A Pamphlet War on the Postwar Treatment of Loyalists

by PHOCION & MENTOR
(Alexander Hamilton & Isaac Ledyard)

NEW YORK, 1784

EXCERPTS

The war was over. The Patriots had won, the British were leaving, and the Loyalists were . . . still there. How to deal with the British supporters was a vexing issue that tested the nation’s professed stand for liberty and justice. Let them live among us or expel them? Remove their citizenship or urge their return to the body politic? Troubling and divisive questions for Patriots, especially in New York City, which had been a Loyalist refuge and British wartime headquarters. Shunned and despised, the Loyalists were condemned as traitors who deserved only vengeance. Harsh new laws restricted their civil rights and property claims. Into this toxic atmosphere came an unexpected advocate of moderation—Alexander Hamilton, who as a college student had engaged in his first pamphlet war and who had served as Washington’s trusted aide-de-camp during the war. Fearing harm to the fragile new nation from the extremism of impassioned victors, Hamilton entered the fray.

A lawyer, Hamilton defended over forty New York Loyalists in lawsuits filed by Patriots whose property had been taken by Loyalists during the war. He argued that legalized retribution violated the peace treaty with Britain and opened the door for homegrown tyranny and mass violation of citizens’ rights. On broader grounds, Hamilton foresaw the damage to America’s reputation in Europe, jeopardizing its standing as a nation founded on Enlightenment values. To radical Patriots, however, Hamilton was a turncoat, yet Commander in Chief Washington himself had warned that aggravating the Patriot-Loyalist divide would destabilize the new nation.

Early in 1784, Hamilton published his first “Letter from Phocion” to defend moderation as the only legal and wise policy toward the Loyalists (his pseudonym from an Athenian soldier renowned for urging reconciliation with defeated enemies). After an onslaught of rebuke including a fiery response from politician Isaac Ledyard (writing as “Mentor”), Hamilton countered his attackers in a second letter. His efforts did not stem anti-Loyalist venom in the state, however, as sanctioned retribution continued for years. These excerpts from the pamphlet war do not follow the opponents’ argumentation on English law, treaty obligations, and trade issues. Instead, they highlight Hamilton’s warnings about extremism and Ledyard’s warnings about moderation in dealing with the Loyalists. Change the issues involved, and their pamphlet war would resemble similar debates today.

—ALEXANDER HAMILTON: LETTER ONE—

A Letter from Phocion to the Considerate Citizens of New York on the Politics of the Day

While not only every personal artifice is employed by a few heated and inconsiderate spirits [persons] to practice upon the passions of the people, but the public papers are made the channel of the most inflammatory and pernicious [harmful] doctrines, tending to the subversion of all private security and genuine liberty, it would be culpable [blameworthy] in those who understand and value the true interests of the community to be silent spectators. It is, however, a common observation that men bent upon mischief are more active in the pursuit of their object than those who aim at doing good. Hence
it is in the present moment we see the most industrious efforts made to violate the Constitution of this State, to trample upon the rights of the subject [citizen] and to chicane² or infringe the most solemn obligations of treaty; while dispassionate and upright men almost totally neglect the means of counteracting these dangerous attempts. A sense of duty alone calls forth the observations which will be submitted to the good sense of the people in this paper, from one who has more inclination than leisure to serve them, and who has had too deep a share in the common exertions in this Revolution to be willing to see its fruits blasted by the violence of rash or unprincipled men, without, at least, protesting against their designs [plans].

The persons alluded to pretend to appeal to the spirit of Whiggism³ while they endeavor to put in motion all the furious and dark passions of the human mind. The spirit of Whiggism is generous, humane, beneficent, and just [but] these men inculcate [promote] revenge, cruelty, persecution, and perfidy [treachery]. The spirit of Whiggism cherishes legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial and conviction of some crime declared by antecedent laws,⁴ reprobates [condemns] equally the punishment of the citizen by arbitrary acts of legislation as by the lawless combinations of unauthorized individuals;⁵ — while these men are advocates for expelling a large number of their fellow-citizens unheard [and] untried, or, if they cannot effect this, are for disfranchising them [removing their civil rights] in the face of the Constitution without the judgment of their peers and contrary to the law of the land.

