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WILLIAM PATERSON AND THE AMERICAN REVOLUTION, 1763-1787

BY

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A dissertation submitted to the Graduate
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PREFACE

Though William Paterson's family background was not as distinguished as that of many of his classmates in the College of New Jersey, or of some of his colleagues in the councils of the American Revolution, he was able to rise to very high position: as delegate to the Constitutional Convention in 1787, and subsequently as Senator, Governor, and Justice of the United States Supreme Court. He had been brought to America as a child (born Ireland, 1745) and spent his boyhood doing chores around his father's store in the little village of Princeton in the Jersey countryside, but in the events of the Revolution he was to become a notable figure. His experience in the Revolutionary era provides some interesting insights into the issues of the day.

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TABLE OF CONTENTS

	PAGE
Chapter I	The Education of a Revolutionary 1
Chapter II	In Training for Leadership 1763-1775 33
Chapter III	The Ideological Origins of The American Revolution in New Jersey 72
Chapter IV	The Decision to Revolt 116
Chapter V	Prosecuting The Revolution 159
Chapter VI	New Jersey in the Confederation 207
Chapter VII	The Philadelphia Convention 247
Chapter VIII	Conclusion 321
BIBLIOGRAPHY	326

LIST OF ABBREVIATIONS

Princeton University Library	PUL
Rutgers University Library	RUL
Historical Society of Pennsylvania	HSP
Library of Congress	LC
Massachusetts Historical Society	MHS
New Jersey Historical Society	NJHS
New Jersey State Library	NJSL
New York Historical Society	NYHS
<u>Minutes of the Provincial Congress and Council of Safety</u>	<u>PCCS</u>
<u>New Jersey Archives</u>	<u>NJA</u>
<u>American Historical Review</u>	<u>AHR</u>
<u>Proceedings of the New Jersey Historical Society</u>	<u>PNJHS</u>
<u>Minutes of the Council of Safety of the State of New Jersey</u>	<u>MCS</u>
<u>Journal of the Legislative Council</u>	<u>JLC</u>
<u>New Jersey History</u>	<u>NJH</u>

CHAPTER I

THE EDUCATION OF A REVOLUTIONARY

When William Paterson spoke before the commencement audience at the College of New Jersey in September 1773, it was a milestone in his life. He had grown from adolescence to young manhood in the shadow of Nassau Hall and the degree he received had been the object of long hours of study since he had become an undergraduate there in 1759. The adult life he was commencing would not always be a happy one, but it would be tolerably long and quite successful measured by his accomplishments and public acclaim. Perhaps more important for this commencement day, the education he had received was to be of crucial importance in shaping his responses to situations faced later in life, and the significance of this was not lost upon him.

The College of New Jersey (now Princeton) was founded in 1746 as an expression of the New Light fervor of the Great Awakening in the middle colonies, and had committed itself to the preparation of new generation of leaders for both the spiritual and temporal worlds. John Witherspoon, who

was called from Scotland to become President in 1768, was in full agreement with the prevailing philosophy of the school when he explained that education "promotes virtue and happiness" as well as preparing men "to enjoy life with dignity and elegance, or employ it to the benefit of society in offices of power and trust."¹ The ideals of a dignified and elegant life devoted to public service were to become the cornerstones of Paterson's career.

An obvious sign of the early success of the school was the completion in 1756 of Nassau Hall, just across the main road from the Paterson store in the little village of Princeton. The College building was the largest and one of the most gracefully appointed structures on the continent.² Within the Hall went on a combination of studies that would appear curious to today's scholars. Apparently unaware that their efforts were laying the foundations for later skepticism, tutors at the College encouraged studies in mathematics and even scientific experimentation side by side with the classics and theology. In part to soften the opposition of other religious groups in the colony, the original proposal for the school had carefully described a true center of learning with programs in the classics, philosophy, and science as well as New Light Presbyterian theology.³

It was unfortunate that the men chosen to lead the

institution in these early years had not lived long enough to leave their personal mark on the place. John Dickinson's presidency of only a few months had been followed by the nine year tenure of Aaron Burr. Upon his death, Burr was succeeded by his famous father-in-law Jonathan Edwards, who was sent to his own grave within a few months by an unforeseen reaction to an inoculation for smallpox. Pater-son studied under Samuel Davies (1759-61) and Samuel Finlay (1761-66). Each of these tended to stress the seminary role, but the dual temporal and spiritual curriculum was maintained. Witherspoon's arrival would mark a new degree of concern for the secular and scientific, symbolized for example by his acquisition of the Rittenhouse Orrery for the College--but the change remained a matter of degree. Until his death in 1794, Witherspoon remained President of the College.⁴

While primary concern was given to providing candidates for New Light pulpits in America, the school was following in the tradition of the dissenting academies in Britain where care was also taken to educate those sons of dissenters who were not destined for the ministry. It was believed that sending such men to Oxford or Cambridge would guarantee their learning the lessons of riot and immorality that were thought to be common among the students there.

The high moral tone and the emphasis on character building so important in the academies, was present too in Princeton.⁵ Statistics show that especially after 1775 the percentage of Princeton graduates bound for the ministry declined precipitously. Between 1777 and 1794, 30 or 13 percent of the graduates became ministers. But even between 1766 and 1775 only 75 or 41 percent chose to serve God in so direct a manner.⁶ Paterson seems never to have considered a ministerial career. But although his occupational objectives developed in a different direction, he remained an actively religious man, and thought of his life as much as a service to God as to man. One need not look very deeply in the later ideas of Paterson to appreciate his concern over what he saw as the loss of moral direction in society.⁷ He had been taught to be always vigilant for signs of moral corruption.

Before Paterson and his fellows could enter the College they were required to prove an ability to translate Greek and Latin texts. The youth from the surrounding area might study in the preparatory school that had been begun by President Burr.⁸ Although there are no surviving records, it is reasonable to assume that living in Princeton Paterson began his studies there. Upon examination, students could be admitted as sophomores, juniors, and before the trustees

decided to become more strict, even as seniors, to be graduated after only one year of residence. Paterson entered as a freshman and followed a complete four year program. The course of study dictated that freshmen concentrate on further studies in the classics and languages. Sophomores were introduced to geography and philosophy. The juniors' principal concerns were mathematics and natural philosophy, and the seniors' work revolved around a review of previous studies.⁹

Students found that the daily pattern was a rigorous one. In a letter to his father, Philip Vickers Fithian described a day that began with a bell being rung at 5:00 A.M. and continued in a strenuous schedule until students were required to return to their rooms at 9:00 P.M. for more study. If individuals slept late, missed morning or evening prayers, or were not in their rooms at the appointed hours, their names were noted down by a "bill-keeper" who once every week presented his list to one of the tutors.¹⁰ Discipline was firm, but as Witherspoon would later note, "no correction by stripes is permitted." He explained how they relied upon "the principles of honor or shame" by calling the delinquent students before the entire academic community for censure. Students who received this public admonition would be immediately expelled if they were again

in serious trouble.¹¹

Firm discipline and a concentration on character building did not, however, preclude a spirit of free intellectual inquiry. It was significant that the school was free from state control. Since the trustees were not called upon to appoint professors recommended from above, the teachers would feel no "temptation to a fawning cringing spirit and mean servility in the hope of court favor or promotion." Students and teachers alike enjoyed a considerable intellectual freedom.¹² The Trustees of the College were proud that:

In the instruction of the youth, care is taken to cherish a spirit of liberty, and free enquiry; and not only to permit, but even to encourage their right of private judgement, without presuming to dictate with an air of infallibility, or demanding an implicit assent to the decisions of the preceptor.¹³

Within the bounds of the religious and social values of the eighteenth century, the students were being taught to think for themselves.

There remains a wealth of manuscript evidence on Paterson's college years. Dozens of essays and orations were written during his years as an undergraduate and thereafter as he lived on in Princeton and actively participated in the affairs of the College and its Cliosophic Society which he helped to found.¹⁴ His commonplace book,

dated 1763 and containing some 268 pages, indicates the basic interests that Paterson fostered during his college years. It is heavily weighted toward literature and history. There are several essays on literary criticism and on the art of writing both prose and poetry. He was a prolific poet himself, but lyricized mostly about the ladies around town and to commemorate weddings and other social events. The commonplace book includes extensive quotations from literature and verse. Among the most often mentioned were Shakespeare, Milton, Swift and Pope. He referred to Kairn's Elements of Criticism, Collier's View of the English Stage and Montesquieu's The Persian Letters. Other favorites were The Spectator, The Tatler, The Gentleman's Magazine and even The Young Ladies' Magazine.¹⁵ Simplicity was for him the cardinal rule in composition, and he even related this to his preferred pattern of life. "As simplicity of language constitutes the best style so simplicity of behavior constitutes good breeding," he explained. "The true gentleman is easy, without affectation, grand, without haughtiness, cheerful without levity, and humble, without meanness."¹⁶ Appreciation of good literature required a certain type of personality too. "Candor and liberal sentiments" were seen as the main hallmarks of a literary critic.¹⁷

It is interesting that in a college committed to the

study of religion and science, Paterson's papers reflect little interest in either. The essays or commonplace book make no mention of natural science other than comments such as one note credited to the British Apollo. "The Blackness of Negroes," he carefully recorded, "is accounted by Anatomists to proceed from a certain Glue or Varnish under the outer skin, which in Negroes is black."¹⁸ With all the quotations from the classics and the popular authors of the day, the Bible was mentioned only inadvertently. In an essay on fashion for example, he noted in passing that Elijah had criticized the haughtiness of Jewish ladies.¹⁹ Otherwise he showed little concern for religious or theological controversy.

His papers and notebooks indicate that he gave much more attention to learning the marks of the gentleman, and trying to make his own personality and appearance fit the mold. He carefully catalogued maxims of manners and style in music, dance and dress. And whenever he had the chance, he commented disparagingly about the absence of grace and good judgment in many of the people around him. At one point, for example, he was moved to distraction by the practice of Princeton undergraduates wearing "night gowns" in public.

Gowns seem as essential to Nassau-students as black

coats and grey wigs to divines.... How often do we behold a shameless collegiate of a sound, unthinking face, his hair frizzled and powdered to the tip of the mode, amble along, with now and then a hitch in his gait, in a party-coloured night-gown; or undress...?²⁰

Paterson recognized the need for recreation in academic life,²¹ but there is no record of his thoughts on the action of the trustees when, during his sophomore year, they imposed a fine on any students caught playing ball against the side of the President's house.²² "Hardly anything," he maintained, "is more difficult to attain than a graceful and easy deportment."²³ And he bemoaned the fact that "crowds of sinical [sic] coxcombs, and solemn fops" greatly abounded at "every place of public resort."²⁴ Above and beyond the hallmarks of style and grace expected of the gentleman, there were social responsibilities as well. A true gentleman had to preserve the better nature of humanity. "If you have debtors," for example, "let not your levity get the better of your prudence; nor your care for your own interest make you forget humanity. A Prison is not for the unfortunate; but the knavish." And attention was given as well to the proper behavior toward inferiors. They were to be treated "with Generosity and humanity, but by no means with Familiarity, on one hand, or Insolence on the other."²⁵ Apparently Paterson learned these lessons well. Formality and conventionality would always be distinguishing characteristics of

his personality.

When not practicing his manners Paterson chose to concentrate his academic attention on history and moral philosophy. History had long been a major topic of study in the colonial colleges, and in the intellectual climate of the eighteenth century it was becoming even more important. History was looked upon as both a prestigious and a practical study. Inventories of academic and private libraries and lists of material published in the colonial years indicate its wide popularity. Summing up an analysis of these sources H. Trevor Colburn reported that "History was the main field of interest. If law is associated with history--and the colonists so regarded it--history emerges as the largest single category."²⁶ The study of the classics was also intimately related to history. The history of ancient Greece and Rome and the lives and characters of the main classical protagonists were favorite topics of colonial scholarship.²⁷

In the age of the Enlightenment, history was more and more looked upon as the stuff from which a new science of politics based upon human nature could be built. During these years history began to replace theology as the study which offered the greatest insight into the human condition.²⁸ Describing the attention colonial leaders paid to history

one recent author explains:

However imprecise, confused and eclectic the colonists gleanings from history and quotations from philosophers may seem to us, they represented to eighteenth-century Americans the experience and wisdom of the Western World.²⁹

Paterson considered history to be among the most important of his studies, spent considerable time reading and thinking about it, and applied its lessons widely in making judgments on all kinds of questions. In his commonplace book he took note of Cicero's "Requisites for the Historian," and agreed that historians should make the effort to write well. But he also noted the opinion of Voltaire that the historian should concern himself with moral judgments as well as narration of the facts. In phrases characteristic of the sententiousness of this baroque age, Paterson concluded:

Truth should be the object of the historian's enquiry; discernment should guide his research; judgement warrant his conclusions; candor direct his reflections; and eloquence of stile [sic] adorn his composition.³⁰

Paterson considered history necessary to an understanding of society. "It is not the true intent of history, so much to load the memory of the reader with a copious collection of public records, as it is to elevate his thoughts and enrich his understanding." He took notice of Montesquieu's opinion that "to understand rightly what a nation is, one

should previously learn what it has been." And he believed that there were specific lessons to be learned from the past as well.

How noble and useful a study is that of History, which at one View presents the Rise, Fortunes, & Catastrophes of the most eminent persons; and at the same Time that it records the good or bad actions of past ages, instructs the present to imitate the first, and avoid the last.³¹

He read extensively in ancient history and carefully outlined the characters of Julius Caesar, Anthony and Cicero. Although he was undoubtedly able to read original texts in Greek or Latin, it is likely that he studied the same translations and popularized histories as other colonial scholars. The works of Charles Rollins were, for example, repeatedly referred to in Paterson's commonplace book.³² "Caesar," Paterson concluded, "resembles Cataline in many respects, but he had better abilities and was more successful." Of Anthony, Paterson wrote that he "was of his own nature neither wicked nor cruel; though he committed some excesses through hurry of passion.... He was a very debauched man in a very debauched age." In contrast his utmost respect was reserved for Cicero, who towards the end of the Republic, "seemed to have lost one half of his existence when he saw the liberties of his country subverted." And on that most important quality of the public servant, virtue:

Pompey had only the outward shew [sic] of virtue;

Caesar frequently neglected even to preserve the appearance of it; Cato carried it to excess; but Cicero was possessed of real virtue, together with vast abilities, and very shining accomplishments.³³

When Paterson later found himself in the situation where a decision had to be made whether or not to support a revolution for American independence, the measure of corruption in the system and the possibilities for establishing a society of virtue would be major determining factors.³⁴

Aspects of modern history also earned an important place in Paterson's commonplace book. The characters of Martin Luther, Charles XII of Sweden, Louis XIV and Marshall Turenne were analyzed, and Voltaire's Universal History was quoted again and again. He reduced to his own words the conclusions of both Rapin's and Smollet's histories of England and incorporated them into a fifty-page sketch of British history. He went to the trouble of pointing out where the various authorities voiced different opinions, on the number of Britains killed in the Norman Invasion for example. Summarizing and trying to deduce the most significant lessons from the British past, he described the objectives of the various factions in the Puritan Revolution. One "more violent party," that "carefully concealed their designs" at first, "extended their views to utter extermination of hierarchy and monarchical government."³⁵ The problem

of violent factionalism developing from successful revolution was one that Paterson would face again later in his career.³⁶ It is evident from Paterson's commonplace book that many of his later arguments in politics and law were based upon the background in history acquired during his student days.

Moral Philosophy, the other study which attracted Paterson's attention, was related to history. This was one of the topics studied by men destined to leadership whether in religious or in secular society. Morality was to them the measure of society as well as the measure of a man--and history seemed to prove their point. It was in some part a reflection of the fact that men continued to view society in organic terms. Each state had its infancy, its manhood, and its period of decline. In a state where high moral standards were maintained, a strong and vigorous future life seemed assured; but where vice and corruption were widespread, the depths of decline and dissolution were thought to be close at hand.³⁷ Paterson's commonplace book and college essays were heavily laden with comments on morality, both individual and social. At several points he noted the relationship of individual morality to the institution of the law, and in very significant arguments, pointed to the state of the morals of a nation as a sign of the society's rise or decline.

There was for him an inextricable bond between individual morality and social virtue. Paterson noted from his reading of Mason's Self Knowledge: "He that is unable to govern himself, can never be fit to govern others, for he hath not the true Spirit of Government; because he wants the art of self government." At another point he explained how all the political theory he had learned was of less importance than moral values. "A little practical Virtue is of more Use to society than the most sublime Theory, or the best principles of government ill applied." He learned from the example of other cultures too. "What the Chinese seem to understand best, and to have most improved, is Morality and the Laws. The respect which children bear their parents is the foundation of Chinese government."³⁸

Civil law and moral virtue were seen as complementary forces which should work together toward the creation of a virtuous society. Where one was silent the other could fill the void. "A good conscience is never lawless in [even] the worst regulated state, and will provide more laws for itself, which the neglect of the legislators hath forgotten to supply." Legal documents such as "Contracts and evidences, and seals and Oaths, were devised to tie fools, and knaves, and cowards: Honor and Conscience are the more firm and sacred ties of gentlemen."³⁹ In a society

where civil law and moral virtue were operating together in the proper way, gentlemen of conscience and good breeding would fill the offices of public trust, and, from there, would oversee the enforcement of the civil law over the rest of society. "Among uncivilized nations," Paterson wrote, "the passions do in general exceed all rational bounds." But where educated gentlemen were sincerely concerned with the well being of society, the situation could be very different.

Happy it is, that, in polished society, the passions, by early discipline, are so moderated, as to be made subservient to the most important purposes. In this respect seminaries of learning are of the utmost advantage, and attended with the most happy effects.⁴⁰

Besides studying their academic subjects, Paterson believed that he and his fellow students at the College were learning to curb their personal passions and govern themselves. As a result he presumed that they would be better able to govern a society that included many individuals who would need their passions curbed by government and laws. As long as the savage instincts of men were controlled and corruption avoided it mattered little whether individual virtue or fear of the state was responsible.

If passions somehow got too wild for government to control, or if because of weakness, corruption of factionalism, government became unable to curb them, the fate of

the nation would be in question. He credited Solon for the insight that "a good government cannot subsist without rewards and Punishments; because impunity emboldens guilt; and virtue, when neglected and undistinguished, frequently becomes languished and declines."⁴¹ If rewards began to be given for no good reason, or men guilty of transgressions appeared to escape punishment, the people of the nation would lose respect for the law and authority of the government, and perhaps even the injunctions to moral virtue built into the society. The result would be a decline in the morals of many of the individuals in the society, but still more lamentable, a decline in the cohesive force which holds great and virtuous nations together.⁴²

At first these ideas were only theoretical. The social scene in the countryside of rural New Jersey presented no serious threat of moral corruption or societal decline. But in the years after 1763 some of the calmness and simplicity of Princeton life began to change reflecting the developing problems of the British Empire. Paterson stayed on in Princeton after his graduation to take a masters degree and to study law under Richard Stockton, and in familiar surroundings he began to perceive the imperial struggle in the context of his social theories. As a sophomore he had attended graduation exercises which featured an oration

on "The Military Glory of Great Britain." The text of the speech was soon published in pamphlet form along with plans for a pageant and five pages of musical score proclaiming the glories of Amherst and Wolfe.⁴³ But unqualified praise for the British was gone by 1765, when in the midst of the Stamp Act crisis the class appeared for the first time dressed in cloth of American manufacture.⁴⁴ By 1766, when Paterson was granted a masters degree and chose "Patriotism" as the theme for his graduation speech, we can only assume that his remarks about the British were not as lavish or as complimentary as they might have been a few years before.⁴⁵

Before long Paterson was tying together the intellectual threads of his Princeton experience and applying them to the troubles of the world around him. The lessons of history and his concern for moral rectitude were at the heart of his ideas, but the catalyst that helped him to draw together his own philosophy of society was his passion for proper manners and sturdy personal character. During his days at Princeton and thereafter, he carried on in his essays and orations, and even in his correspondence, what became practically a personal crusade against what he called "the effeminacy and dissoluteness of modern manners."⁴⁶ In contrast to the "manly and rough-hewn virtues" of his hardy ancestors, Paterson criticized the moral degeneracy

and love of luxury common to men of his own day. Even the traditionally "rugged and intrepid" British Navy, whose virtues were for "so long famous in story," appeared "softened down" by "the effeminacy of modern times." This was a "sad and evident symptom of degeneracy. Without offering any specific examples, he reasoned that "If luxury has wormed herself even into the breast of seamen, what dreadful havoc must she have made among others?"

Fashion indeed seems to be the idol universally adored. By fashion we rise and by fashion we go to bed; we sleep by fashion, we eat by fashion, and in short by fashion regulate every movement of our lives. By fashion some go to hell, and more surprising still by fashion some expect to go to heaven.⁴⁷

The inroads made by luxury and fashion into the character of a nation were unquestionable signs of weakness and corruption. Where luxury became the rage he believed venality and licentiousness would soon follow. He was beginning to note the luxurious tastes of British society, and before long he would see the problems of Empire centered in Britain's moral decline.⁴⁸ Later he would explain in detail how these same ideas led him to support the Revolution.⁴⁹

The education that Paterson received at the hands of his Princeton tutors helped to prepare him for the role he would play in the leadership of America's struggle for

independence. In his History of the American Revolution David Ramsay explained that without the influence of the colonial colleges the "unequal contest" with Britain might have turned out differently. "These lights of this New World" were significant in creating the informed leadership necessary to maintain colonial unity during the long war.

