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“From Principles of Humanity and Virtue”: Moderation and the Revolutionary Settlement in North Carolina

BY JOHN R. MAASS

The struggle for American independence in North Carolina was a civil war, especially after the British concentrated their Southern offensive there in late 1778. It was not only a traditional military contest between regular armies in the field, but a bloody internecine struggle marked by plundering, property destruction, violence and murder as well. Lord Cornwallis's invasion of the North Carolina Piedmont, as well as the partisan warfare welling up in the wake of the Race to the Dan and the retreat from Guilford Courthouse to Wilmington, occurred primarily in the North Carolina backcountry. These concurrent conflicts created great difficulties for Patriot military and civilian leaders in eastern North Carolina as they attempted to establish political legitimacy through the restoration of order and stability.

From his home in Edenton, North Carolina, attorney James Iredell wrote a short letter in June 1784 to his friend Archibald Neilson, a merchant and former secretary to the last royal governor of North Carolina. An ardent loyalist, Neilson hastily left the state once war seemed imminent in 1775. Having not heard from Neilson in years, Iredell welcomed the renewal of an interrupted friendship “between old Friends, however separated by the war or political sentiments.” He lamented the vindictive spirit demonstrated throughout the war years—and since then—against those like Neilson who remained attached to the crown and had suffered so much because of their loyalty. Sympathetic toward the plight of these numerous “Refugees,” especially those who “were not remarkably obnoxious,” Iredell went on to articulate his views on how the post war process of rebuilding the state and dealing with those who failed to support independence should proceed.¹

For James Iredell and a sizeable element of North Carolina's leaders, a policy of moderation would best serve the state as it struggled to overcome the devastation and disruption of the war years. This was particularly true with regard to reintegrating those disaffected from the Patriot cause, many of whom remained in the state while others who had fled sought to reenter. “No Man is either good or bad, merely for his opinions,” Iredell declared, adding

that in political questions there is room for almost an infinite diversity of sentiment, among even the wise, as well as Men of little understanding—and that no Man in a civil war is justly censurable for anything but insincerity in chusing his side, or in fidelity in adhering to it, or in the course of his political conduct deviating in any instances from principles of humanity and virtue.

¹ James Iredell to Archibald Neilson, 15 June 1784, *Papers of James Iredell* (Raleigh: North Carolina Department of Cultural Resources, 1776-2003), Vol. 3, pp. 67-68.

With a glance toward the future he continued with an expression of hope for conciliation, tempered with the recollection of the bitterness the struggle had engendered. “I heartily wish, that the termination of the war could have been followed with an oblivion of its offences, tho’ I cannot but observe that it was conducted in some respects in such a manner as too naturally to cause a deep and lasting resentment in many who have particularly suffered by it.”²

Iredell articulated in this letter a view that many others in the state shared—that the rebuilding of the state and the revolutionary settlement in it had to be based on some degree of clemency, not vindictiveness. What was called for, these moderates and conservatives argued, was reconciliation rooted in moderation. Carolinians who shared this view tried with varying success to mitigate the widespread hostility against the disaffected in order to limit the wartime violence and chaos within the state, and to bring peace, stability and prosperity to the post war years. As part of their efforts, these men sought to avoid alienating the disaffected unnecessarily, and to mitigate the suffering of the families of those who opposed independence. They allowed penitent Tories to rejoin the Whig polity in return for military service, and allowed select others who had fled to come back to enjoy their estates once again, provided they were not the “obnoxious” sort Iredell mentioned. Pardons were granted in some cases, and clemency shown to many of those who posed no threat to the state’s well-being—“unless they have done something to exasperate the people.” This conciliatory influence was a key component in bringing order, tranquility, and stability to a war-ravaged North Carolina and was an essential part of the revolutionary settlement there.³

Advocates of conciliation pointed to the necessity of ameliorating provisions in law to prevent disorders within the state. These men sought to limit retaliatory measures against their internal foes, partially to control the chaos and destruction they saw, but also as a way of placing the state in the position of a controlling authority. This role would enhance the state’s legitimacy, attract the loyalties of the disaffected, and help build the state in the post war years. One of the primary methods North Carolinians employed to reach these goals was to attempt to treat separately those who warred against the state from those who, while to some degree disaffected, posed little or no threat. This can be clearly seen by the reluctance of Whig authorities to punish women and children during and after the war. Women were not seen as combatants, were regarded as less dangerous than disaffected men, and they were not required to take an oath of loyalty to the state. As a result, they were not subject to various punitive acts and resolutions passed during the war, and could not be punished by their provisions. By seeing to the needs of these destitute families, the state also could be cast in the role of protector and provider, and hence convince at least the families of the disaffected that they had a powerful interest in its success, and deserved their loyalty.

² James Iredell to Archibald Neilson, 15 June 1784, *Papers of James Iredell*, 3:67-68. Iredell too suffered as a result of the war. He was separated from his mother and brothers who remained in England, and was disinherited for his support of the Revolution by a wealthy uncle who resided in the West Indies. See Don Higginbotham, ‘James Iredell’s Efforts to Preserve the First British Empire’, *North Carolina Historical Review*, 49 (1972), 127–45.

³ Archibald Maclaine to George Hooper, 29 April 1783, *North Carolina State Records* (Raleigh: North Carolina State Archives, 1895-1905), vol. 16, p. 957.

While many in the state sought to punish the disaffected by a variety of penalizing measures, other Carolinians recognized that some scrutiny should be observed in determining who was to be declared an enemy. This was necessary in order to maintain public order, reduce lawlessness, and to enhance the legitimacy of the state as judicial arbiter. Archibald Maclaine, for example, advised Thomas Burke in February 1781 of the case of a “Mr. Young, of Georgia,” whose property had been seized by the Whigs. Maclaine admitted that Young was a Tory, but that his property had been “carried off in the night from his Plantation in a piratical manner, and every one whom these freebooters choose to call a Tory may be used in the same Manner if they are to be both judges and parties.” In other words, if the Tories were to be punished, it had to be done under legitimate state auspices, not the caprice of local commanders or their men.⁴ Thomas Burke also sought to make sure that the disaffected were handled firmly, but according to the law. To Major Hogg, commander of the spring anti-Tory campaign in 1782, he gave orders to this affect: “Subsist your troops where it can be done without oppressions, on the estates of the disaffected. But to prevent those employed from committing abuses, it will be necessary that nothing be taken from them without a particular account being rendered to you.” He also ordered Hogg to “punish all acts of plunder of inhuman or disgraceful violence,” and not to insult the families of the Tories. “The necessary severities I shall authorize and you will execute, I am persuaded, with sufficient vigor, though with reluctance”⁵

From the first years of the conflict, some Carolinians sought to lessen the war’s effects on non-combatants estranged from their cause. In July 1776, the Surry County Council of Safety advised the local militia commander that regarding property of Tories he was to confiscate their “moveable” property, while “observing in the mean time that their families are supplied with the necessities of Life.”⁶ The state’s “Treason Act” of 1776 provided for the confiscation of property of those deemed inimical to the cause of independence, but also included a provision that trial judges could at their discretion “out of the estate forfeited by virtue of this ordinance, make such provision for the wife and Children if any of the Criminal.” Most subsequent acts continued this provision as well.⁷ A 1778 confiscation act included ameliorating language to prevent dependents of the “many Absentees from the State” from falling into a condition of “the most abject Wretchedness.”⁸ The following year, a revised act specifically exempted the dower property of wives and widows from confiscation.⁹ “We war not against aged parents or

⁴ Archibald Maclaine to Thomas Burke, 9 February 1781, *NCSR*, 22:534-535.

⁵ Thomas Burke to Major Hogg, 13 March 1782, *NCSR*, 16:231. Burke had also recognized during the war that correct behavior on the part of public officials toward the citizenry would prevent people from attaching themselves to the Tories. John Sayle Watterson, *Thomas Burke, Restless Revolutionary* (Washington, D.C.: University Press of America, 1980), 153.

