

Exile, Choice, and Loyalism: Taking and Restoring Dignity in the American Revolution

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Taking a cue from Bernadette Atuahene's concept of "dignity takings" and her insight that government expropriation inflicts more than economic injury, this essay analyzes how American revolutionaries defined political membership, penalized and expropriated British loyalists, and then allowed some to join the American polity in the decade after the Revolution. Many recovered their property, professions, and legal privileges. However, because most loyalists could choose to remain loyal or join the Revolution, they did not lose human dignity as Atuahene defines it. Case studies of two reintegrating lawyers, Richard Harison and William Rawle, explore loyalism, the loss of dignities that loyalists suffered, and some paths toward reintegration. Their appointment as federal attorneys helped make the government conversant in the common law, British statutes, and the law of nations, which in turn supported the Federalist goal of reintegrating the United States into the Atlantic World: achieving, in other words, national dignity.

I. INTRODUCTION

What happens to the losers of a civil war? The conventional answer for the American Revolution is that the British Loyalists fled during the war or soon after the Treaty of Peace in 1783. Expropriated, stripped of civil privileges, tarred as traitors—some tarred and feathered, or worse—they had to find new homes. They migrated with the British Empire across the globe, resettling in places as near as Canada and the West Indies and as far away as India. "The Revolution led to a great diaspora," wrote a twentieth-century historian of loyalism, "turning the Loyalists into wanderers" (Brown 1969, 191; see also van Tyne 1902; Mason 2005; Schama 2005; Pybus 2006). Maya Jasanoff, in her study of "liberty's exiles," agrees (Jasanoff 2011). Estimates of the loyalist diaspora range from 60,000–100,000. Jasanoff puts the number at 60,000 free loyalists, white and black, along with another 15,000 enslaved persons (Jasanoff 2011, 351–58).

Yet estimates for the *total* number of loyalists are much higher—in the hundreds of thousands. John Adams famously opined that, on the eve of Revolution, about two-thirds of the colonies' 3 million residents were in favor of revolution, while the remaining third opposed it (Adams 1813). His off-the-cuff reckoning

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would put the number of loyalists at 1 million. A standard modern count extrapolated from troop enrollments is 500,000 (Nelson 1961, 92; Smith 1968, 259–77). These numbers are soft, and they raise the difficult question of who counted as a loyalist and, with loyalties shifting, when. Still, the hard fact that all estimates reveal is that most loyalists never left. If the total number of loyalists was about half a million and 60,000 or so fled, then more than 400,000 remained. For every loyalist who left, seven or more stayed at home. Even some who left during the war returned afterward (Mason 2014). Exile was the exception; reintegration was the rule.¹

What, then, happened to the great bulk of the loyalists? Was this majority, silent in mainstream histories, invisible at the time? Did the loyalists endure an internal exile of the kind that dissidents suffer in authoritarian societies (Hirschman 1970)? Or did some loyalists participate and even flourish in the new United States? To borrow Bernadette Atuahene's terms, did they get back all that they had lost and believed was still theirs (Atuahene 2014)?

Questions about the fate of loyalists across the new United States have rarely been asked, though there have been a few excellent regional answers (Maas 1989). This essay does not offer comprehensive answers either. Instead, taking a cue from Atuahene's concept of *dignity takings*, and especially her insight that government expropriation is often designed to inflict far more than economic injury, it analyzes how American revolutionaries defined political membership, penalized and expropriated British loyalists, and then allowed some—probably most—loyalists to join the American polity in the decade after the Revolution. Many of those reintegrating loyalists kept or recovered their property, their professions, and all their human dignity. Through countless and difficult journeys, they got back much that they believed was theirs.

Some got more than that. Two examples of reintegrating lawyers help illustrate the different degrees of loyalism, suggest the sort of indignities that loyalists suffered, and indicate the paths some of them traveled toward reintegration. Richard Harison of New York and William Rawle of Philadelphia both trained as lawyers before the Revolution, remained loyal to the British Empire, reintegrated afterward, and enjoyed successful careers deep into the Early Republic. Each became recognized as arguably the most accomplished lawyer in his respective state, which helps explain why President George Washington appointed them as Federal District Attorneys² in New York and Pennsylvania.

As the Washington Administration's leading representatives in commercial port cities that served as the first two capitals of the new republic, Harison and Rawle helped build the federal state from the ground up. In terms of legal practice and governance, at least, their reintegration did not require reeducation.

1. As a comparative matter, the absolute number of British exiles from America was lower than the number of exiles from other contemporary revolutions. For example, émigrés of the French Revolution numbered almost 130,000 (Palmer 1959, 188). In addition, a major difference between the Loyalists and the French émigrés is that the vast majority of the former traveled to other territories within the British Empire; it was from an imperial perspective an internal migration. Those who left revolutionary France were true exiles.

2. The office is now known as US Attorney.

The common law, European law of nations, transatlantic commerce, excise taxes, and English conceptions of seditious libel, for example, were all transparently legitimate in their eyes. They saw these as necessary elements not so much for their own reintegration as for their new country's reintegration into the Atlantic world of commerce and culture (Golove and Hulsebosch 2010). It was a world they had never left. They then propounded those Anglo-American conceptions of law within the executive branch. In and out of government, both kept earning more than they had before and died enjoying not only civic esteem, but also the belief that their new nation had achieved independence and respect.

II. THE ANTILOYALIST PROGRAM: TAKING DIGNITIES

The essence of Bernadette Atuahene's concept of dignity taking captures the important historical fact that expropriation undertaken during revolutions, including those in the American Revolution, involve more than forced transfers of property. In addition to reducing the property owner's economic and social status, confiscating governments often intend to degrade the property owner's sense of personhood and position in the political community. Especially in civil wars and revolutions, expropriation, along with other membership-sorting regulations, is a key strategy for reconstituting political community. That was at least part of the function of expropriation in the American Revolution.

The experience of British loyalists in North America during and after the Revolution therefore offers a fascinating example of how revolutionary governments define membership, punish leaders of the prerevolutionary regime, stigmatize those who remain loyal to that regime, and threaten fence-sitters. Expropriation was part of a broader package of penalties that deprived loyalists of civil and political rights. Each of the revolutionary states developed a package of antiloyalist laws that shared many features.

The point was not just to deprive targets of wealth; it was to strip them of what eighteenth-century Americans saw as the dignities of political and civic membership, which included the rights to hold property; the privileges of office holding and voting, which were restricted to substantial freeholders; the privilege of professional license, available to those with the proper education; and the right to receive the state's protection within its jurisdiction. These rights and privileges were the dignities available to members of the Anglo-American polity, not all enjoyed by everyone, but available to those with the wealth, connections, education, or wherewithal to obtain and retain them. Having forfeited allegiance to the new state, the loyalists were denied its protection. Consequently, if they violated their proscriptions, they often risked capital punishment. Expropriation was part of the process of expulsion, though when the revolutionary governments were financially desperate it became an end in itself. In this sense, the confiscation of loyalist property during the American Revolution shares features with Atuahene's concept of dignity taking.

There are two problems, however, in applying the concept of dignity takings to the loyalists. First, loyalism was not a unitary phenomenon. Second, the concept of dignity itself does not translate smoothly across the centuries.