"It is a well known fact," he went on,

that persons unfriendly to the Revolution, were always more numerous in those parts of the United States, which had either never been illuminated, or but faintly warmed by the rays of science. The uninformed and the misinformed, constituted a great portion of those Americans, who preferred the leading strings of the parent state, those encroaching on their liberties, to a government of their own countrymen and fellow citizens.⁵⁰

There were exceptions to the rule. Patrick Henry is one often cited example of a revolutionary leader of the first magnitude who did not attend a college, and others such as John Adams and Thomas Jefferson did some of their most serious reading and studying after finishing their college careers. But from the very beginnings of American settlement, and especially in New England, there had been a large pool of college educated talent from which to draw prospective colonial leaders. In the eighteenth century the proliferation of institutions of higher learning in other areas of the colonies expanded this leadership potential. In an environment where there was a constant challenge to prepare

men in practical pursuits, there remained a respect and awe for those educated in the classics and related subjects.⁵¹ Indeed the respect that was shown men with this background often consisted in the mass of the population "deferring" to their "better" judgment in matters concerning the governing of society.⁵² Almost one-half of the signers of the Declaration of Independence were college educated and the leadership of college graduates would be significant throughout the revolutionary period.⁵³

It is more difficult to establish the precise intellectual influence that a formal college education might have had on a particular historical personality. The influence of a formal pattern of learning might depend in large measure on the capacities of the individual student or the attitude he assumed toward his studies. Princeton was in some ways the most cosmopolitan of the American colleges, drawing students from all over the colonies,⁵⁴ and during Paterson's attendance there were many famous graduates who would later play important roles in the revolution. But the diverse personalities and accomplishments of Princeton men such as James Madison, Aaron Burr, Oliver Ellsworth, Luther Martin, Benjamin Rush and Jonathan Dickinson Sergeant attest to the fact that education alone does not make the man.

Still, Paterson's personality and frame of mind seem to have made him especially susceptible to the intellectual atmosphere of the College which may have had less obvious impact on others. For one thing Princeton was home to Paterson. When students came from cosmopolitan Philadelphia or the sophisticated plantation society of the Old Dominion to study in the Jersey countryside, they must have taken the dogmatic pronouncements of their tutors with a healthy skepticism bred through worldly experience. Paterson had spent his boyhood in the shadow of Nassau Hall--the imposing building was just completed when he was ten years old. He must have dreamed of the opportunity that a Nassau education could provide to a boy of his comparatively mediocre social stature, and once he was a student there he seemed to uncritically absorb everything that the place had to offer. While a student he was very impressionable, and anxious to assume the manners of the gentleman. Later he might look back with humor at the intentness and pomposity of some of his tutors, but by that time he had learned to be rather pretentious himself.⁵⁵ Some sipped at the cup of stolid Presbyterianism that came hand in hand with the more rationalistic elements of the Princeton curriculum. Paterson drained it to the bottom. The result was to add a religious urgency to his political and social ideas, and

an almost insufferable tone of puritanical moralizing to the way he presented them.⁵⁶

The sermons of many New Light preachers in these years prior to the Revolution were extending their prescriptions on the moral law over the entire society, rather than viewing it as something applying only to the individual regenerate soul.⁵⁷ Man was naturally motivated toward evil, but he was capable of good they thought, particularly if he lived in a state where care was taken to tame the savage instincts of men and encourage the life of virtue. While the government of a virtuous society had to be strong enough to curb the malevolent instincts, it was also possible for a strictly governed state to suffer from a lack of true moral direction and be victimized by the elements of corruption and moral decay. It became a religious as well as a political ideal to establish a system that would encourage virtue in society, and at the same time protect the state from the selfish desires of degenerate leaders. In this context a revolution might be justified as part of a religious movement to purify a corrupt society and create a virtuous one.⁵⁸

But the same religious ardor that might lead men into revolt also warned them that the unstable political system likely to persist through any revolutionary period

would leave society unprotected from the immoral tendencies of a basically licentious population. Here in sum was the position Paterson would take when America was set adrift in the mid-1770's. He might reluctantly agree to the necessity of revolutionary political change to reestablish a republic of virtue, but he did so with a great hesitation bred by fear of the unpredictable social forces that revolution might set free.⁵⁹ By the time Paterson left the College he had expressed the basic elements of a world view based upon historical experience, moral philosophy and a purifying strain of New Light Calvinism. The positions he took and the arguments he phrased during the Revolution, in the crisis of the Confederation and even in the political battles of the 1790's can almost all be found in embryonic form between the pages of his college commonplace book.

His years at Princeton also provided him with some of the skills necessary for political and social leadership. Public speaking was one particularly important talent which the college took pains to engender in its students, even their Latin pronunciation was a matter for serious critical judgment at the annual commencement exercises.⁶⁰ For a man who would never put aside the study of politics and law efficient study habits were important too, and there were the marks of gentlemanly deportment that he so

assiduously made a part of his own life style. They may have given him more the countenance of a country squire in contrast to some of his more cosmopolitan classmates who set off for Philadelphia to seek their fortunes,⁶¹ but in the rural countryside of New Jersey the squire might be more respected than his sophisticated counterpart from the city.

Paterson emerged from the College with all the marks required of one of those "better" men that colonial voters were so ready to "defer to" when it came to governing the society. To be sure he still needed some seasoning, and special training the law would serve to make him even more respectable. What he had learned from Tacitus and Voltaire about the hallmarks of a good society would be reinforced in his study of Blackstone and Coke. Combined with his religious fervor for averting moral decline and encouraging the development of a virtuous society, these lessons would help him to perceive a pattern in the rush of events in the years to come, and would precipitate him toward the revolutionary cause. Unlike those of his classmates who chose vocations in the New Light Presbyterian ministry, Paterson undertook to serve society in more secular political and legal roles, but he took on these responsibilities with the same solemn resolution and religious devotion that Princeton instilled in its politically minded ministry.⁶²

"The man of honor," Paterson had written in one of his college essays, "holds a regular course throughout life, is the same in prosperity and adversity, acts his part with propriety, and is neither ashamed nor afraid of discharging his duty."⁶³ Paterson's concept of his duty brought him wealth and fame as he actively supported the American Revolution and rose to high political and judicial office. As high as he rose though, even to the Philadelphia Convention, he would carry with him the lessons of history and the ingenuous Puritan moralism learned from his Princeton tutors.

FOOTNOTES, CHAPTER I

¹John Witherspoon, "Address to the Inhabitants of Jamaica and Other West India Islands in Behalf of the College of New Jersey," in Documentary History of American Education, ed. by Richard Hofstadter (2 vols.; Chicago, 1961), I, 137-38.

²See Henry L. Savage, Nassau Hall: 1756-1956 (Princeton, 1956).

³[Samuel Blair], An Account of the College (Woodbridge, New Jersey; by order of the Trustees of the College of New Jersey, 1764), pp. 1-18. See also Thomas Jefferson Wertebaker, Princeton: 1746-1898 (Princeton, 1946), pp. 92-93.

⁴Wertebaker, Princeton, pp. 25, 41, 43, 46. See also Lyman H. Butterfield, ed., John Witherspoon Comes to America (Princeton, 1953); and H. C. Rice, The Rittenhouse Orrery: Princeton's Eighteenth Century Planetarium, 1767-1954 (Princeton, 1954). For general material on the College see John MacLean, History of the College of New Jersey From Its Origin in 1746 to the Commencement of 1854 (2 vols.; Philadelphia, 1877).

⁵Wertebaker, Princeton, pp. 80-85.

⁶Douglas Sloan, The Scottish Enlightenment and the American College Ideal (New York, 1971), p. 131. Sloan concludes that "the decline in graduates headed for the ministry was somewhat greater at the College of New Jersey than at Harvard and Yale, although it was a general phenomenon." But the College still remained very much religious oriented. At least until 1946, Wertebaker attested, every President of the College had been either a Presbyterian minister or the son of a Presbyterian minister. Wertebaker, Princeton, p. 88.

⁷See especially Chapter III below.

⁸[Blair], An Account of the College, p. 35.

⁹Ibid., pp. 23-25. See also Francis Broderick, "Pulpit Physics & Politics: The Curriculum of the College of New Jersey 1746-1794," William and Mary Quarterly, third series, VI (1949), pp. 42-68.

¹⁰Philip Vickers Fithian, Journal and Letters, 1767-1774, ed. by J. R. Williams (2 vols.; Princeton, 1930 and 1934), I, pp. 6-10.

¹¹Witherspoon, "Address," in Documentary History of American Education, I, 142. See also [Blair], Account of the College, pp. 20-23.

¹²Witherspoon, "Address," in Documentary History of American Education, I, 143.

¹³[Blair], Account of the College, p. 28.

¹⁴Most of this manuscript material is preserved in the Paterson Collection at the Princeton University Library, but some of the college essays are to be found among the Paterson Papers at the Library of Congress and at the Rutgers University Library.

¹⁵Commonplace book, Box 1, Paterson Collection, PUL.

¹⁶[On Simplicity of Language], n.d., college composition folder, Box 1, Paterson Collection, PUL.

¹⁷[Essay fragment], n.d., college composition folder, Box 1, Paterson Collection, PUL.

¹⁸Commonplace book, Box 1, Paterson Collection, PUL.

¹⁹[On Fashion], n.d., college compositions folder, Paterson Collection, PUL.

²⁰[On Personal Appearance], n.d., college composition folder, Box 1, Paterson Collection, PUL.

²¹[On the Need for Recreation in Academic Life], n.d., college composition folder, Box 1, Paterson Collection, PUL.

²²Savage, Nassau Hall, pp. 24-25.

²³[On the Need for Recreation in Academic Life], n.d., college composition folder, Box 1, Paterson Collection, PUL.

²⁴[On Conduct], n.d., college composition folder, Box 1, Paterson Collection, PUL.

²⁵Commonplace book, Box 1, Paterson Collection, PUL.

²⁶H. Trevor Colbourn, The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution (Chapel Hill, 1965), pp. 4, 20, and passim.

²⁷See Richard Gummere, The American Colonial Mind and the Classical Tradition (Cambridge, Massachusetts, 1963), passim.

²⁸Carl Becker, The Heavenly City of the Eighteenth Century Philosophers (New Haven, 1932), p. 17 and passim. Also see Lawrence Cremin, American Education: The Colonial Experience (New York, 1970), p. 470.

²⁹Gordon Wood, The Creation of the American Republic: 1776-1787 (Chapel Hill, 1969), pp. 7-8.

³⁰Commonplace book, Box 1, Paterson Collection, PUL.

³¹Ibid.

³²Commonplace book, Box 1, Paterson Collection, PUL. On the translations of ancient historians see Wood, Creation of the American Republic, p. 50; Gummere, American Colonial Mind and the Classical Tradition, passim.; and William Gribbin, "Rollin's Histories and American Republicanism," William and Mary Quarterly, third series, XXIX (1972), pp. 611-622.

³³Commonplace book, Box 1, Paterson Collection, PUL.

³⁴See Chapter III below.

³⁵Commonplace book, Box 1, Paterson Collection, PUL.

³⁶His political essays of the 1790's concentrated on the factionalism of the day and the threat it presented to the maintenance of the public interest. See Paterson Papers, RUL.

³⁷Wood, Creation of the American Republic, p. 29. See also the analysis of Paterson's "Address "On the Rise and Decline of Nations" in Chapter III below.

³⁸Commonplace book, Box 1, Paterson Collection, PUL.

³⁹ibid.

⁴⁰[On the Passions], n.d., Paterson Papers, LC. Perhaps this is the same essay which Paterson later lent to John Davenport, a friend at the College. See William Paterson to John Davenport, July 10, 1769, original letterbook, Box 1, Paterson Collection, PUL.

⁴¹Commonplace book, Box 1, Paterson Collection, PUL.

⁴²[Oration on the Degeneracy of the Times], n.d., college compositions folder, Box 1, Paterson Collection, PUL.

⁴³[Samuel Davis], The Military Glory of Great Britain (Philadelphia, 1762).

⁴⁴Cremin, American Education: The Colonial Experience, pp. 465-68; Wertenbaker, Princeton, pp. 56-57.

⁴⁵New York Gazette or Weekly Post Boy, October 2, 1766, quoted in NJA, first series, XXV, p. 219. The newspaper credited Paterson with a speech in which "Elegance in Composition and Grace and Force of Action were equally conspicuous."

⁴⁶[On the Effeminacy and Dissoluteness of Modern Manners], n.d., Paterson Papers, LC.

⁴⁷ibid. See also [On Conduct], n.d., college compositions folder, Box 1, Paterson Collection, PUL.

⁴⁸[Oration on the Degeneracy of the Times], n.d., political essays folder, Box 1, Paterson Collection, PUL.

⁴⁹See Chapter III below.

⁵⁰David Ramsay, History of the American Revolution (2 vols.; Philadelphia, 1789), II, 321, quoted in Cremin, American Education, The Colonial Experience, p. 468.

⁵¹Cremin, American Education: The Colonial Experience, pp. 467-71. Bernard Bailyn, Education and the Forming of American Society (Chapel Hill, 1960), stresses the possible importance of college studies in the evolution of revolutionary thought and calls for further research in the area, p. 89. See also Sloan, The Scottish Enlightenment, p. 268.

⁵²For the importance of deference in early American politics see J. R. Pole, "Historians and the Problem of Early American Democracy," AHR, LXVII (1962), pp. 626-646; and Richard Buel, "Democracy and the American Revolution: A Frame of Reference," William and Mary Quarterly, third series, XXI (1964), pp. 165-190.

⁵³Francis Walsh, The Education of the Founding Fathers (New York, 1935), pp. 33, 111, and passim.

⁵⁴Evarts B. Greene, The Revolutionary Generation: 1763-1790 (New York, 1943), p. 126.

The literalness with which he accepted the lessons of his teachers and the social patterns of his classmates is evident from many of the letters he wrote to his college friends; see Chapter II below.

⁵⁵See Paterson's comment on Samuel Stanhope Smith in Chapter II below.

⁵⁶By the time the Revolution neared he was phrasing some of his public utterances in the form of Puritan jeremiads; see Chapter III below.

⁵⁷On the social and political implications of American Calvinism after the Great Awakening see Alan Heimert, Religion and the American Mind From the Great Awakening to the Revolution (Cambridge, Massachusetts, 1966), and Richard Hofstadter, America at 1750 (New York, 1971), pp. 278-79, 286-87, and Chapters VII and VIII passim.

⁵⁸John Witherspoon, the President of Princeton after 1768, was the epitomy of this revolutionary ministry. His Lectures on Moral Philosophy were monuments of religious thinking on political activity, and have been credited with helping to shape the minds of some of America's foremost Revolutionary leaders. See James Smiley, "Madison and Witherspoon: Theological Roots of American Political Thought," Princeton University Library Chronicle, XXII (1961), pp. 118-132.

⁵⁹See Chapter IV below.

⁶⁰Paterson's 1763 commencement oration (composed and spoken in Latin) was entitled "A Cliosophic Oration," misc. mss., PUL.

⁶¹John MacPherson who went to Philadelphia after graduation to study law under John Dickinson provides the clearest contrast. See Chapter II below.

⁶²As late as the 1790's Paterson was writing newspaper essays on the virtues of unselfish public service. See newspaper essays, oversize collection, Paterson Papers, RUL.

⁶³[On Honor], n.d., college composition folder, Box 1, Paterson Collection, PUL.

CHAPTER II

IN TRAINING FOR LEADERSHIP 1763-1775

In the decade after 1763 when the forces that would soon explode in the American Revolution took shape, and petitions, protests and violent demonstrations were marking the development of a revolutionary mentality, William Paterson was beginning his career. As a young man with an enviable education, influential friends and good prospects for the future, his ambitions were high. He stayed on for the next five years in the stimulating atmosphere of Princeton, living under his father's roof while he studied law, earned a masters degree and continued his participation in college activities. Then in 1769, after being admitted to the bar, he moved to nearby New Bromley and a few years later to Raritan trying to establish a successful law practice and enhance his reputation in the profession and in the community at large.

Paterson had shown considerable talent as a student, but as a young lawyer it was by no means clear how far his

abilities would take him. It was evident to him that professional success was largely a matter of personal contacts and associations, and at Princeton there were plenty of influential connections to be made. Among his college friends were Luther Martin and Oliver Ellsworth, who would later sit with Paterson in the Philadelphia Convention; Aaron Burr, who would later study law under Paterson; Henry Lee, who received military glory as "Lighthorse Harry" during the Revolution; and James Madison who kept an account at the Paterson store.¹ Others who achieved eminence in Paterson's own chosen profession of the law were Tapping Reeve of Connecticut; John Dickinson Sergeant, Attorney General of Pennsylvania during the Revolution; and Jacob Rush, brother of Dr. Benjamin Rush, the famous surgeon of Philadelphia.²

Friendship was defined by Paterson as "a great intimacy between two persons equally as well as strongly inclined to promote each other's interest or happiness." In one of his college essays he bemoaned the natural tendency toward "inveterate selfishness" that influenced many personal relationships and suggested that true friendship cannot exist unless its effect be virtuous affection and benevolence rather than a vicious self interest that might "prove ruinous to society, or the general good." One cannot

help but conclude however, that Paterson was equally aware of the benefits that well-placed friends might bring him in his future career. "It may in general be said," he observed,

that, in all our pursuits, whether of a virtuous or of a vicious kind, we are extremely prone to count those our friends, who are the most active in conducting us to the imaginary good we so ardently wish for, and so eagerly strive to attain.³

For an ambitious young man whose family while well off financially enjoyed no conspicuous mark of social respect, the contacts he was able to make for himself would be especially important. Paterson endeavored to keep in touch with his Princeton friends after they graduated and had moved on to begin their careers. Josiah Stoddard was opening a school in the Jersey countryside and Theodore Romeyn had become a minister in Ulster, New York. Paterson corresponded with Luther Martin and promised to canvass the rich farmers of his neighborhood to see if they would advance Martin the money needed to purchase a parcel of land. And he tried to convince Reverend John Woodhull, a recent graduate and fellow Well Meaning Society member, to reconsider the invitation of a nearby congregation to become their minister. He recognized that the good recommendations of friends and acquaintances were important when he vouched for Benjamin McMicken who was seeking a position as a tavern keeper. As Paterson prepared to move from his life-long home in 1769,

he wrote to Robert Ogden, Jr., who had been a fellow law clerk, seeking to establish a "mutual intercourse by means of letters." In the letter Paterson confessed: "You may laugh perhaps, but I do assure you, it pains me to leave a place in which I have spent the most happy hours of my life, and formed so many valuable connections."⁴

Paterson made several such attempts to begin a polite "epistolary correspondence" with college friends, most of whom were of families wealthier and more widely respected than his own.⁵ The one of his friends who did keep in regular contact was John MacPherson, who had graduated in 1766 and had taken up the study of law under John Dickinson in Philadelphia. Their relationship was apparently affectionate and mutually promotional--the only type of friendship that Paterson defined as true and sincere. They continually questioned each other about their health and happiness, and Paterson pestered his friend to make his letters longer, more frequent, and more punctual: "He knows I love him, he knows I am pleased to hear of his good fortune, he knows I am delighted to correspond with him, why then is he so remiss in answering my last letter?" They tried to arrange meetings, even for a few hours to renew their friendship in person. Paterson invited Johnny to stay under his father's roof when he came to Princeton at

commencement time, and when things were slow in the law office he almost begged his friend to come to spend some time in their old college atmosphere.⁶

They commiserated with one another on the dreadful boredom of studying law. "To be a complete lawyer, is to be versed in the feudal system," wrote Paterson, "and to say the truth, I am not very fond of being entangled in the cobwebs of antiquity." He was driven to distraction, he said, by the dullness of unbroken hours in "the clutches of that pedantic, rambling, helter-skelter Master Coke," whose works were "breathed through" with "eternal egotism and dictatorial pomp."⁷ From time to time they took advantage of their correspondence to quiz each other on legal study questions. They compared notes on their friends' careers and marriage plans. One Princeton classmate had given up the study of law to become a "stage-player," and another, Alex McCasland, had been forced to marry. McPherson explained how their friend had "made free" with

Doctor Alison's younger daughter, which produced effects which might have been expected from Mr. McCasland's known virility. The girl cried; the father stamped; his father raved; and to pacify all, Alex married his pre-enjoy'd darling. Lord save me from all such matches! For I so detest a whore, that I would not marry one of my own making.⁸

The charms of the young ladies of Philadelphia and Princeton were matters of constant consideration.⁹

In June of 1767 Paterson traveled to Philadelphia with his sister and father, and paid a visit to McPherson. Upon his return to Princeton, Paterson wrote his friend to describe the journey home: "I never had such an unfortunate jaunt in my life." He blamed the grooms of the stable and the unwholesome pump water of Philadelphia for making his horse so sick that he was forced to join his father and sister in their chair and lead the half-dead creature as far as Bristol. There he had hired another animal and traveled on, leaving his own horse to recuperate. He stabled the hired horse in Princeton for the night and arranged for a boy to pick it up at 3:00 A.M., return it to Bristol, and bring back Paterson's own mount before the heat of the day. But, as if there had not been enough trouble, when the boy arrived at the stable before dawn the horse had disappeared. Awakened with the news, Paterson was driven to absolute frustration when he realized that he would have to sit and write advertisements announcing the horse's disappearance to be posted in the neighborhood: "I redoubled my ejaculations, and from the bottom of my heart wished hostlers, horses, pumps, and thieves, etc. the Devil's arse a-peak [sic]." Before the unbearably boring job of copying advertisements was complete however, the horse was found grazing in a nearby field. In the end Paterson blamed the

affair on "some negroes," who he supposed, "had the impudence to take him [the horse] on one of their nocturnal frolics." His tension and frustration, he said, might only have been eased by the apprehension of the thief and "the pleasure of seeing the rascal severely trounced."¹⁰ Unfortunately the perpetrator seems never to have been identified.