⁶ Surry County Safety Council to Martin Armstrong, 5 July 1776, *NCSR*, 11:308.

⁷ *NCSR*, 23:998; *NCSR*, 24:348-349.

⁸ *NCSR*, 24:209-214.

⁹ *NCSR*, 24:268.

against Women and Children,” protested a group of lawmakers in 1779.¹⁰ Some of this sentiment was probably based on the desire of state authorities to avoid having a large number of inhabitants destitute and requiring assistance from already overtaxed local and state resources. This may be the case in 1780, when the state Board of War ordered that when confiscating the “great quantities” of corn of loyalists in Rowan and Mecklenburg, authorities were to leave enough corn “sufficient for the Support of the poor women and Children who belong to those persons.”¹¹ The North Carolina government, however, certainly recognized the salubrious effects of leniency with regard to dependents of Tories. The state senate observed in the summer of 1781 that the families of many Tories who had renounced their British allegiances and enlisted in the state’s Continental forces were often “reduced to Poverty in consequence of the Confiscation Act,” that body accordingly resolved that these families receive from the local commissioners of confiscated estates “all Articles and Property of every kind heretofore belonging to them.” This action not only encouraged the disaffected to join the army, it was a mollifying gesture toward their families as well.¹² Even as the war against the Tories heated up for state and Continental authorities by the start of 1782, some provisions for the women and children of these foes seemed necessary. A number of judicial cases show that when property confiscation cases, courts ordered that sufficient provision should be made for the families of the victims.¹³

Many of the state’s citizens expressed sympathy for disaffected non-combatants. A number of women from Wilmington petitioned Governor Martin and the state council late in 1782 not to seek vengeance on the wives and children of North Carolina Tories, who rumor had it would have only forty-eight hours to depart the state once ordered to do so. “It is not the province of our sex to reason deeply upon the policy of the order, but as it must affect the helpless and innocent, it wounds us with the most sincere distress and prompts our earnest supplication that the order may be arrested, and the officers forbid it to carry it into execution.” Many of these petitioners had themselves been forced out of their homes by the British in 1781, but the women insisted that “it is beneath the character of the independent State of North Carolina to war on women and children.” They concluded that “the safety of this State, we trust in God, is now secured beyond the most powerful exertions of our Enemies, and it would be a system of abject weakness to fear the feeble efforts of women and children.”¹⁴

Despite these practicalities associated with loyalists’ dependents, other conciliatory measures were adopted by the state in order to reduce the number of Tories

¹⁰ NCSR, 13:992.

¹¹ NCSR, 14:445, 469-470.

¹² NCSR, 17:865-866.

¹³ See for example the 1782 case of Joseph Dobson of Guilford County, given in Jane S. Hill, trans., *Guilford County North Carolina Court Minutes* (Greensboro: Guilford County Genealogical Society, 1999); Pruitt, *Abstracts of Sales of Confiscated Loyalists Land and Property in North Carolina*, 119-120, 123.

¹⁴ Petition of Anne Hooper, et. al., to Governor Martin, NCSR, 16:467-469. The petition is undated but appears in the records of 1782.

in the field against Whig forces. One such expedient was to lure them back to the fold by offering pardons in return for military service. While a lengthy tour of duty—in some cases, twelve or eighteen months—in the ranks of ill-clothed, poorly supplied Continental or state battalions was unattractive, the alternative of property confiscation, banishment, treason charges, and the sufferings of their families made atonement in the form of enlistment a viable option for many of the state's disaffected men.¹⁵ Governor Burke's goal was "to deprive the enemy of the advantages they derive from having a body of such men in the heart of the Country." He wished to make them "either Continental soldiers or prisoners of War," and hoped that "on the return of the soldiers [to their homes] their Country will be reconciled to them." This would also avoid the "dilemma of suffering numbers [of disaffected] to be executed *summa jure*" for treason, the governor concluded.¹⁶

This assuaging expedient was adopted by state governor Alexander Martin as well, in the form of a 1781 proclamation, in which he declared that those men who had "withdrawn themselves from the faith and allegiance" of North Carolina, and who had joined the enemy forces would be pardoned, provided that in order to "stay the hand of execution," they gave themselves up by 10 March 1782, and immediately enlisted in one of the state's Continental regiments, for a twelve month tour of duty. Those guilty of murder, robbery, and housebreaking did not fall under the terms of this amnesty.¹⁷ Even before Martin's proclamation, a number of North Carolinians who had previously fought for the British sought to gain pardon in exchange for military duty. "Having come to a proper sense of their duty and being duly penitent wish again to be admitted to the Privileges of Citizens, many of whom are now in the Continental Service," the state senate in 1781, declared that these men—"many of the families of which persons are reduced to Poverty in Consequence of the Confiscation Act"—would be allowed to keep their property in return for their military service.¹⁸

Upon Burke's return he continued with this combination of recruitment and leniency, "it being resolved that all of those people who were in Arms with the Enemy or who committed hostilities against the people of this State under color of British authority be made prisoners of War, except a few of the more atrocious, unless they will faithfully serve twelve months in the Continental Line of this State." Even after the March 10th amnesty deadline had passed, Burke wrote that "such as are disposed to enlist may find protection [and] even now will be deemed Citizens...in order that their families may be protected in their absence." He advised one of the state's military officers that "except [for] the very mischievous and atrocious, I wish to see very few submitted to the

¹⁵ Burke's address to the 1782 General Assembly, *NCSR*, 16:9; Fries, *Moravian Records*, 4:1576.

¹⁶ Thomas Burke to Governor Matthews of South Carolina, 6 March 1782, *NCSR*, 16:217-219.

¹⁷ Proclamation of Alexander Martin, 25 December 1781, *NCSR*, 22:211-212; Alexander Martin to Nathanael Greene, 10 February 1782, *Papers of Nathanael Greene*, 10:351.

¹⁸ Senate Joint Resolutions, General Assembly Session Records, June-July 1781, Box 1, N.C. State Archives; Hill, *Guilford County North Carolina Court Minutes*; Pruitt, *Abstracts of Confiscated Loyalists Land and Property in North Carolina*, 115.

Executioner,” a telling reminder of the alternative some Tories faced instead of enlisting.¹⁹

A similar olive branch was offered later that year as North Carolina forces moved into Tory strongholds to suppress them. Governor Martin reported that

By the advice of the Council a Proclamation will issue as soon as the Troops arrive in the Settlement of those people [Drowning Creek], notifying them such are citizens of this State to surrender themselves in ten days, renew their allegiance, and serve twelve months, in the Continental Battalions. On this consideration they will be pardoned and restored to every privilege of Citizens; precluding those guilty of murder, robbery, house burning, and crimes not justified by the Laws of War. On their refusal, such as are taken will be considered prisoners of war (excepting as aforesaid) and liable to exchange...otherwise they will be subjected to the penalties of the Treason Law.²⁰

This latter proviso could mean capital punishment, as loyalists surely recognized.

Even before the state formally adopted the policy of pardon for service, at least a few military commanders in the field saw the its benefit. Colonel Thomas Wade of Anson County reported to General Gates in 1780 that he had received the surrender of about one hundred of the “Outlying torys” of his county, the common men from whom he obtained security, and enlisted them with his forces for three months military service. Wade was optimistic that the Tories would faithfully adhere to their service, and that “if by this method we Can make them useful members and Convince them of their former conduct, it will in my Opinion be better than to Kill them.” But, he added gravely, “we had to Kill a few Outliers, which Ansured a good End.”²¹

This ameliorative policy proved effective. In late 1782, militia General John Butler reported to the Board of War “the Tories are surrendering themselves to the Justices of this and adjacent counties [near Salisbury]. I believe they would be good Subjects, if they could be pardoned.”²² Judge John Williams reported that after the end of Oyer and Terminer Court in 1782, the court had “pretty well delivered the Gaol, by trying some [men] and binding over to the Superior Court the most exceptional characters and by inlisting into the Continental Service...those less obnoxious.” Thus, some of those on trial may have accepted the court’s suggestion of enlistment rather than face harsher punishment.²³ Hanging a number of traitors also acted as an incentive for some of the condemned to accept service in the state’s military forces. In February 1782, Governor Thomas Burke advised South Carolina’s governor John Rutledge that “we have executed

¹⁹ Thomas Burke to Major Hogg, 13 March 1782, *NCSR*, 16:229-231; Watterson, *Thomas Burke: Restless Revolutionary*, 198; Thomas Burke to Nathanael Greene, 15 February 1782, *Papers of Nathanael Greene*, 10:370. This expedition was previously noted in Chapter 4.