The first problem raises the definition of loyalism and the variety of loyalist experiences during and after the Revolution. Historians use various categories to capture the differences in belief and action among the loyalists, such as *principled*, *doctrinaire*, *accommodating*, and *reluctant* (Calhoun 1973). These inexact and overlapping terms convey the fact that individual loyalists were spread along a spectrum, from open and unapologetic leaders of the royal colonies and the long-serving imperial agents who helped make the empire work, to free people of color and even slaves liberated by the British military's call for troops, as well as confused or frightened farmers who had known only one political allegiance and could barely imagine another (Brown 1965; Calhoun 1973, 1987; Tiedemann, Fingerhut, and Venables 2009). That spectrum can be marked into at least three categories: committed office holders and vocal advocates of royal rule, affective loyalists whose words or behavior indicated support for British rule but played no open role in the conflict, and passive loyalists who rarely engaged in the conflict but, by force of tradition or inertia, were skeptical of the Revolution—behaviorally if not mentally neutral.

The first group includes royal officials and long-time imperial agents who served for decades in the colonies. This group, probably numbering in the hundreds, formed most of the hard core of loyalism. Few of them repented; almost all left by the end of 1783; almost none were permitted to reintegrate into the new United States. Affective loyalists probably numbered in the tens of thousands, at least. Many fled, but some remained or returned to their homes and reintegrated into the states. The passive loyalists probably comprised the great mass of loyalists, some of whom got caught up, one way or another, in the Revolution's sorting process, and at a large margin probably blended into the even larger category of genuine neutrals (Tiedemann 1986). As in many political conflicts, some changed sides more than once, calculating medium-term gains or simply to avoid short-term punishment. The spectrum of association, obscured by the simple category of loyalism, was apparent to contemporaries and was reflected in the antiloyalist regulations, which encouraged conversion and reintegration. These provisions were important for the vast majority of affective and passive loyalists, who never left home and remained there after the peace.

The second problem involves historicizing the concept of dignity and thereby distinguishing the losses of the loyalists from those of Atuahene's subjects in South Africa and other modern examples. Atuahene's modern premise is that dignity is a right that all humans deserve. Early modern Anglo-Americans did not use the term in that way. They would have understood dignity as a rank or privilege rather than an essential quality of humanness (Whitman 2004; Waldron and Dan-Cohen 2012; Moyn 2014). Again, the term was often attached to political and civil privileges sometimes restricted by blood, like titles of nobility, or, when openly available, in practice restricted to those with property, connections, or education. Sometimes, these dignities inspired admiration or deference. Just as often, in colonial society at least, they sparked emulation and improvement, or distaste, jealousy, and rebellion (Beeman 1992). The latter impulses are reflected in the abolition of titles of nobility in the revolutionary constitutions (US Constitution, Art. I, § 9).

Similarly, states, republics, and kingdoms had or were supposed to have dignity, a notion that descended from the medieval concept of an immortal king and corresponding body politic (Kantorowicz 1957, 383–450). Federalists frequently invoked that connotation when advocating for the new federal Constitution to rescue the states from the “the point of extreme depression to which our national dignity and credit have sunk” (Hamilton, *The Federalist*, No. 6). When Anglo-Americans did refer to something like human dignity writ large, they spoke of the dignity of the human race, mankind, and the like to refer to the special rank of humanity, implicitly relative to other forms of life (or occasionally to other groups or races believed not to have that native dignity). Despite these different associations with the term dignity in the eighteenth century, something like Atuahene’s conception was in play in the antiloyalist regulations, for almost all those laws presumed that loyalists could exercise choice. An unstated premise, then, was that the loyalists retained the distinctly human quality of free will.

The variety of loyalist experience and the residual element of choice are illuminated in the development and enforcement of antiloyalist regulation during and after the Revolution. The antiloyalist program was severe (Hulsebosch 2006; Coleman 2008; Pashman 2013). The first and primary intention of antiloyalist regulation was to define political membership in the new revolutionary order and to place people within or outside it. Accordingly, the earliest antiloyalist measures were sorting measures. Most provinces established commissions that investigated suspected loyalists and had the power to recommend banishment or to remove them directly, and also to issue patriot oaths and amnesty. Expropriation came later. Loyalists suffered identification as outsiders, civil and sometimes physical banishment, and the forfeiture of property, professional privileges, and civil rights.

Many instructions for the states’ program came from the Continental Congress. Initially, at least, the antiloyalist program was not an instance of state legislators running amok. Instead, many of them followed directions. Already in December 1776, Congress had recommended that the revolutionary committees and assemblies take “the most speedy and effectual measures” against the loyalists, including disarming and possibly detaining them (Hunt 1904–1937, 4:20). In the late spring of 1776, at the same time that Congress recommended that each province establish new governments—write constitutions—it again recommended that the states develop ways of distinguishing loyalists from patriots. Enforcing loyalty was a central way of claiming sovereignty.

Every revolutionary province developed test oaths, roving commissions to administer them, and punishments for recusants (N.Y. Laws Ch. 47, 1778). Soon, several states also began sequestering the property of those loyal to the Empire. The legal consequence of sequestration in each state and at each phase of the war was not entirely clear (and was litigated for decades). The black-letter law, however, was clear: sequestration was a well-known legal term of art that connoted holding the property in trust; in the context of war, the property was held as security, or as a kind of hostage, while discovering how the enemy was treating the property of one’s own loyal subjects.

A possible English model was Oliver Cromwell’s sequestration of royalist and Catholic land and personal property during the Interregnum (Coates 2004, 40–45). In any case, New York’s legislators, for example, understood the difference between

sequestration and confiscation because they provided that commissioners of sequestration “take into custody and possession . . . the personal property of those gone over to the enemy” and deposit the proceeds in the provincial treasury. Once there, the state would either hold it for later payment “to the respective owners thereof, or otherwise dispose of [it] at the discretion of the Legislature,” leaving enough subsistence for the families of loyalists who remained on the land. This statute did not confiscate real property (Committee of Safety and Council of Safety of the State of New York 1842, 826).

Sequestration covered personal property, including rents from real property. In practice, as Howard Pashman has shown, the proceeds were distributed as poor relief for patriotic families, disbursed as patronage to generate loyalty to the revolutionary regime, or deposited into the state’s fisc (Pashman 2013). Rarely was the personal property returned to its owners. Only in 1784, after the war, did New York subtly and retroactively convert those early sequestrations of personal property into outright confiscations (N.Y. Laws Ch. 64, 1784).

The first antiloyalist regulations defined the boundaries of membership and, in the main, left the choice of joining to individuals. The loyalty provisions were various, but in most states membership was performance. Behavior and expressive action mattered most in the commissions’ inquiries. So, too, did reputation among well-known or confirmed patriots: under most state regulations, it only required one witness to support a finding that a certain individual supported the crown. Many of these administrative inquiries were *ex parte*; though the suspected individual had a chance to testify on his own behalf, often he could not be located, and even when he could he did not have the right to face his accusers directly.