Beyond reporting his personal frustrations, Paterson could share with MacPherson his most intimate ideas on the philosophy of life. "Mankind are weak and feeble enough by nature," Paterson observed, "without the additional weights of luxury and intemperance." Yet wherever he looked Paterson saw men "lend helping hands to their own undoing, and hasten the period of their lives by excessive voluptuousness." But while he criticized "the aspiring hopes of the proud and ambitious," he could still mention in a friendly way, his own desire to retain contact with young men of rising fortunes. He asked to be remembered to Jacob Rush, at that time a law clerk with MacPherson, who Paterson thought would reach a high station. "I desire to keep on amicable terms at least with that gentleman, for you know he is to be the speaker of the Hon. House of Commons." Paterson wasn't far off the mark; Rush eventually became Chief Justice of Pennsylvania.¹¹

While Paterson, in the intellectual atmosphere of Princeton, was, as he expressed it, "contemplating the vanity

of riches...with the gravity of a philosopher," MacPherson was enjoying Philadelphia.¹² He told Paterson of his trips to the theater, and described the sermons that George Whitfield gave while he was in town: "He is not the man he was, but still has some very grand strokes."¹³ The young men discussed the political events of the day in their letters, although MacPherson expected that Paterson got most of the news from the newspapers. At one point Paterson suspected that it might have been better if those writers who chose to battle in the papers about imperial politics had "slept in peace." But before long MacPherson was himself involved in the business, personally transcribing copies of The Farmers Letters for John Dickinson.¹⁴

In the spring and early summer of 1770, Philadelphia was alive with rumors and public outcry over Parliament's failure to repeal the Townshend duties in their entirety. Ever since news had reached America in late April that the tax on tea had been retained, the radicals had sought to keep up the non-importation agreements until Parliament knuckled under completely. At first the news from England was hopeful. MacPherson wrote on May 23, 1770, that three London ships had arrived in ballast (with the exception of non-prohibited articles) and brought news that "the people in England are now desperate and are determined to strike."¹⁵

People in Philadelphia, according to MacPherson, were "very apprehensive of a civil war, for the King has formed two camps and laughed at the London Remonstrance." But at the same time word came that "the slaves [i.e., merchants] of Rhode Island...[had] dissolved their committee, and agreed to import."¹⁶

Within a few weeks MacPherson was reporting that he had attended the Philadelphia meeting which passed resolves attacking the merchants of New York for resuming business as usual with the British. "The New Yorkers have acted like scrubs," he wrote, "and deserve to be tarred and feathered, and it behoves every American to disclaim any connexion with them."¹⁷ Even the students at Princeton had reacted violently to the news from New York, by hiring a hangman to burn the letters publicly and by proclaiming the merchants "betrayers of their country."¹⁸ Paterson was in New Bromley, thirty miles from Princeton at the time, and must have heard reports of the protest. Nevertheless his answers to MacPherson's letters were strangely quiet about these extraordinary events.¹⁹

While they don't tell us much about Paterson's political ideas, these letters offer an interesting insight into Paterson's personality. Catapulted by his college experience from the chores of his father's store into the

polite life of respectable society, he strived to retain all the social ties he could. If his personal problems in these years (the psychological depression brought on by long study, the foibles of young ladies, the inconvenience of travel, or the frustration of having to write advertisements) seem somehow less significant than the plight of farmers who were suffering economic hardship or the slaves who may have sought diversion in nocturnal frolics -- they were nonetheless important to him. In one letter to MacPherson, Paterson went on at length about the benefits of being well-bred and well-born. The letter indicates that he was a little sorry that he could not claim a more significant lineage but "gloried at being a Scotchman" as a substitute for the "true blue" status that his immediate ancestry could not provide.²⁰ His letters to his friends remain measures of the pretensions to social status he harbored and the outgoing attitude he assumed in social relationships.

MacPherson was probably Paterson's closest friend, but their intimacies had to be shared over the distance between Princeton and Philadelphia. Closer to home were his fellow students and alumni at the College, and even after he accepted a masters degree in 1766 he remained very active in the intellectual clubs which were a feature of eighteenth century college life. In 1767 and 1768 two

rival student organizations were formed at the College, the Plain Dealing Society and the Well Meaning Club. Paterson was a founder of the latter. Their purpose was social and intellectual, providing a friendly atmosphere for the practice of rhetorical and forensic abilities. But the competition between the groups ran high and the trustees soon began to doubt the wisdom of allowing such fraternities to exist.²¹

Although he was no longer a student at the College, Paterson was one of the guiding lights of the Well Meaning Club, regularly participating in their meetings. It was he who engineered the solution to the trustees' opposition to the clubs, by helping to convince the members of both fraternities to join together to ward off their common foe. He later participated in the founding of the Cliosophic Society, one of the two new societies that took the place of the original clubs when it became clear that the union was unsatisfactory. The name Cliosophic was adopted from a term Paterson had coined in his 1763 graduation speech. Eventually the authorities withdrew their objections as both students and alumni fought to retain their fraternities. The other new club boldly called itself the American Whig Society, and both groups later became identified with the cause of American independence.²²

Political debate did not preclude the sons of Clio from discussing any number of other topics in their monthly declamations before the society. Paterson's themes were characteristic of the literary affectations of the day. Once he prepared a three-part humorous skit on the importance of a graceful literary style.²³ In 1772 he wrote and read before the Society a poem in praise of the charms of Betsy Stockton "The Belle of Princeton," and critical of the students and tutors at the College who aspired to become her suitors. He took the opportunity to poke fun at the very proper Samuel Stanhope Smith, eventually the President of the College, who was then a tutor there:

Tutor Smith, so wondrous civil
Compound odd of Saint & Devil.
This Smith a parson too, alas!
He more resembles for an ass.²⁴

Rather an irreverent attitude toward a man who was destined to be President of the College. There were undoubtedly times when the members of the group could not find enough time to discuss fully the political events of the day or the freshest morsel of gossip. But Paterson did complain of periods when the speakers before the assembly spoke in a very haughty manner but had nothing to say. One of his own monthly declamations discussed his inability to find anything at all new to discuss.²⁵

When more philosophical or politically oriented

questions concerned the club, Paterson's contributions reflected his moralistic, political and social philosophy. And as the problems of the Empire became more acute, Paterson applied his theories more pointedly. In an "Oration on the Degeneracy of the Times" he warned that England was in serious decline due to the insidious character of luxury and political corruption. "Turn over the political pamphlets of the day," he suggested, "and you will immediately see that selfishness, venality and licentiousness characterise [sic] the present Era and denote the Declension of Britain."

Dissent among the great, and furious commotions among the populace bode ill to a country burdened with heavy taxes, and ready to sink under an enormous national debt. Inconsistency, want of principle, and the most turbulent ambition in men of eminent stations lead to disgrace, distraction and inevitable ruin.²⁶

Even in an oration "On Musick", presented before the Cliosophic Society in January 1773, Paterson showed the same concern for the moral degeneration of society. The lecture began as a discussion of the benefits of music in rendering men humane, benevolent and happy, and, quoting Polybius, carefully noted the importance the Greeks gave to the musical arts. But Paterson contrasted the solemn inspiration of the ancients with the "unmeaning Warblers of the present day, who deal out the insipid Sing-song of Italian Operas." It was possible for music "to provoke irregular

desires, and to excite a love of pleasures and voluptuousness," and this could prove dangerous to the nation as a whole.

...light music of the looser sort ministers to luxury, and ought therefore never to be tolerated in a well-regulated state. Musick of the latter kind taints the morals and vitiates the manners; it excites a love of pleasure, sinks into weakness, and melts into luxurious effeminacy [and] softness. Musick, when thus applied, is attended with unhappy effects; it lulls only to enfeeble, and soothes only to unnerve; it, Circe-like turns men into brutes.²⁷

Paterson's philosophy led him to believe that when men became brutes, the society to which they belonged could only decline. In cases where moral corruption had gone too far, radical--even revolutionary--steps might have to be taken to preserve the society and make it virtuous again.²⁸

Paterson returned often to speak before the Cliosophic Society, even later in life when he himself was a trustee of the College. He encouraged the students to exercise their talents as public speakers and sought to maintain a healthy competition between the sons of Clio and their rival society. When he addressed his society on an anniversary of its founding, Paterson was transported by memories of the fraternal brotherhood he had enjoyed. "Friendship like this smooths the current of the passions, makes them glide gently as the flow of a summersea [sic], and fragrant as the breeze that fans the bosom of spring."²⁹ But Paterson's

memorable associations with his brothers of the Clisophic Society were more important because they had encouraged him to refine and reinforce his ideas on politics and society.

At least as influential in shaping his political point of view was Paterson's decision to become a lawyer. The legal profession of America afforded many recruits to the cause of revolution. Lawyers proliferated in America and, despite their occasional unpopularity, they were a powerful influence in the society and government of each colony. "In no country perhaps in the world," Edmund Burke once commented, "is the law so general a study." Acute and inquisitive, American lawyers were full of resources and ready to defend their interests at the first hint of attack. "In other countries," Burke continued,

the people, more simple and of less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle.³⁰

It must be admitted that the study of the law did not inevitably move men to revolt. There were many loyalist lawyers, and British lawyers were firm defenders of imperialism, but the concept of fundamental law enshrined in the British legal system did offer an important rationale to many revolutionary leaders.³¹

In the course of the eighteenth century there was a

general movement to extend the English common law to America. The most important reason for this was the complication of business and personal relationships developing in America that required more precise legal definition than provincial statutes could conveniently provide. But American lawyers came to see the common law as a fundamental law, a higher law above the decisions of parliaments or fiats of kings. It became a tool to use in defense of liberty against the designs of prerogative power in cases ranging from the navigation acts to the threat to trial by jury.³²

Paterson was a conscientious student of the common law, and the belief in a fundamental law developed from everything in his background, from his interest in British history and the Magna Carta to his study of Coke and Blackstone. At one point he developed the concept of the right of revolution in the form of a college disputation, and based his theory upon the fundamental law. "Tyranny is the exercise of power beyond right," he explained. It appears "when the king makes his will, rather than the law, his rule." There was no question in his mind that "wherever law ends, tyranny begins," and he concluded that, "the lawfulness of killing a tyrant: was evident and unquestionable. Revolution it was true could not be taken lightly. Paterson thought great caution should be exercised because the death of the

king might create a great shock to the stability of society, and perhaps open the door to even more misfortune. But the right of the law over the prerogative of the king was absolute. Here was the philosophy that would allow him to justify his own participation in rebellion.³³

In light of his later success and fame, Paterson's decision to make a career of the law was a wise one. He was fortunate in having as his sponsor Richard Stockton, a member of the Governor's Council and Justice on the Supreme Court bench who would later be a signer of the Declaration of Independence. Stockton had many connections in England as well as America and, perhaps most appealing for young Paterson, his office and residence lay just a few hundred yards down the road from Nassau Hall.³⁴ Paterson received the best of legal training and was able to retain his close association with family and friends.

His apprenticeship would last for five years, until he was admitted as an attorney in November 1768. During these years he labored diligently, for he realized, as he said, that "application is necessary to achieve eminence in learning."³⁵ He studied alone into the small hours of the morning, but he still had the energy to discuss knotty problems with his fellow clerks or in letters to his Philadelphia friend. Long hours were consumed in chores relating

to Stockton's practice, especially when the master was out of town. He had use of Stockton's library, but Paterson asked MacPherson to search the bookstores of Philadelphia for certain volumes that he wanted to own himself.³⁶ He also had the opportunity to help Stockton serve some of his most prestigious clients, such as William Alexander, the self-styled Lord Stirling, who during the Revolution would consign his monumental legal difficulties to Paterson's trusted hands.³⁷

He did not begin his career however with distinguished clients to represent or large fees to collect. Princeton was a small town and its legal needs were already well served; so in search of a clientele Paterson moved in 1769 to New Bromley, a half day journey to the west of Princeton, and in 1772 to Raritan, less than a day's journey to the north. While he did not complain about the shortage of business in his infant practice, investigation of the records of the counties in which he did his legal work indicates that he had few cases to look after.³⁸

The boredom of life in the country drove him to such desperation that he referred to himself in words reminiscent of Gray's "Elegy in a Country Churchyard" as "the rose in the wilderness that blooms unnoticed," its fragrance wasted on the desert air. He explained that he had "scarce any

amusement to resort to when I find my spirits flag." When he tired of the law, "and such is daily the case," he tried reading, dreaming of ladies, and always wound up envying MacPherson for the diversions that the city provided. When two acquaintances, one of whom excelled at the flute came to visit in his hermitage, he joined them in a frolic through the countryside in search of an echo: "I never heard any thing more enchantingly harmonious."³⁹ But as much as he thirsted for amusements and entertainments, Paterson cautioned his younger brother that it was high time in his life "that frothy merriment, unmeaning noise, and idle sportfulness should give way to thought more solid, and to actions more useful." He warned that young people are especially prone to be "carried away by fashionable amusements," and explained that "frothy amusements gradually weaken the mind, and give us a relish for others of a more criminal nature." Maturity came in being able to balance practical pursuit and diversion so that one did not indulge in the latter "to too great a degree."

Trust me, my Dear Brother, the life that will not bear reflection is full of pain and will infallibly render you forever miserable.

Presumably as a result of dedication to his own aphorisms, some of the elements that contributed to his later career began to materialize. In August 1769, just a

month after he settled in New Bromley, Paterson was appointed to the coveted position of Surrogate of the province. In this capacity he could collect fees for representing the governor in actions on wills.⁴¹ Stockton had undoubtedly recommended him for the appointment hoping the new position would bring some business Paterson's way, but there was no noticeable increase in clientele. Indeed, after moving to Raritan, Paterson operated a branch of his father's store, overseeing as well the legal needs of the family's enterprise and making occasional business trips to New York and Philadelphia.⁴² He was able to look philosophically at his failure to achieve immediate professional success. In 1773 he tried to encourage his young friend MacPherson whose career seemed to be in the doldrums too. He told his friend not to despair, for legal business "increases little by little: its progress is slow and gradual." "Have patience," he assured, "the prospect will brighten as you advance in life."⁴³ While he waited for business to improve Paterson found time for continued study, and regularly attended meetings of the county court: to become known by his senior colleagues in the profession a young lawyer had to attend the court sessions. The way he conducted himself on these occasions must have been an important reason why the delegates to the first Provincial Congress that met as the

Revolution neared in 1775, chose to trust him with the important post of Secretary.⁴⁴

Most of the cases he did handle in his early career involved the collection of debts, and the single most complicated legal entanglement he was called upon to unravel was the matter of his father's financial difficulties. In January 1775 Richard Paterson placed all of his property (house, land, stock of merchandise, and slaves) up for sale explaining his desire of "quitting business and of closing his affairs." The advertisement he placed in Dunlap's Pennsylvania Packet included a request for "all persons indebted to him on bond, note or book accounts, to make immediate payment," because, the ad continued, "to pay those to whom he is indebted, it is necessary that those should pay first who are indebted to him."⁴⁵ As it turned out his creditors did not wait, and to avoid having the properties attached for indebtedness William arranged to take mortgages in his own name against the lands and buildings belonging to his father. Ultimately the father was forced to declare bankruptcy, but much of his wealth had been protected through the legal assistance of his son, who, before the whole affair was over, was representing his father in more cases than all the rest of his clients combined.⁴⁶ It must be assumed that young Paterson's economic position was the result much more

of his business activity and his involvement with the family fortunes than attention to his meager legal clientele. By 1776 when he was chosen for the Legislative Council (a position that required £1,000 of property) he was financially comfortable and beginning to be recognized as socially prominent.⁴⁷

His association with the legal profession embroiled Paterson in the political protests of the 1760's. It was while he was serving his apprenticeship that the clamor over the Stamp Act swept through New Jersey. Since there were no newspapers and no major ports in the colony to be affected, the burden of the stamp taxes threatened to fall most heavily upon New Jersey's lawyers. The members of the bar joined in a convention in September 1765, and resolved not to use the stamps in any of their transactions. Beginning in November when the law went into effect, they refused to do any business that required the stamps and thereby effectively closed the courts. Nevertheless, from the outset the tactics of protest they employed were cautious and conservative. They denounced "all indecent and riotous behavior," and while they stood for principle, they restricted their protest to passive resistance. When they reconvened in February 1766, they refused to bow to the demands of several hundred "sons of liberty" that the lawyers resume business without the stamps. Such a direct affront to the government and the

law was further than they wished to go, so the assembled lawyers simply put off a resumption of activities until April 1, by which time the legal machinery of the province had returned almost to normal, and Parliament had repealed the law.⁴⁸

Actually, the months during which the courts were closed provided welcome relief for many Jerseymen who suffered economic hardship and were persistently hauled into court by their unsympathetic creditors. Their woes were intensified by economic deflation in the wake of the French and Indian War, and a circulating medium that was steadily contracting as the province levied taxes to withdraw the currency issued during the war. The colony wanted to temper the effects of the withdrawal with new paper money outlays, but in 1764 Parliament passed a currency act forbidding any issue of paper money that required acceptance of the bills as legal tender. Despite all the pressure that paper money advocates would bring in the next decade, and even in the face of Governor Franklin's support for at least a limited legal tender provision, the laws were disallowed in England year after year. And each year the increased taxes needed to pay off the debt further diminished the currency in circulation.⁴⁹ One moment flushed with the prosperity of a war-time economy, the next moment Jerseymen found themselves

faced with plummeting prices and had to pull in their belts tightly. No matter how much property a farmer owned, he could find no cash to pay his creditors. As Paterson had explained to his friend Luther Martin, even the people who had the best collateral could not borrow money.⁵⁰ Creditors hired lawyers to bring their delinquent debtors into court to attach their property for public sale, but there were few buyers, so the debtor's farm and belongings might sell for a fourth or a fifth of their actual value. This may explain why Paterson went to such lengths to assure that his father's property was not sold in this way to settle his debts. As a resident of Hunterdon County explained in 1770, "a man with an estate worth £5,000 will have it torn from him, tho' all his debts amount to but £100; a situation which will naturally make a man feel desperate."⁵¹

To be sure, many people were insensitive to the problem. While the debtors continued to push paper money bills through the Assembly only to have them disallowed in England, others thought the only effective solution to the economic situation would be a retreat from what they saw as an artificially inflated war-time standard of living.⁵² Austerity, however, could not help those already hopelessly entrapped in debt. Though their plight may have been due to very complex economic phenomena, the oppressed debtors

desperately vented their rage on the lawyers who brought down the power of the government upon them. Their rage was not without reason. Considerable evidence suggests that lawyers were engaging in petty even unnecessary litigation to generate fees, were overcharging clients shamelessly, and were in other ways guilty of practices which caused great injury to some. Such respected attorneys as Bernardus LaGrange and Samuel Tucker were "summoned before the legislature to answer allegations of malpractice."⁵³ In 1765 a law for regulating legal fees was considered by the Assembly, but it never went into effect. In 1769 and 1770 there were uprisings of the people in Essex and Monmouth Counties demanding public regulation of the legal profession. Because sympathy for the rioters was so widespread, they were given only light fines or simply released when brought to trial.⁵⁴ This sort of popular agitation was not unique to New Jersey. In the election for the New York Assembly in 1768 a popular slogan had been "no lawyer in the Assembly," and in Pennsylvania they were attacked for being allies of the "merchant aristocracy."⁵⁵

According to the portfolio of Paterson's cases, his early years as a member of the New Jersey bar earned him no special distinction. When public opposition arose however, the young lawyer's defense of his profession was forthright

and unquestioning, surely the kind of response natural to one who aspired to eminence within it. "There has not for some years past been so general a clamour in this province, as that which was lately raised and industriously propagated against the Gentlemen of the Law;"⁵⁶ Paterson began his argument. He lamented that lawyers were in general thought to have "an inordinate desire of accumulating riches," and maintained that the charge was unjust. "If there be dirty attorneys, who drive through thick and thin and stickle at nothing to promote their own designs," those few individuals should "be severely punished and dealt with in an exemplary manner." But he cautioned: "do not involve the innocent in the punishment of the guilty." He admitted that a few might have participated in "unjust practices," but believed that the recent clamor was due in large measure to those people of the province who were notorious for groaning "under the burden of heavy debts, which they have no easy prospect of removing but by the interposition of an insolvent act." Paterson showed no sympathy for the debtors who he suggested had become "strained in their circumstances and reduced to the lowest ebb of poverty, by high living, riot, or sensuality." He wondered that such people "should ascribe this situation to the oppressive measures of cunning men," (which was how, according to Paterson, they characterized the

judicious application of the province's laws) rather than blaming their own voluptuousness and moral degeneracy. The result was that reputations were ruined on the basis of total falsehoods or the "aggravation of real tho' petty offences," and justice was very poorly served.⁵⁷

The movement for the regulation of the legal profession which Paterson so strenuously resisted was unsuccessful, and it was not until the "exigencies of impending Revolution demanded their popular solidarity" that the lawyers voluntarily agreed to "prevent unnecessary litigation."⁵⁸ Paterson was interested in supporting the lawyers against what he considered an unfair attack. Presumably he realized that one way to earn the respect and trust of his professional elders was to make himself conspicuous in their defense. He was certainly not opposed to the principle of government regulation per se. According to his education and his evolving social philosophy it was the responsibility of every society to encourage its people to live virtuous lives, and some groups might need more encouragement than others. Paterson openly favored the public regulation of at least one other profession, namely medicine, and he entered rather prominently into the current debate on the subject.

