist measures. Perhaps most directly, he tried (unsuccessfully) to insert a clause in the 1782 Confiscation Act allowing the next male heir (within the degrees of son, brother, or nephew) who could show he had been a good Patriot to inherit his Loyalist relative's estate.⁷²

After the passage of the Confiscation Act, Gadsden, like many others, expected a process of renegotiation and reconsideration. He told his ally Marion "we must patiently

⁷¹ Christopher Gadsden to Francis Marion, Nov. 17, 1782, Walsh, ed., *Gadsden Writings* 194-95.

⁷² Godbold and Woody, *Gadsden* 227-28. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 298. Walsh, ed., *Gadsden Writings* 195-96.

wait till the next Assembly to endeavor to have its severities at least mitigated where there is room.” In 1783, he continued a letter-writing campaign outlining his philosophical and practical objections to the Confiscation Act. By 1784, he began writing a series of newspaper editorials, usually styling himself an “open and steady republican.” In his editorials, he opposed Alexander Gillon in particular and the Marine Anti-Britannic society more generally. In attacking the Society, he was speaking out against his former Revolutionary allies.⁷³

Both Burke and Gadsden found it easy to blame nefarious politicians for the Confiscation Act. Eighteenth-century political theory often devolved public policy prescriptions on corrupt hidden actions of men seeking private gain through the manipulation of public proceedings. Lawyers were often the target of these conspiracy theories. Conveniently, John and Edward Rutledge, the cousins who wrote the Confiscation Act and promoted its passage as Governor and Speaker of the House of Representatives, respectively, were both lawyers. Gadsden complained that “I know two lawyers who were extremely severe in this Act, to whom more had been forgiven and overlook’d by the public people than almost to all the culprits in the Act put together.” While he did not devote entire pamphlets to attacking the Rutledges, like Burke, he was very hostile to the two. Edward Rutledge particularly made a fortune from land speculation after the Revolution. Later, Gadsden also accused Alexander Gillon of manipulating crowds for personal political gain. He called Gillon one of the “indefatigable sons of *Cunning*, who wish to set us by the ears for their own purposes.”⁷⁴

⁷³ Walsh, ed., *Gadsden Writings* 196. He went on at some length complaining about “these rascals [who] have been the secret murderers of hundreds by the consequence of their rascally conduct.”

⁷⁴ To the Public July 17, 1784, Walsh, ed., *Gadsden Writings* 207.

Aside from his distaste for the authors of confiscation, Gadsden also believed the times called for generosity in the service of stability. Widespread punishment benefited nobody. Instead, the state would be better served by a much more limited banishment act that would single out a few offenders, while preserving the rights of all others. While times were still uncertain, moderate restrictions might be placed on men whose political allegiance was suspect, but even those restrictions should be lifted shortly. “For my part I think it sufficient that such as are suspected as dangerous, should be restrained from electing or being elected, or not put into any office of trust till the war is over.”⁷⁵ In this he disagreed with Burke, who hated the Exclusion Act. Gadsden saw no problem with a temporary, limited citizenship for Loyalist men that allowed them full social intercourse, full economic maneuvering, and full inclusion in the legal system, but without political participation. The state could choose to exclude men it otherwise recognized as full citizen actors from political participation on a temporary basis in order to affirm the stability and safety of the political process. For Gadsden, citizenship was a package whose parts were severable and discernable, while for Burke the package was intricately bound and indivisible.

Gadsden’s great insight was that the times called for generosity. South Carolina citizenship carried positive obligations as well as rights. People needed to control their basest feelings in the interest of the collective good. Gadsden opined “In short, he that forgets and forgives most, such times as these, in my opinion, is the best citizen.”⁷⁶ The General Assembly needed to forget and forgive, but in order for elected leaders to do so,

⁷⁵ Walsh, ed., *Gadsden Writings* 197.

⁷⁶ Walsh, ed., *Gadsden Writings* 197.

the people they represented also had to live up to the best of citizenship by forgetting and forgiving war hurts.

Gadsden condemned Gillon and his followers for deliberately whipping up anti-Tory sentiments in a bid to create disorder. He felt that peace and good order was settling on South Carolina, and Gillon and his followers were creating conflict rather than simply riding the wave of conflict that already existed. Vital trade and happiness was risked for:

revenge on a few individuals at our feet! Shabby politics indeed! Is this not biting our nose to spite our face? It is very lamentable that civil wars, the worst of all wars, are far from being a new thing in History, almost all nations have had them, and what has been generally done by a wise people when they were over?⁷⁷

Further, the “heats and jealousies, the natural consequences of the times, were *subsiding fast*, had not this writer [Gillon] and his dupes established a *lasting* fund for keeping them up.”⁷⁸ Constant harping on the wrongs of the past only kept “alive old piques and resentments, make many families unhappy and spoil good neighborhood.”⁷⁹ Gillon threatened to undermine vital peace. After civil wars, the least said, the soonest mended.

Two different leaders, representing two regions of South Carolina, had each turned from legislating to frantic public writing in an effort to turn the public discussion on Loyalists from confiscation and retaliation to a more just and far-sighted approach to the return of Loyalists. While they disagreed on how much the state should control and punish those Loyalists who were given clemency, both South Carolinians agreed that it was wise public policy to reincorporate many Loyalists subject to confiscation.

Thus far, I have dwelt on specific examples of unrest in the backcountry and in Charleston, and the efforts by prominent men to effect a clemency for Loyalists that

⁷⁷ Walsh, ed., *Gadsden Writings* 202.

⁷⁸ Walsh, ed., *Gadsden Writings* 210.

⁷⁹ Walsh, ed., *Gadsden Writings* 212.

could serve as a foundation for a stable society. Now, in the second half of this chapter, I wish to turn my attention to more diffuse cultural politics surrounding the treatment and position of Loyalists in post-war South Carolina. This second section deals with unattributed newspaper accounts of Loyalists and their treatment in South Carolina and other states, as well as isolated accounts of the ways in which very ordinary South Carolinians, especially in the backcountry, dealt with former Loyalists and the history of division.

Settling the Peace Treaty: South Carolina Anxiety About How a Treaty Would Change their Arrangements for Loyalists

Roberta Jacobs has shown that the Treaty of Paris provoked widespread anxiety, and increased hostility towards Loyalists in 1783 and 1784 across all the states. In New York, mobs took to the streets, just as in Charleston. Newspapers whipped up anti-Tory enthusiasm, throwing down the gauntlet to legislators who might dare to revise wartime anti-Loyalist legislation. Massachusetts, Maryland, North Carolina, and New York residents instructed and petitioned their legislative representatives to keep exiled Loyalists from returning. As we have seen, South Carolinians behaved similarly, petitioning the General Assembly against revising the Confiscation Act. Just as in other states, the proposed peace treaty focused South Carolinians' minds on the issue of Loyalists.⁸⁰

⁸⁰ Jacobs, "Treaty and the Tories" 62-68, 71-74.

Months before the final treaty, the *South Carolina Gazette* and other newspapers began public discussion of an issue close to the hearts and pocketbooks of many South Carolinians: what the eventual peace treaty should look like. Americans eagerly read about the ongoing negotiations, and wrote anxious letters to each other spreading the latest rumors. Peace treaty discussion in the public arena became a non-violent place for South Carolinians to work out their anxieties about the process of enacting reconciliation. Two issues predominated: the status of pre-war and wartime debts contracted with British merchant houses, and whether Loyalists would have to be restored to their property and/or guaranteed citizenship. Historians have written at length about the influence of anxiety about mounting debt on Americans in getting into the Revolution.⁸¹ South Carolina grandees, while some of the richest men in America, were also carrying large balances with British merchant houses. Many claimed no desire to shirk such obligations, but wanted infinite time and terms under which to pay it back. Others argued that the war damages more than outweighed the amounts South Carolinians owed to London, and should erase such debts. Further, during the Charleston occupation, a new generation of British merchants arrived in the city. They petitioned the governor to be allowed to stay after the war, and were allowed a twelve-month grace period after the war to finish collecting their accounts. This meant that the public face of British mercantile debt in South Carolina was men without deep local ties, who were encouraged to collect outstanding debts quickly at a time when few people had access to much cash. People were concerned with restoring damaged property and rebuilding their operations,

⁸¹ See, for instance, T. H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton, N.J., 1985), and Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill, N.C., 1999). For more on South Carolina's debt situation in the Confederation period, see Charles Gregg Singer, *South Carolina in the Confederation* (Philadelphia, 1976) 38-68.

including using available cash and mounting debt to buy new slaves to replace the twenty percent of South Carolina slaves who fled to British lines during the war. The last thing they wanted to do was pay back their debts immediately to men who had come during the occupation to live under British protection and profit from South Carolina's humiliation. Further, the artisans and other less exalted people bitterly resented the continuing presence of the merchants in Charleston, as we have seen earlier in this chapter.

South Carolinians were especially nervous about how the treaty would handle the fate of Loyalists. Even people who supported individual Loyalists did not want to be compelled to readmit all Loyalists under compulsion from Britain. It became an issue of sovereignty to easily offended Americans.

Before addressing the widespread interest in the treaty (with sometimes incomplete rumor), let me review the actual relevant provisions of the Treaty of Paris dealing with debt, and with Loyalists of all varieties. Article IV dealt with debtors with admirable brevity, agreeing that, "creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted." Americans would quickly move to subvert this.

Articles V and VI dealt with Loyalists. Article V called for Congress to "earnestly recommend" that each state restore confiscated Loyalist property to certain categories of persons: British subjects and Americans who had never participated in military actions against America. Further, the article provided that the states should also be "encouraged" to provide that people not meeting those two descriptions be allowed free movement in the United States for one year in order to settle their affairs and attempt to "obtain the restitution of such of their estates, rights and properties, as have been

confiscated.” This mirrored the agreement South Carolinians made with the British merchants.

The treaty called for Congress to use moral suasion over the states to choose to restore the estates of people in that third category, arguing “that spirit of reconciliation” should recommend repealing confiscation, and opening American courts to Loyalist efforts to reclaim property, including debts. The Treaty also emphasized that wartime property damage caused by military actions was not subject to post-war litigation, preempting the possibility of forcing Loyalists to pay for all burned buildings and ruined homes.

Notice that the treaty very cleverly called for “earnest recommendation” only—British negotiators pushed hard for American restitution of some variety to displaced Loyalists, while Americans pushed hard to avoid any obligations for Loyalists, and any impediments to how they could treat them. This article was a compromise between the two sides that made the British feel better without binding Americans to anything. South Carolinian Henry Laurens, who had lost property, been imprisoned, and seen his son killed in a minor skirmish with British troops while he was imprisoned in the Tower of London, was also one of America’s lead negotiators at Nantes. Laurens wrote a relative during the negotiations that while there was an article to “recommend to the several States restitution of Estates” subject to confiscation, James Laurens should “observe tis to be a recommendation” only.⁸²

Such guarantees were never meant to be worth the paper they were written on, at least to the American side. South Carolinians cheered reading Londoners’ complaints that Americans were organizing to prevent Loyalists from claiming their property, in part

⁸² Henry Laurens to James Laurens, Paris, Dec. 17, 1782, Hamer, ed., *Laurens Papers* 16:84.

by discouraging (through crowd action, threats, and public disapprobation) lawyers from taking cases for Loyalists. London papers were angry that they had been gypped in the peace negotiations.⁸³

Article V agreed that states would not confiscate any more estates, and more importantly, that no one would be charged, prosecuted, or forced to pay damages on the basis of his wartime behavior after the treaty's effective date. Anyone who was in prison on war-related charges should be released immediately. This had significant repercussions for South Carolinians, as it would close off the possibility of using courts to prosecute Loyalists. As we saw in earlier chapters, the South Carolina General Assembly intended to use the courts to prosecute Loyalists. Peace treaty negotiators worried (correctly) that Loyalist prosecutions would turn into kangaroo courts, and the British moved to cut off that possibility.

The April 9, 1783 edition of the *South Carolina Gazette* printed the first newspaper edition of the general outline of the treaty (as negotiated by November 1782) to an eager audience. The general summary noted that Congress would recommend restitution of Loyalist property of British citizens and Americans who lived under British protection and did not participate in military activities against the United States. Months in advance, this language was already widely reported in America, to some consternation. Further, at the same time that the South Carolina General Assembly was trying to auction properties confiscated from Loyalists under the 1782 Confiscation Act, reports were circulating in South Carolina that the Treaty might return confiscated estates, thereby making titles to confiscated estates insecure. For instance, in April 1783, the *South Carolina Gazette* reported that such estates might be restored, and the states would owe

⁸³ *South Carolina Gazette and General Advertiser*, Nov. 1, 1783.

Loyalists the “bona fide price” for estates that had already been sold. This would protect purchasers, but wise men could see potential problems in the next clause: “all persons, who have any interest in confiscated lands, either by debts, [or by] marriage settlements” could seek redress in the courts. As we have seen in earlier chapters, dower rights had been excluded from the Confiscation Act, and the reintroduction of those rights made property purchases insecure. Purchasers who bought property under one set of rules discovered that they later had paid 33% too much, as they had to carve women’s shares out of their purchase. Wise Americans saw these problems coming when they read that the treaty would require honoring marriage settlements.⁸⁴

Later in the year, South Carolinians were eager to read that the British House of Commons were preparing to make grants to the Loyalist refugees there in the neighborhood of two million pounds. Of course, everyone knew that given the “present state of finances” they would not be paid the full value of their losses, but some slightly guilty South Carolinians were relieved to discover that Loyalists living in Britain would receive “at least ten shillings in the pound.”⁸⁵ Other South Carolinians must have thrilled to the humiliation those Loyalists faced, living on little in one of the world’s most expensive cities, and being paid only a small percentage of their total losses, meaning they would take a material step down in the world in return for the Loyalist activities. How the mighty are fallen! Reading about Loyalist humiliation stoked Americans’ pleasure in victory, and perhaps helped them ultimately come to accept clemency for some Loyalists, as long as they had the psychic satisfaction of knowing that some Loyalists were paying dearly.

⁸⁴ *South Carolina Gazette and General Advertiser*, April 9, 1783.

⁸⁵ *South Carolina Gazette and General Advertiser*, Sept. 9, 1783.

When the peace treaty was finally signed, South Carolinians, along with their fellow Americans, had the chance to see how Congress would actually act in urging the return of Loyalist property, as officially called for under the treaty. In February of 1784, the *South Carolina Gazette* ran the Congressional call for the return of Loyalist property. In large part, the language simply repeated the language of the treaty, “earnestly recommending” to the states that they offer restoration of the two categories of persons mentioned in the treaty (true British subjects and American residents of occupied areas who did not take up arms against America), and that they allow those who had borne arms against America to come back for one year to settle their estates. Further, it officially called for restoring the estates of even those who had taken up arms against America in the “spirit of conciliation...which should universally prevail” in much the same language as the peace treaty had called for the “spirit of reconciliation.”⁸⁶ Such calls mostly spelled out the hopefulness of an idiot, hoping that better times would magically lead angry men and women to do what had never been proposed openly by most people: restore property to men who had, in fact, taken up arms against the Americans during the Revolution. South Carolinians recognized that there was nothing Congress could do to actually enforce the suggestion, and there was a highly cynical edge to the entire exercise.

By the time South Carolina newspapers ran the actual text of the peace treaty, readers had been well prepared for what the provisions would hold for them.⁸⁷ The governor required that the treaty be promulgated widely much more as a formality than a necessary piece of information, for South Carolinians faced no surprises. But they

⁸⁶ *South Carolina Gazette and General Advertiser*, Feb. 24, 1784.

⁸⁷ *South Carolina Gazette and General Advertiser*, March 18, 1784.

continued to use newspapers to conduct an open conversation about what should be done with the Loyalists.

Public Discussions of Loyalists: What to Do with the Losers

Englishmen had their own ideas about how Loyalists should be treated, of course. The *South Carolina Gazette* ran the high-minded wishes of one such Englishman in May 1784, who ardently hoped that “all past differences of sentiments between individuals were buried in oblivion, and that every thing which has a tendency to keep alive dissensions and persecutions was banished from society.” Should Americans not clasp the Loyalists to their bosom, “the future honor and glory of America” would be tarnished.⁸⁸ South Carolinians were also really interested in the future of Loyalists, but they were far less willing to purchase their “honor” with instant forgiveness for Loyalists. Even a cursory examination of newspapers from 1783 and 1784 shows avid discussion of Loyalists in South Carolina, other states, and British dominions. This discussion, just like that of the peace treaty, allowed South Carolinians to rhetorically consider the fate of Loyalists without violence. In the end, heated newspaper discussion provided a non-violent escape mechanism for anti-Tory feeling.

Public opinion leaders cultivated interest in the fate of Loyalists with their attempts to sway the public, and those in a position to directly influence the legislature. As I discussed above, Christopher Gadsden turned to the papers in his attempt to

⁸⁸ *South Carolina Gazette and General Advertiser*, May 13, 1784.

persuade his fellow citizens to offer Loyalists clemency. He was not the only one. People read to see Tories brought low, and shared the hatred for them that pervaded much of the newspaper coverage. Yet they also were open to considering ‘the Tory problem’ as a public policy problem with more than one possible solution. As much as most South Carolinians hated Loyalists as a group, many had strong, warm personal ties with individual Loyalists.

Anti-Loyalist opinion dominated the coverage, especially in 1783. South Carolinians eagerly read how other states planned to deal with their Loyalists. Some of the coverage explained other states’ current legislative policies, while other coverage dwelt on anti-Tory agitation in other areas. New York, for instance, had a confiscation act, and enforced it. Reading about New York’s strict enforcement no doubt encouraged South Carolinians that other Americans were equally harsh towards Loyalists. Georgia was closely linked to South Carolina both in population (many people owned property in both states and crossed the border often) and in wartime experience (fierce fighting between militias on both sides). Therefore, South Carolinians naturally were interested in Georgia’s intentions towards Loyalists. Georgia passed its own confiscation act in May 1782, a few months after South Carolina. At that time, there was no free Patriot press operating in South Carolina to note the Georgia example, but the Loyalist newspaper in Charleston avidly followed news of confiscation acts in the area. News certainly spread quickly of the Georgia confiscation law, because Aedanus Burke noted it disapprovingly a few months later; the Georgians “have outdone us far enough, and already disposed of upwards of two hundred thousand pounds” of Loyalist property.⁸⁹

⁸⁹ *South Carolina Gazette and General Advertiser*, June 1, 1784. Aedanus Burke to Arthur Middleton, Head Quarters July 6, 1783. Barnwell, "Middleton Corr. Oct. 1925," 203.

Yet the intercourse between the two states gave rise to problems of men who had access to property in both states. South Carolina readers were cheered to see that cooper James Mackey, who was accused of deliberately letting meat intended for the defenders of Charleston spoil, was refused Georgia citizenship along with four other South Carolina Loyalists on the Confiscation list. The Georgia General Assembly decided they were not interested in taking in any persons subject to confiscation in any other state, a decision South Carolina would second.⁹⁰

Reading about similar efforts in other states no doubt encouraged anti-Loyalist factions, and the Charleston papers were quick to reprint stirring anti-Tory rhetoric from other areas. In a story just after Independence Day, Philadelphia's freemen argued that the Loyalists had "justly forfeited [their property] by their treasons," and pledged to uphold the confiscation law personally by taking a group pledge to use "all the means in our power, to expel [Loyalists], with infamy." They made it clear that they were willing to resort to intimidation and violence to keep Loyalists from returning, a stand South Carolinians certainly appreciated.⁹¹

Philadelphia pointed to a concrete way to oppose Loyalists, albeit one that South Carolinians never fully adopted. Just as before the Revolution, the Sons of Liberty had encouraged voluntary compacts to control individual choices in the service of political goals (the non-importation and non-consumption agreements), Philadelphia radicals turned to such compacts after the Revolution to encourage citizens to bind together in driving out Loyalists. They "mutually pledg[ed] ourselves to each other...to expel" Loyalist refugees. In order to ensure widespread knowledge of who to pursue, they

⁹⁰ *South Carolina Gazette and General Advertiser* July 1, 1783. For more on James Mackey's specific offenses, see Chapter 4.