The 13th article of the [New York] Constitution declares “that no member of the State shall be disfranchised or defrauded of any of the rights or privileges sacred to the subjects of this State by the Constitution unless by the law of the land or the judgment of his peers.” If we inquire what is meant by the law of the land, the best commentators will tell us that it means due process of law; that is by indictment or presentment of good and lawful men, and trial and conviction in consequence. . . .

This is a dictate of natural justice and a fundamental principle of law and liberty.

Nothing is more common than for a free people in times of heat and violence to gratify momentary passions by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment, by acts of Legislature.⁶ The dangerous consequences of this power are manifest [obvious]. If the Legislature can disfranchise any number of citizens at pleasure by general descriptions,⁷ it may soon confine all the votes to a small number of partisans and establish an aristocracy or an oligarchy. If it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government would be a mockery of common sense.

These men not only overlap the barriers of the Constitution without remorse, but they advise us to become the scorn of nations by violating the solemn engagements [promises/obligations] of the United States. They endeavor to mold the treaty with Great Britain into such forms as pleases them, and to make it mean anything or nothing as suits their views.

² Use trickery in argumentation.
³ I.e., Patriots. Whiggism was the British political theory based on Enlightenment ideals, opposed to Toryism, and sympathetic to the American cause.
⁴ Laws passed before, not after, the acts deemed criminal. (The U.S. Constitution forbids ex post facto laws, those passed after the commission of acts in order to punish those responsible for the acts.)
⁵ For example, vigilante justice.
⁶ The state legislature had passed and was considering such laws to remove Loyalists’ voting rights and citizenship, and to expel them from the state.
⁷ I.e., can remove voting rights from any citizens it chooses due to their membership in a certain group.
They tell us that all the stipulations with respect to the Tories [Loyalists] are merely that Congress will recommend — and the States may comply or not, as they please.

But let any man of sense and candor [honesty] read the treaty, and it will speak for itself. The fifth article is indeed recommendatory; but the sixth is as positive as words can make it. “There shall be no future confiscations made, nor prosecutions commenced against any person or persons, for or by reason of the part which he or they may have taken in the present war; and no person shall, on that account, suffer any future loss or damage, either in his person, liberty, or property.”

... Can it be denied that the peace which was made, taken collectively, was manifestly for the general good, that it was even favorable to the solid interests of this country beyond the expectation of the most sanguine [optimistic]? If this cannot be denied — and none can deny it who know either the value of the objects gained by the treaty or the necessity these States were under at the time of making peace — it follows that Congress and their ministers [diplomats] acted wisely in making the treaty which has been made; and it follows from this that these States are bound by it and ought religiously to observe it.

The uti possidetis — each party to hold what it possesses — is the point from which nations set out in framing a treaty of peace. If one side gives up a part of its acquisitions, the other side renders an equivalent in some other way. What is the equivalent given to Great Britain for all the important concessions she has made? She has surrendered the capital of this State and its large dependencies [western territories]. She is to surrender our immensely valuable posts on the frontier, and to yield to us a vast tract of western territory, with one half of the Lakes, by which we shall command almost the whole fur trade. She renounces to us her claim to the navigation of the Mississippi and admits us to share in the [Newfoundland] fisheries, even on better terms than we formerly enjoyed it. ... And what do we give in return? We stipulate that there shall be no future injury to her adherents among us [Loyalists]. How insignificant the equivalent in comparison with the acquisition! A man of sense would be ashamed to compare them. A man of honesty, not intoxicated with passion, would blush to lisp a question of the obligation to observe the stipulation on our part.