The state of the healing arts in the eighteenth century was not conducive to earning for doctors the confidence

of the public. Only a small percentage of the practicing physicians had ever received training beyond apprenticeship, and "quacks, montebanks, and midwives practiced 'physick' alongside trained doctors."⁵⁹ In his undergraduate commonplace book Paterson had laid it down "as a maxim, that when a nation abounds with physicians it grows thin of people."⁶⁰ The founding of the first American medical school in 1765 and the establishment in 1766 of the Medical Society of New Jersey, the first of its kind in America, were signs of an increasing concern with professionalism, but there were still problems very disturbing to the public mind.⁶¹

One medical problem that was continually a concern in colonial America was smallpox. When Paterson wrote to Aaron Burr who was staying at Elizabethtown, he expressed surprise that his friend had chosen to remain in that place for any length of time. Paterson was so convinced that the atmosphere of Elizabethtown might lead to smallpox infection that he always drove "thro' Eliz-town as quickly as possible, lest the soft infection should steal upon me, or I should take it in with the very air I breathe."⁶² But Paterson's concern about the disease and the behavior of the physicians of the province went far beyond this, especially in regard to the controversy over inoculation as a preventative for the disease.⁶³

The process of inoculation--or variolation as it was often called--was a new one in the eighteenth century, and many doubted its effectiveness. The process consisted of placing pus from "the pustules of a smallpox victim into an incision or puncture in the skin of a healthy person." The infection that resulted usually remained mild and the chances of survival were good. However the person inoculated actually contracted the disease, and while it was mild for him, he could pass on a full-blown case to anyone with whom he came into contact. Some doctors were very careful in instructing their patients to remain at home and in effect quarantine themselves while the infection ran its course, but others allowed inoculated patients to carry on ordinary lives while their cure progressed. There is no doubt that, in this manner, doctors who practiced inoculation actually spread the disease.⁶⁴

Paterson harbored some very superstitious notions on medicine, including the curious idea that listening to certain music (presumably not the same music that endangered morals) was the only curative to people "bitten by the tarantula."⁶⁵ He saw the practice of inoculation as very dangerous to the community at large. "Beware of Doctors," he wrote boldly, and beseeched the people of his neighborhood to take his warnings seriously.⁶⁶ Physicians, in his mind, were

far more interested in their own income than in the health and well-being of the community (the same charges against which he defended lawyers). He even claimed to have knowledge of a conspiracy among doctors to spread smallpox throughout the community. "The doctors," he stated, "have scented their snuff boxes with the smallpox," and "with quite a modish air" offered to pass them from person to person in company. Paterson explained that since in the cases which he had observed all of those present had already had the disease and therefore could not contract it again, he had simply passed the box and warned his friends "with shrugs and expressive looks" to do the same. But he later repented not speaking up when two elderly women suffered bad reactions (one "flew upwards" with a "whizzing in her brain" and another was "seized with a most violent fit of laughter").⁶⁷ He even charged Dr. Barnet of Elizabethtown, with whom he had exchanged polite correspondence, along with another physician of having "done all in their power to introduce the smallpox among us, which otherwise never would have made its way into this remote corner of the province."⁶⁸ Obviously the qualifications and activities of New Jersey's doctors required careful regulation.

In this connection Paterson again saw portents of the incipient dissolution of society. In the same paragraph

in which he detailed the threat which doctors presented to "his majesty's good people of these parts," he suggested that the spread of smallpox "warns us of our approaching dissolution." And when the smallpox situation got even worse, he referred to "some of the most elderly and sagest women (whose opinion is much to be regarded in matters physical as well as ecclesiastik [sic])."

A certain set of men will, I know, laugh at the observation and call it the freak of a disordered brain; but for my part I freely declare, that I wholly agree with these old matrons, and look upon this spreading disorder to be as ominous to the full as the oversetting of a saltseller, the dreaming about a clergyman, or the howling of a dog.⁶⁹

Driven to the point where even the absurd seemed to make sense, Paterson went on to compare the situation with one of the previous year in which "a comet or blazing star" was sighted.

Those who are skilled in matters of this nature, (one of whom without vanity I count myself) looked upon it as a token of some terrible disaster, or sudden revolution in the lower world; such as the fall of a statesman, the death of a king, or the degradation of a field-preacher.⁷⁰

Paterson was able to clear his mind of superstitious notions long enough in 1771 to join his father and others in a petition at the New Jersey Assembly begging the passage of a law to regulate the practice of medicine.⁷¹ When the legislature complied the following year with the requests

of this and many other petitions, the act was hailed as a very progressive step in the progress of the medical profession.⁷² In the end his hopes to encourage regulation of doctors and his desire to keep the legal profession free from similar controls were each satisfied.

While Paterson's early career cannot have appeared very successful even to himself, it had provided him with some experience and enough exposure so that when it came time to choose those who would sit in the councils of rebellion he was considered eligible by his colleagues and the people. He had reinforced his belief in the concept of a fundamental law and found new evidence for his social philosophy which appended moral degeneracy and general decline. Although at times his thinking exhibited the superstitiousness of an old woman, he had also shown a capacity to assume a leadership role in the preservation of the best interests of his profession and his community. His early career and experiences placed him in a position from which he could be propelled by the Revolution into prominence and fortune.

FOOTNOTES, CHAPTER II

¹James Madison to Richard Paterson, April 3, 1770, James Madison Collection, PUL.

²After graduating Paterson had correspondence with most of these men. See below.

³[On Friendship], n.d., college composition folder, Box 1, Paterson Collection, PUL.

⁴William Paterson to Josiah Stoddard, October 26, 1767; to Theodore Romeyn, August 14, 1770; to Luther Martin, June 2, 1769; to John Woodhull, August 1, 1769; to Samuel Tucker, April 30, 1770; to Robert Ogden, Jr., May 18, 1769, original letterbook, Box 1, Paterson Collection, PUL.

⁵William Paterson to Hosea Hulbert, October 5, 1772, Gratz Collection, HSP. This letter describes some of Paterson's attempts to keep in touch with his friends.

⁶William Paterson to John MacPherson, January 26, 1767; May 11, 1767; November 16, 1768; January 27, 1769; May 23, 1767 and July 30, 1767, original letterbook, Box 1, Paterson Collection, PUL.

⁷William Paterson to John MacPherson, January 17, 1767, original letterbook, Box 1, Paterson Collection, PUL.

⁸John MacPherson to William Paterson, November 16, 1767, William Hornar Collection, HSP.

⁹William Paterson to John MacPherson, August 5, 1767; October 7, 1767; July 31, 1768; February 15, 1769 and passim, original letterbook, Box 1, Paterson Collection, PUL.

¹⁰William Paterson to John MacPherson, July 31, 1767, original letterbook, Box 1, Paterson Collection, PUL.

¹¹William Paterson to John MacPherson, July 31, 1768 and May 21, 1767, original letterbook, Box 1, Paterson Collection, PUL.

¹²William Paterson to John MacPherson, July 31, 1768; original letterbook, Box 1, Paterson Collection, PUL.

¹³John MacPherson to William Paterson, January 17, 1768; May 23, 1770; August 4, 1768 and April 9, 1769, William Hornar Collection, HSP.

¹⁴William Paterson to John MacPherson, May 7, 1768, original letterbook, Box 1, Paterson Collection, PUL.

¹⁵Merrill Jensen, The Founding of a Nation: A History of the American Revolution, 1763-1776 (New York, 1968), pp. 363-64.

¹⁶John MacPherson to William Paterson, May 23, 1770, William Hornar Collection, HSP.

¹⁷John MacPherson to William Paterson, July 24, 1770, William Hornar Collection, HSP.

¹⁸Jensen, Founding of a Nation, p. 366.

¹⁹William Paterson to John MacPherson, July 27, 1770 and July 30, 1770, original letterbook, Box 1, Paterson Collection, PUL.

²⁰William Paterson, to John MacPherson, November 12, 1771, original letterbook, Box 1, Paterson Collection, PUL.

²¹C. R. Williams, The Cliosophic Society (New York, 1919), pp. 1-3; James Beam, The American Whig Society (Princeton, 1933), pp. 7-12.

²²C. R. Williams, The Cliosophic Society, pp. 3-6 and passim. The term "cliosophic" was derived from Paterson's 1763 graduation speech, "A Cliosophic Oration," where he created the composite word from a Greek root spelled in English as it sounded in Greek and meaning "an oration in praise of wisdom," Beam, The American Whig Society, pp. 39-41.

²³[Skit on Literary Composition], n.d., college composition folder, Box 1, Paterson Collection, PUL.

²⁴W. Jay Mills, ed., Glimpses of Colonial Society and the Life at Princeton College 1766-1773 (New York, 1903), pp. 109-26.

²⁵"Monthly Declamation," [4 pages], n.d.; and "Monthly Declamation," [2 pages], n.d., college composition folder, Box 1, Paterson Collection, PUL.

²⁶[Oration on the Degeneracy of the Times], n.d., political essays folder, Box 1, Paterson Collection, PUL.

²⁷"On Musick," dated January 1773, college composition folder, Box 1, Paterson Collection, PUL.

²⁸See Chapter III below.

²⁹[Address Before the Cliosophic Society on the Anniversary of Its Founding], n.d., college composition folder, Box 1, Paterson Collection, PUL.

³⁰Quoted in Charles F. Mullet, Fundamental Law and the American Revolution, 1760-1776 (New York, 1939), p. 8.

³¹Richard B. Morris, "Legalism versus Revolutionary Doctrine in New England," New England Quarterly, Vol. IV (1931), pp. 195-215. See also E. S. Corwin, The "Higher Law" Background of American Constitutional Law (Ithaca, New York, 1955).

³²George Athan Billias, ed., Law and Authority in Colonial America (Barre, Massachusetts, 1965), pp. XII-XIV and passim. See also Mullet, Fundamental Law and the American Revolution, passim.

³³[Is It Legal to Kill A Tyrant?], n.d., Paterson Papers, LC. Paterson also made note of the same principle in his college commonplace book, Box 1, Paterson Collection, PUL.

³⁴Stockton's house, in which he also kept his office, is now the Governor's mansion of the State of New Jersey.

³⁵[On Study], n.d., college composition folder, Box 1, Paterson Collection, PUL.

³⁶William Paterson to John MacPherson, November 16, 1768 and July 26, 1769, original letterbook, Box 1, Paterson Collection, PUL.

³⁷[King v. Lord Stirling], legal brief in Paterson's hand, dated November 1768, General Mss. Misc., PUL.

³⁸In matters relating to Paterson's legal training and career as a lawyer I have relied heavily upon the work of Richard Haskett, "William Paterson, Counsellor at Law" (unpublished Ph.D. dissertation, Princeton University, 1952). His careful analysis of the county court records in the area where Paterson did most of his legal work in these early years is the basis for his conclusion that Paterson's early career was not very successful. Paterson's cases in Hunterdon and Somerset Counties and his cases before the Supreme Court of the Province totaled up to:

1769	2 cases
1770	4 cases
1771	9 cases
1772	4 cases
1773	5 cases
1774	6 cases
1775	15 cases (nine of which were representing his father)

See Haskett, "William Paterson, Attorney General of New Jersey: Public Office and Private Profit in the American Revolution," William and Mary Quarterly, third series, Vol. VII (1950), pp. 33-34.

³⁹William Paterson to John MacPherson, July 27, 1770 and July 30, 1770, original letterbook, Box 1, Paterson Collection, PUL.

⁴⁰William Paterson to Edward Paterson, January 2, 1770, original letterbook, Box 1, Paterson Collection, PUL.

⁴¹Certificate of Appointment as Surrogate of the Province of New Jersey, August 1, 1769, General Mss. Misc. Oversize, PUL.

⁴²William Paterson account book, Box 1, Paterson Collection, PUL. See also Haskett, "Village Clerk and Country Lawyer: William Paterson's Legal Experience, 1763-1772," PNJHS, Vol. 66 (1948), pp. 164-68.

⁴³William Paterson to John MacPherson, September 15, 1773, original letterbook, Box 1, Paterson Collection, PUL.

⁴⁴See Haskett, "Village Clerk and Country Lawyer," and Chapter IV below.

⁴⁵Dunlap's Pennsylvania Packet, January 30, 1775, quoted in NJA, first series, XXXI, pp. 46-47.

⁴⁶For a detailed description of this affair see Haskett, "William Paterson Counsellor at Law," pp. 78-83. Haskett concludes of Paterson's legal maneuver: "if not precisely fraudulent, this affair does have an unpleasant air about it." p. 82n.

⁴⁷See below Chapter IV.

⁴⁸For a discussion of the protest against the Stamp Act in New Jersey see Donald L. Kemmerer, Path to Freedom: The Struggle for Self Government in New Jersey, 1703-1776 (Princeton, 1940), pp. 285-91. A more detailed account can be found in Larry R. Gerlach, "Revolution or Independence? New Jersey 1760-1776" (unpublished Ph.D. dissertation, Rutgers, 1968), pp. 270-91.

⁴⁹Kemmerer, Path to Freedom, pp. 278-282.

⁵⁰William Paterson to Luther Martin, June 2, 1769, original letterbook, Box 1, Paterson Collection, PUL.

⁵¹Leonard Lundin, Cockpit of the Revolution: The War for Independence in New Jersey (Princeton, 1940), pp. 57-8.

⁵²Gerlach, "Revolution or Independence,": p. 403.

⁵³Gerlach, "Revolution or Independence," pp.85-86.

⁵⁴Lundin, Cockpit of the Revolution, p. 65.

⁵⁵Greene, Revolutionary Generation, p. 86.

⁵⁶[On the Clamor Against Lawyers], n.d., political essays folder, Box 1, Paterson Collection, PUL.

57 Ibid.

58 Gerlach, "Revolution or Independence," p. 86.

59 Lester King, The Medical World of the Eighteenth Century (Chicago, 1958), p. 3, Chapters I and II passim.

60 Commonplace book, Box 1, Paterson Collection, PUL.

61 Fred B. Rogers and A. Reasoner Sayre, The Healing Art: A History of the Medical Society of New Jersey (Trenton, 1966), pp. 1-27.

62 William Paterson to Aaron Burr, October 26, 1772, original letterbook, Box 1, Paterson Collection, PUL.

63 For a general description of the long and drawn out controversy see John Duffy, Epidemics in Colonial America (Baton Rouge, Louisiana, 1953), pp. 16-113 passim.

64 King, Medical World of the Eighteenth Century, pp. 320-25. For a contemporary account that is more detailed in its description see Larry R. Gerlach, "Smallpox Inoculation in Colonial New Jersey: A Contemporary Account," Rutgers University Library Journal, Vol. XXXI (1967), pp. 21-28. See also Richard Shryock, Medicine and Society in America: 1660-1860 (New York, 1960).

65 "On Musick," dated January 1773, college composition folder, Box 1, Paterson Collection, PUL.

66 "Beware of Doctors," n.d., college composition folder, Box 1, Paterson Collection, PUL.

67 Ibid., and "On Doctors," n.d., college composition folder, Box 1, Paterson Collection, PUL.

68 [On Doctors], n.d., Paterson Papers, LC.

69 Ibid.

70 Ibid.

⁷¹Petition to Regulate the Practitioners of Medicine (addressed to William Franklin, Governor), dated 1771, signed by William Paterson, Richard Paterson and 14 others, 1939 Calendar No. 47, NJSL.

⁷²Rogers and Reasoner, The Healing Art, pp. 32-34.

CHAPTER III

THE IDEOLOGICAL ORIGINS OF THE REVOLUTION IN NEW JERSEY

While New Jersey has long been called the "Cockpit of the Revolution" and the praises of the tea burners of Greenwich have long been sung, the fact remains that New Jersey's decision to join her sister colonies in seceding from the British Empire was a step she undertook with considerable trepidation. In the words of one most recent scholar, New Jersey's decision to follow "the path from colony to state was primarily, but not exclusively, a matter of following the leaders."¹

With no staple product, no major ocean ports and no frontier, New Jersey was primarily agricultural and felt less than other colonies the hardships from Parliament's legislation after 1763. With no newspapers, no large centers of population, no stable political factions, and considerable ethnic and religious diversity, vehicles for colony-wide political organization were few. Much of the colony's energy in the years between 1763 and 1775 was

spent in solving internal problems of varying magnitude: disputes between the proprietors of East and West Jersey; the 1768 robbery of the Provincial Treasury; the antics of John Hatton, corrupt collector of Salem-Cohancy; and the popular agitation for regulation of lawyers and physicians. But still New Jersey did mount resistance to each of Parliament's attempts to forge a new imperial policy, and she did secede in 1776--even if the posture of New York and Pennsylvania upon whom she had become economically dependent left her little choice but to go along.² This new understanding of New Jersey's role as a satellite to more powerful colonies in the decision for independence--however disappointing it may be to sons and daughters of Jersey's patriots--represents a new level of historical understanding. What it fails to comprehend and adequately explain is the intense ideological commitment of individual revolutionary leaders of the state such as William Paterson.³

Although Paterson had observed at close hand the development of the pre-Revolutionary crises, he seems not to have become personally involved in it until 1774 or 1775. For example while Paterson studied law in Princeton in the summer of 1765, Richard Stockton, his teacher, played an influential role in shaping New Jersey's response to the Stamp Act. Concern that failure to participate in the

upcoming Stamp Act Congress would make New Jersey "look like a speckled bird" among her sister colonies led Stockton to write Assembly Speaker Robert Ogden and beg for reconsideration of the decision made by New Jersey's representatives to restrict their protest to simply petitioning as an individual colony. Stockton suggested that not to send delegates to the New York meeting would "say implicitly that we think it [the Stamp Act] no oppression." Apparently aware of some risk to his reputation, Stockton who was supreme court justice and member of the governor's council asked Ogden to burn the letter after "reading it over twice and considering it maturely."⁴ Soon an extraordinary and unofficial meeting of the assembly was held in a Perth Amboy tavern and three delegates were bound for New York. New Jersey lawyers subsequently supported the province's resistance to the stamp duties by refusing to do court business from November 1 until the following April.⁵

Later in 1770, when Paterson's law clerk friend John MacPherson wrote to him from Philadelphia describing a meeting which passed angry resolves against the merchants of New York for setting aside non-importation, Paterson answered that he wished he had been there, not because he had any great concern with either the issue of the tea tax or maintaining colonial solidarity against Parliament, but

to hear one of their mutual friends "play the orator." His letter went on with pleasantries from Swift on eloquence and "fluency of speech."⁶ In a 1772 letter to MacPherson, Paterson declared his opposition to the establishment of an American episcopate. "I am satisfied," he explained, "that in the colonies, few of the Church of England, except those who are stiled High-Fliers, espouse the cause,"⁷ but he also doubted that the Dissenters, who were "so jealous of each other" would be able to unite to petition against it. His hope was that "those Reverend Fathers will find full employment at home without intermeddling in the politicks [sic] of America."⁸ But in all of Paterson's writings up till 1774-75 allusions to American politics were exceedingly rare, and there was no sign of personal resolve on Paterson's part to resist the decisions of the British government.

Paterson was an ambitious young attorney who intended to make his mark in the world, but until this point in his life the larger realities of imperial politics and provincial economics had meant little to him. There were no stable political parties in the province with which he could associate and further his ambitions, and he was not likely to join in popular protests of those debt ridden farmers who were suffering not because of Parliament's callousness, but because of their own "high living, riot or sensuality."⁹

Although by 1776 he would become the dynamic attorney general of a revolutionary government seeking practical solutions to perplexing political problems, he had shown little previous interest in these tangible or material issues. Rather he became a prime spokesman of the intellectual justifications for the Revolution in New Jersey. As the pressure of events developing out of Boston's tea party propelled the colony toward rebellion, Paterson drew together the maxims of history and moral philosophy to which he had subscribed since his first years at the College of New Jersey, and fashioned from them a rationale for the Revolution based more upon metaphysical and spiritual principles than upon political or economic interests.

The intellectual sources of this metaphysical orientation toward the Revolution were natural elements in the education that Paterson and his contemporaries had received. The lessons of whig history, for example, seemed unmistakable to educated Americans in the 1770's. These chroniclers of the British past had characteristically defended the rights of Parliament against the encroaching powers of the crown. They traced British history back to before the Norman Conquest and found in Tacitus' description of the Saxon way of life a golden age of political liberty that had been destroyed by the Conquest and only partially restored by the Magna

Carta. These were the ideas that had supported the Puritan Revolution of the 1640's, and were continued--albeit underground--during the restoration of the monarchy. The Glorious Revolution of 1688 appeared to some whig historians to be the full reconstruction of the original Saxon liberty, but others cautioned against lassitude and criticized what they saw as growing corruption within the system that was more of a sign of weakness than 1688 was a sign of strength.⁹

Whig history taught the Americans to be proud of their British heritage, not so much because of its military exploits or naval superiority, but because of its political perfection and moral virtue. The political perfection was symbolized by the "balanced constitution" which maintained a constant equilibrium among the forces of society that otherwise would pervert the government to their own selfish interests. The moral virtue of the British stood in their desire to maintain, and if necessary reestablish, a relatively uncorrupt system in which the government created to serve the people could complete its tasks. According to the whig historians who were so avidly read and studied in America, the balanced constitution and the virtuous society had to be preserved at all costs.¹¹

As a student in Princeton Paterson and his classmates had studied and carefully digested the works of such whig

historians as Hume, Smollet, Rapin and Rollins, but he had also paid careful attention to the insights he gleaned from the history and philosophy of the ancients. To many Americans the mid-eighteenth century became a neo-classical age. Constant references can be found to classical authors in the writings of American patriots, many of whom adopted the names of ancient republican heroes as pseudonyms.¹² The lessons they learned from the Greeks and Romans--or more often from modern translations and commentaries--were applied to almost every problem of eighteenth century life. Polybius wrote of the balanced constitution, an ideal which through some mysterious good fortune the British had managed to achieve. The relation of Greek and Roman colonies to their parent states was exceedingly pertinent to current Anglo-American conflicts: those colonies were independent "in everything except sentiment and loyalty." And in their classical studies Americans found further support for the idea of a law of nature "which took precedence over any man-made legislation."¹³ Moreover, it was apparent to those of the eighteenth century that effeminacy, luxury and moral degeneracy had ruined Greece and Rome; and the desire to establish in America "the doctrine of simplicity and frugality found in the ancient republics," was a natural outgrowth of classical studies. To British colonial readers,

who were already watching fearfully for signs of corruption and decline, "the accounts of ancient Greece and Rome told of contending liberty and tyranny, in which tyranny prevailed and the empire disintegrated."¹⁴ The colonists did not want to suffer the same fate, and cognizant of the failure of their classical brothers, they hoped they stood a better chance of defending their liberties.

