



William Paterson

Conservative
Revolutionary
in an
Age of Crisis

R. B. Bernstein



William Paterson (1745—1806), though born in Ireland, was one of the principal New Jersey participants in the American Revolution and the creation of the United States. A framer of the Constitution of the United States and of the Judiciary Act of 1789, one of New Jersey's first United States Senators, and one of the first Justices of the U.S. Supreme Court, Paterson was more than the sum of the offices he held and the historic events in which he played a role. He was not a member of the short-list of pre-eminent figures among the founding fathers—consisting of Benjamin Franklin, George Washington, John Adams, Thomas Jefferson, John Jay, James Madison, and Alexander Hamilton. Nonetheless, he deserves study as a significant *representative* figure of the era of the American Revolution and the nation's founding. Although not a brilliant ideologue like Jefferson, although not a profound theorist of government like Adams or Madison, Paterson was a shrewd, learned, combative lawyer and politician—a self-made man (like John Adams) who built his own career and achieved distinction through a combination of talent, ability, and dogged persistence; the well-timed interventions of friends and mentors and sponsors; and the good luck to be in the right places at the right times.

Paterson was a child of the American Revolution. The Revolution transformed his life and his society; it made possible his career and his achievements. Had the Revolution not happened, such men as Paterson, Jay, John Marshall, even Adams and Jefferson would be remembered, if at all, as provincial lawyers and politicians in the colonial backwaters of British North America. Instead, they helped to found a new nation with a new form of government, which was at once a recognizable descent of colonial forbears and unlike anything else in the Western world.

Another aspect of Paterson's life and career justifies studying him—and that is what kind of revolutionary he was. Though he and Jefferson were contemporaries, Paterson and Jefferson were notably different from each other. For one thing, Paterson was a self-made man, whereas Jefferson was born into the Virginia planter elite. For another, Jefferson was a far-seeing democratic visionary who sometimes allowed his visions of what could be to cloud his perceptions of what actually was. Like John Jay and John Adams, Paterson was a shrewd pragmatist who harbored no illusions about human nature; indeed, his bleak view of humanity caused Paterson as much trouble as Jefferson's idealism caused for him. Paterson

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was a conservative revolutionary, who joined the movement for independence to serve two of his core beliefs: first, that he was revolting on behalf of the old, cherished values of Anglo-American constitutionalism and good government; and, second, that he had to do what he could to keep a restrained, conservative revolution from becoming a tidal wave of social, economic, and political change. Finally, like his contemporaries, Paterson lived his adult life in a time of crisis, and his responses to that succession of crises defined his career and his historical significance.

William Paterson was born on 24 December 1745, in County Antrim, in what is now Northern Ireland. His parents, Richard Paterson and Mary Paterson, came to Ireland from Scotland. They also had a younger daughter, Frances, and two younger sons, Thomas and Edward. In 1747, when William was two years old, his family immigrated to the mainland colonies of British North America. After three years of moving from place to place in the middle colonies, in 1750 Richard Paterson established his family in the town of Princeton, where he opened a store. The store was close to the new College of New Jersey, and young Paterson recognized that education was the best means to advance his career and his social standing. His father financed his education; after two years of study in the Latin Grammar School founded by Reverend Aaron Burr (father of the later-notorious Aaron Burr, and a short-lived president of the college), in 1759 William Paterson enrolled at the College of New Jersey, graduating in 1763.

At what we now call Princeton, Paterson drank in the views of the trans-Atlantic movement known as the Enlightenment, in particular the idea that all history and human experience could be synthesized into general principles of human nature, society, politics, and government. He also absorbed ideas about politics and governance rooted in English constitutional history, in particular the idea that the unwritten English constitution was an ideal blend of institutions, practices, customs, and usages balancing interests and powers one against another in the service of constitutional liberty and good government. He studied assiduously such classical writers as the Roman senator, orator, and lawyer Marcus Tullius Cicero, and popular contemporary works of classical history such as Charles Rollin's *Abridgment*. As was customary in his time, Paterson kept a commonplace book into which he copied extracts from literary and philosophical works that he

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found valuable or insightful—such as Cicero, Alexander Pope, Shakespeare, Tacitus, and even Voltaire. Paterson learned that society was a complex, ordered, organic whole, in which a young man such as himself could learn to rise based on his own talents and industry, as well as by drawing on ties of friendship with those who were more fortunately placed.