... Suppose, then, Great Britain should be induced to refuse a further compliance with the treaty in consequence of a breach of it on our part. What situation should we be in? Can we renew the war to compel a compliance? We know, and all the world knows, it is out of our power. Will those who have heretofore assisted us take our part? Their affairs require peace as well as ours, and they will not think themselves bound to undertake an unjust war to regain to us rights which we have forfeited by a childish levity [lack of seriousness] and a wanton contempt of public faith.

We should then have sacrificed important interests to the little, vindictive, selfish, mean passions of a few. To say nothing of the loss of territory, of the disadvantage to the whole commerce of the Union, by obstructions in the

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8 Isaac Ledyard and other radical anti-Loyalists argued that Article Six of the 1783 Treaty of Paris did not, in actuality, prevent the removal of Loyalists’ citizenship and property. Hamilton refuted each of their arguments in his “Phocion” letters.
fisheries, this State would lose an annual profit of more than £50,000 Sterling from the fur trade.

But not to insist on possible inconveniences, there is a certain evil which attends our intemperance: a loss of character [reputation] in Europe. Our ministers [diplomats] write that our conduct hitherto in this respect has done us infinite injury, and has exhibited us in the light of a people destitute of government, on whose engagements [promises] of course no dependence can be placed.

... But, say some, to suffer [permit] these wealthy disaffected men [Loyalists] to remain among us will be dangerous to our liberties. Enemies to our government, they will be always endeavoring to undermine it and bring us back to the subjection of Great Britain. The safest reliance of every government is on men’s interests. This is a principle of human nature on which all political speculation, to be just, must be founded. Make it the interest of those citizens who during the Revolution were opposed to us to be friends to the new government by affording them not only protection but a participation in its privileges, and they will undoubtedly become its friends. The apprehension of returning under the dominion of Great Britain is chimerical [highly unrealistic]. If there is any way to bring it about, the measures of those men against whose conduct these remarks are aimed, lead directly to it. A disorderly or a violent government may disgust the best citizens and make the body of the people tired of their independence.

... The idea of suffering [permitting] the Tories to live among us under disqualifications [removal of rights] is equally mischievous and absurd. It is necessitating [forcing] a large body of citizens in the State to continue enemies to the government, ready at all times in a moment of commotion to throw their weight into that scale which meditates a change, whether favorable or unfavorable to public liberty.

Viewing the subject in every possible light, there is not a single interest of the community but dictates moderation rather than violence. That honesty is still the best policy [and] that justice and moderation are the surest supports of every government are maxims which, however they may be called trite, are at all times true, though too seldom regarded but rarely neglected with impunity [with no harm]. Were the people of America with one voice to ask: “What shall we do to perpetuate our liberties and secure our happiness?” the answer would be: “Govern well,” and you have nothing to fear either from internal disaffection or external hostility. Abuse not the power you possess, and you need never apprehend its diminution [fear its decrease] or loss. But if you make a wanton use of it, if you furnish another example that despotism may debase the government of the many as well as the few, you, like all others that have acted the same part, will experience that licentiousness [lack of moral restraint] is the forerunner to slavery [tyrannical control].

How wise was that policy of Augustus, who, after conquering his enemies, when the papers of Brutus were brought to him which would have disclosed all his secret associates, immediately ordered them to be burnt. He would not even know his enemies [so] that they might cease to hate where they had nothing to fear.

How laudable was the example of Elizabeth, who, when she was transferred from the prison to the throne, fell upon her knees, and thanking Heaven for the deliverance it had granted her from her bloody persecutors, dismissed her resentment. “This act of pious gratitude,” says her historian, “seems to have been the last circumstance in which she remembered any past injuries and hardships. With a prudence and

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9 i.e., made us look like a people without government and law.
10 i.e., government is most secure when its actions are based on the citizens’ self-interest.
11 Roman emperor Caesar Augustus defeated his enemies Brutus and Cassius at the Battle of Philippi (42 BCE), after which Brutus committed suicide.
12 Queen Elizabeth I of England (reign: 1558-1603), who had been imprisoned by her competitors for the throne.
magnanimity truly laudable, she buried all offenses in oblivion and received with affability even those
who acted with the greatest virulence against her.” She did more, she retained many of the opposite party
in her councils.

