

“Negative Patriots”: How Former Loyalists’ Movement Between States Shaped the Development of American Citizenship, 1781-1790*

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On May 10, 1775, former Boston resident Thomas Brattle departed for Europe. While he was abroad, Massachusetts passed its 1778 Banishment Act, which prohibited him and 299 other individuals who aided the British or left the state after April 19, 1775, from returning. Banished individuals caught returning without a license from a sheriff were to be arrested and deported.¹ In 1779, Brattle arrived in Newport, Rhode Island and traveled to Massachusetts to ask the General Assembly for permission to return. The Assembly found no evidence against him but still ruled against his returning to avoid “let[ting] down the Bars for the Guilty.”² Brattle returned to Newport and petitioned the Massachusetts government again in 1781. After this failed, he requested that the Rhode Island Assembly represent his conduct to the Massachusetts Assembly so that he would be restored to the “Rights and Privileges of a Subject of the United States” and permitted to reside in Massachusetts. The Rhode Island Assembly wrote a letter to Massachusetts Governor John Hancock in November 1782 and detailed how Brattle had lived in Rhode Island for three years, borne arms for America, and regained his property in Connecticut. In December 1782, Governor William Greene Jr. of Rhode Island wrote an additional letter to Hancock and enclosed testimony from several Rhode Islanders. Moreover, seventy-eight citizens of Massachusetts petitioned that Brattle’s citizenship be restored.³ In Massachusetts, the Senate ruled that Brattle could become a citizen on the condition that he relinquished his claims to his father’s confiscated property. However, the Massachusetts House of Representatives rejected Brattle’s

*The phrase “negative patriot” appeared in *Independent Ledger and the American Advertiser*, April 16, 1781.

¹ “November 1782 Session,” J. Carter, ed., [*Act and Resolves*]. *At the General Assembly of the State of Rhode Island and Providence Plantations ... [July, 1776-Oct. 1800]*, vol. 4 (1781/1782), 10 vols. ([Providence, 1776), 31; “Chapter 24: An Act to Prevent the Return to this State of Persons therein named...who have left this State...& joined the Enemies thereof,” October 16, 1778, *The Acts and Resolves, Public and Private of the Province of Massachusetts Bay...* (Boston, 1886), vol. 5, 21 vols., 24, 912-8.

² “November 1782 Session,” 4: 32.

³ “November 1782 Session,” 4: 31-2; Governor William Greene Jr. to Governor John Hancock, December 4, 1782, Thomas Brattle Papers, cited by David E. Maas, *The Return of the Massachusetts Loyalists*, Outstanding Studies in Early American History (New York: Garland, 1989), f. 54 442; 461, 442-3.

latest petition by one vote.⁴ Brattle was subsequently forced to leave the state, but returned in July 1784 on a license from the Massachusetts governor to try to recover his non-confiscated property in court. Finally, in September 1784, the Massachusetts Supreme Judicial Court declared Brattle to be a citizen of Massachusetts.⁵

Massachusetts' actions towards Brattle, the first "banished" loyalist who tried to return, did not exist in a vacuum.⁶ Former Massachusetts loyalists in exile and their family members kept track of how other former loyalists, such as Brattle, were received and the strategies they used. John Amory's brother Jonathan monitored how Massachusetts' legislature responded to Brattle and Isaac Smith Jr. delayed his return until he could hear how " Mr. Brattle...or any other person, however, unexceptionable, [were] received at Boston."⁷ Like Brattle, John Amory settled in Rhode Island while he petitioned the Massachusetts' legislature for citizenship. In addition, because Massachusetts' loyalist banishment laws were arguably the harshest of the eight colonies that passed them, it offers a useful starting point to examine the role of interstate relations in loyalist reintegration.⁸ Barred from returning to Massachusetts, former loyalists took advantage of the state's geographical proximity and fled to neighboring states that were more receptive, namely Rhode Island and Connecticut. In doing so, these former Massachusetts loyalists such as Brattle, sought to influence Massachusetts' laws towards loyalists by gaining support from nearby states.