On graduating in 1763, Paterson apprenticed himself to the lawyer Richard Stockton, and in 1769 qualified for membership in the New Jersey bar; in 1767, he also earned a master's degree at Princeton. His legal education followed the traditional pattern of copying writs and other legal documents, and poring over the crabbed seventeenth-century prose of the legal treatises of Sir Edward Coke. As a young lawyer, Paterson did not begin his practice in the thriving cities of New York or Philadelphia, nor even in the major towns of New Jersey. Instead, he stayed close to Princeton, to assist his father in dealing with legal difficulties and the burdens of debt. Despite the problems of making his fledgling law practice pay, he distinguished himself for defending the legal profession against the anti-elitist denunciations so common in this period—thus winning the approval of leaders of the provincial bar.

Paterson seems to have sat out the ten years of bickering between Britain and her North American colonies that began with the Stamp Act of 1765. Probably, as a lawyer striving to build his practice and to assist his father in coping with the demands of creditors, he had neither the time nor the inclination to throw himself into the great issues of the day. When in 1775, however, the battles of Lexington and Concord forced the question, Paterson, like many other New Jersey moderates, joined the movement resisting British authority. This drawing of lines helped to provoke the collapse of New Jersey's provincial government. In response, New Jersey elected its first provincial congress. Paterson, one of the delegates for Somerset County, soon became the congress's secretary. He declined election to the second provincial congress, but soon returned and resumed his duties as secretary. In the spring of 1776, the third congress adopted measures to suppress the colonial government and to prevent the royal governor, William Franklin (illegitimate son of Benjamin Franklin), from organizing the province's Loyalists. After arresting Franklin, the congress then drafted and promulgated a new state constitution—a stopgap form of legitimate government intended to fill the void of legitimacy left by the end of colonial gover-

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nance. Paterson opposed the new constitution, because its last clause seemed to leave the door open to reconciliation with Britain and because its form of government did not, as he saw it, provide sufficient protection for the rights of private property. Once the congress had proclaimed the new constitution to be in effect, it chose the state's first governor, the veteran politician William Livingston, who in turn named Paterson the state's first Attorney General.

Paterson's chief responsibility was to vindicate the new state government's authority. Jerseymen fell into three groups—Patriots, Loyalists, and those who wanted to be let alone and not be forced to choose sides. Paterson had little sympathy with this last group—even though, a year before, he had been one of them. With energy and determination, he used the law to punish Loyalists and to drive the undecided into Patriot ranks. He campaigned to win the state government increased powers to deal with the menace posed by Loyalists, denouncing them as enemies to good order, public safety, and constitutional liberty; he prosecuted Loyalists and suspected Loyalists to the fullest extent of the law; and he warned his compatriots that laxity and want of vigilance would defeat the Revolution. Paterson also used the law to confiscate the estates of Loyalists who had fled the state rather than swearing allegiance to New Jersey and the United States. Confiscation of the estates of defiant or fled Loyalists was a common practice throughout the war-torn United States; we tend to forget that the Revolution was a civil war, often dividing communities and even families. Indeed, the brother of Paterson's cherished wife Cornelia (whom he married in February 1779), was a Loyalist. Cutting against his general efforts against Loyalists, Paterson did what he could to use the powers of his office to ease the weight of the law as it fell on his Loyalist in-laws. At the same time, Paterson managed to acquire a Loyalist's house and farm at a forced sale—and installed Cornelia there.

Paterson attended court sessions through the state to prosecute Loyalists, to ensure that the local courts and institutions of government were functioning with system and energy, and to keep up his own private law practice. In fact, Paterson once prosecuted a man in a criminal case while representing the same man in the same court session in a civil case. We may find this behavior questionable as a matter of legal ethics, but we ought not to apply the bright-line conflict-of-interest rules of today to an earlier period when those standards did not exist.

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The New Jersey legislature twice chose Paterson to represent the state in the Continental Congress, but each time he declined. In this era, most Americans prized their allegiance to their home state above their identity as Americans, and concerns of state and local politics were more familiar and interesting than were concerns of national politics. Paterson was not alone in this sentiment; for example, in 1776, Thomas Jefferson left the Continental Congress as soon as he could to return to Virginia to aid in revising the new state's laws.