Eighteen months later, in the fall of 1777, the Continental Congress went further. It recommended that the states begin to confiscate property belonging to enemies and then use the proceeds to purchase Continental treasury bonds (Hunt 1904–1937, 9:971). Most states were slow to take up this recommendation, as confiscation remained a controversial policy when applied to neighbors and former friends. Ideological divisions also became manifest between the more radical revolutionaries and conservatives who valued vested rights (Ousterhout 1978). Eventually, however, every state confiscated some loyalist property, though few of them deposited the proceeds in Congress’s treasury (N.Y. Laws Ch. 25, 1779). Finally, toward the end of the war, many states passed statutes penalizing those who had moved behind enemy lines. That migration itself was treated as dispositive of loyalty to the crown, which typically it was. Despite a provision in the Treaty of Peace forbidding future confiscations or prosecutions (Treaty of Peace 1783, Art. VI), some states continued to target loyalist political and civil rights after the war ended (Hulsebosch 2006, 837–38).

Although the states passed bills of attainder that stripped defendants of property and civil rights legislatively, without trial, and convicted many more loyalists in what were mostly *ex parte* judicial proceedings, the revolutionaries were reluctant to apply the law of *treason* to most loyalists. In effect, of course, loyalists attainted either by statute or judicial decrees were banished from the state—from those parts of the state, at least, that the revolutionaries controlled. Having owed loyalty because of birth or long residence to the revolutionary state, their lack of allegiance meant that they forfeited the state’s protection. They were, in the

common understanding of the term, deemed traitors. However, many state legislatures avoided applying treason statutes to the loyalists and often distinguished between disloyalty offenses and treason convictions.

Treason was the gravest crime in the British Atlantic World. In the collective consciousness of American colonists, it was viewed as a weapon wielded by overbearing kings. By definition it was a capital offense; death was the punishment. The revolutionary governments did not want to use that weapon lightly. In fact, the states executed relatively few defendants for their loyalty to the crown (Chapin 1964). There was also a procedural reason for avoiding treason. Because of its notorious past, an English statute enacted under William III required the testimony of two witnesses to convict a defendant of treason (Hull 1968).

Similarly, the British constitutional tradition had moved toward prohibiting statutes of attainder and even attainder itself. The punishment of attainder was a kind of civil death (Patterson 1982): the defendant lost all of his property, his civil rights, and even his bloodline was corrupted, meaning that his family and heirs were excluded from property and privileges, to the extent that those might descend to them due to blood relationship with the traitor. Some states incorporated these reforms in their revolutionary constitutions, prospectively at least (New York Constitution 1777, Art. XLI; Maryland Constitution 1776, Art. XVI; Massachusetts Constitution 1780, Art. XXV), and the federal Constitution of 1787 included all of them: no statutes of attainder, no corruption of blood, and the two-witness rule for treason (US Constitution, Art. I, § 8; Art. III, § 3).

Some revolutionaries wished to go beyond even these reforms. In its first legislative session, the New York Assembly declared that the English common law penalties for treason (drawing, quartering, etc.) were “marked by circumstances of savage cruelty, unnecessary for the purposes of public justice, and manifestly repugnant to that spirit of humanity, which should ever distinguish a free, a civilized and a Christian people.” The resulting statute eliminated those physical penalties for people arrested for treason who refused to plead (N.Y. Laws Ch. 19, 1777). Another statute specified that anyone who refused the state’s loyalty oath, but did not express or perform any belligerency, was guilty of misprision of treason, not treason itself, and land held by such person was taxed doubly, rather than confiscated (N.Y. Laws Ch. 47, 1778).

In contemporary English law, “misprision of treason” was the crime of knowing yet concealing another person’s treasonous activities (Blackstone 1769, 119–20). The revolutionary states expanded the category creatively to embrace a new range of near-treasonous activities that could be penalized without having to satisfy the rigorous standards of treason itself. A Whiggish conception of English constitutional history, combined with strategic forbearance, contributed to the awkwardly worded statutes that categorized people as enemies of the state without labeling them as traitors. The revolutionaries toed the line between keeping faith with the Whig constitutional tradition and vigilantly policing membership.

Calculated pragmatism, however, also played a role in the shift from treason to loyalty laws. It was often quite difficult to meet the common law requirements for proving treason, like two witnesses, and providing the defendant an opportunity, with counsel, to defend himself. Instead, many revolutionary statutes convicted some defendants and allowed others to be convicted on the evidence of only one

witness, and without the defendant's presence. Still, the punishments were expropriation and banishment, not death. Skeptical revolutionaries, however, viewed the measures as, at best, justified by necessity and, at worst, misguided and ideologically offensive (Young 1966; Ousterhout 1981).

In part because of this ambivalence, loyalty provisions usually defined the status as defeasible. For most proscribed loyalists there remained ample opportunity to recant and take an oath of loyalty to the revolutionary state. In addition, as a practical matter, the revolutionary loyalty commissions could operate only in the areas not controlled by the British military or in the shifting borderlands between royal and patriot New York (Kim 1995). Therefore, many people who remained attached to the crown, to one degree or another, were never examined or proscribed. Again, antiloyalist statutes gradually reached some of these residents in the royal sectors.

One way was through statutory attainder. Legislatures encompassed a greater number by decreeing that colonists who moved behind royal lines from patriot or disputed territory were presumptively guilty of misprision of treason. Most of these latter statutes were not technically attainder statutes because the factual predicate remained to be proven in judicial proceedings (Steilen, forthcoming). However, if those who so moved did not leave with British troops, they risked becoming stateless, exiled within the newly recognized American state.

After the peace, exclusion had the potential to become permanent. In practice, though, it was often not permanent. Many Loyalists could, and did, renounce their loyalty. Through legislative petitions, contrition, and transfer of loyalty, they became citizens of the American states (Hulsebosch 2006, 833–35). Others simply returned to life as before, swallowing their losses and their loyalty, or silently shifting allegiance to the new states. After public or private conversion, former loyalists could hold and transfer property, vote and hold office if they met suffrage requirements, and carry on a trade, or a profession, and generally pursue an unobstructed social and civil life. In this sense, the dignities they had lost were restored. Loyalists who held high office under the old regime and had been vocal supporters of the British Empire were generally not readmitted and remained the target of animus long after 1776. However, this notion of an irredeemable core helped mark the boundaries of a conditional path to US citizenship that the vast majority of loyalists could travel.

Having made a fateful decision during the Revolution, loyalists on the large, fluid periphery of loyalty now had a series of choices: whether to leave or stay, and, if they stayed, how to navigate the vindictive antiloyalty that influenced American political culture in the years just after the peace. Though it was not an easy path, some navigated it expertly and soon moved even closer to the center of power than they had been in the old regime. As they recovered their civil and political dignities, they joined the Federalist state-building project that aimed at national dignity.

III. REVOLUTIONARY CHOICE: THE “DIGNITY” OF PERSECUTION

The series of meaningful choices that loyalists faced during and after the Revolution raise the question of whether any of the loyalists had been deprived of

dignity at all as Atuahene defines the concept. She argues that dignity takings constitute a special kind of expropriation, involving not only the stripping of property but also of personhood. The argument recalls Margaret Radin's personhood theory of property, a concept that might apply to many instances of expropriation throughout history. Seen as an offense against personhood, expropriation cannot be fully compensated with property alone. Restitution must include an affirmation of the victims' humanity (Radin 1982; Atuahene 2014).