The reigns of these two sovereigns are among the most illustrious in history. Their moderation gave a
stability to their government which nothing else could have effected. This was the secret of uniting all
parties.

These sentiments are delivered to you in the frankness of conscious integrity by one who feels that
solicitude for the good of the community which the zealots, whose opinions he encounters, profess; by
one who pursues not as they do the honors or emoluments [benefits] of his country; by one who, though
he has had in the course of the Revolution a very confidential share in the public councils, civil and
military, and has as often, at least, met danger in the common cause as any of those who now assume to
be the guardians of the public liberty, asks no other reward from his countrymen than to be heard without
prejudice for their own interest.

P H O C I O N.

__ISAAC LEDYARD, Mentor’s Reply to Phocion’s Letter, 1784__

When the letter of Phocion first made its appearance, the doctrines contained in it stood so opposed to
common understanding that I was very far from supposing that any consequences arising from them
would make a reply to the letter in the smallest degree necessary; . . . but experience has taught me that
passion, pomp, and plausibility may pass even upon an enlightened people for argument and truth.

This author [Hamilton], while he declaims against “heated spirits” and inflammatory” publications,
gives us a striking proof that he has in an eminent degree that great disqualification for a statesman — an
uncontrollable warmth of temper. This letter affords us an instance of the frailty of human nature. It gives
us the picture of a strong and tolerably well-informed mind which, perhaps having been flattered by
success in the early stage of life, has acquired too much respect for its own capacity, too much contempt
for that of others, and too much vanity to conceal these effects. . . .

Before I proceed, permit me to lay it down as a maxim that it is a principle coincident [directly
relevant] to the very nature of society that there be a power vested in it, in some form or other, adequate
to the purpose not only of correcting any present evil in it but to prevent a probable future one. . . .

After a farmer has prepared his

God forbid the government should make it

their interest to be its friends, for to do this

would be to bring the principles of the
government to suit them, not them to suit it.

14 Cockle: toxic weed resembling wheat that is removed from wheat fields before harvesting; used as a metaphor for false religious doctrines in
Matthew 13 [New Testament].
15 I.e., leave possible traitors in the citizens establishing the new nation?
To show that our fears for the well-being of our government on this occasion are founded in reason and not in ideal [i.e., emotions, fears] . . . let us consider the number and quality of the people who, I am ashamed to say, are the subjects of dispute, and the differences between the government which their principles contend for, and ours.

In a monarchical government, I grant the doctrine of Phocion may obtain [apply]. There, fear might make it their interest to be good subjects [citizens] — the fear of offending against the government. But in a republican government, the people are their own governors. A republican government must take its shape from the opinion of the people and is variable, as the opinions of its component parts may vary; hence the necessity of correcting that evil which may spring from a corruption of opinion, and though it may be confined to a few at first, it may communicate to the overturning of the government. The number of those who are in reality malcontents [people displeased with conditions] in America are not so small as may be imagined, nor are their views and hopes so humble as many suppose.

I have said that government has a right to anticipate probable evils. The Tory [Loyalist] principle contains in it a mortal and irreconcilable hatred to our government. That this principle will be communicated is too probable when we consider the wealth, the art [skill], the perseverance, and fashion [mode of conduct] of many of its present possessors. . . .

There is no other way of preventing this probable corruption of opinion but by removing the cause, which I have asserted to be the malcontents of America [Loyalists]. . . .

A government has a clearer right to interfere in checking the promulgation [spread] of depravity in political than in religious opinion. If the Tory principle should be repressed in this way, it is a remedy used for the health and preservation of the body politic, as such no one, not even the Tories, can complain of it as unjust, through they deprecate [deplore] the hardship of the measure as applied to themselves.