This article shows how former loyalists traveling between states and the state legislatures that responded to them tested the framework of state-level citizenship and facilitated the development of a proto-national conception of citizenship that Congress later formalized in the 1790 Naturalization Act. In doing so, it will argue that loyalist re-integration presented state legislatures with their first chance to act as the gatekeepers of state-level citizenship, a position they would hold for over a half-century. Under British rule, the colonies lacked the ability to create British subjects, a right that remained with the British. After the Revolution, the context changed,

⁴ The vote proved controversial in the May 1783 House of Representatives election. Twenty-three of the 51 representatives who voted in favor of Brattle lost re-election, Maas, *The Return*, 442-3; Timothy Pickering to Mehetable Higginson [Newburgh] June 15, 1783, Robie-Sewall Papers, Ms N-804, Massachusetts Historical Society (MHS), Boston, MA.

⁵ "As the Question Respecting the Right of Thomas Brattle, Esq; to Reside in This State as a Citizen of the Same..." *Thomas's Massachusetts Spy, or the Worcester Gazette*, September 19, 1784; Maas, *The Return*, 475.

⁶ In this article, I will define a loyalist as an individual who either declared their loyalty or was identified by the community as not endorsing the Revolution and treated accordingly. For clarity, I will refer to those who supported the Revolution as "revolutionaries." I will define reintegration to mean the process of restoring an individual to society, which broadly includes political rights, economic rights, and/or membership in a community.

⁷ Jonathan Amory [Boston] to John Amory, May 12, 1783, Amory Papers, vol. 16: 98, MHS; Isaac Smith Jr. [Sidmouth] to William Smith, January 4, 1783; Isaac Smith [Boston] to Isaac Smith Jr., June 30, 1783; Isaac Smith Jr. [Sidmouth] to Elizabeth Storer Smith, September 24, 1783 and December 24, 1783, Smith-Carter Family Papers, roll 2, MHS.

⁸ Claude H. Van Tyne, *The Loyalists in the American Revolution* (New York and London: The Macmillan Company, 1902), 331-32; Peter Edgerton, "Banishment and the Right to Live Where You Want," *The University of Chicago Law Review* 74, no. 1023 (2007): 1029. Loyalists were not the only people who were expelled from the state. Throughout the colonial and early national period, Boston actively forced out many impoverished people to avoid having to provide them with relief, Allan Kulikoff, "Table X: Warnings Out of Boston, 1745 to 1792," in "Revolutionary Violence and the Origins of American Democracy," *Journal of the Historical Society* 2 (Spring 2002): 400; Ruth Wallis Herndon, *Unwelcome Americans: Living on the Margin in Early New England* (Philadelphia: University of Pennsylvania Press, 2001); Cornelia H. Dayton and Sharon Salinger, *Robert Love's Warnings: Searching for Strangers in Colonial Boston* (Philadelphia: University Pennsylvania Press, 2014); Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (New York: Oxford University Press, 2017).

as the states became the arbiters of membership and the stakes were raised due to the republic's dependence on reliable citizens to sustain it.

By adopting this approach, this essay bridges the gap between scholarship on loyalists and citizenship. The majority of scholarship on loyalists concentrates on the diaspora in which refugees fled, by choice or force, to places such as Canada, the West Indies, Great Britain, and Sierra Leone and rebuilt their lives.⁹ The limited works on loyalist reintegration focus on the process of reintegration and reconciliation in a single state.¹⁰ This article illuminates the scholarly use of examining loyalists' movement across state borders as a strategy to facilitate their reintegration. It also situates loyalists' questionable membership status within broader debates over state-level citizenship and belonging. Although work by scholars including Kunal Parker, Douglas Bradburn, James Kettner, and Rogers Smith has shed important light on the nature of citizenship in early America, their works pay only brief attention to the predicament of loyalists.¹¹ Building on this work, this essay places closer scrutiny on volitional citizenship. Moreover, it suggests that the question of loyalist citizenship, to which scholars of citizenship in early America largely overlook, should be seen as the first step in the much longer trajectory of contests over state-level citizenship in the eighteenth and nineteenth centuries. The issue of incorporating loyalists led revolutionaries not only to develop "volitional citizenship," but also to debate what membership in the republic entailed.