Therefore, although the American revolutionary states, in their antiloyalist legislation, did target the loyalists' dignities—their political, legal, and civil rights—as full members of the American political community, they did not undermine the loyalists' human dignity. By allowing most individuals to exercise choice, the American antiloyalist program did not dehumanize or infantilize its targets. Loyalists were often mistreated and abused, and sometimes the revolutionaries did not adhere to the procedural safeguards built into their own antiloyalist laws. Loyalists were not, however, rendered subpersons. In addition, relatively few loyalists were killed.³ None (to my knowledge) were forced to labor for the revolutionaries. Enslavement was not a feature of antiloyalist punishment.

Unlike the dispossessed South Africans in Atuahene's study, therefore, the American loyalists chose to become revolutionary outcasts. For male heads of households, at least, loyalism was a choice. In the dangerous swirl of revolutionary events, choice was circumscribed by real and imagined coercion. Nonetheless, loyalism was, formally, a choice. In practice, it usually was experienced as voluntary, which historian James Kettner argued helped usher in a new conception of "volitional allegiance" in the law of citizenship (Kettner 1974), the ramifications of which lasted decades (Hulsebosch 2007).

Although the goal of antiloyalism was community definition, membership was (aside from the irredeemable royalist core) not fixed. The revolutionary antiloyalist program focused on the decision-making process and tried to induce people to reject the crown, choose to affiliate with the revolutionary project, or, even during the fighting, renounce an earlier choice and transfer their loyalty to the states. Membership was sometimes as mobile as the front lines dividing the revolutionary and royal sectors, and there were many people who spent years in the contested borderlands without submitting to either. Some British colonists moved back and forth across the lines of loyalty, taking successive oaths of loyalty to one side and then another. Many succeeded in defying both governments, though each military caught up with notorious fence-sitters, trimmers, and flippers (Clark 1984). Revolutionary legislators assumed that the targets of their legislation possessed a defining quality of humanity: free will.

Choice, and the principle of consent that it symbolizes, means that the antiloyalist program never deprived defendants of their essential human dignity. The loyalists did lose political and civil dignities: the privileges and immunities that

3. One study of loyalism counts sixty-five executions (Chapin 1964). There are reports, however, of extralegal executions, and the states also prosecuted loyalists under facially neutral criminal statutes specifying capital punishment (Brown 1965; Young 1966; Crary 1973, 224). For a fascinating example in which Virginia opted to apply municipal criminal law rather than the law of treason or the laws of war, see Steilen (forthcoming).

attended membership as a citizen in the new regime. However, they retained parallel civil and political dignities within the rest of the British Empire.

This element of choice, and the fluidity between loyalism and patriotism, is directly related to two features of the American Revolution that distinguish it from many colonial revolutions that followed. First, race was not a primary dividing line between the colonist and imperialist. Race absolutely played a role in the American Revolution, and black slaves also exercised choice in the fighting—choice that, for many, led to freedom and exile (Frey 1991; Schama 2005). But race did not mark a bright line of membership or make that line difficult if not impossible to cross (and crisscross).⁴ The vast majority of loyalists shared much with their wartime enemies: language, Christianity, and race. This commonality facilitated reintegration after the Revolution.

Second, revolutionaries and loyalists shared many basic political commitments, which also facilitated reconciliation. The colonists framed their revolution in large part as restorative. Although it became more radical than many leading revolutionaries had initially expected, a common frame was the restoration of shared English constitutional rights and an embrace of the best Enlightenment political values: representation, the rule of law, commerce, and similar values (Reid 1986–1993; Hulsebosch 2014). Although reintegrating loyalists had to renounce allegiance to the British king, they did not have to forswear many political and most legal principles.

Therefore, in contrast to Atuahene's example of Apartheid South Africa, both sides in the American Revolution saw the choice of membership as an authentic one. People could choose one side and then switch without changing many basic principles, practices, and habits. The choice was circumscribed by limited options, powerful short-term incentives like threats and prosecutions, and uncertain wartime calculations about the future. Nonetheless, it was a free choice that, crucially, was experienced as such (Waldron 2014).

In the American Revolution, therefore, the dignities taken could be restored. Because of provisions in the Treaty of Peace prohibiting future confiscations or prosecutions against loyalists, as well as recalibrations of antiloyalist animus in the states over time, individual loyalists were able to retake their rights and privileges (Treaty of Peace 1783, Art. VI). Legal actions begun against them were halted, old properties were regained, and many loyalists quietly reintegrated into their old communities, remade as new political states. Higher-profile loyalists had harder paths to travel. Yet even a few of them, and more successfully their children, succeeded in petitioning to recover confiscated property, although often after paying a fine. Cadwallader David Colden, for example, was the son and grandson of staunchly loyalist office holders. Yet he was able to reacquire his father's land, apprentice law with fellow reintegrating loyalist Richard Harison, and become a successful lawyer in New York City (Jones 1919). In 1818, he became the city's mayor. Similarly, the

4. The modern concept of dignity mapped only partly onto the emerging early modern perception of race: people of color born into slavery lacked the sort of free will that modern commentators associate with dignity (Jordan 1968). However, many free people of color did possess that free will, as did many slaves who decided to flee slavery and join the British army (Schama 2005; Pybus 2006).

sons of royal councilor John Watts, a core loyalist office holder, successfully petitioned the state legislature for permission to repurchase their father's estate in Manhattan and became pillars of New York society.

Opening the revolutionary timeframe to capture not only eight years of the military conflict itself, but also the years after the Treaty of Peace of 1783 reveals how many loyalists gradually recovered many civil and political dignities lost during the war. They had exercised the choice to remain loyal to the British Empire. Afterward, they faced a more constrained choice about whether to leave and resettle elsewhere in the empire or, instead, try to reintegrate into the new politically independent states. In many states, they also faced at least discouragement and often harassment, some of which, when perpetrated by state officers, violated the Treaty of Peace. Nonetheless, these were real choices.

The American example of systematic rehabilitation might motivate scholars to examine revolutionary expropriations over a longer time horizon, not to excuse harsh tactics undertaken during civil war, but to situate those tactics in a dynamic process of revolutionary state building that continues after fighting ends.

IV. WASHINGTON'S LOYAL LAWYERS: RESTORING DIGNITIES IN THE FEDERAL REPUBLIC

It is an old chestnut in the historical literature that most colonial attorneys remained loyal and fled the states, leaving a vacuum for a new generation of lawyers as well as for "common sense" lawyering (Witt 2007, 15–82). The facts show otherwise. Lawyers dominated the revolutionary governments, constitution-writing in the states, and constitutional reform in the late 1780s. Lawyers figured large in the making of the new federal state, too. Two of three cabinet heads, Alexander Hamilton and Thomas Jefferson, as well as the Attorney General Edmund Randolph and Vice President John Adams, were lawyers. The dominant voices in the early Congress were lawyers. Among the first statutes they passed was the Judiciary Act of 1789, which, in addition to establishing a six-justice Supreme Court and thirteen district court judges, also created the offices of Attorney General and thirteen federal district attorneys, one for each state, to prosecute all criminal and civil actions (Judiciary Act 1789, § 35).

Historians have not systematically explored who these federal attorneys were or what they did. President George Washington received informal advice about appointments from senators and other local power brokers who had demonstrated their Federalist beliefs in the recent ratification campaign (White 1948). He then appointed (and the Senate confirmed) thirteen leading lawyers to serve as his Federal District Attorneys, one in each state. For Pennsylvania, quite possibly under the advice of core Federalist and Supreme Court Justice James Wilson, he selected William Rawle. In New York, where it appears that Supreme Court Chief Justice John Jay was a powerful Federalist patron, he appointed Richard Harison.