With the war's end in 1783, Paterson resigned as Attorney General to return to his family and to resume the fulltime practice of law. He also took on students, one of them a young former officer of the Continental Army named Aaron Burr. Two tragedies blighted Paterson's hopes, however. In June 1783, his youngest daughter, Frances, died. Three months later, after giving birth to their only son, Cornelia Bell Paterson fell gravely ill; within four days, she too was dead. Paterson was devastated. In his private papers, he left a draft of an epitaph for his wife:

*Her person was delicate, full of grace and dignity.
Kindled by beauty and enlivened by sense
She was loveliness itself.
The beauties of her person were exceeded only
By those of her mind.
Go Passenger
Reflect upon your own mortality
and learn to die.*

Cornelia Paterson's death left her husband with a three-year-old daughter, also named Cornelia, and an infant son, William, to care for. A little more after a year after Cornelia died, Paterson married one of her closest friends, Euphemia White.

To ease his grief and to support his family, Paterson threw himself into his legal practice, but increasingly he found himself vexed and alarmed by the worsening of national and state affairs. New Jersey was the victim of two large neighbors, New York and Pennsylvania, which imposed taxes on goods crossing state borders; James Madison later compared New Jersey to "a cask tapped at both ends." Also, the demands of debtors and creditors polarized New Jersey's politics, as in other states. Debtors demanded frequent issues of paper money because inflating the currency would drive down the value of debts

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and make it easier for them to repay what they owed. Creditors opposed such measures because they took away the just value of what was owed to them.

Paterson sided with the hard-money faction. For one thing, many of his clients were creditors suing debtors. For another, his conservative cast of thought led him to see any attempt to ease debtors' plight by driving down the value of money as an attack on the rights of private property—intensifying his dislike of the New Jersey constitution's failure to protect the rights of private property. But Paterson came to see that greater issues were afoot, growing out of New Jersey's predicament as a small state at the mercy of large states in a fragile confederation lacking the power to vindicate national interests. Thus, when in 1786 politicians interested in national constitutional reform redirected the agenda of American politics by proposing a general convention of all the states to reform or replace the Articles of Confederation, Paterson was ready to back the proposal.

On 25 May 1787, the Federal Convention began its sessions in Philadelphia, and New Jersey's legislature chose Paterson, along with Governor William Livingston, Judge David Brearly, William C. Houston, and Jonathan Dayton, to represent the state. Governor Livingston's attempts to balance his duties as governor with those as delegate meant that his attendance in Philadelphia was irregular, which made Paterson the de facto leader of the state's delegation. It was his first venture into national politics. Georgia delegate William Pierce described Paterson as one of his invaluable sketches of the Convention delegates:

[Paterson is] *one of those kind of Men whose powers break in upon you, and create wonder and astonishment. He is a man of great modesty whose looks bespeak talents of no great extent, but he is a Classic and a Lawyer, and an Orator—and of a disposition so favorable to his advancement that everyone seemed ready to exalt him with their praises.*

Paterson took a two-part agenda into the Convention: first, to strengthen the general government so that it could better serve national interests—and New Jersey's interests; and, second, to be vigilant lest the Convention, in crafting that stronger general government, injure New Jersey's vital interests. During the Convention's first two weeks, he sensed danger. The

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Virginia Plan, crafted by James Madison and his large-state colleagues from Virginia and Pennsylvania, which formed the basis of the Convention’s work, would threaten New Jersey’s vital interests by creating a two-house national legislature based on proportional representation in both houses, armed with a power to veto state legislation. In other words, large states such as Virginia and Pennsylvania would call the shots on national policy to suit their interests, and small states such as New Jersey would pay the price.

Paterson therefore was determined to assert the claims of the small states, to thwart the large-state juggernaut behind the Virginia Plan, and to force the large states to pay attention to the need for compromise. He signaled his position with a speech on 9 June 1787 mapping the arguments that he, and other small-state delegates such as Oliver Ellsworth of Connecticut and Paterson’s Princeton classmate Luther Martin of Maryland, would make in the coming weeks. Next, on 13 June 1787, he asked for a brief recess so that he and other delegates from the small states could assemble an alternative to the Virginia Plan.

True to his word, on 15 June 1787, Paterson offered a new plan in a speech to the Convention, which historians call the New Jersey Plan. The resolutions composing this plan were the handiwork of a small-state caucus including Paterson and several of his New Jersey colleagues; Luther Martin of Maryland; New Yorkers Robert Yates and John Lansing, Jr.; and Connecticut delegates Roger Sherman and Oliver Ellsworth. Taken together, these resolutions sketched a strengthened version of the Articles of Confederation—pretty much what most of the delegates, from large and small states alike, had at first expected the Convention to propose. For Paterson, the plan’s key feature was that it presented a purely federal government, one in which the general government was made up of individual states, with virtually no direct power to bind individual American citizens. Paterson argued that the American people were not ready for a national government—either one that erased all the states’ boundaries and threw them together into “hotchpot,” or one that preserved the shells of state government while transferring all sovereignty, or ultimate political power, to the national government.

