

## Failure at Queenston Heights: The Politics of Citizenship and Federal Power during the War of 1812

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In February 1814 John Lathrop stood before his Boston congregation and offered a discourse on “the law of retaliation,” declaring that it was not his intention to “show what opinions moral writers and writers on the law of nature and of nations have expressed concerning the doctrine of retaliation”; rather, he declared that he would “show what appears to have been the ‘mind’ of Christ.” While acknowledging the right of nations to defend themselves in the case of attack, he argued that “for *nation* to retaliate on *nation*, in open war, burning for burning, and devastation for devastation, is too bad for Christian rulers to encourage, and is a kind of warfare, which one would suppose must make a barbarian shudder.”<sup>1</sup>

Lathrop looked to the Sermon on the Mount from the Bible in an attempt to understand the mind of Christ. He noted that the core of Jesus Christ’s message had been that “if your enemy have shed the blood of prisoners and captives unjustly, take heed that ye no be guilty of the same abominable wickedness.” Lathrop enjoined his congregants to consider Christ’s reaction to the practice of retaliation “were the Son of God now on earth.” From the time of Christ, nothing had changed, Lathrop declared. “The mind of Christ is the same now that it was eighteen hundred years ago. . . . He then forbade his disciples and those who attended on his preaching, the retaliating of evils, and were he now in the world he would forbid the same thing.” In closing his sermon, Lathrop called on his congregation and his country to “turn from an unrighteous, an unnecessary and ruinous war.”<sup>2</sup>

To Lathrop and many New Englanders, the war with England had not only been disastrous for the nation, but in adopting a policy of retaliation,

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1. John Lathrop, *A Discourse on the Law of Retaliation, Delivered in New Brick Church February 6, 1814* (Boston: James W. Burditt, 1814), 1, 13.

2. *Ibid.*, 13, 15.

the Madison administration had stained the national soul, going beyond engaging in an unnecessary war to inflicting vile torment on its prisoners. The Madison administration's policy of retaliation was an "abominable wickedness," which in its simplest form was a policy that threatened that any harm inflicted upon Americans held in British hands would be visited upon British forces detained by the United States.

Members of the Madison administration and their Republican supporters throughout the country viewed the policy of retaliation in a fundamentally different light than Lathrop and his fellow Federalists. The Madison administration argued that the policy of retaliation had been created in defense of twenty-three naturalized American citizens who had been taken captive and transported back to England to stand trial for treason following the Battle of Queenston Heights in October 1813. British officials defended their transport of the American prisoners, declaring that regardless of the wishes of these Irish-born, now-American soldiers, they remained subjects of the crown until release by the king. Consequently they would be treated as traitors for taking up arms against British forces.<sup>3</sup>

The Madison administration did not share the British understanding of the soldiers' citizenship and had, under the policy of retaliation, taken twenty-three British prisoners and placed them in "close confinement" threatening execution should the naturalized Americans taken at Queenston meet an untimely end. Britain's capture of the American soldiers renewed a long-standing partisan debate over the nature of American citizenship.

While, as historian Alan Taylor has argued, the definition of citizenship was one of the key issues of the War of 1812, noting that the conflict "pivoted on the contentious boundary between the king's subjects and the republic's citizens," questions of citizenship and the partisanship surrounding them were nothing new in the United States. In February 1797, almost two decades earlier, Isaac Williams was tried in Federal Court for accepting a commission aboard a French privateer and violating a treaty of amity between the United States and Great Britain. In his defense, Williams argued that he had expatriated himself from the United States and become a naturalized French citizen in 1792. Further, he contended that his ser-

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3. Ralph Robinson, "Retaliation for the Treatment of Prisoners of War in the War of 1812," *American Historical Review* 49 (October, 1943): 65–70.

vice aboard the French vessel began before England and France had gone to war.<sup>4</sup>

