

NEW JERSEY IN THE AMERICAN REVOLUTION

of the sentiments of Gent[leme]n with whom I am joined,⁵ indeed of Congress also. But I hope, where I have influence to cultivate liberality on success; and without success its needless.

I am yours & c.
R. M.

1. In a letter datelined "Persepone [Parsippany] 3d Decr. 1777," Gouverneur Morris had expressed the following sentiments to his brother: "Nothing will more effectually belie the artful Tales of those who paint the little Territory which Britain possesses among us as a Paradize than the Permitting all such as being now with them [that] are sincerely desirous of returning to their Duty to become Members of the State. Such I am told have made Application and surely it is better to imitate the Mercy of him who is Mercy itself than to pretend to arrogate to ourselves that Vengeance which belongeth to him alone. Such Conduct while it increases our Strength will weaken them and believe me the Vulgar who for a Moment would exclaim against Lenity will in the End both love and admire the Legislature who exercise it for the still Voice of Reason & Humanity will at Length be heard when the Rage of Passions and Prejudices subsides. And Experience is a Liar if the Maxim which Shakespeare puts in the Mouth of his favorite Harry is not as just as it is elegant. 'When Lenity and Cruelty play for Kingdoms the gentlest Gamester is the surest Winner.' [*Henry the Fifth*, Act III, Scene VI, lines 119-20.] But after all I judge in a Corner and by a Rush Candle. You are more abroad and have the full Light of Information. For let Reason say what she will I know much is to be conformed in popular Governments to popular Clamor." Morris Family Papers, Alexander Library, Rutgers University.

2. From 1455 to 1485 England was ravaged by the Wars of the Roses, a bitter civil war between the houses of Lancaster and York, whose symbols were a red and a white rose respectively. The dynastic rivalry and unremitting warfare simultaneously came to an end when Henry, Earl of Richmond, emerged victorious at Bosworth Field in 1485 and, commencing his reign as Henry VII, established the House of Tudor.

3. The two rival political parties in England.

4. Jacobites were supporters of the claim of James II, who abdicated in 1688-1689, and his descendants to the throne of England.

5. The members of the New Jersey Supreme Court.

10 John Cleves Symmes to
Governor William Livingston

[*Executive Correspondence*, pp. 135-37.]

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Cases involving alleged treasonous acts against the state filled New Jersey court dockets during the war. County courts meted out numerous penalties ranging from fines to paroles to imprisonment for a variety of political offenses. But it was the supreme court, while on its annual circuit throughout the state, that ordinarily handled the delicate issue of capital punishment. The members of the high tribunal faced an insoluble dilemma: treason warranted drastic action, but it was necessary to chart a prudent course between the extremes of unwarranted clemency and murderous vengeance. Excessive executions could only tarnish the image of the government, but capital punishment was deemed necessary to deter the more serious acts of subversion. The death penalty greatly troubled Associate Justice John Cleves Symmes during his service on the bench from 1777 to 1783. The following commentary on the fate of a group of prisoners sentenced on December 5, 1778, by a court of oyer and terminer to be executed on January 29, 1779, reveals his attempt to distinguish between potential converts to the republican regime and incorrigible Loyalists. Whatever the judicial considerations involved, Symmes and the other members of the civil establishment knew well that it was in the political interest of the state to act with compassion toward the former but without mercy toward the latter.

Morristown, January 7, 1779.

I beg leave to lay before your Excellency, and the honorable gentlemen of the Council, the business of the state that came before me in the late Circuit, in the counties of Hunterdon and Cumberland, which was capital; recommending to the clemency and grace of your honor those miserable subjects who are under sentence of death.

In the county of Gloucester there is Jonathan Chew¹ condemned for high treason; he was convicted by jury. I take it that he was disaffected from the beginning of the troubles, and joined the enemy at their coming to Billingsport, and acted as a captain among them. The charges laid against him in the indictment of levying war and adhering to the enemies of the state was well supported, and I cannot think there is any equitable circumstance in his favor, either as matter of law or fact. But the following considerations may perhaps plead for him with your honors for a pardon.

1. He is a very weak man in his understanding.
2. He has a family of twelve children, that must be objects of charity if their friend is taken away, and they have no property left.
3. It appeared in the Court that he was humane, and inclined to distress the inhabitants that were in his power as little as possible, in person or property.
4. He left the enemy after they had retreated through Jersey, and came home and threw himself in the way of justice.

Harrison Wells,² who traversed his indictment for levying war against the states, and adhering to its enemies, and convicted thereon. I believe that Mr. Wells was a Whig at the beginning; he was in the militia and behaved well. But I cannot say there was any equitable circumstance appeared (touching law or fact) on his trial that can operate in his favor; but perhaps the following considerations may incline your honors to pardon him:

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1. He was undoubtedly over-persuaded by Mr. John Hinchman,³ who had been his guardian, to go and join the enemy, which at length he did with some reluctance, being partly in compliance to Mr. Hinchman's advice, and partly because he was threatened by the militia.