While subjecthood was applied broadly, citizenship, with its connection to republican government and representation in government, was a more restrictive category. Unlike

⁹ Selected works on the loyalist diaspora include Mary Beth Norton, *The British-Americans: the Loyalist Exiles in England, 1774-1789* (Boston: Little, Brown, 1972); Ann Gorman Condon, *The Loyalist Dream for New Brunswick: The Emry of the American States* (New Ireland Press, 1984); Keith Mason, "The American Loyalist Diaspora and the Reconfiguration of the British Atlantic World," in *Empire and Nation: The American Revolution in the Atlantic World*, ed. Eliga H. Gould and Peter S. Onuf (Baltimore: Johns Hopkins University Press, 2005), 239–59; Maya Jasanoff, *Liberty's Exiles: American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011); Carole Watterson Troxler, "Uses of the Bahamas by Southern Loyalists," in *The Loyal Atlantic: Remaking the British Atlantic in the Revolutionary Era*, ed. Jerry Bannister and Liam Riordan (Toronto: University of Toronto Press, 2012), 185–210; Peter C. Newman, *Hostages to Fortune: The United Empire Loyalists and the Making of Canada* (New York: Simon and Schuster, 2016).

¹⁰ These works include Maas, *Divided Hearts, Massachusetts Loyalists, 1765-1790: A Biographical Directory* (Society of Colonial Wars in the Commonwealth of Massachusetts, 1980); Maas, *The Return*; Maas, "The Massachusetts Loyalists and the Problem of Amnesty, 1775-1790," in *Loyalists and Community in North America*, ed. Robert M Calhoun, Timothy M Barnes, and George A Rawlyck (Westport, CT: Praeger, 1994), 65–75; Brannon, *From Revolution to Reunion*. Despite its title, Robert Calhoun, "The Reintegration of the Loyalists and Disaffected," in *The American Revolution: Its Character and Limits*, ed. Jack P. Greene (New York: New York University Press, 1987), 51-74, does not actually discuss reintegration. Some of the recent unpublished dissertations on loyalist reintegration include Aaron Coleman, "Loyalists in War, Americans in Peace: The Reintegration of the Loyalists, 1775-1800," (unpublished PhD thesis, University of Kentucky, 2008); Brett Palfreyman, "Peace Process the Reintegration of the Loyalists in Post-Revolutionary America," (unpublished PhD thesis, State University of New York at Binghamton, 2014); Emily Iggulden, "The 'Loyalist Problem' in the Early Republic; Naturalization, Navigation, and the Cultural Solution, 1783-1850," (unpublished PhD thesis, University of New Hampshire, Ontario 2015).

¹¹ Kunal M. Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600-2000*, (Cambridge University Press, UK, 2015); Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774-1804*, (Charlottesville: University of Virginia Press, 2009); Bradburn, "The Problem of Citizenship in the American Revolution," *History Compass* 8, no. 9 (September 2010); James Kettner, "The Development of American Citizenship in the Revolutionary Era: The Idea of Volitional Allegiance," *The American Journal of Legal History* 18, no. 3 (1974); Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, VA by the University of North Carolina Press, 1978); Arguably the most well-known book on US citizenship, Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1999) devotes one out of its 506 pages to loyalists.

subjecthood, which was considered perpetual and immutable, citizenship was based on volitional allegiance and could be acquired or rejected. In constructing this new identity, revolutionaries borrowed from English and colonial precedents but with the understanding that the “sovereign” integral to notions of subjecthood was removed and replaced by a government based on popular sovereignty. After the Revolution, because there was no definitive legal definition of who did and did not count as a citizen, states set their own parameters. However, they shared certain understandings of who could be born a citizen. In particular, they held a common belief that citizenship only applied to white men. Because state legislatures such as Massachusetts were constructing a definition of citizenship that excluded non-white individuals, this essay will focus on white male loyalists.¹² The reintegration of loyalists into the states represented the first battleground for examining citizenship as a terrain of struggle that would impact women, free and enslaved African Americans, indigenous Americans and other marginalized groups. While barriers to entry such as race and sex were largely immutable for many seeking citizenship, those for loyalists could be overcome by demonstrating their support for the revolutionary cause as well as finding individuals to vouch on their behalf.