But then again, to men of the eighteenth century hoping was not enough; they were used to praying too. Although this religious orientation toward the Revolution was central to the thought of eighteenth century Americans, historians have until recently paid little attention to it in the rush to establish motives of profit or political power. This is not to say that self-serving motives could not exist side-by-side with more altruistic and spiritual ones, but clergymen and laymen alike were deeply influenced by religious beliefs. The revolutionary potential of Puritanism was well remembered by Englishmen and Americans. Since the earliest settlements in New England, Puritans had watched for omens of God's approval or displeasure. They were very conscious of the decline of orthodoxy in their commonwealth and fearful of the consequences. At first they looked for signs of divine retribution in physical afflictions--a drought, an epidemic, an earthquake, but with growing

sophistication they began to perceive God's displeasure not in catastrophes of nature but in human venality wrought by an increasingly materialistic and affluent society. "Hard-heartedness, security, sloth, sensuality,... formality, hypocrisy--these took the place of caterpillars, shipwrecks, mildew, and the more visible 'tokens of God's displeasure'."¹⁵

Especially after the Great Awakening, New Light Presbyterian sermons, many by ministers trained at Princeton, tended in the same direction. But now the evangelical Calvinist, wherever he preached, presented "political sermons [that] were not vindications of action already taken but encouragement to further endeavor on the part of the populace." Jeremiads against luxury and moral degeneracy were heard from dissenting pulpits everywhere, and the treacheries of the imperial administration were seen as signals of divine disapproval.¹⁶ A particularly good example of this can be found in John Witherspoon's pastoral letter sent in June 1775 to all Presbyterian congregations in the Synod of New York and Philadelphia. Witherspoon advised the faithful to support the Continental Congress and urged them to purify their lives "if possible to prevent his [God's] vengeance by unfeigned repentance."¹⁷ There resulted "the wonderful fusion of political doctrine with the traditional rite of self-abasement," which together became "a dynamo for

generating action."¹⁸ While rationalism alone may have provided justification enough for the leaders of the independence movement and the authors of the Declaration, the assurance that they fought for a victory that had been determined by providence was essential to generate revolutionary energy among many of the followers.¹⁹

The final and most comprehensive source of the intellectual stimulus to revolt came from eighteenth century rationalism. It was characterized by the attempt to create a science of society similar to the science of nature. If man was a natural being and all natural beings had natural rules under which they were to function, it was obvious that there must be natural laws for men as well, and that a society which aspired to virtue must incorporate these natural or fundamental laws into its system. The political philosophers of the period adhered to this formula almost to a man.²⁰ As one of the many Americans who chose to become a lawyer, Paterson found further support for this idea of a fundamental law in his professional studies and experience as a young attorney.²¹ And in the whig histories which he studied the British constitution was seen as a protector of rights (which were natural) that had to be kept secure against the encroachments of political power (which was contrived and had to be carefully defined). "It seemed to be a peculiar moment in

history," it has been observed,

when all knowledge coincided, when classical antiquity, Christian theology, English empiricism, and European rationalism could all be linked. Thus Josiah Quincy, like other Americans could without any sense of incongruity cite Rosseau, Plutarch, Blackstone, and a seventeenth-century Puritan all on the same page.²²

William Paterson had absorbed the lessons to be learned through each of these spiritual and intellectual channels. Although he played no active role in the crises building up to 1774-1776, he was continually reinforcing in his mind the philosophy he would finally espouse. Before and after his graduation from Princeton, in essays and orations (many to be presented before Princeton's Cliosophic Society), Paterson had developed such themes as the justness of tyrannicide under the fundamental law, the effeminacy and dissoluteness of modern manners, and the moral decline of British society and institutions.²³ The news of Parliament's Intolerable Acts, the firm posture of New Jersey's colonial neighbors and the unalterable policies of the Empire reduced the alternatives for many Jerseymen to a simple choice between slavery or independence. At this point Paterson was prepared to assemble the various elements of his metaphysical conscience and to share his thoughts with others who were trying to decide which way to turn.

Some time before the spring of 1775, Paterson made

his personal decision to support the colonial cause and began to pull together his philosophy. It is impossible to determine at precisely what point in time Paterson's "conversion" came, but he did leave, written in his own hand, the text of an "Address on the Rise and Decline of Nations" in which he fully expounded his revolutionary cosmology. Although the specific audience to which he presented the Address is unknown, we do know that he spoke most often before his brothers of the Cliosophic Society. This, plus the didactic tone which the Address at times assumes--the same tone he often adopted before his friends at Princeton--suggests that it was probably presented there.²⁴ The Address is extraordinary in that in its ten pages the lessons of whig history, the classics and eighteenth century rationalism are all woven together into a single argument that at times takes on itself the spirit of a Calvinistic jeremiad. In the Address Paterson shows how even some of the provincial issues of the preceding decade which of themselves would never have led to rebellion, contributed to the attitudes and emotions of 1776. It remains the fullest exposition which can be found of the ideological origins of the Revolution in New Jersey.

"The rise and fall of empires compose the most curious and interesting part of history," Paterson began.

But the record of decline afforded more instructive lessons than that of national beginnings which were usually, in fact, pure myth. Like the "writers of ancient [sic] Greece and Rome," who dealt in idle fictions and "preposterous fables" about the origins of their own states; writers who described the early history of England through the "traditions of the vulgar, the songs of the druids, the fables of canonized monks" were unworthy of regard. Every legend, "however groundless, that tended to please national vanity was dwelt upon with rapture," and even accounts that were at first "founded in truth were so worked up and coloured by the pencil of fiction" that they were now useless to the critical observer. "They may aid the flights of the poet," Paterson continued, "but [they] degrade the dignity of the historian; they may decorate the pages of the former, but they debase those of the latter."²⁵

With a characteristic blend of rationalism and Calvinistic belief, Paterson turned to the decline of empires: "though the existence of a state cannot be prolonged beyond the decree of heaven, yet its dissolution may in general be accounted for by natural means." Subscribing to the then common organic theory of politics, he explained that the causes of decline were inherent in every state:

Physicians tell us, that from our birth there is some peccant humour in the body, which gradually increases, and at length brings on its dissolution: so in the body politick [sic]; the principles of death are interwoven in the very frame and texture of every political establishment.

Invariably some "dead-doing principle" would creep in without the early symptoms being recognized to secretly debilitate and eventually destroy the government. And still worse, whenever a nation reached its crisis stage "men of a pestilential turn" always arose to satisfy their own interests and "urge on the ruin" of the nation as a whole. "Like vultures they hover, to prey upon and devour it."

To illustrate his point Paterson turned to the example of Great Britain. In a state like the British with its limited government, he explained, the way to keep the internal elements of destruction from taking over was to preserve the balance of the constitution, and "not to suffer the smallest encroachment, as it will be an inlet to tyranny." He attacked in no uncertain terms the "shallow politicians and pretending patriots" who clamored about maintaining "the balance of power among neighboring and independent states," but at the same time struggled to destroy the balance within the state for their own objectives. It mattered not at all to him if the balance were upset in order to increase the privileges of the king or those of the people, for "the first introduces despotism and the latter anarchy, which

generally ends in the tyranny of a single person." Paterson propounded as "eternal truth,

that all faction tends to tyranny; history evinces, that, whichsoever party prevail, the people are sure to be oppressed... [because] every party does more or less take humour, prejudice and passion for principle, and therefore the interest of a party and that of a state is for the most part totally different.

Totally detestable then, "were those princes and men, who espouse or create a party in order to disunite the people." "Princes of this cast" could be found in the experiences of modern nations as well as in the annals of ancient history. They "always have some iniquitous scheme in view: they hope perhaps amidst the shock of contending parties to effect what otherwise they could not." The reference to George III and his attempts to buy the support of a party in Parliament and subvert the constitution was unmistakable.

The elucidation of this theme brought Paterson to the body of his Address and the explanation of the first of nine "marks of declension" within a state: when

grievances though complained of and abuses though petitioned against, remain unredressed; when public defaulters, though accused, and ministers though impeached, pass unchastized and even unnoticed.

A case such as this was an indication that one party had become so powerful that it "may deviate most grossly from the known rule of law, and make the most terrible inroads upon the constitution, with impunity." In the tradition

of whig politics, Paterson saw it as the responsibility of the people to remain extremely vigilant and, by petitioning and using the press or whatever means necessary, "to restrain those in power... and in general to make them walk in the track prescribed by law."

Jerseymen did not have to look far to find examples of the failure of the imperial administration to consider seriously their petitions and grievances. Their petitions against the Stamp Act had been answered after considerable and often violent agitation; and their resolves and protests against the Townshend duties (New Jersey upheld non-importation until both New York and Philadelphia had faltered in their resolve) had been at least partially successful. But on the matter that most directly affected New Jersey's economy--the ban on paper money laws--the British had refused to budge. When a 1768 loan office bill which was passed by the New Jersey Assembly with considerable pressure from the countryside was disallowed because of its legal tender provision, the act was rewritten to require that the certificates would only have to be accepted in payment of debts at the loan office that issued them. But the British Privy Council disallowed even that provision--although they had approved similar formulas for Maryland and Pennsylvania. To Jerseymen the Privy Council's action was seen as so

senseless and arbitrary an act that even Governor Franklin wrote Secretary Hillsborough to complain of its unreasonableness.²⁶ In 1770 the Assembly tried to bring pressure by refusing to arrange for the provisioning of the King's troops. This method had worked for New York, but now Hillsborough held firm and eventually had the troops removed from New Jersey rather than give in to the colony's pressure. Finally, in 1775, faced with the rising storm of rebellion, the London government did consent to a £100,000 issue of New Jersey bills of credit,²⁷ but by that time British intransigence on an issue so crucial to Jersey farmers and debtors had helped to poison the imperial relationship.

Paterson severely criticized ministers who broke in upon the constitution, in however a trifling way, "to serve a present expedient, or to supply a present exigency."

They do it perhaps to procure ease and quiet from some pressing disturbance, perhaps to rid themselves of an instant perplexity, or to allay the tumult and clamour of a vexatious and unreasonable populace.

But once a decision is made to breach the constitution "one encroachment naturally leads to another, till at length the civil establishment is wholly overthrown." Paterson assured his audience that "ministers are too frequently led to this capital error as might be shewn [sic] by a number of instances." His not specifying them suggests an assumption

that recent experiences with British ministers were all too fresh in American memories.

Evil and designing ministers could progress in their schemes only if the public let down its guard. Paterson underlined as his next symptom of decline that "Slavery is generally preceded by sleep". All history confirms, that times of imaginary security are commonly times of the greatest danger." He thought that nations like Britain that "hath freedom to lose" should be especially vigilant, and he seemed to chastize his countrymen who were less concerned about the activities of their king and his ministers as he emphasized the "appearance of fatality when a people are at ease and thoughtless, inattentive to the conduct of their rulers, and sunk, as it were, into langour, and a state of insuperable lethargy." Continuing, Paterson described how

An artful prince, abetted by a set of obsequious dependents, generally prepossesses the people in his favor, and does everything in his power to beguile them into a belief of their security, and indeed fairly to lay them asleep. His first acts of oppression wear the semblance of law; he breaks in upon their privileges little by little, and is extremely cautious to clothe everything he does in the venerable garb of legal authority.... Danger is then imminent when the appearance of justice is maintained. The form of law is made use of merely to destroy the substance.

George III had proudly proclaimed himself as a constitutional

monarch, but, as Paterson knew, he was notorious for using Parliament to achieve his personal ends.²⁸

Years before Paterson had shown his capacity for conspiratorial paranoia by claiming that doctors were purposely spreading smallpox by means of their snuff boxes in hopes of infecting the neighborhood and increasing their fees.²⁹ Now he was hypothesizing a premeditated design (to use the term from the Declaration of Independence), carried out over a number of years, to lay low the British Constitution. Any threat to the constitution was in Paterson's view a serious challenge to the well-being of the nation; but ordinarily, when the oppression was undisguised, it "shocked the public eye" into recognizing the danger. If, however, the menace was hidden so that the people continued in "imagined security," the peril was much greater. The belief that an intrigue against the constitution was being perpetrated in the highest circles of the British government was not an uncommon one in the 1770's.³⁰ But with a fantastic piece of circuitous reasoning, Paterson was suggesting that at least one indication for the existence of conspiracy was the absence of any real evidence for one.

"Another most deadly symptom" which Paterson recognized existed "when a standing army is regularly kept

up in times of profoundest peace." Paterson must have been aware of the inconveniences of the British practice of quartering troops among the people. His boyhood village of Princeton, halfway between the two larger towns of Trenton and New Brunswick on the main road from Philadelphia to New York, was regularly called upon to quarter troops. Citizens complained bitterly of the inconvenience when "families with not more than one room" were required "to entertain sometimes ten, twelve or fifteen soldiers."³¹ But in 1758 barracks were built in several locations around the province, and the soldiers were no further inconvenienced. In fact their presence often brought money into the community so that the quartering of troops might be seen "as an economic windfall not a hardship for New Jersey."³² There were a few instances of soldiers brawling with each other or damaging property, but nothing comparable to the troubles of Massachusetts. In fact, when the very regiment that was primarily responsible for the massacre in Boston was transferred to New Jersey, the troops were accepted like any others, and were commended for their behavior when they moved on in 1771.³³

Nonetheless, Paterson continued to fear a standing army as a matter of principle. "Were the present race of Britons like their ancestors of old, or the antient [sic]

Romans," he explained, "a standing army would not wear so terrible an aspect." In old England as in the Early Roman republic, only citizens with property had been allowed to become soldiers, so that they would be more likely to fight for glory or the public good rather than selfish gain. No longer a citizen army, soldiery was now the province of "mercenaries and hired troops."

When the mass of common soldiers are made up of persons of no property, and profligate manners, and abandoned principles; when too they conceive themselves as a distinct body within a state, and look upon the interests of the people as opposed to their own; who can think of so mercenary or graceless a crew in any other light than as tools of oppression, and instruments in the hands of an enterprising spirit to work out the ruin of a state?

Even though the experience of New Jersey with royal soldiers had been uneventful, Paterson rejected the inimical principle of standing armies.

Next in his catalog of "dead-doing principles" Paterson listed an unequal distribution of wealth. "The excessive opulence of some and extreme poverty of others" encouraged "perpetual clamour and discord." Classical example again provided evidence to support his view: "a community of goods was established at Sparta, and an equal distribution of land at Rome." The result had been "sufficient to make a nation happy, powerful and great." Every individual defended the nation with equal vigor "as the

interest of every individual was seen as the same." Whig theorists had always cherished the traditional British population base of small independent farmers who would unlikely be swayed in their public mindedness by men of wealth or pretended superiority. Now Paterson was suggesting that like many declining states in the annals of history, eighteenth century American society was suffering from an unfortunate inequality of wealth.

Recent historical studies support his contention that there was considerable social and economic distance between the rich and the poor, and they also suggest that instead of getting better the situation was in fact becoming more stratified. It has been established that eighteenth century observers who warned of a growing tendency for the rich and the poor to progressively outnumber those of "middling wealth" were substantially correct. There seemed to be a mad scramble for the marks of social respectability, the aspiration heightened by the realization that as provincial society became more complex the avenues of upward social mobility were increasingly difficult to traverse.³⁴ Paterson had shown an avid interest in bettering his own social position, ingratiating himself with certain college friends partially at least on the likelihood of their later high station, and adopting a superior air of mature sobriety

towards the more flamboyant fun-seeking of his college contemporaries. But he also detested the "solemn fops," the "coxcombs" and other pretenders to social superiority whenever he saw them around him. This apparent paradox was, according to recent scholarship, common to many of Paterson's contemporaries.³⁵ It suggests that even before the Revolution some were disquieted by the ambiguous definition of equality that has perennially plagued American idealists.

Paterson was not worried about wealth for its own sake. Wealth, after all, enabled men to better educate themselves for public service. He had noted in his college commonplace book years before that "Knowledge and virtue, and a more eminent degree of service to God and man, ought to be the distinctive character of the rich and the great."³⁶ But society would benefit, he thought, if no individual was so rich and powerful or so poor and defenseless that the temptation might arise to prefer self-interest to the public good. It was especially when their wealth tended them toward idleness, luxury and selfishness that Paterson saw overly rich men as inimical to the general will.

Paterson would return at the end of his Address for a full discussion of the problem of aristocratic luxury and moral degeneration. Meanwhile he listed as a fifth symptom of decline the

multiplicity of laws.... [which] swelled to an enormous bulk, and multiplied to an almost endless variety have a natural tendency to elude justice, introduce chicanery, and keep up a spirit of contention.... When laws are too numerous or complicated, or, if they do not err on this score, too vague and obscure, a spirit of litigation will seize upon every class of people, and render life vexatious and troublesome.

America. was renowned for its "spirit of litigation," and some citizens of New Jersey had more than once blamed attorneys who used the intricacies of the law to increase their fees and unnecessarily harass unfortunate debtors. Paterson had defended lawyers against these charges, and one of his most fruitful enterprises in the years following the Revolution would be his updating, systematizing and simplifying of the laws of New Jersey.³⁷ But responsible lawyers and revised laws notwithstanding, the state would suffer immeasurably if the offices of public trust were not filled with men of integrity and unimpeachable public-mindedness. It was natural then for him to see it as just as fatal when

the execution of the laws is entrusted to persons, who are grossly ignorant, and conceited, as well as notoriously partial, needy and dependent. Perhaps all officers, but especially such as preside in courts of justice, ought to be independent equally of the king and the people: of the first for the sake of liberty; of the latter for the sake of prerogative.

Right now Paterson was most concerned with independence from royal control. The issue of the independence of

colonial judges had been a hard fought one for years; for Paterson it was another example of the king's attempts to subvert the balance in the constitution. America had known some exceedingly corrupt and self-serving public officials since 1763--the "customs racketeers" of Boston being perhaps the worst of them. But New Jersey had had its experience with corrupt officials as well. The historian who has in recent years most closely studied pre-revolutionary New Jersey has observed that "For many New Jerseyans.... the incompetency and dishonesty...." of corrupt and venal minor officers of the crown "was perhaps a greater source of alienation from Great Britain than the exactions of the Stamp Act and the Townshend duties combined."³⁸

Another "evident token of degeneracy and ruin" could be found "when the bulk of the persons in the nation are anxious of being rich rather than great." The public good, the general will, virtue--Paterson had used each of these terms to describe the unselfish spirit that he thought necessary to all strong and vigorous nations. But Paterson claimed that "an immoderate desire of gain" led to a situation where "patriotism, one of the most noble of affections, gradually declines, and at last wholly dies away."³⁹ As Paterson saw it, when men who were interested primarily in personal wealth were fortunate to find that "the public good happens to run in with the spirit of selfishness, then indeed

they assume the garb of patriotism, and are uncommonly active and clamorous, zealous and violent." But if personal and public interest come into competition "then the happiness of the nation is wholly disregarded...." States too, he thought, could be guilty of thirsting for "universal dominion" in which they sacrificed the quality of their institutions for vastly increased material wealth and power.

The Romans aimed at universal despotism seized upon all, and the grasp was ruin.... Oh that kingdoms would grow wise by the example of others, and learn that great and rapid accessions of power do for the most part denote a great and rapid ruin.

In order to preserve the happiness and liberties of their people, states had to prolong their existence and protect themselves from external dangers. War, however, was a very dangerous business and could presage the internal degeneracy of the nation in a number of ways.

If they [nations] take up arms, (which at times is inevitable,) it should be on the best motives, and for the justest cause. For war however successfully carried on insensibly exhausts a nation, and endangers its destruction: war interrupts the course of trade, depopulates the country, relaxes the force of laws, and what is still worse, imperceptibly brings on corruption of manners.

Moving from the general to the specific example of Britain Paterson related some of the recent difficulties that had been faced by the colonies due to the mother country's penchant for war.

A rapid succession of expensive wars, arising chiefly from continental connections, has, within less than a century, beget in the British government a new mischief of a terrible aspect. The national debt, the unhappy consequence of long and chargeable wars, is now swelled to an enormous sum, and must fill every breast with the most alarming apprehensions. Already its effects are severely felt; trade is burdened with heavy imposts, and taxes of every kind surprisngly increase. Look forward and a prospect still more dreadful opens to view.

As Paterson saw it, the debt was too great for there to be any hope of paying it off--national bankruptcy was inevitable. Disgrace, confusion, dissertion and ruin would be the result. The future for Britain seemed to offer little hope, but Paterson was reserving his most despairing predictions for last.

The final third of Paterson's Address was devoted to an emotional sermon-like discourse on "luxury and corruption of manners." As historical evidence for his argument, he opened with a comment on how the "doctrines of Epicurius had pernicious influence on the genius and morals of the people towards the close of the Roman republick [sic]; and perhaps tended not a little to precipitate its fall." As important a signal of societal catastrophe as it was to Paterson, he was painfully aware that everyone did not agree with him, particularly those rationalist cynics who could not perceive the moral dimensions of their own society. "It may not be amiss to observe," he wrote,

that in our own country the tribe of deists, free-thinkers, etc. have conducted mightily to bring on corruption and dissoluteness of manners. What indeed can be expected from a set of men, who look upon virtue as romantick [sic] or nominal, and zeal for religion as superstitious or idle?