2. When with the enemy he was offered a Lieutenant's Commission, which he refused.

3. It appeared that he early wished to make his peace with his country by desiring to surrender himself, but found the popular clamor so much against him that he dare not do it; and his house was contiguous to the enemy.

4. When the enemy left Philadelphia, he surrendered himself at Haddonfield, to the law, refusing to march with the enemy. He appears very penitent.

Besides Chew and Wells, there are fifteen⁴ others condemned for high treason against the state; viz: William Hammet, John Dilk[e]s, John Franklin, James Birch, Joseph Pratt, Joseph Dill, Abraham Fennimore, Joshua Dilk[e]s, Christopher String[e], Daniel Fussman, Lawrence Cox, David Lloyd, Thomas Nightingale, Paterson Cook, and Isaac Lord; who, after having proper time allowed them to consider of a plea, severally pleaded guilty to their indictments, which has prevented the Court from having their causes investigated before them; and I must own that as to by far the greater part of them, I know nothing of the nature of their guilt, or what favorable circumstances there may be in their cases, only as they were charged in their indictments and pleaded guilty; but as to William Hammet, I believe there is as little to be said in his favor as to any of them. I should be exceeding happy, were your honors of opinion there was no occasion of farther examples in cases of high treason; that our laws and government were sufficiently established, and that nothing remained but to forgive. But as I think these things matters of some doubt, I hope your honors will not receive it ill of me if I proceed to say, that were the question put to me, Who shall die? I should be inclined to say, William Hammet.⁵ My reasons are, First. because he was formerly apprehended and sent to your Excellency and the Council of Safety, charged with similar offences against his country, and notwithstanding the Honorable Council of Safety were pleased to suffer him to return home, he went immediately and joined the enemy. Secondly, he was a daring offender while with the enemy, and may be so again. Thirdly, he was taken while in the service of the enemy, and has at no time since, (if I am rightly instructed,) expressed himself a friend to the state, as most of the others have; but he has frequently wished to be sent to the enemy again; and I think the probability is against him that he joins them if discharged. Fourthly, he has no family that must suffer by his death, as many of the others have; and in making up my mind on this subject, I think I am warranted in some measure by the opinion of Judge Blackstone,⁶ where he speaks of the necessity of human punishments. . . .

I have the honor to be, honorable gentlemen, with great esteem, your humble servant,

JOHN CLEVES SYMMES

1. Jonathan Chew of Deptford, who owned extensive tracts of land in Deptford and Greenwich townships, joined the Loyalist West Jersey Volunteers as a captain in 1778. His property was confiscated and sold at auction in March 1779.

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2. Harrison Wells of Greenwich. His 100-acre farm and grist mill were also confiscated and sold in March 1779.

3. Quaker John Hinchman, former assemblyman, who joined the British at Philadelphia in 1778. His property was subsequently confiscated and sold. After a wartime exile in Nova Scotia, he returned to his native New Jersey where he lived out his days amid social ostracism and verbal abuse.

4. Actually sixteen; Symmes omits the name of Gideon Urine.

5. Nothing is known of Hammet other than what Symmes relates here.

6. Sir William Blackstone, whose *Commentaries on the Laws of England* (4 vols., Oxford, 1765-1769; American edition, Philadelphia, 1771-1772) was the basic text for American lawyers well into the nineteenth century.

11 A Writ Ordering the Sale of Confiscated Property in Monmouth County

[Broadside and Letters, Monmouth County, New Jersey: Commissioners for Forfeited Estates Writs, Alexander Library, Rutgers University.]

The state took care to follow elaborate procedures in confiscating and selling the property of Loyalist refugees. In April 1778 the legislature set down the process whereby a person could be convicted of treason in absentia. Three commissioners were appointed in each county to gather information concerning the treasonous activities of an individual (resident or in exile) and to present the evidence to a jury summoned by a justice of the peace. If the defendant was judged guilty, the jurors advertised their decision publicly in the form of an inquisition. The inquisition was then turned over to the court of common pleas, which had jurisdiction over civil cases, and the accused was given a final opportunity to challenge the verdict. If the decision went uncontested—and it invariably did—the court issued a writ ordering the commissioners to dispose of the property at auction under the terms of an act passed in December 1778 which directed the sale of “the Lands, Tenements, Hereditaments and Real Estates” of convicted Loyalists. The writ below is typical of the hundreds of such orders issued from December 1778 to June 1781, when the sale of confiscated property was temporarily suspended because of the grossly inflated currency then in circulation.

[April 29, 1779]

Monmouth County,¹ to wit,

The State of New-Jersey to *Samuel Forman, Joseph Lawrence, Kenneth*