⁹¹ *South Carolina Gazette and General Advertiser*, July 8, 1783.

published the names of returning Loyalists in the local papers, a practice South Carolinians never adopted. Yet reading about more radical South Carolina leaders encouraged those who hated Tories without actually taking the same actions.⁹²

At a time when the General Assembly was deluged with Loyalist petitions seeking redress, South Carolinians were interested to learn that New Jersey faced the same situation. Papers reported that New Jersey received numerous petitions demanding that the “Refugees might not be permitted to return to this state.” New York City and its environs, including parts of New Jersey, suffered from civil war in the Revolution. The British occupied New York City for most of 1783, giving New Jersey Loyalists a safe base from which to petition their legislature. Facing similar problems as South Carolinians, some New Jerseyites also spelled out what would happen to Loyalists who returned. First they would be warned. Anyone who refused to leave would receive the “just punishment due to such infamous parricides”—instant death. It is not clear why this speaker thought Loyalists had committed parricide (the murder of a parent), but calling Loyalists parricides emphasized their inhumanity. These New Jerseyites also called for a compact to root out “Tory fugitives” and those who harbored them.⁹³

Sister state North Carolina also moved against Loyalists, passing several confiscation laws from 1776 to 1778 that were enforced after the war. Edenton residents applauded these laws, as reprinted in the South Carolina press. “We scorn to triumph over enemies we have defeated; but considering those people in general, we are satisfied they never can make good subjects of these states.” Again, other states tied rights for

⁹² *South Carolina Gazette and General Advertiser*, July 26, 1783

⁹³ For a wonderful discussion of the civil war in the New York area, including parts of New Jersey, refer to Judith L. Van Buskirk, *Generous Enemies: Patriots and Loyalists in Revolutionary New York* (Philadelphia, 2002). *South Carolina Gazette and General Advertiser*, July 22, 1783

Loyalists to their fitness as citizens, reassuring South Carolinians that Loyalists were detested across America. Interestingly, these North Carolinians offered a novel reason for opposing the readmittance of Loyalists. Loyalists would make bad neighbors because “the mortification they feel from their defeat” would drive them to undermine society in their efforts to rebuild their own reputations.⁹⁴

Local newspapers also carried stories about Americans who took their hostility to Loyalists further than words. Some South Carolina readers probably cheered when reading that a group of New Yorkers had captured a group of visiting Loyalists and cut off their arms and legs, and in one case, an ear.⁹⁵ Incidents like this were few and far between, especially with this level of violence. The incident in question may not have even happened, but it was reprinted in London newspapers and South Carolina papers because it struck a cord. South Carolinians who wanted to hurt Tories probably would never actually commit such acts, but enjoyed the vicarious emotional release of imagining someone else viciously attacking Loyalists. Legislators realized that something had to be done to fulfill widespread desires for revenge on Loyalists. Florid rhetoric also had its place in slaking blood lust.

Not all of the violence was theoretical, of course. Newspapers printed information on the rioting in Charleston as it happened, further fanning the flames. Even readers who would never turn out into the streets might enjoy reading about other people teaching hated Loyalists a lesson.

⁹⁴ DeMond, *N.C. Loyalists* 153-66. *South Carolina Gazette and General Advertiser*, Sept. 30, 1783

⁹⁵ *South Carolina Gazette and General Advertiser*, Sept. 23, 1783.

Newspapers also spread rumors of Loyalist bad faith. For instance, New York Loyalists reportedly threatened to burn the city rather than evacuate it.⁹⁶ These stories reinforced a belief that Loyalists were untrustworthy, and deserved whatever they got. For readers on the fence about whether Loyalists might be reclaimable citizens, these stories were evidence that at least some of the Loyalists were still seeking to destroy the nation.

By the middle of 1783, supporters of greater clemency to Loyalists also used the newspapers to make their arguments. While newspapers were dominated by anti-Loyalist argument, it was not the only opinion published. Supporters of general amnesty made sure that local papers reported that Georgia was considering passing an act of oblivion returning both citizenship and property to Loyalists.⁹⁷ Since Georgia had passed a very similar act of confiscation and banishment a few short months after South Carolina, it was a natural laboratory for changes to any Loyalist regulatory scheme.

At least some North Carolinians joined the general warming trend by 1784. They lobbied their legislature for the free return of all refugees from the area and other states excluding only those who “by the enormity of their crimes, have become the enemies of all societies.” Allowing them to settle freely could only enrich the area with their mercantile skills and assets. Further, many Loyalists were honorable men who had differed only in “sentiments on a great political question.” This idea undermined the entire premise of the confiscations.⁹⁸

Connecticut showed signs of tolerating Loyalists as well. New Haven citizens elected to allow Loyalists back into Connecticut, arguing that American victory would be

⁹⁶ *South Carolina Gazette and General Advertiser*, Oct. 28, 1783

⁹⁷ *South Carolina Gazette and General Advertiser*, July 19, 1783.

⁹⁸ *South Carolina Gazette and General Advertiser*, May 18, 1784.

incomplete unless “distinguished for justice and magnanimity.” How Americans treated the Loyalists would determine their character. “Future generations, not being influenced by our passions, will form their ideas of our characters” from American treatment of Loyalists.⁹⁹

Alexander Hamilton was outspoken in his defense of Loyalists. His own post-war law practice specialized in defending Loyalists and British subjects in their efforts to control their property in the United States. He defended one British merchant in the famous case of *Rutgers v. Waddington* (1784), and won a victory for his client. The *South Carolina Gazette* picked up one of his Phocion circulars, and without rehashing the discussion earlier in this chapter, I want to consider how South Carolinians heard certain points. He eloquently argued that true Whiggism was “generous.” Expelling “a large number of their fellow citizens” without the benefit of a trial was contrary to the ideals of the Revolution, and made every citizen vulnerable to the whims of any “prevailing faction.” While it was “common . . . for a free people, in times of heat and violence, to gratify momentary passions,” letting revenge dictate law distorted law, and ultimately liberty.¹⁰⁰

Expatriate Loyalists certainly also found glee in reading about Americans’ problems. Certainly Loyalist expatriates filled the London newspapers with tales of woe. Henry Laurens even worried that refugee rabble-rousing might upend treaty arrangements. He told a friend “if all the people called Loyalists were scattered in America they would not do so much mischief as they do here.” Loyalist refugees fed off

⁹⁹ *South Carolina Gazette and General Advertiser*, July 10, 1784. The New Haven town meeting made the customary distinction between honorable Loyalists and criminals who plundered and murdered. For more on Connecticut Loyalists, see Zeichner, “The Rehabilitation of Loyalists in Connecticut,” .

¹⁰⁰ *South Carolina Gazette and General Advertiser*, May 4, 1784.

the increasing hysteria, reading in the London papers that “all accounts from Charleston describe the inveteracy of the inhabitants towards the English in very strong terms.” Similarly, South Carolinians took pleasure in news of extensive crop failures in Canada. The outlook for the next year was “dreadful” and Canada would have to rely on grain imports from America.¹⁰¹

Yet there was sympathy too. The *South Carolina Gazette* printed an obituary for George Duncan, a Charleston merchant who was banished in 1778 and spent his remaining years in England. While recognizing his Loyalism, his obituary writer emphasized his “unblemished integrity” and his assistance to Charleston prisoners. (Perhaps he was easier to forgive since he left the state long before the reduction of Charleston.)¹⁰²

Newspaper discussions of Loyalism touched on many nerves. Such publicity certainly shows that all manner of the reading public were concerned with the question of clemency or punishment for Loyalists. This interest was especially high in the first few years after the war, at the same time as the General Assembly debated the future of Loyalists. Such public discussion was intended to sway and persuade South Carolinians as to the proper role of Loyalists after the war. Newspaper debates helped keep the problem of Loyalism alive just as surely as the physical presence of Loyalists did. Such debate also provided an escape valve for hostility towards Loyalists; rather than targeting all former Loyalists, South Carolinians debated Loyalists in the newspapers.

¹⁰¹ Henry Laurens to Thomas Mifflin, London, April 24, 1784, Philip M. Hamer, George C. Rogers, and David R. Chesnutt, eds., *The Papers of Henry Laurens*, 16 vols. (Columbia, S.C., 1968-)16: 445. *South Carolina Gazette and General Advertiser*, Nov. 22, 1783, Dec. 13, 1783.

¹⁰² *South Carolina Gazette and General Advertiser*, March 2, 1784. Palmer, *Loyalist Biographies* 239.

In conclusion, I wish to consider one popular satirical poem that was published in several states' newspapers in 1783 and 1784. In November of 1783, the *South Carolina Gazette and General Advertiser* ran a satirical poem poking fun at the Loyalist dilemma. "The Tory's Soliloquy," a humorous if pedestrian take-off of Hamlet's soliloquy, "To go or not to go," ran in many state newspapers where Loyalist numbers were highest. New Yorkers and South Carolinians got an especial charge from it.¹⁰³ It invoked the Loyalist dilemma:

"To go, or not to go"—is that the question?
Whether 'tis best to trust the inclement sky,
That scowls indignant o'er the dreary Bay
Of Fundy, and Cape Sable's rock and shoals,
And seek our new domains in Scotia's wilds,
Barren and bare;--or stay among the rebels!—
And, by our stay, rouse up their keenest rage,
That, bursting o'er our now defenseless heads,
Will crush us for the countless wrongs we've done them?

Very few white South Carolina Loyalists chose to go to Nova Scotia for precisely the reasons the poem suggested: Nova Scotia was "dreary" and offered limited economic possibilities, especially for people used to a much warmer climate with better soil. Yet "stay[ing] among the rebels" depended on Patriots' willingness to deal generously with Loyalists. This was correctly deduced that the physical presence of Loyalists, especially wealthy ones, would induce rage. In choosing to stay, Loyalists depended on those who had suffered the most during the war, since post-war legislatures in South Carolina and other states were filled with war heroes.

The poem continues by imagining the plight of Loyalists who stay and provoke Patriots. In addition to having to appeal to former enemies for mercy, the Loyalists might

¹⁰³ Catherine S. Crary, ed., *The Price of Loyalty: Tory Writings from the Revolutionary Era* (New York, 1973) 391-92.

find themselves facing “the *kind stare* of some *outrageous* mob,/ Who, for their sport our persons may adorn/ In all the majesty of *tar and feathers*.” Such waggery, like much newspaper propaganda, tried to encourage mob action against Loyalists. The writer went further, suggesting Loyalists worry lest “our necks, to keep their humour warm/ May grace a rebel halter!” Our satirist went to more mundane concerns as well. Loyalists faced public ridicule in an attempt to shame them into disappearing. The poet painted Loyalists as thin-skinned creatures, “pierc[ed]” by the “open insult—the heart piercing stab” of being called a “*dam’d Tory*.” “Or worse, far worse,/Committee’s rage—or jury’s grave debate/On the grand question “shall their lives” forfeit/Or property—or both.” Would Loyalists be able to reclaim their property, or would others profit from their losses? Despite the grand rhetoric, this was the central question for most South Carolinians.

Coping with the Strains of Civil War: Dealing with the Inherent Human Tendency towards Violence

South Carolinians faced practical and psychological obstacles in their efforts to move ahead after the war years. Most of the population was scarred from the trauma of violence. In the backcountry, Reverend Archibald Simpson, newly arrived back in his homeland after the war, found “a dark melancholy gloom.” Henry Laurens certainly complained frequently of his losses (as we have seen). While his complaints had the potential advantage of letting him avoid even the appearance of obligations he did not wish to take on, it also let him work through his anger. He despaired to one woman of

the pain of “beginning the World anew upon terms infinitely worse” than he faced as a youth. He also believed he was far from the only one. He warned one friend to “remember the Minds of the People are sore.” Like many other South Carolinians, he had lost close friends and family to the war. In his case, he openly was in “deep mourning for that brave honest man...the dear object of my present Woe,” his son John Laurens. Arthur Middleton, South Carolina’s delegate to Congress, was so “anxious” about the future of his country he considered “the really melancholy Situation of our Country.” Years later, Henry Rugeley wrote his Irish mother that “considering the Troubles I have experienced,” he should not complain about reaching the age of fifty in decent health.¹⁰⁴

For elite men, the trauma was yet greater. British efforts to attract slaves away from their owners during the war led to mass black migration and flight. Philip Morgan suggests that some 25,000 South Carolina slaves, or 25% of the total slave population, permanently left plantations during the war. The majority who did not leave stayed principally because they didn’t get a chance to flee safely. Slave owners who were invested in a paternal model where they headed “my family, black and white,” were deeply distressed to find that their black family had abandoned them. Yet their expectations were more tempered than those of their nineteenth-century descendants. As Philip Morgan argues, “if the overwhelming response of mid-nineteenth century

¹⁰⁴ Nadelhaft, *Disorders of War* 127. Laurens to Countess of Huntingdon, Charleston, March 31, 1785, Laurens to William Manning, Paris, Dec. 4, 1782, Laurens to Mary Laurens, Paris, Dec. 30, 1782, Hamer, Rogers, and Chesnutt, eds., *Laurens Papers* 16: 67, 111, 548. Middleton to Aedanus Burke, April 7, 1782, Joseph W. Barnwell, "Middleton Corr. Jan. 1926," , see 29. Henry Rugeley of Wateree to his mother Elias of St. Ives, March 18, 1785, Doc. #146, Rugeley Papers, Bedfordshire Public Records Office (copy at SCHS).

slaveholders to their slaves' actions in the Civil War was one of betrayal, that of late eighteenth-century slaveholders was one of surprise."¹⁰⁵

Owners were anxious during the war that their slaves might flee (and rightly so). Governor Dunmore's Proclamation in Virginia spelled out the threat: the British might offer slaves freedom in return for destroying the plantation system, and setting off pandemonium in Southern slave societies. Such a blow would cause chaos and bring the economic system of the Southern colonies to its knees. Moses Kirkland, a backcountry Loyalist, relished the prospect, crowing that "the instant that The Kings Troops are put into motion," the slaves would "rise upon their Rebel Masters." Henry Laurens reacted to the threat by calling all of his slaves together and delivering them a long lecture warning them of the dangers of leaving the plantation or associating with anyone off the plantation.¹⁰⁶

During and immediately after the war, South Carolina masters found they had little control over their slaves. One of John Lewis Gervais's slaves threatened an overseer that he would leave Florida for South Carolina at his pleasure. Eliza Pinckney complained that her slaves were "insolent and quite their own masters." Henry Laurens rejoiced that most of his slaves stayed with him during the war, but uneasiness about their true affection for him slipped out. While in prison, he took comfort in periodic letters from his slave overseer Samuel Massey, showing that at least one slave would stick by him. Massey reassured him that while some of his slaves could "hardly be perSwaided to

¹⁰⁵ Philip D. Morgan, "Black Society in the Lowcountry, 1760-1810," in *Slavery and Freedom in the Age of the American Revolution*, ed. Ira Berlin and Ronald Hoffman (Charlottesville, Va., 1983). 111. Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York, 1976) 74-75. Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill, N.C., 1998) 385.

¹⁰⁶ Morgan, "Black Society in the Lowcountry, 1760-1810." 108-10.

Stay[, ...] those at Mepkin are all for Staying at home.” After the war, one enterprising South Carolinian offered forty slaves for sale with one overwhelmingly positive attribute: the slaves never fled even when the British were nearby.¹⁰⁷

Families split by the war suffered a special kind of pain. The Ball family saw two men named on the Confiscation Act: Elias Ball of Comingtee and Elias Ball of Wambaw. First, Elias Ball of Comingtee found favor with his kinsman Henry Laurens, who made provision for him to take stewardship of his Georgia plantation while he petitioned for clemency, which he was granted in 1784. Laurens looked forward to being able to “take him again into my arms as a friend.”¹⁰⁸ When Elias Ball did return to South Carolina he was relieved and pleased to discover that his father was “as Harty now as he has bin for some years & my Brother has two fine Boys,” showing the pain he felt at not being able to help in family affairs. Elias Ball of Wambaw was permanently exiled to Great Britain after the war, but maintained a transatlantic relationship with his extended family for many years.¹⁰⁹

He remained friends with his cousin Elias Ball of Comingtee, who even purchased his cousin’s slaves at auction in an effort to preserve his estate. In 1784, Elias Ball worriedly asked his cousin if his passage to England had been “agreeable” and if the family was settling into Devonshire well. He asked his cousin to pay his respects to his wife and hoped that despite current appearances, he might “spend[] some part of the remainder of his days with you.” A few months later, the cousin in South Carolina wrote his cousin in England that he faced “total ruin” due to weather changes before harvesting

¹⁰⁷ Samuel Massey to Henry Laurens, Charles Town, June 12, 1780, Hamer, Rogers, and Chesnutt, eds., *Laurens Papers* 15: 305. Morgan, *Slave Counterpoint* 283-85, 384-85.

¹⁰⁸ Laurens to John Owen, London, Aug. 9, 1783, Hamer, Rogers, and Chesnutt, eds., *Laurens Papers* 16: 260.

¹⁰⁹ Elias Ball Jr. to Elias Ball of Wambaw, Limerick, July 25, 1784, 11/516/52 Ball Family Papers, SCHS.

his crop. Such intimate disclosures maintained family closeness across a large ideological and geographic distance. Comingtee Elias Ball was glad to hear that his cousin expected a healthy pension from the British government. In the fall of 1786, the South Carolina cousin informed Elias Ball of Wambaw that “my Good Father” died. Despite the sad tidings, he wished his English family “health & happiness” and, as always, signed himself “your affe[ctionate] kinsman.” In 1787, Elias Ball of Comingtee congratulated his Bristol relative on the “nuptual of your daughter.” He even kept his cousin apprised of his favorite slave’s health: in 1790, Elias Ball of Wambaw learned that “poor old Tom has bin in a declining state for some months past.” These cousins also trusted each other in business. Elias Ball of Comingtee used Elias Ball of Wambaw as his mercantile agent in England. In this guise, Comingtee Elias Ball shipped rice to his cousin and relied on him to reduce his costs from the “extravagant Charges” London merchants took from his account. (Mixing business with affection promptly backfired, as Comingtee Elias Ball fell behind in his accounts.) Wambaw Elias Ball also relied on his cousin to supply him with documentation of his lost South Carolina property for his own claim for losses on the British government.¹¹⁰

At times, the relationship frayed, but over the same kinds of things any other family relationship suffered from. Wambaw Elias Ball disputed a family will in 1786 from his home in Bristol. He was amazingly sure of his inheritance rights from such a distance, and as a person with no legally enforceable rights in South Carolina. He wrote John Ball to complain that no “person can mistake the plain express words of the Will.”

¹¹⁰ Elias Ball Jr. to Elias Ball of Wambaw, Limerick, July 25, 1784, 11/516/52, Ball to Ball, Limerick, Nov. 2, 1785, 11/516/55, Elias Ball to Elias Ball, Limerick, Sept. 23, 1786, 11/516/56, Ball Family Papers, SCHS. Elias Ball to Elias Ball, Limerick, Oct. 31, 1786, 11/516/56, April 7, 1787, Jan. 9, 1787, 11/516/57, Feb. 10, 1790, June 6, 1790, 11/516/7, Ball Family Papers, SCHS.

Piercingly, he accused his in-law of “show[ing] an inclination to grasp at her Mother’s estate” since his marriage to Elias Ball’s sister. Elias Ball even threatened to come to South Carolina to settle the will, which he had no legal standing to do. He was especially enraged because he was supposed to be the executor of the estate, yet others still in South Carolina settled it in his place.¹¹¹

Cordial, and even close, relations continued among the Ball family for years, probably until after the Revolutionary generation died. Eventually, ‘Wambaw Elias Ball’ became a story told to children in the clan, often to scare them. The ‘Wambaw Elias’ was a “mean fella” who captured his own runaway slaves and sold them before departing for England. His portrayal as the family Tory lived on, coming to match the later nineteenth-century portrayal of Loyalists as especially cruel, hard people. Later descendants did not know the history of warm relations.¹¹²

South Carolinians, for all the pain and confusion, were excited about the prospect of moving forward. Rice crops that were abandoned in 1781 were replanted by 1783. South Carolinians rapidly began importing new slaves to service an expanding agricultural economy.¹¹³ Optimistic plans for post-war betterment filled men’s minds and hearts. In just one example, the General Assembly became involved in plans to build a substantial waterway network well into the interior for the purposes of expanding commerce. Underlying some of this optimism was the desire for post-war stability. Also, in the rush for personal and societal wealth-building, South Carolinians correctly

¹¹¹ Elias Ball to John Ball, Bristol, Aug. 27, 1786, John Ball to Elias Ball, Kensington, S.C., Dec. 27, 1786, Anne Simons Deas, *Recollections of the Ball Family of South Carolina and the Comingtee Plantation*, reprint 1978 ed. (Charleston, S.C., 1909) 106, 109-10.