²⁰ Alexander Martin to Governor Matthews of South Carolina, 9 June 1782, *NCSR*, 16:690.

²¹ Thomas Wade to Horatio Gates, 23 November 1780, *NCSR*, 14:751.

²² John Butler to The Board of War, 4 November 1782, *NCSR*, 16:663.

²³ Judge John Williams to Alexander Martin, 27 January 1782, *NCSR*, 22:610.

some Traitors and Felons at Hillsborough, and have some Prospect of recruits from our disaffected. I shall take immediate measures for bringing them to a decision." No doubt seeing some of their disaffected comrades swinging by the neck made decision making easier for Tories.²⁴

While state officials allowed some Tories the chance to redeem themselves by serving in the armed forces, other Carolinians also demonstrated a moderating bent toward restraint in dealing with the disaffected. This occasionally came in the form of petitions of citizens, who requested special favors from the Assembly. In one instance, dozens of inhabitants of the Hillsborough District petitioned the state legislature on behalf of one Thomas Estridge, then "under Sentence of Death for High Treason." The signers urged pardon for him and those "unhappy Citizens who have been deluded by the Artifices of the Enemy," in the name of humanity. As the basis for clemency, the signatories cited Estridge's good character, and "Humane Treatment and Good Services to our Citizens who had fallen into the Hands of our Enemies." They also urged the consideration of the condemned's "Wife and a Number of Small Children," who could not be supported by the accused were he incarcerated or hanged.²⁵ Some juries who convicted men for treason afterwards suggested lessening the severity of the sentences.²⁶ Numerous prayers, petitions and memorials made their way to the state's chief magistrate and the legislature during the war, which demonstrate a moderating spirit among at least part of the populace.²⁷

Clemency was another powerful tool employed by the state's governor, assembly and courts to reduce the bitterness between Whigs and Tories, to attempt to persuade the disaffected to seek a return to society, and to establish the state's institutions as a legitimate authority. Pardons rewarded those who returned to the North Carolina polity, and served as examples to others of the benefits of public penitence.²⁸ Early in the war, pardons seem to have been considered based upon the individuals character, particularly if reliable Whigs would vouch for them. Thus in 1777, Alexander Martin (then a Continental officer) solicited clemency for loyalist Joseph Hughes, a prisoner captured at the 1776 Battle of Moore's Creek, so that he could be paroled to his home. "I do not think him quite so capital offender as some of the captive Tories here, and would beg leave to recommend him to such clemency." It should be noted that the Moore's Creek insurgents served in a regularly constituted army, and not committing depredations against civilians, burning homes, plundering, and other outrages. As such, state officials

²⁴ Thomas Burke to John Rutledge, 15 February 1782, *NCSR*, 16:511-512.

²⁵ *NCSR*, 19:931-932. The petition is undated but by context appears to be from 1782.

²⁶ *NCSR*, 14:340. It should be recalled, however, that not everyone approved of such leniency. Brigadier General Allen Jones of the state militia wrote at the time "I make no doubt but hanging about a Dozen [conspirators] will have exceeding good Effects in this State and give Stability to our new Government. They seem to have been designed for this purpose by providence." Allen Jones to Thomas Burke, 6 August 1777, *NCSR*, 11:747.

²⁷ For Thomas Burke's experiences with regard to clemency issues during his tenure as state governor, see Scott Langston, "Burke as Mediator," 43-79.

²⁸ *NCSR*, 12:115-116, 268-269; Crow, "Tory Plots and Anglican Loyalty," 1-17.

may have been more inclined toward clemency for them.²⁹ Other examples from the struggle's opening years exist as well. Colonel Thomas Wade of Anson County recommended that the governor consider pardoning Lewis Lowery, a Tory officer who had left captivity in Staunton, Virginia in 1777 to return to Anson, even offering to take the oath. Although Lowery's return was a violation of his parole, Wade suggested that he be pardoned, since he "appears to have a desire to once more give his country satisfaction of his sincere return to his duty as a subject of this State."³⁰ There were more pragmatic reasons for pardons as well. May 1777 Senate records show that regarding prisoners, senators were "willing that such as are desirous of becoming good subjects of this state and members of society should have it in their power...to be immediately enlarged and exert all their power by their good conduct to reconcile themselves to the State and replace themselves, if possible, in the good opinion of their fellow citizens."³¹

Support from Whig friends who testified favorably on behalf of the disaffected on some occasions proved very valuable to petitioners. A number of citizens—including several county militia officers and justices of the peace—signed a supportive petition in 1786 on behalf of Hugh Ross, in which they described him as "honest, harmless, peaceable and useful" neighbor who left home with the enemy only because of the "riposte of the Tories, [and] the Crualty of the American Army then [1781] then marching from Salisbury." Ross admitted that when the state was invaded by the British in 1781, he was one of the "poor ignorant men" who left their farms and families to seek safety in Charleston rather than remain at home. In his attempt to regain from the assembly lands confiscated by the state in his absence, he cited his large family, poor financial condition, and his peaceful conduct while in South Carolina in hopes of obtaining relief. The legislature eventually exonerated him in 1787, and restored estate.³²

James Brown's attempt to obtain leniency illustrates a salient feature of clemency—North Carolina authorities believed that conciliatory measures would induce others to return their allegiance to the state. Brown got one Stephen Cobb to write the governor a letter for him, in which Cobb pleaded "If it's your pleasure to admit him to bail, I am induced to believe it will answer a good purpose, as I think it will bring over several disaffected people in that Quarter to a sense of their duty" by the example.³³ By late 1780, North Carolina's militia commander General William Smallwood urged the state to issue a proclamation of amnesty for the Tories, "who, from their late Treatment from the British, distress him by surrendering themselves daily, and he believes would generally come in was their any encouragement."³⁴ Smallwood wrote in October that

²⁹ Alexander Martin to Richard Caswell, 20 April 1777, *NCSR*, 11:455-456.

³⁰ Thomas Wade to Richard Caswell, 5 September 1777, *NCSR*, 11:607.

³¹ *NCSR*, 12:91.

³² Petition of Hugh Ross, December 1786, Joint Standing Committee Papers, General Assembly Session Records, November 1786, Box 2, N.C. State Archives; *NCSR*, 24:928; *NCSR*, 18:202. The bill for Ross's relief was presented in the House by William Wood, representative for Anson County. *NCSR*, 20:164.

³³ Stephen Cobb to Richard Caswell, 15 August 1779, *NCSR*, 14:196-197.

³⁴ *NCSR*, 14:459.