The complicated question of Williams's citizenship eventually came before the Chief Justice of the United States Supreme Court, Oliver Ellsworth in the case *Williams v. United States* (1799). Ellsworth, presiding over the Circuit Court for the District of Connecticut, ultimately ruled against Williams arguing that "the common law of this country remains the same as it was before the revolution" and that "all the members of a civil community are bound to each other by compact." This compact, Ellsworth declared, cannot be dissolved by one of the parties alone. Ellsworth went on to state that "when a foreigner presents himself here, we do not inquire what his relation is to his own country . . . . If he embarrasses himself by contracting contradictory obligations, the fault and folly are his own."<sup>5</sup> In the aftermath of *Williams*, Republicans feared that this ruling represented a continued consolidation of power at the Federal level, threatening the liberty of all Americans. In contrast, many Federalists continued to embrace an expansion of the power of the national government—with the *Williams* case serving as only one of several cases in the early-nineteenth century that would expand the power of the Federal judiciary.<sup>6</sup>

Although, as *Williams v. United States* demonstrates, the definition of citizenship had been a contentious issue since the early days of the American Republic, the War of 1812 reinvigorated this debate and gave it a new sense of urgency. In many ways, these contrasting definitions of citizenship were representative of rival political systems (Imperial in Canada and Republican in the United States) that could not peacefully coexist on the same continent. The capture of the Irish-born American soldiers at Queenston Heights not only reinvigorated the debate over the definition of

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4. See Taylor, *The Civil War of 1812: American Citizens, British Subjects, Irish Rebels, and Indian Allies* (New York: Alfred Knopf, 2010), 3–12. For more on the issue of citizenship see also James Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: University of North Carolina Press, 1978), and Douglas Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union 1774–1804* (Charlottesville: University of Virginia Press, 2009).

5. St. George Tucker, *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia*, vol. 1 (South Hackensack, N.J.: Rothman Reprints, 1969), 436–438. In the 1790s members of the Supreme Court also served in the circuit courts.

6. See Taylor, *The Civil War of 1812*, 3–12.

citizenship but also came to symbolize a fundamental question about the viability of the young United States.<sup>7</sup>

With so much at stake, the plight of the twenty-three American prisoners from the Battle of Queenston Heights turned the earlier debate surrounding the *Williams* case on its head. The Madison administration's invocation of the law of retaliation following the battle reshaped the ideological positions of both the Federalists and the Republicans. In attempting to secure the release of these naturalized American citizens, members of the traditionally pro-states' rights Republicans embraced policies that expanded the power of the federal government. Conversely, members of the Federalist minority, who had long supported the expansion of the national government, decried the Madison administration's tactics as symptomatic of a power grab that threatened to destroy American liberties and put the United States on a course toward tyranny—all of this stemming from the Americans' October 13 defeat on the banks of the Niagara River and the fate of twenty-three Irish-born American soldiers.<sup>8</sup>



The American defeat at the Battle of Queenston Heights was the result of what historian Alan Taylor has labeled an increasingly high-stakes “political game of chicken.” The opening salvo came when the Republican governor of New York, Daniel D. Tompkins, convinced the Madison administration to nominate as commander-in-chief of the New York militia Federalist Stephen Van Rensselaer, his would-be opponent in the upcoming gubernatorial election.<sup>9</sup> The nomination to head the New York militia left Van Rensselaer in a difficult position. As a Federalist who

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7. *Ibid.*

8. The most useful works in understanding the politics of the period include J. C. A. Stagg, *Mr. Madison's War: Politics, Diplomacy, and Warfare in the Early American Republic, 1783–1830* (Princeton: Princeton University Press, 1983); Donald Hickey *The War of 1812: The Forgotten Conflict* (Chicago: University of Illinois Press, 1989); Richard Buel, *American on the Brink: How the Political Struggle over the War of 1812 Almost Destroyed the Young Republic* (New York: Palgrave, 2005); and Taylor, *The Civil War of 1812*.

9. Taylor, *The Civil War of 1812, 187–190* and Robert Malcomson, *A Very Brilliant Affair: The Battle of Queenston Heights, 1812* (Annapolis, MD: Naval Institute Press, 2003), 63–70. Malcomson's work on the Battle of Queenston Heights is the most comprehensive of these sources with a detailed account of the battle and helpful maps; see also Benson Lossing, *Pictorial Field-Book of the War of 1812* (New York: Harper and Brothers, 1868), 408–409; and Theodore Crackel, “The Battle of Queenston Heights, 13 October 1812,” in *America's First Battles 1776–1965*, eds. Charles Heller and William Stofft (Lawrence: University of Kansas Press, 1986), 40–45.