¹¹² Edward Ball, *Slaves in the Family* (New York, 1998) 8-9.

¹¹³ Robert Olwell, *Masters, Slaves, & Subjects: The Culture of Power in the South Carolina Low Country 1740-1790* (Ithaca, N.Y., 1998) 262.

divined that a society in which men were focused on getting rich was a society with better things to do than rehearse old wrongs.

Yet amidst the optimism, some of their moves to build a better society suggest war-scarred psyches. Having seen the worst that could happen, enthusiasm was tempered with a desire to set into place bulwarks against a repeat of civil war.

We have already seen in Chapter Three that individual citizens (both Patriot and Loyalist) took in orphaned children during and after the war. In most cases, men took in children whose parents had been their friends or business acquaintances before the war. They honored the call of personal ties in caring for dependent children. Evidence for this is clearest in the testimonies of Loyalists who cared for the children of deceased Patriot soldiers. Of course, at the time they reported these actions, they were using them to show good character as exculpatory evidence against their sins as Loyalists—certainly self-motivated claims. Still, people vouched for them.

Some South Carolinians moved towards a more comprehensive solution to the problem of orphans in the years after the war, founding the Camden Orphan Society in 1786. Camden, in the interior of South Carolina, was hard struck by the civil war. Two battles were fought in Camden, and the town endured countless raids. A visitor to the town in 1784 remarked that the war damage was so extensive that it was “evident Proof[] of... [British] wanton Barbarity & Desolation” because troops had “burnt the Court House, Gaol, & the greatest Part of the best Houses. They cut down all the Fruit Trees; & destroyed all the Furniture, which they could not carry away.”¹¹⁴

Joseph Kershaw, one of the founders of the Camden Orphan Society, was a prominent figure in pre-Revolutionary Camden who ran and owned local mills as well as

¹¹⁴ Krawczynski, "1784 Tour of Backcountry," 202.

servicing as a mercantile agent for Ancrum, Lance and Loocock. He also owned an extensive plantation. All of this made him one of the most respected figures of the backcountry amongst Lowcountry denizens. During the war, he committed to the Patriot side early, joining Drayton and Hart on a tour of the backcountry in 1775 designed to discourage Loyalists and muster more committed support from Patriot sympathizers. He ended the Revolution as a prisoner of war and was finally exchanged by the British in time to become a member of the Jacksonborough Assembly. He was, in all ways, an important and respected citizen.¹¹⁵

The inaugural meeting of the Camden Orphan Society was held on Independence Day 1786. In so doing, the organizers linked the Orphan Society to the spirit of the Revolution. But, while the care of poor orphans had always been a problem for colonial societies, the Revolution brought home to these men exactly how fragile the system for dealing with such unfortunates could be. The Society wished to provide funds for “suitable buildings for the reception of poor Orphans, or other children in distress, within the State.” Historians have stressed the role of the society in providing education for poor children, especially since Joseph Kershaw had also chaired a committee before the war that recommended the state pay teachers in order to provide tuition-free education for poor students. For me, Kershaw’s founding of the Camden Orphan Society on Independence Day also suggests he saw proper care of the detritus of the late war (the orphans) as part of an effort to avoid a future war. One nervous rule regulating the behavior of members at meetings is more evidence that South Carolinians were concerned with social disruption. In between rules about paying dues on time, and not coming to the meeting drunk, the society ordered that “all disputes, whether upon a

¹¹⁵ Edgar and Bailey, eds., *Directory S.C. House Rep.* 2: 374-77.

matter of Religion, Government, or of a private nature, shall be banished from this Society; and every member who shall persist in such disputes, after being admonished by the president, shall be subject to a fine at the discretion of the Society.” Healthy debate about matters of government is part of a healthy democracy, which South Carolinians claimed to be building (however limited their vision in fact was). Outlawing discussion on government suggests a stronger nervousness about the possibility of discord among the members. The possibility of civil war was not far enough away from the mental world of South Carolinians who had just lived through one to allow them ease. Members continued to relate their endeavors to protect orphans to their endeavors to build a stable republic, as the annual meetings continued on Independence Day for more than two decades.¹¹⁶

The Camden Orphan Society did not manage to actually erect an orphanage or begin paying school fees for several years. By 1794, they paid for James Bowler’s children to attend a local school. Later, they joined forces with the Mount Sion Society to support free education for promising young white men without the means to pay tuition. Despite their relatively modest achievements, the Society is interesting as an example of how the war shaped post-war philanthropic efforts. Charlestonians also formed an orphan society in the post-war years. The city council first explored the idea in 1786, hoping to find a way to take in Revolutionary orphans. These leaders had in mind Bethesda, the orphanage George Whitefield founded near Savannah. In a short four years, they managed to raise funds to build an orphanage. One historian argues that locals saw the Charleston Orphan House as “a patriotic act rather than a charitable one,”

¹¹⁶ Camden Orphan Society, Camden Records 1786-1812, SCL. Edgar and Bailey, eds., *Directory S.C. House Rep.* 2: 375. Rules of the Camden Orphan Society, July 4, 1786, Camden Orphan Society, Camden Records 1786-1812, SCL.

for the chance to shape poor white children to take their place in society turned “a social problem into a political opportunity.”¹¹⁷

Other young men needed help in creating good places for themselves in a growing nation, even if they still had parents. Late eighteenth-century philanthropists encouraged wider access to education. Thomas Jefferson propounded a system of mass, publicly supported education available to all bright young male students. Such a system would allow democracy to flourish, as citizens would be educated and able to judge the country’s interest rationally. The new Republic called for an educated citizenry. These schools should be within a reasonable distance for all children, so as to ensure access to youths from rural areas. In his Elementary School Act, Thomas Jefferson proposed such universal education “to avail the commonwealth of those talents and virtues which nature has sown as liberally among the poor as rich, and which are lost to their country by the want of means for their cultivation.”¹¹⁸

South Carolinians were interested in joining this movement to expand education. Aedanus Burke, in his role as an advocate for the backcountry, felt that South Carolina should open a university so that the “spreading of knowledge & learning thro’ the Land w^d. have this good effect, the Youth in our Back country w^d. become valuable useful men; instead of being, as they are at present, brought up deer-hunters & horse thieves, for want of Education.”¹¹⁹ Backcountry stability would be well served by education. Since the backcountry provided a steady source of Loyalist militiamen during the Revolution,

¹¹⁷ Sept. 10, 1794, July 4, 1798, Camden Orphan Society, Camden Records 1786-1812, SCL. Susan L. King, ed., *History and Records of the Charleston Orphan House 1790-1860* (Easley, S.C., 1984), Barbara L. Bellows, *Benevolence among Slaveholders: Assisting the Poor in Charleston, 1670-1860* (Baton Rouge, La., 1993) 121-23.

¹¹⁸ Thomas Jefferson, Elementary Education Act, 1817. ME 17:440, Eyer Robert Coates, Jr., ed., “Thomas Jefferson on Politics & Government,” (1995-2001), Thomas Jefferson Digital Archive, Electronic Text Center, <http://etext.virginia.edu/jefferson/quotations/jeff1370.htm>, Accessed March 16, 2007.

¹¹⁹ Burke to Middleton, July 6, 1782, Barnwell, "Middleton Corr. Oct. 1925," 204.

an emphasis on giving backcountry men a better source of income might serve the greater cause of post-war stability. Rachel Klein argues that South Carolinians were advocates of free education for the lower classes because the experience of the Regulator movement taught them that the only way to reduce crime was to find ways for the backcountry population to work hard at legitimate goals.¹²⁰ This seems true but incomplete. In the wake of the Revolution, South Carolina leaders also concluded that educating people to support themselves would further the stability of society. Men with little investment in society, and little ability to provide for themselves legitimately, were far more likely to turn to crime. Plundering, while a nice way of life for individuals, was hard on society.

Philanthropic Charlestonians were also fans of education for the poor. One historian who closely studied Charlestonians' attitudes towards philanthropy adroitly points out "however attached Charleston's elite were to the forms of a patriarchal society in their relations with women, children, and slaves, in their dealings with white laborers they adopted the competing liberal mode of demanding that workers act as free agents."¹²¹ White men, even in a very hierarchal society, flattened class divisions in the interest of promoting white harmony in the face of intense divisions between white, slave, and Native Americans. As such, they needed schooling to allow most white men to take their places as free adults.

Schools in the interior would also answer the needs of a rapidly increasing population. South Carolina's backcountry population grew rapidly in the decades after the Revolution. Between 1790 and 1800 alone, the backcountry saw an increase of some

¹²⁰ Klein, *Unification of a Slave State* 240.

¹²¹ Bellows, *Benevolence among Slaveholders* 16.

42,000 white residents.¹²² For all of these reasons, the region needed schools. By August of 1783, a general assembly committee finalized a bill to give the Trustees of a proposed school in Ninety Six District 180 acres of land to sell and use the proceeds to fund the school in the then-growing town of Ninety Six. (The town was quickly eclipsed in the decade after the Revolution, and the decision to make Columbia, farther to the east, the new state capital finalized the end of growth for Ninety Six. Columbia, not Ninety Six, eventually became the site of a new college.) This land was Loyalist property confiscated under the 1782 Confiscation Act and held by the Commissioners of Forfeited Estates.¹²³ Other states also turned to Loyalist property to fund education. The University of Pennsylvania benefited from forty-five sizable estates granted outright to the university, and others in which the university got partial shares.¹²⁴

During the early part of the Revolution, forward-thinking Charlestonians and backcountry residents founded the Mount Sion Society to build a school in the interior, near today's Winnsboro, South Carolina, in Fairfield County. Colonel John Winn and his brother General Richard Winn were both founders and substantial financial contributors. Richard Winn donated the land on which a later incarnation of the school was built. (The school eventually became Mount Sion College.) Prominent Charlestonians also joined the organizing efforts, including members of the Pinckney, Huger, Rutledge, and Moultrie families. By 1780, the school hired a teacher and began classes. The British invasion unsurprisingly ended classes at the school, and the school facility was “broke up

¹²² Edgar, *South Carolina* 259.

¹²³ General Assembly Committee Reports, 1776, 1778, 1782-1785, Oversize 1783, Box 27, Series 165005. Act. No. 1195, “An Act to Vest One Hundred and Eighty Acres of Land, Late the Property of James Holmes, in Certain Persons, in Trust, for the Benefit of a Public School,” Cooper and McCord, eds., *Statutes of S.C.* 1: 574-75. Tim Lockley, Southern Charities Project (2002-), http://www.warwick.ac.uk/fac/arts/SouthernCharitiesProject/state_southcarolina.htm. Accessed March 14, 2007.

¹²⁴ Ousterhout, *State Divided* 290.

by the enemy” but the building was at least standing at the end of the war. In the summer of 1783 the Winnsboro members worked to restart the school with a fundraising campaign across the state, including revising their own dues structure. In 1784 they hired a teacher and repaired the school building in order to reopen as Mount Sion College. Life at the Mount Sion school was to be comfortable for its boarders, despite its being a charity school. Not only did a “sober Matron” take charge of making sure the “little Masters...wash[ed], comb[ed] their heads, and dress[ed] neatly” every day, but they were provided with waiters at meal times and their diet was strictly regulated to include enough meat and “plenty of vegetables when to be had.”¹²⁵

Religion was another way to control societal conflict, especially the backcountry. Before the Revolution, the backcountry was largely unchurched. While scattered settlements had Presbyterian congregations, most inhabitants were not strongly attached to any church. Further, the Anglican church, while strong in the Lowcountry, did not well serve members in the interior. Yet churches are often a strong contributor to social stability, even in a world where religious denominations compete. While the true groundswell of religious conversion would sweep the backcountry in the early nineteenth century, several denominations did move to establish more permanent religious institutions across South Carolina in the wake of the Revolution. In all these cases, building a religious community is a profound investment in social trust and in your

¹²⁵ Minutes of the Mount Sion Society 1783-1784, SCL, Jack Allen Meyer, *The Mount Sion Society of Charleston and Winnsboro, South Carolina, 1777-1825* (Winnsboro, S.C., 1978) 1-12, 44-45 (Rules and Directions for the Steward of Mount Sion School 1785). Klein, *Unification of a Slave State* 239-41.

community. After the chaotic civil war, this investment in community was especially important to South Carolinians.¹²⁶

To build a church is to express optimism for the future, and South Carolinians were willing to do it in concert with former Loyalists. Episcopalian members of St. Mark's Parish who lived in the High Hills of the Santee agitated for a church closer to home before the Revolution, but did not construct a larger building until 1788, when General Thomas Sumter (a Revolutionary hero) donated the land for a new, beautiful church with a half-hipped roof and twelve large windows. (Thomas Sumter was generous to local churches, as he also donated land for High Hills Baptist Church, where Richard Furman first preached.) Thomas Sumter sat on the vestry committee that authorized the expenditures for a new church along with several other Revolutionary heroes. Benjamin Waring, for instance, was a captain under Francis Marion. Yet among the prominent and committed Patriots, one vestry member was a former Loyalist. William Rees, a prominent Loyalist from the backcountry, has already been mentioned in this chapter. He was one of the Loyalists whipped and warned off by the crowd in the spring of 1784. The General Assembly removed him from the confiscation list in 1784, and despite the hickory stripes he received at the hands of the crowd, he continued living in South Carolina. Rees suspected, correctly, that he could recreate a comfortable life of public honor. Despite his 1784 beating, by 1788 he was on the vestry of the church.

¹²⁶ For more on the unchurched nature of the eighteenth-century interior, and the wave of religious enthusiasm and affiliation in the early nineteenth century, see Christine Leigh Heyrman, *Southern Cross: The Beginnings of the Bible Belt* (New York, 1997).

Further, he held an expensive subscription pew near the minister, and in front of most of the congregation. (Of course, the best pew belonged to General Thomas Sumter.)¹²⁷

Padgett's Creek Baptist Church, in Union County in the interior, was formed in 1784. Two of the rules of the fellowship regulated conduct during war. These articles of faith were ones that every member of the church had to subscribe to in order to be a member in good standing. Padgett's Creek members, having recently lived through a war, believed that religious commitment entailed pacifism. The tenth article of faith opened fellowship to "any Minister, or Church of Separate order, that doth not tolerate war." At some later point, the congregation crossed out the requirement that members must not tolerate war. Intense exposure to civil war heightened these men's hostility to war itself. The eighth article of faith regulated how members were to behave in times of war. "As to war, we do not hold it right to be forward or active in any such Cases, but if our Members are Drafted Sho'd go & answer their draft with that spirit of meekness as becomes Christians & return in the same." Unlike the Society of Friends, their pacifism was not absolute. But, even in war, men of conscience should fight in a Christian spirit. Reading between the lines, these men did not believe many of their neighbors had fought the Revolution in a Christian manner. These rules suggest lingering concerns about how community members might treat each other in moments of conflict. More interestingly, however, it suggests that by 1784, backcountry religious organizers contemplated allowing people who had chosen different sides in the war to join together in fellowship, and thereby worried more about how to control conflict than eliminate it.¹²⁸

¹²⁷ Church of the Holy Cross Vestry Minutes (including a pew chart), SCDAH. Edgar and Bailey, eds., *Directory S.C. House Rep.* 2: 698-99.

¹²⁸ Padgett's Creek Baptist Church, Book I, Nov. 22, 1784-July 15, 1837, SCL microfilm, WPA Transcript.

Even Independence Day itself helped knit South Carolinians together and caused them to focus on what they wanted for their future, not what they had been in the past. David Waldstreicher argues that celebrations such as Independence Day helped create a sense of unified American nationalism across state boundaries as celebrants read about similar celebrations in other American areas, and imagined themselves and their celebrations as part of a greater tapestry. Independence Day helped bridge the great problem of American continuation: regional differences were very real, and Americans were bound by a shared government and war, not a pre-existing national identity. The great trick of the early national period was to hold together the nation until genuine national identity and emotive ties were strong enough to do the job that good intentions would never be enough to guarantee.¹²⁹

South Carolinians were performing two imaginative projects through their Independence Day celebrations: imagining themselves as part of a unified nation, and imagining themselves as having been part of a unified war effort. Waldstreicher sees conflict as an inherent part of celebratory rites, but the conflict between Loyalists and Patriots was best left unspoken. While political displays in South Carolina were marked by open jockeying for power between Federalists and Anti-Federalists, silence was the order of the day on the presence of former Loyalists in the audience. Moves to paint individuals with the appellation Tory, however politically advantageous, risked reminding South Carolinians of things best forgotten. In the next chapter, we will see

¹²⁹ In this, as in the rest of this work, I follow John Murrin's argument that framers of the Constitution understood that the republic rested on a very flimsy base, as there was no shared national identity strong enough to support a nation. Instead, they created a constitution hoping that it would keep the nation together long enough for national identity to grow. In this analogy, the constitution was the roof of the country, that depended on national identity (the walls) to hold up the roof. The founders put up the roof hoping they could manage to keep the house from collapsing while they worked on putting up the walls. Murrin, "A Roof without Walls: The Dilemma of American National Identity."

how this silence persisted well into the nineteenth century. For our current purposes, however, we will see how the war was discussed in order to create a sense of unity.

July Fourth celebrations began during the war, when they were ways of signaling unity with the war effort. In Charleston and other port cities, revelers threatened suspected Tories with property violence, including breaking unlit windows. If city dwellers would not participate, crowds were willing to compel at least the appearance of unity on Independence Day. In 1777, when Charleston was far removed from actual fighting, independence celebrations were a chance for locals to show their commitment to the Patriot cause. By extension, those who did not participate in the public rituals of celebration were suspected of disloyalty, not just disinterest.

During British occupation, Independence Day was obviously not celebrated. The rites usually used during such celebrations were renewed in late 1782 when the British finally withdrew from the city. South Carolinians, especially Charlestonians, have never needed lessons in how to put on a public spectacle. In the wake of the announcement of the final peace treaty, Charlestonians threw a grand party. During the day, the now rested and fed South Carolina Continental Line marched proudly with “the colours planted in front of the center of the line” from the State House to Col. Moultrie’s house (the much-vaunted hero of Sullivan’s Island) with “a general volley of musquetry from the whole line,” “drums beating,” and general “huzzas” of “God save the state.” The ritual forms were those they had always used to celebrate military victories, now used to celebrate American independence. Instead of God save the King, it was now God save the state (not God save America). The governor came out for general greetings and conversation with the citizens, and there was “a general and splendid illumination,” just like

Independence Day and Palmetto Day celebrations. Having wished for the preservation of the state of South Carolina during the day, citizens retired to their homes to “drink Prosperity and Union to the Thirteen States.” The next day, General Greene reviewed the troops and hosted a banquet.¹³⁰

The first post war Independence Day went smoothly, with no discussion of Loyalists. Unfortunately, as we saw earlier, such celebrations still opened up confrontations in Charleston between the crowd and former Loyalists. Trouble continued in 1784. These examples further persuaded many that in the interests of harmony, Independence Day must present a vision of South Carolina unity during the Revolution.

Conclusion

South Carolinians were conflicted in dealing with Loyalists in the wake of the Revolution. As the war ended, almost all were enraged with those who had been on the opposite side of the war. For most people, it was difficult to empathize much with Loyalists, as the pains of war were still fresh. Even men who would later publicly battle for an end to confiscation at first wanted nothing more than to hurt Loyalists. As South Carolinians looked around at ruined property and desolate landscapes, trauma overflowed.