Three days of debate aired all the alternatives—from Luther Martin’s vehement defense of state sovereignty, to James Madison’s scholarly yet forceful argument for the Virginia Plan, to New Yorker Alexander Hamilton’s high-toned

proposal of a truly national government that would reduce the states to administrative districts. Finally, on 19 June 1787, the Convention voted to reject the New Jersey Plan and proceed on the basis of the Virginia Plan. That vote might seem like a defeat for Paterson, but like any shrewd lawyer, he had developed the skill of arguing in the alternative. He had offered the New Jersey Plan as a red flag to the Convention—or, as John Dickinson of Delaware, a veteran politician and another small-state delegate, put it in a private reproof to James Madison, as a signal of “the consequence of pushing things too far.” Now the Convention was on notice that the small states would not let themselves be trampled. Rather, they would insist on a compromise plan that would protect the interests of the small states as well as those of the large states.

For the next three weeks, the Convention struggled to define the structure and composition of the legislature of the United States. Connecticut’s Ellsworth and Sherman and Delaware’s Dickinson each had sketched the model that the Convention ultimately would adopt—a two-house Congress of the United States in which the people of the several states would be represented proportionately in the House of Representatives and each state, large or small, would have equal representation in the Senate. As Clinton Rossiter noted in his classic history of the Convention, the challenge was not in finding the solution but rather in getting politicians of differing views to live with it.

In this debate, Paterson led the small-state forces and Madison led the large-state forces. It was an ironic juxtaposition, for both men had attended the College of New Jersey, and, while a student, Madison had kept an account at Paterson’s father’s store. Just as Madison and James Wilson of Pennsylvania were the stubborn, uncompromising spokesmen for the large states, Paterson assumed the role of stubborn, uncompromising spokesman for the small states, allowing Sherman and Ellsworth to play the roles of conciliators and compromisers. The strategy worked, for on 16 July 1787, after perhaps the most bitter and painful period of the Convention, a committee offered the Great Compromise (proportionate representation in the House, equality in the Senate), and a majority of the Convention agreed to it. At the last minute, Edmund Randolph of Virginia demanded that the Convention adjourn so that the small-state forces could find a way to conciliate the large states. It was a breathtakingly ill-timed move, and Paterson seized on it. Jumping to his feet, either truly

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irate, or a consummate actor, he called Randolph's bluff:

I agree that it is high time for the Convention to adjourn, that the rule of secrecy ought to be rescinded, and that our constituents should be consulted. No conciliation can be admitted on the part of the smaller States on any other ground than that of an equality of votes in the second branch. If Mr. Randolph would reduce to form his motion for an adjournment sine die, I will second it with all my heart.

By calling Randolph's bluff, Paterson raised the stakes, threatening to break up the Convention. Randolph tried to escape the trap that Paterson had laid for him, but South Carolina's John Rutledge would not let Randolph off the hook. He pointed out:

The little States are fixed. All that the large States then have to do is to decide whether they [will] yield or not. For my part I conceive that although we could not do what we thought best, in itself, we ought to do something. Had we not better keep the Govt. up a little longer, hoping that another Convention will supply our omissions, than abandon everything to hazard? Our constituents will be very little satisfied with us if we take the latter course.

The Convention adjourned for the day, and the large-state caucus, which met the next morning before the full Convention's session, dissolved because it could not find a way out of the Great Compromise. In essence, it was Paterson's victory. As his biographer, John E. O'Connor, declares, Paterson deserves credit as "the father of the United States Senate" and as a key deviser of American federalism, which divides sovereignty between federal and state governments.

Paterson then left the Convention and returned home to tend to his family and to his law practice for the rest of the summer, returning to the Convention in September to sign the proposed Constitution on behalf of New Jersey. He was satisfied with the finished document. As a small-state nationalist, he was perfectly willing to give the general government considerable power once he was sure that the Constitution protected New Jersey's vital interests—including rights of private property. The Constitution included such safeguards as a provision banning states from interfering with the obligations of

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contracts, a ban on state taxes on exports and imports, and an exclusive power of Congress to impose taxes on interstate commerce—all of which New Jersey citizens and politicians welcomed. There was little or no opposition to the Constitution in New Jersey, which ratified the document early and unanimously.