opposed the war, Van Rensselaer was forced to decide between declining to serve, thus sacrificing his reputation for patriotism, or accepting the position, undermining his anti-war stance. Van Rensselaer accepted the position, despite lacking any combat experience, but insisted that he be able to name his own staff, including his hyper-partisan cousin Solomon Van Rensselaer. The result was a military leadership that continued in its opposition to the war even as they prepared to lead New York's military. Solomon Van Rensselaer highlighted the paradox inherent in a Van Rensselaer-led military command, declaring in a letter to his wife that any failure "will not be our fault but that of the Government."<sup>10</sup>

By October 1812 more than 6,000 American troops (about 2,350 officers and men from the U.S. Army and 4,050 New York militia) massed at the Niagara frontier defending the American border with Canada. But partisan bickering left the expansive force with inadequate supplies, improper food, and wretched discipline. Van Rensselaer intended his force to be the model of Federalist society where common men deferred to their superiors; indeed, one member of Van Rensselaer's staff praised their camp as a model of order, decency, sobriety, and discipline. Despite the wishful thinking of the officers, the camp was, in reality, full of soldiers who insulted their superiors, neglected guard duty, sniped at British forces across the river, and deserted camp. Making matters worse, fierce storms plagued the force throughout the early fall, and American efforts to fight the war on the cheap were exposed as the flimsy tents supplied to the troops were shredded in the wind and rain. Left exposed to the elements many troops succumbed to illness. As conditions and morale continued to deteriorate and news of American action on other fronts, particularly at Fort Erie, made its way to his encampment Van Rensselaer felt increasing pressure to act.<sup>11</sup>

With officers warning that mass desertion was imminent should they delay any longer, Van Rensselaer prepared to cross into Canada. Although the New York officers had a dim view of their chances for success, expecting instead that the attack would simply underscore the failure of the

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10. Taylor, *The Civil War of 1812*, 182–185.

11. The success at Fort Erie had come when a joint force of American seamen and soldiers had captured the British brigs *Detroit and Caledonia* which contained the last of the capture goods and men from the British victory at Detroit. Malcomson, *A Very Brilliant Affair*, 107–117; Crackel, "The Battle of Queenston Heights," 42–44; and Taylor, *The Civil War of 1812*, 184–186.

Madison administration to properly prepare for war, they proceeded apace. The first attempt to cross in the early hours of October 11 collapsed when, according to Van Rensselaer, the officer intended to lead the crossing abandoned the detachment and fled in a boat that contained nearly all of the troops' oars.<sup>12</sup> Despite this initial setback, the pressure to act continued unabated, and Van Rensselaer hurried his forces back into action on October 13. The general later explained, "The previously excited ardour seemed to have gained heat from the late miscarriage . . . . On the morning of the 12th, such was the pressure upon me from all quarters, that I became satisfied that my refusal to act might involve me in suspicion, and the service in disgrace."<sup>13</sup>

The Van Rensselaer plan called for about thirty boats, of twenty men each, to cross the Niagara River under cover of darkness, landing at a low plain below the Queenston bluffs. They hoped to take the British by surprise. As had been the case a few days beforehand, the American invasion did not go as planned. Instead of the intended thirty boats, the Americans found themselves with only twelve or thirteen vessels available and by the time they had prepared for the crossing they were already losing the cover of darkness. Almost as soon as the Americans had begun to cross, British forces raised the alarm and any element of surprise was lost. Further complicating the American efforts, Van Rensselaer's cousin Solomon, who had been appointed to lead the crossing, was injured by British fire upon landing. With the British firmly in control of the bluffs and reinforcements on the way, the American effort seemed doomed to be a complete failure.<sup>14</sup>

It was following the injury to Solomon Van Rensselaer that the Americans' fortunes seemed to turn. Captain John Wool, who assumed command following the loss of Van Rensselaer and who had been injured in the initial exchange, noticed a small, unguarded path up the bluffs above Queenston. Quick to take advantage, Wool led a force of about sixty men to a position above the British forces, which had been firing at the Americans as they made their crossing. Upon realizing that the Americans had seized the high ground, the British forces under the command of General Isaac Brock retreated to the flats below. Drawing on his experience

12. Malcomson, *A Very Brilliant Affair*, 118–120.

13. *Ibid.*, 126.