And yet South Carolinians found their way to widespread support for some Loyalist returnees. How did they overcome anger and come to reconciliation? Time

¹³⁰ *South Carolina Gazette and General Advertiser*, April 26, 1783.

helped. While in 1783, and in the immediate wake of legislative clemency, there was widespread frustration, more and more Loyalists reappeared after 1784, slipping quietly into communities across the state with little or no comment. When men had time to rebuild, they also were more willing to allow those former Loyalists they deemed useful and trustworthy to return.

Two South Carolinians joined a small but outspoken chorus of American leaders who used public persuasion to try to ameliorate the confiscation laws. Aedanus Burke and Christopher Gadsden both opposed confiscation for legal, moral, political, and economic reasons. Each wrote at length to try to make the case to their peers that confiscation was a policy that was unwise, and would ultimately hurt the United States. In speaking out, they provided cover for other, more moderate, leaders to lift confiscation for many Loyalists, while still supporting the idea of permanent exclusion for those the populace refused to readmit.

While mobs greeted a few hated Loyalists, for the most part South Carolina Loyalists who had not murdered anyone were readmitted quietly. Public discussion of Loyalists was much harsher than the reality of treatment, and served as an escape valve for Tory hatred. Reading South Carolina newspapers, one might think that South Carolinians whipped and chased out Loyalists all the time, but in fact they did not. The rhetoric served to vent negative feelings in nonviolent ways.

All of this is not to say that South Carolinians were not nervous about the possibility of on-going civil war. They moved to build new social institutions, such as schools and orphan societies, and expand other social institutions like churches. Partly, the Revolution unleashed new social energy to build a more perfect society (the

Revolution was the heyday of eighteenth-century millennialism), but South Carolinians also were motivated by the desire to make sure their society was stable enough to incorporate former Loyalists while avoiding ongoing armed conflict.

South Carolinians had fought a bloody civil war in the American Revolution in which Loyalist and Patriot alike had committed depredations. Despite this unpromising beginning, South Carolinians had incorporated most former Loyalists back into the political, economic, and social fabric of the state through adroit but often unplanned use of political theater, street violence, petitioning, and church and social organizations.

CHAPTER SIX

(MIS) REMEMBERING THE REVOLUTION: COMMEMORATIVE CULTURE AND THE TORY LEGACY

During the war, Tories helped to unify the Patriot colonists behind the war effort, both in fact and in propaganda. After the war ended, public culture, both in official pronouncements and in commemorative culture, worked to dispel wartime hostilities by avoiding mention of the Tories. Independence Day celebrations in the 1780s avoided mentioning the Tories and focused on the British as the enemy, in large part because Independence Day itself became a moment for open conflict between former Tories and Patriots, rather than a healing moment. Almanacs produced for the local market also avoided commemorating local battles, choosing safety in the battle of Trenton and Princeton, rather than the potential shoals of Camden and Kings Mountain. This strategy was only so successful, as evidenced by the street brawls in Charleston on July 4, 1783, and continued fighting in the streets in 1784. Nonetheless, officials reinvigorated their efforts to leave Tories out of the official commemorative speeches in an effort to avoid such future incidents. South Carolinians practiced the philosophy “hear no evil, speak no evil” in their public pronouncements about the recent Revolutionary past in the 1780s. Public discourse focused “us versus them” where the “them” was only the British, and the “us” was all Americans. Members of the audience knew better, of course, but it was

politer and safer not to say so. However, what happened as the Revolution became less an open scar and more a memory? How did South Carolinians remember the Revolution?¹

This chapter considers the legacy of the American Revolution as civil conflict in the public culture of early national and antebellum South Carolina. I argue that while their eighteenth-century forbearers were wary of anything that might fuel disunity among South Carolinians, antebellum South Carolinians came to revel in the brutality of their Revolutionary past as one more testament to the virility of Southern manhood and the Southern Republic. For them, ritual invocations of battle served to unify, not to divide. While Tories could be and were mentioned in public discourse, it was not imagined that those Tories could have anything to do with the antebellum state. Then, I show that Loyalist ancestry continued to be an issue for South Carolinians who were actually descended from Loyalists. Educated, elite South Carolinians who shared the misfortune of having Loyalist ancestors often had very thin skins, convinced that their peers looked down on them for their tainted past. A surprising number found refuge in the growing historical preservation movement, finding a release for their different histories in a unified filiopietism of the Revolution.

Finally, I conclude with the work of William Gilmore Simms, the talented prominent novelist of mid-nineteenth-century Charleston. Simms helped to shape South Carolinians' perception of civil conflict in the American Revolution for both antebellum Southerners and twentieth-century historians. Simms, a prolific novelist, wrote a series of Revolutionary war romances set in his beloved South Carolina. These novels, set in

¹ While in previous chapters, I choose to use the term Loyalists, in this final chapter I will often use the term Tory. I am making a distinction here between actual persons, who are Loyalists, and their public image after the Revolution, in which Tories became increasingly stock figures.

both the Lowcountry and the backcountry, portray the American Revolution in South Carolina as a brutal conflict with many local Tories. Simms deals with the casual destruction and violence between civilians in the Revolution, but he convinced generations of readers that Tories were uniquely culpable for the plundering, murder, and terrorizing of civilians that he frankly acknowledges as part of the Revolution. Simms helped shape a perception of the American Revolution in the South that has enjoyed remarkable staying power, culminating in the popular movie *The Patriot*, loosely based on Simms's novel *The Partisan*.

Overall, this chapter argues that South Carolinians managed their public memory of the Revolution in ways that stifled urges to relive Revolutionary civil conflict, guaranteeing that lingering animosities were not given a chance to smolder and burn. Only when the Revolutionary conflict could seem like a grand adventure, not the crucible of a generation, and only when the Revolutionary losers were so well re-incorporated into the body politic that most people had forgotten their Loyalist heritage, could the reality of Toryism remerge into public discussion. Even then, Tories could only operate at the level of stock figures.

This chapter deals with public memory, by which I mean memorializing activities with official sanction. The broader public sphere, including emotional networks and the circulation of individual wartime memories in company, is generally not the stuff of this chapter. Certainly such "tall-tales" existed, and influenced the culture into which younger generations were socialized. One visitor recalled that around 1800, he visited Charleston and heard "frightful tales of woe" as he circulated, many of which focused on

“pillage, fire, & sword.” He further noted, “the name of Cornwallis, is seldom mentioned without a hearty curse.” Yet much of this was left out of more official days.²

Public Commemorative Culture: Toryism in Independence Day Celebrations and Battle Commemorations

Americans were acutely attuned to the importance of collective memory. As the first generation of a new, independent American Republic (the first Republic of the modern world) they were concerned with ensuring the continuation of their experiment in human liberty. Shared public commemorative culture was vital in reminding adults of the rightness of their novel experiment in the midst of routine political disagreement. It was also crucial in educating youth and inculcating them with an unquenchable fire for American liberty and national probity. Americans took the work of public commemoration seriously.³

As we have seen in Chapter Five, public commemoration of American independence began during the Revolution. Throughout the 1770s and 1780s, public

² Charles Caleb Cotton as quoted by Travers, *Celebrating the Fourth* 38.

³ For a full discussion of the importance of public commemoration in the new Republic, see David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776-1820* (Chapel Hill, N.C., 1997), Len Travers, *Celebrating the Fourth: Independence Day and the Rites of Nationalism in the Early Republic* (Amherst, Mass., 1997), and Sarah J. Purcell, *Sealed with Blood: War, Sacrifice, and Memory in Revolutionary America* (Philadelphia, 2002). Waldstreicher makes the important point that conflict within efforts to remember helped to make the festive culture more important and central to American national myth-making efforts. Further, he is right that “relentless politicization gave nationalist rituals their most important meanings. Conflict [rather than consensus] produced ‘the nation’ as contestants tried to claim true American nationality and the legacy of the Revolution.” Waldstreicher, *Midst of Perpetual Fetes* 9. However, issues of sectional identity or party politics did not fundamentally change the imperatives of dealing with the history of armed civil conflict within South Carolina. Another interesting take on early national festive culture is Simon P. Newman, *Parades and the Politics of the Street: Festive Culture in the Early American Republic* (Philadelphia, 1997), although I find it less helpful for this work.

revolutionary commemorative celebrations worked to inspire unity among the local population. Loyalism was rarely mentioned. Public oratory focused on the contributions of the citizens to the war effort against the British. Civil conflict was ignored or downplayed as much as credulity allowed. The riots of 1783 convinced governmental leaders that too much public attention to the problem of Toryism was a bad idea. And, with the historic fear of mobocracy, South Carolina leaders trembled to allow unrestrained festivities, choosing instead to try to control them through public restrictions and sponsored public festivals.⁴

But what happened after the new American Constitution? This is important considering that in 1784 the majority of Loyalists named in the Confiscation Act were pardoned and released from confiscation. While amerced persons continued to petition, the General Assembly was firmly on the side of clemency by the middle of the decade.

Imagining Unity, Avoiding Open Conflict: Independence Day Celebrations in South Carolina

By the 1790s, public celebrations became as much about current political struggles as past glories. Rapidly growing partisanship was reflected in the celebrations

⁴ For a history of the fear of mob rule in America, see Paul A. Gilje, *The Road to Mobocracy: Popular Disorder in New York City, 1763-1834* (Chapel Hill, N.C., 1987). For an example of a carefully planned festival, see the dinner for dignitaries outlined in the published ode to the festivities for July 4, 1783. July 5, 1783, *South Carolina Gazette and General Advertiser*. Governor Benjamin Guerard prohibited the use of illuminations for most festivities. Certainly the risk of fire was a major cause of this prohibition, but so was a general fear of unrest. The Governor also cracked down on liquor consumption before such large gatherings came together. March 14, 1784, *South Carolina Gazette and General Advertiser*.

of Independence Day.⁵ Despite festivals' popularity, they became vehicles for working out present political tension as much as reifying the recent heroic past. In particular, such celebrations became part of a growing movement of divided politicking, whereby Federalists and anti-Federalists mustered supporters and gained positive publicity for their positions and candidates through these celebrations, which associated new political issues for the Republic with the upright, patriotic dutifulness of the Revolution. Less positively, this obvious disunity affected the way ordinary people felt about participating in these celebrations, depressing turnout in many cities. At the same time, Independence Day was solidified into the new festive culture of the nation as one of the few holidays guaranteed to attract working class people. Unlike religious holidays, Independence Day was guaranteed as a day of rest and leisure for white working class people.⁶

For much of South Carolina, however, the presence of slaves, who by definition could not become part of the liberty-loving citizenry, muted the celebration of Independence Day and shaped its expression. As Len Travers has pointed out, Charlestonians saw nothing wrong with using slave labor to serve festive meals in honor of Independence Day, although visiting Northerner Edward Hooker was horrified by the “incongruity” of slaves serving “an independence dinner.” Charleston also had a free black population who were equally excluded from celebrating Independence (of any kind). In 1799, a public advertisement for July Fourth festivities warned “No admittance for people of Color.” Despite this public denial of the reality of slavery, South

⁵ In this section, I concentrate on Independence Day rites, but South Carolinians also celebrated Palmetto Day—the festival commemorating the Battle of Sullivan’s Island (1776), where Patriots managed to hold Fort Moultrie early in the war. Palmetto Day celebrations also changed over the years, but I concentrated more on Independence Day as it was more popular across the state in early years. Palmetto Day, especially in the beginning, was a local holiday touting the important of Charlestonians in the war effort. It also immortalized a moment long before the worst of the armed civil conflict, and therefore the silence on the subject of civil conflict is more understandable without recourse to fragile conscience.

⁶ Travers, *Celebrating the Fourth*, Waldstreicher, *Midst of Perpetual Fetes*.

Carolínians did moderate their celebrations in an effort to avoid inciting slave revolt. Charleston history suggested that slaves did indeed see the ripe connections between calls for white liberty and their own enslaved state. During the 1765 Stamp Act controversy, enslaved Charlestonians took note of the angry white crowds who shouted ““Liberty! Liberty and stamp’d paper!”” in the streets outside of the homes of stamp officers. Shortly after this demonstration, some enterprising slaves milled in the streets shouting ““Liberty”” just as the whites had done earlier. Predictably, whites panicked.⁷

The 1791 San Domingo insurrection did nothing to calm white nerves either. It certainly served as the foremost example of what revolutionary ideas might create in slave societies, as slaves claimed the mantle of French Revolutionary ideas of the equality of man. Practically, French refugees poured into Charleston with their slaves, bringing news of the insurrection not only to unnerved white South Carolínians, but also to their enslaved African Americans. French emancipation of these rebellious slaves in the following years also reminded and worried white South Carolínians that their slaves might also associate *liberté*, *égalité* and *fraternité* with their own situation, and demand freedom.⁸

⁷ Travers, *Celebrating the Fourth* 145. Waldstreicher, *Midst of Perpetual Fetes* 314. Frey, *Water from the Rock* 51.

⁸ The classic work on French-inspired Revolutionary activity in the Caribbean is C. L. R. James, *The Black Jacobins; Toussaint L’ouverture and the San Domingo Revolution*, 2d ed. (New York, 1963). More recently, a marvelous new work on the rebellions, seeing it in the context of the greater Caribbean, and incorporating trends that move away from what might still be termed the great man school of history (which James is a part of) is Laurent Dubois, *A Colony of Citizens: Revolution & Slave Emancipation in the French Caribbean, 1787-1804* (Chapel Hill, N.C., 2004). In the last generation, more historians have insisted on and paid attention to the links between African Americans in the North American colonies. Julius Scott showed how African Americans communicated across these colonies in his doctoral dissertation. Julius Sherrard Scott, "The Common Wind: Currents of Afro-American Communication in the Era of the Haitian Revolution" (Ph.D., Duke University, 1986). More recently, Marcus Rediker and Peter Linebaugh have reestablished transatlantic links in communication for insurrections and protest movements in the early modern era. Marcus Rediker and Peter Linebaugh, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston, 2000).

There was evidence that slaves did indeed associate Independence Day with the hypocrisy of their own enslaved state. Arson was a convenient weapon of slave resistance, both on a small level and as the beginning of wider insurrection. For instance, the insurrectionaries in New York in 1741 began their broader attack on the city with a pre-planned burning of the fort, intended to heighten chaos and panic at the moment the Spanish were supposed to arrive in the city.⁹ Whites across the colonies were afraid of arson in slave revolt, and Charleston herself had seen suspicious arsons. One irritated Charleston newspaper writer pointed out that it was suspicious that one particular fire had broken out in three different parts of the city, all in business districts, seemingly simultaneously. He was convinced that this was therefore the “work of incendiaries,” and South Carolinians knew that those incendiaries were almost certainly slaves. Given the widespread fear of slave arson, white South Carolinians no doubt got the message from several arson attempts committed on or near Independence Day. On July 5, 1798, someone or some group set fire to a nice house in the main district, and authorities, after determining that the blaze was deliberately set, arrested two black women for the crime. At the trial the next day, the court established that one woman was the property of the house owner, and the other was a “French” slave, brought from Saint Domingo. On Independence Day in 1819 and 1820, arsonists struck again, trying to destroy Charleston neighborhoods. One fire was extinguished thanks to a letter from a slave who apparently betrayed fellow conspirators.¹⁰

⁹ Here I am following Marcus Rediker and Peter Linebaugh’s analysis of the 1741 insurrection. While the link to the Spanish is somewhat speculative, if convincing, the arson attempt was documented as part of the trial. Marcus and Peter Linebaugh Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston, 2000). Jill Lepore also has written on the subject of the 1741 New York conspiracy, with somewhat different conclusions. Jill Lepore, *New York Burning: Liberty, Slavery, and Conspiracy in Eighteenth-Century Manhattan* (New York, 2005).

¹⁰ Travers, *Celebrating the Fourth* 148.

Slave controls were always tight, but South Carolinians were especially careful to make Independence Day a whites-only celebration. In some Northern cities, including Boston and Philadelphia, blacks were briefly permitted to join in public celebrations of the holiday.¹¹

For a people already so hesitant about publicly celebrating Independence Day, lest it inspire dreaded slave insurrection, South Carolinians had an additional potential problem. The legacy of civil conflict between whites was not one of which sane South Carolinians wanted to remind slaves. South Carolinians had long suppressed open political conflict between whites in an effort to avoid encouraging slave rebellion. This urge to hide conflict between whites (and to keep everybody happy enough to present a united front) also encouraged South Carolinians to limit their discussion of Loyalism and the civil war of the Revolution. Two separate fears of potential slave insurrection, that of the rhetoric of liberty stirring up a passion for uprising, and that of civil conflict between whites creating an obvious opportunity that enslaved blacks might then seize to revolt, met in South Carolina's Independence Day commemorations, virtually guaranteeing that South Carolinians would say as little as possible about the Tory past. South Carolinians were already moving towards their vaunted nineteenth-century culture of "the harmony we were famous for."¹²

Independence Day celebrations in Charleston were constrained by one sizable practical problem as well—heat. South Carolina gets very hot by July, and parades were usually scheduled early in the morning to avoid excessive fatigue. Unpaved streets

¹¹ Travers, *Celebrating the Fourth* 150.

¹² Travers, *Celebrating the Fourth*. Robert M. Weir, "'The Harmony We Were Famous For': An Interpretation of Pre-Revolutionary South Carolina Politics," *The William and Mary Quarterly* 3d. ser., 26, no. 4 (1969): 473-501.

guaranteed that those watching the festive marches would be forced to breathe copious dust. It is likely that already-stifling churches were filled far beyond their normal capacity for celebratory orations, with those attendant discomforts. In 1809, one orator passed out during his speech. One might opine that Independence Day was a holiday better designed for Northern audiences, who might find the summer entertainment refreshing.¹³

With this background, we can begin to understand why Independence Day celebrations said so little for so long about the Tory past. Public oratory was one of the most important aspects of early Independence Day celebrations, and the only popular aspect of the celebrations that was encouraged by the elites. (As we saw in Chapter Five, Charleston elites worked hard to eliminate the public drinking, marching, and fireworks celebrations that were a central part of the way ordinary people participated in the Independence Day and Palmetto Day celebrations. By the 1790s, Charleston elites had managed to assert a great deal of control over these unwanted festivities.) Such orations were also the way the elite were able to massage the messages of Independence Day for themselves, ordinary whites, and enslaved African Americans. In addition, orations provide one of the best records of these celebrations, as they were reprinted in newspapers and in publications.

David Ramsay was an important orator and public figure in early national South Carolina. He was a prominent Charleston doctor (although not a South Carolina native) and wrote several histories of South Carolina, including a long history of the Revolution in that state, and a general history of the American Revolution. Ramsay was concerned with the future of the American experiment and sought to use his writing and speaking to

¹³ Travers, *Celebrating the Fourth* 62-65.

shape a unified America. His entire body of work articulated a view of South Carolinians' unity against the British during the Revolution. In his 1794 Independence Day oration in Charleston, Ramsay emphasized the unity of patriotic South Carolinians against the despotic British foe. In Ramsay's public memory, South Carolinians' prosecution of the war was noted for "our countrymen['] ... magnanimity..." in the "eight years war." But the magnanimity that Ramsay publicly praised was directed towards the British, not to any Loyalists. He did concede the brutality of the war, but strictly in terms of British brutality against colonial armies, militias, and civilians. Of Great Britain he said, "obdurate and inhuman in her efforts to reclaim us, there was no affliction we did not endure—no barbarity which she did not exercise. ... Husks and offals would have attested British mercy to conquered rebels."¹⁴

Ramsay used his bully pulpit to convince South Carolinians that the Revolution had opposed well-behaved South Carolinians who strictly observed the niceties of honorable wartime conduct against British troops (and no locals) who broke all the rules of war. Brutality was acknowledged only to be filed away as committed strictly by an "other" who no longer existed in the new state. It was a nice fantasy. In a multi-hour oration, Ramsay mentioned civil conflict in the Revolution once. Despite the sensitivity of the subject, perhaps it was the elephant in the room, mentioned only because its crushing weight needed some escape valve. Ramsay acknowledged internal division

¹⁴David Ramsay, *An Oration, Delivered on the Anniversary of American Independence, July 4, 1794, in Saint Michael's Church, to the Inhabitants of Charleston, South Carolina* (London, 1795) 3, 24. Ramsay also wrote a two-volume history of South Carolina's Revolution, which largely reprinted speeches and Revolutionary letters. He was one of the earliest South Carolina historians of the Revolution, first publishing his history in 1785. Craig A. Newton, "Three Patterns of Local History: South Carolina Historians, 1779-1830," *South Carolina Historical and Genealogical Magazine* 65 (1964): 145-57, 145-46. David Ramsay and Charles Colcock Jones, *The History of the American Revolution* (Philadelphia, 1789).

briefly in order to portray it as further proof of British infamy in the prosecution of the war:

There was a time when the heart of the patriot sunk within him and when Britain hoped to regain, by *our division*, what we had rescued from her by unanimity. She exulted with fiend-like ecstasy at the *scenes of anarchy and civil war*, which the embarrassed finances, and feeble powers of the confederacy too awfully portended. [emphasis added]¹⁵

In this imagining of South Carolina's Revolutionary conduct, civil conflict was absent before British perfidy stirred up "division" which was due to "embarrassed finances" and "feeble [state] powers" rather than genuine attachment to Britain and noble feeling, or hatred between white residents of South Carolina. Civil conflict simply emphasized Britain's "fiend-like ecstasy," which was stirred by "scenes of anarchy" that would be repulsive to normal men and women of honor. In fact both local Loyalists and Patriots of the backcountry often seemed to positively enjoy the cycle of revenge that the Revolution opened up. Despite the acknowledgment of South Carolina's not-so-distant past of committed Loyalism and civil warfare, Ramsay painted a picture of largely united South Carolinians against a brutal British foe who showed none of the finer feelings of enlightened man.

