Controlling the Opposition in Pennsylvania During the American Revolution

The legislative record for the state of Pennsylvania during the American Revolution presents a picture of harsh people unyielding in their determination to stamp out all opposition. Not only were severe punishments mandated for behavior considered dangerous to the American cause, but, during periods of threatened or actual British invasion of the state, small groups of men were given extensive discretionary power to defend Pennsylvanians from internal as well as external enemies. Had these groups wished to eliminate personal or political opponents, either by execution or banishment, they had the power to do so. In practice, however, this did not happen. Instead, harsh measures were partially invalidated by juries refusing to indict or convict, by the Supreme Executive Council exercising its power of pardon after conviction, or even by the legislature passing special acts exempting certain individuals from the full force of a particular law.

This is not to say that all defendants received fair treatment before the law or that some did not suffer unjustly. Although the "declaration of the rights of the inhabitants" in the Pennsylvania constitution of 1776 promised accused persons rights long recognized
under English and provincial law, often many so-called disaffected\textsuperscript{1} persons were deprived of these rights during the Revolution.

At first, after the Declaration of Independence, unsettled conditions in Pennsylvania made it difficult for opponents of separation to secure fair treatment by law. A convention in the summer of 1776 drew up a state constitution which was so controversial that it divided Pennsylvania society for many years. Under that instrument, elections were held the following fall, and the first state Assembly met November 28, 1776, but members refusing to serve prevented it from taking action until January 1777. By that time, the executive arm of the government, the Supreme Executive Council, had not met at all, and it would not be completely formed until March 4, 1777. Thus, the state of Pennsylvania was without adequate legislative and executive branches from July 4, 1776, to March 4, 1777, and even then the government was insecure because many citizens continued to petition and work for its replacement and many experienced administrators refused to serve under it. It was even longer before all the courts, which had ended in May 1776, were functioning properly because lawyers who opposed the new Pennsylvania constitution of 1776 led a "deliberate sabotage" of the courts, refusing either to practice or to accept office, hoping thereby to prevent the courts from resuming and to force a revision of the constitution.\textsuperscript{2} Because of this opposition and the general confusion resulting from the British invasion and occupation of Philadelphia from September 1777 to June 1778, all the courts were not operating normally until the fall after the British evacuation. With government inoperative, opponents of the Revolution sometimes were challenged or detained by ad hoc groups which had little or no legal authority or respect for the niceties of the law.

During the fall and winter after the Declaration of Independence, the state was run by a Council of Safety which had been appointed

\textsuperscript{1} The term Loyalist, used by modern historians, was seldom applied by Revolutionary Pennsylvanians. Instead, the terms Tory or, more often, disaffected indicated those who opposed separation from Great Britain.

\textsuperscript{2} Thomas R. Meehan, "Courts, Cases, and Counselors in Revolutionary and Post-Revolutionary Pennsylvania," \textit{The Pennsylvania Magazine of History and Biography (PMHB)}, XCI (1967), 3-34.
by the constitutional convention in July 1776.\textsuperscript{3} Without an adequate police force, however, this body could not control extra-legal groups, such as mobs which gathered to punish suspected dissenters in their own fashion. For example, in August 1776 Lawrence Fegen, a Philadelphia tavern owner, was rumored to have aided a British prisoner of war to escape. Subsequently, a riot occurred during which the mob, remembering earlier suspicions about Fegen, attacked his home. In the ensuing fray, Mrs. Fegen was wounded, their home robbed, and some of their property destroyed. The Council of Safety inveighed against the violence and offered a $50 reward for the capture of the culprits, but the money went unclaimed and the rioters unpunished.\textsuperscript{4}

Citizens not only inflicted their own punishments but occasionally created their own spontaneous courts. On November 25, 1776, Thomas McKean chaired an impromptu court of seventy-three people meeting to hear charges against suspected dissenters. Although McKean was to become chief justice of the state Supreme Court, at this time he was not even a Pennsylvania justice of the peace. The seventy-three citizens acted as a large grand jury of sorts. They received charges against persons accused of disloyalty, had those individuals brought before them, heard the defense, and then voted whether to prefer charges against them before the Council of Safety. Some twenty individuals were questioned, and about eight men were imprisoned for two or three weeks for “crimes” such as singing “God Save the King,” toasting the King, commenting that opposition to him was not justified, and exchanging news of the successes of the British forces.\textsuperscript{5}

Once judges had been commissioned under the new state government, the legal procedures for the trials of persons accused of disloyalty to Pennsylvania and the United States should have followed the same steps that had been prescribed for accused criminals under the British, but sometimes this was not the case. Persons suspected

\textsuperscript{3} This group originally had been appointed as a Committee of Safety by the General Assembly June 30, 1775, and first met July 3, 1775. The constitutional convention changed the group’s membership and title in July 1776, and it met as a Council of Safety until Mar. 13, 1777. Pennsylvania Archives (Pa. Arch.), Eighth Series, VIII, 7247; Colonial Records (Col. Rec.), X, 279–784, and XI, 1–170 for minutes.

\textsuperscript{4} Col. Rec., X, 701; Loyalist Transcripts, L, 94–107, New York City Public Library.

of disloyalty to the Revolutionary cause occasionally were arrested and detained in jail without proper warrants and without subsequent hearings. In September 1777, nine persons who lived in Chester County were picked up by a troop of Continental soldiers and brought to the Philadelphia jail, where they remained three days before the Executive Council freed them. Two years later, during a riot with which they had no connection at all, four Quakers were jailed, supposedly to protect them from the violence. Two were liberated after a week when friends interceded in their behalf. The other two won release only when someone advised them to demand a writ of habeas corpus. The last man to be freed spent over six weeks in jail—not for a crime, but for his own "protection." As late as July 1780, Daniel and Caleb Offley, who had refused to pay a tax for soldiers' salaries, were jailed by verbal order of a militia captain without any warrant or legal writ to the jailer. Two days later Caleb was released, but Daniel was detained until August 9 when the captain, in the middle of the night, told Daniel he too could leave because a friend had paid the tax for him. A month later, however, no trace had been found of anyone who had paid the money. Of course, the Philadelphia court records, contain no mention of any of these persons, in spite of their confinements.

Even when accused disloyalists were given a trial there was no assurance that it would be a fair one. If the state's attorney did not like the verdict, he simply sent the jury back to deliberate further. In the case of Samuel Rowland Fisher, who was accused of sending information to the enemy in a letter to his brother behind the British lines at New York City, the jury was closeted three times before they brought back the acceptable verdict. When Fisher's brother remonstrated against this maneuver, members of the audience threatened him; Samuel Fisher believed that threats against the jury explained the final verdict of guilty. He was sentenced to forfeit half his property, and spent the next two years in jail.