14. Malcomson, *A Very Brilliant Affair*, 133–142; Crackel, "The Battle of Queenston Heights," 44–46; and Taylor, *The Civil War of 1812*, 186–189.

from previous encounters with American forces at Detroit, Brock believed that a decisive counter-attack would drive the Americans from the heights and allow him to regain the advantage. Placing himself at the head of a company, Brock led the charge on the newly established American position atop the bluffs. Rather than regaining the heights, however, as soon as the charge was underway, Brock was shot in the chest and soon died. With their commander lost, the initial British counter-attack collapsed and the Americans seemed to have won the day.<sup>15</sup>

Although men continued to cross, by mid-morning only three of the original American boats remained serviceable. Left to cross in relatively small numbers and without a larger unit to surround them, the American soldiers felt exposed and vulnerable. Making matters worse, the night before the crossing, Solomon Van Rensselaer had threatened that any man who deserted once across the river would “expiate their crime by fire of the Artillery and Musketry of the Columns which shall be directed at them to their total Extirpation.” Despite the improved American fortunes, by mid-morning many of those making the crossing found themselves feeling exposed with threats coming from all sides. British and Indian forces were at their front, and their own Federalist commanders to the rear.<sup>16</sup>

The task of securing the American gains fell to Lieutenant Colonel Winfield Scott and his artillery company who moved from the river below to the heights to strengthen the American position. The trickle of reinforcements from the American side left Scott and his men in a tenuous position. The second British counter-offensive, aided by about 250 of their Native American allies, struck terror into the hearts of the remaining American forces, and turned the battle into a bloody rout. Although Scott and his men held out as long as they could in the face of the joint British-Indian force, many of the American militiamen had delayed on the far side of the river and refused to cross. Without these reinforcements, the British and their Native allies soon overran the American positions. Overwhelmed by British forces Scott surrendered to avoid a massacre. One of Scott’s men recounted his reaction to the British counter-offensive noting that “I thought hell had broken loose and let her dogs of war upon us.” The

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15. Malcomson, *A Very Brilliant Affair*, 150–158; Crackel, “The Battle of Queenston Heights,” 44–46.

16. Van Rensselaer cited in Taylor, *The Civil War of 1812*, 189. Crackel, “The Battle of Queenston Heights,” 45–48.

final Queenston tally heavily favored the British—estimates for Americans killed range as high as 500 (although the numbers are likely much closer to 100) with 100 more wounded and 925 captured. On the British side, twenty killed, eighty-five wounded, and twenty-two captured.<sup>17</sup>

Scott and many of the 925 captured Americans (436 regulars and 489 militia) expected to be released on parole within a matter of weeks as both sides had employed liberal prisoner policies to that point in the conflict. True to form, most of the officers were granted parole almost immediately after their capture and allowed to return to the United States, while the enlisted men, along with officer Winfield Scott, were transferred to Quebec to await their exchange. Within a matter of weeks British and American agents agreed to terms of exchange, which specified that the Americans being held at Quebec were to be returned to Boston. As the Americans boarded a vessel bound for Boston, however, a group of British officers demanded that all of the Americans muster on deck. On deck, the British officers questioned each prisoner about the country of his origin, making special note of any accent that might betray these “Americans” as natural born British-subjects. When Scott realized what was happening he raced to silence his men, but by then the British officers had already identified twenty-three soldiers whom they believed to be British subjects by birth.<sup>18</sup>

The American Revolution notwithstanding, British officials argued that English common law held that any person born a British subject remained so until death, regardless of citizenship status in another state. Thus, despite both official and unofficial American opposition to British action, the twenty-three Irish-born Americans captured at Queenston Heights soon found themselves in irons aboard a frigate bound for England to stand trial for treason.<sup>19</sup>

The failure at Queenston and the plight of the Irish-American soldiers quickly became a partisan issue. Federalist editors celebrated the Van Rensselaers as valiant leaders who had been abandoned by Republican militia officers at Queenston Heights. Republicans countered by attack-

17. Taylor, *The Civil War of 1812*, 189. Malcomson, *A Very Brilliant Affair*, 188–196. Crackel, “The Battle of Queenston Heights,” 45–48.

18. Winfield Scott, *Memoirs of Lieutenant-General Scott* (New York: Sheldon and Company Publishers, 1864), 67–72; Hickey, *The War of 1812*, 177–178; Malcomson, *A Very Brilliant Affair*, 196–201; Lossing, *Pictorial Field-Book of the War of 1812*, 408–409.