Rhetorical tricks are nice, but sometimes reality intrudes, even in the mind of the writer. Given the public nature of this oration, and the fact that it was only twelve years after the end of fighting, there were undoubtedly former Loyalists in the audience. Rising political partisanship seemed especially unfortunate in a region that had known such violent division. And, once again, political partisanship was restrained in South Carolina due to the ever-present fear of slave revolt. Nonetheless, the 1790s were marked by

¹⁵ Ramsay, *1794 Independence Day Oration* 24.

rising political factionalism. Federalists dominated Charleston, while the backcountry was more favorable to the anti-Federalist persuasion. Aedanus Burke, who was sympathetic to the backcountry and hostile to the Lowcountry elite, reported that backcountry people ““had a coffin painted black, which, borne in funeral procession, was solemnly buried, as an emblem of the dissolution and interment of publick liberty”” after the ratification of the Constitution.¹⁶ While Loyalists had come from both regions, and Loyalists from both regions had received legislative clemency, it was nonetheless true that Loyalism, and especially civil war, was associated with the backcountry in the minds of South Carolinians. Factionalism between the regions, while customary in South Carolina politics, was nonetheless unnerving, and in the context of the recent civil conflict especially unwelcome.

Ramsay and other leaders were nervous about whether a fragile society might be undone by political disagreements between Federalists and Democratic-Republicans. Early Americans generally felt threatened by the rise of party politics, despite evidence that such politics actually made the polity stronger. Predisposed to a distaste for factionalism, South Carolinians were especially concerned about the rise of faction in a state that depended on white unity in the face of a restive, sizable slave population. Therefore, in his oration Ramsay cautioned South Carolinians that the “nation of freemen...pay no unhallowed devotion at the alter of faction.” Further, his oration ended with a plea that Americans:

while celebrating the acquisition of our common inheritance, meet like *a band of brothers*; and, *forgetting the circumstance of occasional division*, let us present to the world the noble spectacle of a nation of freemen—pure in patriotism—with

¹⁶ Edgar, *South Carolina* 252.

but one mind, and one soul, IN DEVOTION TO OUR COUNTRY.” [emphasis in italics mine]¹⁷

Undoubtedly, partisan tension between Federalists and Democratic Republicans was uppermost in his mind when composing these lines, but it is likely that he also meant to include the Loyalist past as one more “circumstance of occasional division.” The important lesson in all cases was for South Carolinians to refuse to allow division to tear them apart. This warning also served as a coded warning that South Carolinians must not allow the wartime divisions to stop them from “meet[ing] like a band of brothers.” Ramsay could not afford to recognize divisions that still had the potential to act like pathogens in the fragile body politic, but in dancing around these facts he had to create a narrative that could work to acknowledge the reality of wartime hurts without unsettling the new state.

I have focused on Ramsay both because he is the most forthright of the 1790s Independence Day orators in recognizing the brutality of the war in South Carolina (convenient for my purposes, of course), and because Dr. Ramsay was the most learned and historically thoughtful of the orators, if not the most powerful of speaker.¹⁸ He had, after all, written several histories of the war, whereas other speakers were chosen because they served as Attorney General or were prominent members of the Society of the Cincinnati. Still, other speakers in the 1790s also made comments that might have struck some members of the audience as recognizing the fratricidal nature of the late war, despite the general retreat into patriotic platitudes. William Smith noted in 1796 that

¹⁷ Ramsay, *1794 Independence Day Oration* 32.

¹⁸ Henry Laurens was so convinced of David Ramsay’s intellectual acumen that he chose him as a son-in-law, when he had carefully discouraged other suitors for his daughter Martha’s hand. Laurens had carefully educated Martha, and he only wished to see her married to a man of superior intellectual ability (who could appreciate Martha, and by extension, Henry Laurens himself.)

while all states suffered “miseries,” South Carolina citizens “partook of more than their portion of the common distress; they indeed drank to the very dregs of the bitter cup of calamity.” Such “bitter calamity” might include the usual recitation of the horrors of war, taken straight from biblical language, that orators were so fond of invoking. Yet the next paragraph referred to wartime activities that indeed took place in South Carolina during the war. “All the horrors that could be perpetrated by the destructive sword of the enemy, the desolating torch of the incendiary, or the infernal tomahawk of the savage, were heaped on the wretched inhabitants of this devoted state.” Arson was not only a strategy in general in the Revolution, but was especially used in South Carolina. British and Patriot officials sometimes engaged in deliberate, planned arson, such as the destruction of Georgetown towards the end of the war. Backcountry militias routinely used arson of crops and houses as a method of discipline. And the British and the Loyalists received all the popular blame for inciting Native American warfare in 1775 and 1776.¹⁹

Should anyone in the Charleston audience not believe that the backcountry was included in Smith’s thoughts, he cleared up any misgivings by reminding his listeners that the “sable mantle” of the encroaching British spread over the “western confines” of the state. He further recognized the brutality of the war through the seemingly safe strategy of speaking of the honor of Patriot women. Patriot women, in contrast to Loyalist women, never had “[t]heir hands...polluted by the torch of the incendiary, or the dagger of the assassin; *their* arms were never stained by the blood of their enemies.”

¹⁹ William Smith, *An Oration, Delivered in St. Philip's Church, before the Inhabitants of Charleston, South-Carolina, on the Fourth of July, 1796, in Commemoration of American Independence* (Charleston, 1796) 4-5. My thoughts on the use of arson as a routine tool of war during the Revolution, a practice technically known as **pyromunkcy**, was stimulated by Benjamin Carp’s recent work on arson as a military tool and a propaganda instrument. Benjamin L. Carp, "The Night the Yankees Burned Broadway: The New York City Fire of 1776," *Early American Studies: An Interdisciplinary Journal* 4, no. 2 (2006): 471-511.

Patriot women showed their virtue as natural women by avoiding the unwomanly excesses of the undisciplined warrior. Presumably, in contrast, Loyalist women did pollute their hands as arsonists (although it was men, not women, who used arson as a calculated tool), or assassinate Patriot men (although spying was far more likely). Only through these safe rhetorical outlets could bad wartime behavior be acknowledged on Independence Day. By way of contrast, Thomas Tucker avoided the subject entirely in 1795, and Henry William Desaussure was so distracted by his paeans to Greene and Washington that he could barely even be brought to notice any Southern battles. The closest he got to controversial subjects was to praise the victory at King's Mountain.²⁰

Independence Day orations continued to serve as events to shape current political disputes as well as to celebrate the past. The War of 1812 provided a new wartime experience to influence South Carolinians' views of their Revolutionary past. Few Americans actually fought in the war or were personally affected by it, especially in comparison to the Revolution. Further, the South was united in its support for America in the War of 1812. (It was New Englanders who experienced bitter, if unarmed, divisions related to the war.) Charlestonians used Independence Day to encourage unity in the face of the new British aggression, and accordingly downplayed anything that smacked of citizen discord, including "party feeling." With the conclusion of the war, the Federalists were eclipsed, further dampening open conflict during such rites. Paradoxically, the cathartic climax of the Battle of New Orleans also reinvigorated

²⁰ Smith, *1796 Independence Day Oration* 5, 8. Thomas Tudor Tucker, *An Oration Delivered in St. Michael's Church, before the Inhabitants of Charleston, South-Carolina, on the 4th of July, 1795*; in *Commemoration of American Independence* (Charleston, S.C., 1795). Henry William Desaussure, *An Oration, Prepared, to Be Delivered in St. Phillip's Church, before the Inhabitants of Charleston, South-Carolina, on the Fourth of July, 1798*. In *Commemoration of American Independence* (Charleston, S.C., 1798)

discussions of military heroism, as jubilant Americans celebrated their military victories in both wars against the British. (Of course, such orations usually ignored painful and humiliating losses, such as the burning of the new federal capital.)²¹

The War of 1812 served to downplay the divisions of the civil population during the Revolution in South Carolina. Jonathan Maxcy, the President of South Carolina College (now the University of South Carolina) made Columbia's Independence Day speech in 1819. By this time, Columbia was the inland capital of the state, and was continuing to grow in wealth and influence. Maxcy's oration focused on promoting the great stature of South Carolina among the states in the Union. "Among the States who had the honour to furnish prominent persons for the public service, South Carolina holds a distinguished rank." He reminded the crowds of "her illustrious Laurens and Pinckney," two popular South Carolina Revolutionary figures. By 1819 the linkage of the backcountry and Lowcountry elite was complete, and audiences in Columbia were as likely to thrill to the exploits of Lowcountry Patriots like Laurens as to the exploits of Patrick Calhoun. Maxcy also traced a course for the new country to follow in achieving greatness. In his imagining, improved transportation that took advantage of the "majestick rivers which roll their waters though every part of our country" and the construction of public roads would allow the natural evolution of the United States into a more powerful country. In these ways his speech took the usual paths, emphasizing political and social themes common to such oratory.²²

²¹ Travers, *Celebrating the Fourth* 197-98.

²² Jonathan Maxcy, *A Discourse, Delivered in the Chapel of the South-Carolina College, July 4th, A.D. 1819, at the Request of the Inhabitants of Columbia* (Columbia, S.C., 1819) 10, South Caroliniana Library, Books Division. For a lengthy and persuasive discussion of the long process of knitting together the Lowcountry and backcountry through the consolidation of their respective elites, see Klein, *Unification of a Slave State* .

South Carolinians celebrated the militia just as other Americans. In the eighteenth century, most Americans saw the Revolution as a people's war, and celebrated the military contributions of everyday men over the Continental Army. It was not until 1818 that Continental soldiers were offered pensions for their service. Such pensions were not offered until Americans began to see the Continentals as crucial to the winning of the war.²³

On the heels of yet another humiliating war, Maxcy reflected on the nature of war itself.

War even in its mildest form, is a most tremendous scourge. On the ocean, its evils are chiefly limited to the combatants. On the land its course is marked with ten fold horrors. The aged, the helpless; the fond mother and her weeping infant; fields stript of their verdure; cities ascending in flames; the labours of art and of science suspended; depravity stalking abroad, and opening her mouth against the heavens; wide wasting pestilence, famine and death; all the monuments of skill and of glory overturned, and defaced; and the temples of the living God prophaned and polluted; the riches and toils and glory of ages, leveled in the dust and buried in ruin; all these, the usual attendants of war, pourtray its horrors, and announce it the most terrifick scourge with which heaven punishes the guilty nations.²⁴

South Carolina had been spared the ravages of the War of 1812, and few in the audience were warriors in that conflict. Instead, Maxcy's words seem a combination of generalized pieties and allusions to the horrid nature of war that would have been familiar to the older members of his audience. For those South Carolinians who had experienced the "tremendous scourge" of war, they knew all too well "the usual attendants of war". While most of the passage reiterates the usual platitudes against war by those with little experience ("the fond mother and her weeping infant", the "cities ascending in flames"

²³ John Phillips Resch, *Suffering Soldiers: Revolutionary War Veterans, Moral Sentiment, and Political Culture in the Early Republic* (Amherst, Mass., 1999), especially 1-5.

²⁴ Maxcy, *1819 Independence Day Discourse* 6.

all taken out of classical literature, and especially the King James Bible, as much as nineteenth-century realities), certain lines echoed the realities of war in the South Carolina backcountry. Burning crop fields was popular with Native Americans, white American Patriots and Loyalists, and British regular troops. Fields were indeed “stript of their verdure,” or at least their corn. Plunder and requisitioning (more or less the same thing) were everyday wartime activities.

More interestingly, Maxcy also warned that war led to “the temples of the living God prophaned and polluted.” As Walter Edgar has emphasized, at least one high-ranking British officer operating in the South Carolina backcountry targeted churches as “sedition shops.”²⁵ No doubt Maxcy intended his speech more to emphasize America’s unique promise in the world and the wisdom of avoiding foreign entanglements that might yet again lead Americans into war, but his invocation of the horrors of war no doubt had more concrete associations for some of his audience. His oration did not shrink from linking war to Independence Day, of which 1790s orators were more cautious. In this, we can see the influence of the new interest in American military exploits in the wake of America’s ‘Second War of Independence.’

In general, Independence Day orations, with their emphasis on current political dilemmas, and their desire for general uplift, were unlikely to be the place South Carolinians began to publicly address their divided past. The role of Independence Day, especially in a slave society, was very much to create white consensus, or at least the illusion of such. Acknowledging the civil war of the American Revolution could only undermine this effort.

²⁵ Walter Edgar, *Partisans & Redcoats: The Southern Campaign That Turned the Tide of the American Revolution* (New York, 2001) 62-63. The officer in question is James Wemyss, who destroyed several Presbyterian churches as “sedition shops.”

**“the best feelings and greatest harmony pervaded the assemblage:” Battlefield
Commemorations at Backcountry Battles²⁶**

In the first quarter century after the Revolution, Independence Day was the main way that South Carolinians publicly celebrated their war. As the past grew more comfortably distant, and the landscape came to have dominant connotations besides the blood of war, South Carolinians (and other Americans) came to commemorate specific battles as well as general days of American Independence. In Charleston and the rest of the Lowcountry, Palmetto Day became an important public celebration. Palmetto Day celebrates the defense at Fort Moultrie and is celebrated a scant week before Independence Day. For Lowcountry South Carolinians, it began to supplant Independence Day as the major celebration of the Revolution. In so doing, Lowcountry people put the Lowcountry at the figurative center of the Revolutionary celebration. More importantly, Palmetto Day served to address military honor as a crucial part of Revolutionary remembrance. A battle commemoration replaced a general political commemoration as the foremost place in public culture to celebrate the American Revolution. Palmetto Day was also a fortunate choice because it celebrated the moment of glorious defense before the fall and occupation of Charleston. This meant that Palmetto Day celebrated a moment before civil conflict in most of South Carolina. The elevation of Palmetto Day allowed Lowcountry South Carolinians to extol a moment when South Carolinians were mostly united against the British foe in valiantly and heroically defending their homeland.

²⁶ *Proceedings of a Celebration of Huck's Defeat, at Brattonsville, York District, South Carolina, July 12, 1839*, (Brattonsville, S.C., 1839) 1.

Palmetto Day was also celebrated in the interior, but with less enthusiasm. While planters in the antebellum interior could imagine themselves among the troops valiantly defending Charleston (and their forbearers had certainly been there), they were even more excited by ways to imagine themselves as offering specific contributions to America's success in the Revolution. Since backcountry South Carolina in fact did not lack for historic Revolutionary battles, it was perhaps only a matter of time until some South Carolinians would begin to publicly celebrate these battles.

With the exception of Palmetto Day, which became more a festival than a battlefield commemoration, South Carolinians shied away from too much explicit commemoration of the Revolution in the first three decades. South Carolinians did not reenact specific battles, choosing instead to honor the Revolution in general, rather than specific engagements. Local almanacs included only a few specific Revolutionary battles, and very few of them were local battles. For example, the "Carolina and Georgia Almanack" included Tarleton's defeat, but also the Battle of Trenton and of Bunker Hill. Specifically militia battles were not honored, such as Kings Mountain and the Battle of Huck's Defeat. The only other local battle mentioned was the battle at Camden, which was a humiliating defeat for the Americans.²⁷

²⁷ *The Carolina and Georgia Almanack or Ephemeris for the Year of Our Lord 1783, Being the Third after Leap-Year, and the Seventh of American Independence* (Charlestown, 1783). Representative almanacs include *The South Carolina and Georgia Almanack or Ephemeris for the Year of Our Lord 1783, Being the Third after Leap-Year, and the Seventh of American Independence*, (Charlestown, S.C., 1783), *South Carolina and Georgia Almanack*, (Charleston, S.C., 1784), *The Carolina and Georgia Almanack or Astronomical Diary*, (Charleston, S.C., 1787), *South Carolina and Georgia Almanack*, (Charleston, S.C., 1793), *The Palladium of Knowledge, or the Carolina and Georgia Almanac*, (Charleston, S.C., 1796), and *The Mirror or Carolina and Georgia Almanac*, (Charleston, S.C., 1804). All of these can be found in the Book Division of the South Caroliniana Library.

Compared to the ideological ease of Palmetto Day, the backcountry battles offered large problems, but also certain potential advantages. The advantage is that Palmetto Day, while celebrating a one-day victory, largely commemorates a moment of defeat. In contrast, several backcountry battles were clear military victories for the Patriots (some of the only victories of the entire war); and it is always nicer to celebrate victory than defeat. The problem is that many of the most famous backcountry battles included both Patriot and Loyalist militia troops. The backcountry battles are a record of violence, brutality, war crimes, and strong divisions between armed locals. How could South Carolinians write and speak the history of civil war in such a way as to maintain the peace?

Nineteenth-century South Carolinians recognized the divided loyalties of their citizens in their battle-specific commemorations, although they did not dwell on these differences. Instead, they recognized divided loyalties as one more obstacle that their ancestors had to overcome in order to win the Revolution. In order to show specifically how South Carolinians handled battlefield commemorations, I want to consider commemorative activity at two particular backcountry battles that both took place in what is today York County, South Carolina: the battle of Huck's Defeat (also known as Brattonsville or the battle of Williamson's Plantation) and King's Mountain. I chose these two battles because they were both Patriot victories against Loyalist troops, where probable majorities of the combatants were denizens of the Carolina and Georgia backcountry.²⁸ Further, these two battles both have an early history of commemorative

²⁸ For more specific discussion of these two battles, refer back to Chapter One, or see Gordon, *South Carolina and the American Revolution: A Battlefield History*.

activity, and some of the celebrations were captured in local newspapers and in publications circulated statewide.

I will turn first to the battle of Huck's Defeat. Col. Beatty's oration at an 1839 commemoration of the battle stands as a particularly useful case of trends in commemoration. The Battle of Huck's Defeat was one of the more vicious in the Revolution. (As I showed in Chapter One, that is a high standard, in a manner of speaking.) Huck, a Loyalist commander originally from Pennsylvania, was one of the most hated officers in South Carolina, accused of numerous wartime atrocities. Huck and his troops descended on the homes of two prominent Patriot leaders in the New Acquisition District. Both men were commanders under militia General Thomas Sumter. As in so many other cases in the militia civil war, the Loyalist militia approached intending to try to get intelligence on Sumter's position, and to harass local Patriot families in an effort to discourage them and smoke out their heads of household. All of this was part of a strategic battle for control of the hearts and minds, as well as the byways, of York County.

Loyalist troops managed to surprise the Bratton family on their homestead. The young men were taken prisoner in the family's corncrib and told to prepare for execution at the break of dawn. Martha Bratton and her younger children were imprisoned in the upstairs and guarded throughout the night by troops. Legend has it that Mrs. Bratton was threatened with death by one of the Loyalists. On the nearby Williamson plantation, several members of that family were also placed under guard.

