“THE BURTHEN NOW UPON OUR HANDS”: THE TREATMENT OF BRITISH PRISONERS OF WAR IN THE REVOLUTIONARY SOUTH, 1780-1781

by

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ABSTRACT

THOMAS GROVER. "The Burthen Now Upon Our Hands": The Treatment of British Prisoners of War in the Revolutionary South, 1780-1781. (Under the direction of CHRISTOPHER CAMERON, PhD.)

Casualties represent the human element destroyed by war. As such, historians use their numbers to describe the scale or aftermath of a given conflict in terms of dead and wounded. Yet, there exists a third group of casualties often not included in these traditional statistics: prisoners of war (POWs). Historically, American military planners have failed to properly prepare for the adequate care and management of POWs. Evidence of this trend stretches back as far as the Revolutionary War. Soon after hostilities broke out, American leadership faced the dilemma of what to do with their British captives. As students of Enlightenment thought, or veterans of the British Army, many of the American leaders sought to adhere to the rules and customs associated with traditional European warfare. However, separation from Europe and frequent conflicts with Native Americans introduced changes in American thought about the practicality of these traditions. When the war shifted to the South, the two sets of ideals clashed, influencing the treatment British prisoners received at the hands of their American captors. The war in the South also raised questions for historians. Did British POWs receive the same treatment as their compatriots in the North? Were they exchanged and/or paroled? Where were they kept and how were they cared for? If there were differences, what were they and how can they be explained? This paper sets out to answer these and other questions about British POWs in the Revolutionary South. The first portion analyzes the basis of American POW policy, how it developed, and the difficulties implementing it. The second portion consists of a case study of the prisoners taken at King's Mountain, the treatment they received, and how that treatment reflected the dysfunctional attempts to carry out national policies. The evidence suggests that the identity of British prisoners in the South not only determined their political value and the treatment they received, it also hindered Congressional efforts to implement an effective POW policy that governed these very aspects.

DEDICATION

To Wendy, who encouraged me and supported me throughout this journey.

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PROLOGUE

Colonel William Campbell looked up at the sky and let the warm rays of the October sun shine on his face. He closed his eyes for a brief moment and took a deep breath. The air was tainted with the acrid, metallic odors of gun powder and blood, yet, through it all, he could still smell the sweet scent of the fall leaves. He opened his eyes and quickly looked around at the chaos and carnage surrounding him: dead men lying on the ground, wounded men crying out for help, frightened prisoners huddled together, and, of course, the joyous faces of the victors. Campbell heard the last shots of the battle fired only a few moments earlier. He recalled how difficult it was to get his men to stop shooting after the enemy raised the white flag of surrender. They were so angry and vindictive— many calling for "Tarleton's Quarter"— that they lost sight of the difference between warfare and murder. It was only after his Herculean efforts that Campbell regained full control over his troops. Now, he had to move on to the tasks at hand. Campbell heard stories of Major Patrick Ferguson boasting that not even God could remove him from this mountain. Ferguson was dead now, shot down in a hail of bullets. Campbell was not God; yet, surely the Almighty helped him achieve this monumental victory.

It was late in the afternoon and dusk would soon settle over the mountain. There was so much left to do: treat the wounded, bury the dead, gather up weapons and supplies, and the prisoners… what was he to do with the hundreds of prisoners his men captured? He knew he did not have much time before word of Ferguson's defeat reached Lord Cornwallis back in Charlotte. When it did, Campbell expected the British commander to come after he and his army. Still, that would have to wait for now. The

current situation required his immediate attention. It was going to be a long night for every soul on that mountain if they were to leave it tomorrow morning.

CHAPTER 1: INTRODUCTION

The Battle of King's Mountain was a crucial and timely victory for the Whigs in their bid for independence. The fighting in the South was steadily going against them. The subjugation of Georgia, the fall of Charleston, and the crushing defeat at the Battle of Camden, gave the British military increasing momentum as it drove farther into the back country of the Carolinas. It seemed unstoppable, an invincible juggernaut that crushed everything in its path. The fervor of rebellion, perhaps even the desire for independence, was quickly fading when Ferguson and his army of Provincial and militia forces met defeat atop the rocky slopes of King's Mountain. The victory was so complete that it stopped the British advance in its tracks and severely damaged the Tory movement in both Carolinas.

Aside from the strategic ramifications, the Battle of King's Mountain was notable for being the first major Whig victory in the South that resulted in the capture of a large number of prisoners. Smaller victories, such as those at Moore's Creek Bridge, Musgrove's Mill, and Fort Anderson, all produced prisoners— as did countless raids, skirmishes, and ambushes— but nothing of this magnitude. Until King's Mountain, the only victories resulting in the capture of hundreds of prisoners were in the North at the battles of Trenton and Saratoga. The only other southern victories to eventually match or surpass King's Mountain were Cowpens and Yorktown.

The capture of so many prisoners in the South raises questions about what was done with them. Did they receive the same treatment as their compatriots in the North? Were they exchanged and/or paroled? Where were they kept and how were they cared for? If there were differences, what were they and how can they be explained? This paper

sets out to answer these and other questions about British prisoners of war in the Revolutionary South. The first portion analyzes the basis of American POW policy, how it developed, and the difficulties implementing it. The second portion consists of a case study of the prisoners taken at King's Mountain, the treatment they received, and how that treatment reflected the dysfunctional attempts to carry out national policies. The evidence suggests that the identity of the British prisoner in the South not only determined his political value and the treatment he received, it also hindered Congressional efforts to implement an effective POW policy that governed these very aspects.

An important, yet, often overlooked result of warfare is the accumulation of prisoners of war. Historians have paid little attention to this subject for various reasons. The principal cause is its controversial nature. Investigating how a nation treats its enemies requires examining a past that some may prefer to remain hidden because the results of historical inquiry might challenge that nation's self-identity or international reputation. Nations who exalt themselves, or are exalted, for their sense of righteousness, may find it difficult to defend themselves when confronted with a questionable past. A second cause is that captivity changes the soldier's usefulness. Prior to capture, the soldier is a practical statistic for historians. He is included with other soldiers to determine the size of his regiment, brigade, or army in a given action or theater of operation. Even as a casualty, the soldier's usefulness is extended to include helping historians determine the results of a conflict. However, the soldier's usefulness appears to end when he is captured. As a prisoner of war, he can neither be used to define the

statistics above, nor can he further contribute to the war effort. He continues to exist, however, without a nation or purpose, his status changes from soldier to pariah.

Historical research into the United States and prisoners of war gained a foothold in the late 1960s and exploded during the 1970s and 1980s. American involvement in Vietnam served as the impetus for this movement because the conflict raised public awareness of American prisoners of war. Images of captured soldiers and airmen (many from the infamous Hanoi Hilton) appeared in newspapers and on television sets across the nation. Four narrative models developed during these decades. The first two view Americans in the role of the captor. The second two reverse this and view Americans as the captives. Each of them reflects the tensions of the Cold War as Americans questioned the nation's self-image and self-identity.

The first model portrays Americans as captors in a positive light. This view contends that the United States has consistently treated its prisoners of war in a humane and ethical manner. Proponents of this position admit that America's record is not spotless; however, they argue that the overall historical pattern demonstrates a degree of benevolence unmatched by other nations. Americans are compassionate care-givers who leave their prisoners in better condition after their capture.[1] One of the more popular topics that reflects this position is the treatment of German prisoners detained in the United States during the Second World War. Works, such as Arnold Krammer's, *Nazi Prisoners of War in America*, and Allen V. Koop's, *Stark Decency* serve as examples of

[1] Robert Doyle, *The Enemy in Our Hands: America's Treatment of Prisoners of War from the Revolution to the War on Terror* (Lexington: University of Kentucky Press, 2010), 7.

this narrative.[2] Each author argues that the overall treatment German prisoners received while in the United States was notable for its humaneness and decency.

The second narrative model casts doubt on America as the Great Benefactor. This view portrays American captors as perpetrators, arguing that prisoners of war have historically suffered under the firm hand of the United States. Proponents of this position are critical of failed American policy and the negative effects caused by these failures. The treatment of Japanese-Americans at the beginning of World War II received much attention by historians for its controversy. For example, John Christgau's, *"Enemies": World War II Alien Internment*, examines the role of the Federal government and military in the creation and implementation of internment camps for Americans of Japanese, Italian, or German descent at the outbreak of war.[3] Another example of American perpetration is the treatment shown toward Korean War veterans held prisoner during the conflict. Raymond Lech's, *Broken Soldiers*, explores the brutal treatment endured by these former soldiers at the hands of the North Koreans, only to suffer further persecution by their own government when they returned home.[4]

In the remaining narrative models, the American role switches from captor to captive. The third model portrays American captives as heroic figures.[5] These narratives depict American prisoners of war enduring and overcoming tremendous hardships. Donald Knox's story of the survivors of the brutal Bataan Death March and Glen Robins' account of William Robinson, the longest-held American prisoner of war in Vietnam, are

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[2] Allen V. Koop, *Stark Decency: German Prisoners of War in New England Village* (Hanover: University Press of New England, 1988) and Arnold Krammer, *Nazi Prisoners of War in America* (New York: Stein and Day, 1979).
[3] John Christgau, *"Enemies": World War II Alien Internment* (Ames: Iowa State University Press, 1985).
[4] Raymond Lech, *Broken Soldiers* (Urbana: University of Illinois Press, 2000).
[5] Doyle, *Enemy in Our Hands*, 2.

examples of a heroic narrative that pays tribute to the strength of the American soldier and his will to survive his enemies.[6] The fourth narrative model examines American prisoners of war as victims.[7] Unlike the second model, these narratives detail a darker side of American captivity at the hands of the enemy. Conley Clarke's, *Journey Through Shadow*, examines the mistreatment American prisoners received at the hands of the communist Chinese and North Koreans during the Korean War.[8] E. Bartlett Kerr's, *Surrender and Survival*, explores the treatment American prisoners of war received from the Japanese during the Second World War.[9]

The common thread between all four narrative models is the theme of American superiority. As the captors, Americans are unequal in their compassion and gracious treatment of enemy prisoners. Conversely, their sense of superiority is displayed by acts of repression against specific groups of people. As captives, the Americans demonstrate their superiority by heroically overcoming enemy oppression. Contrariwise, American prisoners of war who fell victim to abject torture and abuse, create a clear distinction between themselves and the brutish nature of their enemies. These narratives provided a response to those who questioned the nation's integrity during and following the Vietnam War. Nevertheless, historians had yet to determine how well these narratives applied to America's first conflict.

[6] Donald Knox, *Death March: The Survivors of Bataan* (New York: Harcourt Brace Jovanovich, 1981) and Glen Robins, *The Longest Rescue: The Life and Legacy of Vietnam POW William A. Robinson* (Lexington: University of Kentucky Press, 2013).
[7] Doyle, *Enemy in Our Hands*, 4.
[8] Conley Clarke, *Journey Through Shadow: 839 Days in Hell: A POW's Survival in North Korea* (Gaffney: C. Clarke Publishing, 1988).
[9] E. Bartlett Kerr, *Surrender and Survival: The Experience of American POW's in the Pacific, 1941-1945* (New York: W. Morrow Publishers, 1985).

The topic of prisoners of war in the American Revolution has received little attention from historians when compared to more recent conflicts. This is ironic, as national prisoner of war policies began with the Revolution. Likewise, the Revolution provides historians the unique opportunity to study the role of Americans not only as captors and captives of a foreign enemy, but of fellow Americans as well. A handful of historians are taking the necessary steps forward to fill this gap in the historiography. In his monograph, *America's Captives*, historian Paul J. Springer offers his analysis of the United States' POW policies and how they developed. He is also one of the first historians to compare the stated goals of American policy with the actual treatment that prisoners received.[10] He offers a quick review of the European political traditions for prisoners, explaining how the practices of parole and exchange developed over centuries of warfare on the European continent. Many of the future Patriot leaders absorbed these traditions while serving alongside the British during the French-Indian War which, eventually set the basis for American policy.[11] After examining the various stages of policy development over the course of America's military history, Springer notes that American policy-makers repeatedly returned to three fundamental goals: reciprocity for the treatment for American prisoners, a general attempt to adhere to acceptable customs of war, and finding the quickest, simplest, and most cost-efficient means of handling prisoners. Yet, he also determines that the United States has struggled to achieve these goals. In the end, Springer concludes that American treatment of its prisoners of war was

[10] Paul J. Springer, *America's Captives: Treatment of POWs from the Revolutionary War to the War on Terror* (Lawrence: University Press of Kansas, 2010), 8.
[11] Ibid., 10.

consistently good; however, its overall application of that treatment was inconsistent because of the military's unwillingness to plan in advance.[12]

Robert Doyle also examines the overall treatment of America's prisoners of war in his survey, *The Enemy in Our Hands*. He too maintains that American treatment of 'traditional' prisoners of war — uniformed soldiers belonging to an enemy state — was excellent, often surpassing the requirements set forth by the Geneva Convention; however, its treatment of 'non- traditional' prisoners, such as civilians and insurgents, was not as exemplary. This created a dichotomy within the prisoner population resulting in different treatment for each group. According to Doyle, the relationship between Loyalists and Patriots reflected this difference, leading him to observe that "Americans were much more violent against their own than they are against foreign soldiers in captivity."[13] Consequently, Doyle concludes that being a prisoner of war in American hands could be a horrible or reasonable experience depending on the cultural and legal circumstances surrounding each particular conflict.[14]

Springer's and Doyle's surveys establish a solid basis for further historical study on America's treatment of prisoners of war during the Revolution. They provide a wider context of how the nation's policies developed, how they failed, and how they evolved. Of particular interest are their observations about the relationship between the identity and treatment of the prisoner. Both authors make distinctions between Americans and foreign-born prisoners (British and Hessians), between Loyalists and Patriots, and between officers and enlisted men. The identity of the prisoner influenced the treatment

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[12] Ibid. 2-4, 12.
[13] Doyle, *Enemy in Our Hands*, 3.
[14] Ibid., 10.

he received, whether good or bad. Thus, both Doyle and Springer succeed in synthesizing the two narrative models of America as the captor. However, because these works are surveys, they do not fully contribute to academic debate because they are limited in the amount of depth each author can provide about any one conflict. While they remain beneficial as a starting point for the study of prisoners of war in the American Revolution, they are, by their very nature, unable to progress any further than that. Thus, it becomes necessary for historians to devote an entire study on the subject.

Charles Metzger's, *The Prisoner in the American Revolution*, is one such study.[15] He pushes forth the argument that Americans displayed more compassion for their British prisoners than what the British showed toward captive Americans. British obstinacy to not recognize American sovereignty resulted in them viewing their former subjects as nothing more than rebels. When coupled with the lack of supervision of subordinate officers, the experience of captivity for American prisoners resulted in treatment that "ranged from the humane to the savage." Conversely, Metzger contends that British prisoners primarily suffered more from American inexperience on handling prisoners of war than they did from abuse.[16]

While Metzger focuses on the prisoner experience of soldiers from both sides, Gerald O. Haffner focuses his attention entirely on the American treatment of British soldiers. He concurs with Metzger's assessment about the quality of treatment the British prisoners received, stating that they were often treated with compassion.[17] Haffner's thesis is developed through a series of case studies, which allow him to examine certain

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[15] Charles H. Metzger, *The Prisoner in the American Revolution* (Chicago: Loyola University Press, 1962).
[16] Ibid., xiii-ix.
[17] Gerald O. Haffner, "The Treatment of Prisoners of War by the Americans During the War of Independence" (PhD. Diss. Indiana University, 1951), 513.

aspects, or themes, that defined the experience of British captives, such as exchanges, retaliation, Loyalism, and differences in the treatment between officers and enlisted men. From these cases, Haffner concludes that "there is ample evidence that humanity was shown toward the captured 'redcoats' and the German mercenaries."[18]

Metzger and Haffner's works are helpful for the detailed information they provide when compared to survey works; yet, they also have their shortcomings. Both authors demonstrate an anti-British slant to their work. This is expected of Haffner, given his topic. However, Metzger's premise is based on a neutral position— at least in title. Moreover, his analysis does not specify if Congressional policy or by military tradition drove American lenience. For Metzger, humanitarianism served as the Americans' basis for taking prisoners. Haffner's contention that Americans treated their British captives with compassion is questionable when placed against events in the South. His brief handling of the Battle of King's Mountain and lack of any reference to the Battle of Cowpens ignores two of the most significant southern Whig victories that resulted in the capture of hundreds of British prisoners.

Political historians used the trend of narrower, historical inquiry to explore certain aspects about prisoners of war in the American Revolution more closely. The resulting works were more in-depth treatments on specific, historical topics. For example, a key policy feature during the Revolution centered on the use of prisoner exchanges to replenish the ranks of both armies. However, an official exchange was not agreed on until the very end of the war.[19] This spurred historians to examine the development of

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[18] Ibid., 513-14.
[19] Larry G. Bowman, "The Pennsylvania Prisoner Exchange Conferences, 1778," *Pennsylvania History: A Journal of Mid-Atlantic Studies* 45, No. 3 (1978): 269.

exchange policies more closely to understand the reasons for this failure. One of those historians, Martha Dixon, examines Congress' efforts to develop a prisoner policy in, "Divided Authority." Her study suggests that the Congress was too weak to properly implement and enforce an official policy. Her research also reveals that the strained relationship between the States and the Congress compounded matters and affected the implementation of these policies.[20]

Larry Bowman offers his analysis of a series of meetings between George Washington and his British counterpart, General William Howe, in his article, "The Pennsylvania Prisoner Exchange Conferences." These meetings sought to create a cartel to govern an official prisoner exchange between the warring nations. He argues that established rules for managing prisoners of war are not totally applicable to captives taken in an act of rebellion. Consequently, the issue of managing prisoners of war in the Revolution began with complications.[21] The Continental Congress' demand for British recognition of American independence and compensation for taking care of British prisoners, plagued Washington, undermining his ability to reach an agreement with Howe (whom he knew would never accept such demands). Likewise, Howe struggled to arrange an exchange of prisoners without officially recognizing both American independence or militia troops as prisoners of war. Because both men were in desperate need of soldiers but constrained by their respective governments, they conducted a number of unofficial, partial exchanges instead. All of this leads Bowman to conclude that although these conferences ultimately failed, they helped the generals understand the complexities

[20] Martha W. Dixon, "Divided Authority: The American Management of Prisoners in the Revolutionary War, 1775-1783" (PhD Diss., University of Utah, 1977), iv-vi.
[21] Bowman, "Pennsylvania Prisoner Exchange," 257.

behind prisoner of war management. Additionally, they succeeded in establishing an open line of communication between the adversaries for continued talks.