It is a surprising fact: the two Federal Attorneys serving in the two most populous and commercially active cities in the United States in the 1790s, cities that also served as the first two capitals of the federal government, had remained loyal

to the British Empire during the American Revolution. In their roles as Federal Attorneys, they initiated many of the landmark federal cases of the 1790s, including treason prosecutions following the Whiskey and Fries Rebellions against federal taxation, prosecutions of privateers for violating US neutrality, prosecutions of Republican printers for seditious libel against the executive under the Sedition Act of 1798, dozens of Customs Act enforcement actions, and much more. Just as important as high-profile litigation for US state building was the legal counsel they offered other federal officers, from customs collectors on the docks to department heads like Secretary of the Treasury Alexander Hamilton. In all these tasks, Harison and Rawle brought to bear their English legal educations, continuing connections to metropolitan British legal culture, and their enduring commitment to an effective central government. Their private legal papers—historians have never before systematically explored Harison's papers and have drawn on Rawle's only for the major litigations—reveal their centrality to the development of Federalist notions of legality in the earliest part of the early republic.

Rawle and Harison successfully reintegrated into a political community that had not been their first choice. These two men were not representative. Their prominence, ability, and location place them outside the average. Although they were not members of the irredeemable and powerful loyalist core, they were not passive, peripheral loyalists either. They were educated, richer than average, and well connected. Their relatively elite status made reintegration both easier and more difficult. On one hand, they had more connections and resources. On the other, they were prominent and obvious targets for antiloyalist revenge. Sitting between the notorious royal appointees and obscure country farmers, they faced an uncertain future after the peace: Would they be able to reintegrate, or would they suffer revenge?

They do illustrate the different degrees of loyalism among the loyalists: in 1776, Harison was already practicing law and made a conscious choice to remain loyal, while Rawle was a teenage student who was part of a loyalist Quaker family. They also illustrate the different paths that loyalists took during the war: Harison served in the imperial wartime government, and Rawle went into exile with his stepfather, the mayor of Philadelphia, first to the British headquarters of New York City, and then to the imperial capital of London. Finally, their cases suggest the range of ways that loyalists reintegrated into the United States. After fleeing with the troops in late 1783, Harison returned the next year and petitioned the New York legislature that had proscribed him, received the support of influential friends like John Jay, and by mid-1788 had been reintegrated enough that he was elected to represent a council district in New York City at the state's ratification convention. For his part, after the fateful Battle of Yorktown, Rawle returned to Pennsylvania via Paris, with the help of a safe-conduct passport from family friend Benjamin Franklin. He hurried back across the Atlantic to preempt a rumored legislative proscription.

After returning, both men headed large families, enjoyed financial success, founded and served in civic organizations in their cities, and were among the leaders of the legal professions in their jurisdictions for decades after the peace. Both were also pillars of the Federalist Party, and their loyalism, British educations, and

professionalization contributed not just to the British orientation of federal administration in the 1790s, but also to its technical competence in law during a decade when the experimental federal government could have failed. That orientation and those skills also shortened their public careers. As reflexive and unapologetic Hamiltonian Federalists, Harison and Rawle found themselves out of federal office after Thomas Jefferson's election in 1800. Both handled the Republican succession with equanimity. For them, the Revolution of 1800 was just another political upheaval, less costly and jarring than the one twenty-five years earlier. Returning full time to private practice, they enjoyed long, prosperous, and prominent careers.

That two of the most important Federal Attorneys in the early republic had been loyalists is not just a curious fact. It also offers insight into the continuing transatlanticism of Federalist legal culture. Harison and Rawle both maintained personal and business relationships with people in Great Britain after the Revolution. They represented British subjects in US courts and managed their complicated real property holdings. Taking advantage of their port locations, they regularly ordered and received law books from Britain. Both recognized that they now practiced law in a republic rather than a monarchy. Nonetheless, their English and imperial orientation deeply influenced the way that they interpreted the new constitutional system. Through continuing connections with the old empire, they held onto the dignities that they had all but lost, and by pushing the new United States forward, they also participated in the Federalist quest for national dignity.

A. William Rawle

Histories of Pennsylvania and of the Rawle family are reluctant to classify William as a loyalist. Although the facts speak for themselves, they are amplified by Rawle's own words in his many letters to family and friends during his four-year exile from Philadelphia. First he traveled to New York City, Britain's military headquarters during the Revolution, and then he sailed to London. Those letters make clear that although the young Rawle never participated in royal government (unlike his stepfather Samuel Shoemaker), he expressed hope that the British would win, couched always in regret that the Revolution had occurred at all. He was an affective loyalist, and though young—he was seventeen when the States declared independence and twenty-three when he sailed home from London in 1782—he was old enough for militia service and in the same generation as many who served in the war. For example, he was only a few years younger than Alexander Hamilton (b. 1755), John Marshall (b. 1755), and James Monroe (b. 1758), and he was older than Andrew Jackson (b. 1767), all of whom served in the revolutionary forces. Had he remained in Philadelphia after the revolutionary forces gained control of that city in mid-1778, the nineteen-year-old Rawle most likely would have had to pledge his allegiance and serve in the militia or suffer proscription.

Rawle was born in 1759 to merchant Francis Rawle and his wife, Rebecca Warner, both deeply enmeshed in Philadelphia's powerful Quaker community. Francis Rawle died when William was young, and Rebecca remarried Samuel Shoemaker, a successful merchant who served as the last royal mayor of the place

that Quaker William Penn had named the City of Brotherly Love. The Quakers were overwhelmingly Loyalist (Mekeel 1979). When the British troops evacuated Philadelphia in 1778, Shoemaker and his stepson went with them to New York City, fearing that the revolutionaries would prosecute adult men who refused to pledge allegiance to the new state of Pennsylvania. The new revolutionary state government had already attainted Shoemaker of treason by statute; when Patriot forces gained control of the city by mid-summer they took control of his property (Montgomery 1907, 542–47). Rebecca and William's sister remained behind. Letters to them reveal his loyalist affections, as well as the shift of his loyalty after the Battle of Yorktown in late 1781.

In New York City, Rawle apprenticed in law with the royal Attorney General John Tabor Kempe, one of the most accomplished lawyers in any of the colonies (Crary 1957). Like so many first-time visitors to New York, Rawle initially complained about the lack of books and breeding—he could not find a copy of Charles Rollin's *Ancient History*, for example (Rawle to Sister, Oct. 22, 1778, Rawle Family Papers [RFP])—but soon he became enamored of his host family and grew to appreciate Kempe's depth of learning, inside and outside the law. He and his father (as Rawle referred to Shoemaker) selected Kempe as a mentor in part because of the New Yorker's "amiable character & extensive abilities" and also because of "his being Kings attor[ney] his practice in the C[ourt] of Admir[alty] &c." (Rawle to Rebecca Shoemaker, Mar. 7, 1778, RFP). In other words, Kempe had a broad and sophisticated practice and played various roles in the crown's legal system. By the time Rawle left three years later for London, he, like many immigrant New Yorkers, defended the city's virtues like a native (Rawle to Sisters, May 1781, RFP).