The foregoing are only a few examples of the many injustices that

6 Pennsylvania Historical and Museum Commission (PHMC), RG 27, Supreme Executive Council Clemency Papers, 1777.
8 Ibid., 300, 303, 308.
9 Ibid., 159-166.
opponents of the Revolution who remained in Pennsylvania had to endure. The most severe sufferers, however, were the extremely dedicated Quakers who refused to take any step which would recognize the legality of the Revolutionary government. Fisher was offered a pardon in December 1779, five months after his conviction, but he refused to apply for it because he believed himself unjustly convicted by an illegal government. When he subsequently became ill, he was told he could go home if he would give his recognizance to return as soon as he was well, but again he refused. He continued to reject any offer of release on terms that might recognize his guilt or the authority of the government. Even some of Fisher's Quaker contemporaries became impatient at his obduracy. Finally, on July 23, 1781, he was given a complete pardon, yet he refused to leave the jail if he had to pay the customary fees. Officially he was not relieved of this obligation, but the Sheriff, anxious to get rid of Fisher, discharged him without fees.10

The laws specifying punishment of opponents of the Revolution may be divided into those directed against particular forbidden behavior and those giving power to individuals to act at their own discretion. The most severe charge was treason. Even before Independence, Washington's army punished military traitors,11 but Congress delayed grappling with civilian opposition, perhaps hoping to win over its opponents or perhaps realizing its own very ambiguous position. Since treason was considered "a criminal attempt to destroy the existence of the government,"12 until Congress was the legal government, it could not logically punish a failure of allegiance to itself.

Therefore, until the Declaration of Independence, Congress encouraged the individual colonies to suppress dissent within their own borders and to develop their own definitions and punishments of treason. As early as October 1775, an attempt by Dr. John Kearsley and several others to send derogatory information from Philadelphia to England forced both Pennsylvania and Congress to consider the

10 Ibid., 183, 196, 444-450.
12 Chief Justice McKean, Respublica v Samuel Chapman, 1 U. S. (1 Dall.) 53 (1781), 57.
legal problem of controlling civilian opponents. When the Philadelphia committeeemen who captured Kearsley and his cohorts realized they were without legal authority to detain or punish these individuals, they consulted Congress. That body responded with the only authority it could give: a resolution that all those who endangered the safety of the colony should be arrested and secured. By June 1776, the discovery of the possible complicity in a counterfeit ring of the mayor of New York City, David Matthews, forced Congress to take further action. Matthews, acting in support of the King, obviously could not be tried under British treason laws. This prompted Congress to pass a resolve which stated that all persons living in any of the colonies and receiving protection from its laws owed allegiance to those laws. Levying war against any of the colonies, or adhering to or giving aid and comfort to the King of Great Britain or other enemies of the colonies was treason, and the resolve called on the colonial legislatures to pass laws punishing such acts.

In response to this congressional recommendation, the Pennsylvania constitutional convention that convened in the summer of 1776 passed two ordinances defining treason and misprision of treason and providing for their punishment. An ordinance of September 5 stated in almost the same words as the congressional resolve that anyone then living in Pennsylvania or anyone voluntarily moving into the state owed allegiance to Pennsylvania. A citizen found guilty in a court of Oyer and Terminer of high treason, which was defined as waging war against the state or adhering to or helping the enemies of the state, would be imprisoned no longer than the duration of the war and would forfeit all his or her possessions to the state. Anyone convicted in the same court of misprision of treason, defined as knowingly helping or concealing a treason, would forfeit one-third of his possessions and be imprisoned no longer than the duration. Since the courts were all closed, however, it was impossible to prosecute anyone under this measure. By the time the courts were operating, the legislature had passed its own treason law.

In another ordinance of September 12, the convention struck out

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14 Journals of the Continental Congress, V, 475.
15 Pennsylvania Gazette, Sept. 11, 1776.
against those citizens who still dared to speak their convictions. From now on anyone found guilty before a justice of the peace of expressing his opposition in either speech or writing would be forced to provide security for his future good behavior or, in default, could be jailed until he did give the required security. If the offender was judged by the deliberations of two out of three justices of the peace to be too dangerous he could be committed for the duration of the war. Appeal was allowed to the Council of Safety. Since members of the Council of Safety also had been made justices of the peace, there was no appeal from their decisions as justices. Even with well-trained judges, this would have been a dangerously loose ordinance, leaving the question, as it did, to the discretion of the justices whether an individual was "too dangerous." But to make matters worse, most local judges had little or no formal legal training, and some of those with colonial judicial experience refused to serve under the new constitution. Since the constitutional convention on September 4 had appointed justices of the peace but had not reopened the courts, an individual accused under this ordinance could be jailed, denied his right to a trial, and punished without being heard by a jury of his peers solely on the judgment of two men with little if any knowledge of the law.

At least fifty-eight persons spent varying periods in jail between July 4, 1776, and February 11, 1777, when the Assembly passed its own treason law. Records are very scanty, reporting charges only in terms such as damning Congress, being an enemy of the United States, uttering disrespectful expressions, and behaving in an inimical fashion. Only one man was specifically accused of high treason. Most were detained by either a local county committee or by Council of Safety or both. None of these persons ever had their day in court. Some were bailed and never prosecuted, some required to give security for their future good behavior, and some just released after a short period in jail. Probably there were others, but incomplete records prevent identification.

17 Pennsylvania Gazette, Sept. 25, 1776.
Finally, on February 11, 1777, the first state Assembly passed an act which combined the convention's ordinances but made the punishments harsher. Every person "now inhabiting, residing, or sojourning within the limits of the State of Pennsylvania, or that shall voluntarily come into the same hereafter to inhabit, reside, or sojourn, do owe, and shall pay allegiance to the State of Pennsylvania." Anyone legally convicted in a court of Oyer and Terminer by the evidence of two witnesses of any of certain crimes against Pennsylvania or the United States was guilty of treason and punishable by death and forfeiture of all his possessions. Those crimes were taking a commission from the King of Great Britain or other enemies; levying war; joining the enemy's army or procuring or persuading others to do so; furnishing arms, ammunition, provisions, or any articles for the aid or comfort of the enemy; holding traitorous correspondence with them; conspiring to betray Pennsylvania or the United States into foreign hands; and giving intelligence to the enemy for that purpose. In defining misprision of treason, the Assembly went beyond the previous definition of knowingly aiding or concealing a traitor and included in this term acts of sedition not severe enough to warrant execution yet believed serious enough to be punishable. Thus, if anyone attempted to convey intelligence to the enemies of the state by publicly speaking or writing against the public defense, tried to incite others to turn against the Pennsylvania government or to return to their allegiance to Great Britain, discouraged others from enlisting in the service of the commonwealth, stirred up disorders or insurrections in order to dispose people to favor the enemy, or opposed and tried to prevent measures in support of independence and was so convicted in a court of Quarter Sessions by the evidence of two or more witnesses, he would be guilty of misprision of treason and would suffer imprisonment during the war and forfeiture of half his estate.\(^{19}\)

In order to inflict the punishments specified by this law, the accused person had to be captured, tried, and convicted. But what of those citizens who escaped prosecution behind the British lines having left valuable property which, if it could be confiscated legally

\(^{19}\) Laws Enacted in a General Assembly of . . . Pennsylvania (Philadelphia, 1777), 10. It was under this law that Samuel R. Fisher was tried for misprision of treason.
without a prior trial, could be used by the state to meet its mounting war expenses?