Betsy Knight was not as sympathetic in her assessment of prisoner exchanges. She concedes British refusal to recognize the independence of the American colonies was certainly a major factor in the failure of efforts to establish an official prisoner of exchange. However, she suggests "that Congress was at least equally at fault" of sabotaging these efforts, implying that it was mostly to blame.[22] The American Articles of War, passed by Congress on June 30, 1775, did not contain any provisions for prisoners; thus, the military administered matters pertaining to prisoners. Yet, as the war intensified, Congressional interference increased in frequency as it sought to assert its overall authority. Knight contends that this interference resulted in deadlock in the North where the majority of prisoners were held. In the South, where Congressional power was at its weakest, exchanges were successfully made between British and American leadership, proving that agreement was possible to achieve.[23]

Each of these authors provide important insight into the political mechanisms behind POW management. It was complex, wrought with political ambitions, and disjointed in its application. Dixon's account of an American political system divided over the question of States' rights and Federal authority is beneficial in describing the relationship between the northern and southern states. However, she does not account for divisions that occurred within the individual states between leadership and militia forces. Likewise, Bowman's analysis of the conferences in Pennsylvania provides an excellent

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[22] Betsy Knight, "Prisoner Exchange and Parole in the American Revolution," *The William and Mary Quarterly* 48, No. 2 (1991): 201.
[23] Ibid., 202.

understanding of the political complexities behind the prisoner of war issue. Yet, the primary antagonist in his account, the Continental Congress, had limited influence in the southern states according to Betsy Knight. Thus, the source of complexities must come from elsewhere. As for Knight, her assessment linking successful exchanges with weak Congressional influence does not account for decisions made by individuals, such as Colonel Martin Armstrong, that made exchanges impossible to conduct.

What remains to be examined more closely is the treatment of British soldiers as prisoners of war during the Southern Campaign. The conclusions of the historians above must be weighed against the events of the war in this region to determine their overall accuracy and applicability. American leaders based their policy on the ideals of Enlightenment thought and European military tradition. Yet, years of fighting in the frontier produced soldiers who neither understood, nor believed as national leaders did. The narrative of the King's Mountain prisoners bears this out. Their story demonstrates the numerous complexities and conflicts that occurred at various levels of leadership over their fate as prisoners of war. Their identity as either Provincial soldiers (referred to as "British") or militiamen had significant implications. The former possessed more political capital for exchanges; thus, they we were less likely to experience the worst treatment. The latter, however, expected little mercy from their captors, nor any help from congressional leaders in the North.

CHAPTER 2: PAVED WITH GOOD INTENTIONS: THE IDEALISM OF AMERICAN POW POLICY

Casualties represent the human element destroyed by war. As such, historians use their numbers to describe the scale or aftermath of a given conflict in terms of dead and wounded. Yet, there exists a third group of casualties often not included in these traditional statistics: prisoners of war (POWs). Historically, American military planners have failed to properly prepare for the adequate care and management of POWs. Paul Springer suggested that the United States military consistently struggled with the issue of POWs because it never went to war fully prepared to handle the number of prisoners it eventually captured, forcing leaders to improvise solutions each time the nation entered a conflict.[24] Evidence of this trend stretches back as far as the Revolutionary War. Soon after hostilities broke out, American leadership faced the dilemma of what to do with their British captives. As students of Enlightenment thought, or veterans of the British Army, many of the American leaders — political and military — inculcated themselves with the European traditions of warfare and sought to adhere to these rules and customs.[25] However, separation from Europe introduced changes in American thought about the practicality of these traditions. As colonists on the frontier, Americans learned to wage untraditional warfare, which did not follow the accepted laws of war, particularly in the South. This dichotomy created difficulties between policy-makers, who grappled with the realities of POW management, and southern leadership who did not share, or understand, the idealism behind the policies.

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[24] Springer, *America's* Captives, 2.

[25] Stephen Conway, "The British Army, 'Military Europe' and the American War of Independence," *The William and Mary Quarterly* 67, no. 1 (January 2010), 69-100.

2.1. The Enlightenment and the Laws of War

American leadership used traditional European models to develop policies for managing their prisoner of war population because these were the models with which they were most familiar.[26] These models were products of Enlightenment thought. The philosophies of Montesquieu, Grotious, and Vattel particularly influenced European politics and warfare in the sixteenth and seventeenth-centuries. Their writings on the legal rights and obligations of nations provided a moral framework for the proper conduct of war. The result was a developed system of international laws that defined expected behavior of belligerents and enforced by their sense of honor. This system established a familiar framework upon which American leaders built their policies. They also recognized additional benefits of using these models. First, it lent credence as an international policy accepted by all European nations. Second, it was a proven system that worked. Therefore, it is important to understand the basic tenets of the European models to compare what American leaders intended with their policies on the one hand, against the success of their implementation on the other.

Enlightenment thinkers believed that a series of laws governed the totality of nature and society. Charles Louis de Secondat, Baron de Montesquieu argued for the existence of a celestial law (i.e. God), a natural law, a political law, and a civil or social law. If such laws existed between nature, the individual, and society, he posited, there must also be a law that governed the interaction of nations as well.[27] "Laws, in their most general signification," he wrote in *The Spirit of Laws*, "are the necessary relations arising

[26] Dixon, "Divided Authority," 13.
[27] Charles Louis de Secondat, Baron de Montesquieu, *The Spirit of Laws*, vol 1, *The Complete Works of M. de Montesuieu* (London: T. Evans, 1777), 1:6-7.

from the nature of things."[28] Thus, if a relationship existed, there also existed a law to govern it. International law existed, according to Montesquieu, because of the relationship between one nation to another, binding them and leaving no justification for a rogue state. Swiss philosopher, Emmerich de Vattel concurred, describing the Law of Nations as, "the rights subsisting between nations or states, and the obligations correspondent to those rights." These rights and obligations not only described how a nation should be treated, but how it was to treat other nations as well, denoting a relationship within the international community. Furthermore, Vattel argued that the common practices among the nations, such as commerce, invention, and worship, demonstrated that such a bond existed.[29] Therefore, international law governed all nations on the basis of their relationships and demonstrated by their actions.

War neither signified a break in that relationship, nor did it nullify the law. On the contrary, Enlightenment philosophers argued that it made the law that much more imperative for warring nations to follow. Even though war signified a change in the relationship between nations, it did not suggest an end. The relationship continued to exist albeit as one of enmity rather than of friendship.[30] Vattel wrote, "Men, although reduced to the necessity of taking up arms for their own defense and in support of their rights, do not… cease to be men."[31] Therefore, even in times of war, the law continued to govern the nations because they did not cease to be nations.

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[28] Ibid., 1.
[29] Emmerich de Vattel, *The Law of Nations or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns*, 6th ed. (Philadelphia: T. and J.W. Johnson Booksellers, 1844), 5-6.
[30] Montesquieu, *The Spirit of Laws*, 174.
[31] Vattel, *Law of Nations*, 371.

The concept of limited warfare was the crux of Enlightenment thought regarding international conflict. Vattel believed that it was incumbent upon the leaders of warring nations to seek peace with one another for the sake of their respective nation and its people.[32] Regulating the manner in which nations conducted wars provided leaders the means to minimize the length of a conflict and restore peace. Montesquieu echoed this when he declared that "the object of war is victory; that of victory, is conquest; and that of conquest, preservation."[33] Nations at war, therefore, were to avoid seeking the total and wanton destruction of their enemy, but to show restraint toward him, his armies, his citizens, and his lands. Once again, Montesquieu declared, "It is a plain case that, when the conquest is completed, the conqueror has no longer a right to kill, because he has no longer the plea of natural defense and self-preservation."[34] Therefore, the people and land of a defeated nation were to remain unharmed even though the nation no longer existed as an official state. Any aggressive action taken toward them was an unjust act of war.[35]

The preservation aspect of international law served as the basis for POW policy. Even in surrender, international law protected enemy captives. Vattel argued that nations possessed the right to take prisoners during war, but that prisoners, themselves, possessed basic rights of their own. Their first, fundamental right was the right to life. Echoing Montesquieu, Vattel wrote, "As soon as your enemy has laid down his arms and surrendered his person, you no longer [have] any right over his life." However, he added the following caveat: "unless he should give you such a right by some new attempt [to

[32] Ibid., 430.
[33] Montesquieu, *The Spirit of Laws*, 7.
[34] Ibid., 177.
[35] Vattel, *Law of Nations*, 389.

attack,] or had before committed against you a crime deserving death."[36] Vattel's interpretation clearly prohibited the execution of prisoners of war following their surrender. To commit such an act was a breach of the laws of war and a crime against humanity itself.[37] Yet, he still allowed for their execution in circumstances where the prisoners presented a threat or committed a capital crime. This additional portion of the law later created issues for the Americans and British fighting in the South.

International law permitted nations to secure their prisoners to prevent escapes, including the use of fetters and confinement. However, according to Vattel, prisoners were "not to be treated harshly, unless personally guilty of some crime against him who has the power."[38] Again, the rights of prisoners extended to their right to humane treatment by their captors. Abuse, neglect, and punishment of prisoners were forbidden by law with the exception of criminal acts. Yet, even in those cases, the individual prisoner received punishment, not the entire community of prisoners. Furthermore, the capture, security, and confinement of prisoners did not include enslavement, which went against the natural law.[39] To do so, according to Vattel, maintained the state of war, which ended upon the enemy's surrender.[40]

Caring for prisoners of war did not solely rest on the shoulders of the victor, it was a shared responsibility between the conqueror and the conquered. The host nation was to care for the immediate needs of the prisoners, such as food, water, and shelter. However, the prisoners' home nation was responsible for the costs incurred during their

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[36] Ibid., 354.
[37] Springer, *America's Captives*, 10.
[38] Vattel, *Law of Nations*, 353.
[39] Hugo Grotius, *The Rights of War and Peace Including the Law of Nature and of Nations*, trans. A.C. Campbell (Washington, D.C.: M. Walter Dunne, 1901), 345.
[40] Vattel, *Law of Nations*, 356.

captivity. Vattel suggested that the prisoners remained citizens of their respective nation during captivity and, as such, were the responsibility of that nation. He stated that "the state is bound to procure, at her own expense, the release of her citizens and soldiers who are prisoners of war, as soon as she has the means of accomplishing it, and can do it without danger."[41] If the host nation paid for any immediate care, it was the responsibility of the prisoners' home nations to provide compensation for those costs. However, the host nation was not to harangue the enemy state for payment. Instead, if its opponent was unable to provide for its captured citizens, it was the obligatory for the host nation to parole the prisoners and allow them to pay for their own liberty.[42]

Paroles and exchanges were effective methods of managing the size of the prisoner of war population. Parole was simply an agreement between the prisoner and captor in which the latter granted the former his release, so long as he swore an oath to no longer take up arms again until properly exchanged. The system benefited both sides of a conflict. It lifted the burden of taking care of the prisoners, thereby, lowering incurred costs. It also allowed for captured officers to be returned to their posts much quicker.[43] Exchanges typically occurred when the prisoner population involved large numbers of men. International law compelled a nation to seek and secure the release of its soldiers since their capture occurred while in service to the nation and its causes.[44]

During the eighteenth-century, opposing forces used the popular practice of cartel agreements to achieve this end. Cartels were written agreements between opposing

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[41] Ibid.
[42] Springer, *America's Captives*, 10.
[43] Ibid., 10.
[44] Vattel, *Law of Nations*, 359.

armies and consisted of a mutual set of rules by which to conduct prisoner exchanges.[45] Leaders throughout the European armies considered the practice as the most humane and honorable way a nation could treat its captives.[46] Armies conducted most exchanges on a rank-for-rank basis, while others involved the payment of ransoms. In such instances, the exchange rates were not based on the personal wealth of the prisoner; however, this did not imply social equity. It was "natural to proportion the price of the ransom to the prisoner's rank in the hostile army, because the liberty of an officer of distinction [was] of greater consequence than that of a private soldier or an inferior officer."[47] Nevertheless, nations frequently arranged exchanges throughout Europe as a means of recovering lost manpower.

If international law was the engine for the European models, honor was the fuel that ran it. Montesquieu wrote that "honor sets all the parts of the body politic in motion, and, by its very action, connects them; thus, each individual advances the public good, while he only thinks of promoting his own interest."[48] Honor, therefore, was the essence that bonded all facets of society together into a single, cohesive unit, regardless of individual action. It was the hallmark of civilized society and gave life to a nation, its laws, and its virtues.[49] It was a reflection not only of the individual but of the nation and was akin to the reverential fear of God. Thus, honor inspired people to live their lives in a manner that glorified themselves and the nation as well. To do otherwise brought shame to both.[50]

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[45] Knight, "Prisoner Exchange," 201-22.
[46] Vattel, *Law of Nations*, 359.
[47] Ibid., 418.
[48] Montesquieu, *Spirit of Laws*, 32.
[49] Ibid., 33.
[50] Vattel, *Law of Nations*, 92.

This enlightened sense of honor served as a new code of chivalry for the aristocracy and military. Stephen Conway noted that "aristocracy was itself originally a military institution, and the chivalric ideals of the medieval knights —bravery, generosity, and honor— continued to exert a hold on the minds of eighteenth-century army officers."[51] The popular practice of exchanging officers, technology, and ideas between the European nations ensured the incorporation of this new chivalric code into the militaries across the continent.[52] Additionally, this code unified the European armies in a professional fraternity governed not only "by the laws of war but also [by] military etiquette, a generally understood set of norms and values common to the different European armies."[53]

Within this environment, prisoners of war were to be treated in a humane manner. Honor demanded that armies act mercifully and display compassion toward their captives as fellow human beings. It required them to remain faithful to their promises and to act without guile.[54] Simultaneously, honor demanded prisoners abide by their sworn oaths taken at the time of their parole and by the rules set forth by their captors. In demanding the obedience of both the captor and captive to the laws of war, honor ensured the preservation of humanity. Scottish historian, Adam Ferguson, spoke of this when he wrote "we have improved on the laws of war, and on the lenitives which have been devised to soften its rigors; we have mingled politeness with the use of the sword; we have learned to make war under the stipulations of treaties and cartels, and trust to the faith of an enemy whose ruin we meditate. Glory is more successfully obtained by saving

[51] Conway, "The British Army," 89.
[52] Ibid., 71.
[53] Ibid., 94.
[54] Vattel, *Law of Nations*, 371.

and protecting, than by destroying the vanquished."[55] Thus, Utopia continued even in a dystopian setting.

2.2. The Development of American POW Policy

As stated earlier, American leaders designed an official prisoner of war policy based on the management model set forth by European nations — particularly Britain and France. Yet, its status as a fledgling nation made this a difficult and slow process. While Congress sought to create an ethical and humane code, it also had to be efficient in terms of monetary and political cost.[56] Finding a balance proved difficult, with most developments occurring after-the-fact rather than proactively.

The earliest reference to prisoners of war by the Continental Congress was in a letter to General George Washington written in June 1775. In it, Congress set forth its expectations of him and granted him the authority necessary to meet them. The fifth item in the letter stated that Washington was to "take every method in [his] power consistent with prudence, to destroy or make prisoners of all persons who now are or who hereafter shall appear in Arms against the good people of the united colonies."[57] The letter clearly demonstrated that Congress anticipated prisoners to be taken; however, it did not provide any further clarification as to what Washington was to do with them. Instead, it included the handling of prisoners within a blanket clause, which stated that since Congress could not anticipate every circumstance Washington would face, "many things must be left to [his] prudent and discreet management."[58] This letter placed the responsibility of

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[55] Adam Ferguson, *An Essay on the History of Civil Society*, 2nd ed. (London: A. Millar, 1768), 306-07. Ferguson is being sarcastic here. A lenitive is an older medical term for laxative or stool softener.
[56] Springer, *America's Captives*, 12.
[57] Continental Congress (JCC), *Journals of the Continental Congress, 1774-1789*, vol. 2, ed. Worthington Chauncey Ford (Washington DC: GPO, 2005), 101.
[58] Ibid.

developing a plan to manage prisoners of war entirely on Washington and his officers, much like what occurred between European armies.

In May 1776, the Continental Congress took a major step toward developing an official prisoner of war policy. On the 16th of that month, it resolved to form three congressional commissions — one for each group of colonies: North, Middle, and South — for the express purpose of caring for the growing prisoner of war population "as nearly conformable as the Circumstances of this Country will admit of, to the Custom of other civilized Nations."[59] These commissions were to supervise the operations that housed, clothed, and fed the prisoners of war within their district. Congress believed the commissions offered a cost-saving measure for all of the colonies. Additionally, the commissions promised to improve the process of caring for the prisoners by decreasing the number of issues caused by an inefficient system.[60] Five months later, on October 7, 1776, Congress went further and officially ordered the establishment of commissaries in each of the states, rather than districts, and placed them under the supervision of the Board of War.[61]

Little changed over the next few years by way of organization until January of 1780, when Congress made major changes once more to its prisoner of war policy. On the 13th, Congress expressed its unhappiness over "the present management of the prisoners of war, and great dissatisfaction having arisen from the mode of exchanging them." Moreover, Congress conveyed its displeasure over displays of partiality demonstrated by commissaries acting on their own accord and for the lack of proper

[59] JCC, vol. 4, 361.
[60] Ibid.
[61] JCC, vol. 5, 850.

security measures. As a result of these problems, Congress made the following proclamation:

> Resolved, that all prisoners of war, whether Captivated by the Army or Navy of the United States, or by the Subjects, troops or ship of any particular State, shall be delivered into the care and custody of the Commissary General of Prisoners, his deputies or assistants, and deemed and treated in all respects as prisoners of war to the United States. That it be earnestly recommended to the Governments of the respective States that they make no exchanges of prisoners to the intent that all exchanges be made through the Commissary General of Prisoners, by direction of Congress, or the Commander in Chief, or the board of Admiralty…[62]

With this proclamation, Congress assumed full authority over prisoners of war. The timing and circumstances of this act are significant for two reasons. First, the timing of the resolution coincided with the failure of Washington and Congress to reach a cartel agreement with the British and increased British activity in the South. By January 1780, the cities of Savannah, Georgia and St. Augustine, Florida were in British possession. A new offensive toward the Carolinas was only a few, short months away.

Second, the resolution revealed a series of issues that plagued Congressional attempts to manage prisoners of war. The key issue was the perceived interference from the states who undermined the authority of Congress by conducting their own exchanges. This dilemma not only reflected the debate over States' rights versus Federal authority, but also raised questions over who was responsible for exchanges according to the Laws of War. The former was a question of sovereignty. Did the states possess the right to conduct their own exchanges, or was that right superseded by national interests, even if the congressional infrastructure was too weak to be effective? The latter however, was a

[62] JCC, vol. 16, 48.

question of identity. Were captured soldiers considered prisoners of war and subject to international laws, or, were they prisoners of the State, and the laws that governed therein?[63] The difference revealed disagreement in thought as well as political motives.

2.3. Difficulties of Implementation

Although Congress established a commissary to handle its prisoner of war population, this did not ensure that such a political body had the necessary strength to properly administer its responsibilities. It was highly susceptible to absenteeism by its members and, as simplistic as this seemed, it proved critically important. Their absences resulted in a slower, inefficient response to the growing problems of prisoner management.[64]

The primary weakness of Congress, however, was its inability to centralize its power. Although it made attempts to increase control, as demonstrated by the changes made to the prisoner of war policy, the states remained hesitant to give Congress total authority.[65] "Each of the thirteen states judged itself a sovereign polity. Its officials were very conscious of their importance and the prestige of the state, and the very presence of state prisoners whetted state pride."[66] This rivalry between the states and Congress, and the sensitivities that accompanied each, only served to complicate the handling of prisoners of war.[67] In a letter to the North Carolina General Assembly in 1777, Governor Thomas Burke expressed his misgivings about congressional authority. He believed in forming a Congress "for the purpose of opposing the usurpations of Britain, conducting

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[63] Doyle, *Enemy in our Hands*, 3.
[64] Dixon, "Divided Authority," 20-21.
[65] Ibid., 48.
[66] Metzger, *Prisoner in the Revolution*, 10.
[67] Ibid., 15.

the war against her, and forming foreign alliances as necessary thereto," but did not believe this gave Congress *carte blanche*.[68] "This idea of the Powers, use and authority of Congress, excludes all coercive Interpositions within the States respectively, except with respect to the Army and Navy because the States are competent to every exertion of power within themselves."[69] Burke's words reflected the popular view among southern leaders that the Continental Congress was a necessary evil to properly conduct the war with Britain, but also that its authority only extended to the Continental Army and Navy, not state militia troops.