While in New York, Rawle finally got hold of Rollin's tales of classical civil wars, court intrigues, patriotism, and betrayal. It all sounded close to home, but unlike the stern classical authors, Rawle doubted that his generation should celebrate people who doomed their own family members for their political choices. "We admire Brutus condemning his sons to death for attempting to bring in the Tarquins," he wrote in 1779, "but should we not detest a Whig or a Tory now who should punish his sons for being of different principles?" It is a revealing interpretation that captures a twenty-year-old's sense of the complexity and contingency of political choice. Similarly, as he fled by boat from Philadelphia, he hoped that the oncoming revolutionary forces would treat his mother, sisters, and other remaining loyalists well. If they did not, the loyalists might rise up and rebel. Yet Rawle did not want that. "I hope such an opposition will never be made," he confided to his mother, "or at least that the former friendships of fellow citizens will prevent the necessity of its being made" (Rawle to Rebecca Shoemaker, June 24, 1778, RFP).

Nonetheless Rawle remained committed to the British cause. When the New York papers published news of Britain's successful battles against France in early 1779, he sent copies to his mother so she could distribute them among friends in Patriot-controlled Philadelphia. The reports, he thought, would "revive the spirits of the most drooping Tory in Philadelphia." Still, it was all bittersweet. He predicted that Britain and France would soon end the war, and North America would suffer imperial punishment. "Laid in ruins," he imagined, "to gratify the fatal ambitions of a few artful men!" (Rawle to Rebecca Shoemaker, Jan. 1779, RFP). That is

how twenty-year-old Rawle interpreted the Revolution at about its midpoint: the design of “a few artful men.” “Ministers firm; Militia disciplin’d; Supplies settled; Privateering unequalld,” he reported to his mother from New York in early 1780, “the French trade almost destroy’d bankruptcy universally prevailing among their merchants. Can we expect anything more encouraging?” (Rawle to Rebecca Shoemaker, Jan. 30, 1780, RFP).

When Samuel Shoemaker sailed to London in the summer of 1781 to petition for compensation, Rawle went as well to study at the Middle Temple. The twenty-two-year-old believed that he could not fully prepare for his legal career in wartime New York (Wharton 1840, 45). What he needed was three years in London. It was not unusual for the sons of elite colonists to travel to Britain for schooling, legal training, and social seasoning, but it had become less common since the middle of the eighteenth century, as the provincial bars, especially in the northern colonies, developed their own training routines, clerkship standards, and bar exams. For an aspiring lawyer to leave the United States for London during the Revolution, the decision was full of meaning. Like other law students, Rawle attended court sessions, listened to Lord Mansfield on the bench, watched the leading lawyers, and took their advice to read widely and deeply—starting with David Hume’s *History of Great Britain* (Rawle to George Fox, Sept. 24, 1781, RFP).

Rawle’s three-year plan changed only six months later. He realized that the Battle of Yorktown, in the fall of 1781, demonstrated that the British would almost certainly lose the war. Then he began hearing rumors that he would be banished from Pennsylvania as a Tory (Rawle to Rebecca Shoemaker, Jan. 1, 1782, RFP). It was time for him to make a choice about the rest of his life: Should he remain in England or return to Pennsylvania? His preference suddenly became clear: he should “submit to that authority which is establish’d there,” meaning in Philadelphia.

A major factor in Rawle’s decision to return to America was his comparative professional prospects. The bottom line was that there were too many accomplished young men in London, “mak[ing] it almost impossible for a stranger to succeed. And in the law particularly they are too numerous to leave a shadow of hope, to one so unknown, and unsupported as I should be.” There were additional reasons to prefer a professional life in Philadelphia: it was less expensive than London and more “agreeable” to Rawle. In addition, his mother’s property had not been confiscated and would nicely supplement his income as he got his professional legs. Simply put, he could expect a more successful practice and an easier life in Philadelphia. “[W]ith the knowledge I have already gain’d and the studies I shall continue to pursue,” he concluded, “I flatter myself I shall not want a genteel and easy livelihood” (Rawle to Rebecca Shoemaker, Jan. 1, 1782, RFP). London was a big pond, and Rawle was keenly aware of his relative size. Philadelphia was in all ways more manageable.

It was not just his decision. He had to gain permission to return. Again, because of the rumors that he would be targeted, he had to return quickly, pledge allegiance, and safeguard his future inheritance. “Tho’ the step may be in some degree humiliating, yet I have nothing to fear,” he convinced himself while writing to his mother, “as I have nothing to charge myself with. I have in no one instance taken a decisive part on either side, unless that voyage to New York which was the

effect of filial duty, should be urg'd as a crime." Yet he understood that his behavior during the war (quite apart from his private protestations of loyalism) could be interpreted differently. In addition, he knew that the Pennsylvania state legislature had enacted a mandatory loyalty oath for all men eighteen years and over; the statute was passed in June 1777, just weeks after Rawle's eighteenth birthday (Pa. Laws Ch. DCCXLV, 1777).⁵ Of course, he had never taken that oath. The longer he remained in London, "I should perhaps be at last called upon by a proclamation to appear at the bar like a malefactor and take my trial for treasons I never dream'd of committing" (Rawle to Rebecca Shoemaker, Jan. 1, 1782, RFP). Therefore, he traveled to Paris, obtained a passport from the American minister to France and old family acquaintance, Benjamin Franklin, and returned to Philadelphia in late 1782 (Franklin 1782). To retain whatever dignities he might enjoy in his native Philadelphia, he had to scramble across Europe and the Atlantic. Reentry was uneventful. The next year he joined the bar, opening a law firm that its successors maintain is the oldest in the United States.⁶ He slowly worked his way into the city's legal field, married, and started a family.

Rawle was instinctively Federalist. Long known for his constitutional treatise written forty years later, Rawle took notes on the document soon after its publication. It was as if the fact of the Constitution had confirmed the wisdom of his choice five years earlier to stake his claim in America. "[T]he history of man," he later gushed, "does not present a more illustrious monument of human invention, sound political principles, and judicious combinations, than the Constitution of the United States" (Rawle 1829, 17). Such sentiments were common among Federalists: the document itself was a signal moment in development of the dignity of man. For Rawle, the striking fact of the Constitution was its supremacy clause, in which the Constitution, treaties, and federal law were made supreme to state law, and state judges were explicitly directed to enforce this supremacy. So bedazzled was he by the prospect that the states, which claimed sovereignty in 1776, would submit themselves to suits by individuals in the federal courts that he proclaimed the federal Constitution "the first instance (in modern times at least) of sovereign powers submitting themselves to judicial authority," at the petition of individuals claiming rights. "In thus subjecting our public actions to judicial recognition," Rawle asked himself, "do we not attain some resemblance of a Theocracy[?]"⁷

Rawle's reverence for the new Constitution, along with his legal acumen, broad learning, and, not least, Federalist connections, won him appointment as the Federal District Attorney for Pennsylvania in 1791. For a decade, Rawle was one of

5. Rawle included the statute in his manuscript history of the state legislation during the Revolution, probably written in the 1790s. He noted that many of these statutes seemed necessary during the war, but they no longer were so after its conclusion. Indeed, "their continuance an instant after that necessity has cleared amounts to a fresh enactment of them, and we ought to consider them now as recently made, without precedent & without justification" (History of Pennsylvania during the Revolution, RFP).