In June 1777, the Executive Council sought the opinion of Chief Justice McKean on several questions concerning those who had fled to the enemy. Among these points were whether there was any process under the laws of Pennsylvania for outlawing persons who would not appear for trial and whether there were measures for seizure of their estates. In his affirmative reply, McKean referred to a Pennsylvania law of May 31, 1718, which stated that when a freeholder of Pennsylvania who was indicted of treason or other capital crimes did not appear to answer his indictment the court should issue a writ ordering the sheriff of the county where the offender lived to arrest and bring the offender before the Supreme Court at its next sitting. If the accused could not be found, the sheriff was then to proclaim at the court of Quarter Sessions held in the home county that the offender had to appear before the justices of the Supreme Court on the day specified in the writ to answer the charge against him. If the proclaimed person did not appear at the proper time, he could be outlawed and attainted of the crime of which he had been indicted. The state could then confiscate all his property, real and personal, keeping one-half for the support of government and giving the other half to the criminal's family or next of kin.

McKean had shown the way to tap the economic resources of the refugees, but confiscation without a prior trial was not a move to be taken lightly. The Pennsylvania Assembly was busy before its summer adjournment on June 19 passing a Test Act and responding to petitions calling for revisions in the state constitution. After it reconvened in September, the legislature appointed a committee to draft a bill for confiscating the estates of inhabitants who had joined or might join the enemy. But the British entered Philadelphia shortly thereafter, the Assembly fled to Lancaster, and the confiscation law would not be passed that year.

The next move was made by a Council of Safety created by the House to provide for emergencies that might arise during the regular interval between the end of the Assembly and the meeting of the legislators to be chosen in the October election. This Council of

Safety passed an ordinance on October 21 declaring forfeited the property of inhabitants who left their homes to join or aid the British. Commissioners were appointed to seize such property, to inventory it, and to hold it subject to the future disposition of the Assembly. This ordinance, approved in December by the new Assembly, provided for the confiscation of only personal property, not the more valuable real estate. Under this measure, the state sold the personal effects of only a few persons—perhaps a dozen at most.

Then on March 6, 1778, while the British still occupied Philadelphia, the Assembly passed an act legalizing the confiscation of real estate. It ordered thirteen men, suspected of having joined the British, to report for treason trials on or before April 20 or suffer attainder. In the future, the Supreme Executive Council was empowered to proclaim the names of persons who were subjects or inhabitants of Pennsylvania or who owned real estate there, who "now do adhere to, and knowingly and willingly aid and assist the enemies of this State, or of the United States of America, by having joined their armies within this State, or elsewhere, or who hereafter shall do the same," and to require them to surrender for treason trials before a fixed day. After the deadline had passed, delinquent persons were to be declared guilty of treason. All the estates they had owned on or after July 4, 1776, were to be seized and sold, and the proceeds after payment of their debts would become the property of the state, although judges could make parts of the estates available for the use of their wives and children. If the attainted persons reported late or were captured, the judge before whom they were brought could not grant them trials on the treason charge; he could only pronounce the mandatory death sentence. After passage of this act, the Supreme Executive Council passed ten more proclamations which brought to 500 the names of persons ordered to report for treason trials or suffer attainder.
This action to confiscate refugee property had not been taken precipitously. On the contrary, more than twenty months had elapsed since independence had been declared and almost six months since the British had marched into the state capital. The Chief Justice had been consulted and statutory precedents considered. It took the anger generated by the British occupation to force this measure through, and more than 80 percent of those accused would have their names proclaimed during 1778 when bitterness over British occupation and destruction was at its height.

There was one more act which proved particularly difficult for opponents of the war and that was Pennsylvania’s Test Act passed in June 1777. This measure required all males over the age of eighteen to take an oath of allegiance to the state, to renounce their allegiance to the King, to promise not to do anything prejudicial to the freedom and independence of Pennsylvania, and to report all treasons or conspiracies which they might discover. Anyone refusing the oath would be incapable of holding office, serving on juries, suing for recovery of debts, electing or being elected, buying, selling, or transferring lands, or owning arms. A nonjuror traveling out of his usual home territory might be suspected of being a spy because he lacked a certificate saying that he had taken the oath. If he persisted in his refusal to take the oath, he could be put in jail and kept there without bail until he did swear or affirm his allegiance to Pennsylvania. This law was changed several times to either harshen or ameliorate its provisions, but the general idea remained that citizens had to renounce allegiance to the King and swear allegiance to the commonwealth or else lose some of their civil rights.

Other laws were passed during the Revolution to punish various behaviors and to increase or make uniform the punishment of traditional crimes as they were practiced by the disaffected. For example, anyone convicted of going into Philadelphia during the occupation could be fined £50 and imprisoned at the discretion of the court. When the British circulated counterfeit American money to further depreciate its value, the Assembly made forging and passing counterfeit money a felony punishable by death. When groups of British sympathizers robbed tax collectors and mail carriers, such activity

also became a capital crime. When escaping British prisoners of war became a problem, the Assembly decreed that anyone helping such persons could be fined £50 or publicly whipped thirty-nine lashes for each count.26

In addition to these laws punishing specific acts, great discretionary power was given to small groups of men at times of stress. On September 16, 1777, an act legalized the recent banishment to Virginia of twenty prominent Pennsylvanians, mostly Quakers, by the Executive Council. For the future, it empowered the

President, and Vice-President, and the members of the supreme executive council of this state, or any two of them, either upon the recommendation of congress, or at the requisition of the commander in chief of the army, or the commander of a division, or corps in the same, or upon the information of any creditable subject [to arrest any person] who shall be suspected from any of his or her acts, writings, speeches, conversations, travels, or other behaviour, to be disaffected to the community of this, or all, or any, of the united states of America, or to be a harbinger of the common enemy, who is at our gates, or to give, mediate or immediate intelligence and warning to their commanders, by letters, messengers or tokens, or by discouraging people from taking up arms, for the defence of their country, or spreading false news, or doing any other thing to subvert the good order and regulations, that are or may be made and pursued for the safety of the country [to seize his papers, and either to confine or remove him to another place of safety.]