In the spring of 1789, New Jersey's legislature honored Paterson by electing him one of the state's two first United States Senators. Paterson was the favorite among the four candidates for two seats. He found his election a welcome escape from private burdens; he had spent much of 1788 contending with the burden of debt that his brothers Thomas and Edward had racked up after a wildly impractical venture in New Orleans. At one point, William exploded to Thomas:

I am harassed and prosecuted for your debts. . . . My credit is ruined; my reputation is blasted; I and my wife and children are beggars; and, gracious heaven, all this time calamity is owing to men called Brothers. I may perhaps keep out of Prison during the Winter, but in the spring a Jayle must be my Doome—unless I experience more Lenity from Creditors, who are strangers, than I have justice from you, who are a Brother.

Though Paterson did survive the “calamity,” the episode poisoned his relations with his brothers, and he never had contact with either of them again.

The Senate in which Paterson and his colleague Jonathan Elmer were to serve was a tiny body. Even if all thirteen states' delegations were present, its membership would number only twenty-six, and for most of 1789, it had only eighteen members. North Carolina and Rhode Island had not yet ratified the Constitution, and a deadlock between the two houses of New York's legislature delayed their election of Senators for months. The Senate met behind closed doors, and as a result it lost a great deal of public interest and sympathy to the House of Representatives, the first regularly-constituted American legislative body to hold its sessions in full public view. The House also had the sole power to introduce revenue and appropriations bills, always interesting subjects.

The one major task on which the Senate took the lead was framing a statute creating the federal judiciary. Article III of the Constitution authorizes “one supreme Court and such other lower courts as Congress may from time to time ordain and

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establish.” Some Senators were not convinced that any lower federal courts were needed, preferring to leave enforcement of federal law to the state courts. Paterson did not agree. He was one of the key framers of the Judiciary Act of 1789, a statute authorizing a fully developed system of federal courts. This measure created federal district courts having limited grants of judicial power over federal criminal cases and customs cases; federal circuit courts, which were the system’s main trial courts (though they could also hear appeals from the district courts); and a six-member United States Supreme Court. It divided the nation into three judicial districts—Eastern (New England and New York), Middle (New Jersey to Virginia), and Southern (the Carolinas and Georgia)—and required that two Justices of the Supreme Court “ride circuit” twice a year in each region, holding circuit courts with each state’s U.S. District Judge. The Senate designed this judicial system, first, to give the Justices of the Supreme Court something to do, and, second, to keep them from making mischief for the courts of the several states. The Judiciary Act of 1789 was yet another bundle of compromises between supporters and opponents of national power, and Paterson was at the same time a key advocate of national power and a key broker of compromise.

Within the Senate, Paterson, faithful to his conservative world-view, emerged as a leader of those calling themselves Federalists. Claiming the label used by the Constitution’s supporters in 1787-1788, they backed a strong general government, favored Treasury Secretary Alexander Hamilton’s economic and fiscal policies, and stressed the need to stay neutral in European affairs, while gently tilting toward the former mother country, Great Britain, and against the revolutionary French Republic. Paterson thus ranged himself against the emerging Republicans, led by Representative James Madison of Virginia (his old adversary from the Federal Convention) and Secretary of State Thomas Jefferson.

In 1790, the venerable William Livingston died, leaving the governorship of New Jersey vacant, and the legislature elected Paterson to succeed his old sponsor and friend. Though at first he resisted the pleas of his friends and political allies, Paterson finally resigned from the Senate and returned to New Jersey to assume the governorship—no longer a struggling provincial lawyer but now his state’s chief executive and leading politician.

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happy episode in his political career. He never lost his suspicion of the state legislature's judgment in fiscal matters and in dealing with debtor-creditor-issues, but the controversies that had convulsed the state in the 1780s had ebbed following adoption of the Constitution. Indeed, New Jersey's economic prospects had brightened because of the regularization of interstate commerce and because of the growing interest in fostering manufacturing as a new sector of the state's economy. The Society for Establishing Useful Manufactures (SUM), founded by entrepreneurs such as Tench Coxe to capitalize on Hamilton's 1791 *Report on Manufactures*, saw New Jersey as a superb staging area. Paterson was deeply involved in the Society's initial efforts at organization, and worked with Hamilton and with the state's legislators to craft a charter to win for the Society the special privileges and powers it would need to carry out its objectives. One of the byproducts of the Society's efforts was the creation of what in effect was the first American company town, a model city that would host the Society's manufacturing ventures, to which the legislature gave the name Paterson, to honor the governor.