6. The modern firm Rawle & Henderson LLP traces its partnership lineage back to Rawle's entry to the bar, making it arguably "the oldest law firm in America." <http://www.rawle.com/history> (accessed June 4, 2015).

7. William Rawle, "Thoughts on Judicature" (RFP). These notes are undated, but they appear to have been written in the late 1780s and must have been written before Congress sent the Eleventh Amendment to the states for ratification in 1794.

the most public faces of the new federal administration in its capital city. He prosecuted the defendants in the Whiskey Rebellion who resisted the federal excise tax. He prosecuted Gideon Henfield and other US citizens who joined French privateering ships against Britain for violating US treaties and the law of nations during the Neutrality Crisis of 1793–1794 (American State Trials 1793). In another tax revolt known as the Fries Rebellion, against the stamp and home taxes to support the quasi-war against France, he again led the prosecutions.

There were also run-of-the-mill federal contracting cases; inquiries into congressional bribes and southern raids into Spanish Florida; and questions about the circulation of notes of the Bank of the United States. Finally, Rawle spearheaded prosecutions against the Jeffersonian Republicans' house newspaper, the *Philadelphia Aurora*, under the controversial Sedition Act of 1798. In those cases, he forcefully argued that the First Amendment prohibited only prior restraint of publication criticizing the government, not postpublication criminal prosecution. In other words, the English law of seditious libel applied in America (Smith 1956; Slaughter 1986; Newman 2004). In sum, Rawle was a fierce and effective defender of the supremacy of federal law, treaties, and the Constitution.

Somewhat obscure are the circumstances of his resignation from office in the spring of 1800. The timing coincided with two occurrences that probably disenchanted Rawle with the administration of John Adams. First, after Rawle's hard-won conviction of the ringleaders of the Fries Rebellion, Adams decided to pardon most of them. Second, Adams fired the High-Federalist Hamiltonians in his cabinet when they disagreed with his pursuit of peace with France, and it is probable that Rawle associated himself with that faction of the Federalist Party (Dauer 1968). His resignation of office may have been one more pledge of loyalty to doomed leadership.

Once again Rawle survived and prospered. He maintained a lucrative practice outside his government portfolio as well. His caseload stretched from acting as counsel to a Philadelphia alderman trying to determine whether the offspring of a runaway slave woman were free or not, to run-of-the-mill real estate transactions and debt collection (Rawle to Alderman Keppele, Apr. 1, 1804, RFP). Rawle was not a land speculator but, like virtually every major player in the early American legal profession, he represented plenty of them. He also represented English and exiled loyalists who had interests in Pennsylvania, including the Penn family. The revolutionary state legislature had confiscated the Penns' proprietary lands for the use of the state, but it had not taken all of their *private* or nonproprietary land. Which was which? This was a knotty question involving a skein of land transactions over the course of a century. Rawle served his transatlantic clients faithfully for decades as they and their grantees disentangled the private parcels from the proprietary lands forfeited in the Revolution.

Outside the courts and counseling, Rawle had a hand in many of the social organizations that made Philadelphia the nation's cultural capital during his lifetime. Like many Quakers, he opposed slavery and served as president of the Pennsylvania Abolition Society. He was a member of the American Philosophical Society, the Library Company, and the Historical Society of Pennsylvania, as well as one of the founders of the Law Academy of Philadelphia. In 1825, he published

his famous *View of the Constitution*, the first stand-alone examination of the federal Constitution. Upon his death he was eulogized as the dean of the Philadelphia lawyers. His eulogists suppressed his loyalism.

B. Richard Harison

Richard Harison was openly loyal during the war. Indeed, he pledged his loyalty to the crown many times, and after the war ended he sought compensation from Parliament for lost professional income (Palmer 1984, 361). He sought compensation for other losses during the fighting too. When petitioning for compensation for property in New York City that the military occupied without compensation, he reminded the military governor that that he had refused to take a loyalty oath to the revolutionary government and, consequently, lost property outside the British zone of control. As Harison described himself to the British Commander-in-Chief,

he was brought up to a genteel & lucrative Profession, from the exercise of which he has been almost entirely precluded for six years & upwards by his Loyalty, & the Situation of the Country, besides sustaining many other heavy losses in outstanding Debts and other effects, & that he has avoided troubling you Excellency by any application, even for Justice, till forced by the Necessity of his Affairs arising from the long continuance of the Rebellion. (Memorial to Sir Henry Clinton, Commander-in-Chief, draft, Aug. 20, 1781, Richard Harison Papers [RHP])

As an open loyalist to the crown, Harison suffered the loss of his civil and professional privileges. However, by the spring of 1784, he had already begun to work his way back into the professional world of New York. In May, the New York legislature passed a harsh statute rendering anyone who fled to or remained behind British lines during the war liable to be convicted of misprision of treason, with the penalty that they would lose all civil privileges (should any remain) and be disabled to vote or hold office. The statute was controversial. Alexander Hamilton, for example, railed against it in the Assembly and then further in his *Phocion* essays. But it passed after the inclusion of twenty-seven names of people who were exempted from the punishment. Reputable patriots had petitioned the legislature for these exceptions. Among those names was Richard Harison.

In the words of the statute, “a very respectable number of citizens of this State, well attached to the freedom and independence thereof, have entreated the legislature to extend mercy to persons herein after mentioned, and to restoring them to their country.” The twenty-seven were “hereby permitted to return to and reside within this State without any molestation, and therein to remain until the end of the next meeting of the legislature, or until further legislative, provision shall be made in the premises” (N.Y. Laws Ch. 66, 1784). Harison’s deep connections to leading New York lawyers such as John Jay and Hamilton counted for much.

Soon after, Harison entered a law partnership with a patriot lawyer, although he could not yet litigate in the New York courts. He could, however, offer counsel, and for many years this was his specialty: a transactional counselor as well as, eventually, a top-notch litigator. Finally, in 1786 he was readmitted to the state bar. The day after he was readmitted, he joined other senior members of the bar to administer oral bar exams to young law clerks seeking membership (New York Supreme Court of Judicature 1786, 5, 12). His practice quickly returned to status antebellum, and the state legislature did not hesitate to appoint him as an arbitrator in difficult cases. In 1788, he was elected a delegate from New York City to the state's ratification convention in Poughkeepsie, where he was a solid Federalist vote in favor of the Constitution.

Throughout the 1780s he developed a close professional relationship with Alexander Hamilton. That relationship might have led to his appointment as the first Federal District Attorney in September 1789. Washington first offered Harison a federal district judgeship. He declined, possibly because that would have impeded, or eliminated, his lucrative private practice. Soon Harison and his wife were socializing with the president. More critically, on the day that the Senate confirmed Harison's appointment, Hamilton sent him the first of dozens of letters seeking advice about how to interpret federal statutes (Alexander Hamilton to Richard Harison, Sept. 26, 1789, RHP).

Throughout the 1790s, Harison was a trusted legal counselor to government officers, from customs agents on the docks to the cabinet. Not least of his skills was a full understanding of the British customs regime from which the US Congress borrowed much of its statutory regulation of US trade. That borrowing was, however, partial and confused, which led to many knotty questions of interpretation. "It is a Misfortune in our Legislation that particular Regulations of other Countries have been adopted," Harison drily observed to Hamilton, "without considering their dependence upon the system to which they belong" (Richard Harison to Alexander Hamilton, Feb. 4, 1791, RHP). The eighteenth-century statutes that Americans drew on depended on and incorporated much older statutes, which Congress did not parse and reenact. As a consummate British-American lawyer, Harison was able to spot the missing connections and suggest interpolations.