The relationship between the states and their militia revealed how important civilian control of the military was to the American colonists. Article XVII of the North Carolina Declaration of Rights stated "That the People have a Right to bear Arms for the Defence of the State, and as Standing Armies in Time of Peace are dangerous to Liberty, they ought not to be kept up, and that the military should be kept under strict Subordination to, and governed by the Civil Power."[70] The Americans used the militia system as its primary means of defense from the earliest days of colonization. Consequently, when fighting broke out with England, the colonists went to war "under the mature leadership of legislative bodies that for all practical purposes were already in command of the local military establishments."[71]

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[68] Literally "blank paper." It implies total freedom to act.

[69] Thomas Burke, "Letter from Thomas Burke to the North Carolina General Assembly," December 1777, *The Colonial and State Records of North Carolina*, vol. 11 (online: Documenting the American South), 701, https://docsouth.unc.edu/csr/index.php/document/csr11-0625#p11-701

[70] North Carolina Provincial Congress, "North Carolina Declaration of Rights, December 17, 1776," *The Colonial and State Records of North Carolina*, vol. 10 (online: Documenting the American South), 1004, https://docsouth.unc.edu/csr/index.php/document/csr10-0443#p10-1004

[71] Don Higginbotham, *The War of American Independence: Military Attitudes, Policies, and Practice, 1763-1789* (New York: The MacMillan Company, 1971), 14.

This long-standing tradition of controlling their own military forces only added to the States' reluctance to share power with Congress.[72] In many circumstances, states passed laws giving their consent for Continental forces to use their militia but limited their use by placing constraints on area of service, length of service, and who would administer discipline.[73] Once more, Governor Burke echoed this sentiment when he wrote "that every State has a right to control the [garrison] of Soldiers within their Territories." He then continued, stating, "I believe it will be necessary for every established State to provide a mode whereby Civil authority can interpose."[74]The result was a chaotic system in which Congress issued orders, only to have governors and military officers largely ignore them and do what they wanted to do for the sake of expediency and self-interest.[75]

A third factor that contributed to Congress' failure to centralize its power was its physical location within the colonies. Congress and General Washington possessed more influence and control over prisoner policies in the northern and mid-Atlantic states because of their proximity to the front lines. However, after the British shifted their attention to the South, this zone of influence decreased significantly.[76] A key component of administering official prisoner policy was the Continental Army. This force acted as Washington's —and by default, Congress'— principle tool of implementation. Yet, when the British captured Charleston in 1780, it also captured the Continental Army garrisoned there, thereby depriving Washington and Congress of their ability to effectively

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[72] Ibid.

[73] North Carolina General Assembly (NCGA), "Acts of the North Carolina General Assembly, 1777," *The Colonial and State Records of North Carolina*, vol. 24 (online: Documenting the American South), 128, https://docsouth.unc.edu/csr/index.php/document/csr24-0002#p24-128

[74] Burke, "Letter to Assembly 1777," 702.

[75] Springer, *America's Captives*, 15.

[76] Ibid., 27.

implement policies. Consequently, the implementation of prisoner policy was further left to the discretion of the States and their militia commanders, some of whom held questionable views toward the enemy.[77]

Aside from implementation, tension between Congress and southern leadership presented problems regarding jurisdiction. In the North, where congressional control was stronger, authority over prisoners was rarely questioned by the states. Conversely, in the South, where congressional influence was weaker, jurisdiction proved a larger, cantankerous issue. Although Continental troops captured a number of prisoners, state militia forces captured the majority of them. This sparked debate as to whose authority the prisoners fell under. Did they belong to Congress, or to the State whose forces captured them? Furthermore, did congressional authority extend to enemy militia captured within their home state? The former fell in more with the debate of States' Rights versus Congressional dictates and dealt more with the capture of British regulars. However, the latter question was more complex and proved critical as fighting shifted from the North to the South.

Congress complicated the issue when it used the terms 'prisoners' and 'prisoners of war' intermittently in its legislation, blurring the status of these men. For instance, the congressional resolution from May 1776, declared that captured sailors were to "be deemed prisoners, to be taken care of by the supreme executive power in each colony to which they are brought." However, in the subsequent paragraph, the congressional leaders state "that such as are taken, be *treated* [italics added] as prisoners of war, but with humanity, and be allowed the same rations as the troops in the service of the United

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[77] Ibid.

Colonies."[78] The wording of this portion of the resolution is important. Congress expected captive sailors—and soldiers by implication—to be treated as prisoners of war in terms of their care, but this designation did not imply a change in their political status. The only other instance it used the phrase "prisoners of war" in the resolution was in regard to captured officers and their parole. Throughout the remainder of the resolution, Congress referred to these men only as prisoners.

Congress' ambiguity concerning the distinction between prisoners and prisoners of war was in response to England's refusal "to classify captured Americans as prisoners of war."[79] Yet, it also unintentionally gave states a legal loophole to prosecute Tory prisoners for various crimes under the laws of their respective State.[80] All of the southern states—and some northern ones— possessed laws enabling the State to confiscate the property of known, or alleged, Tories. In states where it was difficult to convict someone of treason, such as Virginia, lawmakers "defined a variety of acts as lesser crimes" giving legal precedent to prosecute Tories more effortlessly.[81] Other states, however, passed legislation that redefined what constituted treason, making it much easier to prosecute individuals—primarily Tories, or Tory-sympathizers—of such a crime. The North Carolina General Assembly did this on May 9, 1777. The following passage contains most of the language from the act. Although it is admittedly lengthy, it is important to see how comprehensive the authors of this legislation intended it to be:

> Be it enacted by the General Assembly of the State of North Carolina and it is hereby enacted by the authority of the same that all and every Person and Persons (Prisoners of War excepted) now inhabiting or residing within the Limits of the

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[78] JCC, vol. 4, 370.
[79] Bowman, "Pennsylvania Prisoner Exchange," 258.
[80] Dixon, "Divided Authority," 44-46.
[81] John E. Selby, *The Revolution in Virginia, 1775-1783* (Williamsburg: The Colonial Williamsburg Foundation, 1988), 220-21.

> State of North Carolina or who shall voluntarily come into the same hereafter to inhabit or reside do owe and shall pay allegiance to the State of North Carolina. And be it further enacted by the authority aforesaid that if any Person or Persons belonging to or residing within this State and under the Protection of its Laws shall take a Commission or Commissions from the King of Great Britain or any under his authority or other the enemies of this State or of the United States of America or shall levy War against this State of the Government thereof or knowingly or willingly shall aid or assist any enemies at open War against this State or the United States of America by joining their Armies or by enlisting or procuring or persuading others to enlist for that purpose or by furnishing such Enemies with arms, ammunition, provision or any other article for their aid or comfort, or shall form or be anywise concerned in forming any combination, plot or conspiracy, for betraying this State or the United States of America into the hands or power of any foreign enemy or shall give or send any Intelligence to the Enemies of this State for that purpose, every person so offending and being thereof legally convicted by the Evidence of two sufficient Witnesses or standing mute or peremptorily challenging more than Thirty-five Jurors in any Court of Oyer or Terminer or other Court that shall and may be established for the Trial of such offences shall be adjudged guilty of high Treason and shall suffer death without the benefit of Clergy and his or her estate shall be forfeited to the State.[82]

The legislation clearly indicated that it did not pertain to prisoners of war, which is what made the identity of the prisoners crucially important. So long as states considered militiamen as citizens and not professional soldiers, they fell under state authority and were consequently subject to state law. This raised the stakes for captured Tory militia troops. It also created a dichotomy between prisoners of war, whose treatment was based on the Law of Nations, and prisoners of the state, who were not treated under this same law.[83] Washington and Congress wanted all of them considered ‘prisoners of war,’ thereby placing them under congressional authority; however, the states felt that this

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[82] NCGA, "Act of the North Carolina General Assembly Concerning Treason Against the State, May 09, 1777," *The Colonial and State Records of North Carolina*, vol. 24 (online: Documenting the American South), 769-70, https://docsouth.unc.edu/csr/index.php/document/csr11-0700.
[83] Doyle, *Enemy in Our Hands*, 3.

undermined their own authority.[84] Until the situation resolved itself, Tory prisoners faced more uncertainty about their future than did their British cousins.

The identity of the prisoners heavily influenced the treatment they received. Generally, the professional soldiers of the British army, including the German and American provincials, received better treatment from their captors than militia prisoners. There are two reasons to account for this. First, American leaders still possessed vestiges of their former imperial identity; thus, they continued to believe in "their shared British heritage and their enduring cultural affiliation with their overseas brethren."[85] The names of some Provincial regiments reflected this as well. Although they retained their identities as Americans, they demonstrated their British loyalties with names such as the "King's American Dragoons," the "King's American Rangers," the "King's Loyal Americans," and the "Loyal American Regiment."[86] Nevertheless, there is little evidence to suggest that the British military believed in this shared heritage. "Despite sharing a common language, culture, religion, and political history with many Americans, British regular officers and soldiers often identified more closely with their counterparts in the French army. On some occasions, at least, consanguinity counted for less than a sense of professional identity, which British military men saw as essentially European."[87] Within this context, the British never fully accepted the Americans simply because they were no longer "European" enough. There is evidence to suggest that some in the British military questioned whether or not the Americans remained civilized men. Following the Battle of

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[84] Dixon, "Divided Authority," 171-73.
[85] Ken Miller, "'A Dangerous Set of People': British Captives and the Making of Revolutionary Identity in the Mid-Atlantic Interior," *Journal of the Early Republic* 32, no. 4 (Winter 2012): 573.
[86] "List of Regiments," The Online Institute for Advanced Loyalist Studies, accessed March 27, 2019, http://www.royalprovincial.com/military/rlist/rlist.htm.
[87] Conway, "The British Army," 71.

Great Bridge, Patriot Colonel, William Woodruff made efforts to treat the British soldiers, captured by his men, with the best of care to counter the rumors that his "Shirtmen"—his troops wore traditional hunting smocks for uniforms— scalped their prisoners just like the "savage" Indians.[88]

The second reason for treating British troops differently was that it provided excellent political capital before Britain and other nations. By taking the moral high ground and treating British prisoners of war in a humane manner, American leaders believed that they would draw a distinction between the British and themselves. Stories of the mistreatment of Americans aboard British prison ships drew increasing criticism. Continental leadership believed that taking a humanitarian approach toward managing British prisoners would legitimatize the Americans' struggle for independence and ease the treatment of their brethren.[89] However, as the war progressed, political motivations changed. Seeing no change in the treatment of American prisoners and no change in British attitude toward recognizing American independence, the Continental Congress issued a decree wherein Congress felt compelled "to carry into Execution the law of Retaliation" against prisoners of war in their care.[90] While efforts to ensure the humane care of prisoners were noble at first, opinions slowly changed when these efforts no longer produced the political capital that American leadership needed.

The group that received the poorest treatment were the Tory militia forces who the enemy not only looked down upon, but also the regulars within their own armies as well.[91] Lieutenant Anthony Allaire, of the Loyal American Volunteers, thinly masked his

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[88] Selby, *Revolution in Virginia*, 73-74.
[89] Miller, "Dangerous People," 572.
[90] JCC, vol. 8, 430.
[91] Higginbotham, *War of American Independence*, 10.

contempt for the militia in his diary entry for August 5, 1780. In it, he noted the surrender of Fort Anderson—also referred to as Fort Thicketty— near Cowpens, South Carolina. Among the captured troops was a sergeant from his regiment and eighty militiamen. The actual loss of the fort appeared ancillary as to the manner in which it fell. According to Allaire, the greater offense was that the force inside the fort surrendered in a "dastardly manner, without exchanging a single shot."[92]

In another instance, Allaire recorded his dissatisfaction when he learned of the "disagreeable news" that his regiment was being separated from the rest of the army to serve on the Carolina frontier alongside militia forces.[93] Uzal Johnson, a Loyalist surgeon and friend of Allaire's, corroborated this in his diary entry for the same date. Johnson noted that the troops were anticipating word from Major Patrick Ferguson that they would be relieved of their service in the back country. When it reached them on the 29th, only two units received orders to join Cornwallis' army at Camden. The remainder of the force, including Johnson and Allaire, was to remain in the western frontier. Johnson recorded their reaction as one of mortification when they realized they were going to continue serving in the backwoods alongside the militia.[94]

There are several reasons that explain why militia forces were so unpopular. The first, according to Don Higginbotham, was that "the [militiamen] symbolized the 'natural' way to fight by responding to a challenge instead of honor or reward." They were paid volunteers who preferred fighting closer to their communities, under their own

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[92] Anthony Allaire, *Diary of Lieutenant Anthony Allaire*, Eyewitness Accounts of the American Revolution (New York: New York Times and Arno Press, 1968), 23.
[93] Ibid., 505-06.
[94] Uzal Johnson, *Captured at King's Mountain: The Journal of Uzal Johnson, A Loyalist Surgeon*, ed. Wade S. Kolb III and Robert M. Weir (Columbia: University of South Carolina Press, 2011) 26-27.

leaders, and in their own way, prizing marksmanship and familiarity with the terrain over close order volley fire. This made them different kinds of soldiers when compared to the professional soldiers of Europe or even the United States.[95] They epitomized the civilian-soldier; however, they were also perceived as unreliable, undisciplined, and disobedient— the antithesis of the professional soldier.

A second reason for their unpopularity was the innate hatred between Tories and Patriots. The war polarized the American population, making the fighting much more personal, vicious, and vindictive. This was especially true in the South, where militia units not only comprised the bulk of the armies but also conducted most of the fighting. It was in the South that the conflict devolved into a bitter civil war in which the opposing sides no longer saw each other as soldiers but as something else altogether.[96] Charles Metzger offered an accurate summary of this relationship between militias. He described the Revolution not only as war between England and the United States, but also between the Tory and Whig. It was unavoidable, therefore "that Patriots should hate Tories even more fiercely than they hated British soldiers, for the latter were soldiers by profession and utter strangers." Conversely, Tories called America their home, making them an ever-present threat to independence and representative government.[97] Therefore, Whigs considered them the greater danger because they represented a threat both on the battlefield and within the community.

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[95] Higginbotham, *War of American Independence*, 11-13.
[96] Doyle, *Enemy in Our Hands*, 19.
[97] Metzger, *Prisoners in the Revolution*, 3.

2.4. Prisoner Management

Although Congress developed policies for the overall treatment of prisoners, it lacked a strong bureaucratic infrastructure to effectively manage the entire prisoner population. Consequently, it placed the responsibility of caring for the prisoners to local government officials and military authorities.[98] In the North, states like Pennsylvania and Virginia held prisoners of war in towns or designated prison camps deep within the colony, away from the coast where British power and control was at its greatest.[99] Southern leaders, particularly in the Carolinas, took similar measures with their prisoners of war, keeping them in detention centers at Halifax, Hillsborough, and Salisbury. However, these areas proved inadequate to handle the steady increase of captives as the war intensified in the South. Unlike Pennsylvania, or even Virginia, the Carolinas did not have the resources, such as wheat for bread, to sustain a large prisoner population over an extended period of time. Congressional leaders and governors ordered the prisoners north for imprisonment in Virginia and Maryland, but the trip was long and difficult. Furthermore, the volatile environment of the Carolina frontier, with its roving bands of militia and the steady advance of British forces, made it quite dangerous.

Resolving these issues proved difficult. Military leaders had to rely on the local populace to provide for the immediate needs of the prisoners, such as food, clothing, and shelter. More often than not, they carried this out through dictates and confiscation—although civilians received a promise for reimbursement. Security, however, was more problematic. Neither Congress nor the states possessed an established body of civil law enforcement agencies during the Revolution. Likewise, the Continental Army did not

[98] Dixon, "Divided Authority," iv.
[99] Metzger, *Prisoners in the Revolution*, 48-49.

have a branch of designated police units to handle such situations, relying instead, on individual officers to establish security details. Thus, security requirements placed additional stress on military leaders and forced them to find the additional manpower needed to secure the prisoner population.[100] They turned to the States to call upon their militias. One such example of this occurred in January of 1781, when the North Carolina Senate approved a measure granting authority to General Allen Jones "to order One Hundred of the Militia of his District, to be commanded by a Field Officer, to proceed to take charge of and March the said Prisoners from Salisbury and Hillsborough to Halifax aforesaid."[101] However, security did not ensure safety as the use of militia sometimes placed the welfare of the prisoners in the hands of local commanders, some of whom held very little value in the lives of their enemies.[102] One such commander was Colonel Benjamin Cleveland of Surry County, North Carolina, whose hatred toward Tories was well-known to many.

Prisoner security extended beyond preventing escapes, it also included securing the prisoners against would-be rescuers. Rescue was always a concern for the American and British and even influenced their strategies at times. In a letter to General Jethro Sumner in the summer of 1781, General Nathanael Greene shared intelligence that British cavalry forces, under Colonel Banastre Tarleton, were possibly heading south and "pushing for our prisoners, which are to be expected on the road from [Salisbury] to Virginia." He continued that "Should the enemy be near you, and the Prisoners in danger

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[100] Ibid., 43-44.
[101] NCGA, "Minutes of the North Carolina Senate (January 27,1781-February 14, 1781)," *The Colonial and State Records of North Carolina*, vol. 17(online: Documenting the American South), 645, https://docsouth.unc.edu/csr/index.php/document/csr17-0288#p17-645.
[102] Springer, *America's Captives*, 27.

of falling into their hands you will order them to be brought on with your Troops until you meet Major Ross who has a flag going to Virginia to James Town with the whole to effect an exchange."[103] Greene's statement that the prisoners were Tarleton's prime objective, signified their level of importance to the British. Sending a detachment of troops to attempt a rescue —the validity of which Greene questioned, yet, considered viable enough to act upon— demonstrated the British willingness to use their best troops to recover captured soldiers. Likewise, Green revealed the importance the prisoners had to American planners when he mentioned that they were part of an intended exchange taking place in Jamestown. The threat of Tarleton's forces forced Greene to consider alternative measures in order to prevent their rescue; thus, his conditional statement, "Should the enemy…," followed by a new set of orders for Sumner to follow if such an event were to take place.