If such a person would agree to take the oath or affirmation of allegiance when tendered to him, he might be released. But in any case, no judge was permitted to issue a writ of habeas corpus, or other remedial writ, to obstruct these proceedings against suspected persons in time of danger to the state.27

This measure gave to certain individuals very dangerous discretionary powers, powers the colonists would never have permitted the British to exercise over them. This was enacted, however, at the end of the first Assembly just before the legislature fled Philadelphia


ahead of the approaching British army and was to be in force only until the end of the first sitting of the second Assembly. On January 2, 1778, the last day of its life, it was extended until the end of the next sitting of the same Assembly, April 24, 1778, when it died.28

The Council of Safety that was created in October 1777, was also given extensive powers. In addition to having the power to pass regulations and ordinances for the preservation of the commonwealth, its members could proceed against, seize, detain, imprison, punish, either capitaly, or otherwise, as the case may require, in a summary mode, either by themselves, or others by them to be appointed for that purpose, all persons who shall disobey or transgress the same, or the laws of this State heretofore made for the purpose of restraining or punishing traitors or others, who from their general conduct or conversation may be deemed inimical to the common cause of Liberty, and the United States of North America.

They were also empowered to seize provisions for the army from citizens and to regulate prices and force sales where articles were needed. It is true that certain safeguards were written into the law. The Executive Council retained the right of veto over acts of the Council of Safety and could terminate it at any time. But since the Council of Safety included the members of the Executive Council, this restriction would have been meaningless had the Council of Safety been power hungry. A clause in the act provided for "the exercise of the ordinary course of justice, in the tryal and punishment of offenders," but even this was nullified by the additional phrase "as far as the present conditions of the State will admit."29 A dozen men bent on assuming power for themselves and given the authority to render capital punishment "in a summary mode" would have been a very dangerous group. Fortunately the Council of Safety was ended December 6, 1777, by proclamation of the Supreme Executive Council.30

Again, on October 10, 1779, in response to public demand that the legislature do something about suspected treasonous activity, an

28 Laws Enacted in the Second General Assembly of . . . Pennsylvania (Lancaster, 1778), 81-82.
30 Col. Rec., XI, 353.
act was passed which empowered the members of the Executive Council and the justices of the Supreme Court to apprehend suspected persons. Upon complaint that someone was an enemy to the American cause, they could issue a warrant to arrest the person and examine him. If they decided he was disaffected, they could bind him with sufficient security for his good behavior or, for want of security, commit him to jail, there to remain until the end of the first sitting of the next Assembly, or they could send him out of the state. The act was extended for six months on November 27, 1779, and again on March 24, 1780.  

By June 1, 1780, news had reached Philadelphia of the imminent departure from New York City for points unknown of a British armed force, and the Assembly authorized the President or Vice-President in Council to declare martial law in order to protect the public security during the approaching summer recess of the legislature. The members of the Executive Council responded immediately, issuing a proclamation on June 9 declaring martial law to enable them to meet the demands of the army for horses and wagons and to examine strangers to the city and prevent spying and passing counterfeit money.

These, then, were the main measures under which opponents of the Revolution could be punished. Not only was it illegal to aid the enemy in any way whatsoever, but it was against the law to oppose the Revolutionary measures in speech or writing. Under the test laws, for various periods, persons who refused to take an oath of allegiance to the new state and country could be deprived of their civil rights, kept from practicing their professions, and forbidden to move freely through the state. Individuals or groups were given the power to jail or banish anyone suspected of being “disaffected” or an “enemy to the American cause” without a trial to determine guilt. A person’s possessions could be confiscated and sold, his papers searched and kept, his freedom impaired, and even his life forfeited by the judgment of the members of the Supreme Executive Council.

Such laws made a mockery of the state constitutional guarantees

31 Laws Enacted in the Third Sitting of the Third General Assembly of... Pennsylvania (Philadelphia, 1779), 255–256.
32 Pennsylvania Gazette, June 7, 1780.
33 Col. Rec., XII, 383–384.
that "in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council . . . [and to have] a speedy public trial by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty. . . ." And these laws were used; some people suffered unjustly or too harshly; many were punished for their outspokenness rather than for criminal activity. Certainly, the dissenters' fears of what might happen under the new government were justified. But, looking at the total picture, the violent revolutionary possibilities permitted by the acts of the legislature never happened, and apparently were never even considered.

To determine exactly how many citizens were charged, tried, and punished under these laws is impossible, not only because of illegal, hence unrecorded, imprisonments such as those related earlier in this essay, but also because of missing or incomplete records. The dockets and indictment papers for the courts of Quarter Sessions for two counties are largely missing—those for Berks destroyed in a courthouse fire in the early nineteenth century and those for Northampton apparently discarded after plastic tape used on them by WPA workers in the thirties disintegrated and stuck all the pages together. Even where court papers have survived, they are very limited in information: no arguments were noted, only occasionally was evidence described, and often cases were listed without their ultimate disposition explained. In addition, a law passed March 8, 1780, allowed the Attorney General to reduce charges of treason or misprision of treason to misdemeanors. From then on, without other evidence, it is impossible to distinguish between disloyal activity and nonpolitical misdemeanors. Therefore, numerical data on punishment of the disaffected describe only the minimum number of persons involved.

In spite of the incomplete records, however, I believe that enough data remain to indicate the dominant pattern of treatment of the disaffected. Since cases resulting in severe punishment were recorded by the newspapers, if not by the courts, the cases that escape us probably were instances of harassment such as unprosecuted charges

and short jail confinements intended to coerce acceptable behavior from outspoken opponents and never recorded.

Of course, to be confined for any length of time or even to be charged without being jailed still constituted punishment. The jails were generally log cabins, inadequately furnished and heated, and the meager food allowance had to be supplemented by private means. The accused, guilty or innocent, had to pay jail charges and fees for the various legal services performed. Judgment, no matter what the verdict, required the defendant to pay all costs before being released. Even when cases were discharged without going to trial, the accused had fees to pay. Undoubtedly, some of the charges that were dropped before trial had been motivated by spitefulness and were never intended to be prosecuted. Often the original complainant did not appear to prosecute and for this reason the case would be ended.\textsuperscript{36} Lack of indictment or conviction, however, did not mean that the defendant did not suffer an informal punishment through the fee system.

The following table lists 1,402\textsuperscript{37} instances when 1,256 persons were accused of disloyal acts after July 4, 1776. I have tried to categorize the cases, although it is difficult because the colonists often made the punishment fit the criminal rather than the crime, and the limited records frequently fail to explain why apparently similar cases were handled differently. Twenty-three percent of the cases did not conveniently fit under any of the headings either because of substance or lack of records, hence the large number of miscellaneous cases.

\begin{table}
\begin{tabular}{ll}
1. Jailed during period July 4, 1776–February 11, 1777 & 58 \\
2. Jailed or paroled August–September 1777 & 70 \\
\hspace{1em} (includes 20 who were banished to Virginia) &
\end{tabular}
\end{table}

\textsuperscript{36} For example, PHMC, RG33, Rec. Sup. Court, Oyer & Terminer Docket, Phila. Co., April 1779, p. 366. Sixteen persons were discharged for this reason.