While serving in the federal government, Harison maintained a busy private practice. Like Rawle, many of his clients were loyalists with land, family, and other interests in New York. He was related to some of those loyalists. His father-in-law, George Duncan Ludlow, had been an associate Supreme Court justice in New York and, after the Revolution, became the chief justice of the new province of New Brunswick. The Ludlows' landholdings on Long Island and in New Jersey kept Harison busy for decades. They also gave him some opportunities for land speculation. In turn, Harison regularly corresponded with his own attorney in London, who represented his family's property in England. Like many loyalists, he and his family retained property interests on both sides of the Atlantic.

Harison's relationship with his London attorney led to another legal connection of lasting importance with bookseller Joseph Butterworth. Throughout his service as a federal attorney, Harison made repeated requests to Butterworth and received several trunks full of law books. His goal was to obtain the latest reports of

English courts and also, critically, to purchase leading treatises on subjects with which, before his service, he had little experience.

For example, in the early 1790s, as Europe stormed into the wars of the French Revolution, Harison launched himself on a crash course on maritime rights and duties under the law of nations. Potentially conflicting treaty commitments with France and Britain, the two major European antagonists on the Atlantic Ocean, put US shipping in a precarious position. Yet as the last major neutral shippers sailing the Atlantic, they were also able to exploit the European conflict for their own gain. The problem of neutral duties for the US government, and the opportunities offered by neutral rights for US commerce, raised a host of complex legal issues that lawyers, preeminently Federal District Attorney Harison, needed to analyze (Gordan 2014). To do so, he ordered dozens of books on admiralty law and the law of nations from his London bookseller. Treatises by Bynkershoek, Zouche, and Leoline Jenkins on the freedom of the seas, and other books on admiralty jurisdiction and the laws of war, dotted his requests for the next several years. With a curiosity born of professional necessity, Harison then placed an open order with Butterworth in early 1795 requesting that he send “any new Publications of acknowledged Merit upon Questions respecting the rights and conduct of neutral nations, the rules of practice or Decisions of your Admiralty Court, or any question connected with the Law of Nations . . . and be assured that I shall at all times be ready to pay for any extra trouble I may occasion” (Richard Harison to Joseph Butterworth, Jan. 5, 1795, RHP).

Harison put these books to immediate use. He led one of the earliest prosecutions of an American citizen for accepting a prize commission from the French minister Citizen Genet in 1793. The new books were crucial for his analysis of the rights and duties of neutral nations, and he willingly shared them with other lawyers, including those who represented opposing parties. He also lent them to Federal District Judge James Duane to help him decide one of the first neutrality cases to reach the federal courts (Richard Harison to [William] Lewis, Jan. 14, 1794, RHP). Judge Duane then cited this borrowed source in his opinion (Duane 1794, 26). Harison’s loyalist connections helped supply not only the material culture of American law, but also some of its legal authority.

Likewise, Harison was in the thick of the Adams Administration’s prosecutions of newspaper publishers in New York City for seditious libel under the Sedition Act of 1798. Yet it was also his role, he believed, to advise the cabinet to seek leniency in certain cases, such as where the defendant was poor, when she was a widow who had discontinued her deceased husband’s newspaper, and where the witnesses were many miles away, making the prosecution costly (Richard Harison to Timothy Pickering, Apr. 10, 1800, RHP). The Federalist case against the publishers relied on the equation of American free speech doctrine with the English common law: the First Amendment required only that the government abstain from prior restraint. After publication, however, it could prosecute printers for libel.

If Harison privately sought leniency for some publishers, he was nonetheless the public face of seditious libel enforcement in increasingly Republican New York City. In 1801, President Thomas Jefferson dismissed Harison from office as part of his demi-purge of Federalists from administrative positions. Jefferson often provided

no reason for dismissing Washington's appointees in the executive branch. Customs collectors, inspectors, marshals, and several other district attorneys were removed without cause. When it came to Harison, however, Jefferson identified him as a "Tory." It was a dishonor he reserved for very few other appointees (Prince 1970, 572). Reintegration may have had limits. Almost twenty years after the peace, and fifteen after the restoration of all his civil privileges, Harison remained in Jefferson's eyes a loyalist.

Of course, what really mattered was his politics in the 1790s, not the 1770s. Harison's loss of office was as much a tribute to his reintegration as it was the last indignity of revolutionary antiloyalism. Like dozens of other office holders, he was classified as a *Federalist* and treated just like them. And Jefferson did not hold the line against *all* loyalists; instead, he appointed a few, like Tench Coxe, to important executive offices.

Like so many executive officials caught up in partisan housecleaning ever since, both Harison and Rawle transitioned smoothly back to full-time private practice and enjoyed success. They recovered from this setback, too, and went on to enjoy long, prominent careers in their adoptive nation.

V. CONCLUSION

Historians over the past generation have begun to recover the crucial fact that the American Revolution was a civil war that tore apart families and friends. They have also begun to recover the "ordeal" that colonists loyal to the empire experienced in the controversies leading to the outbreak of war and during the Revolution (Bailyn 1974). Still, the impression remains that, after the war, most loyalists fled North America. This is a misperception. The vast majority of those people who had been born in North America or emigrated to it before the Revolution, and who supported the crown, remained there, either never leaving or returning after brief exile in Britain. Most loyalists stayed in the new United States. As harsh as the revolutionary antiloyalist laws were, many of them contained safety valves that permitted most targets to recover their civil status and become citizens in the new republic.

American antiloyalism stripped its targets of various dignities—offices, property, civil and political rights. It did not, however, deprive its targets of human dignity writ large. The element of choice so central to the antiloyalist regulations, the exercise of which determined whether an individual would be expropriated, exiled, or reintegrated, seems antithetical to Atuahene's concept of dignity taking and her twentieth-century examples, whereby targets were not permitted any choice. Nonetheless, once Anglo-American dignities were taken, some kind of reparative process was necessary before an individual could recover any of them. In postrevolutionary America, that process usually demanded at least political conversion and contrition, and it often required a supportive network of patriotic friends and colleagues. The affinities of race, family, religion, professional practice, general political ideology, and, not least, legal training made restoration an entirely different kind of

experience in the United States than in many other postcolonial societies. More important, there never was any real apology by the victors to the victims.

As the examples of William Rawle and Richard Harison suggest, however, neither was there any deep apology from many of the loyalists. Among Federalists, at least, former enemies could unite in the project of establishing national dignity. Washington's loyal lawyers found it easy to serve the project of constituting a federal union and reintegrating it into the transatlantic world of commerce and credit. From their perspective, they shifted from one empire to another, without dislocation.

What had moved was the metropole. As William Rawle had observed from London, in the new United States they found themselves closer to the center of imperial power than they could ever have imagined in the British Empire. They did more than simply sign on to the Federalist project devised by others. In addition, their particular skills and connections helped facilitate the reorientation of that project in the 1790s toward a rapprochement with Great Britain, which, paradoxically, guaranteed the former colonies real independence. These loyalist lawyers had most of their personal dignities restored, and in the process they helped earn international dignity for their adopted nation.

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