An additional security concern was keeping prisoners away from areas with a sympathetic populace. American leaders knew that they could not keep their prisoners in areas that harbored strong, Tory sentiment.[104] Such was the case for General Richard Caswell when he wrote to Governor Abner Nash in July 1780. In his letter, Caswell expressed his concerns about where to send the one hundred British and Tory captives under his responsibility. He hesitated sending them north into North Carolina because there were "very few of the inhabitants of Anson County who have not taken the Oath of Allegiance to the King of Great Britain."[105] Caswell recognized that sending the prisoners

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[103] Nathanael Greene, "Letter from Nathanael Greene to Jethro Sumner," 23 July 1781, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 566, https://docsouth.unc.edu/csr/index.php/document/csr15-0508#p15-566.
[104] Metzger, *Prisoners in the Revolution*, 43-44.
[105] Richard Caswell, "Letter from Richard Caswell to Abner Nash," 31 July 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 11, https://docsouth.unc.edu/csr/index.php/document/csr15-0009#p15-11.

through a region of questionable loyalties exposed them and his men to increased risks from Tory militia and spies. Similarly, American leaders knew that they could not keep prisoners of war in areas where hatred for the British and/or Tories created a potentially dangerous population.[106] When leaders debated whether or not to march the King's Mountain prisoners into Virginia, they voted against doing so after receiving threats by men from the region to gather an army and kill every one of them.[107]

Provision and security met the immediate needs of prisoners of war, but long-term detention required additional methods of supervision. In these circumstances, American leaders used paroles and exchanges as a means of managing their captives. Paroles were a popular method of management because they were short, did not require any negotiation, and they could be issued anywhere. Records show paroles issued on the battlefield, in prisoner detainment areas, and even private homesteads. Congress or the State determined the basic wording of a parole beforehand by, providing captors with a model on which to base their forms.[108] The fundamental structure consisted of the prisoner's name, an acknowledgement that he was a prisoner of war, a promise to honor the terms of his parole, the issue date of the parole, and his signature. An example is the parole of Stephen Brown, issued on November 1, 1780:

> I, Stephen Brown, Prisoner of War to the United States of America, do promise and declare upon my Word of Honor that I will not directly or indirectly say or do anything to the Detriment of these United States or their Army or Commander, that I will not go beyond the Distance of Six Miles from the House of Mr. Monro, near Hillsborough, where I am quartered, without the Leave of the Commanding Officer at Hillsborough, for the Time being, and that I will obey his Orders in all

[106] Metzger, *Prisoners in the Revolution*, 43-44.

[107] Mark Armstrong, "Letter from Mark Armstrong to Horatio Gates," 19 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 744-45, https://docsouth.unc.edu/csr/index.php/document/csr14-0658#p14-744

[108] JCC, Vol. 4, 371 and "Parole of Prisoners of War [Blank]," *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 462, https://docsouth.unc.edu/csr/index.php/document/csr15-0383#p15-462

> Things becoming a Prisoner on Parole, until I am regularly exchanged. Given at Hillsborough the first Day of November, 1780. [109]

After providing his name, Brown conceded his status as a "Prisoner of War to the United States of America." This is important because it implied Brown's acknowledgment of the Unites States as a sovereign nation (whether or not he believed it to be so). He then swore an oath, based upon his personal "word of honor"— a reflection of the new code of chivalry— that he would not be a threat to the Americans. He further promised to remain within six miles of the Monro residence in Hillsborough, where he was housed, and to obey his captors until properly exchanged.

Captors also customized the terms of a parole to address current circumstances or to fit the needs of the prisoners. Samuel Ryers, a captain in the New York Volunteers (a Loyalist Provincial regiment captured at King's Mountain), received a wound during battle. The wound did not prevent him from marching with the other prisoners of war at first, however, circumstances quickly changed. Ryers received a parole one week following his wounding. The language of the parole paralleled Brown's. It contained an acknowledgement of his status as a prisoner of war, a promise of good behavior, and an agreement to travel limits. However, the terms of his parole included a clause in which he promised to "keep within the Bounds of six Miles of [his] present abode, unless removed with the wounded of the American Troops nearer to Salisbury."[110] The inclusion of this clause indicates that a change occurred in his condition. It suggests that his wound

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[109] Stephen Brown, "Parole of Stephen Brown," 1 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 722-23, https://docsouth.unc.edu/csr/index.php/document/csr14-0635#p14-722.

[110] Samuel Ryers, "Parole of Samuel Ryers," 13 October 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 694, https://docsouth.unc.edu/csr/index.php/document/csr14-0600.

worsened, so much so, that he was no longer able to continue the march. Consequently, he needed a parole that would address his situation and allow him to remain where he was. Another example of modifying a parole to deal with developing circumstances is found in a letter from General Allen Jones to then-Governor Richard Caswell. In it, Jones described altering the paroles of the prisoners in Halifax because of the weather. Due to the summer heat, Jones gave the prisoners "all the liberty I can consistent with safety, for, should they be confined I am sure, from their numbers and the smallness of the prison, some epidemical disorder would soon break out."[111] In this instance, Jones modified the terms of parole for the prisoners in order to prevent sickness from spreading throughout the prisoner population and the surrounding civilian population as well.

Concerns about personal health and well-being sometimes moved prisoners to seek new paroles on their own. This often resulted in prisoners bypassing local commanders and requesting paroles from high command. Lieutenant John Nairne, of the 71st Regiment, asked General Horatio Gates for his parole in order to return to British lines to recover from ill-health.[112] Other prisoners sought new paroles to improve the conditions of their captivity. Captain Jacob James and two other men from the infamous British Legion wrote Gates to request he move their place of parole to Charleston, New York, or Philadelphia for "being in want of money and Necessaries," which they were unable to procure because of their confinement "to the Limits of half the Small town of

[111] Allen Jones, "Letter from Allen Jones to Richard Caswell," 18 February 1777, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 115-16, https://docsouth.unc.edu/csr/index.php/document/csr14-0126#p14-116.
[112] John Nairne, "Letter from John Nairne to Horatio Gates," 29 October 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 719, https://docsouth.unc.edu/csr/index.php/document/csr14-0629#p14-719.

Halifax."[113] It is important to recognize the concern behind James' letter, but it is difficult to believe Gates' fulfilling such an absurd request.

Paroles served two functions. The first was to control the interaction of the prisoners between themselves and with the public. When prisoners arrived at an encampment, their captors issued paroles to the officers and placed the enlisted men in the local jail— or gaol— or prison barracks. This was due, in part, to the accepted traditions of an aristocratic society. Officers were nobility; thus, their elevated status gave them a higher level of importance. In practical terms, however, it was easier to parole and monitor the movements a handful of officers rather than attempt to do the same with dozens, or even hundreds, of enlisted men. Furthermore, paroling the officers separated them from their men, depriving the rank and file of leadership.

Paroles also controlled the interaction between the prisoners and the local population. Large groups of prisoners, kept in towns, provided opportunities for them to engage with the local citizens. Sometimes, this created additional problems. Governor Richard Caswell ordered Captain John Smith and his militia to "send the British Prisoners now in Johnson County to some place of safety, and where nothing is to be apprehended from their insiduous [sic] attempts to disaffect the subjects of this State or to remove their slaves."[114] Caswell's order reveals that some of the British prisoners— either British regulars or provincial troops— attempted to persuade citizens of Johnson County to change their loyalty, or, cause them economic harm from the loss of their slave

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[113] Jacob James, "Letter from [Jacob] James, N. Vernon, and S. Willet to Horatio Gates," 7 September 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 596, https://docsouth.unc.edu/csr/index.php/document/csr14-0492#p14-596

[114] Richard Caswell, "Instructions to John Smith Concerning British prisoners of War, Including Related Resolution by the North Carolina General Assembly," 5 March 1779, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 20, https://docsouth.unc.edu/csr/index.php/document/csr14-0020#p14-20.

labor. In response to their actions, Caswell ordered these prisoners removed from the county and taken to Halifax for detention.

The second function for paroles was to manage the financial burdens brought on by taking prisoners. The most popular solution was to house the prisoners in private homes, even though this did not offer the means to fully secure them to prevent escape.[115] Placing parolees with local families passed the responsibility of feeding and housing them, along with their incurred costs, over to the local citizenry, thereby, easing the burden on the military. Families that took on paroled prisoners received compensation for their cooperation, or at least the promise of compensation. However, this did little to ease their burden. Parolees were occasionally allowed to hire themselves out as laborers and officers allowed to rent private rooms, but sometimes these measures were not enough to cover the costs.[116]

Since the terms of a parole were contingent on the prisoners' location, it became necessary to issue a new parole when they moved. The new terms often resembled the original ones; however, there were instances where they were drastically altered to fit the situation. Not all of the prisoners welcomed these changes. Captain Duncan McNicol, of the Royal Highland Emigrants, complained about the restrictions placed upon him during his detention in Halifax. In a letter to Governor Caswell, McNicol described being ordered to sign a second parole after being moved from Salisbury to Halifax. The new parole greatly reduced the travel distance permitted him. Unlike his previous parole, which allowed him to travel up to ten miles, this one granted him "only the liberty of the town of Halifax and two miles on the southside of the Roanoke river." By comparison,

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[115] Metzger, *Prisoners in the Revolution*, 48.
[116] Springer, *America's Captives*, 19-20.

McNicol noted that “the Hessian officers who [were] on parole much nearer the seat of war [were] allowed six miles.”[117] The Hessian reference was clearly an attempt by McNicol to appeal to Caswell’s sensibilities as a fellow Englishman (despite his being Scottish) and restore the terms of his previous parole.

When compared with the armies in Europe, or even those in the northern colonies, the armies in the South were relatively small in size; thus, any losses— whether killed, wounded, or taken prisoner— held greater consequences. One way of recovering these losses, or to simply reinforce an army, included an increased use of militia forces. This was an integral part of Cornwallis’ plan for the invasion of the Carolinas. By drawing upon Tory sentiment, which he believed was strong in the Carolinas, Cornwallis expected an influx of Tory militia to come to him and help swell his ranks, thereby, easing the demands placed on the few regiments of British regulars.[118] Another way to recover losses was to conduct prisoner exchanges.

Both sides sought opportunities to make exchanges early on in the conflict; however, the motivations for exchanges varied. In practical terms, military leaders needed exchanges to replenish their ranks, especially their pool of officers. Washington viewed exchanges as a means of returning his veteran officers and soldiers back to his army because he needed them; however, he was unwilling to exchange British regulars for militiamen. He recognized that militia units typically had short terms of service. Thus, their service requirements were likely finished by the time an exchange could be arranged, at which point they would simply go home, leaving Washington in the same

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[117] Duncan McNicol, “Letter from Duncan McNicol to Richard Caswell,” 8 March 1777, *The Colonial and State Records of North Carolina*, vol. 11 (online: Documenting the American South), 415-16, https://docsouth.unc.edu/csr/index.php/document/csr11-0290.
[118] Doyle, *Enemy in Our Hands*, 17.

situation as when he started. Conversely, British regulars were career soldiers; therefore, if exchanged, they were likely to return to active duty, ultimately giving the advantage to the British in terms of numbers and experience.[119]

State officials viewed exchanges as opportunities to save their soldiers from captivity because they considered them citizens.[120] In a letter to Governor Caswell, Captain Neale McNeale of the British privateer, *Mosquito*, pleaded with the governor to establish a cartel agreement between North Carolina and British-held New York City for a prisoner exchange. He argued that the British held many North Carolinians prisoner in New York City and that Caswell should "make use of [his] exertions for the proper establishment of a cartel between this State and the city of New York and the other States in possession of the British armies and fleets for an exchange of prisoners."[121] McNeale's argument appealed to Caswell's sense of civic duty and to his "well known benevolence and philanthropy to mankind in general."[122] Caswell was not establishing a cartel just to save McNeale, but to also save the many other North Carolinians being held by the British in horrid conditions. Records indicate that McNeale was paroled rather than exchanged shortly after his petition to Caswell; however, the idea of establishing a cartel agreement between two states, or, between the State and a city, suggests that leaders actively considered such ideas to provide themselves with more options.[123] Although

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[119] Springer, *America's Captives*, 15-18, 24-25.
[120] Ibid., 15-16.
[121] Neale McNeale, "Petition from Neale McNeale Concerning an Exchange of Prisoners," *The Colonial and State Records of North Carolina*, vol. 22 (online: Documenting the American South), 893-94, https://docsouth.unc.edu/csr/index.php/document/csr22-0648#p22-893
[122] Ibid.
[123] North Carolina Council of State (NCCS), "Minutes of the North Carolina Council of State," 18 November 1779, *The Colonial and State Records of North Carolina*, vol. 22 (online: Documenting the American South), 962, https://docsouth.unc.edu/csr/index.php/document/csr22-0681#p22-962.

Caswell did not acquiesce to McNeale's request, records do show his involvement in at least one exchange.

On November 3, 1779, the North Carolina Assembly met to discuss an upcoming cartel exchange between the British and South Carolina. Recognizing an opportunity to regain captive North Carolinians, the Assembly resolved "that his Excellency the Governor be requested to send all the Prisoners of War belonging to this State as expeditiously as may be to [Providence Island], in order to obtain in exchange an equal number of the good Citizens of this or the United States."[124] A month later, Governor Caswell received a letter from General Benjamin Lincoln in Charleston, South Carolina. In his letter, Lincoln informed Caswell that an exchange took place recently and that the actions of the representatives from North Carolina helped with the exchange. "We have none now with the Enemy saving a few Officers," wrote Lincoln, "I hear that there are some [prisoners] in your State for which our officers will be given. We credited for them in New Providence, where we are much indebted, or have credit for them, to be accounted for hereafter."[125]

The Continental Congress opposed exchanges conducted by individual states, such as what North and South Carolina accomplished. Its members believed that the political authority to make cartel agreements for exchanges rested solely with Congress and not the States. On November 17, 1779, the Board of War wrote to Congress, stating:

> The Board are more and more convinced every day of the endless confusion and injustice arising from State Exchanges and wish they were totally abolished. The

[124] NCGA, "Minutes of the North Carolina Assembly, October 18,1779 – November 10, 1779," *The Colonial and State Records of North Carolina*, vol. 13 (online: Documenting the American South), 882, https://docsouth.unc.edu/csr/index.php/document/csr13-0580.

[125] Benjamin Lincoln, "Letter from Benjamin Lincoln to Richard Caswell," 3 December 1779, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 229, https://docsouth.unc.edu/csr/index.php/document/csr14-0264.

> individual Sovereignty of the States was consulted in the plan we had the honor to lay before Congress, quite as much from motives of policy as those founded on reason. The Exchanges of prisoners seem in our humble opinion to be most properly the objects of the general authority, and as they are appendages of the power of making peace and war, they ought as we conceive to be solely vested where that power is and ought to be lodged.[126]

Given the date of this letter, it is very likely that the Board of War was responding directly to the actions of North and South Carolina. It made two arguments against the States. First, an earlier plan, previously submitted by the Board before Congressional leaders, already took the sovereignty of each state into account. Second, the Board argued that exchanges were part of the act of making war and peace; therefore, the States needed to recognize congressional authority in the same manner as the Board.

This incident was not just another example of the conflict between Congressional power and state sovereignty. It also revealed Congress' political motivation for exchanges. Congress viewed prisoners of war political capital, which could be used to force Britain to recognize the legitimacy of the United States through diplomatic measures.[127] Furthermore, officials hoped that this recognition would extend to the safe return of American prisoners whom the Crown considered traitors and not legitimate prisoners of war.[128] Yet, Congress' political desires were not limited to the states.

Congressional desire for full authority over prisoners of war also extended to American military commanders and affected their efforts to reach an official cartel agreement between the warring nations. Washington held a series of meetings with British leaders between 1777 and 1778 in an attempt to establish an agreement that would regulate formal prisoner exchanges. While the officers and representatives from both

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[126] JCC, vol. 15, 1288.
[127] Springer, *America's Captives*, 15,26.
[128] Miller, "Dangerous People," 567.

sides were amicable to one another, neither made significant progress in the negotiations. A chief reason for this failure was the changing demands from Congress placed upon Washington at the last minute, catching him unprepared and humiliating him before the British.[129] These demands included requiring the British to first pay for the costs of caring for the prisoners before an exchange, the return of General Charles Lee and Lieutenant-Colonel Ethan Allen, a promise to cease the arbitrary arrests of civilians, and recognition that captured Tories were not subject to exchange but were to be returned to their respective states for trial and imprisonment.[130] Although these demands conformed with the ideals of international law, Washington saw them for what they were—"arrogant, provocative, and unacceptable to the British, as well as an abridgment of what he believed was his own authority to negotiate."[131]

British military commanders pursued prisoner exchanges for much the same reasons as their American counterparts. They were just as anxious to recover lost and badly needed manpower through exchanges. Yet, they did not have the authority to establish an official cartel agreement between the nations because it would lend credence to the American claim of independence. In a conventional war, British generals possessed the authority to enter into an agreement to facilitate prisoner exchanges because they, and their military counterparts, were members of sovereign nations. The conflict in America, however, was not a conventional war but a rebellion; therefore, the British did not recognize the legitimacy of American claims to national sovereignty. They further understood that entering to a cartel agreement would send a message to their European

[129] Bowman, "Pennsylvania Prisoner Exchange," 261.
[130] Bowman, "Pennsylvania Prisoner Exchange," 261-64 and Knight, "Prisoner Exchange," 203.
[131] Knight, "Prisoner Exchange," 203.

rivals about American sovereignty, thereby, enticing them to intervene in the war (which the French and Spanish eventually did do).[132]

Despite the difficulties imposed by state and national governments, the need for manpower drove military leaders to conduct smaller exchanges when they could. "Releases were arranged, not according to any formal or comprehensive policy but, from time to time, by individually negotiated cartels."[133] The key feature of these exchanges was their localization, which made the terms inapplicable to other theaters of operation. In regions where government and Continental authority was stronger, such as the North, partial exchanges were more difficult to achieve. Inversely, these informal exchanges were much easier to conduct in the South where political interference was less likely to occur because of the greater distance from New York and Philadelphia.[134] The ease of conducting exchanges in the South proved helpful to the military leaders there—especially militia leaders— because they met the immediate needs for localized manpower. However, these exchanges created larger issues for upper leadership, who were attempting to manage exchanges on a larger scale.

2.5. Conclusion

The works from the Enlightenment not only influenced the independence movement in America, they also served as the ideological basis for the European tradition of warfare, which American leaders also adopted. These philosophies established a series of laws that were to govern warfare and ensure that both humanity and civilization would

[132] Bowman, "Pennsylvania Prisoner Exchange," 257.
[133] Knight, "Prisoner Exchange," 201-02.
[134] Ibid.

not devolve into a brutal and anarchistic state. The preservation aspect of the laws served as the basis for the proper treatment of prisoners of war.

When war broke out between the colonies and Britain, American leaders quickly looked to the European model to establish their own policies for maintaining a prisoner of war population. However, they did not anticipate the difficulties of implementing these policies. Congress suffered from its inability to centralize its authority over all of the states because their individual governments perceived it as a threat to their sovereignty. Questions about jurisdiction over prisoners of war only added to these tensions. Leaders also did not foresee issues arising from the difference of treatment that prisoners received based on their identity. British regulars received better treatment in part because Americans considered them kin. Yet, Tory militia suffered greatly for their loyalty to Britain, even though they actually were kin—literally in some cases. The fighting in the South only served to heighten this animosity.

Paroles and exchanges presented their own issues. Paroles were quick and easy but subject to change and limited to specific locations. These changes sometimes led to additional issues among prisoners who disagreed with any alterations to their parole requirements. Housing parolees presented its own issues. The financial burden and security issues proved difficult for both military leaders and individual home owners to balance. Officers promised compensation for the costs of housing prisoners but it was slow to materialize. Additionally, citizens were occasionally victims of unwanted behavior by their "guests," which only added to the tensions.

Leaders pursued exchanges but found them difficult to achieve. The motives for an exchange differed between the parties involved. Military leaders wanted to use them to

replenish their ranks, especially in the South where there was a limited number of available troops. Yet, changing congressional demands continually undermined Washington's efforts to establish an official cartel agreement. Moreover, British leaders did not possess the authority to enter into such an agreement without acknowledging the sovereignty of the United States and enticing European rivals to intercede in the war. States arranged for exchanges to secure the release of their citizens-soldiers adding to the tensions between them and the Continental Congress over the question of authority.