Unfortunately for Paterson, who hoped that the Society would be a vehicle for promoting New Jersey's economic growth, and for Hamilton, who hoped that the Society would be a showcase for his economic policies, most of their collaborators were interested only in the swift generation of paper profits via speculation, which neither Hamilton nor Paterson wanted. In 1792, the financial collapse of William Duer, one of the era's leading speculators and a key figure in the Society's affairs, helped to cause the Society's slow collapse as well. By 1796, the "model city" was a ghost town that never got formally incorporated; Paterson, New Jersey, would have to wait till the nineteenth century to flower as an industrial center.

Governor Paterson and the state legislature worked together more successfully to establish a new, permanent state capital at Trenton. His greatest project as governor, however, was that of revising and reorganizing the state's laws, including the colonial laws that had been in force before the Revolution. The legislature assigned this task to Paterson, reserving to itself the authority to re-enact the codified laws once the governor submitted his report. Other states had launched similar efforts to revise their laws, most notably Virginia in 1779 under the leadership of Thomas Jefferson. Even so, Virginia's law-reform project was a joint venture by Jefferson, his mentor George Wythe, and Wythe's great adversary Edmund

Pendleton. By contrast, New Jersey had entrusted this immense project to one man.

Revising New Jersey's laws occupied Paterson's free time long after he resigned as governor. As he persevered, the task grew in size and complexity under his hands. In particular, Paterson was aghast at the harshness of British criminal law, declaring, "It is written in Blood, and cannot be described without Horror." Paterson eased the penalties for dozens of crimes, in particular reducing death penalties to imprisonment at hard labor and removing the penalty of corporal punishment. He also revised the laws governing slavery, although he refused to go as far as abolition and worried that an attempted amendment to permit gradual emancipation would cause the whole bill's defeat. Not until the 1840s did New Jersey finally abolish slavery, the last of the northern states to do so.

The most complicated of his law-revision reports focused on New Jersey's chancery courts and legal procedures. Following the English legal system, New Jersey had divided its courts into two types. Law courts entertained suits for money damages; equity courts issued injunctions (court orders either forbidding or requiring action by the party enjoined), dealt with wills and estates, and otherwise used judicial power to make litigants do things or to prevent them from doing things. Chancery practice in England had not been reformed for centuries, and grew so tangled and corrupt that Charles Dickens satirized chancery in his greatest novel, *Bleak House* (1851—1853). Meeting the challenge, Paterson's 1799 report brought order and system to New Jersey's chancery practice, paralleling the practice in the state's law courts and otherwise purging the law of fossilized doctrines and antiquated procedures. So, too, the last of his reports, that governing practice in New Jersey's law courts, finished in 1800, struck a balance between imposing order on a previously chaotic body of law and preserving the spirit of common-law jurisprudence. As Paterson wrote in that report:

There is a danger in departing from known and established regulation and usages, whenever this happens the law is perplexed, and at a loss how to advise or proceed, and the client in consequence is liable to injury or delay; everything is thrown as it were on the ocean, and afloat for a time; and it requires much litigation, a series of decisions, and a length of practice before certainty and order can be restored.

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Paterson's work as law reformer and codifier overlapped his last and most distinguished post. In early 1793, Justice Thomas Johnson of the U.S. Supreme Court died after only two years of service. President George Washington offered the post to Paterson, who accepted the appointment and resigned his governorship.

Within two years of his appointment to the Court, Paterson decided his most famous case, the technical and complex matter of *Van Horne's Lessee v. Dorrance*. Paterson heard and decided the case while presiding over the U.S. Circuit Court for the District of Pennsylvania, ruling that a state law (a Pennsylvania law transferring property from one person to another without compensation) violated the U.S. Constitution's clause barring state laws impairing the obligations of contracts and was therefore invalid. He also took part in the U.S. Supreme Court's 1796 case of *Hylton v. United States*, in which the Justices upheld as constitutional a federal tax on carriages; the clear implication of *Hylton* was that, had the Justices found the statute unconstitutional, they would have struck it down. Both decisions predate the 1803 decision by Chief Justice John Marshall, in *Marbury v. Madison*, generally regarded as establishing the federal courts' power of judicial review.