19. Robinson, “Retaliation for the Treatment of Prisoners of War in the War of 1812,” 65–70; Kettner, *The Development of American Citizenship*, 270.



ing Van Rensselaer as a partisan whose political opposition to the war had demoralized his troops. Some in the Republican press went as far as to insinuate that the Federalist officers had tipped off their British counterparts to the attack. It was the fate of the Irish soldiers, however, that would become the major issue of the day.

Within days of the battle, an article running under the heading *Lex Talionis* ran in Republican newspapers around the nation. Citing the “law of retaliation” and the actions of George Washington himself during the American Revolution, the Republican press called for the American government to act as the British had done and “seize an equal number of English prisoners and retaliate—and there will be an end to those of acts of cruelty.” To many Republicans any British claim over the twenty-three Irish-American soldiers was completely without standing and the Madison administration had an obligation to protect the lives of American citizens.<sup>20</sup>

From the moment of initial British interrogation aboard the transport ship, Winfield Scott stood as a champion of the Queenston twenty-three. Immediately after their separation from the main body of prisoners at Quebec, Scott worked to convince the British officers to release the naturalized soldiers. When that failed, Scott attempted to comfort the captive soldiers, assuring “them that the United States’ Government would not fail to look to their safety, and in case of their punishment, as threatened to retaliate amply.” Upon his own exchange in January 1813, Scott immediately traveled to Washington and presented the case of the sequestered prisoners to Madison and several members of Congress. They instructed Scott to make a formal report to the Secretary of War on the plight of the twenty-three, which would then be communicated to Congress as a whole. Along with this official report, Scott personally lobbied members of Congress to act on behalf of the prisoners.<sup>21</sup>

Scott was not alone in his efforts on behalf of the twenty-three prisoners. Just weeks after the American defeat at Queenston, Congressman Robert Wright of Maryland sponsored legislation declaring that should any American citizen be taken captive by the British “suffer death, muti-

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20. *Journal of the House of Representatives*, November 18, 1812. *Shamrock or Hibernian Chronicle* (New York, NY), October 31, 1812; *New Hampshire Gazette* (Portsmouth), November 3, 1812; *City Gazette and Daily Advertiser* (Charleston, SC), November 4; *Otsego Republican Press* (NY) November 21, 1813. Taylor, *The Civil War of 1812*, 190.

21. Scott, *Memoirs*, 72–75. Lossing, *Pictorial Field-Book of the War of 1812*.

lation or corporal punishment.” The legislation further directed that the President shall be “empowered and required to cause the most rigorous retaliation to be executed, on any subject, office, soldier or Indian in the service or employment of the British government.” Scott’s lobbying accompanied growing public support for the retaliation bill, and on March 3, 1813, the day before Madison was sworn into office for a second term, Congress passed the Retaliation Act authorizing the President to act in reprisal for the imprisonment and threatened trial of the twenty-three Irish American soldiers.<sup>22</sup>

In March of 1813 during his second inaugural address, Madison framed an argument around the need to respond to the British treatment of the Queenston twenty-three. Madison declared the war to be “just in its origin and necessary and noble in its objects” and remarked that the United States had waged the war “with scrupulous regard to all these obligations, and in a spirit of liberality which was never surpassed.” He continued that by way of contrast, however, the British had violated the rights of American citizens through their threats to “punish as traitors and deserters persons emigrating without restraint to the United States, incorporated by naturalization into our political family, and fighting under the authority of their adopted country in open and honorable war for the maintenance of its rights and safety.” Such actions were, Madison declared, in “contempt of the modes of honorable warfare.” Backed by Congressional action and having outlined his justification, Madison ordered that twenty-three British soldiers were to be held in close confinement in retaliation for the treatment of the Irish-American prisoners.<sup>23</sup>

The Republican press greeted the expansion of presidential authority granted through the Retaliation Act and the resulting decisive action with a great deal of excitement. Writing from New York, “Tit for Tat” noted that “the necessity of retaliation is ever to be regretted, and its practice to be avoided, if not absolutely necessary for the purposes of self-preservation. Retaliation, it must however be observed, is often beneficial: it prevents war, it mitigates war, it shortens war.” “Tit for Tat” went so far as to argue that if a policy of retaliation had been put in place during the years leading

22. *Journal of the House of Representatives* November 13 and 17, 1812. *The Star* (Raleigh, NC) November 27, 1812. On citizen lobbying see *Journal of the House of Representatives* February 23, 1813.