“perhaps a Proclamation [of amnesty] would effectually draw at this Crisis numbers from the British Interest, who perhaps might be rendered hereafter useful to their Country.”³⁵ Likewise, Anson’s Colonel Thomas Wade reported in November 1780 that he had in custody Captain John Kimbrough, “of the Disaffected and Deluded people of this Neighborhood,” who after “Lying Out” for two months surrendered himself, and asked for the mercy of the state. “His coming in will be the means of the Chief Outlyers in this County to Come in a few days time, I expect.”³⁶ Governor Burke received from one of his militia generals the observation in the summer of 1781 that many of the men who had joined the British garrison at Wilmington that year “may be brought from him,” not by punitive measures but “by showing them Lenity...I think most of them joined [the British] through fear.”³⁷

Others were pardoned for what might be called good behavior. Captain William O’Neal recommended a pardon for Dr. John Pyle and his son, both loyalists who after having surrendered themselves to O’Neal’s militia force, “proved very faithful” attending to the wounded of both sides in several skirmishes in the upper Cape Fear Valley.³⁸ During Cornwallis’ invasion of North Carolina in 1781, Dr. Pyle joined the British forces, raised a large corps of Tories for service and was defeated in February 1781 in what is now Alamance County. Pyle and his son helped care for the wounded after Guilford Courthouse, was acquitted of treason in Chatham court, and was allowed to remain in the state without the loss of his property.³⁹

As the war dragged on, many Tories seem to have concluded that either they no longer wished to fight the Whigs, or they lost hope in ultimate British victory, for by the end of 1780 a steady stream of disaffected men began to seek clemency by contritely claiming to have been deluded or led astray by the British or the loyalists. Several men in Orange County in April 1782 petitioned Governor Burke that before the British arrived in their neighborhood in 1781, they had been

good subjects to the State and always behaved consistent with the laws thereof, but at that time, having no Army of this State or the United States to fly to, did foolishly go to Lord Cornwallis and remained with him but a very short time before we returned home, being convinced of our folly and determined to act as good subjects to the State.

Several Orange County militia officers supported their petition for clemency by advising Burke that while the petitioners were with the British they “did not act as bad men.”⁴⁰

³⁵ William Smallwood to Horatio Gates, 27 October 1780, *NCSR*, 14:712.

³⁶ Thomas Wade to Horatio Gates, 23 November 1780, *NCSR*, 14:750-751.

³⁷ William Caswell to Thomas Burke, 30 August 1781, Preston Davie Collection, Southern Historical Collection, UNC, Box 3, #141.

³⁸ William O’Neal to Thomas Burke, 19 March 1782, *NCSR*, 16:244.

³⁹ *DNCB*, 5:160.

⁴⁰ Petition of Samuel Hawkins, et. al., 10 April 1782, *NCSR*, 16:276-277.

Archibald McKay (“being advanced in years”) wrote to the legislators in 1783 that although he fled the state rather than swear allegiance to it in 1777, he was now “convinced of the wickedness and folly of the enemies of this country, to seduce and ruin the weak and unwary from their duty and Interest.” With contrition, he sought to return to his home and to “become a citizen of this free and Independent state.”⁴¹

Loyalist officer John Kimbrough also used this tact when he petitioned Governor Burke “to release him from his parole so that he may return to his home in order to provide the Necessaries for the Support of his family Who are reduced to the greatest distress.” He admitted that he had been “unhappily, through Various intimidations, led away and induced to act in a measure Contrary to the laws of the State,” but was now “fully Convinced of his Error and Sincerely sorry for what he has done.” Kimbrough’s process of obtaining a pardon was lengthy. He was jailed for some time, and in 1786, the Senate received a “petition of sundry of the Inhabitants of Orange and the adjacent counties” in his favor. The Senate resolved that Kimbrough “be released and set free from any further confinement.” The former Tory’s financial straits due to his confinement were apparently a factor in the clemency grant too, as the senators “resolved further, that in consideration of the distressed situation to which the wife and children of the said Kimbrough would be reduced by the carrying the sentence aforesaid into Execution, the said John Kimbrough be and he is hereby exonerated and forever discharged from the Forfeiture of the one half of his estate, as incurred by the sentence aforesaid.”⁴²

Some errant Tories served due to fear, as Governor Burke learned in 1781. “A great number of [Col. David Fanning’s] party stay with him because they dare not leave him,” army officer Andrew Armstrong reported. He went on to describe one Tory company in arms that would “return home could they only have assurance of not being hanged.” Armstrong recommended pardoning them, as “it is certainly as easy to reduce the number of our enemies by pardoning them than by killing them and much better suited to our present condition.”⁴³ Brigadier General William Caswell believed the same thing. Regarding Craven and Dobbs counties, he thought that “A [number] of those people who have been and are with the British, would come in on some terms. Should your Excellency think proper to give them any indulgence [I] think it would answer a good purpose.”⁴⁴

A number of others during the last several months of the war petitioned to be readmitted as citizens. These petitions usually employ contrite language, a promise of good conduct, and a request for clemency. “Sundry Inhabitants of the County of Surry” made such an appeal in 1782, in which they claimed that inducements and threats made by “wicked and designing men” briefly led them to oppose American independence. “We clearly found out our error and immediately withdrew ourselves from having any

⁴¹ Petition of Archibald McKay, 1783, Joint Papers, General Assembly Session Records, April-May 1783, Box 1, N.C. State Archives.

⁴² *NCSR*, 18:99.

⁴³ Andrew Armstrong to Thomas Burke, 22 August 1781, *NCSR*, 22:1048. Armstrong was a former Continental officer who was then serving with the state forces.

⁴⁴ William Caswell to Thomas Burke, 27 August 1781, *NCSR*, 15:627.

Connection with so unwarrantable Proceedings,” and claimed to have turned out for every call for Continental and State troops, “paid our taxes with Cheerfulness, and in short have submitted to everything ordered or done to us whether Lawful or not.” This reads like the plea of men scared of their Whig neighbors, and anxious to avoid punitive measures being taken against them. “We want words to express our Desire to be once more admitted to the Priviledges of other Citizens in this State,” they concluded plaintively, no doubt concerned about keeping their property as well.⁴⁵

As the war reached its conclusion, Governor Martin too saw some of the benefits of reconciliation, although he was deferential to the Assembly on such matters. He wrote at the beginning of the April 1782 Assembly meeting that “many of our revolted Citizens having surrendered themselves to the Justice of the State, supplicate for mercy, and offer to return to their allegiance; your interposition is necessary to discriminate the classes of those deluded people who may be the proper objects of clemency.”⁴⁶ The following year he wrote in a similar vane: “Our late revolted Citizens who through ignorance and delusion have forfeited their lives, but are endeavoring to expatiate their crimes by new proofs of fidelity, have fresh claims to your clemency on this happy occasion.”⁴⁷

Not all Tories, however, were pardoned after petitioning for relief. Governor Martin received a petition for relief from a Mrs. McLean, probably the wife of Major Alexander McLean, a commissioned Loyalist officer from Cumberland County who served with the British during the war. Martin declined to give a pardon to the major, whom he described as an “unfriendly character” who had broken his oath of allegiance to the state, and with others “withdrew and attached themselves to the late enemy during the War.” Major McLean had tried to return to the state without leave of any authority to do so, and as a British officer, was barred by the Treaty of Paris from doing so (even though the state did not recognize its provisions). “Privately and without leave the Major returned here, which to his former obnoxious disposition is adding insult to the Government. He cannot therefore obtain your request to remain here, especially on shore, as I am doubtful my authority could not protect him from an enraged, injured people.” Martin added that Mrs. McLean could stay in the state with “ample protection,” as she had not violated any laws, oaths, or duties to the state.⁴⁸

Likewise, William Collson ran into resistance when he sought clemency from the state in 1780. Collson alleged that he was led “to withdraw myself from the Allegiance I owed to this state and go within the Enemys lines,” a statement phrased to make him look like a victim. In his petition he stated that he was now “convinced of the Folly and wickedness of my conduct,” and that he did not bear arms against North Carolina. Nevertheless, his appeal was rejected.⁴⁹ His case, and McLean’s, reflects the tendency of

⁴⁵ Petition of Inhabitants of Surry County, undated, Grievances, General Assembly Session Records, April-May 1782, Box 1, N.C. State Archives.

⁴⁶ Gov. Martin to the Assembly, 22 April 1782, *NCSR*, 16:297; *NCSR*, 19:260.