By their movement across borders, former loyalists from Massachusetts threatened to undermine the very nature of state boundaries and tested the meaning of the Articles of Confederation’s “privileges and immunities” clause. Article IV of the Articles of Confederation mandated “free inhabitants of each of these States... shall be entitled to all privileges and immunities of free citizens in the several States.”¹³ While states remained in control of determining citizenship, the “comity clause,” prevented individuals who were naturalized by one state from being viewed as aliens in other states. Moreover, it challenged state sovereignty by suggesting that individuals outside the state could play a role in determining who could claim citizenship within it. Thus, former loyalists who were not admitted into Massachusetts could play off of this clause by entering a more welcoming state, obtaining citizenship, and thereby gaining entry to Massachusetts.

Rhode Island’s General Assembly sometimes allowed former Massachusetts loyalists to reside in Newport or Providence while the Massachusetts courts and legislature handled their cases. One such former loyalist was Isaac Winslow, who at age ten fled Boston with his parents in the mid-1770s and tried to return to Boston in 1782. He traveled to New York where he twice met with Henry Knox, who was there for negotiations with the British about prisoner exchanges. Knox wrote to the Massachusetts governor and the Massachusetts Assembly on Winslow’s behalf. He asserted that Winslow’s “character is fair and he promises to be a good member of any community in which he may reside.” Wondering if “no formal permission could be obtained,” Knox asked

¹² For more information on Black loyalists see Norton, “The Fate of Some Black Loyalists of the American Revolution,” *The Journal of Negro History* 58, no. 4 (1973): 402–26; James W. St. G. Walker, *The Black Loyalists: The Search for a Promised Land in Nova Scotia and Sierra Leone, 1783-1870*, Dalhousie African Studies Series (New York: Africana Publishing Co. and Dalhousie University Press, 1976); John W. Pulis, ed., *Moving On: Black Loyalists in the Afro-Atlantic World*, vol. 4, Crosscurrents in African American History (New York: Garland Pub, 1999); Mary Louise Clifford, *From Slavery to Freetown: Black Loyalists After the American Revolution* (Jefferson, NC: McFarland, 2006); Cassandra Pybus, *Epic Journeys of Freedom: Runaway Slaves of the American Revolution and Their Global Quest for Liberty*, (Boston: Beacon Press, 2006); Alan Gilbert, *Black Patriots and Loyalists: Fighting for Emancipation in the War for Independence*, (Chicago: University of Chicago Press, 2012); Christopher Curry, *Freedom and Resistance: A Social History of Black Loyalists in the Bahamas* (Gainesville: University Press of Florida, 2017).

¹³ “The Articles of Confederation,” March 1, 1781, The Avalon Project, Yale Law School.

what “conduit would be offered if he came and cast himself on the mercy of the Government?”¹⁴ Isaac’s brother Samuel stepped into this role. He successfully petitioned the Rhode Island Assembly for permission for Isaac to remain in Providence until the Massachusetts Assembly reconvened the following January.¹⁵ With Isaac relatively secure in Providence, Samuel continued to petition the Massachusetts Assembly. Eventually in February 1783, the Massachusetts Assembly granted Isaac permission to return and to become a Massachusetts citizen after taking the oath of allegiance.¹⁶

In the cases of Brattle and Winslow, Rhode Island served as a safe-harbor. Although the state’s government did not grant these individuals citizenship, it did allow them to remain in the state for stretches of time and ultimately advocated to Massachusetts’ legislature on their behalf. The exact reason for this clemency remains unclear. Since these former loyalists were petitioning to return to Massachusetts, one possible explanation is that Rhode Island likely did not view these individuals as threatening to the state since they showed no desire to settle permanently in Rhode Island.