23. *Annals of Congress*, 13th Congress, 4th Session, 121–122; *National Intelligencer*, March 5, 1813.

up to the war, then the war itself might have been avoided. Anticipating Federalist opposition to the policy, “Tit for Tat” argued that “an ill-timed humanity . . . tends to embolden the enemy. Retaliation of every cruelty will render the instances of cruelty fewer.”<sup>24</sup> Other supporters of the policy argued that American soldiers were being held captive by “British savages, by men who have no sense of honor & who are callous to the feelings of humanity.” Given the inhumanity of the British captors, a policy of retaliation seemed to be the only course of action. Under an American policy, these supporters argued, “hostages (naval commanders if possible) ought to be detained in close confinement. . . . Painful as retaliation is, it is a duty, and nothing else will teach Englishmen to treat their prisoners according to the usage of civilized nations.”<sup>25</sup> The editors of the *Baltimore American* hoped that the American government would make full use of the policy:

We trust that the government will rigidly pursue this system until the British officers and government may become sensible of the policy, if they are insensible to the benevolence of treating the American prisoners as human beings and equals. A similar proceeding for the future security of our seamen, who may fall into the enemy’s hands, is loudly called for by justice and the public voice.<sup>26</sup>

In the Republican press, retaliation was presented as a necessary tool; one to be employed to counterbalance British cruelty and to bring an end to the war. Such action, they argued, was both just and popular.

Federalists, on the other hand, were predictably opposed to the administration’s new policy, arguing that British officials had every right to try the twenty-three prisoners as traitors. Building on Ellsworth’s 1799 ruling in *Williams v. United States*, Federalists contended that the policy of retaliation and the Madison administration’s efforts to interfere with the British plans to try these soldiers for treason were a violation of international law. According to one Federalist, “the case is very simple. The British have taken 23 of their own subjects, fighting in the enemy ranks against their own country; and as this is a crime punishable with death by the laws of

24. *Military Monitor* (New York), April 19, 1813.

25. *Essex Register* (Salem, MA), June 5, 1813.

26. Reprinted in *The Albany Argus* (NY), June 18, 1813; *New York Statesman* (Albany) June 23, 1813; *The Essex Register* (Salem, MA), June 26, 1813; *Ohio Register* (Clinton, OH), June 26, 1813; and *The Otsego Herald* (Cooperstown, NY), July 3, 1813.

all civilized nations, these men have been sent home to be tried for the fact.” Underscoring the interpretive similarities between the Federalist and British positions, the editors of the *London Courier* asked “who is Mr. MADISON, and WHAT IS AMERICA, that the public law of Europe should be changed at their fiat and for their convenience? By the chicanery of American naturalization the United States have endeavored to destroy at once the principle of natural law which has been recognized and acted upon in every other state.” Citing distinguished English jurist William Blackstone, the *Courier* argued, “It is a principle of universal law . . . that the natural born subject of one prince, cannot, by any act of his own, no, not by swearing allegiance to another, put off, or discharge his natural allegiance to the former.” In both Federalist and British interpretations of the laws of both lands, English officials had every right to treat the twenty-three British-born combatants as traitors.<sup>27</sup>

Beyond concerns regarding the basic legality of retaliation, many Federalists feared that the policy of retaliation was part of a Republican effort to expand the power of the presidency, a move that would lead to tyranny. The *Rhode Island American* charged that Madison was acting “in imitation of the French Emporour”; while, in Boston, *The Repertory* labeled Madison “the Emperor of America.” Madison’s attempt to free the twenty-three soldiers, according to the Federalists, put the entire United States in danger. “The prisoners in possession of the enemy, if the facts alleged be true, are traitors, and have forfeited their lives by laws of nations. If Mr. Madison proceeds in the course he has taken, he will find the whole civilized world united against him, with the solitary exception of even Bonaparte himself.” The *Salem Gazette* declared that this legislation made Madison little different than “BONAPARTE,” leaving “the lives of British subjects at his mercy, with no security but the caprice of the hostile head of a hostile faction.” According to the Federalist press, the policy of retaliation was utterly without civilized precedent. In a widely reprinted article, one Federalist declared that “no law of nations—no principle consistent either with the original and indefeasible rights of man, or with the modified privileges which result from the social compact can sanction or even palliate them.”<sup>28</sup>

27. *Evening Post* (New York), November 22, 1813. Reprinted in *City Gazette* (Charleston, SC), October 16, 1813. Kettner, *The Development of American Citizenship*, 271–272.