Stories differ on who carried word to Sumter's camp, but a messenger did get through to Williamson and Bratton, alerting them to their families' peril. They led a

detachment of their forces in a fast ride back to their plantations, and surprised the Loyalist forces just before dawn. The engagement was, notably, a complete victory for the Patriots. Captain Huck was killed in the first round of fire, and only about 50 men from the Loyalist group managed to escape. The Bratton family was freed, and area Patriots took heart in the victory.

This, then, was a battle that York County residents wanted to remember. Much of the impetus for the first large commemoration actually came from the Bratton family, whose nineteenth-century members saw this as an ideal way to burnish their family's reputation. Dr. John Bratton, one of the sons of William and Martha Bratton, spearheaded the 1839 commemorative celebration. He also still owned the battlefield, and chose to open his land to the public for the ceremony. Proving once again that there is no such thing as a free lunch, some fifteen hundred people, including four aged Revolutionary soldiers, turned out to stifle in the South Carolina summer heat while hearing hours of high-flying oratory, watching a procession of badly trained militia, and enjoying lengthy toasts in return for the bribe of Dr. Bratton's luncheon.²⁹

In burnishing the contributions of the militia, the speaker went beyond recognizing the presence of Loyalist forces as well as Patriot forces to celebrating the negative contributions of the Loyalists. While many South Carolinians "joined the standard of the enemy, and committed frequently the most horrid and revolting deeds," the orator claimed that "the inhabitants of York District, to their imperishable honor were never paroled as prisoners, nor took protection as British subjects—preferring rather exile and resistance, than lame submission and a dishonorable peace." In a single phrase, the celebrants made their own local experiences more honorable than most of the state,

²⁹ *Celebration of Huck's Defeat*,

acknowledging Loyalism only to emphatically write it out of local history. Similarly, during the toasting John Carrol, a local soldier credited with shooting Captain Huck, was feted for being “a whig from the first, a whig to the last, he didn’t believe in the tories, and he made the tories believe in him.” It is true that a majority of the fighters from the York area were Patriots, but the area and surrounding counties certainly produced fighters for both sides, making this a rhetorical sleight-of-hand to transfer guilt elsewhere.³⁰

With the guilt for Loyalist acts safely transferred, celebrants could revel in the brutality and blood of the Revolution. With great overstatement, the speaker told the crowd “the waters of the spring below us, that now gush forth so clear and transparent, were on that occasion completely crimsoned with the blood of tories and British soldiery.”³¹ The commemorators showed a certain blood lust that was perhaps the single best indicator that they no longer feared, or even saw, their own tortured past of repeated civil conflict.

The commemoration did recognize the division of South Carolinians at the battle. Col. Beatty argued that the fact that “many of her own citizens joined the standards of the enemy” simply made his “forefathers” more “...like David of old, with a sling and a stone, against the Goliath of British might.” In creating his image of David vs. Goliath, Beatty lamented the difficulties attendant on America “with a small population thinly scattered over extensive territory, and even that population divided and arranged on opposite sides.” He also played up South Carolina’s importance in the Revolutionary war. For him, South Carolina’s internal division meant they suffered more than other

³⁰ *Celebration of Huck's Defeat*, 5.

³¹ *Celebration of Huck's Defeat*, 4.

Americans in order to birth the new nation, and should therefore come in for disproportionately greater praise. “South Carolina suffered much in the revolutionary struggle. She had not only to contend with this formidable foreign foe; but many of her own citizens joined the standard of the enemy, and committed frequently the most horrid and revolting deeds.”³²

The 1839 commemoration of Huck’s Defeat is the only one I have found evidence for in the nineteenth century. In part, this is because it was a more local battle, without the high stakes of major backcountry battles for control of the country. It is certainly no accident that this celebration took place at the instigation of a descendant trying to burnish his family’s reputation. In comparison, Carolinians on both sides knew King’s Mountain was a turning point from the beginning. Cornwallis was upset when he heard of Ferguson’s loss, and both General Greene and local Loyalists recognized that the Patriot victory would dry up recruits for the British side. One local Loyalist despaired that other Ninety-Six Loyalists were “so totally disheartened by the defeat of Ferguson” that in the entire area now “we could with difficulty assemble one hundred, and even those. . . would not have made the smallest resistance if they had been attacked.”³³

King’s Mountain attracted commemorative activity by 1815. The local York community organized a celebration to lay a memorial marker dedicated to four local heroes. No oratory was published, but the marker remains together, next to a newer one laid in 1914 that repeats the wording on the earlier plaque. This earlier, local

³² *Celebration of Huck's Defeat*, 2.

³³ Huck’s Defeat was celebrated repeatedly in the twentieth century, and is now celebrated almost yearly. The first time it was celebrated again was in 1919 D. H. Hill, *Col. William Hill and the Campaign of 1780* (1919). Pancake, *Destructive War* .

commemoration paved the way for a much larger and much more ambitious 1855 celebration.³⁴

The 1839 commemoration of Huck's Defeat carried no clear political overtones for antebellum America. Rather, it spoke to a more general sense of undivided patriotic fervor and Revolutionary virtue, just as countless other celebrations across the United States did. By the 1850s, however, battlefield commemorative culture fulfilled much more specific political aims. As tensions between the Southern states and the Northern states increased, the American Revolutionary memory took on a new cast. South Carolinians began to imagine their forefathers as the original defenders of Southern national independence, as much as the creators of an American independent polity. When York County, South Carolina residents first began planning a "celebration" of the battle of King's Mountain for the seventy-fifth anniversary, they invoked the "reunion of the states on the ever-memorable spot" as desirable because "we meet as children of the same family, as joint possessors of the same heritage of fame."³⁵

Who were these children of the same family who the Kings Mountain committee chose to invite to join in the planning and celebration? They were South Carolinians, especially from the surrounding districts of Chester, Union, Spartanburg and Lancaster, and North Carolinians, Virginians, Tennesseans, and Kentuckians. On the practical side, these states represented areas from where men who fought in the battle of Kings Mountain hailed. The organizers intended to "especially [invite] the descendants of those who took part in the battle." On a deeper level, the imagined understanding of Kings

³⁴ See Figure 1 at the end of this chapter.

³⁵ John S. Preston, *Celebration of the Battle of King's Mountain* (Yorkville, S.C., 1855) 2.

Mountain as a Southern battle for America made it imperative that it becomes a shared experience of Southerners as well as a memorial for South Carolinians.³⁶

It was not solely a Southern affair. In order to illustrate the importance of their festivities, and to press their claims for the importance of Kings Mountain to the nation, they did invite “distinguished gentlemen from all parts of the Union,” including George Bancroft as guest speaker. (Bancroft, however, was a Southern sympathizer, a point that became clear in his speech.)³⁷

An air of martial romanticism pervaded the celebration. Various volunteer militia companies enthusiastically paraded along the route. Some of the troops recited “the concluding chapters of ‘Horse-shoe Robinson’, in which are described, in the attractive garb of romance, the thrilling incidents of the battle” while others listened to “the inspiring strains of martial music.” The day was not without its hazards. There was an animated reenactment of the battle, marred by an accident in which one soldier managed to “severely shatter[] his right arm” when he discharged his weapon too early. He was carried off the field for an immediate amputation. In addition, “his face was shockingly burned, and fears were entertained that his eye-sight would be entirely lost.” This event provided a bit of excitement for the afternoon but also was an unintentional reminder of the very real hazards of war that a generation who had largely not seen military service

³⁶ Preston, *King's Mountain* 4. Given Kings Mountain's location on the North Carolina/South Carolina border, the York organizers had to invite representatives from North Carolina (or at least Mecklenburg County). However, there was no requirement that they include states representing the Over Mountain Men (Tennessee and Kentucky) and certainly no requirement that they invite Virginia representatives. Should there be any doubt that this felicity among Southern states was a product of a particular historic epoch, one need only consult the *Yorkville Enquirer's* story on the Kings Mountain Monument Association's installation festivities in the early twentieth century. At that commemoration, the North Carolina and South Carolina senators used the occasion to take public potshots at each other's states. South Carolina's senator “jumped on the North Carolinians with both feet for their notorious tendencies to try to claim everything in the way of historical achievement.” The *Yorkville Enquirer* snickered at the North Carolina D.A.R.'s who “seemed horrified at the way [the South Carolina senator] treated the sacred Revolutionary history and traditions of their state.”

³⁷ Preston, *King's Mountain* 4.

had forgotten. It was also an eerie preview of what South Carolinians would experience in a few short years. The reenactment served to connect South Carolinians with their past in a concrete way. It is not surprising that a battle commemoration would involve a reenactment, although using live ammunition turned out to be a poor decision.³⁸

The commemoration featured two orators, both of whom spoke at great length as befitted a nineteenth-century speech. Both orators dwelt with great interest on the military nature of the conflict, and dwelt on the brutality of the battle. Both orators also recognized the nature of civil warfare that was epitomized in the battle at Kings Mountain. In fact, they dwelled on scenes of violent Tories. However, no one mentioned that descendants of the Tories might also be present that day.

George Bancroft, the famous historian and promoter of history as a support of American nationalism, was the keynote speaker. Bancroft himself was descended from Loyalists, yet he had fundamental disdain for the Loyalists, which he expressed in his speech. For him, Kings Mountain was a singular turning point because it “struck dismay into the tories...check[ing] the concerted system of house-burning and domestic carnage which was filling Carolina with the deadliest horrors of civil war.” A local orator was even less restrained, describing Loyalists as “myrmidons” who “ravished” wives and daughters, hanged sons, and butchered pregnant women. His affections, like those of the Carolinians, were to celebrate the frontier men of legend, who turned out valiantly despite listening for “the echo of the Indian’s war-whoop” that might threaten their families. Another orator believed that the “mountain hunter” was so accurate at Kings Mountain that he “sent a death messenger in every bullet.”³⁹

³⁸ Preston, *King's Mountain* 4, 26-27, 36-37.

³⁹ Preston, *King's Mountain* 49, 56, 79-80.

Bancroft specifically endorsed the view that Kings Mountain was a singular example of Southern bravery in the face of overwhelming odds. “All honor must be awarded to the south, since she was left to herself in the hour of her utmost distress.” Southerners in the audience wondered if once again they would be left alone to defend themselves against such distress. Bancroft played up regional hostilities by emphasizing that the South had honored the Revolutionary contributions of the North, but not vice versa. The toasts also picked up this theme. Among the toasts was one honoring York for her steady Patriot leanings and calling on her to “never shrink from that principle of magnanimous independence” which presumably she could teach other Southerners. Yet another toast was offered to “Virginia, North Carolina and South Carolina: Firmly united in the days of 1780, may they ever be found, side by side, battling in defense of their constitutional rights and liberties against a common foe.” Again, speakers used the Kings Mountain celebration to invoke another coming struggle for Southern independence against aggression. Should the point have been too subtle for some in the audience, a congratulatory letter from Missouri spelled it out. A Missourian asserted, “we have a similar foe to encounter in Kansas.” He said that the border ruffians were the inheritors of the Patriot forces at Kings Mountain, fighting “single handed and alone” just as the Patriots had.⁴⁰

Revolutionary virtue could serve to call and inspire less aware South Carolinians to the defense of Southern liberty again. In between toasting famous Revolutionary leaders such as Washington, De Kalb, Marion, Sumter and Pickens, celebrants toasted John C. Calhoun.⁴¹

⁴⁰ D. R. Atchinson, Platte City, Mo., Sept. 12, 1855. Preston, *King's Mountain* 34, 76, 88.

⁴¹ Preston 34.

And yet, there were lessons there for them that they chose to ignore. In relishing the bloodiness of the Revolution, one cannot help wishing they had considered that war is bloody. A local orator imagined his grandfather asking, “why have we marred the face of this fair, new land with a cruel and bloody civil war?” However, the orator celebrated such brutality, reveling in an imagined connection with mountain men who “turn[ed] aside for nothing, save now and then to shoot a tory, as a bear hunter shoots a snake, merely to kill the vermin.” Battlefield commemoration was another way for South Carolinians to talk themselves into another civil war.⁴²

What about open discussions of Loyalism? Adjoining Chester County bragged that their district had been “filled...with whigs, and now with their descendants.” Chester County had plenty of Tories too, but in memory they claimed to have been solidly Whig. York toasted itself at the commemoration as “that portion of South Carolina which scorned British protection in 1780.” There was certainly recognition (with a certain gory enthusiasm) of the centrality of Tories in the battle of King’s Mountain. The published narrative of the celebration noted that George Bancroft directed the battle recreation “hard-by the spreading branches of the venerable tree from which the baker’s dozen of traitor tories were hung.” The violence of the battle was enthusiastically celebrated. After the formal toasting, the crowd examined a rifle and sword used in the battle by a Chester County native.⁴³

Tories themselves were painted in colorful but subhuman terms. The Loyalists of this celebration were stock figures. The celebrated Over Mountain men were imbued in this tale with a casual attitude towards hunting Tories.

⁴² Preston, *King's Mountain* 46, 51.

⁴³ Preston, *King's Mountain* 16, 28, 34-35.

Swiftly, but with stern determination, they kept the track, turning aside for nothing, save now and then to shoot a tory, as a bear hunter shoots a snake, merely to kill the vermin, or to keep his rifle from rusting; or, if they found a rascal skulking around their march, they stretched him up with a grape vine, practicing for subsequent necessities.

In glorifying the heroism and sturdiness of their ancestors, the speaker turned to the mountaineers as the best exemplar of a lost Southern manhood. The Tories, on the other hand, were the lowest of the low.⁴⁴

In conclusion, Tories remerged in public commemoration after the Revolutionary generation had long passed, and at a time when their grandchildren were taking their place in public life. Public discussion reemerged in the context of a new aggressiveness about the South's military contributions to the war. Such contributions were touted not for themselves, but for the assertion of Southern honor in the face of growing sectional conflict. The exploits of the Revolution served to call a new generation of Southerners to arm for battle to preserve Southern free white liberties.

“stigma...to the rising generation”: Loyalist Descendants and the Pain of Lingering Social Disability⁴⁵

Robert Cunningham was the son of Patrick Cunningham. Patrick was the younger brother of another Robert Cunningham, and a cousin of John Cunningham.

Patrick was a Loyalist with his brother in the Snow Campaign of 1775-1776, where he

⁴⁴ Preston, *King's Mountain* 51.

⁴⁵ William Blake complained that his placement on the amercement list would inflict stigma on his children. While he was the only one to complain of this possibility to the General Assembly, it raises a fair question. What was the experience for the children and grandchildren of Loyalists as they grew to adulthood and tried to take their place in South Carolina society? No. 5 William Blake (on Amercement), Free Conference Comm. Meeting, SCDAH.

raised a militia force and attacked a Patriot encampment, spilling the first South Carolina blood of the Revolution. He did maintain his neutrality after that until the fall of Charleston, when he commanded the Little River Loyalist regiment throughout the rest of the war. He applied for leave to stay in South Carolina and was denied, leaving for Florida. After the mass clemency of 1784, he returned in 1785 and appealed to the General Assembly, who removed him from the confiscation list, but left him subject to both amercement and a seven-year restriction on voting.⁴⁶

Family tradition held Patrick was so proud he vowed to avoid voting not only for the statutory period, but an additional seven years after that. (If South Carolina would not let him vote, he would not vote in earnest.) Yet, after the new constitution restored all Loyalist voting rights in 1790, his neighbors sent Patrick to the Tenth General Assembly (1792-1794). His young son must have been so proud of that achievement, and the warm endorsement from his locality that it implied. Unfortunately, family tradition also held that:

The jealousy of the members from the Lower Country, particularly directed against him as a Cunningham, and shown most palpably in their efforts to keep him in the background, by pointedly passing him over in all committees, etc., so disgusted him with its paltriness, that he peremptorily refused to yield to the earnest entreaties of his constituents to allow himself to be again put forward.⁴⁷

Perhaps Patrick Cunningham was beginning what was to be a family legacy of oversensitivity. Perhaps this reflects a lingering distrust between the backcountry and the Lowcountry. But more likely, this indicates that while Patrick Cunningham met the test of citizenship—acceptance into his local community and attention to the demands of neighborliness that citizenship was still only local. He had the legal privileges of

⁴⁶ Edgar and Bailey, eds., *Directory S.C. House Rep.* 4:139-40.

⁴⁷ Appendix on Cunningham family in George Atkinson Ward, *The Journal and Letters of Samuel Curwen, an American in England, from 1775 to 1783*, 3rd. ed. (New York, 1845) 618-38.

citizenship, but that did not require the General Assembly to grant him trust. Members who were well aware of his wartime history knew that he was a Loyalist from start to finish. In addition, the family recognized that while Ninety-Six residents drew distinctions within the Cunningham family, people from other areas focused on the association of the family name with William “Bloody Bill” Cunningham, the hated Loyalist.⁴⁸

Patrick Cunningham was not the only Loyalist to later overcome voting and office-holding restrictions and find himself elected to a position of trust and honor. Philip Barton Key of Maryland (uncle of poet Francis Scott Key) left Maryland in the wake of his Loyalist military activities, even filing a claim in Britain in 1785. Yet he returned to Maryland and opened a successful law practice, regaining his former wealth despite never overturning the confiscation of his property. He was elected to the United States House of Representatives in 1806, despite a campaign against him on the grounds of his past Loyalism. With self-satisfaction, he reflected that he “returned to my country like a prodigal to his father, felt as an American should feel, was received and forgiven, of which the most convincing proof is my election.”⁴⁹

⁴⁸ John Belton O’Neill, *Biographical Sketches of the Bench and Bar of South Carolina* (Charleston, S.C., 1859) 395-96. Judge O’Neill was a contemporary of Robert Cunningham. Interestingly, this was not the only time he interfered in public judgments on the Cunningham family. William Gilmore Simms suspected him of helping write part of the Appendix on the Cunningham family published by Samuel Curwen, but supplied by Ann Pamela and Robert Cunningham. William Gilmore Simms to Benjamin Franklin Perry, Woodlands, Oct. 30, 1846, Mary C. Simms Oliphant, Alfred Taylor Odell, and T. C. Duncan Eaves, eds., *The Letters of William Gilmore Simms*, 5 vols. (Columbia, S.C., 1952-) 2:202. John Belton O’Neill, Appleton’s Encyclopedia, Virtual American Biographies, <http://famousamericans.net/johnbeltononeall/>, Accessed March 14, 2007.

⁴⁹ M. Christopher New, *Maryland Loyalists in the American Revolution* (Centreville, Md., 1996) xi, 121-22. Francis Scott Key’s father was a Patriot during the Revolution, so his own actions can’t be compared to the Loyalist children and grandchildren later in this chapter. Nonetheless, it strikes me as very much a story of the American Revolution that our national anthem was written by a man who had both Patriots and Loyalists in his family.