His Address had been from the beginning forceful and animated. But he had saved the best for last, and now launched into a tyraid against the evil effects of luxury.

Luxury effeminates and torments the opulent, and tempts the indigent, who are destitute of the means of pleasure, to acquire them by fraud and violence. Luxury turns the brave to cowards, and the industrious to thieves. Luxury begets profusion, profusion begets want, and want begets venality and dependence. A general depravity of manners is the necessary consequence of unbounded opulence, which poisons every rank in life and generally proves the bane of affluent states. The most chargeable superfluities are considered as the necessaries of life; these grow upon us every hour, and people now-a-days cannot subsist without articles, which a few years ago were wholly unknown.

Although luxury was "dressed up as a virtue" and given names such as "taste, elegance, politeness, fashion," Paterson was convinced of its sinfulness. In the tone of a jeremiad he attacked the "contagion" which was, in a "soft and imperceptible" way, infecting the people. At the beginning "smooth and flowery," luxury and voluptuousness lulls men so that "nothing is listened to but the musick of adulation and the song of pleasure." Conscience and reflection--the hallmarks of the vigorous Calvinism that had been imbued in Paterson at Princeton--had been silenced "in the

roar of obstreperous jollity." He could only hope for a rebirth of conscience which "breaks in upon the hour of mirth, dashes the brightest joys with sorrow, and pours poison in the bowl of sensuality."

Luxury and moral degeneracy were related to each of the other marks of decline of which he had spoken. One reason for fear of a standing army had been the fear of luxury and voluptuousness in the military.⁴⁰ Temptations to a luxurious life were what led public officials in the paths of corruption. The "insuperable lethargy" he had noted could be tied to the "enfeebling lull" of luxury. These ideas were not new to Paterson; his education at Princeton had been intended to inculcate such notions. A few years earlier, when Princeton's President Witherspoon had addressed the people of the West Indies in search of students and financial support for the school, he had stressed the importance of a "prudent education," especially for "children of persons in the higher ranks of life." Wealth subjected young men to "dangerous temptation," and they had to be taught the virtues befitting those destined for public service, "the abhorrence of low riot and contempt for brutal conversation." Witherspoon had argued that the college in the countryside of New Jersey was much better suited to this than schools in Britain, where "a

constant succession and variety of intoxicating amusements, such as Balls, Concerts, Plays, Races, and others" might encourage unwholesome desires.⁴¹ Paterson, not entirely immune to the frivolities that college life did offer, had been careful to keep them under control; in any case, he subscribed fully to the proscription of luxury. At one point in the Address he borrowed the language of a talk "On Musick" he had prepared several years earlier:⁴²

Luxury lures from the path of duty, and beguiles into vice; luxury taints the morals, and vitiates the manners, sinks into weakness and effeminate softness. Luxury [like music] lulls only to enfeeble, soothes only to unnerve, and Circe-like, turns men into brutes.

Even "persons virtuously inclined...unable to resist the torrent, suffer it gently to waft them along" in the path of degeneracy. Paterson was insistent that this was "no imaginary description," and suggested that his listeners look around them for the incontrovertible evidence so that "every close and careful observer must confess its truth."

Lo! what splendid edifices, what costly furniture, what magnificent apparel, what voluptuous festivity, what luxurious banquets! The enfeebling lull of musick [sic], sprightly dances, gay gardens, splendid theatres, gilded baths, intoxicating masquerades, luxuriant tables, and publick [sic] gaming houses are now looked upon as innocent and even necessary gratifications. How often are fortunes dissipated, and health impaired in loose festivity, and luxurious enjoyments? The ladies too have their amusements, their melles, their visiting-days, their hurricanes. Day is turned into night, and night into day; all is

mirth and sport and dissipation; all distinctions are lost, and all conditions are confounded. What rapid progress hath luxury made even in these infant colonies?

Writing in 1778, David Ramsey concluded in his Oration on the Advantages of American Independence that were it not for the revolt "our frugality, industry, and simplicity of manners, would have been lost in an imitation of British extravagance, idleness and false refinements."⁴³ But long before independence had been declared, Paterson had been able to identify and trace the origins of America's new and dangerously demoralizing tastes.

We tread close upon the heels of our brethren in Britain; we imitate them in dress, in manners, in equipage, in riot, in voluptuousness, in every softening pleasure and degrading vice. Infatuated Americans! so swiftly to lay hold of every luxurious habit, and so eagerly to lick up every foreign and pernicious vice. Where now is that simplicity in manners and in dress more enchanting far than the false glitter and borrowed refinements....

This intriguing, if exaggerated, picture of colonial society in the years before 1776 was not the meaningless flight of a disordered mind. Paterson's intellect was widely respected and his capacity for practical and effective leadership would soon be proven. Those who shared Paterson's fears could point to more than a few historic precedents. If they associated luxury with the more wealthy elements of American society, as did Paterson, they would have feared with him the increasing concentration

on both ends of the American economic spectrum. There was a likelihood that luxury would breed more luxury, but the most frightening possibility for still more corruption infecting America was threatened by those who wanted to establish in the colonies a nobility on the old world model.

Even before the Stamp Act crisis, Governor Bernard of Massachusetts had suggested the establishment of a formal nobility in America. It seemed to Bernard and others that the creation of some titled aristocrats in America would be the only practical way to give the upper houses of the provincial legislatures the prestige they needed in the political climate of America where so much popular attention was paid to the lower houses.⁴⁴ In New Jersey too there were problems that brought to mind the most galling practices of feudal nobles. A controversy raged in the Pennsylvania Gazette in January and February of 1770, following the publication of a letter by a Jersey farmer. The letter complained of the damages caused by Philadelphia's "haughty gentry" who trampled the fields of farmers while fox hunting.⁴⁵ As late as 1775 Sir John Dalrymple wrote his Address of the People of England to the Inhabitants of America trying to soothe Americans who felt the English "assumed airs of superiority." Dalrymple insisted that every honor of England was open to Americans and suggested that "we [the

British] would be happy to see you ask the establishment of a Nobility, and of ranks among yourselves."⁴⁶ Paterson had already listed as a sign of weakness the inequal distribution of wealth. To translate an already dangerous de facto aristocracy of wealth and talent into a formal nobility of the European kind would undermine any chances of America achieving its full potential as a virtuous society.⁴⁷

In the words of one recent scholar, "Americans were repeatedly told that they represented the last outpost of English freedom, that they were the last sentinels of English virtue."⁴⁸ The idea that America was a "city on a hill" with a peculiar opportunity to achieve as near as possible political and social perfection had come with the earliest Puritan colonists. Paterson was capable of similar utopian sentiments. Summoning up the picture of a pastoral arcadia where simple virtues persistently won out over scheming self-interest and corruption, Paterson seemed to look forward to the Jeffersonian image of a society of yeoman farmers whose very simplicity and lack of social pretension were marks of their own integrity and the nation's virtue. America was thought to have a unique opportunity to carry these dreams into reality. Europeans looked upon the inhabitants of America as living in close approximation to a state of nature, uncorrupted by social or political contrivances

as entrenched as their own. But now it seemed to many Americans that the evils were rapidly increasing, and worse still, they seemed to be abetted by a British conspiracy to spread immorality and aristocracy across the Atlantic. The view of America as a "city on a hill" may have indeed encouraged the idea of a conspiracy against it. The English connection had been good, it had after all given them the blessings of the British Constitution, but now the constitution was being destroyed. It appeared to many Americans that if they had any hope of achieving their utopia of virtue, they must break with the British who were too far gone for thorough redemption.⁴⁹

Paterson asked his audience a series of rhetorical questions:

Is not a nation far gone in luxury and on the verge of ruin, when places [in Parliament] are made merchandise and merely bought and sold, when most things are carried by a bare majority often procured by little arts, when electors 'give up their dirty souls for pay,' and when in short corruption is reduced to a system? Is not a nation far gone in luxury, when crowds of prostitutes set themselves up for sale, when the land swarms with spies and parasites and sycophants, when nothing is sought for but wealth to sate avarice, and titles to sate vanity. Is it not an evident token of degeneracy and mark of declension, when pensions are bestowed undeservedly, and taxes multiplied unnecessarily, merely to keep up a number of obsequious dependents, or a legion of rascally taxgatherers [sic]? When trade is fettered with severe restrictions, when the people groan under an enormous national debt, when selfishness, venality, and licentiousness universally prevail, is not the prospect terrible, has it not an appearance of fatality?

Time was short and becoming shorter, for "swarms of pensionary vultures are hourly increasing, and prey upon the vitals of the Constitution." For them all things were "base and venal," and "so far from having the virtues, they have not even the vices of great men."

To conclude he turned again to the ancient past to "let Rome, let Athens, let Sparta speak." The same sort of luxury and corruption had helped Cyrus to conquer the Assyrians, given Persia to Alexander, and enabled "Atilla, with his tribe of undisciplined barbarians, to lay the western empire" low. "Lo! Caesar mounted on luxury, triumphed over the liberties of his country, poured desolation, like a rapid torrent, over half the globe, and swam in Roman blood." In ringing tones Paterson assured his fellow Americans that, ideologically at least, the odds were on their side: "All history declares, that the dissolute, the voluptuous, and effeminate have ever been subdued by the hardy, the temperate and the brave."

Beliefs as firm as these were the kind of stimuli that led many men to risk their lives, their fortunes and their sacred honor in the name of their country. The intellectual movement toward revolution represented more than a legalistic debate on the definition of the empire or the power of Parliament within it. At times it became an intense

emotional experience which involved feelings of responsibility toward God and hopes for the very nature of mankind. Paterson had not himself been involved in the Anglo-American controversies developing before 1774 or 1775, but now things were coming together for him. With Paterson, as with many other future revolutionaries, the cumulative effect of a number of issues had great influence in the months immediately prior to independence.⁵⁰

We should not rule out material objectives. A young, ambitious, but as yet not-very-successful lawyer would have been foolish to speak out early in such radical terms when he might depend on people of the other cast for much needed business. He may also have been able to foresee the opportunities that the Revolution would provide him for career and fortune, though it is unlikely that his sights would have been set as high as he was in fact able to rise.⁵¹

Paterson's "Address on the Rise and Decline of Nations" has a tone far more militant and uncompromising than any of his earlier statements. The words take on a frenzied almost frantic quality that his letters, essays or speeches had never had before and would seldom have again. Paterson's perception of political events and his interpretation of what constituted political virtue were to change as time passed and he assumed different personal and

professional positions. When he became a well-to-do lawyer representing aristocratic landowners and powerful creditors, he spoke more frequently about sanctity of property being one of the prominent hallmarks of a virtuous republican state.⁵² And when he became a thorough-going Federalist supreme court judge freely enforcing the Sedition Act against Jeffersonian newspapers, he could see them as engines of faction which worked against the public good.⁵³ One aspect of republican ideology appeared more threatened at one time than another, and his interpretation was adapted to new circumstances and unforeseen events, but his steadfast belief in the basic principles of republicanism he set down before the Revolution was never shaken.

The pattern of revolutionary ideas could give significance to issues that in practical terms were of little importance. New Jersey had experienced no special inconvenience from the presence of British troops after 1763, but the generalized fear of standing armies that was supported by the warnings of whig authors could be very important in the minds of potential revolutionaries. There may only have been 1,000 communicants of the Church of England in New Jersey in 1775, which would have made the real threat of Anglican power indeed remote.⁵⁴ But if plans for an American Episcopate were seen as a contrivance for "high fliers" to

introduce new aristocratic institutions into the colonies, the issue might take on an entirely new light. New Jersey may have been less capable of maintaining "a viable existence outside the British Empire--i.e., as an independent state" in 1776, than Massachusetts or Rhode Island or Virginia. And this may help to explain the "reluctance, hesitancy and misgiving" some historians have found.⁵⁵ But there were other Jerseymen who had studied the annals of the ancients, applied classical lessons to the problems of their day, and ultimately concluded that the colony could no longer remain connected to an empire which "hourly" became more corrupt. The tangible issues of imperial politics, provincial economics, and the decisions of colonial neighbors were of undeniable significance, but New Jersey's Revolution had its own home-grown ideological origins as well.

FOOTNOTES, CHAPTER III

¹Lawrence R. Gerlach, "New Jersey in the Coming of the American Revolution," in New Jersey in the American Revolution: Political and Social Conflict, Papers Presented at the First Annual New Jersey History Symposium (Trenton, 1970), p. 20.

²Ibid., pp. 8-20 passim.

³The most complete study of New Jersey in the years leading up to the Revolution is Gerlach's "Revolution or Independence," but it fails to recognize the ideological dimensions of the revolt. Gerlach explains in his introduction that he has steered clear of ideological references because of methodological problems, pp. XVIII-XX, XXXIn.

⁴Richard Stockton to Robert Ogden, September 13, 1765, in PNJHS, first series, Vol. II (1846-1847), p. 149. See also Kemmerer, Path to Freedom, pp. 283-86.

⁵See above Chapter II.

⁶William Paterson to John MacPherson, July 30, 1770, original letterbook, Box 1, Paterson Collection, PUL.

⁷William Paterson to John MacPherson, June 26, 1772, original letterbook, Box 1, Paterson Collection, PUL.

⁸Ibid. Paterson shared the widespread concern over aristocracy and social pretension in the English Church in America, see Carl Bridenbaugh, Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities and Politics, 1689-1775 (New York, 1962), pp. 182, 183, 213-14.

⁹[On the Clamor Against Lawyers], n.d., political essays folder, Box 1, Paterson Collection, PUL.

¹⁰Colbourn, Lamp of Experience, pp. 6-10. Such ideas were common to those men Caroline Robbins has called Seventeenth Century Commonwealthmen (Cambridge, Massachusetts, 1959).

¹¹Colbourn, *Lamp of Experience*, passim; Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Massachusetts, 1967), pp. 70-77, and passim; Lawrence Leder, *Liberty and Authority: Early American Political Ideology, 1689-1769* (Chicago, 1968), pp. 79-94. See also Pauline Maier, "The Beginnings of American Republicanism," in *The Development of a Revolutionary Mentality, Papers Presented at the First Library of Congress Symposium on the American Revolution* (Washington, D.C., 1972).

¹²See Gummere, *The American Colonial Mind and the Classical Tradition*, passim; Wood, *The Creation of the American Republic*, p. 49. Paterson's college commonplace book contains numerous examples of Paterson's interest in history and the classics, Box 1, Paterson Collection, PUL. Paterson himself adopted two classical pseudonyms for newspaper essays he wrote during the 1790's, newspaper essays, oversize, Paterson Papers, RUL.

¹³Gummere, *The American Colonial Mind and the Classical Tradition*, p. 97 and passim; Wood, *Creation of the American Republic*, pp. 49-50.

¹⁴Colbourn, *Lamp of Experience*, p. 39; Howard Mumford Jones, *O Strange New World, American Culture: The Formative Years* (New York, 1964), pp. 248-50, Chapters VII and IX passim.

¹⁵Perry Miller, *The New England Mind: From Colony to Province* (Cambridge, Massachusetts, 1953), pp. 27-28. On religion and the Revolution in New England see also Alice Baldwin, *New England Clergy and the American Revolution* (Durham, North Carolina, 1928), and Charles Akers, *Called Unto Liberty: A Life of Johnathan Mayhew* (Cambridge, Massachusetts, 1964).

¹⁶Heimert, *Religion and the American Mind* (Cambridge, Massachusetts, 1966), p. 18 and passim. See also Perry Miller, "From Covenant to Revival," in *The Role of Ideology in the American Revolution*, ed. by John R. Howe (New York, 1970), pp. 34-43; and Edmund S. Morgan, "The Puritan Ethic and the American Revolution," *William and Mary Quarterly*, third series, Vol. XXIV (1967), pp. 3-43.

¹⁷"Pastoral Letter," dated June 29, 1775, in The Works of John Witherspoon (4 vols.; Philadelphia, 1800), II, 599-603. Witherspoon elaborated: "If it is undeniable, that universal profligacy makes a nation ripe for divine judgements, and it is the natural mean to bring them to ruin, reformation of manners is of the utmost necessity in our present distress," p. 604.

¹⁸Miller, "From Covenant to Revival," pp. 41-43.

¹⁹See Nelson R. Burr, The Anglican Church in New Jersey (Philadelphia, 1954). Burr goes so far as to call the Revolution a "Religious War" and describes the Presbyterians as especially active patriots, pp. 387-91.

²⁰For the impact of Enlightenment rationalism on the Revolution see Henry Steele Commager, "America and the Enlightenment," in Development of a Revolutionary Mentality, Papers Presented at the First Library of Congress Symposium on The American Revolution (Washington, D.C., 1972), pp. 7-29; Peter Gay, "The Enlightenment," in The Comparative Approach to American History, ed. by C. Van Woodward (New York, 1968), pp. 34-46; and Bernard Bailyn, "Political Experience and Enlightenment Ideas in Eighteenth Century America," AHR, LXVII (1962), pp. 339-351.

²¹See Chapter II above.

²²Wood, Creation of the American Republic, p. 7.

²³See Chapters I and II above.

²⁴The sentiments Paterson expressed were common, at least in the college community of Princeton. The September 1775 commencement included a Latin oration entitled de luxuria, a speech on "The Nature and Pernicious Effects of Luxury," another on "The Growth and Decline of Empires," and a forensic disputation on the subject: "The Moral Duties are the same in their nature, object and obligation between societies and private persons." New York Gazetteer, October 12, 1775, in NJA, first series, Vol. XXXI, pp. 205-06.

²⁵[Address on the Rise and Decline of Nations], n.d., political essays folder, Box 1, Paterson Collection, PUL. While Paterson did not explicitly indicate the date of this Address, the topics discussed and the tone of the discourse place it near the outbreak of hostilities. The remainder of this chapter will consist primarily of analysis of this Address. Unless otherwise noted, all subsequent quotations have been drawn from it.

²⁶Kemmerer, Path to Freedom, pp. 304-06; Gerlach, "Revolution or Independence," pp. 403-09; William Franklin to Lord Hillsborough, September 29, 1770, in NJA, first series, Vol. X, pp. 200-01.

²⁷Lundin, Cockpit of the Revolution, p. 59; also see account in NJA, first series, Vol. X, pp. 549-52.

²⁸On George III and the British political scene see Louis Namier, The Structure of English Politics at the Accession of George III (Second ed., London, 1957), and his England in the Age of The American Revolution (Second ed., London, 1961); also see Richard Pares, King George III and the Politicians (Oxford, 1953).

²⁹See above Chapter II.

³⁰Bailyn, Ideological Origins, pp. 144-159 and passim.

³¹Petitions of Princeton Inhabitants, quoted in Gerlach, "Revolution or Independence," p. 140.

³²Gerlach, "Revolution or Independence," p. 159.

³³Ibid., pp. 151-163. See also John Shy, Towards Lexington: The Role of the British Army in the Coming of the American Revolution (Princeton, 1965), pp. 389-91.

³⁴Jackson Turner Main, The Social Structure of Revolutionary America (Princeton, 1965), pp. 195-96 and passim, especially Chapter V. Most of the scholarship concerning this factor of increasing stratification has concerned New England: James A. Henretta, "Economic Development and Social Structure in Colonial Boston," William and Mary Quarterly, third series, Vol. XXII (1965), pp. 75-92. Charles S. Grant, Democracy in the Connecticut Frontier Town of Kent (New York, 1961), and Kenneth Lockridge, A New England Town, The First Hundred Years: Dedham, Massachusetts, 1636-1736 (New York, 1970).

- ³⁵Wood, Creation of the American Republic, pp. 73-74.
- ³⁶Commonplace book, Box 1, Paterson Collection, PUL.
- ³⁷William Paterson, Laws of the State of New Jersey, Revised and published under the authority of the Legislature (Newark, 1800).
- ³⁸The comment was directed specifically at the activities of John Hatton in southern New Jersey. Gerlach, "Revolution or Independence," pp. 437-38. The activities of the "customs racketeers" of Boston are fully discussed in Oliver M. Dickerson, The Navigation Acts and the American Revolution (Philadelphia, 1951).
- ³⁹Gordon Wood has commented that the revolutionaries were less interested in the liberty of individuals than in the "public rights of the collective people against the supposed privileged interest of their rulers." Creation of the American Republic, p. 61.
- ⁴⁰Shy, Towards Lexington, pp. 379-80, 387, 393.
- ⁴¹Witherspoon, "Address," in Documentary History of American Education, ed. by Richard Hofstadter, Vol. I, p. 140.
- ⁴²January 1773, college composition folder, Box 1, Paterson Collection, PUL.
- ⁴³Quoted in Wood, Creation of the American Republic, p. 110.
- ⁴⁴Edmund S. Morgan and Helen M. Morgan, The Stamp Act Crisis: Prologue to Revolution (Chapel Hill, 1953), Chapter II passim; Bailyn, Ideological Origins, pp. 277-81.
- ⁴⁵Quoted in Lundin, Cockpit of the Revolution, p. 94n.
- ⁴⁶Quoted in Wood, Creation of the American Republic, p. 212.

⁴⁷For comparison and contrast of America's aristocracy with Europe's nobility in the eighteenth century see R. R. Palmer, The Age of the Democratic Revolutions (2 vols., Princeton, 1959), Vol. I, Chapters II and III, especially pp. 67-74.

⁴⁸Colbourn, Lamp of Experience, p. 181.

⁴⁹Wood, Creation of the American Republic, p. 107-08.

⁵⁰See below Chapter IV.

⁵¹See below Chapters V and VI.

⁵²See below Chapter VI.

⁵³See newspaper essays, oversize, Paterson Papers, RUL.