Paterson joined the Court when partisan alliances of Federalists and Republicans clashed more and more often over issues of domestic and foreign policy. Paterson presided over one set of controversial cases, those trying defendants charged with taking part in the Whiskey Rebellion of 1794. As part of Hamilton's fiscal program, Congress had enacted a tax on whiskey, which outraged small farmers in Pennsylvania, who felt that it prevented them from distilling part of their grain crop as whiskey and selling it to make ends meet. Refusing to pay the tax, they threatened to rise up in rebellion against any federal effort to enforce it. President Washington called out the militia, and he and Hamilton led 15,000 men in search of the Whiskey Rebels. An outraged Justice Paterson urged the federal grand jury to indict those who were apprehended on charges of high treason. In presiding over their trials, he all but ordered the juries to return guilty verdicts, and he sentenced the convicted defendants to death; later scholars have criticized his actions on legal grounds. Paterson also penned anonymous newspaper essays defending the 1795 Jay Treaty with Great Britain—negotiated by Chief Justice John Jay, acting as a special presidential envoy—and denouncing those who dared to oppose it.

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In 1798, as domestic and foreign crises engulfed the nation, Paterson and his colleagues on the federal bench sacrificed all pretense of impartiality. Relations between France and the United States had worsened through the decade, and in response to a peace mission sent by President John Adams, three French diplomats demanded a bribe from the Americans (Charles C. Pinckney, Elbridge Gerry, and John Marshall) as the price of negotiations. The Americans refused, and Marshall returned home to report on the mission’s failure. The furor caused by President Adams’s strategic release of the papers documenting this XYZ Affair inflamed the nation, and led to an undeclared naval war between French and American warships. Congress also enacted a package of measures, known as the Alien and Sedition Acts, prohibiting criticism of the government or of specified federal officials, such as the President.

Federalist prosecutors targeted Republican newspaper editors under the Sedition Act, and Justice Paterson presided over the grand jury that indicted Representative Matthew Lyon, Republican of Vermont, who was both a member of the House and a newspaper editor. Charging that the nation’s existence was in peril, Paterson observed, “No government, indeed, can long subsist, where offenders of this kind are suffered to spread their poison with impunity.” Heeding Paterson’s words, the grand jury indicted Lyon, and at his trial (the first under the Sedition Act), Paterson was as committed to securing Lyon’s conviction as he had been to securing his indictment. On the jury’s conviction of Lyon, Paterson sentenced him to four months in jail and a \$1,000 fine. For the rest of his days, Paterson faced severe criticism of his conduct in the Lyon case, even more so than in the case of the Whiskey Rebels, but Paterson’s words and actions typified the vehemence, anger, and intolerance raging on both sides of the political divide in the late 1790s.

In the election of 1800, Paterson may have written newspaper articles attacking the Jeffersonian Republicans, though there is no conclusive proof, but otherwise he was far calmer than were many of his political allies. Aghast at their loss of the Presidency and both houses of Congress, Federalists sought to maintain a foothold for themselves in at least one branch of the federal government. A lame-duck session of Congress enacted the Judiciary Act of 1801, creating a new set of circuit courts, a step that also relieved the Justices of the tiresome duty of riding circuit. Also, after Chief Justice Oliver Ellsworth announced his retirement from the Court, pressure

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mounted on President John Adams to name a reliable Federalist as his successor. John Jay turned down reappointment to the Court, and Paterson soon became a leading candidate for the vacancy. Adams instead named Secretary of State John Marshall, outraging many of Paterson's friends; in their view, a man ten years Paterson's junior should not have been preferred over Paterson, and even Marshall had suggested that Paterson would have been a more appropriate nominee. However, in light of Paterson's controversial actions in the Whiskey Rebels' trials in 1795 and in Lyon's seditious-libel trial in 1798; of Paterson's cordial relations with Alexander Hamilton (whom Adams loathed); and Adams's tendency to refuse to do whatever Federalist Senators demanded that he do, it was unlikely that Adams ever would have nominated Paterson.

In any event, Paterson soon found that he and Marshall got on well, and the two men worked together to rally their colleagues on the Court. The new Republican Congress repealed the 1801 Judiciary Act in 1802, abolishing all of the 1801 Act's changes to the federal judiciary and reimposing the burden of circuit-riding on the Justices. The flurry of lawmaking inspired two lawsuits that headed for the Justices; both cases, *Marbury v. Madison* and *Stuart v. Laird*, challenged the Jeffersonian Republicans' actions in undoing the judicial reorganization brought by the 1801 Judiciary Act. The cases posed the risk of all-out war between Jeffersonian Republicans, who dominated the legislative and executive branches, and a beleaguered judiciary staffed by Federalist judges.