At the heart of these issues were the prisoners themselves. They endured the difficulties of captivity while these larger powers wrestled with one another over their fate. For prisoners in the South, the conditions of captivity were far more unpredictable than their comrades experienced in the North. The bitter civil war in the back country, the animosity between Whigs and Tories, and conflicts of authority left their future more uncertain. Whether they captured in small skirmishes in the Carolina forests, or in pitched battles like King's Mountain, prisoners of war in the South faced the very real possibility of abuse, murder and general misery at the hands of their captors.

CHAPTER 3: "OUR POOR LITTLE DETACHMENT": A CASE STUDY OF THE KING'S MOUNTAIN PRISONERS

King's Mountain sits along the border of North and South Carolina, where its tall peak and steep slopes help it to stand out among the rolling hills and ridges of the area. At the top of the mountain is a relatively flat, pear-shaped clearing, approximately five hundred yards long and about two hundred yards at its widest point.[1] In the colonial era, colonists used the clearing as a cowpen, or stopping point, when moving their cattle. Its unique features provided a suitable location for both man and beast to rest, as well as to defend against the numerous threats that roamed the countryside. It was these same features that drew Major Patrick Ferguson, of the 71st Regiment of Foot, and his army of American Loyalists, to encamp atop the mountain in the early days of October 1780.

Ferguson and his men were part of Lord Charles Cornwallis's first invasion of North Carolina. They marched westward toward the Carolina foothills to guard Cornwallis's left flank against possible attacks from patriot militias. Simultaneously, Cornwallis marched north with the main army of British regulars to take the village of Charlotte and its important crossroad.[2] A third army, under General Alexander Leslie, moved east toward Virginia and the Chesapeake to act as a diversion.[3] At the core of Cornwallis' plan was the hope that his presence would encourage Loyalists to flock to his command and join him in suppressing the rebellion. Yet, as Cornwallis— and later, Ferguson— learned, Loyalist sentiment was not as widespread as he believed. In fact, it was quite the opposite. The central and western portions of the Carolinas were a hotbed

[1] John S. Pancake, *This Destructive War: The British Campaign in the Carolinas, 1780-1782* (Tuscaloosa: University of Alabama Press, 1985), 118.
[2] Ibid., 115-16.
[3] Ibid., 109.

of rebellion. Resistance was frequent and, at times, costly for the British, as Ferguson was to find out.

The fighting that occurred in the South during the last three years of the American Revolution was notable for its savagery and bitterness. Armies generally consisted of a small force of regular soldiers augmented by militia; however, in some circumstances, the composition of the armies was entirely of militiamen. Such was the case in the backcountry of the Carolinas, where militia forces conducted the majority of the fighting. The fighting that occurred here was characterized as short, violent skirmishes that more resembled guerilla warfare than traditional combat. Within this environment, American leaders struggled to implement official policies for managing the growing number of British prisoners of war. Although they based their policies on Enlightenment principles that promoted the preservation of the human being, their application was difficult to achieve. The vitriol between Whigs and Tories led to acts of vengeance and abuse on both sides. Discipline was a constant issue, as was the question of sovereignty between the Continental Congress and the individual states. Lastly, militiamen were not held in the same regard as their professional counterparts. Given these reasons, certain questions must be asked. What happened to the British soldiers captured in the South? How much did the violence in the southern campaign influence their overall treatment? Was there a difference in the way British regulars and Loyalist militia were treated?

This chapter seeks to answer these questions by conducting a case study of the prisoners captured at the Battle of King's Mountain. This encounter was an important victory for the Patriot forces, as it halted the British advance into North Carolina and resulted in the capture of over eight hundred prisoners of war— the vast majority of

whom were militiamen. This study will draw heavily upon the diary accounts of two of those prisoners, Lieutenant Anthony Allaire of the Loyal American Regiment (a Provincial unit) and Dr. Uzal Johnson, a Loyalist surgeon attached to Ferguson's army. Both men kept detailed accounts during their time in captivity, including names, dates, and locations. With the addition of official reports and letters, it is possible to follow the plight of these prisoners during their long march from King's Mountain to Virginia. Special attention is given to the hangings at Bickerstaff Plantation, abuse at the hands of high-ranking American officers, and the inexplicable release of the prisoners against the wishes of Congress. This case study will demonstrate that American mismanagement and bigoted treatment toward their captives exemplified the overall failure of the Americans to implement a successful prisoner of war policy in the Revolutionary South.

3.1. Slaughter and Suffering

As stated above, the battle at King's Mountain occurred during Cornwallis' first invasion of North Carolina in the fall of 1780. His main objective was the capture of the village of Charlotte. To protect his left flank, Cornwallis sent Major Patrick Ferguson west with an army of approximately one thousand Loyalist soldiers, the vast majority of which were militia. Only Ferguson and the one hundred or so men of the Loyal American Regiment represented the professional soldiers in the entire force. The Loyalist army marched toward the Carolina mountains, conducting a brutal campaign of terror and retribution against known Whigs along the way. However, Ferguson's zeal to eradicate the rebellion in this region led him to move too far to the West, weakening his line of support and leaving his army dangerously vulnerable.[4] Realizing his error, Ferguson

[4] Ibid. 116-17.

changed direction and moved back East; however, his efforts proved too late. Seizing upon this opportunity, militia commanders, Isaac Shelby, John Sevier, and William Campbell, gathered their forces at Quaker's Meadow (near the modern-day city of Morganton) along with other militia groups and set out to attack Ferguson while he remained unsupported. Within a week, the Whig army caught up with Ferguson and his men encamped in a clearing on top of King's Mountain.[5]

The Whigs attacked on October 7th, between two and three in the afternoon. Unbeknown to Ferguson, or his men, the Whig forces managed to surround the Loyalists without being detected.[6] The battle was relatively short but intense, lasting only an hour and five minutes.[7] In that time, both sides charged and counter-charged leaving their dead and wounded littered across the landscape. Eventually, the tide turned against Loyalists and the Whigs "advanced up the Hill pretty rapidly."[8] According to Lieutenant Anthony Allaire, when the men of the North Carolina militia realized their predicament, their line began to crumble and fell back toward the center of the clearing. Other militia units soon followed, creating mass confusion.[9]

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[5] Ibid.

[6] John J. Hardin, "Description by John J. Hardin of the Battle of King's Mountain, based on Isaac Shelby's Recollections," *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 107, https://docsouth.unc.edu/csr/index.php/document/csr15-0069#p15-110.

[7] Multiple accounts from men that fought that day give this exact amount, including Allaire, Johnson, and Colonel William Campbell.

[8] Johnson, *Captured at King's Mountain*, 31.

[9] Allaire and Johnson recorded contrasting opinions regarding the conduct of the militia troops. Allaire, the professional soldier, was openly critical of the militia. He wrote that when the Carolinians "gave way, [it] naturally threw the rest of the militia into confusion," insinuating that these troops were undisciplined and cowardly. By comparison, he described the soldiers of his regiment only as "brave men." (Allaire 31) Allaire's words reflected the popular view among professional soldiers at that time, which showed little— if any— respect for militia forces. Conversely, Johnson's account of the militia's performance stands in stark contrast to Allaire. He noted that the Carolinians successfully repulsed two attacks by the Whigs before being "obligated" to fall back due to a lack of ammunition— a fact that even Allaire acknowledged. (Johnson 31)This sequence of events demonstrated that the same regiment Allaire maligned for cowardice and lack of discipline, successfully defended their position until they no longer had the means to continue their resistance. Such behavior is not indicative of the sins Allaire accused them of committing.

The Whigs pressed forward with their attack, pushing the militia further back until they men were so close together that they resembled a mob rather than an infantry unit. Allaire later recorded in his diary that it was impossible to make a line out of six men.[10] According to numerous eyewitness accounts, Ferguson was cut down in a hail of bullets near the end of the battle as he attempted to rally his men and make one last, desperate charge. His death left Captain Abraham DePeyster of the King's American Regiment in charge. Seeing the situation rapidly deteriorating before him, DePeyster raised a white flag to signal his surrender and save what was left of the Loyalist Army.[11] There are questions as to whether or not the killing continued after the surrender. Some of the combatants remembered the shooting coming to an immediate end once DePeyster raised the white flag. According to Ensign Robert Campbell, "As soon as Capt. DePeyster observed that Col. Ferguson was killed, he raised a flag, and called for quarters. It was soon taken out of his hand by one of the officers on horseback and raised so high that it could be seen by our line, and the firing immediately ceased."[12] However, Lyman Draper suggested that this was not the case in his timeless book, *King's Mountain and Its Heroes*. He maintained that some of the Whig militiamen continued shooting at the hapless Loyalists after they signaled their surrender. According to Draper, these men continued their deadly work due either to an intense, emotional response, or, out of ignorance. His examples of the former included the story of Joseph Sevier, who continued shooting out of rage after he heard that his father, Colonel John Sevier, was

[10] Allaire, *Diary of Anthony Allaire*, 31.
[11] Ibid.
[12] Robert Campbell, "Description by Robert Campbell of the Battle of King's Mountain," *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 103, https://docsouth.unc.edu/csr/index.php/document/csr15-0068#p15-100.

killed (he was not). Other examples included men refusing to give quarter to the prisoners in revenge for Tarleton's alleged massacre at the Waxhaws.[13]

However, the firing most likely continued for the latter reason— ignorance. The Whig militiamen were seasoned warriors, having learned their trade through numerous wars with Native Americans. Yet, this kind of fighting did not follow traditional European customs; thus, "many of the young men… knew not the meaning of a white flag under such instances."[14] This was borne out by an eyewitness account of Colonel William Campbell running back and forth desperately urging his men to cease firing. In one instance, Draper wrote, Campbell kicked a rifle away from one of his soldiers, screaming at the man to stop firing or else he would be committing murder.[15] Later, in a letter to his brother-in-law, Campbell hints at this stage in the battle when he told him that when "the flag for a surrender was immediately hoisted, *and as soon as our troops could be notified of it* [italics added] the firing ceased, and the survivors surrendered themselves prisoners at discretion."[16] Campbell's actions displayed how much European traditions influenced his military training. Fortunately for the prisoners, these traditions empowered Campbell as a leader, giving him the ability to restrain his men and prevent a massacre from occurring.[17]

Word of Ferguson's defeat quickly spread and with it, speculation over the fate of the prisoners. General William Davidson was one of the first commanders to hear about

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[13] Lyman C. Draper, *King's Mountain and Its Heroes: History of the Battle of King's Mountain, October 7th, 1780, and the Events Which Led to It*, Heritage Series (Spartanburg: The Reprint Company, 1967), 281-82.
[14] Ibid., 282.
[15] Ibid., 283.
[16] William Campbell, "Letter from William Campbell to Arthur Campbell," 20 October 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 126, https://docsouth.unc.edu/csr/index.php/document/csr15-0085#p15-126.
[17] Springer, *America's Captives*, 27.

the battle and sent a letter to notify his commanding officer, General Jethro Sumner, of the happy news. After providing Sumner with the early details of the battle, Davidson added that he was unsure of what the victorious Whigs were going to do with the prisoners. He proposed that they would most likely "secure their Prisoners in or over the mountains [and] proceed towards Charlotte."[18] Davidson's comments revealed a train of thought based concurrently on reality and conjecture. Securing the prisoners of war by sending them through the mountains was a popular and oft-used tactic among Whig leaders. Yet, marching on Charlotte to attack Cornwallis grossly assumed that the British general would not react to such a threat. Moreover, it ignored the most mobile and feared unit in his army— Tarleton's cavalry. Still, Davidson was not alone. Colonel Thomas Polk shared this same sentiment when he wrote to the North Carolina Board of War that "In a few Days doubt not but we will be in Charlotte [and] I Will take Possession of my house & his Lordship take the Woods."[19] Although their expectation of battle did not come to fruition, Davidson's and Polk's statements do suggest that news of the victory had already reinvigorated the Patriot cause.

General Horatio Gates, commander over the Whig armies in the South, received word of the victory at King's Mountain on October 12th. After passing the news along in a letter to Virginia Governor, Thomas Jefferson, he penned a letter to the commanders who fought at King's Mountain. In his letter, he commended them for their achievement then gave the first, clear direction as to what to do with the prisoners of war. He wrote:

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[18] William Davidson, "Letter from William Lee Davidson to General Jethro Sumner," 10 October 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 685-86, https://docsouth.unc.edu/csr/index.php/document/csr14-0591#p14-685.
[19] Thomas Polk, "Letter from Thomas Polk to the North Carolina Board of War," 11, October 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 414, https://docsouth.unc.edu/csr/index.php/document/csr15-0319#p15-414.

> I am now only anxious about the disposal of the prisoners, as they must be ready to use in exchange for our valuable citizens in the enemy's hands. Send them under proper guards to Fincastle Court House, Virginia. I will desire the Colonel of that county to have a strong palisade, eighteen feet high out of the ground, instantly set up, within which log huts may be built to cover them. The guard must be without, and the loop holes eight feet from the ground. Provisions, etc., shall be ordered to be provided for them.[20]

Gates letter is significant for two reasons. First, he provided a destination for the prisoners, along with instructions as to how they were to be detained. Fincastle is in Botetourt County, just north of Roanoke. It sits along the edge of the Blue Ridge Mountains and is deep within the heart of Virginia, which offered a safe and secure location in which to keep the prisoners. As added security, Gates intended to have the local militia build an encampment for the prisoners, complete with a palisade, armed guard, and barracks. This was a significant development. Moving the prisoners to the Virginia mountains suggests that Gates did not believe North Carolina was safe yet from the British, in spite of the success at King's Mountain. Furthermore, the construction of a prison camp —there were very few in the South— indicated the level of importance the prisoners had in the eyes of the Southern Command.

Gates intended to use the King's Mountain prisoners in exchange for the "valuable citizens in the enemy's hands."[21] This was likely in reference to the citizens of Charleston being held captive following the city's surrender that past May. The loss of Charleston shifted the balance of power to the British, who now held the advantage over the Americans during negotiations for an exchange.[22] Gates and others believed that the

[20] Horatio Gates, "Letter from Horatio Gates to the American Officers at the Battle of King's Mountain," 12 October 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 115-16, https://docsouth.unc.edu/csr/index.php/document/csr15-0075#p15-115.
[21] Ibid., 115.
[22] Springer, *America's Captives*, 28.

victory at King's Mountain dealt a serious enough blow to the British that it swung the momentum back to their advantage. If he could capitalize on this shift, he would have better leverage at the exchange table.

The Whig leaders decided to remain on the battlefield for the night since it was now late afternoon and many of the wounded needed attending. The following day, the prisoners capable of walking marched west toward the mountains, while the wounded who were unable to move received paroles.[23] Johnson noted in his diary that he remained behind to continue treating the wounded, including injured Whigs because he was "in preference to their own Surgeon."[24] According to Allaire, they marched sixteen miles that first day until they reached an abandoned Loyalist plantation owned by the Matthew Fondren family. Allaire's tongue-in-cheek entry that the Whigs "thought it necessary" to undergo such a long march provides clear evidence of his disdain for his captors.[25] Whether this sentiment was on account of his overall sense of aloofness as an officer, or, from being forced to walk alongside the enlisted men rather than riding his horse is unclear. However, this brief entry provides additional insight into the situation. A sixteen-mile march was unusually long, especially when compared to those mentioned in earlier entries, which were commonly ten miles or less in length. While such a march was not impossible, it does suggest that a sense of urgency existed among the Whigs. Draper noted that a popular rumor spreading among the troops at the time was the rapid approach of Tarleton's cavalry.[26] Whether this was true or not, Campbell and his officers chose to

[23] Johnson, *Captured at King's Mountain*, 32.
[24] Ibid.
[25] Allaire, *Diary of Anthony Allaire*, 31.
[26] Draper, *King's Mountain*, 320.

be cautious and seek safety in the mountains as quickly as possible, the opposite reaction that Davidson and Polk had expected.

The army and its prisoners left the Fondren plantation the next morning and marched for two more days, covering an additional thirty-five miles. By Wednesday, October 11th, they reached the plantation belonging to Colonel John Walker, a retired officer of the Continental Army. Prior to the last stage of the march and their arrival at Walker's plantation, Colonel Campbell issued a general order to his troops, which indicated that the prisoners' troubles were beginning to mount. The first part required an official accounting of the dead and wounded from the battle. That this had yet to be done once more indicates the sense of urgency to leave the battlefield. This portion of the order also established an official guard for the prisoners. This group of two hundred men and officers were to march in front of the army in order to immediately take over the security of the prisoners as soon as the army reached camp.[27]

The creation of a guard was certainly done to prevent escapes; however, as the second portion of Campbell's orders reveals, there were additional security concerns:

> I must request the officers of all ranks in the army to endeavour to restrain the disorderly manner of the slaughtering and disturbing the prisoners. If it cannot be prevented by moderate measures, such effectual punishment shall be executed upon delinquents as will put a stop to it.[28]

This section of Campbell's order provides a shocking revelation of prisoner abuse at the hands of their Whig captors. Draper provided an account of one such incident in which Colonel Thomas Brandon found a prisoner hiding in the hollow of a sycamore tree while

[27] William Campbell, "Orders from William Campbell," 11 October 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 115, https://docsouth.unc.edu/csr/index.php/document/csr15-0074#p15-115
[28] Ibid.

trying to escape. According to Draper, Brandon “dragged him from his hiding place and completely hacked him to pieces with his sword.”[29] This was not likely an isolated incident. Campbell’s order suggests that multiple episodes had already occurred during the march, causing Campbell to grow concerned enough to promptly address the issue. Interestingly, neither Allaire nor Johnson alluded to any such episodes of abuse in their diaries during these days; however, Allaire’s entry from November 1st mentioned Johnson tending “a man whom they had cut on the march.”[30] It is unclear as to what point during the march the man was assaulted, but it does lend credence to the claims that Whig soldiers committed acts of violence against the prisoners.

The increased distance between the Whigs and Cornwallis and the diminishing threat from Tarleton bolstered the confidence of the rebel army that they were no longer being pursued. They became more brazen in their mistreatment of the prisoners, as evidenced by the violent attacks during the march and their looting of the captured baggage train upon arriving at the encampment at Walker’s plantation. This event outraged some of the captured officers. Allaire was appalled by the lack of honor displayed by the Whigs, recording in his diary that “Those villains divided our baggage, although they had promised on their word we should have it all.”[31] For the other prisoners, the incident was much more than the enemy breaking their word. The baggage train contained their clothing and other personal items; thus, the prisoners felt further violated, vulnerable, and humiliated. In his diary, Johnson described the experience as one of “mortification.” The next day, he lamented in his diary, “every Field Officer had

[29] Draper, *King’s Mountain*, 326.
[30] Allaire, *Diary of Anthony Allaire*, 33.
[31] Ibid., 31.

given his Honour I should have all my Baggage for attendg [sic] their Wounded. Where honour binds I find Promise can be broke. query? would not hemp do the business better?"[32] Johnson's words reveal a growing sense of despair as he realized that his captors did not live by the same code of honor that he was accustomed to. They did not keep their word. They only made empty promises, which were easily broken. His despondency was such that he questioned if death was preferable for everyone involved. Would the rebels have not found it easier to just hang them with hemp ropes? There would be no need for false promises then. Would the prisoners be better off with hanging? They would have been spared from this suffering and finally found peace.