⁵⁴Gerlach, "Revolution or Independence," pp. XXII-XXIII.

⁵⁵Gerlach, "New Jersey in the Coming of the American Revolution," p. 14.

CHAPTER IV

THE DECISION TO REVOLT

It seems ironic that such a traditional and moralistic soul should receive his baptism in practical politics as a leader in a revolutionary war for independence, but irony is the stuff of which history is made. Paterson had made an eloquent intellectual commitment to protect America from the continuing corrupting influence of Great Britain, but he had so far declined to participate actively in the protest movement. As clear a justification as his ideological arguments presented for American independence, a complete separation from Britain was an alternative he was not yet prepared to consider. It was the rush of events in the last crisis of empire that so reduced the alternatives as to make independence the only acceptable path and to draw William Paterson into the leadership of the revolutionary movement. In taking on this new role Paterson did not sacrifice his puritanical conservatism or his passion for stability and moral order. In fact his role in the administration of

revolutionary justice would later enable him to help New Jersey become a more virtuous society--or at least a more law-abiding one. Nonetheless the decision for independence which Paterson and most of his colleagues eventually made was not the free choice of revolutionary patriots, but the grudging recognition that there was nothing else to do.

The final deterioration of the imperial relationship began when news of the passage of the Boston Port Bill reached Massachusetts on May 10, 1774. Before three days had passed the Boston town meeting had resolved to stop all import and export trade with England and the West Indies, and directed Sam Adams to inform the other colonies of their action. In virginia, after declaring June 1 (the day the Port Bill became effective), a "day of fasting, humiliation and prayer," the Burgesses found their House dissolved by Governor and Council. Adjourning to Williamsburg's Raleigh Tavern, they resolved to boycott tea and communicate with the committees of correspondence of other provinces about calling a congress of all the colonies. By August a convention of Virginians had vowed absolute non-importation and a stop to all exports to England (including tobacco) unless the grievances raised by the Intolerable Acts were soon redressed.¹ But support for such uncompromising economic retaliation was not forthcoming from other colonies. In

New York and Philadelphia there was a considerable distrust of Boston's merchants and opposition to proposals for an embargo, and in Boston itself a large faction was desirous of paying for the tea to settle their troubles. Finally, Adams agreed to follow the suggestions for a congress that were coming from every corner of the colonies; and in a chamber locked so that the Governor's order to dissolve could not be heard, the Massachusetts Assembly selected delegates and set the date for the First Continental Congress in Philadelphia.²

New Jersey's colonial legislature had not been in session when news of the Port Bill and the other "intolerable" measures arrived. Mass meetings were held in eleven of New Jersey's thirteen counties to condemn the new British regulations and to vow support for beleaguered Boston. A colony-wide meeting at New Brunswick (July 21-23) chose a delegation to go to Philadelphia and selected a new provincial committee of correspondence.³ While Jerseymen waited anxiously for news of the Continental Congress, many were brought closer to a feeling of involvement and intercolonial fidelity as they sent provisions for the relief of Boston, lest she be forced by the British blockade to submit to Parliament.⁴ The Continental Congress met in September, and soon local watch committees and county committees of

correspondence were springing up everywhere to enforce the Continental Association against trade with Britain that had been agreed upon at Philadelphia.⁵

To this point, while the resistance to the intolerable acts was overwhelming,⁶ there as yet had been no serious talk of independence in New Jersey. A few such as Jonathan Elmer, later Paterson's colleague in the Senate of the United States, were already speaking in terms of "slavery or independence."⁷ But most Jerseymen were, like Paterson, still far from seeing things in such black and white terms. In fact, moderate and conservative colonists went along with economic sanctions as peaceful alternatives to unwanted violence.⁸ If Paterson played an active role in any of the mass meetings or organization of local committees, no evidence of it has survived. Paterson's only intimate experience with colonial protest had been during the 1769 popular clamor against lawyers and, in that instance, he had described the protestors as propertyless rabble unfairly rebuking an entire respectable profession for the sins of a few.⁹ Such rabble were hardly the type of people he would now seek to associate with. He had never been very interested in extra-legal resistance to imperial regulations, and even the events of the winter of 1774-75 were not of a sort to draw him in. The current protests over Parliament's

latest inequities had not gone much beyond the non-impotiation agreements of a few years earlier. Moreover, Paterson had a reputation to protect. Even if he had thought that this new turn in imperial affairs called for his active opposition to British rule, a young man trying to make a place for himself in the ranks of New Jersey's established legal profession might ruin any chances for success if he were to be marked as one of a small radical minority.

With other Jerseymen of mixed sentiments Paterson was content to await the decisions of the Second Continental Congress scheduled for May 1775. But the quiet Jersey springtime was shattered by the thunderclap from Lexington and Concord. Spontaneously the local committees which had for months been readying themselves were galvanized into action.¹⁰ Now moderates and conservates who abhorred violence found their alternatives considerably reduced, and radicals were reinforced in their beliefs. "Gunpowder is a great equalizer," observes Edmund S. Morgan, "and after the Americans had matched their muskets against the British, they were more confident than before in denying the authority of Parliament."¹¹

Not knowing what to expect, local militia companies across the Province put themselves in trim. In Paterson's Somerset County a volunteer company was organized and drilling

became an everyday procedure.¹² In other areas of the Colony overzealous patriots had to be restrained from shedding the blood of local Tories or striking out aimlessly at symbols of British authority. Within hours after the news of Lexington and Concord reached Princeton on April 24, a meeting had produced a circular letter calling for an extra-legal Provincial Congress to be held as soon as possible. The proposal was well received, the date was set for May 23, and all eyes turned to the meeting of this first full fledged Provincial Congress within the colony.¹³

Amidst the flurry of political and military activity, Paterson was moved as well. He had previously written of how standing armies represented "military vengeance" hanging "over the heads of the people, like a sword, that threatened them with extermination at a single blow."¹⁴ Now the blow had been struck. There was no need to worry about being singled out as a troublemaker either. After April 1775 the number of prestigious men involved in colonial protest swelled continuously. His own friend and teacher Richard Stockton was active, and soon men as respected as Rev. John Witherspoon would be loudly demanding independence. When the freeholders of Somerset County met at the county courthouse on May 11, 1775, Paterson was among them. The meeting resolved:

that the several steps taken by the British Ministry to enslave the American Colonies and especially the late alarming hostilities commenced by the Troops under General Gage against the inhabitants of Massachusetts Bay loudly call on the people of this Province to determine what part they will act in this situation of affairs.¹⁵

The part Paterson was to act was decided when, after an hour adjournment, he was chosen by secret ballot to be a deputy to the upcoming Provincial Congress.¹⁶

Were it not for the extraordinary events going on around him, Paterson's introduction to practical politics might have been very different, but in this critical situation his was to be a baptism of fire. As the deputies began to queue up and present their credentials it became clear that the Somerset delegation was among the largest¹⁷ and most influential. Hendrick Fisher, chosen President of the Assembly, and Jonathan Dickinson Sergeant who became Secretary, were each from Somerset. Sergeant, a lawyer and Princeton graduate, subsequently chose two other young Somerset attorneys with Princeton backgrounds to be his Assistant Secretaries. His nominees, William Paterson and Frederick Frelinghuysen, were promptly approved by the delegates.¹⁸ A few days later Sergeant stepped down from his post and Paterson was moved up to take his place, leaving Frelinghuysen the lone Assistant.¹⁹ The care with which he had cultivated his friendships and groomed his reputation

had paid off. Before he could have realized what had happened, the young lawyer who had previously played no active role in the politics of protest had become an officer of the extra-legal congress which was soon to become New Jersey's revolutionary government.

Before taking any concrete action the assembled representatives proclaimed their "profoundest veneration for the person and family of George III," and professed "all due allegiance to his rightful authority and government." But without pause for further reflection they voted approval of the Continental Congress and congratulated the Provincial Legislature for having done the same.²⁰ They hesitated to go ahead with their work of organizing the colony without suggestions from the Continental Congress, which was sitting at Philadelphia, but when no guidelines were forthcoming the Provincial Congress set out on its own. First they adopted a provincial association or oath of allegiance. The spilling of blood had hardened the line between supporters of the administration of the empire and its critics, but some formal means was needed to identify those individuals who might seek to undermine the patriot's cause. Through the county and local committees the inhabitants of the province over the following months were asked to sign the association which spoke in terms of an "arbitrary design" by the British

and proclaimed the abhorrence of "slavery" (presumably to Parliament). They might ardently wish for reconciliation, but subscribers swore to

personally, and as far as our influence extends, endeavor to support and carry into execution whatever measures may be recommended by the Continental and our Provincial Congress, for defending our Constitution, and preserving the same inviolate.²¹

Fearing a breakdown of orderly local administration, the congress further asked Jerseymen to

associate and agree, as far as shall be consistent with the measures adopted for the preservation of American freedom, to support the magistrates and other civil officers in the execution of their duty, agreeable to the laws of this colony...firmly determined, by all means in our power, to guard against those disorders and confusions to which the peculiar circumstances of the times may expose us.²²

Those who refused to sign the association left themselves open to action by the congress, the committees, or the local patriots.

By June 3 the congress had moved on to formulate a plan for setting the militia on a ready footing. Secretary Paterson carefully recorded the purpose of their instructions: "that due obedience be paid to officers, and strict attention observed in learning the military exercise." Where militia activity had begun in earnest (in Morris, Sussex, and Somerset) the companies were congratulated "for their zeal in the common cause." Regulations

instructed the other counties quickly to follow suit so that every township or corporation would have at least one company and be sure that drills were held regularly each month if not more often. Then, to meet the financial needs of the county committees, the delegates agreed to raise £10,000 from the inhabitants of the colony and apportioned shares to the respective counties. Representatives of the township committees were ordered to break down the appropriate shares for each individual and collect the tax. Finally a new Committee of Correspondence was chosen with authority to reconvene the Provincial Congress, and the session adjourned.²³

As Paterson traveled home to Raritan he must have pondered the significance of his new position and wondered what could transpire next. If he had any doubts about the reports from Massachusetts they were soon completely dispelled by the news of the valiant American defense of Bunker Hill overlooking Boston where the Americans had inflicted over 1,000 casualties on the British in a single day (June 17).²⁴ Meanwhile the Continental Congress had taken over the patriot force besieging Boston as a Continental army and sent George Washington to command it. John Dickinson, with whom Paterson's old friend MacPherson had been so closely associated, won support for his Olive Branch Petition, and the Continental Congress agreed to send it to England.

But they also made significant steps toward establishing themselves as a regularly functioning governmental body by agreeing to issue \$2 million in bills of credit, empowering commissioners to make treaties with the Indians, and establishing a Post Office Department under Benjamin Franklin.²⁵

Probably as important as any of these events in influencing Paterson's commitment to the revolutionary cause was John Witherspoon's "Pastoral Letter," which was read on June 29 to the assembled Presbyterian congregations from New York to Philadelphia. Invoking the protection of God for soldiers in the name of liberty could only reinforce the commitment of men like Paterson who saw their religious belief and their social philosophy as two sides of the same coin.²⁶

When the delegates to the Provincial Congress reassembled on August 5, they were prepared to follow the example of the Continental Congress and proceed to take over more of the functions of the legally constituted legislature. Paterson was again sitting as Secretary. First in order of business was to instruct the county committees to deliver to the congress the names of those delinquent in paying their share of the £10,000 tax and those who refused to sign the association. The assessors and collectors, it was decided, should be paid the same salary as the officers of the

provincial government who fulfilled the same tasks.²⁷

The most important business to be completed by this session was to establish a system of regular elections. The delegates thought it was especially important that the people have frequent opportunities to renew their support for the work of the congress since increased taxes and further military preparations appeared inevitable. Therefore it was decided that on September 21, 1775, and on the third Thursday of every September "during the continuance of the present unhappy disputes between Great Britain and America," elections would be held for the Provincial Congress and the county committees of observation and correspondence. The township committees were to be chosen each March.²⁸ Hereby the Provincial Congress put everyone on notice of their intention to supplant the colonial legislature and assume the governing authority in the colony. By regularizing the establishment of the county and local committees they were organizing the several levels of a revolutionary government. There was, however, no attempt to revolutionize procedure. Elections were to be held in the same manner as provincial elections had always been held, and anyone qualified to vote for the colonial assembly could participate.

Once the electoral machinery was set the delegates moved on to more prosaic but no less important business.

They promulgated a series of specific militia regulations which required all able-bodied men between sixteen and fifty to join their local company and set the amounts to be paid for service exemption and as fines for failing to appear on muster day. Quakers were exempted from military service, but they were expected to perform "all other services...consistent with their religious profession." Jonathan Dickinson Sergeant was made Treasurer with the responsibility to receive the tax monies as they came in. A Committee of Safety was formed so that there would be some patriotic authority in the colony even when the congress was not in session. Finally the delegates referred complaints of price gouging to the Committee of Safety for action and adjourned.²⁹

New Jersey's First Provincial Congress had completed its tasks. Unlike the previous extra-legal gatherings of Jersey patriots, the congress had taken significant steps toward assuming the government of the province. The colonists feared what might happen if a vacuum of authority developed and their new provisions for taxing, electing representatives, organizing the militia, and supervising the activities of local administration were seen as required pre-conditions for repudiating the authority of the Governor and his assembly. Paterson's role as Secretary of the congress was not an easy one. Perhaps Sergeant realized this when he resigned in

Paterson's favor after only a few days of service. The Secretary was relied upon to carefully record the minutes of each meeting, keep track of delegate attendance, and maintain all the official correspondence of the congress with the Continental Congress, the other colonial governments, and the county committees. The amount of paperwork must have been unpleasant to the young man who had been moved to such frustration by the chore of copying advertisements a few years earlier.³⁰ It was a laborious and thankless job that others were unwilling to assume, but it did give Paterson an extraordinary opportunity to become known and respected. It also put him in a position where his future career, indeed his future life, depended upon the success of the American cause. His name was affixed to every pronouncement of the Provincial Congress. If the King's troops were able to destroy the revolutionary forces and begin to seek out those guilty of leading the treasonous rabble, Paterson's name would be high upon their list.

The King had already proclaimed the American colonies to be in open rebellion (August 23), but the vagaries of eighteenth century communications kept this news from reaching America until early November. Meanwhile, elections had been held in New Jersey and the newly chosen Second Provincial Congress had met. Somerset County, which had chosen nine

delegates the previous May, now sent only three: and Paterson was not among them.³¹ This should not be seen as a relaxation of his commitment. It is evident that the press of personal business influenced Paterson not to seek re-election. The leaders of the Congress who had hoped to retain him as Secretary (even as a non-delegate) heard from a member who had spoken to Paterson and reported that "his [Paterson's] business and circumstances would by no means admit of his associating as Secretary."³² Certainly the largest part of his activity at this time must have been devoted to solving his father's financial problems, but he remained active in Somerset's continuing military preparations as well.³³ John Carey was chosen to take over the secretary's chores for the three and one half week session. The responsibilities of the office were strenuous in the First Congress; they became even more challenging as the Second Congress took on more and more of the business of governing the Province. Carey found the job too much to handle along with his other responsibilities as a delegate, and when the next session was called to order at the beginning of February 1776, he was pleased to hand the office back to Paterson.³⁴ The press of personal business had eased, and Paterson was again able to devote his time and energy to furthering his fledgling political career.

The session of the Provincial Congress Paterson missed had been relatively uneventful. But in Philadelphia there were new developments. James Dickinson, long a conservative and conciliatory influence in the Continental Congress, had embarked upon a campaign to undermine those who were tending the congress toward a decision for independence. His native Pennsylvania, Delaware, and subsequently Maryland responded by instructing their delegates in Philadelphia to oppose independence at all costs. The result was to point up in bold terms the divisions that continued to exist within the Continental Congress.³⁵ New Jersey became associated with the Dickinson group when, by what turned out to be the final meeting of the legally constituted Provincial Assembly convened at Burlington in November 1775, its delegates in Philadelphia were instructed "utterly to reject" any bid for independence. Encouraged by the Privy Council's approval of their most recent paper money bill and a few petitions against independence, Governor Franklin was almost able to convince the Assembly to send its own petition to the king. But the emissaries who were quickly dispatched from Philadelphia to change the mind of the Assembly had the desired effect, and the Continental Congress, anxious to maintain the appearance of solidarity abroad even if they were deeply split from within, was spared the embarrassment that Franklin had nearly carried off.³⁶

From this point until February 1776, when Paterson joined the second session of the Second Provincial Congress, political opinions polarized dramatically. Soon Governor Franklin found himself under house arrest while Attorney General Cortlandt Skinner was forced to flee because a packet of their incriminating letters had been conveniently intercepted.³⁷ In England Parliament had passed the Prohibitory Act (December 22) which set the royal navy loose against American ships as if they were enemies and outlaws in a manner Merrill Jensen has described as "legalized piracy." And the negotiations had begun to hire Hessian mercenaries to quell the American rebels. The Continental Congress had directed an unsuccessful attack against the British at Quebec, had authorized the creation of an American navy, and had appointed a committee to seek support from America's friends abroad. Also important in the development of independency was the publication of Tom Paine's Common Sense, just weeks before the Provincial Congress reconvened.³⁸ To be sure, there were also private and personal motivations behind the decisions of many Americans to continue in support of the movement which became more and more revolutionary. If Paterson was aware of it, the knowledge that his bosom friend and confidant John MacPherson had fallen at Quebec might have helped dispel any lingering doubts he may have

had about standing firm in the face of British intransigence.³⁹ However, while pressure of unfolding events and arguments like Paine's made radicals more convinced of their righteousness, conservatives became more fearful than ever before.

Within the next few months it became obvious to more and more colonists that, as distasteful as the idea may have appeared a year before, a war for independence was the only alternative to total subjection to Parliament. New Jersey's Provincial Congress was called back into session by its Committee of Safety to answer the demands of the Continental Congress for a new battallion of troops and for more effective internal security and communications. Paterson was again the secretary and the manuscript minutes that remain are written in his firm clear hand.⁴⁰ The Provincial Congress met through February 1776, as rumors spread that the British might abandon their positions in Boston and occupy New York. Detachments of Jersey minutemen "equal to a battallion in the Continental service" were sent to help build fortifications in the neighboring colony, and the official records and treasury funds stored in Perth Amboy were removed for safe-keeping. In its single most important act the Provincial Congress resolved to extend the franchise to "every person of full age, who hath immediately preceded the election, resided one whole year in any county of

this colony, and is worth at least fifty pounds in real or personal estate." Here was a significant liberalization of the election laws which had long adhered strictly to suffrage by freeholders alone.⁴¹ To give the newly enfranchised voters an opportunity to exercise their privilege, the election of a new Provincial Congress was planned for the fourth Monday in May, even though the election law did not call for one until the following September.⁴² Aware that the threat of war was close at hand, the delegates felt out of touch with the stream of events which seemed to be coming too fast for them to readily respond. They found "the measures of the British ministry [to be] uncertain, extraordinary, and new almost every week." The situation appeared out of control, at least as far as the Provincial Congress of New Jersey was concerned. With this in mind on March 2 they revised the instructions of their representatives in the Continental Congress to allow them "to pursue such measures as you may judge most beneficial for public good of all the Colonies," and adjourned.⁴³

The new instructions superseded the orders of the previous November which categorically rejected independence, but most people in New Jersey were still unwilling to see the tie with Britain cut. A considerable number would remain loyal to the crown in any case. Many found it hard to justify

a far-reaching and irrevocable step when they had not personally felt the effects of Parliament's economic legislation or the intimidating presence of British troops. Others, Paterson among them, could comprehend the tyranny of British legislation, the treachery of her military threat, and the insidious moral corruption Paterson had so eloquently described, but they were deterred by other considerations from reaching the ultimate conclusion of independence. Particularly, there was the frightening prospect of a war for independence turning into a social revolution. Such fears were not unique to Jersey men. They were shared by a class of men in every colony who were also motivated partly by self-interest, and John Dickinson and others were eloquently defending their interests in Philadelphia.⁴⁴ Paterson had long recognized the dangers of internal revolution; and although he seemed to think a republican form of government would serve America better than the British monarchy, the obvious dangers that would be imposed by the transition from one to the other were enough to terrify him. Paterson remembered his history. He had, for example, studied and carefully digested the history of the Puritan Revolution. In that case "a few moderate men sought only to ascertain the liberties of the nation," but others wanted "an utter extirpation of hierarchy and monarchical government." This

latter group had "at first concealed their designs under the profession of rigid Presbyterianism" only later to reveal their true intentions of leveling the traditional institutions of British society and politics.⁴⁵ Prudent men could not help but fear that factions of self-serving Americans might seek to capitalize upon the troubles of their country as had the British levelers only a little over a century before.

Notwithstanding the relative quiescence of New Jersey's population the colony was inexorably swept into the decision for independence. This was partly the result of anxiety stirred by the preparations in New York for imminent invasion, and partly due to pressure brought upon them by the Continental Congress to formally constitute their new government.⁴⁶ Then too there was the realization that the decision for or against independence did not really belong to Jersey-men. Dependent as she was upon stronger neighboring colonies, New Jersey was bound to act as a satellite, and as they moved toward independence New Jersey was irresistibly swept along.⁴⁷

In the final analysis however, New Jersey was carried into the Revolution because the new Third Provincial Congress, which sent the sympathetic delegation to Philadelphia, approved the Declaration of Independence, and wrote the

constitution for the new state, was considerably more whiggish than the population at large--and William Pater-son was a leader of this newly chosen congress. Why the results of the May elections were so unrepresentative is not difficult to ascertain. Weeks before the election was held it became clear that the vote would be a referendum on independence. The Continental Congress had proclaimed America's ports open to the ships of the world, and on May 10 had instructed those colonies that had not yet done so to set up a government so that every kind of government under the Crown "should be totally suppressed and all the powers of government exerted, under the authority of the people of the colonies."⁴⁸ Some spokesmen for independence boldly made their appeals, but only a few tories saw fit to risk the ire of their neighbors by denouncing the radicals. One citizen of Somerset County reported that the election gave the tories an opportunity to "parade their troops," whose "appearance in some Counties was formidable."⁴⁹ Yet, even though suffrage requirements had been relaxed in response to popular petitions, when election day arrived, only a relatively small number of votes were cast. The vote was overwhelmingly for known whigs.⁵⁰ Perhaps the small turnout was due to the fact that there were open whig-tory contests in only a few counties. It has been suggested that most

voters stayed home feeling that a whig victory was a foregone conclusion.⁵¹ But it is also likely that many chose the path of prudence and refrained from identifying themselves as moderates or Tories by exercising their viva-voce right in the emotionally charged atmosphere of May 1776. A few months later these timid Tories, emboldened by the presence of the British in New York, would plunge New Jersey into a civil war.