\textsuperscript{37} Among the many sources for these data were newspapers, the published Colonial Records and Pennsylvania Archives, the records of the courts of Oyer and Terminer located at the PHMC in Harrisburg, the Peter Force Collection in the Library of Congress, diaries such as that of Samuel R. Fisher, and the records of the courts of Quarter Sessions located in the individual county courthouses.
3. Proclaimed—no surrender or capture during war (includes one who died before his proclamation issued)

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4. Proclaimed, surrendered on time, discharged (includes one who died before discharge and three whose erroneous proclamations were corrected)

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5. Proclaimed, surrendered on time, not discharged

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<tr>
<td>charged with misdemeanor, submits to court</td>
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</tr>
<tr>
<td>jailed, no other record</td>
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</tr>
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<td>recognizance forfeited (ran away)</td>
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<td>Grand Jury refused to indict</td>
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</tr>
<tr>
<td>indicted, tried, not guilty</td>
<td>12</td>
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<tr>
<td>indicted, tried, guilty</td>
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<td>executed—2; pardoned—1</td>
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6. Proclaimed, surrendered late

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<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assembly extended time to report</td>
<td>3</td>
</tr>
<tr>
<td>discharged—2; tried for misdemeanor—1</td>
<td></td>
</tr>
<tr>
<td>pardoned</td>
<td>1</td>
</tr>
<tr>
<td>jailed, nothing further</td>
<td>1</td>
</tr>
<tr>
<td>jailed, released</td>
<td>3</td>
</tr>
<tr>
<td>sentenced to death without trial</td>
<td>5</td>
</tr>
<tr>
<td>pardoned—2; released—3</td>
<td></td>
</tr>
</tbody>
</table>

7. Proclaimed, captured

<table>
<thead>
<tr>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>pardoned</td>
<td>1</td>
</tr>
<tr>
<td>jailed, and ?</td>
<td>1</td>
</tr>
<tr>
<td>captured by other states, not returned</td>
<td>4</td>
</tr>
<tr>
<td>executed without a trial</td>
<td>2</td>
</tr>
<tr>
<td>by state—1; by army—1</td>
<td></td>
</tr>
<tr>
<td>tried, not guilty</td>
<td>2</td>
</tr>
<tr>
<td>tried by court martial, guilty</td>
<td>3</td>
</tr>
<tr>
<td>executed—1; respited &amp; released—1; exchanged—1</td>
<td></td>
</tr>
</tbody>
</table>

8. Not proclaimed, charged with high treason

<table>
<thead>
<tr>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>147</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>discharged</td>
<td>52</td>
</tr>
<tr>
<td>Grand Jury refused to indict</td>
<td>30</td>
</tr>
</tbody>
</table>
tried, not guilty 23
tried, guilty 5
pardonéd–3; executed–2 (for burglary–1)
indicted, trial postponed, bailed, and ? 2
recognizances forfeited 13
jailed, and ? 3
miscellaneous (incomplete records, ran away, died, etc.) 19

9. Charged with misprision of treason 76
discharged 8
Grand Jury refused to indict 6
tried, not guilty 7
tried, guilty 17
pardonéd–8; imprisonment remitted–4;
discharged–1; escaped–1; unknown sentence–3
indicted for misprision, tried for misdemeanor 2
recognizance to appear, and ? 24
indicted, no record of trial 11
warrant to arrest, nothing further 1

10. Charged with treasonable misdemeanors 89
recognizance to appear, and ? 1
discharged 6
Grand Jury refused to indict 2
indicted, process awarded (gone) 2
indicted, and ? 2
tried, not guilty 10
pleaded guilty 27
all fined, no pardons or remissions submitted to court 12
all fined, 3 remitted
tried, guilty 27
fines and/or corporal punishment all or partially remitted–13

11. Charged with assisting POWs to escape 50
submitted to court 1
tried, not guilty 7
tried, more than one count, guilty & not guilty 5
all or part of fines remitted—4
tried, guilty — 30
all fines remitted—12; part fines remitted—15
miscellaneous, not tried — 7

12. Robbery of tax collectors — 63
accessory before or after — 35
   Grand Jury refused to indict — 4
   indicted, and ? — 4
   indicted, gone — 3
   indicted, discharged — 9
   indicted, prosecution ended — 1
   tried, not guilty — 5
   tried, guilty — 9
   benefit of clergy—7; hanged—1; fined—1
principals — 28
   shot by capture party — 1
   sentenced to death — 11
      escaped—1; pardoned—4;
      executed (2 for murder)—6
   attainted, outlawry or treason, and gone — 6
   tried, guilty, 10 years in jail — 1
   tried, not guilty — 1
   indicted, jailed, and ? — 2
   jailed, discharged — 2
   Grand Jury refused to indict — 1
   charged, gone — 2
   indicted, too ill to attend court — 1

13. Counterfeiting or passing — 23
   discharged — 1
   not caught — 3
   Grand Jury refused to indict — 1
   indicted, left — 1
   pleaded guilty, pardoned to be state's witness — 1
   tried as misdemeanor, not guilty — 1
   tried, not guilty — 5
   escaped before court appearance — 1
   tried, guilty — 9
benefit of clergy–3
fine & corporal punishment remitted–1
sentenced to hang–5
  pardoned–2; hanged–3

14. Robbery & burglary

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>discharged</td>
<td>1</td>
</tr>
<tr>
<td>Grand Jury refused to indict</td>
<td>2</td>
</tr>
<tr>
<td>pleaded guilty, executed</td>
<td>1</td>
</tr>
<tr>
<td>tried, not guilty</td>
<td>2</td>
</tr>
<tr>
<td>tried, guilty</td>
<td>8</td>
</tr>
<tr>
<td>executed–6; pardoned–2</td>
<td></td>
</tr>
</tbody>
</table>

15. Horse theft

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>tried, not guilty</td>
<td>1</td>
</tr>
<tr>
<td>tried, guilty</td>
<td>3</td>
</tr>
<tr>
<td>all given some remission of sentence</td>
<td></td>
</tr>
</tbody>
</table>