3.2. Bickerstaff Plantation

After spending two days at the Walker Plantation, the Whig army broke camp and moved the prisoners twelve miles east to the plantation of Captain Aaron Bickerstaff, a Loyalist officer mortally wounded at King's Mountain. Colonel Campbell's set of orders for the new camp revealed the development of a new problem that caused great concern. Within the previous forty-eight hours, large groups of Whig militiamen deserted their units to return to their homes. The rate of desertion was high enough for Campbell "to insist that proper regimental returns be made every morning" and to request regimental commanders "not to discharge any of their troops until we can dispose of the prisoners to a proper guard."[33] Desertion plagued military commanders. According to Colonel Shelby, "this force, like all other partisan bodies, called out for a peculiar emergency, was difficult to be kept embodied. The men one after another returned home, so that when

[32] Johnson, *Captured at King's Mountain*, 32.
[33] William Campbell, "Orders from William Campbell," 13 October 1780 - 14 October 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 118, https://docsouth.unc.edu/csr/index.php/document/csr15-0079#p15-118.

they reached the Catawba there were not more men than prisoners."[34] Such was the nature of militia: they fought when called upon, then returned home as soon as the fighting was done. In this instance, the number of deserters was so great, it created a major security issue for Campbell as he was quickly losing the manpower needed to secure the prisoners and prevent their escape.

The events that occurred at Bickerstaff plantation stand as a testament to the bitterness and brutality of a land divided by civil war. According to a number of accounts, the officers from North and South Carolina approached Colonel Campbell (a Virginian) to complain that there were men among the prisoners who allegedly committed acts of violence against the inhabitants of the Carolinas prior to King's Mountain.[35] They pressed Campbell to establish a court-martial in order to properly try these men for their crimes arguing "that, if they should escape, they were exasperated, and they feared they would commit other enormities worse than they had formerly done."[36] Draper argued that the Whigs had no other choice but to try these men themselves. He stated that "in the ranks of Colonel Ferguson, there were many individuals notorious as habitual plunderers and murderers. What was to be done with these? There were no courts of justice to punish their offences; and, to detain them as prisoners of war, was to make them objects of exchange."[37] Holding their own court was the only option that the Whigs possessed to deal with such dangerous men.

Yet there was another reason to try these men for their alleged crimes: retribution. There is a brief moment in Shelby's memoirs that describes the arrival of a paroled

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[34] Hardin, "Battle of King's Mountain," 110.
[35] Draper, *King's Mountain*, 330.
[36] Campbell, *Battle of King's Mountain*, 103.
[37] Draper, *King's Mountain*, 338.

officer at the camp one week after the battle at King's Mountain. The officer informed the Whig leaders "that he had seen eleven patriots hung at [Fort] Ninety-Six, a few days before, for being Rebels."[38] The timing of this event is significant, because it placed the meeting during the same time as when the Whig army encamped at Bickerstaff Plantation. This suggests that the news given by the paroled officer triggered the response by the Carolinians to approach Colonel Campbell and press for a court martial.

The hangings at Fort Ninety-Six were not the only instances of recent British atrocities that angered the Americans. In September, Colonel Elijah Clark and his men attacked the town of Augusta but were eventually defeated by a combined force of Loyalists and Cherokee Indians. Approximately thirty Whigs were taken prisoners during the battle. Twelve of them were immediately hanged, while the remainder were given over to the Cherokee for torture and execution.[39] This controversial decision held serious implications for future actions against British prisoners. The hangings alone were enough to anger the Whigs, but the decision to surrender the remaining prisoners over to the Cherokee enraged them. Many of the militiamen, from the officers to the privates, either took part in the 1776 campaign against the Cherokee or participated in other military actions against them prior to the war. Their pre-existing animosity toward the Indians only served to fuel their rage once they learned of the fate of their fellow, white brethren. A second instance occurred barely a month prior to Augusta. In mid-August, British and American forces faced each other at the Battle of Camden. The result was a major victory for Cornwallis and a humiliating defeat for General Horatio Gates. The British captured hundreds of American troops. In his report to Lord George Germain, Cornwallis wrote of

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[38] Hardin, "Battle of King's Mountain," 109.
[39] Draper, *King's Mountain*, 199-200.

the prisoners, "I shall give directions to inflict exemplary punishment on some of the most guilty, in hopes to deter others in future from sporting with allegiance, with Oaths, [and] with the lenity [and] generosity of the British Government."[40] The "exemplary punishment" was death by hanging and the unfortunate victims of Cornwallis' "directions" were a group of militiamen captured at Camden. When asked later by General William Smallwood about the hangings, Cornwallis defended his decision explaining that the only men executed were "for bearing Arms, after having given a Military Parole to remain quietly at home; or for enroling [sic] themselves voluntarily in our Militia, receiving Arms and Ammunition from the King's Store [and] taking the first Opportunity of joining our Enemies;" thus, making them guilty of treason.[41]

Cornwallis's explanation fell on deaf ears, however, as many American militiamen considered the hangings as callous murder. As Shelby explained, "whatever excuses and pretences the Tories may have had for their atrocities, the British officers, who often ordered the execution of Whigs, had none. Their training to arms and military education should have prevented them from violating the rules of civilized warfare in so essential a point."[42] The executions at Ninety-Six, Augusta, and Camden were the epitome of British cruelty in the Carolinas and did little to deter rebellion, as Cornwallis hoped. On the contrary, it stoked the flames of rebellion, intensifying the civil war between Loyalists and Whigs. The result were events like the one that developed at

[40] Charles Cornwallis, "Letter from Charles Cornwallis, Marquis Cornwallis to George Sackville Germain, Viscount Sackville," 21 August 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 273, https://docsouth.unc.edu/csr/index.php/document/csr15-0194.
[41] Charles Cornwallis, "Letter from Charles Cornwallis, Marquis Cornwallis to William Smallwood," 10 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 274, https://docsouth.unc.edu/csr/index.php/document/csr14-0648#p14-733
[42] Hardin, "Battle of King's Mountain," 111.

Bickerstaff Plantation, where Whigs held impromptu trials in the name of justice but used as a means for revenge.

Campbell acquiesced to his officers' requests and ordered the court-martial. The following morning, the Whig guard paraded then formed a circle. According to Johnson's diary account, he, Captain DePeyster, and the other provincial officers sat within the encirclement to witness the trials.[43] The separation of these officers from among the prisoners demonstrates that the Whigs differentiated provincial soldiers — whom they referred to as "British" even though they were actually Americans —and militiamen. This delineation was important to the Whigs, because it gave them the legal authority to try the militia prisoners under State laws rather than military law. Perhaps to justify their actions before the encircled officers and their militia counterparts, "A copy of the law of North Carolina was obtained, which authorized two magistrates to summons a jury, and forth with to try, and if found guilty, to execute persons who had violated its precepts."[44] However, Allaire saw through the ruse, referring to the trial later as a "mock-jury."[45]

Although the records do not indicate which copy of the North Carolina law the Whigs used, it is likely that they used one that included the 1776 ordinance which established a series of courts throughout the State to handle criminal cases. This same ordinance authorized "two persons in each District being men of integrity, ability and learned in the law" to serve as justices. It also gave justices the authority to summon a jury from outside of the pre-selected pool of jurors, if one was not available at the time of

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43 Johnson, *Captured at King's Mountain*, 32.
44 Hardin, "Battle of King's Mountain," 109.
45 Allaire, *Diary of Anthony Allaire*, 32.

trial.[46] Draper noted that finding justices was not difficult since the majority of the Whig officers were already magistrates in their own communities. Furthermore, the 1776 law clearly gave them the authority to form a twelve-man jury in order to conduct a court of law.

The trials began approximately mid-morning and continued throughout the day until evening. Johnson noted that it rained all day, which only added to the misery.[47] The tribunal consisted of two magistrates and a jury comprised of the remaining field officers and some captains. Men from the lower ranks were not permitted to serve for jury duty. As each of the accused stood before the board, they were charged with various crimes, which Shelby listed as "breaking open houses, killing the men, turning the women and children out of doors, and burning the houses."[48] Eyewitnesses stepped forward to testify against the accused prisoners in lieu of any other evidence. Nevertheless, this was more than enough to condemn a man, especially if he possessed an elevated reputation, or position, within the public sphere. Allaire made a similar observation in his diary entry for that day, stating that the Whigs particularly focused on trying the prisoners "who had the most influence in the country."[49]

There is some disagreement as to how many men stood trial, and ultimately, condemned to death before the tribunal. Alexander Chesney, a South Carolina Loyalist, wrote that twenty-four men were condemned, whereas, Allaire and Johnson counted thirty condemned men. Ensign Robert Campbell counted thirty-two, but the highest

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[46] NCPC, "Ordinances of Convention 1776," *The Colonial and State Records of North Carolina*, vol. 23 (online: Documenting the American South), 990, https://docsouth.unc.edu/csr/index.php/document/csr23-0057.
[47] Johnson, *Captured at King's Mountain*, 32.
[48] Hardin, "Battle of King's Mountain," 109.
[49] Allaire, *Diary of Anthony Allaire*, 32.

amount came from Colonel Shelby, one of the instigators of the trials, who stated that thirty-six men were found guilty and condemned.[50] The exact number of men found guilty and condemned may never be known; however, the majority of the sources indicate that it was at least thirty.

The trials concluded as night fell. The Whigs found a large oak tree nearby and began carrying out the executions. They hung the condemned men in groups of three, beginning with the officers. Allaire, disgusted by the day's events, described the condemned men as "a sacrifice to their infamous mock jury" and that they "died like Romans" before their executioners.[51] In his opinion, these men died as heroes, bravely surrendering their lives for their king in the highest demonstration of loyalty. Moreover, they did so as true soldiers— obedient, brave, and defiant to the end— like the legendary centurions. Allaire's romanticized description of their deaths gave back a sense of dignity to the unfortunate men while simultaneously villainizing the Whigs for their actions. Johnson's account of the hangings was not as idealized as Allaire's, although he too likened their death as Romanic "saying they died for their King [and] his Laws."[52] Instead, he recorded the tragic stories of two of the condemned officers' families, who were apparently camp followers and witnessed the entire affair. Johnson wrote:

> What increased this Melancholy scene, was the seeing Mrs. Mills taking leave of her Husband, [and] two of Capt. Chitwoods Daughters take leave of their Father[. The] latter were comforted with being told their Father was pardoned, they then went to our Fire where we had made a Shed to keep out the Rain[. They] had scarce sat down when News was brought that their Father was dead[. Here] words can scarce describe the Melancholy scene[. The] two Young Ladies swoon'd

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[50] Alexander Chesney, "The Journal of Alexander Chesney: A South Carolina Loyalist in the Revolution and After," *The Ohio State University Bulletin* 26, no. 4 (October 30, 1921), 18; Allaire, *Diary of Anthony Allaire*, 32; Johnson, *Captured at King's Mountain*, 32; Campbell, *Battle of King's Mountain*, 104; Hardin, "Battle of King's Mountain," 109.

[51] Allaire, *Diary of Anthony Allaire*, 32.

[52] Johnson, *Captured at King's Mountain*, 32.

> away, and continued in fits all Night.— Mrs. Mills with a Young Child in her Arms set out all Night in the Rain with her Husbands Corps, [and] not even a Blanket to cover her from the inclemency of the Weather…[53]

The descriptions provided by Allaire and other recorders of these events focus on the condemned men and their alleged criminality or qualities as a soldier. As such, these accounts offer sanitized versions of the events: These men were criminals who were finally brought to justice, or, these men were true soldiers who died like heroes. Conversely, Johnson's diary entry provides a sobering account of the events at Bickerstaff Plantation, to remind others (or himself) that the deceased prisoners were also family-men, with wives and children and homes of their own. It also served as a reminder that the suffering of these men extended to others and was not limited to themselves.

Johnson also related the story of Captain Walter Gilky, which was not only tragic, but was also an example of the ironies that sometimes occurs during war:

> The crime of one Walter Gilky that was executed, was his wounding the lad that was brought into us at Whites the 17th of July. [The] Boy appeared to evidence against Gilky; a poor retaliation for the [kindness] shewn him in our Camp, [and] his being set at liberty upon promising to go home to his Parents.[54]

The episode that Johnson refers to occurred earlier in the summer. The entry for that day described militia troops returning to camp with four prisoners. One of the prisoners was a fifteen-year old boy who was severely wounded in the arm.[55] Johnson obviously remembered treating this boy's wound and that Gilky was one of the militiamen that captured him. While Johnson did not indicate when the boy was set free, his presence at the trials indicates that he survived his wounding and received parole at some point

[53] Ibid., 32-33.
[54] Ibid., 33.
[55] Ibid., 21.

following his capture. Thus, his appearance at the trials to testify against Gilky upset Johnson, who felt betrayed after caring for him.

Although the tribunal declared over thirty men guilty and sentenced them to death, the Whigs only executed nine of them. The remaining prisoners received pardons. Interestingly, Robert Campbell wrote that these nine "were thought the most dangerous, and who had committed the most atrocious crimes."[56] Draper suggested that the sudden end of the executions was due to word reaching camp that Tarleton and his cavalry were approaching the area.[57] Once more, the Whig leaders chose to err on the side of caution, strike camp, and begin marching right away, just as they did a week before. Their destination by now was the Salisbury District to the east. The diary entries of both Allaire and Johnson indicate that a sense of urgency pervaded the encampment. Both men recorded that the army and the prisoners started marching at five o'clock that morning and did not stop until ten o'clock at night. In the course of those fifteen hours, they covered thirty-two miles over rough roads, swollen creeks and rivers, and through torrential downpours until finally stopping at the McDowell Plantation for the night.[58]

The events at the Bickerstaff Plantation demonstrate the complexities between state and military law and jurisdictional authority over prisoners of war. In this instance, the Whigs believed they had the legal right to try the prisoners under North Carolina law; however, they conducted the trials through a military court-martial. Men, such as Robert Campbell, believed the trials and subsequent executions were just and necessary, stating that, "The Officers on the occasion acted from an honorable motive to do the greatest

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[56] Campbell, *Battle of King's Mountain*, 104.
[57] Draper, *King's Mountain*, 344.
[58] Allaire, *Diary of Anthony Allaire*, 32 and Johnson, *Captured at King's Mountain*, 33.

good in their power for the public service, and to check those enormities so frequently committed in the States of North and South Carolina at that time."[59] Draper concurred, maintaining that the tribunal was a direct response to "the Tory lawlessness that largely over-spread the land."[60] He went on to argue that "the complaints against the Tory leaders were made by the officers of the western army from the two Carolinas, and the court and jury were composed exclusively of officers— and all was done under the form and sanction of law."[61] Thus, the trials and executions were just because they were done under the auspices of protecting the public, the proper procedure of law, and within the scope of only the Carolinas and Carolinian law.

Yet, there are other aspects of these events that cast a shadow upon their legitimacy. The reliance on eyewitness testimony as the only source of evidence against the accused is difficult to defend, as it is far too susceptible to dishonesty and poor memory. Moreover, the reputation of the eyewitness influenced the weight of their testimony. Draper documented the story of an accused militiaman who was about to be acquitted until one of the judges on the jury testified against him, thereby condemning him.[62] A court which allows a judge or juror to testify against an individual accused of a capital crime, cannot possibly be considered just or fair.

This leads to the next issue with the legitimacy of the trials and executions. The primary motivation for the hearings was not the pursuit of justice but an opportunity to exact revenge. The arrival of the paroled officer at Bickerstaff Plantation, his conversation with the Whig commanders, and their requests for a court-martial cannot be

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[59] Campbell, *Battle of King's Mountain*, 104.
[60] Draper, *King's Mountain*, 336.
[61] Ibid., 336-37.
[62] Ibid., 333-34.

considered mere coincidence. The timing does not allow it. The stories about the previous hangings at Camden and Augusta were already in the minds of the Whigs and fomenting their anger, as were the numerous other stories related to them from the people around them. The report about the hangings at Fort Ninety-Six proved to be the catalyst needed to set off the chain reaction of events at Bickerstaff. The Whigs wanted retribution for these barbarous acts, and they had the men responsible for them. The legal proceedings were simply superficial formalities of what was tantamount to a kangaroo court.

Whatever their reasons were for the trials, the Whigs succeeded in squelching Loyalist activity throughout most of the Carolinas. Much of this had to do with the news of Ferguson's defeat at King's Mountain; however, news of the hangings at Bickerstaff Plantation spread just as quickly. Cornwallis, in his response to General Smallwood's inquiry, noted "that the cruelty exercised on the Prisoners taken under Major Ferguson is shocking to humanity; and the hanging [of] poor old Colonel Mills, who was always a fair and open Enemy to your Cause, was an act of the most Savage barbarity."[63] The Whigs wanted to send a message of the potential repercussions for remaining loyal to the English Crown and accomplished this in convincing fashion.

In addition to creating an environment of fear, the Whigs also succeeded in practically destroying the leadership structure of the Loyalist militia in the west. Colonel Mills and Captains Chitwood and Gilkey, were just some of the officers executed at Bickerstaff Plantation. Two other captains and a lieutenant also lost their lives that night. The loss of so many high-ranking officers created a leadership vacuum that the British and Loyalists found difficult to fill. Consequently, the number of enlistments among the

[63] Cornwallis, "Letter to William Smallwood," 733.

Loyalist militia soon dropped. This became evident for Cornwallis at the Battle of Guilford Courthouse the following year. General Henry Clinton made this very point in his controversial critique of Cornwallis after the war when he wrote that he was "at a loss to guess what may have been his Lordship's reasons for being surprised that Loyalists] failed to join him after the victory at Guilford, as such efforts of loyalty could scarcely be expected of them after their past sufferings."[64]

3.3. Misery in Moravia

The Whig army and its prisoners continued marching for the next several days, stopping at different plantations along the way. The weather worsened, as did the terrain, exhausting both man and beast. The prisoners particularly suffered because they received very little to eat and did not possess the appropriate clothing for the raw weather conditions.[65] During the march, prisoners began slipping past their guards and escaping into the surrounding forests. Colonel Campbell's concerns about the desertion rate and prisoner security were coming true. Allaire and Johnson give contrasting numbers as to how many prisoners made their escape during this journey. Johnson claimed that only thirty escaped, while Allaire stated that the number was closer to one hundred.[66] It is difficult to assess which set of numbers is correct. Regardless of the numbers, it appears that the Whigs became more aggressive in securing the prisoners. On the 17th, three prisoners attempted to escape their captors. The Whig guards gave chase and managed to

[64] Sir Henry Clinton, *Clinton-Cornwallis Controversy*, vol. 1, *The Campaign in Virginia 1781* (London: Benjamin Franklin Stevens, 1888), 105.
[65] Allaire, *Diary of Anthony Allaire*, 32.
[66] Ibid. and Johnson, *Captured at King's Mountain*, 33.

shoot one of the escapees through the body, while the other two got away. The following day, the Whigs hung the wounded man for his efforts.[67]

On Monday, October 23rd, the caravan reached the Moravian settlement of Bethabara, in what is now present-day Winston-Salem. Upon their arrival, the Whigs placed the captured officers in an abandoned building then moved the remaining prisoners to a large, fenced meadow to the north of town.[68] Both Allaire and Johnson noted in their diaries the kindness shown toward them and the remaining prisoners by the Moravian people. It is not difficult to imagine that this was a welcome respite from what they had to endure up to this point of their captivity.