28. *Rhode Island American* (Providence), October 15, 1813; *Repertory* (Boston, MA), December 21, 1813. *Evening Post* (New York), November 22, 1813; also in *Connecticut Journal* (New Haven, CT),

In casting Madison as a Bonaparte clone, Federalist editors sought to connect Britain's ongoing European conflict with the French emperor and the war in North America. This rhetorical fusion of the two conflicts highlighted a long-standing political schism in the United States. Since the outbreak of the French Revolution during the Washington administration, the growing partisan divide between the nascent Federalists and Republicans drew Americans into distinct camps with respect to European loyalties.

In the subsequent decades, Federalists worked to tar Republicans with the chaos of the French Revolution, while Republicans attacked the Federalists as crypto-Loyalists.

These European affinities reinforced themselves as Republican anti-British sentiment attracted the support of Irish immigrants in the early nineteenth-century and New England Federalists found themselves more in agreement with London than with Washington. So deeply rooted were these partisan affiliations that by the time American soldiers engaged in war with England in 1812, the effort represented a virtual civil war. Under these circumstances the debate regarding the plight of the twenty-three, Irish-born American soldiers rapidly expanded, incorporating not only military concerns but also questions of American citizenship and identity. In decrying Madison as a new Bonaparte, Federalist editors were not only invoking a well-established Francophobia, but raising fundamental questions about who was an American.<sup>29</sup>

Federalist denunciations of the administration's growing power included social gatherings around the nation. The *Boston Daily Advertiser* reported one gathering in Taneytown, Maryland, organized to celebrate "the late victories of the allied armies over Bonaparte," where the collection of Maryland Federalists toasted "The Constitution of the United States—May the storms of party zeal never overleap its SACRED LIMITS," and called for "A speedy restoration, without retaliation, of the American captives." In instituting the policy of retaliation, Federalists charged, the Madison administration had violated international law and put the United States on a path toward tyranny.<sup>30</sup>

The Federalist response was not limited to partisan rhetoric. In Congress Federalists attempted to employ legislative methods to limit

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November 29, 1813 and the *Northern Whig* (Hudson, NY), November 30, 1813; *Salem Gazette* (MA), July 27, 1813.

29. See Taylor, *The Civil War of 1812*, 5–12.

30. *Boston Daily Advertiser* (MA), February 4, 1814.

Madison's power of retaliation. In December 1813 the Federalist minority proposed legislation that would require the President to lay before the Congress "all the evidence in his possession relative to the commencement, progress, and present state of the system of retaliation upon the prisoners of war to which the governments of the U. States and G. Britain have lately resorted." In support of this legislation Representative John Lovett of New York observed that "it is a fact, as notorious as lamentable, that the government of the United States has entered upon a broad system of retaliation upon prisoners of war—that rapid strides in that system have already been made towards a very serious, and possibly, fatal result." Under this policy, "many individuals are already deprived of their personal liberty, and in strong solicitude, are awaiting an uncertain fate. In every point of view, the subject of retaliation is important." Such an important issue, Lovett argued, could not be left to the president alone. "It is the solemn duty of the house to examine with profound attention the ground we are advancing upon. . . . The voice of the nation and humanity," he said, called on Congress to "thoroughly investigate the business." Lovett and the other Federalist members of Congress saw themselves as one of the last bulwarks of American liberty and principles.<sup>31</sup>

The legitimacy of the American policy of retaliation aside, many Federalists feared that there would be a terrible price to pay for such a policy. Specifically, they feared American prisoners would bear the brunt of retaliation at the hands of the British. The *New York Evening Post* argued that Madison himself claimed that the policy of retaliation "would be to return a specific injury, equivalent to the injury received." If equal treatment was the president's aim, the *Post* argued, "clearly then, what he could do in this case, and *all* he could do, would be to seize an equal number of American prisoners, who had been fighting in the enemy's ranks within the U. States, and who had been naturalized and become English *adopted citizens*." Instead, to "retaliate for this, the president has seized upon an equal number of men, against whom nothing can be alledged from any quarter." In acting in such a manner, the Federalist editors argued, Madison was placing the "crimes of the guilty on the heads of the innocent,