16. Miscellaneous

<table>
<thead>
<tr>
<th>Description</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Treasonable association” in Berks, about (actually this appears to have been a tax revolt)</td>
<td>100</td>
</tr>
<tr>
<td>all fines partially or totally remitted</td>
<td></td>
</tr>
<tr>
<td>taken on board captured ships</td>
<td>11</td>
</tr>
<tr>
<td>all jailed, term not known, pardoned–1; some exchanged</td>
<td></td>
</tr>
<tr>
<td>group from Chester, jailed by troops for 3 days</td>
<td>9</td>
</tr>
<tr>
<td>discharged, various charges &amp; courts</td>
<td>4</td>
</tr>
<tr>
<td>Grand Jury refused to indict</td>
<td>5</td>
</tr>
<tr>
<td>indicted for sedition, and ?</td>
<td>12</td>
</tr>
<tr>
<td>warrants for arrest, and ?</td>
<td>8</td>
</tr>
<tr>
<td>recognizances to appear, and ?</td>
<td>18</td>
</tr>
<tr>
<td>jailed, no court record</td>
<td>58</td>
</tr>
<tr>
<td>no record of release–41; escaped–5; released–5; released on conditions–7</td>
<td></td>
</tr>
<tr>
<td>jailed, no test oath</td>
<td>20</td>
</tr>
<tr>
<td>pardoned–13</td>
<td></td>
</tr>
<tr>
<td>indicted, submitted, sedition</td>
<td>2</td>
</tr>
<tr>
<td>indicted, pleaded guilty</td>
<td>3</td>
</tr>
<tr>
<td>tried, not guilty</td>
<td>2</td>
</tr>
</tbody>
</table>
The most frequent charge against the dissenters was treason, and the largest concentration of names of persons so charged was in the eleven proclamations issued by the Assembly and the Executive Council from March, 1778, to April, 1781. Five hundred names were listed in these proclamations, but actually this number represented, at most, 491 persons. Six individuals were proclaimed twice (Joseph Kennard, Joshua Proctor, Henry Steininger, George Philip Wertman, and Anthony Yeldall), and alternative spellings in three other cases (Daniel Jones/Janes, James Stephenson/Stephens, and Stephen Styger/Styer) are believed to represent only three persons rather than six. Other similar listings may also have been duplications in order to correct errors in the original proclamations, but lacking certainty I have treated all the others as different persons.

In addition to the 491 proclaimed persons, at least 147 others were accused of treason. Of these 638 persons, forty-three were tried and seven suffered the supreme penalty. One of the seven was actually executed for burglary, and another was hanged by the army for spying. Five executions for high treason out of 638 accusations are certainly less than one might expect in a state which had been occupied by an enemy force and whose loyal citizens had to flee their homes and occupations, leaving both to the depredations of the British and their supporters.

Misprision of treason, although not a capital crime, nevertheless could have very distressing consequences for convicted persons, causing them to forfeit half their property and spend the rest of the war period in jail. Actually a protracted jail sentence could amount to a death sentence because of the miserable conditions in colonial prisons. Records were found of seventy-six persons being accused of misprision of whom twenty-four were tried. Out of seventeen con-
vicited, at least thirteen received some sort of pardon or remission of sentence.

Charged with misdemeanors of treasonable nature were a minimum of eighty-nine citizens, of whom seventy-six are known to have been brought to trial. Of these, ten were acquitted, twenty-seven pleaded guilty, twelve submitted to the court, and twenty-seven were convicted. The guilty were punished generally by low fines, augmented in a few cases with an hour in the pillory or a short jail term or both. With the decreasing seriousness of the crime and its punishment, an increasing percentage of cases reached the courts. Whereas only forty-three out of 638, or 6.7 percent, of the persons accused of high treason were tried and seventeen out of seventy-six, or 22 percent, of those accused of misprision were tried, out of eighty-nine accused of misdemeanors seventy-six or 85 percent were settled before a judge. At this level of charge, there were also many persons (44 percent of the total number so charged) either pleading guilty or submitting to the court while protesting their innocence. This was quite common for minor crimes because people preferred to pay small fines rather than to go through a trial.

Another crime which was unique to the Revolutionary period was assisting the escape of British prisoners of war. Some fifty people were accused of this crime, all but three of these as a result of an act passed on April 13, 1782, providing that anyone convicted in a court of Quarter Sessions of concealing or helping the escape of a prisoner would be fined £50, one-half to the state and the other to the informer. If the convicted person could not pay the fine, he or she would be publicly whipped thirty-nine lashes. The following fall, 1782, and spring, 1783, sessions of the court of Oyer and Terminal heard forty-seven of these cases, twenty-seven of them in Lancaster, eleven in Chester, eight in Philadelphia, and one in Berks counties. The accused in Lancaster argued that it had been customary to allow the prisoners of war to work on nearby farms. When, after passage of the act about which they claimed to have known nothing, prisoners asked for directions or food and drink, the farmers had seen no reason to refuse. Furthermore, they accused

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General Moses Hazen of deliberately sending out prisoners to act as provocateurs against anyone who fed or directed them. Hazen then became the informer, eligible for one-half the fines of any persons convicted, and the prisoners of war were the main witnesses for the prosecution. Thirty-six persons were found guilty of one or more counts, most convicted of three counts because three prisoners traveled together. Hazen stood to gain a sizable sum if he could collect. The total fines levied were £3,665. Of this amount, Hazen was awarded £1,425 as the informer in twenty-five cases. Perhaps there was some truth in the arguments of the farmers because the state gave up its claims to part or all of the fines levied in thirty-one out of thirty-six cases; all of the fines were remitted in fifteen cases. Again the data show a reluctance to carry punishments as far as the law allowed.

Among the more traditional crimes, the one practiced by the greatest number of disaffected persons was robbery, particularly of state tax collectors. There were several groups of thieves, but the one best known and most successful was the Doan gang of Bucks County, named after the five Doan brothers and their first cousin who constituted its core. The gang operated with the active help or tolerance of many of the local citizens including at least one collector who connived at his own robbery. A law of September 8, 1783, offered rewards for the capture of thirteen men attainted of outlawry by the Supreme Court and five others charged with being accessories to their crimes, and declared the death penalty for anyone who helped them, with benefit of clergy specifically denied. The offer of rewards helped in the capture of some of the gang, but others moved to western Pennsylvania where they plagued citizens of Washington County until chased out of the state to Detroit.

Ultimately some sixty-three persons were charged with being either principals or accessories in the robberies of tax collectors. Among the twenty-eight named as principals, six were executed (two for murder) and one was shot by a capture party. Fourteen of the thirty-five persons accused of helping the principals were tried with five acquitted and nine convicted. One was hanged, and seven

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39 Laws Enacted in the Third Sitting of the Seventh General Assembly of ... Pennsylvania (Philadelphia, 1783), 189-192.
claimed the benefit of clergy, although it is not explained how this was possible under the act of September 8, 1783.

The table shows that out of 1,402 accusations, trials resulted 208 times (15 percent), producing seventy-six acquittals and 132 convictions. There were also forty-six examples of the accused either pleading guilty or submitting to the court. The 178 guilty persons received nineteen pardons and fifty-six whole or partial remissions of sentence, and were allowed to plead benefit of clergy ten times. This means that only ninety-three suffered the full sentence given. If those who pleaded guilty or submitted and received small fines are not included, then 132 persons convicted by trial received nineteen pardons, fifty-three whole or partial remissions, and ten benefits of clergy, or fifty persons suffered full sentences. To complete the picture, twenty disaffected persons were executed by the state for various crimes: eight for burglary, four for high treason, two for passing counterfeit money, two for robbery, two for murder, one for piracy, and one for being an accessory before the fact of the robbery of a tax collector. Not a large number out of 1,402 accusations made in the heat of war in a state invaded by a destructive enemy.