The Moravians were a religious sect of German Protestants who migrated to North Carolina from Pennsylvania in the mid-eighteenth century. They were pacifists, unwilling to take up arms for either the Whigs or the Tories. This stance periodically caused troubles for them, as each of these groups suspected the Moravians of secretly working for the opposing side. The North Carolina Assembly eventually allowed the Moravians to affirm their loyalty to the State in 1779, thus, easing tensions with the Whigs. (The Assembly passed an act, which changed the Oath of Allegiance and Fidelity to the Affirmation of Allegiance and Fidelity. The Moravians, whose religious convictions forbid them from swearing any oaths, requested that this be done.)[69] Yet, the significance of the Moravians was not their loyalty to one side or another; it was their proclivity for record-keeping. The Moravians were avid diarists and record-keepers, sending annual reports back the main churches in Pennsylvania and Germany of what

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[67] Johnson, *Captured at King's Mountain*, 33
[68] *Records of the Moravians in North Carolina*, ed. Adelaide L. Fries, vol. 4, 1780-1783 (Raleigh: Edwards and Broughton Company, 1930), 1631.
[69] Ibid., 1878-79.

transpired in the settlement over the previous year. These records contain personal accounts and eyewitness testimony of events that occurred within Bethabara during the nineteen days that the King's Mountain prisoners remained there. Therefore, it is possible to piece together their story during the next phase of their captivity.

On their first night at Bethabara, Allaire and Johnson recorded an incident whereby a militia officer, known only as Captain Campbell, entered their room and demanded they give him their bed. Allaire recalled that Campbell "came into our room and ordered us up in a most peremptory manner."[70] Johnson concurred, adding that Campbell "strutted about in a truly coward like manner with his Sword drawn and threatening to Murder us."[71] Allaire went to Colonel William Campbell and reported the incident. Soon afterwards, Colonel Campbell had the disruptive captain removed from the room and peace was restored. However, the episode demonstrates how the Whigs' abusive treatment of the prisoners continued unabated. Unfortunately for Allaire and Johnson, Captain Campbell was only the beginning of their troubles. Colonel Benjamin Cleveland proved to be much worse.

3.4. Colonel Benjamin Cleveland

Benjamin Cleveland was a large man, both literally and figuratively. Standing six feet in height and weighing over three hundred pounds, Cleveland struck an imposing figure among the men around him.[72] He was the quintessential, frontier aristocrat, married into a wealthy family, made a career raising cattle, and owned a large parcel of land in the Yadkin Valley of central North Carolina. Cleveland was an avid hunter,

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[70] Allaire, *Diary of Anthony Allaire*, 33.
[71] Johnson, *Captured at King's Mountain*, 34.
[72] Lynn T. Sprague, "The Terror of the Tories: Colonel Benjamin Cleveland," *The Outing Magazine* 53 (October 1908-March 1909): 60-61.

travelling as far west as the forests of Tennessee and Kentucky in search of game.[73] He was a prominent citizen in what was then Surry County (it split in 1778 to form Wilkes County) and, like other backwoods aristocrats, became involved in law and politics, serving as a Justice of the Peace and as a commissioner on the Surry County Committee of Safety.[74]

At the outbreak of the Revolution, Cleveland lead a local militia unit to the settlement of Cross Creek, near present-day Fayetteville, where he attacked and defeated a group of Scottish Tories. In the short campaign that followed, Cleveland and his men "scoured the country in the region of Wake Forest" and established the *modus operandi* that gave him his notoriety. After capturing their prisoners, Cleveland immediately tried them for various crimes (treason, murder, theft, etc.), convicted them, and then had them executed by hanging them from the nearest tree.[75] This form of backwoods justice was not unique to Cleveland for both sides committed the same atrocities against one another. However, Cleveland's overall success, coupled with his imposing features, gave him mythical status throughout the Carolinas. To his supporters, he was a noble warrior, full of bravery and patriotism, yet, "to all Tories the terror of terrors."[76]

Cleveland's intense hatred for Tories was proportional to his physique. This was not only evident by his readiness to hang them, but also by his abusive behavior toward those he suspected were sympathetic to them. An anecdotal story about Cleveland, by those who knew him, describes such an episode and demonstrates a man so overcome by

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[73] Draper, *King's Mountain*, 427-29.
[74] Surry County Committee of Safety, "Minutes of the Surry County Committee of Safety," August 25,1775, *The Colonial and State Records of North Carolina*, vol. 10 (online: Documenting the American South), 228, https://docsouth.unc.edu/csr/index.php/document/csr10-0093#p10-228.
[75] Draper, *King's Mountain*, 432-33.
[76] Ibid., 454.

his zeal that he acted on the slightest perception of sympathy. Near the end of the war, a man was travelling back to his home in the eastern part of the State. He stopped at Cleveland's plantation to stay for the night. At some point during the night, Cleveland began to suspect the man was actually a Tory. Unbeknown to Cleveland, the man was very much a Whig and a man of some stature as well. This did not matter, however, and the following morning, before the man resumed his travels, Cleveland assaulted him, took his horse, then sent him on his way.[77] While the veracity of this account is certainly questionable, the fact of its popularity is indicative of the public opinion about Cleveland at the time. He was a violent, unpredictable man.[78]

Cleveland made a career of using his judicial authority to carry out his sense of justice against captured Tories. It did not matter whether he acted independently, or as part of a larger army. The events at Bickerstaff Plantation bore this out. Even sympathetic Draper felt compelled to admit, "there can be no question but Colonel Cleveland was conspicuous in bringing about the execution of the Tory leaders at Bickerstaff's."[79] Not only was Cleveland one of the officers that pressured Colonel Campbell to hold a court-martial, he also made sure that he was one of the presiding justices. The following incident demonstrates just how far Cleveland was willing to use the law to punish Tories:

> At the trial at Bickerstaff's, when the [John] McFall's case was reached, Major McDowell, as the proper representative of Burke County, whence the culprit hailed, was called upon to give his testimony; when, not probably regarding McFall's conduct as deserving of death, he was disposed to be lenient towards

[77] Katherine K. White, *The King's Mountain Men: The Story of the Battle, with Sketches of the American Soldiers Who Took Part* (Baltimore: Genealogical Publishing Company, 1966), 72-73.
[78] According to the rest of the story, this same man returned to Cleveland's home after the war. Cleveland took the man in as he did before, but he did not recognize him. The next day, the man and Cleveland went riding out on Cleveland's property. When they were out of sight, the man pulled a pistol on Cleveland, made the big man lay prone, then tied him up to some saplings. The man announced who he was; took back his horse; then left Cleveland lying on the ground, exposed to the elements. Cleveland was found three days later, alive, but certainly wounded in pride.
[79] Draper, *King's Mountain*, 436.

> him. Colonel Cleveland, who, it would appear, was one of the presiding justices, had his attention attracted from his paper, upon which he was making some notes, by hearing McFall's name mentioned, now spoke up— "That man, McFall, went to the house of Martin Davenport, one of my best soldiers, when he was away from home, fighting for his country, insulted his wife, and whipped his child; and no such man ought to be allowed to live." His fate was sealed by this revelation…[80]

Cleveland blurred the lines between judge and eyewitness when he testified against McFall. His testimony and the subsequent condemnation of the man suggests that he was not afraid to bend the rule of law to achieve his goals. That Draper's account did not record any opposition to Cleveland by the other officers (who nearly acquitted McFall moments before) also suggests that the panel of officers either feared or felt intimidated by this large man.

On October 26th, Colonel Campbell left Bethabara and placed Cleveland in charge "to take command of the guards now here, and of those who may come to camp till I return, and in the meantime to issue such orders as may be necessary."[81] Given what they knew about Cleveland, based on hearsay and first-hand experience, it is easy to speculate the level of apprehension and anxiety felt among the prisoners when they learned of Campbell's departure and Cleveland's assumption of command. Yet, Campbell had little choice. Colonels Shelby and Sevier left days earlier to return home, leaving only Cleveland as the next high-ranking officer. Perhaps, realizing this was not the ideal choice for the situation at hand, Campbell issued a new set of orders prior to his departure. The orders were tactful but direct and addressed his expectations of his officers and men in carrying out their duties during his absence. Campbell may have placed

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[80] Ibid., 333-34.
[81] William Campbell, "General Orders from William Campbell at Bethabara," *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 372, https://docsouth.unc.edu/csr/index.php/document/csr15-0279#p15-372.

Cleveland in charge of the camp, but he remained the overall commander of the army and he expected his orders to be obeyed “under pain of arrest or confinement.” He then placed a curfew over the camp and forbade the sale and use of alcohol without permission to control the militiamen, indicating that discipline and drunkenness were significant issues for the leader.[82]

As for the prisoners, Campbell reminded Cleveland and the other officers that they were to follow any instructions he sent them. They were not given the authority to move the prisoners from Bethabara to another location, or to even make any changes to the current arrangements within the Moravian settlement. The prisoners were to receive their full rations while he was away. Furthermore, the captured provincial officers (like Allaire and Johnson) were to remain in their assigned housing unless Campbell, himself, ordered their removal. Unlike the other parts of his orders, Campbell followed this command with a curious clause expressing his hope that these officers would not experience any abuse while he was away. There is little doubt that the incident involving Allaire and Johnson three days earlier influenced Campbell to add this to his orders. Yet, this statement should not be read as if Campbell sympathized with the officers. If this were true, it would have seriously weakened his position and control over his army. This position also contradicts the overall authority behind the rest of his orders. Instead, Campbell’s statement was an innuendo of a thinly-veiled threat. He was well-aware of Cleveland’s hatred and past treatment toward Tories, as well as the men under Cleveland’s command. Thus, Campbell’s simple expression of hope was, in actuality, a stern warning.

[82] Ibid.

Despite Campbell's orders, the abuse continued after his departure. On October 30th, a Tory militiaman was nearly hung before Cleveland reprieved the man. According to Allaire, the man's crime was simply talking back to a Whig soldier who had cursed the man moments before.[83] Two days later, Allaire witnessed another incident of abuse when Cleveland assaulted Johnson while he was treating a wounded man. Johnson recorded the episode in his diary that night:

> I went to see the Prisoners, got permission from Coll. Cleveland to go within the Ring [and] dress the wounded Prisoners, when dressing one McCatchum[,] Coll. Cleveland came to me and said he was a Damnd Villain [and] deserved the Gallows[.] I asked him what he was guilty of, he repeated that he was as Damnd Villain as I was and deserved hanging[. He] then very passionately said he found out my Villainies, [and] had a great mind to cut me up[. No] sooner said than done, he struck me over the Head with his Sword, and levil'd [sic] me[. He] repeated his stroke [and] cut my Hand[.] I then desired to know my Crime, he said I was a Damn'd Traitor to my Country [and] that he would confine me in the Guard with the other Villains[.][84]

Just like the incident with Alexander Chesney during the long march, this account demonstrates the unpredictable and violent nature of Cleveland's anger. Johnson's description of the events does not indicate any animosity, or pre-existing issue, between he and Cleveland when he asked the colonel for permission to treat the wounded. Yet, it is clear that something triggered Cleveland. A likely explanation is that Cleveland felt challenged when Johnson questioned him about the wounded man's guilt. This was not the response a man of Cleveland's size and matching ego was expecting. Nor was he expecting this insolent surgeon to continue challenging him during his assault.

In a fortunate turn of events, Colonel Martin Armstrong and his Surry County militia relieved Cleveland and his men when they arrived at Bethabara that evening.

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[83] Allaire, *Diary of Anthony Allaire*, 33.
[84] Johnson, *Captured at King's Mountain*, 34.

Johnson noted, rather cheekily, that it was "a happy exchange to the Prisoners."[85] By all accounts, life in the Moravian settlements appeared to settle down after Cleveland and his men departed. One Moravian diarist noted that "the town was more quiet this evening."[86] Cleveland and his men cannot be blamed for all instances of abuse; however, the decrease in the number of references to abuse does suggest that they were responsible for—or at least involved with— many of them. What is evident is that Cleveland and his men willfully ignored the very laws that they used to punish their Tory prisoners. They became a law unto themselves, making them much more difficult to manage, or to be trusted to carry out any of the congressional policies for the proper care and management of prisoners of war.

3.5. The Armstrong Affair

The arrival of Colonel Armstrong marks a distinct shift in the narrative of the King's Mountain prisoners. References to violence in the diarists' records no longer appear, whereas, references to leisurely activities increase. Both Allaire and Johnson frequently mentioned taking horseback rides and walks to the neighboring Moravian towns during this period. However, this does not imply that their troubles were over. On the contrary, conditions for the prisoners remained difficult as they continued to endure brutal winter weather and food shortages. Yet, the atmosphere was undeniably more peaceful for them than before. Much of this was due to Cleveland's departure; however, some of it was also on account of Armstrong.

On November 8th, a week after he assumed command, Armstrong extended an offer to the captive North Carolinian Tories, inviting them to enlist in the Whig militia. In

[85] Ibid.
[86] *Records of the Moravians*, vol. 4, 1632.

return for their service, Armstrong promised to release them from their captivity. A Moravian diarist in Bethabara noted "that all the prisoners from this province who were fit for military duty… enlisted."[87] Word travelled quickly to the other Moravian settlements. In Salem, a diarist wrote, "We hear that most of the captured Tories who live in this section have been released, on condition that they serve six months in the American army." The diarist also added an additional detail: "Before beginning service they were allowed to go home and wash their clothes."[88] Although this last statement seems comical, it speaks volumes about the condition of the prisoners. The Tory soldiers were wearing the same clothes they were wearing at King's Mountain a month prior. Having no change in clothing meant the prisoners were placing additional wear on what they already had on. The long marches, numerous crossings at creeks and rivers, and general use, caused it to deteriorate much faster. Captain Adam DePeyster described some of the men as being shoeless and wearing clothing so ragged, that they were practically naked.[89]

The condition of the prisoners was a violation of the laws of war according to European tradition, but there was little the prisoners could do about it. Captain DePeyster pleaded for his men in a letter to General Gates:

> Since we have had the misfortune of being taken by the militia, they have deprived us of all our Baggage and other necessarys, except what we had on in the action. We are now left without a Change of Cloaths, nor a farthing of money to bear our expence, a Circumstance never before Known in the army—our soldiers without Blankets, shoes, or even body Cloaths, and of course very unfit for a long march into a Cold Climate at this period of the season; and as to our Militia, their

[87] Ibid., 1633.
[88] Ibid., 1576.
[89] Adam DePeyster, "Letter from Adam DePeyster to Horatio Gates," 3 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 724, https://docsouth.unc.edu/csr/index.php/document/csr14-0638.

> situation is truly melancholy and calls for immediate succour. I only wish your Excellency had an opportunity of seeing us all.[90]

DePeyster's letter described the dire circumstances of the prisoners. They did not possess any clothes, any blankets, any shoes, nor any money with which to purchase such items. Furthermore, they were completely unprepared to march into the Virginia mountains during the winter (apparently, he was aware of Gates' desire to send them to Fincastle Court House). DePeyster made it clear that the Whig militiamen were to blame for the entire situation because they were the ones who destroyed the baggage train. From one professional soldier to another, DePeyster knew that Gates would understand his plight of being at the mercy of militia. If he did not, DePeyster wished the general see their conditions for himself to prove he was not lying.

DePeyster also describes the melancholia among the captive militiamen and the need for immediate relief, implying a sense of urgency for Gates' intercession. The singling out of this group from among the prisoners suggests that their lack of professional training did not prepare them to handle the hardships of enemy captivity. If they received the same training as the regulars, then they would find strength in discipline. Still, the militiamen were suffering to the point of breaking. This helps explain why so many of the prisoners accepted Armstrong's offer. When Johnson learned of the enlistments, after returning from Salem, he did not fault the militiamen for making the decision. He recognized that service in the army, even if it was with the enemy, was preferable to a slow death from exposure to the cold and starvation.[91]

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[90] Ibid., 724-25.
[91] Johnson, *Captured at King's Mountain*, 35.

On the same day Armstrong made his offer to the prisoners, he wrote a letter to Gates to report on their status. He informed Gates that one hundred eighty-eight of the prisoners were deemed citizens of the Salisbury District and, as such, were subject to civil rather than military jurisdiction. Accordingly, they were "taken out of [his] Hands by the Civil power [and] bound over to ye law."[92] In the letter's post-script, written four days later, Armstrong nonchalantly added that "The Torie prisoners have all enlisted into the Continental Service, excepting a small number, which the Justices have Committed to Halifax."[93]

Gates was enraged by the report and did not understand why Armstrong made these decisions. His orders pertaining to the prisoners were clear and consistent since he first issued them on October 12th: "Send them under proper guards to Fincastle Court House, Virginia."[94] Although Gates' issued his initial set of orders to the officers at King's Mountain, he made his intentions clear to others as well. He wrote Virginia Governor, Thomas Jefferson, "I have ordered the Prisoners who were taken at Kings Mountain, and who are now at the Moravian Town in this State, to be march'd [sic] immediately to Fincastle [Court] House, also requested [Colonel] Preston to Supply them, and their Guard with provisions, and directed Him to have a Stockade immediately Set Up, to Secure them in."[95] At the very least, Colonels Campbell or Cleveland

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[92] Martin Armstrong, "Letter from Mark Armstrong to Horatio Gates," 7-11 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 727, https://docsouth.unc.edu/csr/index.php/document/csr14-0642#p14-727. Note: The letter is attributed to Major Mark Armstrong, a subordinate of Colonel Armstrong. The context of the letter indicates that Colonel Armstrong was the actual author.
[93] Ibid., 728.
[94] Gates, "To the American Officers," 115.
[95] Thomas Jefferson, "From Thomas Jefferson to Samuel Huntington, 7 November 1780," The Papers of Thomas Jefferson, vol. 4, 1 October 1780 - 24 February 1781 (Founders Online), https://founders.archives.gov/documents/Jefferson/01-04-02-0121.

forwarded Gates' orders. The North Carolina Board of War alluded to this when it wrote Armstrong, "The Orders were positive and repeated to the Commanding Officers of the prisoners from Gen. Gates *by our advice* [emphasis added] to send the Prisoners on to Fincastle, or other safe places in Virginia."[96]

If Armstrong understood— or was aware of— Gates' orders about the prisoners, he needed to explain himself. This was the position of the Board of War when it wrote:

> We know not by what authority you, as Colonel of the Militia of Surry County, should undertake to issue proclamations of pardon and promise to use your Influence thereon, to set at large 500 Traitors, or at least Prisoners of War, without consulting the Supreme powers of this State previously on that Subject, so easy to be done without the Necessity of involving yourself in the many difficulties that perhaps may ensue from this rash Action. Why was not General Gates, the [Continental] Commander; why was not [General] Smallwood, the Commander of the Militia, consulted, that uniform proceedings might be throughout the State?[97]

The Board's scathing letter continued, posing additional questions for Armstrong to consider: Did he not believe his actions would portray the North Carolina government as weak and anarchistic, led by a mob and chaos rather than by law and order? Did he bother to stop and consider that the prisoners would be used in exchanges that would repatriate North Carolinians held captive in Charleston?[98] Armstrong's actions no longer made this a possibility. Gates and the Board of War wanted answers and Armstrong was quick to respond. In his subsequent letter, Armstrong explained that he made his decision based on several factors. First, he admitted to listening to the advice of others rather than following orders. Armstrong explained how these individuals convinced him "that such

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[96] North Carolina Board of War (NCBW), "Minutes of the North Carolina Board of War," 14 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 463, https://docsouth.unc.edu/csr/index.php/document/csr14-0396#p14-419.
[97] Ibid., 462-623
[98] Ibid., 463.

men would Never be Exchanged, but be tryed [sic] by the laws of their Country.[99] This portion of Armstrong's response illustrates the jurisdictional conflict over captured militia soldiers. Did they fall under Continental authority, or did they still remain under State/Civilian authority? Armstrong's letter indicates that he considered them under the authority of the State following a meeting with fellow officers and Court Justices from Surry and the surrounding counties. They argued that action had to be taken with the prisoners. Either the prisoners needed to be released in return for military service, or they needed to stand trial for their crimes against the people and against the United States. These were the only options presented to Armstrong because none of the men believed captive militia were ever exchanged.