While Rhode Island seemed to function as a waiting room for Massachusetts loyalists, Connecticut went a step further by naturalizing some of them. Because states gave each other’s citizens equal recognition under Article IV, Connecticut’s actions directly undercut Massachusetts’ banishment acts. For example, in 1783 Connecticut’s General Assembly approved the petition of Richard Smith, a former Massachusetts resident, merchant, and proscribed loyalist, to reside in Connecticut as a citizen. Some Connecticuters endorsed the state’s decision, arguing that each state had jurisdiction over legal matters in its own borders and that Connecticut should not make a law barring former residents of Massachusetts from residing in Connecticut.¹⁷ Others opposed it, emphasizing that Smith was “proscribed as an obnoxious person in a neighbouring State” and had supported America’s enemies during the war.¹⁸ Thus, while Smith had not acted against Connecticut, he had acted against a fellow state and thus the entire revolutionary cause.

Hitting the crux of the matter, Paul Dains wrote an article in the *Connecticut Gazette* decrying the decision as setting a dangerous precedent for citizens to commit a crime in one state, travel to a neighboring state, obtain a pardon and citizenship, and become a citizen of “all the United States.” By this logic, Smith, by becoming a citizen of Connecticut, had become a citizen of Massachusetts despite Massachusetts’ laws against him. Dains feared that if Connecticut could repeal a Massachusetts law against an individual for a relatively minor crime, “why not extend it to murder”? Thus, he raised issues not only about cross-state matters, but also about the degree to

¹⁴ Henry Knox, Samuel Shaw, and Boston Public Library, American Revolutionary War Manuscripts Collection, *Letter about Mr. Winslow’s Return and Grumbings from Massachusetts’ Continental Troops [Manuscript]*, October 8, 1782, (West Point, N.Y., 1782). See also, Maas, *The Return*, 442.

¹⁵ “November 1782 Session,” [*Act and Resolves*], 4:19.

¹⁶ “Chapter 7: Resolve on the Petition of Samuel Winslow, Permitting His Brother to Return to This Commonwealth,” February 4, 1783, *Acts and Resolves of Commonwealth of Massachusetts, 1782-1783* (Reprinted Boston: Wright & Potter, 1890) 366; “Chapter 75: Resolve Approving the Licenses Given by the Governor to George Spooner and Others, Late Absentees,” July 7, 1784; “Chapter 43: Resolve Approving Licenses Given to Certain Absentees, to the Third Wednesday of the Next Session of the General Court,” November 4, 1784; “Chapter 148: Resolve Extending Licenses to George Spooner and Others, to the Next Session of the General Court,” March 17, 1785; “Chapter 133: Resolve Extending the Licenses to Sundry Persons Called Absentees,” July 4, 1785, *Acts and Resolves of the Commonwealth of Massachusetts, 1784-1785* (Boston: Wright & Potter, 1892), 243, 281, 401-2, 697.

¹⁷ “A Spectator,” *Connecticut Gazette*, April 4, May 9, 1783.

¹⁸ “A Meeting of the Inhabitants of the town of Cheshire on Monday the third day of March, Anno Domini, 1783,” *Connecticut Journal*, March 20, 1783.

which one state was governed by another state's laws.¹⁹ Dains also highlighted how the Articles of Confederation had created a highly ambiguous notion of national citizenship by merely equating citizens of one state with citizens of another. The question of loyalist reintegration was arguably the first stress test of that new citizenship. Although not the intention behind the "privileges and immunities" clause, the phrase had effectively created a proto-national citizenship.