Although again smaller than might be expected, a greater number of persons lost property than their lives because of their opposition to separation and war. In fact, the law of March 6, 1778, proclaiming the first thirteen men was largely inspired by the desire to be able to confiscate the property of those who had left the state in order to reduce the tax burden on Patriots. We will never know exactly how much personal property was lost through theft or destruction, although it is known that the possessions of at least ninety-four

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40 An interesting, although rough, comparison may be made with the data for the United States in 1977 when 80 percent of adults arrested for Crime Index offenses were prosecuted in the courts. Of these, 68 percent were found guilty as charged, 8 percent convicted of lesser offenses, and 24 percent released either through acquittal or dismissal. *Uniform Crime Reports for the United States, 1977* (Washington, D. C.), 214.

41 Abraham Carlisle, Richard Chamberlain, David Dawson, Abraham and Levy Doan, James Fitzpatrick, John Freeman, Ralph Morden, Benjamin and James Nugent, Thomas Richardson, John Roberts, Christopher Shockey, John and Robert Smith, Kimble Stackhouse, Lot Sulsey, James Sutton, John Tomlinson, Abijah Wright. Those convicted of crimes other than treason were included if they or their associates were known to be disaffected. Others convicted of capital crimes may also have been disaffected, but evidence of this was not found.
persons were formally confiscated by the state. We do have fairly good records of the real estate confiscated which show that 121 persons lost realty. This represented, however, only a very small percentage of the total population and area of the state. I have shown elsewhere that one-tenth of 1 percent of the land in Pennsylvania was taken from five one-hundredths of 1 percent of its people and sold to eight one-hundredths of 1 percent of its people.  

The harshness of the laws, particularly the extreme penalty for treason, tended to operate against their enforcement. There is evidence that juries were loath to indict or convict on a charge of treason because of the mandatory execution. For example, Lewis Guion, not proclaimed but charged with treason, was accused by three witnesses of helping the enemy, and, furthermore, he admitted to the judge that he had been employed by the British army as a conductor of wagons. Yet a jury in November 1778 found him not guilty of treason, and he was released on his own guarantee and that of two other freeholders for his good behavior during the rest of the war. Another defendant, Joseph Bolton, was accused by four witnesses of being a spy, of cooperating enthusiastically with a party of Hessians arresting Patriots, and of being at British headquarters. Yet he, too, was acquitted by a jury the same month and discharged with no penalty other than payment of his fees. Of the 147 persons accused of high treason but not proclaimed, bills of indictment were preferred to the grand jury against sixty, but only half were indicted, and of the twenty-eight tried, only five were convicted.  

Not only were private citizens reluctant to indict or convict others of disloyal acts, the government itself was not eager to prosecute unless the alleged crime was one which directly injured citizens, such as murder or burglary. When the crime involved treasonous activity, the law was least inclined to prosecute. In March 1780, the Assembly passed a measure which allowed the Attorney General with the

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43 PHMC, RG 33, Rec. Supreme Court, Oyer & Terminer, Phila. Co.
44 Ibid.
45 People also evaded jury duty. When Samuel Garrigues, Sr. was tried for high treason, forty men were fined £10 each for not reporting for jury duty.
permission of the court to reduce the charges of treason and misprision of treason to misdemeanors which upon conviction carried penalties much less severe.\textsuperscript{46} Lawyer Jasper Yeates said that the crime of sedition had been reduced from misprision of treason to a misdemeanor because the legislature thought it too harsh.\textsuperscript{47}

In addition to permitting charges to be reduced to misdemeanors, the legislature also occasionally passed special acts exempting attainted persons or their dependents from the penalties of the laws. Reynold Keen, Albertson Walton, Daniel Rundle, Matthias Aspden, Henry Gordon, and John Gosline were all granted extensions of their deadlines so they could report to a judge for treason trials.\textsuperscript{48} Nathaniel Vernon’s and John Spering’s estates were vested in their children who were Patriots, and Elizabeth Ferguson, with great persistence, managed by repeated requests to win back her estate which had been forfeited by her husband’s attainder.\textsuperscript{49}

In March 1781, the Executive Council reprimanded the Assembly for bypassing its own laws in this manner and recommended that if the laws were too harsh they should be repealed.\textsuperscript{50} But the Council itself was guilty of the same clemency for which it chided the Assembly, and the records suggest that the Council was more concerned about the Assembly infringing upon its power than it was about too much leniency. The minutes of the Council reveal many examples of pardons or remissions of parts of sentences. By the end of the war, it was possible to secure a pardon for disloyalty even for individuals who had fought with the British. Sometimes it took persistence, but pardon was attainable.

Actually the Executive Council took a very pragmatic view of the

\textsuperscript{46} Laws Enacted in the Second Sitting of the Fourth General Assembly of . . . Pennsylvania (Philadelphia, 1780), 320–322.

\textsuperscript{47} Respublica \textit{v} Weidle, 2 U. S. (2 Dall.) 88 (1781).


\textsuperscript{50} Col. Rec., XII, 675–676.
disaffected in Pennsylvania. In the late fall of 1777, the Council wrote to two men in Paxtang, Lancaster County, who had intercepted a salt merchant because he was not a colonial supporter. The Council advised the men to view the matter in the larger context of the needs of the state.

The disaffected are numerous, & men disposed to act in the direct service much taken up, and not to be spared for other purposes. The Tories may be made serviceable in many respects, & to a very great degree. Interest will dispose them to plow & raise corn; to fatten Cattle & other beasts; to make leather; & so on, others among them induced by gain, have set up Salt works; Ventured their substance at Sea, & in various other modes indirectly & undesignedly promoted our affairs. If then they carry on any business, that may be eventually advantageous, in God's name, let them go on.\(^5\)

The Council was, therefore, advising citizens to use harsh laws against those who were employed in business detrimental to the people but to ignore those who were just disgruntled in hope that they would be won over to the Revolutionary cause or, in any case, could be used to further that cause.

Moreover, there is some indication that what may have been ordered in the laws was not intended to be strictly enforced in practice. On April 1, 1778, the Assembly passed a supplement to the controversial Test Act which made it lawful for any two justices to summon any male white person over eighteen to appear and take the oath. If he refused, he could be jailed for three months or fined up to £10. If he refused to pay the fine, it could be levied against his possessions. At the next court of Quarter Sessions, he could be offered the oath again, and if he still refused to take it, he had thirty days either to take the oath or leave the state forfeiting his personal property to the state and his realty to the person entitled to inherit.\(^6\) The next month petitions from several of the pacifist sects asked the Assembly for exemption from the test laws. The legislature denied the request, but Vice President George Bryan wrote to Northampton County that since these people were not threatening,

it was not the wish of government that the laws be enforced against them. He hoped that if they were ignored, their objections might wear away; if pressed, he feared their objections might harden. He recommended that the power to call nonjurors before a justice be reserved for those who threatened the state, and he referred to the practice in England in the execution of a similar law. He concluded by asking the magistrates and others "to soften the harsh councils of some well meaning but over-zealous & imprudent men."\(^{53}\)

In spite of Bryan's call for a relaxation of the harsh provisions of the test acts in the case of the pacifists, local administrators in Upper Saucon, Northampton County, applied the law in all its severity. The court summoned a group of Mennonites, and, when they refused to take the test, all their personal property was seized and sold in June 1778. They were ordered to leave the state, their real property to descend to their heirs as if they were dead. Two of the wives in behalf of the group petitioned the Assembly for relief in September 1778, claiming that all their personal property had been sold, leaving them destitute. The court either had never received the Vice President's suggestions or, if received, had ignored them. The Assembly was appalled at the recital of the effects of its act and turned the matter over to the Council for investigation. If the facts were true, the Council was told to grant relief to the petitioners from the state treasury.