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31. *New York Commercial Advertiser* (NY), December 24, 1813; see also *The Journal of the House of Representatives*, December 21, 1813, and *The Journal of the Senate*, February 2 and March 9, 1814. *The Federal Republican* (Washington DC), December 24, 1813.

and he shall press and execute the prisoners he has seized.” They continued that Madison’s conduct can be seen as “nothing short of MURDER.”<sup>32</sup>

Such behavior the Federalists feared opened the way to mass cruelty on both sides of the conflict. The *Boston Gazette* charged that “This system, once begun, there will be no end to it. Great Britain has taken many more prisoners than we have—If we hang and shoot, they will hang and shoot.” As a result of the policy of retaliation, “the natives of this country are . . . to be butchered like cattle, merely for the sake of protecting British and Irish traitors.” The *Federal Republican*, publishing from Georgetown, continued to voice its opposition, stating that the policy of retaliation will result in a “progressive series of Barbarities,” in which, “there will be but a momentary interval before the ordinary treatment of prisoners must be exchanged, as respects all, for the modes in which they are enslaved, immured, and deprived of life by nations over whom civilization has not dawned.” According to the editors of the *Federal Republican*, these cruelties would be applied “to the whole number of prisoners in [British] possession, 1500, said to be.” In addition to their threat to retaliate against all American prisoners, the Federalist paper reported, the British also threatened the “destruction to all our exposed cities, towns, and villages,” if the policy of retaliation continued. “We are now threatened with the destroying vengeance of [British] fleets, if our government persists in the course of retaliation.”<sup>33</sup>

The events in the months that followed the implementation of the American policy of retaliation in both England and the United States only increased concerns over prisoner mistreatment. Both sides continued to participate in a type of brinksmanship expanding the number of prisoners threatened with execution for treason and held in close confinement. By the winter of 1814 the British had transported a total of eighty-two naturalized Americans to England, ostensibly to stand trial for treason, and held forty-six American officers in close confinement. On the American side, 128 British officers and enlisted men had been committed to close confinement. The growing tension was eased only in the spring of 1814 as reports from England suggested that the twenty-three Queenston prisoners were receiving treatment no different from that of any other prisoners of

32. *New York Evening Post* (NY), December 30, 1813.

33. *Boston Gazette* (MA), November 25, 1813. *Federal Republican* (Washington, DC), November 19, 1813.

war, and that there appeared to be no plans to try them for treason. In the months that followed both sides began to back down from their posturing.

In the end no prisoner on either side was executed as a result of the policy of retaliation. Despite an end to the immediate threat to their lives, the twenty-three soldiers taken at Queenston were expressly excluded from a number of exchanges in the ensuing months and remained in British hands until the official end of the war with the Treaty of Ghent in late 1814. Finally, on July 9, 1815, twenty-one of the original Queenston Heights twenty-three (two of them having died of natural causes while in captivity) arrived in New York. There to greet them was the man who had fought for their release from the first, now Major General Winfield Scott.<sup>34</sup>



John Lathrop concluded his 1814 sermon calling for Americans to “turn our eyes from the awful scenes . . . where war has raged, and where contending armies have retaliated injuries on each other,” and ask that he “who ruleth in the heavens, would have mercy upon us.” Lathrop’s sermon on retaliation demonstrates how expansive the debate over the treatment of prisoners became. What had begun as a military engagement on the banks of the Niagara River in Upstate New York rapidly evolved into a debate about the fundamental nature of American citizenship. The plight of the twenty-three Irish-born Americans captured at Queenston Heights captured the attention of the entire nation, from partisan editors to Protestant ministers. A defeat that in many ways had its roots in New York gubernatorial politics became an international crisis. In debating the cause of the Queenston twenty-three, Americans of all political stripes, from around the country, found themselves wrestling with profound questions about the nature of American citizenship, government, and foreign relations.<sup>35</sup>

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34. Robinson, *Retaliation for the Treatment of Prisoners in the War of 1812*, 70.

35. Lathrop, *A Discourse on the Law of Retaliation*, 15–16.