⁴⁷ Gov. Martin to the Assembly, 19 April 1783, *NCSR*, 16:773-775.

⁴⁸ DeMond, *North Carolina Loyalists*, 254; Alexander Martin to Mrs. McLean, n.d., *NCSR*, 19:942-943. Given Martin’s references to the treaty, the letter must have been written after 1783.

⁴⁹ Petition of William Collson, Miscellaneous Petitions, General Assembly Session Records, August-September 1780, N.C. State Archives.

the legislature to reject leniency for men who had served the British or appeared to have done so.

Despite continued hostilities toward loyalists, evidence of reconciliation is apparent. The case of Duncan Ochiltree signals some degree of moderation, in that even though he was suspected of strong Tory sympathies, he remained within the state. He resided in Fayetteville by the end of 1786, and was apparently considered to be a respectable citizen, for when the state General Assembly met in Fayetteville in November 1788, Ochiltree was nominated for the session's clerkship.⁵⁰ Ochiltree's case was not an isolated one. In the summer of 1784, Archibald Maclaine noted that many Carolinians who had left with the British had returned—"even some of those who were seen in a very unfavorable point of view are now regarded as citizens, against whom there are no objections," though those who had actively been in arms against the Whigs were not included in this group.⁵¹ Carolinians who favored a less antagonistic approach toward the disaffected must have been encouraged as well by the case of Simon Cleary. In November 1784, Maclaine presented a bill in the Assembly "to remove all disabilities from Simon Cleary," who in 1775 inherited, along with several others, his brother's North Carolina estate in New Bern, the greater part of which was subsequently seized by the commissioners of confiscated estates in Craven County. The Cleary's lived at the time in Ireland and England. Testimony convinced the assemblymen that the Cleary's had made several attempts to return to the state during the war but were unsuccessful in doing so. The legislature allowed them the monetary value of the estate that was already sold.⁵² The act was amended in 1787 to include a provision requiring the largest inheritor, Patrick Cleary, then still living abroad, to take the oath of allegiance to the state of North Carolina.⁵³ This case suggests a spirit of accommodation toward those not deemed state enemies by 1784 that had not existed earlier in the war.

This conciliatory mood can also be seen in opposition to banishment and property forfeiture of the loyalists by some Whigs within the state. Carolinians with reservations about these measures were at times accused of being Tories, or overly sympathetic toward those who were. A number of Whigs, however, regarded the forced removal of residents and the confiscation of their property as too severe or unconstitutional. Their voices called for moderation, measured responses to the problem of loyalty, and for reconciliation as the basis for state formation and peace. Although many prominent citizens fell into this camp, their efforts were often overwhelmed by those they called the "democratic sort," and others who held that banishing their enemies and seizing their property to convert it for the war effort was proper and just. As a number of citizens of Edenton wrote in the summer of 1783, the disaffected in many cases were deserving of hard treatment, but in the wretched situation many of the Tories found themselves in at the close of the war, "their situation now forbids Resentment. We only wish that the

⁵⁰ *NCSR*, 18:406-407, 411; *NCSR*, 20:481.

⁵¹ Archibald Maclaine to George Hooper, 25 June 1784, *NCSR*, 17:149-150.

⁵² *NCSR*, 19:764; *NCSR*, 24:696-697. Benjamin Franklin supported the Cleary's case. *NCSR*, 19:750-751.

⁵³ *NCSR*, 24:889-890; *NCSR*, 20:239-240.

Public in their Conduct towards them may be guided by motives of Policy, not Revenge, which we think unbecoming of a generous People.”⁵⁴

Some of those who opposed punitive measures against loyalists were merchants and traders in the state’s ports and inland towns, who were concerned about the effects of confiscation on North Carolina’s commerce. In 1780, the state legislature received the “Memorial of Merchants, Traders and Others Residing at Cape Fear,” which declared that the most recent confiscation act “greatly endangers the credit of this State as a commercial Country.” Most merchants carried on trade with credit from abroad. These men argued that seizing their goods would make it impossible to pay back their foreign creditors, which would give to North Carolina a terrible reputation abroad, even when the war was over. “What foreign merchant will hereafter give credit to an Inhabitant of North Carolina? If a State seizes upon private property, what man will hereafter be mad enough to trust his property to that State?” The Act “will have the most pernicious consequences on the public as well as the private credit of the Country.” The petition, however, was rejected. Notably, it was signed by a number of men who had known sympathies for loyalist friends, neighbors, and relations.⁵⁵ Wilmington attorney Archibald Maclaine, in 1782, again objected to “confiscating the Landed Estates of those who live in the British dominions...and debt due to the British merchants.” The latter, observed Maclaine, “will effectually destroy our Commercial Credit,” and the former would not punish active Tories within the state.⁵⁶ The following year he introduced a measure in the assembly to repeal past laws that tended to restrict foreign commerce, but it too was rejected.⁵⁷

Confiscating the property of those who refused to support the Patriot cause raised legal issues among some Carolinians as well.⁵⁸ In 1783, Maclaine successfully introduced a bill “to enable the Judges of the Superior Courts...to review the judgments had in the several County Courts against estates supposed to be confiscated and to confirm or invalidate the same agreeable to law and to cause restitution to be made.”⁵⁹ Even Governor Burke, who supported confiscation of loyalist property in general, favored limits in its execution and proper authority for its practice. Such authority, he reasoned, rested with the legislature, not with local officials, whom he worried would act with too much of a free hand. He informed one state official in 1782 that “it would be too arbitrary an Act to authorize commissioners to seize property of such persons they may deem disaffected, and our Government, which ought to be a Government of Laws,

⁵⁴ Resolutions of the Citizens of Edenton, 1 August 1783, *Papers of James Iredell*, 2:430-432.

⁵⁵ “Memorial of Merchants, Traders and Others Residing at Cape Fear,” Miscellaneous Petitions, General Assembly Session Records, April-May 1780, Box 1, N.C. State Archives.

⁵⁶ Archibald Maclaine to Thomas Burke, 27 March 1782, *NCSR*, 16:247-248.

⁵⁷ *NCSR*, 19:674-675.

⁵⁸ Petition of William Aldridge, Senate Joint Resolutions, General Assembly Session Records, June-July 1781, Box 1, N.C. State Archives.

⁵⁹ *NCSR*, 19:305; *NCSR*, 24:497-498.

not of mere power, will not tolerate such acts in the Supreme Magistrate.”⁶⁰ Others objected to the seizure of property of British subjects who did not actively participate in fighting the war, and who owed no allegiance to the state. “To consider the former owners of British property in a criminal point of view is absurd in the extreme,” Maclaine noted.⁶¹ In other words, British subjects—who by definition owed no allegiance to North Carolina—should not forfeit their property like those Carolinians who took the British side.⁶²

A number of other Carolinians opposed confiscation measures as well. Rowan County lawyer William Sharpe, a long-serving member of the Continental Congress, observed in 1782, “I think it would be happy for this State if all the confiscated property was in the bottom of the ocean. It stands in the way of other measures for raising revenue, it produces great speculation and I fear that in the end it will be unproductive.” Pierce Butler, a South Carolina correspondent of James Iredell’s no doubt spoke for a number of moderate and conservative North Carolinians when he feared “that the early pages of our history will be sullied by an unbecoming greediness for property.” Others maintained that the confiscation process was for the most part a way to financially benefit only a chosen few. Archibald Maclaine held that confiscation was “for the purpose of enriching individuals.” These sentiments shed light on one of the key issues regarding the matter of confiscation in Revolutionary North Carolina. As Sharpe recognized, not only was this process a means of punishing those whom the state deemed its enemies, it was also an important source of revenue for the state. While Sharpe apparently regarded other means of raising funds for the state as more appropriate and efficacious, North Carolina relied upon forfeited property sales considerably during and after the war for its financial needs. Confiscation also served to instill within a large part of the population an allegiance to the state, since the purchasers of the seized property not only had an opportunity to buy valuable loyalist property now suddenly available, they were able to do so on generous terms. Accordingly, the state must have been seen in a favorable light by those able to obtain confiscated estates, moveable property and chattel, the prospect for which was often not the case under royal government. Carolina authorities thus benefited from these sales not just financially, but politically as well, by combining loyalty and commercial opportunity to secure the allegiance of many of its citizens.⁶³ The benefits of confiscation became the chief stumbling block for those who sought to end the practice, or at least lessen its effects. As Maclaine concluded in 1783, “those who risk to retain that property which has been unjustly and impolitely confiscated to the use of the public, will not be without strong arguments in their favor. Independent of the devastation committed in the different states, the slaves taken away, and what is still

⁶⁰ Thomas Burke to James C. Mountfloreance, 17 March 1782, *NCSR*, 16:235.