There is no form of government so delicate in its nature, and which requires so much attention to preserve, as that which exists in the minds of the people [i.e., democracy/republic]. While corruption is kept out of it, there is no form of government so honorable to men and so happy to the partaker of it; and when corrupted, there is no government so much to be detested and avoided. . . . I am not willing to trifle with this acquisition [independence] — to risk it from a false notion of generosity, or because it is easy for Phocion and others to bestow the epithet of “vindictive” on the salutary [beneficial] measures that may be proposed to its preservation. We did at the commencement of the war, and have in the whole course of it, kept it in view as a debt which we owed to posterity to bequeath to them that liberty which we received from our ancestors. Having got this in our power by a hazardous and dreadful conflict, to suffer [permit] the inestimable acquisition to perish by neglect would be not only to betray them but ourselves.

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16 I.e., a government has a more obvious right to suppress dangerous political opinions than it does heretical religious opinions.
__ALEXANDER HAMILTON: LETTER TWO__

_A Second Letter from Phocion to the Considerate Citizens of New York, Containing Remarks on Mentor's Reply, 1784_

The little hasty production under the signature of Phocion has met with a more favorable reception from the public than was expected. The force of plain truth has carried it along against the stream of prejudice, and the principles it holds out have gained ground in spite of the opposition of those who were either too angry or too much interested to be convinced. Men of this description have, till lately, contented themselves with virulent invectives against the Writer without attempting to answer his arguments; but, alarmed at the progress of the sentiments [opinions] advocated by him, one of them has at last come forward with an answer — with what degree of success, let those who are most partial to his opinion determine. . . .

Thus we have another example how easy it is for men to change their principles with their situations — to be zealous advocates for the rights of the citizens when they are invaded by others, and as soon as they have it in their power to become the invaders themselves, to resist the encroachments of power when it is in the hands of others; and the moment they get it into their own hands to make bolder strides than those they have resisted. Are such men to be sanctified with the hallowed names of patriots? Are they not rather to be branded as men who make their passions, prejudices, and interests the sole measure of their own and others’ rights? The history of mankind is too full of these melancholy instances of human contradiction.

When the advocates for legislative discriminations are driven from one subterfuge [deception] to another,¹⁷ their last resting-place is that this is a new case, the case of a revolution. Your principles are all right, say they, in the ordinary course of society, but they do not apply to a situation like ours. This is opening a wilderness through all the labyrinths of which it is impossible to pursue them. The answer to this must be:

that there are principles eternally true, and which apply to all situations such as those that have been already enumerated;
that we are not now in the midst of a revolution but have happily brought it to a successful issue;
that we have a Constitution formed as a rule of conduct;
that the frame of our government is determined, and the general principles of it settled;
that we have taken our station among nations; have claimed the benefit of the laws which regulate them, and must in our turn be bound by the same laws;
that those eternal principles of social justice forbid the inflicting punishment upon citizens by an abridgment of rights, or in any other manner, without conviction of some specific offense by regular trial and condemnation;
that the Constitution we have formed makes the trial by jury the only proper mode of ascertaining the delinquencies of individuals;
that legislative discriminations to supersede the necessity of inquiry and proof would be a usurpation of the judiciary powers of the government, and a renunciation of all the maxims of civil liberty;
that by the laws of nations and the rules of justice we are bound to observe the engagements entered into on our behalf by that power which is invested with the constitutional prerogative of treaty; and that the treaty we have made in its genuine sense ties up the hands of government from any species of future prosecution or punishment, on account of the part taken by individuals in the war.¹⁸

¹⁷ I.e., when those who support legislative sanctions against the Loyalists run out of deceitful justifications for their positions, they resort to the excuse that this is a new situation, that of a revolution.
¹⁸ List formatting added.
The great majority of those who took part against us did it from accident [i.e., necessity], from the dread of the British power, and from the influence of others to whom they had been accustomed to look up. Most of the men who had that kind of influence are already gone. The residue [remaining Loyalists] and their adherents must be carried along by the torrent and, with a very few exceptions, if the government is mild and just, will soon come to view it with approbation [approval] and attachment.