Marshall had persuaded the Justices to set aside their practice of seriatim opinions (every Justice stating his views in every case) in favor of issuing one opinion for the Court. He would write in *Marbury v. Madison*; having recused himself in *Stuart v. Laird* because he had heard and decided the case on circuit, he asked Paterson to write the opinion for the Court in that case.

In *Stuart v. Laird*, the federal circuit court restored by the 1802 Act had ruled on a land dispute originally filed with the new federal circuit court created by the 1801 Act. The losing party sought to have the court's decision overturned because (1) only the court that originally had heard the case could decide the case and (2) the 1802 Judiciary Act was unconstitutional because (a) it had abolished judgeships and thus unseated federal judges, who could be removed only by impeachment, and (b) it had restored circuit-riding by the

Justices. Paterson's opinion for the Court held that a case could constitutionally be transferred from an abolished court to a functioning court, and that Congress had full power to create or dismantle lower federal courts. Finally, as Paterson pointed out, the argument against riding circuit made no sense, for from 1789 to 1801 the Justices rode circuit; the 1802 Act's reviving of a practice viewed by all as legitimate for more than a dozen years suggested that "the question . . . ought not now to be disturbed." As Marshall had done in *Marbury v. Madison*, Paterson in *Stuart v. Laird* showed judicial statesmanship of a high order and saved the federal judiciary and the Supreme Court from a disastrous confrontation with Congress and the executive branch.

In his last judicial opinion, in *United States v. Smith*, written while presiding over the U.S. Circuit Court for the District of New York in the summer of 1806, Paterson distilled his core beliefs about law and the Constitution:

The law, like the beneficent author of our existence, is no respecter of persons; it is inflexible and even-handed, and should not be subservient to any improper considerations or views. This ought to be the case particularly in the United States, which we have been always led to consider is a government not of men, but of laws, of which the constitution is the basis.

It was his valedictory. As he approached his sixtieth birthday in 1805, he was increasingly aware of his growing frailty. Previously he had had great reserves of energy that he could call on almost without thinking about it—but now he was conscious of his failing powers. While riding circuit in 1806, he wrote his will and put his affairs in order. He then went to visit his daughter Cornelia, who had married the noted New York landowner and politician Stephen Van Rensselaer, a relation of his old political ally John Jay. Paterson had planned to take the waters at Ballston Spa, but he fell gravely ill, and, after six weeks, he died, on 8 September 1806, three months shy of his sixty-first birthday.

What relevance does the life of William Paterson have to us today? We live in what we assure one another is an era of unprecedented crisis. And yet Paterson and his contemporaries lived their entire adult lives in a constant state of crisis. From 1765 to 1775, they had to weather the dispute with Great Britain over the American colonists' rights and responsibilities

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under the unwritten English constitution. From 1775 through 1783, they had to declare and then to win American independence in an unprecedented, grueling war against one of the world's most formidable military and naval powers—a war that in some places, including Paterson's New Jersey, became a civil war. Beginning in 1776, they also undertook a series of complex, unprecedented struggles to devise new forms of government to secure the fruits of the Revolution. Even with the adoption of 1788 of the U.S. Constitution, their sense of crisis was not at an end. Now, they faced yet another set of struggles, spanning the rest of their lives, to make their new systems and institutions of government and law work, to conduct politics within a new and untried constitutional framework, to test whether political conflict and factional strife could be contained within the matrix of the Constitution. Paterson did not live to achieve the seeming serenity of retirement, but even in retirement, Adams, Jefferson, Madison, and their colleagues were besieged by questions, pleas, demands for advice and guidance—and they sometimes doubted whether the experiment would succeed.

Throughout their careers, then, Paterson and his contemporaries always were aware of the fragility of their endeavors, and their awareness of fragility fed their sense of crisis. Not only were they aware of those risks—they were committed to combating them. Their commitment—and their willingness to pay the price of grinding toil and heartbreak that it exacted from them—ought to reassure us and to challenge us. Paterson and the others among the founding fathers were forced by their circumstances to learn on the run, and their most remarkable efforts of creative adaptation should inspire us and challenge us to do likewise.



R. B. Bernstein, distinguished adjunct professor of law at New York Law School, has written, edited, or coedited twenty books on American constitutional and legal history, including *Thomas Jefferson*, *The Founding Fathers Reconsidered*, and the forthcoming *The Education of John Adams*. This article is a revised and corrected version of a lecture originally given at William Paterson University on 6 December 2002.

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