⁶¹ Archibald Maclaine to James Iredell, 14 September 1783, *Papers of James Iredell*, 2:445-446.

⁶² Archibald Maclaine to George Hooper, 21 April 1784, *NCSR*, 17:134.

⁶³ William Sharpe to Nathanael Greene, 8 August 1782, *Papers of Nathanael Greene*, 11:506; Archibald Maclaine to George Hooper, 14 June 1784, *NCSR*, 17:144-145; Archibald Maclaine to George Hooper, 9 April 1783, *NCSR*, 22:624; Pierce Butler to James Iredell, 4 February 1784, *Papers of James Iredell*, 3:13.

worse, those now detained [i.e., banished] from us, will operate as powerful reasons for keeping what we have got.”⁶⁴

Like property confiscation, banishing individuals from the state was a practice not without its opponents. A number of Carolinians fell under the banishment laws inadvertently when they were out of the state for legitimate reasons when independence was declared, not because they were Tories. Not only did those who challenged banishment do so on grounds that many citizens unjustly fell under the acts' terms, many objected to the very propriety of the laws. “Banishment is a punishment unknown to the Laws, and...no Judicial Power of this State have a right to adjudge the same against any of the free Citizens thereof,” in the minds of one group that protested the practice to the Assembly after the war.⁶⁵ Even some of the state's judges were at times doubtful of the expedient, although they may have been acting disingenuously in order to avoid public censure. In June 1783, for example, several “obnoxious” North Carolina Tories arrived in Wilmington from St. Augustine, including the notorious Samuel Bryan, who had not only fought on the British side at the battle of Camden, but had been condemned for treason before being exchanged in the prisoner cartel in South Carolina. An observer reported that “the Judges, convinced that they had no power to order them back, referred them to the magistrates, & the latter saw through the evasion.”⁶⁶ Others believed that some Carolinians were barred from returning because they were due “large sums,” or were rivals in trade. Thus, in some cases, vindictiveness went hand in hand with a desire to avoid the repayment of debts or commercial competition.⁶⁷

One of the most consistent voices of moderation and reconciliation with regard to the problems associated with the disaffected in the south was that of General Nathanael Greene. As overall commander of the military efforts in the Southern Department from December 1780 to the end of the war, Greene was in a position not only to observe the ill effects of punitive measures taken against the state's enemies, he was also able to exert significant influence over civil and military authorities in order to reduce the violence and disorders of vengeful policies toward the Tories.

Greene came to understand the brutal nature of the internecine war in the lower south during the early 1780s through the innumerable accounts of atrocities so common in that theatre. Yet while some on the Patriot side called for vengeance and punitive measures against the Tories, Greene instead advocated a moderate course of action distinguished by humane treatment of and leniency toward these enemies as a way of bringing order to the ravaged southern states, with justice administered by “Civil Government,” not by vigilantes.⁶⁸ Historian Wayne Lee has recently written that the history of “the war in North Carolina from 1780 to 1782 reveals a complex story of a

⁶⁴ Archibald Maclaine to James Iredell, 14 September 1783, *Papers of James Iredell*, 2:445-446.

⁶⁵ *NCSR*, 18:477, 479-483.

⁶⁶ Archibald Maclaine to George Hooper, 12 June 1783, *NCSR*, 16:967; Cooke, comp., *Revolutionary History of North Carolina in Three Lectures*, 224-233.

⁶⁷ Archibald Maclaine to George Hooper, 14 June 1784, *NCSR*, 17:145-146; Archibald Maclaine to George Hooper, 9 April 1783, *NCSR*, 22:624.

⁶⁸ Nathanael Greene to Andrew Pickens, 5 June 1781, *Papers of Nathanael Greene*, 8:349-350.

society struggling with the strains of war, hoping for restraint, fearing escalation, all the while trying to bring together their cause to a successful conclusion.” Greene, without question, exemplifies this characterization.⁶⁹

Order was certainly much needed in the Carolinas. Loyalists and Patriots frequently plundered each other’s homes, which not only resulted in lost or destroyed property and destabilized the states, it “adds not a little to our difficulties,” Greene complained.⁷⁰ He deplored this all too common practice, which lasted until the end of the war and served to provoke bitter feelings among the populace. Such vindictive larceny was “very destructive to the morals and manners of a people...Indeed it is the most direct way of under mining all Government, and never fails to bring the laws in contempt.”⁷¹ As such, Greene sought to curb the practice among his own troops and the states’ militia forces as well, as a way to establish order and just as importantly, to stop alienating the disaffected in the department. “The practice of plundering” Greene sought “to Check as much as possible,” in that it resulted in “ruinous Consequences,” particularly when committed by undisciplined militiamen, who were often subject to less severe discipline than his regulars.⁷²

Greene sought to minimize the impact of impressment, to show the Tories that so long as they remained peaceful, his army would handle them with fairness. While foraging, he advised his officers, take “care not to distress the Inhabitants; and give receipts for what is taken...all marading and plundering you will punnish on the spot with not less than fifty stripes for each offence.”⁷³ In another example, regarding the impressment of dragoon horses, Greene instructed General Thomas Sumter to “give certificates for the whole, whether taken from Whig or Tory and if any discrimination is necessary, [let] Government make that hereafter.”⁷⁴ Similarly, to his cavalry commander he wrote “don’t neglect to take all the good horses you may come across; give receipts for all you take to both Whig and Tories.”⁷⁵ These instructions, of course, were not always complied with in the field by commissary agents and quartermasters, but they do demonstrate Greene’s philosophy of dealing with the enemy fairly and leniently, primarily so as not to alienate them and drive them toward the British. Otherwise, as he

⁶⁹ Lee, “Restraint and Retaliation,” 165.

⁷⁰ Nathanael Greene to Samuel Huntington, 28 December 1780, *Papers of Nathanael Greene*, 7:9; Lee, *Crowds and Soldiers in Revolutionary North Carolina*, 180-185.

⁷¹ Nathanael Greene to John Martin, 9 January 1782, *Papers of Nathanael Greene*, 10:173.

⁷² Nathanael Greene to Anthony Wayne, 9 January 1782, *Papers of Nathanael Greene*, 10:175; Lee, *Crowds and Soldiers in Revolutionary North Carolina*, 180-185; Lee, “Restraint and Retaliation,” 168.

⁷³ Nathanael Greene to Capt. Griffin Faunt le Roy, 25 December 1780, *Papers of Nathanael Greene*, 6:612. See also Greene’s Orders, 16 August 1781, *Papers of Nathanael Greene*, 9:187, and Greene’s Orders, 27 August 1781, *Papers of Nathanael Greene*, 9:259, for his admonitions to the army against depredations against civilians.

⁷⁴ Nathanael Greene to Thomas Sumter, 30 April 1781, *Papers of Nathanael Greene*, 8:176-177.