Dains commented on Smith's quest for Connecticut citizenship in a moment when the Confederation Congress began, for diplomatic purposes, to nationalize procedures for loyalist treatment and reintegration. The first attempts to impose a national standard on loyalists' position in the United States came in with the 1782 Preliminary Articles of Peace and the 1783 Treaty of Paris. In particular, these documents called on state legislatures to provide "restitution" for all estates, rights, and properties confiscated and an end to confiscation or prosecution against loyalists.²⁰ Hoping to obtain a favorable commercial treaty with Britain after the war, Congress recommended that the states actually repeal all laws that contravened the Treaty. The Treaty's loyalist provisions were extremely controversial in several states, Massachusetts included. The publication of the preliminary articles in April 1783 inspired opposition in the American states, a sentiment that was further inflamed by the definitive peace of 1784.²¹ For years, state governments remained reluctant to comply with the Treaty and, in some cases, passed additional laws that directly contravened it. New Hampshire was the first state to repeal all of its laws contrary to the Treaty but did not do so until September 1786. Some legislatures waited until after 1788.²² States' noncompliance with the Treaty meant loyalist treatment and reintegration often varied greatly from state to state through the 1780s, with Connecticut and Massachusetts representing the polar extremes.

Unsurprisingly, Massachusetts politicians and residents were alarmed that Connecticut had effectively flouted its banishment acts by admitting Smith as a citizen. Expressing this fear, the Massachusetts Assembly called on Massachusetts Governor John Hancock to ask Connecticut Governor John Trumbull of Connecticut to relinquish Smith's citizenship. Unlike Connecticut, Massachusetts had a law stating that it would not "admit to the rights of citizenship any or all refugees from other States" before consulting the legislature of the state from which they had fled. Hinting at the impact of precedent, the Massachusetts General Assembly warned that Smith's admission was not only an "injury" to Massachusetts, but also set a precedent by which Connecticut might admit all individuals "whose inimical principles, dispositions, and conduct"

¹⁹ "From Paul Dains to Mr. Blunt, Constitution-Hill," *Connecticut Gazette*, April 28, 1783; "Constitution Hill, April 28, 1783," *Connecticut Gazette*, May 9, 1783; This debate occurred at the same time as Connecticut's own assembly was legislating regarding loyalists, Oscar Zeichner, "The Rehabilitation of Loyalists in Connecticut," *The New England Quarterly* 11, no. 2 (1938), 315.

²⁰ "Preliminary Articles of Peace," November 30, 1782 and "The Paris Peace Treaty," September 30, 1783, The Avalon Project, Yale Law School.

²¹ "Extracts of a Letter from Philadelphia, dated January 22," *Continental Journal and Weekly Advertiser*, February 20, 1783; "London November 29," *Supplement to the Boston Gazette*, March 3, 1783; "New York February 22," *Salem Gazette*, March 6, 1783; *Salem Gazette*, April 24, May 1, 1783; *Massachusetts Gazette*, May 6, 1783.

²² The date each state declared it had repealed all laws contrary to the Treaty: September 15, 1786, New Hampshire; April 30, 1787, Massachusetts; May 10, 1787, Connecticut; May 15, 1787, Maryland; September 1787, Rhode Island; December 12, 1787, with a proviso that it would not occur until Britain surrendered forts and compensated for slaves seized, Virginia; December 22, 1787, North Carolina; February 2, 1788, Delaware; February 22, 1788, New York; March 3, 1788, Pennsylvania, stated that there were no laws in force that ran contrary to the treaty; ~1788, New Jersey. South Carolina, and Georgia did not repeal their laws by 1788, but did pass generous acts regarding former loyalist, Maas, *Divided Hearts*, xx, f. 59.

during and after the war “uniformly justified their exclusion” from Massachusetts. Ultimately Governor Trumbull refused Governor Hancock’s request and allowed Smith to remain.²³

By granting former Massachusetts loyalists citizenship in their state, the Connecticut Assembly had effectively broken down their barriers to reentering Massachusetts. While this position did not inspire cordial relations with Massachusetts, it did stand to benefit Connecticut’s economy. Writing in the *Connecticut Gazette*, one individual declared that if Massachusetts had the “sovereign right to proscribe for disobedience or dislike 1,000 of their most opulent inhabitants,” Connecticut had the same right to “declare the same persons free citizens of this State.”²⁴ As the war drew to a close, Connecticut needed both inhabitants and money—and admitting former loyalists, particularly wealthy merchants with European trading connections, seemed to be a panacea for both shortages.²⁵ By welcoming loyalists, Connecticut literally profited from the contradiction between the states’ monopoly over the naturalization process and their reciprocal obligations to recognize other states’ citizens as equals under the Articles of Confederation.