The second factor to influence Armstrong's decision was his ignorance about a cartel agreement with the British. "Nor did I know the Contrary," he wrote, "untill I was Acquainted by the board of war that a Cartel has been lately settled for that purpose."[100] To be fair, this was a legitimate point in Armstrong's defense. Cartel negotiations were not announced until all parties reached a final agreement. Nor can it be assumed that the discussion of a prisoner exchange during the council meeting was in reference to a specific cartel agreement. Yet, despite these points, Armstrong's ignorance was not a valid excuse. He conceded as much when he wrote, "what I have acted with reguard to the Militia of Salisbury district was entirely done Through my Ignorance, & the Council aforesaid; nor shall I plead Justification any further, as I now plainly see I was wrong."[101]

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[99] Martin Armstrong, "Letter from Mark Armstrong to Horatio Gates," 19 November 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 744, https://docsouth.unc.edu/csr/index.php/document/csr14-0658#p14-744.
[100] Ibid.
[101] Ibid.

Armstrong's third reason was the serious security issue facing him upon his arrival at Bethabara. The departure of Cleveland and his men left Armstrong short on manpower and ammunition. "I was Left with Very few men fit for duty, without a sufficient Quantity of arms, and many of the Continentals obliged to Stand with empty Guns, for I had no Ammunition."[102] Consequently, escapes occurred. The first was on November 7th, when three provincial lieutenants (one of whom was Allaire) and a captain from the South Carolina militia violated their parole and made their escape while out walking. Allaire's diary account did not make any mention of having to slip past a guard, suggesting that they walked unattended.[103] This made their escape that much easier. A group of twenty provincial soldiers made their escape three days later.[104] This incident is more telling of the growing security problems. Since the escapees were enlisted men, they were not housed like the officers. Instead, the Whigs detained them inside a fenced pasture with guards posted about. The fact that a group of sixteen men managed to escape their captors now rather than before suggests that fewer guards were present.

Another security issue for Armstrong was ensuring the safety of the prisoners during a march through the Virginia mountains. In his first letter to Gates, Armstrong mentioned being advised by the Virginia officers serving under him "not to send them over the Mountains."[105] In his second letter, he offered more detail about the Virginians, stating that "many of the officers from The other Side of the Mountain threatned [sic] that if the Tory prisoners were Taken to the westward they would raise a body of men [and]

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[102] Ibid.
[103] Allaire, *Diary of Anthony Allaire*, 34.
[104] *Records of the Moravians*, vol. 4, 1633.
[105] Armstrong, "Letter to Gates," 7 Nov., 728.

Kill every one of Them."[106] Thus, if he were to obey Gates' orders and move the prisoners to Fincastle Court House, he would be placing their lives at risk. This was unacceptable to Armstrong, who believed that it was better to preserve the lives of the prisoners by disobeying a direct command, than being responsible for their deaths through blind obedience.

These were the reasons Armstrong provided in his response to Gates and the Board of War. However, there were additional factors that influenced his decision but were not alluded to in his letter. The most significant of these was a similar invitation he made to the Tories in Surry County three weeks before his offer at Bethabara. On October 14th, a Whig force of three hundred militiamen ambushed a much larger force of nine hundred Tories at Shallow Ford, near present-day Huntsville, North Carolina. The attack was a success for the Whigs, who managed to kill the Tory leader and drive the rest of the army off into the surrounding countryside. Knowing that the remnants of the Tory army remained in the area, and recognizing that the Whigs remained outnumbered, Armstrong called for a Council of War on the night of October 19th.[107] The council agreed that Armstrong extend an offer of pardon to interested Tories. Accordingly, on October 24th, Armstrong issued the following advertisement:

> Agreeable to an order of Council of the Officers present in Camp at the Shallowford, October 19th, 1780, I hereby give this Public Notice, Requesting and Commanding all those deluded people in the [County] of Surry who have been Concerned in the late Insurrection and taken up arms against their Country, in Open Violation of the Laws thereof, to Come to Richmond on or before the first day of November Next and Deliver up all their Arms, Ammunition, Shotpouches, Horses, Saddles, Bridles, &c., which they or any of them have taken from the good people of the said County, or had in the field of Battle at the

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[106] Armstrong, "Letter to Gates," 19 Nov., 744-45.

[107] Martin Armstrong, "Minutes of a North Carolina Militia Council of War," 19 October 1780, *The Colonial and State Records of North Carolina*, vol. 14 (online: Documenting the American South), 123-24, https://docsouth.unc.edu/csr/index.php/document/csr15-0741#p15-124.

> Shallowford or elsewhere; Give Security for their Good behavior, be Subject to Such Other Rules, orders and Regulations as the Commanding Officer shall think Requisite for the better Security of the Lives and properties of the peaceable Inhabitants of said County and the Service of this and the United States; then and in such Case I promise to make Use of my Influence with the General Assembly of this State to Obtain for all such A pardon.[108]

Armstrong's invitation was a gamble. The officers hoped to capitalize on the recent victories at Shallow Ford and King's Mountain to deplete the ranks of the larger enemy force through the promise of a pardon, thereby negating the enemy's size advantage. Three weeks later, Armstrong found himself in a similar situation again at Bethabara. Cleveland's departure left him without enough men to properly secure the prisoners. If Armstrong was not outnumbered by the prisoners, they were very close to even with his men. Given this situation and his recent actions (in addition to the same cadre of officers), it is reasonable to consider that Armstrong chose to make a similar offer to the prisoners at Bethabara for the very same reasons as above.

Armstrong's decision was also influenced by his empathy toward the prisoners. He believed they needed a second chance to demonstrate their loyalty to the United States and not the Crown. His motivation for providing that chance was the prisoners' anxiety over their fate. They did not know where they were going, when they were leaving, or how much longer they were to remain in captivity.[109] Their fears were further aggravated by their current state and living conditions.[110] Armstrong believed anxiety required

[108] Martin Armstrong, "Advertisement by Martin Armstrong Concerning a Pardon for Loyalists in Surry County," *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 124, https://docsouth.unc.edu/csr/index.php/document/csr15-0742#p15-124.
[109] Johnson, *Captured at King's Mountain*, 35.
[110] DePeyster, "Letter to Gates," 724-25.

action, and action required opportunity. Therefore, he sought to "give them the opportunity of Showing their fidelity by act of Service to their Country."[111]

The final influential factor for Armstrong was his empathy for the Moravians. As the commanding officer of Surry County's militia, Armstrong frequently travelled through the Moravian towns, stopping often to speak with the people, or attend their religious services. In time, he developed close relationship with them. His compassion for the Moravians compelled him to advocate for them when he could in matters involving the State, or with fellow military officers. In one instance, he authorized travel passes for one of the Brethren who wished to go to the Moravian settlements in Pennsylvania.[112] On another occasion, the Moravians learned that Gates' army was going to travel through their settlements. Anxious that they did not have the supplies to sustain them during such an event, they approached Armstrong, who interceded on their behalf to prevent the army's march through the area.[113] Such was the Moravians' admiration and appreciation for Armstrong that they considered him their friend and guardian.[114]

When Armstrong witnessed the suffering of the prisoners, he also noticed the suffering of the Moravian people. Before his arrival, they fell victim to theft, disorderly conduct, threats of violence, near-executions, and constant food shortages. He understood that the Moravians could not provide much more for themselves, let alone an army and hundreds of prisoners. Offering a pardon to the prisoners gave Armstrong the opportunity to provide immediate relief for the Moravians once the prisoners were released.

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[111] Armstrong, "Letter to Gates," 19 Nov., 745.
[112] *Records of the Moravians*, vol. 4, 1568.
[113] Ibid., 1563.
[114] *Records of the Moravians in North Carolina*, ed. Adelaide L. Fries, vol. 3, 1776-1779 (Raleigh: Edwards and Broughton Company, 1930), 1024.

At the conclusion of his letter to Gates, Armstrong provided details about the current status of the prisoners. He issued bonds to the militiamen from Burke County under the full authority of the Superior Court and enlisted in the service for a term of six months. The militiamen from Surry County also received bonds; however, their terms of service were only three months.[115] After the enlisted prisoners departed Bethabara, a Moravian diarist noted "only the English soldiers were left and the militia from South Carolina, who were counted as belonging to the Royal Army."[116] A group of Tories who rejected Armstrong's invitation still remained, but their number was small. According to Armstrong, they were already sentenced to imprisonment at Halifax by the County Magistrates.[117]

On November 9th, Armstrong ordered the remaining prisoners removed from Bethabara and relocated one mile up the road to a nearby plantation. They continued on the same road the following day until they reached the Moravian town of Salem.[118] They remained at Salem for a week. As far as any of the prisoners knew, they were still going to Virginia. However, news arrived on the 18th that changed their outlook. Johnson's diary entry for that day states that Captain DePeyster received a response to his letter from General Gates. In the letter, Gates ordered DePeyster and his men moved to the town of Hillsborough.[119] This course led due East and not North toward Virginia.

The band of prisoners and their guard set out toward Hillsborough on the 19th. Over the course of the following two days, they did not encounter any problems with

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[115] Armstrong, "Letter to Gates," 19 Nov., 745.
[116] *Records of the Moravians*, vol. 4, 1633.
[117] Armstrong, "Letter to Gates," 19 Nov., 745.
[118] Johnson, *Captured at King's Mountain*, 35.
[119] Ibid., 36.

their Whig captors. However, they did experience instances of bitter animosity from the people around them. Johnson noted several incidents involving his party and the local citizenry. Despite their being in need, many of the people between Salem and Hillsborough refused to provide any food for the prisoners. "They all seemed determined to make us fast for the good of our Souls," Johnson observed.[120] Neither did many of the citizens permit the travelers to lodge with them. In one instance, Johnson described an altercation between their guide and a Mr. Logan over their being permitted to stay within his house. Johnson's guide eventually won the contest and obtained permission, however, Mr. Logan spent much of the night "marching about the Floor [and] examining his muskets." The entire episode proved quite unnerving for Johnson and the others who "were not without… apprehensions he had some design" for them.[121]

3.6. Aftermaths

On November 22nd, Johnson and the other officers reached Hillsborough. The enlisted men arrived the next day. As in the past, the Whigs assigned the officers to quarters in private homes and issued paroles. They then imprisoned the enlisted men in the town jail. They remained in Hillsborough for the remainder of 1780 and the first months of 1781. On February 10th, Johnson and DePeyster received paroles and permission to return to Charleston, arriving there on March 2nd. The fates of the enlisted men varied. Some were eventually sent to Winchester, Virginia for detainment while others remained in Hillsborough. By October 1781, only sixty of the original seven hundred King's Mountain prisoners remained in captivity.[122]

[120] Ibid.
[121] Ibid.
[122] Ibid., xxxv.

The effects from the Armstrong Affair continued to reverberate for months. When Major-General Nathanael Greene replaced Gates on December 4th, one of his first reports to Washington addressed the issue of what happened with the prisoners. He wrote, "All the prisoners taken by [Colonel] Campbell and others have been dismissed, paroled and enlisted in the Militia Service for three months, except about 130. Thus[,] we have lost by this folly (not to say anything worse) of those who had them in charge upwards of six hundred men."[123] Greene recognized, as did Gates, that Armstrong's decisions crippled Patriot efforts to conduct an effective exchange with the British. On February 3, 1781, the North Carolina General Assembly suspended Armstrong for "misdemeanor in office."[124] His military career was not over, however, it was severely damaged.

The narrative of the King's Mountain prisoners demonstrates the complex nature of the prisoner of war experience in the Revolutionary South. The war devolved from a conventional conflict with set-piece battles fought in the European tradition, to a brutal civil war, marked by raids, ambushes and guerilla tactics. Moreover, the animosity endemic to civil war, created an environment wherein men, such as Benjamin Cleveland, thrived and gained notoriety for their ruthlessness and violence against their foes. All of this inevitably influenced the treatment British prisoners of war received at the hands of their captors. The question that remains now is "how much?"

The answer to that question depends on the identity of the prisoner. The composition of the King's Mountain prisoners consisted of Loyalist Provincial soldiers

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[123] Nathanael Greene, "Letter from Nathanael Greene to George Washington," 7 December 1780, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 175, https://docsouth.unc.edu/csr/index.php/document/csr15-0127#p15-175.

[124] NCGA, "Minutes of the North Carolina Senate," 3 February 1781, *The Colonial and State Records of North Carolina*, vol. 15 (online: Documenting the American South), 668, https://docsouth.unc.edu/csr/index.php/document/csr17-0288#p17-668.

and Tory militiamen. The former, while Americans, were professional soldiers in the British Army— better seen as National Soldiers. Consequently, they received different treatment from their captors. As the events at Bickerstaff Plantation demonstrated, their status as regulars provided a degree of protection from acts vigilantism and vengeance. It was not complete protection, however, as the assault on Johnson revealed. The latter were the non-professional soldiers. Because of their status as State Soldiers, these men fell under the jurisdiction of state laws rather than Federal military authority. As a result, they often fell victim to kangaroo courts and frequent executions.

The identity of the prisoners also determined their political value. Patriot leaders wanted to use the King's Mountain prisoners in exchange for the hundreds of prisoners in Charleston because they possessed greater leverage at the bargaining table. Yet, the Armstrong Affair demonstrated how little value local leadership subscribed to the Tory militia. The Virginian officers' threats against moving the prisoners into their state made this readily apparent. Additionally, others at the Council of War expressed the belief that militiamen were never exchanged. Only the "British"— referring to the regulars— possessed any inherent value, regardless if they came from England, Canada, or even other colonies.

CHAPTER 4: CONCLUSION

Wars are complicated affairs made even more complex by the responsibility of managing prisoners of war. This was especially true in the Revolutionary South, where the war for independence was already complicated by the brutality of civil war. Congressional leaders relied on the traditions they learned from the British military to construct a POW management policy that assured reciprocal treatment for American prisoners, required official recognition of American sovereignty, and was cost-effective. Yet, the majority of the soldiers in the South were militiamen, accustomed to untraditional warfare and who did not share the same belief system as the leaders in the North. This conflict had a direct effect on prisoner of war policies. American leaders sought to incorporate the Enlightenment-based traditions of Europe into its POW policies, only to find that southern leaders and soldiers generally rejected them for being impractical.

The unresolved (and growing) issue of states' rights versus Federal authority also contributed to the difficulties of implementing an effective POW policy. Southern leadership, from governors to local militia commanders, believed that congressional power over militia troops was strictly limited. Militiamen were State Soldiers and, as such, were first subject to the authority and jurisdiction of their respective state. This extended to captured militia as well. Furthermore, the enforcement arm of Congressional policy, the Continental Army, was impotent following the fall of Charleston and its subsequent defeat at the Battle of Camden. Consequently, the fate of captured militia was much more fluid than their Regular and Provincial counterparts in the British Army.

Americans frequently used paroles and exchanges as a means of managing the prisoner population. Yet, even these were not simple to carry out. Paroles were location-based, requiring a new one each time a prisoner relocated. Sometimes, the new paroles did not reflect the same terms as the previous parole, thereby, causing confusion and anger among the prisoners. Paroles were also gentleman's agreements based solely on the prisoners' word of honor to abide by the stipulations of the agreement. This raised numerous security issues for southern military leaders, who often did not have the necessary manpower to prevent prisoners from escaping and returning back to their units to fight another day.

Exchanges were difficult to conduct as well in the South. After Charleston and Camden, the British had the numerical advantage over American leaders in terms of prisoners. Congressional interference resulted in a breakdown in discussion to arrange an official cartel agreement between the warring nations, pushing individual State governments to conduct their own. However, the fundamental issue with these exchanges was matching prisoners rank-for-rank. Captured militiamen did not possess the same political value as other prisoners; therefore, they were far more difficult to use in these affairs. Their advantage only became apparent when captured in large numbers, such as at King's Mountain and Cowpens.

The Battle of King's Mountain was a pivotal moment in the Southern Campaign. It provided a badly needed victory to the independence movement at a time when the South was on the verge of collapsing. The battle produced a collection of prisoners for the first time in the South that was only comparable to the victories at Trenton and Saratoga up to that point. The story of what happened to those prisoners illustrates the

difficulties of captivity for the British. Prisoners endured abuse, neglect, and terrible living conditions at the hands of the Whig captors. Neither militiamen, nor army regulars were immune to these troubles. However, captured militia faced greater threats to their well-being. The trials at Bickerstaff Plantation stand as a testament to their mistreatment.

The violent environment of the Carolina backcountry gave rise to men like Benjamin Cleveland, who was hero to some, but a villain to others. His threats and attacks on prisoners, such as Uzal Johnson and Alexander Chesney, were the antithesis of treating enemy soldiers humanely. Moreover, his willingness to twist the rule of law to exact revenge revealed how little he valued the lives of Tory prisoners. Similarly, the actions of the Virginia militia officers exhibited an unequivocal hatred for the British prisoners when they threatened to slaughter them if Armstrong attempted to march them into their State as ordered. There is little doubt that any attempt to implement Congress' policies would meet stiff resistance by some of the very leaders the policies were designed to control.

Officers, like Martin Armstrong, created a different set of issues for implementation. His decision to disobey orders and offer pardons to the majority of the King's Mountain prisoners at Bethabara virtually destroyed the hopes of upper leadership to conduct any substantial exchange in the near-future. Although his reasons he provided to Gates and the Board of War for making his decision appeared logical and humane, there were other factors in play that he did not admit. His recent success with a similar offer to the Tories in Surry County gave him additional confidence that he could achieve the same results at Bethabara. Moreover, his empathy toward the condition of the prisoners and his Moravian friends, moved him to take action in an attempt to provide

some form of relief. However, this episode also demonstrated how easily a single man dismantled POW policy by doing what he thought was right.

The political value and expected treatment of a British prisoner of war in the South was contingent on his identity. Regular and Provincial soldiers tended to receive better treatment from their captives; however, this does not imply the absence of mistreatment or neglect. Popular opinion among Whig leaders held that these professional soldiers, whom they always referred to as "British," were innately more valuable than their non-professional cousins. Militia prisoners consistently received the worst treatment. Because the Whigs believed they fell under the jurisdiction of state laws, they possessed a means of convicting them for their loyalty to the Crown. Thus, their identity determined how well they fit within Congressional policy. The more useful they were, the more likely policy was followed and vice versa. The history of British prisoners of war in the South requires further research to identify and understand America's successes and failures for future policy-making. At the very least, it is necessary to give a voice to these marginalized figures who remained in the silent shadows until now.

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APPENDIX

As part of the program requirements for the Public History concentration, I am required to create a final project. The project that I created is titled, "When the Public Historian Becomes the Entrepreneur," and deals with historians in the private market. As part of this project, I created a business plan for a historical research service and a developmental plan for a web-based mobile application. Because of the proprietary nature of these two portions, I have chosen not to attach my project to this thesis in order to protect my intellectual property. The project is available upon request.