Robert Cunningham himself was born in 1786, just after his father returned to South Carolina. Growing up in the 1790s and 1800s, he came of age in a time when Loyalists were integrated back into the community and little was said about them publicly. Yet he grew up with a very thin skin on the subject, indicative that he and his family were acutely aware that they did come under increased scrutiny. He became a lawyer, and studied under John C. Calhoun, becoming friends in the process. At the outbreak of the War of 1812, he rushed to volunteer, “burning with the desire to wipe out forever the popular stigma” of his family’s association with Bloody Bill. He organized a militia unit, and served honorably during the war. As a war hero, he was elected to the General Assembly in 1820 for the district of Laurens. Stories differ on what happened next. A family supporter claimed he heard whispers against another man with the name Cunningham, and stood up to defend that man against charges of Tory descent, admitting in a “manly avowal” that he was of the Tory Cunningham family. Other accounts suggest that he was the person being discussed, and that fellow legislators suggested he could not be trusted despite his own military service because of his Tory ancestry. In any case, accounts all agree on what happened next. He quit politics in disgust, and refused to ever hold another public office.⁵⁰

In South Carolina’s 1830 nullification controversy, he was a Unionist. While admirers attributed his insistence on union to his war service, it is certainly tempting to suspect that as someone smeared with disloyalty and disunity his whole life, he clung to

⁵⁰ Calhoun arranged for him to study law under a Connecticut attorney, among his many kindnesses over the years. At the time, he recommended him as a young man “of an excellent character, and of very respectable connections.” So presumably, in 1810 the Cunninghams were considered “respectable.” Calhoun to Benjamin Tallmade, Laurens, S.C., April 18, 1810, Robert Lee Meriwether, William Edwin Hemphill, and Clyde Norman Wilson, eds., *The Papers of John C. Calhoun*, 28 vols. (Columbia, S.C., 1959-) 27: 288-89. O’Neill, *Biographical Sketches* 397-99. David Moltke-Hansen, “Why History Mattered: The Background of Ann Pamela Cunningham’s Interest in the Preservation of Mt. Vernon,” *Furman Studies* 26 (1980): 35.

national unity for himself. But in the heat of rapidly dissolving social ties, Col. William Campbell Preston made an impassioned oratorical push for nullification. Standing in the courthouse at Columbia, he bandied about the opprobrious epithet Tory repeatedly, and in such a way that suggested he intended to target Robert Cunningham, or at least that was very much the way Robert took it. Aggravated beyond belief, and ever sensitive, Cunningham tried to challenge him to a duel (but mutual friends intervened.)⁵¹

Other Cunninghams were sensitive. His son John Cunningham complained to John C. Calhoun after the publication of accounts of his ancestors' war behavior of his "peculiar" position in his own neighborhood of Abbeville. He reflected on his difficulties when my "family in this State has against it many strong prejudices associated with the [American] Revolution," and concluded that those reservations were likely to stand in his way in trying for political position. As an ambitious young man, he asked Calhoun, a family friend, whether he should leave for Memphis or New Orleans, where he could make a name for himself without the constant quiet resentment of Toryhood. In addition, he asked Calhoun for a letter of character recommendation that he could take with him west.⁵²

Even in private life, Robert Cunningham felt people continued to talk about his Tory heritage suspiciously. In an effort to clear the air, he set out to find and publish

⁵¹ The South Carolina Nullification Crisis precipitated the national crisis. Local nullifiers wanted to call a convention to nullify the hated 'Tariff of Abominations' that raised many import duties 30% to 50%. Unionists were not in favor of the tariff, but argued that the Nullifiers were rash and would be better served by trying to repeal the tariff, not nullify. South Carolina went through a political war for control of the General Assembly, and friends and relatives were increasingly hostile to each other. Both sides argued that they were the true inheritors of Revolutionary virtue.. William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* (New York, 1965), Edgar, *South Carolina* 330-37, Lacy K. Ford, *Origins of Southern Radicalism: The South Carolina Upcountry, 1800-1860* (New York, 1988) 127-40. O'Neill, *Biographical Sketches* 399-400.

⁵² John Cunningham to John C. Calhoun, Abbeville Court House, Oct. 15, 1846, Meriwether, Hemphill, and Wilson, eds., *Calhoun Papers* 23:492-94. Calhoun did provide John with a letter of introduction to a former Louisiana governor. Calhoun to Alexander Mouton, Nov. 8, 1846, Meriwether, Hemphill, and Wilson, eds., *Calhoun Papers* 23: 532.

historical proof clearing his ancestors, and thereby removing the Tory stain for his family. He resented the widespread nineteenth-century characterization of Loyalists as brutal men bent on committing atrocities for blood sport—men who were lacking in some crucial features of humanity and civilization—in other words, archetypal “others.” In his apologia, he hoped to place his ancestors’ acknowledged Loyalism in a better light. Involving his invalid daughter Ann Pamela Cunningham in the project, he hoped to give her something to do besides mope. As she explored, she became convinced her Loyalist ancestors should be seen as principled, and that historians had been too hasty to condemn Loyalists as unprincipled men looking for personal spoils, given that plenty of Patriots were also motivated primarily by the possibility for plunder, and Loyalists were often motivated by loftier goals. In 1845, Ann Pamela Cunningham published a defense of Patrick, Robert, and William Cunningham in an appendix to a compilation of New England Loyalist papers first published in London. (An important point: she published anonymously.) She hoped to show that they had followed true convictions selflessly and had behaved decently, while many Patriots had simply sought self-advancement. She also tried to rescue William Cunningham from his appellation “Bloody Bill.” At one point, she argued that William was warped by persecution, which “speedily changed a kind and affectionate tempered man into a vengeful and unsparing partisan.” Much to her dismay, her efforts did not receive the kind of positive affirmation and acceptance she was hoping for.⁵³

Her publication attracted the furious notice of William Gilmore Simms, a Charleston novelist, historian, and prominent Southern intellectual. And unfortunately,

⁵³ Moltke-Hansen, "Why History Mattered," 36-38. Ward, *The Journal and Letters of Samuel Curwen, an American in England, from 1775 to 1783* 638-48.

her father was a far less sensitive individual than his daughter. When she was a schoolgirl, she was so difficult to live with that her roommate, Anna Maria Calhoun (John C. Calhoun's daughter), changed roommates within the first month. Simms recognized that loyalties could be complicated, but otherwise he completely rejected the Cunninghams' argument. He attacked the Cunningham history in five articles in the *Southern Literary Messenger* in 1846, three dealing with the Revolution in South Carolina and Patrick and Robert Cunningham, and two devoted to demolishing any effort to say anything good about William Cunningham. While he did attribute good wartime behavior to Robert and Patrick Cunningham, he viciously demolished Ann Pamela Cunningham's attempts to redeem William. He was not only livid that the author (as he did not know her identity) would not "leave at rest a memory, which nothing but a diseased and mistaken judgment could have wished to summon," but enraged that in her defense she impugned Patriot heroes, and made one John Caldwell the devil of her piece. Perhaps this was a poor idea from many angles, as Caldwell was John C. Calhoun's uncle (and the man for whom he was named) as well as an honored Patriot figure. Simms was attuned to the Caldwell family's feelings, but gave little thought to the feelings of Loyalist descendants. He did not suspect the real authoress, but he did believe whoever wrote the piece could only be a person with "a blind and stubborn attachment, whether of kindred or sympathy." In that he was right, but he later had to backtrack. He demolished Ann Pamela's argument paragraph by paragraph, and the only good thing he could find to say about William was he was a "bold, bad man."⁵⁴

⁵⁴ Moltke-Hansen, "Why History Mattered," 38. William Gilmore Simms, "The Civil Warfare in the Carolinas and Georgia, Part I," *Southern Literary Messenger* 12, no. 5 (1846): 257-65, William Gilmore Simms, "The Civil Warfare in the Carolinas and Georgia, During the Revolution, Part Ii," *Southern Literary Messenger* 12, no. 6 (1846): 321-36, William Gilmore Simms, "The Civil Warfare in the Carolinas

The entire exchange started a volley of responses, and Simms suspected the impetus came from northerners. His friend James Henry Hammond was much more perceptive, warning him two months after the final attack ran that “you were very severe on the ‘Cunningham Family’ & it strikes me that this answer does not probably come from the North, but from much nearer home.” Hammond did not know who the author was, but he did reflect that the “Cunninghams here are extremely sensitive and always on the qui vive for insults on their ancestry.” Here we see what many others probably thought: while everyone was aware of their ancestry, nobody dwelt on it the way the family did. Yet I suspect the Cunninghams became so sensitive because they were acutely aware of having “Bloody Bill” hanging over their head. It was easy for outsiders who didn’t have to live under that cloud to dismiss them as overly sensitive, just as it always is easier for the person with privilege of any kind.⁵⁵

Hammond was right to suspect the family had a hand in the whole thing. Ann Pamela Cunningham became very upset, and eventually Simms became aware of her identity. He was taken aback, and without denying his own position, he apologized to her and her circle of friends for giving “pain to such a creature so delicately constituted.” He also suspected she hadn’t written it, and kept looking for a man behind the scenes. (He was wrong.) Ann Pamela’s brother John hot-headedly tried to challenge Simms to a duel,

and Georgia, During the Revolution, Part Iii," *Southern Literary Messenger* 12, no. 7 (1846): 385-400, William Gilmore Simms, "Biographical Sketch of the Career of Major William Cunningham of South Carolina, Part I," *Southern Literary Messenger* 12, no. 9 (1846): 513-24, William Gilmore Simms, "Biographical Sketch of the Career of Major William Cunningham, Part Ii," *Southern Literary Messenger* 12, no. 10 (1846): 577-86.

⁵⁵ Benjamin Perry had encouraged Ann Pamela Cunningham to paint her ancestors in a more flattering light, and he was kind to the family’s feelings in his published history. While he also found nothing good to say about William Cunningham (“deserved all the infamy which had been heaped upon his character”), he wanted to protect the family from too close association with Bloody Bill. He recognized their feelings were “repeatedly and most wantonly outraged” by the association. Benjamin F. Perry, "The Revolutionary History of South-Carolina," *Southern Quarterly Review* (1847): 468-85, especially 484-85. James Henry Hammond to William Gilmore Simms, Jan. 28, 1847, Oliphant, Odell, and Eaves, eds., *Simms Letters* 2: 260 footnote 27.

but the parties were able to avoid it while saving face. John later tried to dissociate himself from the defense, indicating to Simms that he felt “regret” over the publication. He was probably embarrassed by anything that reminded people once again that he was a Loyalist descendant.⁵⁶

Ann Pamela and Robert were harder to please. Simms protested he had treated Patrick’s and Robert’s cases with “great forbearance & respect,” both out of historical accuracy and out of respect for Robert Cunningham and his “connection with the Union Party in 1832.” But Simms drew a sharp line between those men and William Cunningham, warning that “no member” of the family should “attempt[] to justify and defend such a person.” While he felt the family were not “identified with his infamy & name” (obviously, the Cunningham family vociferously disagreed), they ran the risk that trying to defend William would “only incur the danger, in the vulgar mind” of connecting the names. “Any farther attempt to do so will greatly endanger their own position.” He pushed his friend Perry to try to convince the family to back off, and thanked him several months later for putting “them right on the necessity of insisting upon a total separation from Bill, whom they would in vain try to rescue from public odium.”⁵⁷

Robert Cunningham reacted to the embarrassment by trying to involve his friend John C. Calhoun. He implored him for a letter of character reference for his family, telling him what he knew of his ancestors. Calhoun was the son of Patrick Calhoun, a Patriot commander in the Revolution, putting his own ancestry beyond dispute. Calhoun responded generously, reminding any future reader of the “kind & friendly personal

⁵⁶Simms to Benjamin Franklin Perry, Oct. 30, 1846, Oliphant, Odell, and Eaves, eds., *Simms Letters* 2: 200-03.

⁵⁷William Gilmore Simms cut his political teeth as a young orator for the unionist cause. Edgar, *South Carolina* 330-37. Simms to Benjamin Franklin Perry, Oct. 30, 1846, May 20, 1847, Oliphant, Odell, and Eaves, eds., *Simms Letters* 2: 200-03, 317-18.

relations” between them. On Robert, John and Patrick Cunningham’s wartime service and character, Calhoun reflected that while his own family was “opposed to the side they took in the great struggle,” they never said “ought against either of them calculated to impeach their humanity, or conduct, as individuals, in relation to the Whigs.” Instead, Patrick Calhoun spoke “favorably” of Patrick Cunningham, and Calhoun’s uncle John Caldwell (the one Ann Pamela had just maligned) spoke well of Robert Cunningham. Even as a personal friend, John C. Calhoun was unwilling to say anything in favor of William Cunningham, although he reminded his friend that William was “as I have always understood, remotely connected with you.” On William, he was moved to say “that I never heard my parents, or any of my relations speak of him, but in terms of the severest reprobation for his unhumanity & cruelty.” Calhoun went on to express anger that Ann Pamela (and he knew it was her) had tried to defend William by working to “impeach the character of those who became victims of the cruelty of the former.” He also went on for a paragraph defending his own kinsman John Caldwell.⁵⁸

Two lessons seem apparent from this episode. One, Ann Pamela Cunningham and her father should have left well enough alone. In trying to clear their name from the stigma they perceived, they instead reminded people of their ancestry without convincing anyone of their cause. While many agreed that their father and grandfather were honorable Loyalists, their connection to William Cunningham was impossible to shake. Perhaps this is why Ann Pamela actually changed the spelling of the family name in later years, turning Cuningham into Cunningham.⁵⁹ Two, while this is evidence that there was

⁵⁸ John Caldwell was murdered by William Cunningham’s Loyalist forces in November of 1781. Robert Cunningham to Calhoun, Nov. 19, 1846, Calhoun to Robert Cunningham, Meriwether, Hemphill, and Wilson, eds., *Calhoun Papers* 23: 543, 549-50.

⁵⁹ I use “her” spelling throughout this work.

some lingering hostility to Loyalist families in South Carolina, it is also the only case I can find of such trauma. Even this lasting stigma did not stop the Cunninghams from acquiring wealth and political office.

Thankfully for America, Ann Pamela Cunningham finally found a more effective outlet for her burning desire to clear her family name. She turned from trying to burnish Loyalist history to burnishing Patriot history, and succeeded marvelously. After her public humiliation as a writer, she aided another female historian in compiling materials on female Patriots in the Revolution, leading to a three-volume history. In 1853, she anonymously published “An Appeal to the Ladies of the South” in the *Charleston Mercury* and then other Southern newspapers. Signing herself “a southern matron,” she started a sectional appeal to raise money to purchase Mount Vernon, the homestead of George Washington, for eternal preservation. Mount Vernon was already a popular tourist attraction, but the Washington family was tired of non-paying tour groups picnicking on their lawn. In financial trouble and sick of the trouble, John Washington tried to sell the property several times to Congress and/or the Virginia state government.⁶⁰

Ann Pamela and other Southerners were afraid that a Northerner might buy the property. In her appeal, she wondered if “sacred” Mount Vernon might become “the seat of manufactures and manufacturers? Noise and smoke, and the busy hum of men, destroying all sanctity and repose around the tomb[?]” Despite the intention of saving

⁶⁰ Ellet, *Women of the American Revolution*. Patricia West, *Domesticating History: The Political Origins of America's House Museums* (Washington, D.C., 1999) 1-15. Charles B. Hosmer, *Presence of the Past: A History of the Preservationist Movement in the United States before Williamsburg* (New York, 1965) 41-49. Bushrod Washington had to post a sign on the waterfront of the property in 1822 reminding visitors it was private property, and discouraging “picnics on the lawn.” On the early history of the Mount Vernon Ladies Society, a biased but clear account is available in Mount Vernon Ladies Association, *Historical Sketch of Ann Pamela Cunningham, "The Southern Matron"* (New York, 1911). For more on Ann Pamela Cunningham's role as a woman in public life in the nineteenth-century preservationist movement, see Barbara J. Howe, "Women in Historic Preservation: The Legacy of Ann Pamela Cunningham," *The Public Historian* 12, no. 1 (1990): 31-61.

Mount Vernon for the South, within a year Northern women also wanted to raise money for the project. Ann Pamela welcomed the money and effort, and strove to rise above sectional politics, but her own mother sniffed, "Let it be all South." Perhaps this had something to do with the fact that her own mother's family was tied to Washington's by marriage, whereas Ann Pamela thrilled to link herself to a more positive American history. This granddaughter of Tories found herself surrounded by women chosen for their distinguished Revolutionary ancestry. In 1858, the Mount Vernon Ladies Society was able to purchase the property, with Ann Pamela Cunningham as the head. She continued to run the organization well past the Civil War, putting the property on a solid financial foundation and ensuring the continuity of the group. She truly found her personal outlet in historical preservation work, and wiped out any perceived stain on her character from her Tory ancestry by firmly associating herself with the man considered the deity of the Revolution.

Today, there is a South Carolina chapter of the Daughters of the American Revolution named for her, seemingly oblivious to the fact that she was the granddaughter of Tories. She did manage to put her ancestry behind her through the medium of historic preservation of the Patriot past.⁶¹

Historic preservation was a surprisingly popular outlet for Loyalists and their descendants. In Massachusetts, several Loyalist returnees (men who fled by 1776 and came back in the 1780s) were early members of historical societies, including the Massachusetts Historical Society and the American Antiquarian Society. William Paine, one such Loyalist, even became the vice-president of the American Antiquarian Society and spoke on their behalf at a patriotic occasion in 1815. In South Carolina, Ann Pamela

⁶¹ Moltke-Hansen, "Why History Mattered," 39.

Cunningham was not the only grandchild of Loyalists to turn to historic preservation. Frederick Augustus Porcher was the grandson of Philip Porcher of Charleston. Porcher had been a Whig, even lending the state 14,000 pounds for the war effort. He also served on the Committee of Ninety Nine in 1774. But after the fall of Charleston, he took a British commission, which led to his inclusion on the confiscation list. As we saw in Chapter Four, he petitioned the General Assembly and was included in the mass clemency restoration in 1784, although he was still subject to amercement. (Today the Philip Porcher home in Charleston is a very pleasant bed and breakfast, with no mention in the guidebooks of Porcher's status as a post-1780 Loyalist.)⁶²

His grandson Frederick had an academic temperament. Despite inheriting a sizable plantation, he never was a very good planter and became a professor at the College of Charleston. Trained at Yale, he pursued history as an avocation and wrote several pieces on the Lowcountry, including Revolutionary history. He was well aware that his grandfather had been punished for Loyalist activity. In his memoir, he openly catalogued the fact that his grandfather "had been amerced by the Jacksonboro Convention." Both out of personal interest in history and a desire to associate himself with the Whig Revolutionary past, he founded the South Carolina Historical Society in 1856 to "collect, preserve and publish such historical matter...as should seem desirable." In so doing, he founded an institution that collected extensive materials on the Patriot cause, highlighting its virtues and guaranteeing future generations would know of South

⁶² Stephanie Kermes, "I Wish for Nothing More Ardently Upon Earth, Than to See My Friends and Country Again": The Return of the Massachusetts Loyalists," *Historical Journal of Massachusetts* 30, no. 1 (2002): 30-49, see 48 (and 48 footnote 44) for Loyalists involved in historical societies in Massachusetts. The Committee of Ninety Nine served as the temporary government of South Carolina in 1774. Robert M. Weir, *"A Most Important Epoch": The Coming of the Revolution in South Carolina* (Columbia, S.C., 1970) 55. Coker, "The Punishment of Revolutionary War Loyalists in South Carolina" 195-203. Charleston Year Book (Charleston, 1884) 166.

Carolina's past. Like Ann Pamela Cunningham, in addition to founding the organization, he served as president for a long stretch, gaining personal honor as well as family honor through his pursuit of historic preservation.⁶³

While there were lingering whispers about some Loyalist clans, the paucity of such evidence suggests that Loyalist children and grandchildren were remarkably well integrated into South Carolina society. Porcher's memoirs indicate no sense of social stigma. Instead, he remembered looking down on a local Methodist family, who were distant kinsmen. His father and a Marion relative formed a local library together. In the Porcher experience, Loyalism was a very brief stigma that was not handed down to later generations. Yet in two cases, Loyalist grandchildren became prominent and influential historic preservationists, chiefly memorializing a Whiggish view of the Revolution. Temperament clearly played a role, but I find it telling that both of these nineteenth-century famous South Carolina preservationists had a Loyalist in the closet.⁶⁴

William Gilmore Simms and the Romance of Carolinian Civil War: Novelization Affixed a Permanent Place for Civil Conflict in Popular Memory

William Gilmore Simms is one of the reasons that Americans, including American historians, have been so enthralled with the brutality of the American

⁶³ Samuel Gaillard Stoney, ed., "The Memoirs of Frederick Augustus Porcher," *South Carolina Historical and Genealogical Magazine* 44, no. 2 (1943): 65-80, especially 65-67. Porcher seemed to have no problem with this taint of Loyalty in his life or in his psyche, simply accepting it in the memoir. One factor in this matter-of-fact attitude, as compared to Ann Pamela Cunningham, is that Porcher sat down to write his memoir in 1866 after great "afflictions" in the Civil War. Given the recent war, he was so shell-shocked he simply wanted to record "the old landmarks of the country" before history swept away all he had ever known. (Or, at least, he was terrified everything he had ever known was about to end.)

⁶⁴ Stoney, "Frederick Porcher Memoirs," 142, 144.