Either the number of malcontents in the State is small or it is considerable. If small, there is no room for apprehension [concern]. If great, then opposition to the government is only to be overcome by making it their interest to be its friends or by extirpating [removing] them from the community. A middle line, which will betray [reveal] a spirit of persecution in the government but will only extend its operation to a small number, will answer no other purpose than to disable a few, and inflame and rivet the prejudices of the rest by exhibiting the temper of government in a harsh and unconciliating [stubborn] light. We shall, then, in truth, have a considerable faction in the State ready for all innovations [change/uprising].

There is a bigotry in politics as well as in religions, equally pernicious [harmful] in both. — The zealots of either description are ignorant of the advantage of a spirit of toleration. It was a long time before the kingdoms of Europe were convinced of the folly of persecution with respect to those who were schismatics [dissenters] from the established church. The cry was, these men will be equally the disturbers of the Hierarchy and of the State. While some kingdoms were impoverishing and depopulating themselves by their severities [harsh treatment] to the non-conformists, their wiser neighbors were reaping the fruits of their folly and augmenting their own numbers, industry, and wealth by receiving with open arms the persecuted fugitives. Time and experience have taught a different lesson, and there is not an enlightened nation which does not now acknowledge the force of this truth — that whatever speculative notions of religion may be entertained, men will not, on that account, be enemies to a government that affords them protection and security. The same spirit of toleration in politics, and for the same reasons, has made great progress among mankind, of which the history of most modern revolutions is a proof. Unhappily for this State, there are some among us who possess too much influence, [who] that have motives of personal ambition and interest to shut their minds against the entrance of that moderation which the real welfare of the community teaches.

I shall now with a few general reflections conclude.

Those who are at present entrusted with power in all these infant republics [states] hold the most sacred deposit that ever was confided to human hands. 'Tis with governments as with individuals — first impressions and early habits give a lasting bias to the temper and character. Our governments, hitherto, have no habits. How important to the happiness, not of America alone, but of mankind, that they should acquire good ones!

If we set out with justice, moderation, liberality, and a scrupulous regard to the Constitution, the government will acquire a spirit and tone productive of permanent blessings to the community. If, on the contrary, the public councils are guided by humor [impulse19], passion, and prejudice — if from resentment to individuals or a dread of partial inconveniences the Constitution is slighted or explained away upon every frivolous pretext — the future spirit of government will be feeble, distracted, and arbitrary. The rights of the subject [citizen] will be the sport of every party vicissitude [change in dominant party]. There will be no settled rule of conduct, but everything will fluctuate with the alternate prevalence of contending factions.

19 I.e., impulse (not referring to a comedic quality).
The world has its eye upon America. The noble struggle we have made in the cause of liberty has occasioned a kind of revolution in human sentiment. The influence of our example has penetrated the gloomy regions of despotism, and has pointed the way to enquiries which may shake it to its deepest foundations. Men begin to ask, everywhere: Who is this tyrant that dares to build his greatness on our misery and degradation? What commission has he to sacrifice millions to the wanton appetites of himself and a few minions that surround his throne?

To ripen enquiry into action, it remains for us to justify the revolution by its fruits.

If the consequences prove that we really have asserted the cause of human happiness, what may not be expected from so illustrious an example? —— In a greater or less degree the world will bless and imitate.

But if experience, in this instance, verifies the lesson long taught by the enemies of liberty — that the bulk of mankind are not fit to govern themselves, that they must have a master and were only made for the rein and the spur — we shall then see the final triumph of despotism over liberty. —— The advocates of the latter must acknowledge it to be an ignis fatuus\(^{20}\) and abandon the pursuit. With the greatest advantages for promoting it that ever a people had, we shall have betrayed the cause of human nature.

... 

\[\text{PHOCION.}\]

\(^{20}\text{Ignis fatuus: illusion, will-o’-the-wisp (Latin: “foolish fire”).}\)