⁷⁵ Nathanael Greene to Col. Henry Lee, 25 June 1781, *Papers of Nathanael Greene*, 8:455.

well knew, “the Inhabitants will become our enemies when they find they are subject to oppression instead of finding protection.”⁷⁶

In addition to his attempts to stop the looting of Tories and their families by vengeful Whigs, Greene also strove to reduce the level of violence in the south directed at those who refused to support independence. Such a policy, he hoped, would convince the loyalists to abandon their support of the British. He sought “to soften the malignity and deadly resentments subsisting between the Whigs and the Tories, and put a stop as much as possible to that cruel custom of putting people to death after they have surrendered themselves prisoners.”⁷⁷ These efforts were not only in the interests of reducing violence, but would go a long way toward establishing order within the states, as well as the legitimacy of the new revolutionary governments. As Greene noted to Griffith Rutherford, a soldier not known for benevolent treatment of Tories, “it has ever been my wish to avoid cruelty and the dignity of our cause requires that it should be marked with humanity, justice and moderation.”⁷⁸ Greene frequently advised his subordinates to put an end to what he called “private murders,” by which he meant the killing of Tories outside of the traditional limits associated with legitimate warfare. “I have, both from motives of Policy, as well as humanity, opposed every measure all in my Power, which had for its object, nothing but revenge and Persecution,” a clear statement of his principle that such violence undermined civil and military authority, and served to increase chaos and bloodshed certain to impede reconciliation with the loyalists.⁷⁹

In Greene’s view, the most effective way to bring order and stability to the south was to espouse restraint and adopt a conciliatory stance toward the disaffected of all stripes, save only those who had committed the most flagrant abuses and barbarous acts. He favored pardons for those Tories who took up arms against their Whig neighbors, provided they had served in a military capacity, but not in the role of banditti or lawless marauders. Regarding British and loyalist activities around Wilmington, Greene advised Governor Thomas Burke “to Strike at the root of the evil by removing the British, and offer these poor deluded [Tory] Wretches some hopes of forgiveness, and you will feel little injury from this class of People.”⁸⁰ Greene recognized that retribution only served to engender even more retributive violence.⁸¹ Greene instead called for leniency as a way to begin to bring peace to the southern states, so that civil institutions might have a better chance to be reestablished. He consistently recommended moderation to all who would listen, “as men may be often reformed by soft means when persecution will only

⁷⁶ Nathanael Greene to Isaac Shelby, 2 August 1781, *Papers of Nathanael Greene*, 9:127.

⁷⁷ Nathanael Greene to Anthony Wayne, 9 January 1782, *Papers of Nathanael Greene*, 10:175.

⁷⁸ Nathanael Greene to Griffith Rutherford, 29 January 1782, *Papers of Nathanael Greene*, 10:277. For Rutherford’s reputation, see Fries, *Records of the Moravians in North Carolina*, 3:1376.

⁷⁹ Nathanael Greene to Gen. Alexander Leslie, 1 February 1782, *Papers of Nathanael Greene*, 10:295. Leslie was the British commander in South Carolina during the end of the war. Pancake, *This Destructive War*, 237.

⁸⁰ Nathanael Greene to Thomas Burke, 12 August 1781, *Papers of Nathanael Greene*, 9:166.

⁸¹ Lee, *Crowds and Soldiers in Revolutionary North Carolina*, 186-192.

confirm them in their opposition.”⁸² Moreover, if the disaffected could see that the budding revolutionary governments were acting in a conciliatory manner toward them, it would clearly demonstrate that the southern states were the safer, less costly alternative to support, rather than the British, whose garrisons at Charleston, Savannah and Wilmington seemed only to perpetuate the destructive war. Convincing the Tories that the Patriot side had more to offer them in terms of ending the war and establishing order became a significant part of Greene’s plan to end the chaos in the south and bring about a revolutionary settlement.

Greene certainly recognized that malice toward the disaffected was counterproductive. “Cruelty always marks the authors with disgrace and is generally attended with disadvantage...I would always recommend moderation, not from any regard to the Tories but for our own sakes, cruelty being dishonorable and persecution always increasing the number and force of our enemies.”⁸³ Not only would vindictiveness by the Whigs produce few benefits, it would also undermine the efforts of the revolutionaries to establish their own civil institutions, tasks made infinitely more difficult amidst these “miserics” of war. Greene advised General Thomas Sumter at the end of 1781 to coax the Tories away from the British leniently, “for though we have great reason to hate them, and vengeance would dictate one universal slaughter, yet when we consider how many of our good people must fall a sacrifice in doing it we shall find it will be more in our interest to forgive than to persecute.”⁸⁴ A few weeks later he elaborated upon this theme to Sumter. “Go ahead with the good work of trying to bring them in,” as “it will save the lives of so many people, and perhaps hereafter they may prove good Citizens.”⁸⁵

As part of his advocacy of reconciliation, Greene favored the policy of military service for returning Tories, favored by a number of Carolinians as noted above.⁸⁶ “Those who have been in the British interest,” Greene wrote, “and by their past conduct have rendered themselves obnoxious to their Country have now an opportunity in part to atone for their past conduct by joining the American Army and manifesting by their future conduct a sincere repentance for what is past.” In return for repentant loyalists “behaving properly,” the general pledged “to afford them all the security in my power from improper resentments and depredations of individuals or plundering parties.” Thus, if those who had opposed the revolutionaries abandoned their allegiance to the Crown, Greene was willing to protect them from retribution at the hands of their former Whig

⁸² Nathanael Greene to the Marquis de Lafayette, 9 June 1781, *Papers of Nathanael Greene*, 8:368.

⁸³ Nathanael Greene to Griffith Rutherford, 20 October 1781, *Papers of Nathanael Greene*, 9:456-457. For S.C. Governor John Rutledge’s harsh proclamation of pardon in 1781 for the disaffected in that state, see *Papers of Nathanael Greene*, 9:458.

⁸⁴ Nathanael Greene to Thomas Sumter, 28 November 1781, *Papers of Nathanael Greene*, 9:634.

⁸⁵ Nathanael Greene to Thomas Sumter, 12 December 1781, *Papers of Nathanael Greene*, 10:40.

⁸⁶ Fries, *Records of the Moravians in North Carolina*, 4:1576, 1627; Greene to Francis Marion, 12 December 1781, *Papers of Nathanael Greene*, 10:38.

neighbors, an assurance without which the loyalists would have been reluctant to accept Greene's offer.⁸⁷

Greene was convinced that clemency would not only bring a successful conclusion to the war more quickly, it would make for a smoother transition to peace once the hostilities were finally over. "Principles of humanity as well as good policy require that proper Measures should be immediately taken to restrain...abuses, heal the differences, and unite the people as much as possible," Greene suggested in the summer of 1781, referring to both Whigs and Tories. He recommended that "all parties ought to be strictly prohibited under the penalty of capital punishment from plundering and that no violence should be offered to any of the Inhabitants let their political sentiments be as they may unless they are found in arms," although the general would consider armed men in legitimately established units to be prisoners of war, not traitors. There were, as usual, exceptions, but he insisted that punishments be handled by civil officials, not vindictive men acting outside the bounds of authority. "The idea of exterminating the Tories is not less barbarous than impolitick; and if persisted in, will keep this Country in the greatest confusion and distress." Greene knew that there would surely be opposition to his conciliatory policies, "sensible [that] the most worthless part of the Whigs will think themselves injured in being restrained; but I am perswaded in doing it you will do honor to the cause of humanity and promote essentially the interest of your country."⁸⁸

This was not always easy to bring about in the field, as not all soldiers concurred with Greene's belief in pardoning the disaffected. Although in 1781 he had "given directions...to all the militia officers to promise pardon and forgiveness to the tories that will come in and give up their Arms,"⁸⁹ this advice was often ignored. Greene received word in the fall of 1781 that North Carolina's General Griffith Rutherford was harassing Tories and burning their homes. Unsure of the veracity of such reports, He wrote to Governor Alexander Martin in October in response. "I hope the report is not true," Greene penned, "for this mode of carrying on the war is so cruel and barbarous that if there were no other objection those would be sufficient. But the policy is not less pernicious than the mode is savage." He knew that such measures might harden the hearts of the disaffected, rather than winning them over. "Driving away the Tories without discrimination will render their situation desperate and make them from a feeble and partial enemy [into] a firm and determinate foe....the infidelities of the Tories may be sufficiently punished without having recourse to such desperate measures."⁹⁰

Shortly thereafter, a concerned Greene wrote directly to Rutherford, and enunciated his thoughts on the treatment of Tories. "Persecution does but confirm the cause it is meant to destroy; and therefore I think those measures highly unwarrantable which carries the mark of cruelty and increases our enemies." He reminded the militia

⁸⁷ Proclamation to the Inhabitants Upon the Saluda, 5 June 1781, *Papers of Nathanael Greene*, 8:349.