When investigators found that indeed the complaints were justified, the Assembly on December 5 passed another supplement to the Test Act alleviating the harsh penalties for nonjurors. They were no longer to be jailed or have their property confiscated; they could only be denied the right to vote, hold office, or serve on juries. All other penalties, heretofore passed, were removed. To relieve those suffering under the earlier act, the Council passed a proclamation pardoning and releasing all those imprisoned for refusing to take the test.\(^{54}\)

After the war was over, the Executive Council also refused to enforce the attainder laws, even when the accused was a noted

bandit who probably deserved his punishment. In 1784, Aaron Doan, attainted of outlawry, was captured, brought before the Supreme Court, and sentenced to death in accordance with the laws. When his case was sent to the Council to set the date of execution, John Dickinson, the President of Pennsylvania, in conjunction with his Council wrote a letter to the judges containing a number of questions about the law which permitted such a procedure, whether there were precedents, whether in this case all the proper steps had been followed, and whether there was any way to set aside the attainder and permit a trial. The letter clearly shows the shocked incredulity of the Council members, and the reader wonders where they were during the three-year period when the eleven proclamations were being issued and published in the newspapers. The Council described the attainder as

a case of a novel and extraordinary nature, which, being once established as a precedent, may greatly affect the lives, liberties, and fortunes, of the freemen of this commonwealth. . . . To take away the life of a man without a fair and open trial, upon an implication of guilt, has ever been regarded as so dangerous a practice. . . .56

Although the justices supported the attainder as legal, explaining its precedents and assuring the Councilmen that all the legal proprieties had been observed, nevertheless the Council decided that a warrant could not legally be issued for putting Doan to death.56

When members of the Executive Council refused to enforce harsh laws against Revolutionary dissenters, they were probably continuing colonial practices. Traditionally, Pennsylvania's laws had been made deliberately harsh to deter crime rather than to punish it. Since severe penalties were threatened for purposes of deterrence and not for punishment, sentences rarely had imposed the maximum possible penalty, pardons had been available, and benefit of clergy had been allowed for some offenses. Jurors also had helped the convicted by returning guilty verdicts for lesser crimes, for example

55 *Respublica v Doan*, 1 U. S. (1 Dall.) 86 (1784), 86.
56 *Col. Rec.*, XIV, 388–393.
manslaughter rather than for murder. Therefore, when Revolutionary juries refused to convict or the commonwealth pardoned the condemned, this was not a new practice.

Evidence suggests that the Revolutionary leaders tried to continue, as much as possible, the legal habits followed under the British, which were deeply ingrained in the colonial sense of propriety. When danger threatened, they were willing to suspend the traditional practices, to assume unusual powers, to produce harsh laws, and even to enforce those laws occasionally as examples. But throughout, it was always understood that such behavior was motivated by necessity, was only to be temporary, and was for the purpose of defending the commonwealth against the British.

Making the tradition of leniency easy to continue during the Revolution was the nonthreatening character of most of the opposition in Pennsylvania. Many of the disaffected were members of pacifist sects, opposing the war for religious reasons but not endangering the state. Recognition of this reality is reflected in Bryan’s recommendation to ignore them. Furthermore, the die-hard supporters of the British, both pacifist and nonpacifist, joined the enemy or went behind British lines early in the war. The disaffected left behind were those who disliked the changes that had occurred in Pennsylvania but who did not necessarily support the British. Many of the disaffected had themselves opposed British measures before the war but had believed separation too extreme a means of resistance and had feared committee tyranny more than that of the British. Although many of these people disliked both sides, there was no acceptable refuge for them. To withdraw to Canada meant starting all over again to clear land on the frontier; many eastern Pennsylvanians had never experienced the frontier and had no wish to do so.

These people, largely law-abiding citizens before 1776, would not


58 Douglas Greenberg, Crime and Law Enforcement in the Colony of New York 1691-1776 (Ithaca, N. Y., 1976), and Harry B. Weiss and Grace M. Weiss, An Introduction to Crime and Punishment in Colonial New Jersey (Trenton, N. J., 1960), indicate that leniency may have been widespread in New York and New Jersey as well.
be likely to break laws after 1776, especially not when it might result in their banishment, imprisonment, or property loss. Hence, threatening laws, occasionally enforced to convince the timid that the state could mean business, might have prevented undesirable activity. In any case, at no time did the disaffected who remained in Pennsylvania seriously threaten the commonwealth. Only on the frontiers where refugees combined with Indians under British leadership to attack settlements were disloyal Pennsylvanians dangerous.

In addition to a tradition of leniency and a largely nondangerous opposition, another reason for lack of thorough enforcement of harsh laws against Revolutionary opponents may have involved the way Patriots perceived the disaffected. Because of the relatively small population, at most 300,000 in the state, chances were good that many of the disloyal had been well known and liked by Patriots before the war. They lived side by side, knew each other’s families, did business together, and realized that underneath their differences Whig and Tory had the same motive: to find the best solution to the problems between mother country and the colony they all loved. Patriots decided by 1776 that the only solution was separation, whereas the disaffected thought independence more dangerous than British tax measures. A political difference divided the disaffected from the Patriot—not treason. Recognition of this is apparent in the way Pennsylvanians treated those so accused. Harsh laws were passed to prevent the political opposition from joining forces with the external enemy to endanger the commonwealth. Yet, at the same time, neither government nor juries wished to enforce those laws unless absolutely necessary. They were willing to harass the opposition, to confine them for short periods, to fine either formally or informally through the fee system, but more severe punishments were seldom enforced.

For those few who lost property or their lives under attainder laws that assumed guilt without testing it in a court, for those who spent periods in jail because they had not heard of a writ of habeas corpus or who relinquished their civil rights rather than renounce the allegiance they had held all their lives, the declaration of rights in the state constitution of 1776 must have seemed a cruel hoax. Fortunately, however, the number of persons denied that document’s
guarantees was relatively small. Juries were reluctant to convict and both arms of the government generously relieved the convicted of part or all of their punishments. The declaration of rights was firmly rooted in society, set aside only when the situation seemed to demand it but never forgotten, a legacy from the British that the colonists continued to respect even when they had denied the parent.