Brattle’s case was simultaneously representative of the experiences of other Massachusetts loyalists and uniquely instructive in the multitude of strategies he used over time. Loyalists such as Brattle and Smith were able to exploit differing understandings of citizenship in surrounding states to ultimately regain Massachusetts citizenship. While the pressure from the Confederation Congress to abide by the Treaty of Paris was relatively weak, Massachusetts’ legislature as well as the public appeared to feel pressure from neighboring states. Although certainly not the only factor, it is clear that by obtaining support from neighboring state governments, former loyalists helped push Massachusetts to adjust its laws.

Brattle’s eventual success in obtaining citizenship can in part be attributed to a change in sentiment and legislation in Massachusetts. After Congress’ January 14, 1784 recommendation that the states comply with the Treaty of Paris, Massachusetts passed an act in March that declared all absentees aliens, repealed the 1778 and 1783 Banishment Acts, barred “conspirators” and those who had borne arms for the British from the state, restored estates that had not yet been confiscated, and allowed the governor and Council to grant licenses to others with the approval of the General Court.²⁶ Because of this legislation, Brattle was able to return to Massachusetts in July 1784 on a license from the governor to recover his non-confiscated property in court. Much as Brattle obtained support from the Rhode Island Assembly, governor, and Massachusetts citizens, after 1786, Massachusetts required former loyalists to provide “sufficient recommendations and a

²³ “Letter from the Honorable General Assembly of the Commonwealth of Massachusetts to the Governor of the State of Connecticut,” *The Independent Chronicle and the Universal Advertiser*, May 20, 1783; May 24, 1783, May 22, 1783; “Chapter 21: Resolve Requesting His Excellency the Governor to Write to the Governor of the State of Connecticut, Relative to the Admission of Richard Smith, a Proscribed Absentee of this Commonwealth, into said State,” *Acts and Resolves, 1782-1783*, 372.

²⁴ *Connecticut Gazette*, June 6, 1783, quoted in Zeichner, “The Rehabilitation,” 319. See also *Thomas’s Massachusetts Spy, or the Worcester Gazette*, July 1, 1784.

²⁵ Zeichner, “The Rehabilitation,” 318.

²⁶ January 14, 1784, Worthington C. Ford, ed., *Journals of the Continental Congress, 1774-1789*, vol. 26, 34 vols. (Washington, D.C.: Government Printing Office, 1904), 30; “Chapter 69: An Act for Repealing Two Laws of this State, and for Asserting the Right of this Free and Sovereign Commonwealth, to Expel such Aliens as may be Dangerous to the Peace and Good Order of Government,” March 24, 1784, *Acts and Resolves, 1782-1783*, 661-4.

certifycate [sic]" of the length of their residence in the Commonwealth. If they were successful they could live in the state and gain the same rights as natural-born citizens.²⁷

Although it did not provide a concrete definition of citizenship, Article IV powerfully shaped the meaning of it by preventing individuals who were naturalized by one state from being viewed or treated as non-citizens by other states. As a result, Article IV's "privileges and immunities" clause subverted state sovereignty by suggesting that individuals in other states could influence who could claim citizenships within other states. Thus, while individual states ultimately controlled naturalization, their naturalized citizens became members of a national community that "transcended" state boundaries.²⁸ Consequently, this essay suggests that the inability of states to uniformly define whether or not a loyalist qualified to be a citizen pointed out a weakness in the Articles of Confederation's "privileges and immunities" clause and the need for a proto-federalist approach to citizenship.