⁸⁸ Nathanael Greene to Andrew Pickens, 5 June 1781, *Papers of Nathanael Greene*, 8:349-350.

⁸⁹ Nathanael Greene to Henry Lee, 29 July 1781, *Papers of Nathanael Greene*, 9:103.

⁹⁰ Nathanael Greene to Alexander Martin, 9 October 1781, *Papers of Nathanael Greene*, 9:438-439.

commander that “to detach the disaffected from the British interest is our true policy and this can be done by gentle means only.” For those who resisted such methods, and remained “stubborn and obstinate there is ways and means of bringing them to punishment far more consistent with the dignity of the Government.”⁹¹ Greene meant, of course, that loyalists must be countered by legitimate means (either civil or military), not by wantonness and cruelty. A few months later, he continued to implore Rutherford to adopt lenient measures to reconcile the disaffected in North Carolina. “I have always observed both in religion and politicks moderation answers the most valuable purposes.”⁹²

Despite his many pleas, Greene was not uniformly successful in persuading all civil and military leaders of the necessity of granting pardons to those Tories who sought it. Greene had particular difficulties with North Carolina’s governors during the last two years of the war, especially Thomas Burke. The two men clashed over the arrangements for a prisoner of war exchange, or cartel, in 1782.⁹³ The governor wished to treat loyalists captured while under British arms as traitors, and punish them accordingly. Burke was of the opinion as early as 1778 that North Carolinians who served the British should be subject to “municipal laws,” not to be treated as prisoners of war.⁹⁴ He refused to treat these Tories as prisoners of war, because they would then be exempt from civil punishment, whereas the Whigs who did the same thing would not be. He advised Greene that “those who Should be found to have Committed atrocious Crimes before adhering openly to the Enemy, Or inhuman Barbarities such as the Laws of War will not Justify, afterwards, I intended to resign Altogether to the Civil Magistrate.” Greene sought to consider those Tories captured while serving in a military manner as prisoners of war, and exchanged for captured Whig militiamen. If the state tried and condemned them for treason, they could not be used in the cartel. Moreover, Greene feared such harsh treatment would also inspire retaliation by the British and Tories, adding to the chaos all of the southern states.⁹⁵

Burke’s successor, Alexander Martin, was less opposed to Greene’s position with regard to exchanging Loyalists and showing leniency than Burke had been, or at least was more pragmatic. Martin advised Greene that with regard to captured loyalist officers in the custody of North Carolina, if the British refused to exchange them for Patriots held in Charleston, then the “Treason Laws of this state are to have their full effect.”⁹⁶ Martin seems to have agreed with Burke regarding Tory prisoners, that is to say, they were

⁹¹ Nathanael Greene to Griffith Rutherford, 18 October 1781, *Papers of Nathanael Greene*, 9:452-453.

⁹² Nathanael Greene to Griffith Rutherford, 29 January 1782, *Papers of Nathanael Greene*, 10:277.

⁹³ Lefler and Newsome, *North Carolina: The History of a Southern State*, 256.

⁹⁴ *Papers of Nathanael Greene*, 11:163n.

⁹⁵ Thomas Burke to Nathanael Greene, 28 March 1782, *Papers of Nathanael Greene*, 10:549-551.

⁹⁶ Alexander Martin to Nathanael Greene, 12 May 1782, *Papers of Nathanael Greene*, 11:185-186.

traitors subject to the ultimate punishment, even though many of them committed no atrocities or other crimes. Only the loyalists' value within the arrangements of the prisoner cartel made Governor Martin decide not to punish a number of those in state custody for the treason convictions. Greene later responded to Martin that mercy should be shown to those who sought it from the Whig governments, so long as it did not leave dangerous individuals within the states to continue to perpetrate violence and destruction. "The interests of the Country will be promoted more by clemency than severity," he concluded.⁹⁷ Nevertheless, Burke and Martin rejected Greene's suggestions of leniency, and used pardons primarily for the purpose of releasing as many of their own men as possible from British captivity. Their willingness to grant pardons was thus for practical purposes, not a significant philosophical alignment with Greene.

By the end of the war, Greene's attempts to bring back the loyalists into the fold seemed to have mixed results. Although he saw some encouraging signs of conciliation,⁹⁸ other reports were not so sanguine. By May 1782, Greene heard that North Carolina legislature would not adopt moderate treatment of the Loyalists. A Charlotte correspondent advised him in May 1782 that with regard to loyalists "the people seem more than ever occupied with the idea of their destruction."⁹⁹ Greene's call for moderation went mostly unheeded, as North Carolina actively pursued confiscation of loyalist property, refused to allow many Tories to return to their states after the conclusion of hostilities, and passed punitive legislation to the loyalists' disadvantage.¹⁰⁰ Nevertheless, in the interest of peace and humanity Greene appears to have remained fixed in his ideas, expressed in the summer of 1782, that "considering the frailties of human nature[,] charity and mercy should be extended in all cases not opposed to the peace and safety of the people."¹⁰¹

While a vindictive spirit held sway, particularly in the backcountry, after the Revolutionary War ended, a less punitive disposition among men in both regions laid the basis for calming of social conflict in the 1790s. This interaction between a more volatile backcountry and a more urbane eastern low country allowed those who favored conciliation to alleviate the disabilities imposed upon their former loyalist neighbors and to lessen violence and disorder after 1789. While some of the disaffected were eventually allowed to return to the state, and for the most part violence had ended by the middle of the decade, property confiscation continued almost unabated until 1787, and the more "obnoxious" Tories would never return to North Carolina. The spirit of moderation may have been initially too weak to dominate the state's rebuilding efforts during most of the

⁹⁷ Nathanael Greene to Alexander Martin, 27 June 1782, *Papers of Nathanael Greene*, 11:375.

⁹⁸ John Butler to Nathanael Greene, 13 September 1782, *Papers of Nathanael Greene*, 11:654.

⁹⁹ Capt. Nathaniel Pendleton to Nathanael Greene, 1 May 1782, *Papers of Nathanael Greene*, 11:150.

¹⁰⁰ DeMond, *Loyalists in North Carolina*, 158-169; Crow, "Liberty Men and Loyalists," 125-178.

¹⁰¹ Nathanael Greene to Alexander Martin, 27 June 1782, *Papers of Nathanael Greene*, 11:375.

1780s, but after North Carolina ratified the Federal Constitution in 1789 political moderation, rooted in Revolutionary experience, took hold of the Tar Heel state.¹⁰²

¹⁰² See the scholarship discussed in Robert M. Calhoun, "A Troubled Culture: North Carolina in the New Nation," Jeffrey J. Crow and Larry E. Tise, *Writing North Carolina History* (Chapel Hill: University of North Carolina Press, 1979), pp. 80-87. A moderate state was not necessarily placid. Early American moderates preferred a political society in which stabilizing and destabilizing forces operated to create a "counterpoise," or what John Witherspoon called "an over poise upon the whole." See Robert M. Calhoun, *Conservatives and Evangelicals in the Early South* (Columbia: University of South Carolina Press, 1988), p. 87.