Revolution in the South. For better and for worse, William Gilmore Simms has been the primary shaper of the memory of the Revolution in South Carolina for more than a century. He has had a wide influence despite being read relatively infrequently in the twentieth century. Historians read his novels, and his distinctive voice, coupled with exhaustive research, has immortalized Revolutionary civil conflict as the central story of the Revolution in the South.

Simms saw himself as both a historian and a novelist, and wrote extensively in both forms. In both, he showed a strong focus on South Carolina's Revolutionary war experience, especially in the Lowcountry he knew and loved. As a biographer, he wrote about Francis Marion and Nathanael Greene, two of the most famous and influential military leaders. In his work on Francis Marion, he had the perfect entrée to examine partisan warfare, a prominent feature of the South Carolina experience, and an enduring fascination in his novels. Influenced by James Fenimore Cooper and Sir Walter Scott, he aimed to disseminate historical understanding to a wide audience through use of detail-oriented romances. In his seven romances of the Revolution, he traced the course of the war from the reduction of Charleston to the years immediately following the Revolution.⁶⁵

For all of his work, he engaged in extensive historical research. For *The Partisan* (his most famous novel), he conducted extensive interviews with veterans who served under Marion. He also read Marion's letters, General Horry's collection of letters from other officers, and toured battlefields. Growing up in a culture steeped in oral traditions

⁶⁵ William Gilmore Simms, *The Life of Francis Marion* (New York, 1844), William Gilmore Simms, *The Life of Nathanael Greene, Major-General in the Army of the Revolution* (New York, 1861). His seven novels, ordered by the events they portray, are *The Partisan* (1835), *Mellichampe* (1836), *Katherine Walton* (1851), *The Kinsmen* (1841, later renamed *The Scout*), *The Forayers* (1855), *Eutaw* (1856), and *The Sword and the Distaff* (1852, renamed *Woodcraft*.)

of the war, he also had a maternal grandmother who raised him on her favorite subject, the Revolution. He later remembered her emphasis on “Patriot heroism and Tory depravity” and it shaped his thinking. He began informally interviewing war veterans at the tender age of thirteen. All of that research paid off, as later historians have established that his novels are accurate in most details (if woefully inaccurate about race relations).⁶⁶

Simms hoped his novels would teach Southerners about their Revolutionary past, but he also hoped that he could educate Northerners about the South’s crucial role in the Revolution. Unfortunately, South Carolina’s civil conflict could easily give rise to the belief that South Carolinians were not dedicated to the war, a misimpression to which his novels might contribute. When Lorenzo Sabine published his famous work on Loyalists, he pushed the idea that South Carolina had more Tory support than any other region, and more inflammatorily, that South Carolina owed her independence to the efforts of New England soldiers, not her own men. Sabine further suggested that Charleston, Simms’ beloved hometown, had surrendered without even trying to defend the city. Outraged but smart, Simms planned a Northern lecture tour to address these issues. Frustratingly, the tour failed miserably. But in his defense, he was careful to recognize that South Carolina did produce a large number of Tories, and he was sympathetic to some.⁶⁷

Throughout his work, Simms portrayed the brutality and violence of the American Revolution in the Carolinas. Rather than shrinking from the nature of the warfare as brutal and internecine, Simms romanticized and celebrated it. Partly due to the inherent

⁶⁶ Mary Ann Wimsatt, *The Major Fiction of William Gilmore Simms: Cultural Traditions and Literary Forms* (Baton Rouge, La., 1989) 64. C. Hugh Holman, "The Influence of Scott and Cooper on Simms," *American Literature* 23, no. 2 (1951): 203-18. C. Hugh Holman, "William Gilmore Simms' Picture of the Revolution as a Civil Conflict," *The Journal of Southern History* 15, no. 4 (1949): 441-62, esp. 443, 447.

⁶⁷ Sabine, *American Loyalists*. Sean R. Busick, *A Sober Desire for History: William Gilmore Simms as Historian* (Columbia, S.C., 2005) 82-87.

flattening tendencies of the romance form, his Loyalists are almost always from the lower classes. When they come from the upper class, they are looking for personal profit and advancement. His novelistic history judges Tories harshly, although one recent writer has argued that in comparison to the ‘straight’ histories of the Revolution of the time, Simms offered more nuance.⁶⁸

At least his books are full of Tories! With his focus on civil conflict, he dwelt on partisan warfare as experienced by all classes of society. During the war, General Nathanael Greene commented again and again on the fury of hostility during the war, once sighing that “the Whigs and the Torrys...pursue each other with as much relentless fury as beasts of prey.” The Whig hero of *Mellichampe* echoed him. “It is a strife between brothers, all of whom have learned to hate as I do, and to seek to destroy with an appetite of far greater anxiety. The terms between Whig and Tory, now, are death only. No quarter is demanded—none is given.” A party in *Woodcraft* wanders by the evidence of all this hatred: a field where “no coffin or shroud enwrapped the forms of those who had cast themselves off.”⁶⁹

In Simms’ novels, the Tories are portrayed as committing all the depredations that were in fact committed by both sides. Simms spares no effort in portraying those Loyalists as the scum of the earth. He is perhaps most clear about this in his novels *The Partisan* and *The Forayers*. He describes one militia group of Loyalists as a “troop of banditti” who comported themselves as follows:

Banding together in small squads, the *dissolute and the wicked* among the citizens, native and adopted, thus availed themselves of the distractions of the war to *revenge themselves upon old enemies*, destroy the property they

⁶⁸ Busick, *Sober Desire* 73.

⁶⁹ Nathanael Greene to Samuel Huntington, Dec. 28, 1780, Showman, ed., *The Papers of General Nathanael Greene* 7: 9. *Mellichampe* as quoted in Busick, *Sober Desire* 74. Simms, *Woodcraft*, 211.

could not appropriate, and, with the sword and the rope, punish [the Patriot family]. ...to such a degree were the atrocities of these wretches carried, that men were dragged from the arms of their wives at midnight, and suffered for their love of country in the sight of wife and children, by dying in the rope, and from their own roof-trees.⁷⁰ [emphasis added]

The Tories themselves were “chiefly the desperadoes and outcasts,” including people who had been “notorious for...petty larcenies.” They were motivated by “a profligate lust for plunder” to participate in “that saturnalia of crime.” In novel after novel, Simms argues that Tories were primarily motivated by greed. In *Woodcraft*, Google steals a gold watch, and carries intelligence for profit, not conviction. McKewn, the dastardly British officer, is busy stealing slaves for personal profit. In *The Forayers*, one character contemplated the breeding of “monsters” during civil war. An outlaw joined the British cause because “the right side with him...is that which promises most plunder.” And Hell-Fire Dick led a band of deserters who robbed and killed Whig and Tory alike.⁷¹

Yet sometimes Simms saw a more nuanced view. *Mellichampe* created a character modeled on the real life Colonel Thomas “Burnfoot” Brown, who became a Loyalist leader after being ruthlessly tortured. He condemned the increase of brutality on both sides, and acknowledged that “to burn in wantonness, and to murder in cold blood, and by the cruelest tortures, were the familiar achievements of the time.” However vicious the war might have been at times, Simms played it up for all it was worth, thereby immortalizing a view of the Revolution obsessed with violent atrocities. In that way, Simms happily played into the hands of the propagandists of the Revolution. As a

⁷⁰ William Gilmore Simms, *The Partisan* 2 vols. (1835, reprint 1968) 2: 129. Holman, "William Gilmore Simms' Picture of the Revolution as a Civil Conflict," 450.

⁷¹ Simms, *Partisan* 2: 129, 132. Hell-Fire Dick was a character in both *Eutaw* and *The Forayers*.

member of the grandchildren's generation, Simms was influenced by living testimony filtered through rapidly changing (and ossifying) memory. Patriots who lived through the events could better separate the reality of partisan warfare with rules from the atrocity rhetoric that suffused the culture. With the passage of time, and constant rhetorical reminders of atrocity tales, veterans and civilians alike came to understand their past as being more like the tall tales they were used to hearing. Simms, who grew up on such tales, found confirmation of it in his adult interviews.⁷²

Perhaps the best example of this is in his most famous novel, *The Partisan* (1835), a thinly veiled retelling of Francis Marion's adventures. Major Singleton does not commit atrocities. But he is aware of them, including those of Frampton, the revenge-seeking Patriot whose wife was murdered by Loyalists. *The Partisan* is also clear about the consequences of growing civil conflict—the disappearance of any position of neutrality. Colonel Walton gave his parole, and tries to stay neutral. He was upset to realize Singleton was unwilling to trust him, and protested he was not a Tory. Singleton's reply? "I have little faith in neutrals. He who is not for me, is against me."⁷³

What is most important about *The Partisan* is that it, along with Simms' other Revolutionary romances, fixed a view of the Revolution in South Carolina as a romantic, brutal, violent, internecine conflict in the minds of future South Carolinians. His blending of fact, atrocity rhetoric, proslavery apologia, and imagined Tories became the view of the Revolution. At the same time as South Carolinians were reveling in commemorating backcountry battles as an example of Southern unity and heroism in the face of outside threats to their way of life, Simms reveled in the brutality of war as a sign

⁷² *Eutaw* as quoted in Holman, "William Gilmore Simms' Picture of the Revolution as a Civil Conflict," 450, 454.

⁷³ Simms, *The Partisan*, 1: 157.

of masculine Southern honor in his novels. By so doing, he ensured that the late antebellum view of the American Revolution, formulated to answer specific needs of a polity dissolving into sectional war, would become the view for more than a century. Simms influenced other novelists, and the South Carolina Revolutionary fighting continued to be an almost irresistible topic of novelists throughout the twentieth century. In 2003, two Southern writers published novels based on the backcountry fighting, and despite widely varying literary quality, the novels agree on the brutality and civil war of the Revolution. *The Partisan* continues to reverberate through the psyche of many Americans today, further shaping future views of the Revolution—the novel is the source for the adapted screenplay *The Patriot* (2000).⁷⁴

In *The Patriot*, Mel Gibson plays a loosely disguised version of Francis Marion, with bits of Thomas Sumter, Andrew Pickens, and Daniel Morgan thrown in for good measure. (Some sources suggest this was done to avoid unsavory aspects of Marion's life.) In the movie, the Tories are capable of incredible brutality at the hands of their British masters, including burning alive a town of Patriot-identified civilians. The movie paints Banastre Tarleton, renamed Tavington for the movie, as a wicked persecutor of Patriots and murderer of young, defenseless boys.

Now Americans imagine the Revolution in the South as a brutal civil war characterized by revenge killings. Yet this is an inaccurate, misleading picture of the war. It is, however, the legacy of William Gilmore Simms.

⁷⁴ Kenneth Roberts, *Oliver Wiswell* (New York, 1940), Allen Tate, *The Fathers* (New York, 1938), Inglis Fletcher, *Raleigh's Eden* (Indianapolis, Ind., 1940), Robert Morgan, *Brave Enemies* (Chapel Hill, N.C., 2003), and Jimmy Carter, *The Hornet's Nest: A Novel of the Revolutionary War* (New York, 2003). One imagines the relationship between the advance payments and the literary quality of the last two novels are reversed, as Carter's book is one of the most painful reading experiences I have had in years. Carter is descended from Revolutionary war survivors in Georgia who tried to stay neutral. Morgan is descended from a veteran of Cowpens. Roland Emmerich, "The Patriot," (United States: Columbia Pictures, 2000).

Conclusion

South Carolinians actually dealt with the task of managing historical memory of civil conflict rather well. While some Loyalists certainly had thin skins, they were reincorporated at every level of society. Historical memory focused on topics unlikely to upset the apple cart, and rightly so. While a startlingly high number of Loyalist descendants turned to controlling historical memory so as to write themselves into the larger patriotic history of America (Bancroft, Porcher, and Cunningham in this chapter), peace pervaded South Carolina in part because they handled memory so skillfully. When discussions of Toryism and Tory wartime brutality emerged again into the public arena through battle commemorations and William Gilmore Simms' novels, such discussions were firmly anchored in efforts to motivate South Carolinians to choose unity—this time in the face of Northern 'aggression'.

Figure 1: Chronicle Markers, 1815 and 1914, King's Mountain Historical Site



CONCLUSION

Part of what makes it hard to recover the history of reconciliation after the civil war of the Revolution is what makes it worth doing, namely, the success of the enterprise. South Carolinians, despite a brutal civil war, were able to reincorporate many defeated Loyalists so successfully that their children and grandchildren went on to found prominent Revolutionary war preservation efforts, have political careers, and make plenty of money. Loyalist ancestry was no bar to full social and civil engagement in later years. Around the world, people know that the American national anthem is very difficult to sing, but not that the stirring paean to the American flag was written by the nephew of a pardoned Loyalist (although the son of a Patriot).

South Carolina's Revolution was nasty and brutal. Since each side relied on local militia support for numerous engagements, it was almost inevitable that battle tactics would sink to those Americans had long used against Native Americans. The militia's preferred military tactics, and the new political uses of the militia in the Revolution as a tool of political enforcement, combined to ensure militias fought viciously, and followed the logic of escalating retribution. As guerilla warfare and the manpower provided by trained militias became increasingly important, more than one hundred engagements were fought in South Carolina, including some of the most spectacular American victories of the war. The battles of Kings Mountain and Cowpens were both fought by Loyalist

and Patriot militias, for instance. South Carolinians eagerly participated in whipping up atrocity rhetoric, spreading increasingly preposterous tales around. Atrocity rhetoric was a major recruiting tool, but also a practical teaching tool, showing men how to fight the war under the rules of retribution.

Understandably, after such a brutal civil war, in which friends and relatives had taken opposing sides and undermined each other's position, victorious South Carolina Patriots were enraged and ready for payback. Yet, while most hated the idea of Loyalists, they were willing even at an early period to protect some and forgive others. The Jacksonborough Assembly and Governor Rutledge passed a series of acts regulating the return of Loyalists in 1782. While the Confiscation Act banished almost 400 men, and stripped them and their families of all their property, the Assembly was in fact merciful. South Carolina gave Loyalists several chances to return to Patriot allegiance before lowering the boom of confiscation. Each act was designed to balance punishment and reward, offering Loyalists a carrot and a stick to encourage them to seek reintegration. Despite Patriot anger, the General Assembly dramatically whittled their list of potential confiscees, and created a lesser punishment for those men who they felt needed some public punishment, but not banishment. Prominent legislators protected their own friends and kin. Clearly many Loyalists were untouched by the Confiscation Act, as the Assembly reiterated that Loyalism disqualified men from voting or holding office for several years after the Revolution.

While some 4,000 white Loyalists did leave Charleston in British transports, many more stayed, whether or not they were subject to confiscation. Loyalists subject to confiscation overwhelmingly chose to petition the General Assembly for clemency,

drawing on a long Anglo-American history of petition that recognized the duty of legislatures to consider such petitions. Between 1783 and 1784, 70% of the Loyalists named on the Confiscation Act submitted petitions to the Assembly. Petitioners carefully assembled packages with individual petitions and supporting petitions attesting to their honorable character, good neighborliness, and upright wartime conduct, and lobbied their former Patriot neighbors to sign these petitions.

Buried under the deluge, the Assembly took two years to consider and debate clemency for Loyalists. Legislators formed committees to consider petitions from each district, using local members to decide whether local communities truly supported each Loyalist. At every step of the war, local support was crucial in determining each Loyalist's fate, and local support, as evidenced by supporting petitions, character witnesses in hearings, and local legislative approval, made the difference between removal from confiscation and continued banishment.

At the same time, South Carolinians were forced to consider, and define, what citizenship truly meant to them in order to defend Loyalist banishment. While legal definitions of citizenship in a new republic depended on volitional allegiance (the idea that citizenship was voluntary and changeable), Americans certainly did not believe that one could change citizenship at any time (during a war) without notice. Practically, Loyalist petitions and the way legislators and ordinary South Carolinians questioned and supported Loyalists shows that whatever the legal definition of citizenship, South Carolinians understood citizenship to be based on evidence of honorable conduct and neighborliness. Citizenship was a lived reality of proper behavior within a web of social obligation—the willingness to participate in credit networks, aid each other, and

demonstrate these conditions over time. South Carolinians struggled to reconcile their image of Loyalists as pitiless, cruel persecutors with their image of most petitioners they knew. Again and again, they testified that petitioners were men of long residence in South Carolina, who had lived near them and been accounted trustworthy and upstanding.

In 1784, the General Assembly revised the Confiscation Act, readmitting half of the Loyalists to the state, while amercing their estates. While this restoration act largely completed legislative reconciliation, later assemblies continued to readmit a few individuals. In addition, the Assembly continued to hear petitions from amercees, and slowly readmitted at least some of those taxes through complicated, individual means. Further, even men who could not persuade the Assembly to readmit them were able to reclaim at least some of their South Carolina property through their wives and minor children, who were increasingly given a 1/3 share. Overall, the majority of South Carolina Loyalists were successful in regaining their former lives.

All of this happened despite unrelenting opposition to a few Loyalists. South Carolinians carried on a heated discussion of what to do with Loyalists in newspapers and public pamphlets. Prominent legislators such as Aedanus Burke and Christopher Gadsden attacked confiscation as an unwise and unjust policy that would ultimately hurt South Carolinians as much as Loyalists. Others enjoyed reading about the trials and tribulations of Loyalists in South Carolina and other colonies, but such discussions, however vitriolic, served as a safety valve releasing the pressure of anti-Tory enthusiasm. By 'talking it out,' South Carolinians saved themselves from enacting their rage more violently. Certainly, there were attacks on a few particularly hated Loyalists, such as Matthew Love and James Cooke. But however violent those attacks were, they took

pressure off the rest of the Loyalists, and gave disgruntled Patriots an outlet for their rage. (Of course, they probably also scared some former Loyalists into avoiding too much self-assertion in the critical early years, which helped the process of reconciliation.)

By the 1790s, anti-Loyalist feeling had calmed, and many former Loyalists were living in South Carolina (even in the backcountry). South Carolinians adroitly managed public uses of historical memory to ensure they did not rehash Revolutionary conflicts. Loyalist children and grandchildren were incorporated at every level of society—so much so that Ann Pamela Cunningham, the granddaughter of a Loyalist militia leader, briefly roomed with John C. Calhoun's daughter at an exclusive boarding school for girls. By the time the South faced civil war again, South Carolinians were so secure in their memories of the American Revolution that they invoked their Revolutionary past as a beacon of unity against outside foes.

What made South Carolina able to reconcile after civil war, when so many societies do not accomplish this goal? I certainly cannot suggest any hard and fast rule. But I do want to make an observation. Today, national and international peace and reconciliation movements (and scholars) often recommend, or at least base their models on, official national action in the cause of reconciliation. The Truth and Reconciliation Commission in South Africa is a now classic example. Success depends on two things: one, that each side feels they have gotten a fair hearing, and two, that the full legitimacy of the highest national government stands behind official reconciliation.

South Carolina was successful with a different model. First, while Loyalists did get the chance to speak for themselves, nobody ever encouraged them to unburden themselves freely. (I in no way want to suggest this model is especially applicable to

South Africa's case, where the moral claims are different.) The losers had to swallow their rage and disappointment as a precondition to reintegration, and those Loyalists who were not willing to do so didn't submit a petition. Second, and perhaps more generally relevant, South Carolina, through ad hoc means, evolved a system of reconciliation that used state government legitimacy to cover the process of localized reconciliation. The state legislature gave their imprimatur to decisions made locally. Further, those decisions arose from negotiations between Loyalist and Patriot neighbors. This suggests that a top-down approach is not always required or even helpful. While state or national (or international) government does need to give an official seal of approval to reintegrating activities, South Carolina's reconciliation process worked because it gave local Patriots a stake in reconciliation. Locals got to decide who stayed and who went, and this process put the onus of appeal on those former enemies seeking reintegration.

This local process worked for a second reason as well. What government can provide, and the South Carolina General Assembly did provide, might be better termed legal reintegration or legal status regularization. The actual process of reconciliation depended on a discussion of character, where each individual was judged by his actions. In South Carolina, the two went together, as the government extended legal reintegration to those individuals who were able to achieve reconciliation. Reconciliation works best when everyone buys into the process, and for people to buy in, they need to feel that they have control over the decision. Top down reconciliation doesn't work, but bottom up reconciliation with government backing, worked for eighteenth-century South Carolinians.

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