Reflecting the problem Massachusetts faced when Connecticut admitted Smith to citizenship, James Madison wrote in Federalist No. 42 that certain "aliens who had rendered themselves obnoxious, were laid under indicts inconsistent, not only with the rights of citizenship, but with the privileges of residence." By this logic, an individual proscribed in one state could obtain citizenship under the laws of another state and assert their rights to residence and citizenship within the state that proscribed them. As one of his many justifications for federalism, Madison argued that the Constitution could resolve this quagmire by authorizing the Congress to establish "a uniform rule of naturalization."²⁹ Ultimately, the Constitution did not accomplish this fully. It merely repeated the "privileges and immunities" clause without further defining citizenship or its rights, and put off naturalization to a later date. By delegating the power to define citizenship to the federal government, the Constitution left it unclear if states had concurrent authority. In the early 1790s, some courts indeed ruled that states did have these concurrent powers, and an uneasy coexistence of state and national control over the boundaries of citizenship persisted into the nineteenth century.³⁰

The first federal Naturalization Act came in 1790, and it set national standards for permitting someone to obtain "volitional citizenship." The act offered naturalization for "free white person[s]" of "good character," who resided in the United States for two years, and took an oath to "support the Constitution of the United States." Unlike prior oaths of allegiance, which were to a specific state, the 1790 Act required the petitioning individual to take an oath or affirmation to support the Constitution.³¹ In some ways this language of "good character" reflects the anxiety that Massachusettsans and other former revolutionaries felt about admitting former

²⁷ For example, see "Chapter 19: An Act for Naturalizing Jonathan Curson and William Oliver," July 7, 1786 and "Chapter 14: Order Relative to the Sustaining the Petition of Persons, Who Shall Apply for Acts of Naturalization," October 29, 1787, *Acts and Resolves of the Commonwealth of Massachusetts, 1786-1787* (Boston: Wright & Potter, 1893), 3-4, 744.

²⁸ Kettner, *Development of American Citizenship*, 218-222.

²⁹ James Madison, "Federalist No 42: The Powers Conferred by the Constitution Further Considered From the New York Packet. Tuesday, 22 January 1788," in *The Federalist, A Collection of Essays, Written in Favour of the New Constitution, By a Citizen of New-York*, vol. 2, 2 vols. (New York: Printed by J. and A. McLean, 1788), 48-57.

³⁰ Parker, *Making Foreigners*, 64; Elizabeth F. Cohen, "Citizenship and the Law of Time in the United States," *Duke Journal of Constitutional Law & Public Policy* 8, no. 1 (2013): 67-74.

³¹ "Chapter 3: An Act to Establish an Uniform Rule of Naturalization, First Congress, Session 2, March 26, 1790," in *The Public Statutes at Large of the United States of America...*, ed. Richard Peters, vol. 1, 44 vols. (Boston: Charles C. Little and James Brown, 1845), 103-4; Helen Irving, "Naturalisation," *Citizenship, Alienage, and the Modern Constitutional State: A Gendered History*, (Cambridge, UK: Cambridge University Press, 2016), 53-54.

loyalists to citizenship---could they prove themselves to be valuable, contributing members of the republic?³² Hinting at the still tenuous place of loyalists in the republic, the 1795 revised Naturalization Act prohibited individuals who had been convicted of joining the British army during the Revolution or proscribed by a state from obtaining citizenship without the consent of their state's legislature.³³

By considering the impact of former Massachusetts' loyalists seeking admittance and citizenship in Rhode Island and Connecticut, this article demonstrates what can be learned by including loyalists within studies of early America rather than considering them in isolation. The issue of incorporating loyalists led revolutionaries not only to develop "volitional citizenship," but also to begin to define what membership in the republic entailed. Moreover, by traveling to states such as Rhode Island and Connecticut, former Massachusetts loyalists placed increasing tension on the concept of state-citizenship. By taking advantage of the Articles' "privileges and immunities" clause, these former loyalists as well as state legislatures' acting in response facilitated the development of a proto-national conception of citizenship that preceded the 1790 Naturalization Act.

³² Parker, *Making Foreigners*, 64.

³³ "Chapter 20: An Act to Establish an Uniform Rule of Naturalization and to Repeal the Act Heretofore Passed on That Subject (Passed January 29, 1795)," in *The Public Statutes at Large*, 103-4.