William Paterson was one of the more moderate Whigs chosen by Somerset County to sit in the Third Provincial Congress that later became the Convention of New Jersey. There were extremists too. John Witherspoon, outspoken advocate of independence, was present, and on the other side of the issue were several delegates from Bergen and Monmouth who would defend the authority of the King and Governor William Franklin to the end. But the uncertainty and hesitation of men like Paterson set the tone for the Congress. This was the body that would commit New Jersey to independence, but it did so with none of the dogmatic determination that one might expect of a revolutionary assembly. In fact, the Third Provincial Congress was a rather passive body that was often influenced by external pressures in making what nonetheless remain memorable decisions. They took the steps necessary to assure New Jersey's role in the

independence movement, but they did so reluctantly, and they had to be pushed every bit of the way.

The first few meetings of the congress which convened in Burlington on June 10 were given over to ordinary business. Paterson was unanimously chosen secretary and Samuel Tucker was elected chairman. Resolutions from the Continental Congress were read and studied. Then on June 12 came a test vote. An obstructionist minority introduced a motion to require two-thirds of the deputies to constitute a quorum. Paterson joined the majority of 41 to 15 in voting down the proposal which set the pattern for future decisions (the votes would never again be even as close as this).⁵² The relative unanimity of their voting, however, did not encourage the congress to take precipitous or radical steps. They more often than not waited until decisions had been made for them.

The first really significant business they undertook was forced upon them by Governor William Franklin. This devoted servant of the King had tenaciously clung to the thread of royal authority while his colleagues in other colonies and even his own Attorney General had been forced to abdicate and flee.⁵³ Now he had summoned the colonial legislature to meet on June 20 in Perth Amboy, nearby to Staten Island where the recently dispatched Royal Peace

Commission was to be headquartered.⁵⁴ Over the past months the Provincial Congress had assumed the powers of the governor and his legislators in almost every particular, and they had done so without the necessity of an open confrontation. Now that the governor was throwing down a direct challenge to its authority, the congress had no choice but to act. On June 14 they voted 38 to 11 that Franklin's order to the legislature to convene "ought not to be obeyed." Then, on the following day, they took a series of steps to keep the governor from interfering further in their affairs. First, by a vote of 41 to 10 he was declared to be in "direct contempt and violation of the resolve of the Continental Congress" which had called for the suppression of all vestiges of royal government. By 42 to 10 they agreed that he was "an enemy of the liberties of this country; and that measures ought to be immediately taken for securing" his person. And, in a final act of ingratitude, they voted 47 to 3 to cut off his salary.⁵⁵

These charges were forthright and strong, but the congress hoped that Franklin would peacefully submit. One needs only to imagine what the patriots of Virginia would have done to Governor Dunmore if they could have laid hands on him in June 1776, to appreciate the kid gloves with which

the Jersey congress handled Franklin. Col. Nathan Heard was ordered to carry out "the necessary business" of securing the person of the Governor with all "delicacy and tenderness." But Franklin refused to sign the parole that would have left him "on his honour," and Heard had no choice but to place him under armed guard. The congress, now forced to take further action, ordered Heard to bring Franklin to Burlington and appealed to the Continental Congress to arrange for the ex-Governor to be moved to another colony where he "would be capable of doing less mischief." On June 20 the reply of the Continental Congress was received. If upon examining the prisoner the delegates were convinced that "he should be confined," an arrangement would be made to move him to another colony. The next morning Franklin was brought before the assembly, and again he made it impossible for his judges to be lenient, this time by refusing to answer their questions and denying their authority. In the end the congress grudgingly declared him "a virulent enemy" and placed him under guard until the Continental Congress arranged for him to be moved--eventually to Connecticut.⁵⁶ This was a crucial step in bringing New Jersey into the ranks of independency, and it was forced upon them by Franklin's intransigence.

Earlier that week the Congress had appointed Friday

the 21st as the day on which they would consider the propriety of setting up their own government (according to the instructions from Philadelphia) and choose a new delegation to represent New Jersey in the Continental Congress. The arrest of the governor the same day set the stage for what would be the most critical day in New Jersey's movement toward independence. Petitions had been coming in since the congress first met, and a number of them had argued against independence. One which had been printed in the New York newspapers was signed by 900 New Jersey freeholders, and some whig leaders still voiced their disapproval of independence, at least until the people had spoken unequivocally.⁵⁷ But the petitions read on the afternoon of June 21 "praying that the government of the Province of New Jersey may not be changed," fell upon hollow ears. Now that the governor's office, the last vestige of royal authority, had been destroyed, some new pattern of government was absolutely necessary. If there was anything that Pater-son and his colleagues feared more than despotism from Great Britain it was anarchy at home. The decision "that a govern-ment be formed to regulate the internal police of this Colony" was made by a vote of 54 to 3. New Jersey's reluctant revolutionaries had voted overwhelmingly to take another step toward independence, but the step actually reflected a

conservative inclination. Like their conservative fellow patriots in the Continental Congress, who once independence became likely argued that a system of confederation and government be formalized first, the New Jersey leaders were trying desperately to keep some semblance of authority present in this time of great trial.⁵⁸

June 21 had been so busy that the matter of choosing a new delegation to go to Philadelphia had to be put off until the next day. Many of the delegates may have preferred to delay still further any discussion of independence, but there was now no alternative. A resolution for independence had been placed before the Continental Congress and a committee was already at work framing the document of separation. There was no doubt that the delegates to be sent to Philadelphia would have to vote either for or against the break with England, and as the New Jersey Congress came to choose them they in effect decided for independence. The dean of the new delegation was John Witherspoon whose outspoken advocacy of independence was notorious. Of the others (five in all) probably the least positive on the issue was Richard Stockton, Paterson's old friend and teacher, but like the rest when the time came he would be present to sign the Declaration. The instructions given to the delegates were especially significant for they were specifically

empowered to join the other colonies "in declaring the United Colonies independent from Great Britain," and setting up a "confederacy for union and common defense."⁵⁹

The congress had spoken clearly and unequivocally, but it was hardly the choice of committed revolutionaries. On the matter of independence as on the matter of setting up a new government for New Jersey the congress had waited so long that the decision was made for them. All Paterson and his colleagues had to do was to recognize that the actions of the king and parliament, the British army, Governor Franklin, their neighboring colonies and the Continental Congress had deprived them of any real alternative other than following along in the footsteps of revolution. They may have prepared themselves ideologically so as to rationalize such dramatic actions when they became absolutely necessary--certainly Paterson had done so in his "Address on the Rise and Decline of Nations." But they had lacked the boldness to act before. Even now, their revolution was a passive and defensive one, less concerned with reorganizing society than maintaining order, and less concerned with striking out in new directions than in not being left behind.

The following week was devoted to preparing the new constitution. A committee drafted the document in only two days; then after a few days' consideration before a

committee of the whole house, the new pattern of government was speedily approved.⁶⁰ Actually there was not much new in it. The old structure of the provincial government remained intact, considerable property requirements were retained for office-holders, and the franchise was extended no further. The largest single innovation was the increased power of the legislature with respect to the governor who, now chosen by the legislators for one year, would be essentially powerless.⁶¹ The sentiments which led to this legislative supremacy were obvious, but legislative decision making was usually arduous and always inefficient. Could such a government operate effectively? There were other questions and doubts too. This Provincial Congress had no specific authority to constitute a new government and there were no plans to have the document ratified by the people. Only on July 18, two weeks after the constitution was promulgated, did the Congress finally resolve to "assume the style and title of the Convention of the State of New Jersey."⁶² Throughout the manuscript minutes Secretary Paterson consistently referred to the new government being considered as a "Charter of Rights" rather than a constitution,⁶³ suggesting that he and others viewed the document as something less than a permanent frame of government.

The role that William Paterson played in the creation

of New Jersey's first constitution has been a matter of confused debate. It has been claimed that, since he was the secretary of the congress and skilled in the law, he must have been the author of the document.⁶⁴ However, he was not even a member of the drafting committee, and in the only roll call vote taken to confirm the constitution rather than defer it for further consideration, Paterson voted no.⁶⁵ It has also been suggested that Paterson's objection was most likely based upon his disapproval of the last paragraph of the document,⁶⁶ which stated in tones characteristic of New Jersey's reluctant revolutionaries that

if a reconciliation between Great Britain and these Colonies should take place, and the latter be taken again under the protection and government of the Crown of Great Britain, this Charter shall be null and void.⁶⁷

If one looks only at the limited evidence provided in the congressional minutes, this conclusion might seem satisfactory. Paterson did on July 3 join eight others in voting unsuccessfully to delay printing the constitution for a few days "in order to reconsider, in a full house, the propriety of the last clause."⁶⁸ This idea that he objected to the last clause is consistent with his later attacks against moderates and trimmers who would not unequivocally support the patriot cause. But Paterson had more substantial reservations too. Just a few months after it went into effect he was suggesting that the constitution be set aside since

it was inappropriate to the critical conditions which required dynamic executive leadership.⁶⁹ Then too, the "charter of rights" did not protect rights very well, at least as far as Paterson was concerned. In the decade after the Revolution he attacked the constitution time and time again for making what he saw as the sacred property rights of individuals subject to the whim of a majority at the polls.⁷⁰

Neither is it clear whether or not Paterson approved of the liberalized suffrage qualifications that were carried over into the new constitution. His personal opinion is not known, but in February 1776 when the decisions were made to ease the restrictions on voting and call a special election, the delegation from Paterson's Somerset was the only one to vote against both proposals.⁷¹ Even into the 1790's Governor William Paterson criticized the constitution as being inadequate to effective government, in part because it was written in great haste to meet a crisis situation.⁷²

Actually the crisis was more imminent than has been supposed. On July 2, the same day on which the constitution was voted upon, the worst fears of New Jersey whigs were realized as Lord Howe landed British troops on Staten Island.⁷³ Members of the Convention sitting in Burlington were shocked that morning when Lt. Col. Nathaniel Scudder of the Monmouth County militia, who had ridden through the night to reach them, reported that he had seen the enemy

fleet approaching. At 6:30 the previous evening he had counted "about 130 sail in the channel from the Hook to New York within nine miles from the Narrows." At about 4:00 in the morning, after having already traveled 50 miles, he had heard "a very heavy firing of cannon," which he presumed to be either the British attacking New York or attempting to "cover the landing of their troops."⁷⁴ The news struck the delegates at Burlington like the crushing blow of a sledgehammer. In fact the noise that Scudder heard must have been the result of a summer thunderstorm for there was no firing as the British landed that day,⁷⁵ but for all the delegates knew at that very moment their wives and children were being ravaged by the enemy. The Convention immediately sent word to Philadelphia and appealed to the Continental Congress to send assistance "without the least delay" to meet "this alarming exigency." The Convention adjourned to inform absent delegates of the frightening news and convened again that afternoon to hurriedly finish their debates on the new constitution, approve a few amendments to the committee report, and vote. It is likely that some of the delegates did not even wait until the afternoon session but hastened home to see to the safety of their families.⁷⁶ It is also reasonable to assume that many who did attend and voted to ratify the constitution were influenced by the immediate

threat of enemy guns. Paterson's desire to consider the constitution more carefully might have been given more attention if the very existence of the country and the safety of the people were not trembling in the balance. Analysis of the 1776 constitution must take this factor into account. Moreover, the dramatic role played by Col. Scudder should be recognized: he was the Paul Revere of New Jersey's revolution.

Since Paterson was well trained in the law and familiar with history, we must assume that he foresaw at least some of his later objections in 1776, when the constitution was being framed, and that this accounts for his vote to reconsider it. Far from objecting only to the final clause, Paterson set himself apart from his less scrupulous colleagues who had sacrificed too many of what he thought to be the necessary and conservative protections of government in the face of British cannon and perhaps with an eye toward assuring the popular acceptance of the new formula.⁷⁷ His negative vote should be seen as a conscientious personal expression of his conservative philosophy which the constitution had lamentably rejected. Much of Paterson's later career would be spent trying to convince the people of New Jersey that they had made a terrible mistake.

Meanwhile, Paterson was disappointed but he remained at the forefront of New Jersey's Revolution. The official copy of the constitution, on display to this day as the symbol of New Jersey's decision to break with its colonial past, is written in his hand and bears his signature as secretary.⁷⁸ Paterson was moralistic, superstitious, and maybe even a little paranoid, but he was not stupid. He realized that the political movement of which he had become a part offered tremendous opportunities for career and fortune. Even if his scrupulous conservative philosophy was in the haste of the moment rejected, there would be other opportunities when his ideas might be more widely accepted and his skills in administration and legal work appreciated. In this spirit he allowed himself to be chosen a member of the first Legislative Council under the new constitution and faced anew the problems created by a nation at war.

On September 13, the newly chosen Governor William Livingston spoke to a joint session of the new legislature, and tried to reinforce their belief in the rightness of the American cause. "America" he reminded them "had deferred independence "till the decisive alternative of absolute Submission, or utter Destruction" had been reached. "In a word, till the most scrupulous [conscience] could, on the

maturest Reflection, find itself justified before God and Man, in renouncing those Tyrants." Livingston must have hit a responsive chord in Paterson when he went on to declaim against the British who had "ravaged a great part of Asia; and dissipated in Venality and Riot, the Treasures extorted from its innocent Inhabitants by the Hand of Rapine and Blood;" and now "finally meant to prolong their luxury and corruption, by appropriating to themselves the hard-earned Competance of the American world." Paterson's conservative religious and social ideology that had led him to regret the corrupting correspondence between British and American society could be an effective force for mobilizing men toward the hard work needed to win independence. Ideological and practical political justifications for revolution continually reinforced one another. Livingston closed his address by calling upon his audience to join him in "setting our faces...like a Flint, against that Dissoluteness of Manners and political corruption, which will ever be the Reproach of any People."⁷⁹

FOOTNOTES, CHAPTER IV

¹Jensen, Founding of a Nation, pp. 464-66, 474-77.

²Ibid., pp. 466-70.

³Kemmerer, Path to Freedom, p. 320; Gerlach, "Revolution or Independence," pp. 498-503, 507-508.

⁴The activities in New Jersey for the relief of Boston are described in Gerlach, "Revolution or Independence," pp. 510-513.

⁵On the county committees and the enforcement of the Continental Association see Gerlach, "Revolution or Independence," pp. 500, 549-52. At first Governor Franklin thought the decisions of the Congress would have little support in New Jersey, but within weeks he was forced to report differently. See William Franklin to Lord Dartmouth, October 29 and December 6, 1774, in NJA, first series, Vol. X, pp. 500, 503.

⁶On the little resistance that came from Royal Officials, tory publicists, Anglican ministers, and Quakers see Gerlach, "Revolution or Independence," pp. 535-40.

⁷Elmer's speech quoted in Gerlach, "Revolution or Independence," pp. 495-96.

⁸Ibid., p. 552.

⁹[On the Clamor Against Lawyers], n.d., political essays folder, Box 1, Paterson Collection, PUL. William Livingston, Paterson's friend and later wartime governor of New Jersey, showed the same hesitation to throw in his lot with the rabble of the sons of liberty. See David Bernstein, "New Jersey in American Revolution: The Establishment of a Government Amid Civil and Military Disorder, 1770-81," (unpublished Ph.D. dissertation, Rutgers, 1970), p. 232.

¹⁰Kemmerer, Path to Freedom, pp. 327-28; Gerlach, "Revolution or Independence," pp. 580-82.

¹¹Edmund S. Morgan, The Birth of the Republic (Chicago, 1956), p. 70.

¹²On the mobilization of the New Jersey militia see Gerlach, "Revolution or Independence," p. 581.

¹³Historians dispute which gathering of New Jersey patriots should be called the First Provincial Congress. Bernstein, "New Jersey in the American Revolution," calls the meeting of July 1774 the First Provincial Congress and the Trenton gathering of 1775 the Second. Charles Erdman, New Jersey Constitution of 1776 (Princeton, 1929), also singles out the 1774 date, but allows that some might prefer "to apply that name to the extra-legal meeting of the assembly in 1765 when delegates to the Stamp Act Congress were chosen," p. 10. Kemmerer, Path to Freedom, and Gerlach, "Revolution or Independence," however, reserve that title for the May 23, 1775, meeting in Trenton. I have chosen to follow this latter style. It appears that, as significant as the earlier meetings may have been, they were singular instances in the protest struggle. The congress that came together in May 1775 continued to reconvene (albeit with some changes in membership) until 1776 when the constitution it wrote went into effect. Besides, this was the first meeting at which all thirteen counties were represented.

¹⁴[Address on the Rise and Decline of Nations], n.d., college composition folder, Box 1, Paterson Collection, PUL.

¹⁵Minutes of the Provincial Congress and Council of Safety of the State of New Jersey (Trenton, 1879), p. 114. Hereafter referred to as PCCS.

¹⁶Ibid., pp. 114-15.

¹⁷Only Essex, Middlesex and Hunterdon (the other "corridor counties") had sent more delegates. For a complete analysis of the delegates see Gerlach, "Revolution or Independence," p. 591.

¹⁸PCCS, p. 170. Sergeant had graduated in 1762 while Paterson was still a student, but Frelinghuysen had only received his degree in 1770. Samuel Tucker from Hunterdon County was chosen Vice President.

¹⁹The date was May 30, 1775, PCCS, p. 175.

²⁰Ibid., pp. 171-72.

²¹Ibid., p. 176.

²²Ibid., p. 176-77.

²³Ibid., p. 180-83.

²⁴John R. Alden, The American Revolution (New York, 1954), pp. 34-39.

²⁵Jensen, Founding of a Nation, Chapters XXII and XXIII *passim*.

²⁶Works of John Witherspoon, ed. by John Rogers, II, pp. 599-600. See also Chapter III above.

²⁷PCCS, pp. 184-85.

²⁸Ibid., pp. 185-86.

²⁹Ibid., pp. 187-94.

³⁰See Chapter II above.

³¹PCCS, p. 197.

³²Ibid., pp. 200, 203. The Congress had resolved to reappoint him to the post before it was known whether or not he would be able to attend.

³³See Chapter II above on his father's bankruptcy. See also Petition, dated January 25, 1776, signed by Paterson and others, seeking the appointment of a militia officer, mss. #MG 42, NJHS.

³⁴PCCS, pp. 203, 341. When Carey did not attend the sitting, two other delegates (Clark and Stewart) were offered the job and declined on the grounds that it would interfere "with the duty of their stations as delegates." Only then was Paterson reappointed. Mss. minutes, February 2, 1776, NJHS. Paterson resumed the secretarial chores, but until May 1775 he carried on as a non-delegate. It is unclear whether or not he was paid a salary for this period.

³⁵Jensen, Founding of a Nation, pp. 641-43.

³⁶Kemmerer, Path to Freedom, pp. 337-38; Gerlach, "Revolution or Independence," pp. 627-634.

³⁷Lundin, Cockpit of the Revolution, p. 74; Kemmerer, Path to Freedom, p. 340.

³⁸See Jensen, Founding of a Nation, Chapters XXIII and XIV passim.

³⁹Mills, Glimpses of Colonial Society, p. 23.

⁴⁰Most of the minutes of the second session of the Second Provincial Congress as well as the minutes of the Third (elected in May 1776) and the Convention which it later became have survived in manuscript form and are in Paterson's hand. They are preserved in the collections of the New Jersey Historical Society. With a few significant exceptions (see below) the discrepancies between the published PCCS and the manuscript minutes are inconsequential, but wherever possible I have noted references to the manuscript minutes; hereafter referred to as Mss. minutes.

⁴¹Mss. minutes, February 3 and February 5, 1776, NJHS; PCCS, pp. 370-73. On the requirements for voting in New Jersey see Richard P. McCormick, History of Voting in New Jersey (New Brunswick, New Jersey, 1953), pp. 67-68 and passim.

⁴²PCCS, p. 379. Even though the new election was called for before the completed suffrage legislation was formally passed into law by the congress, it is clear that the intent of the new election was to accommodate the newly enfranchised voters. The congress had already agreed on the principle of the wider suffrage, and were delayed in the final passage because of the working out of some of the details. PCCS, pp. 373-74.

- ⁴³Mss. minutes, March 1, 1776, NJHS.
- ⁴⁴Jensen, Article of Confederation (Madison, Wisconsin, 1940), pp. 10n. and 55-103 passim.
- ⁴⁵Commonplace book, Box 1, Paterson Collection, PUL.
- ⁴⁶Jensen, Founding of a Nation, pp. 670-99 passim.
- ⁴⁷Gerlach, "New Jersey in the Coming of the American Revolution," passim.
- ⁴⁸Quoted in Jansen, Founding of a Nation, p. 684.
- ⁴⁹Quoted in Erdman, New Jersey Constitution of 1776, p. 25.
- ⁵⁰The only Poll List that survives indicates that only 694 Morris County voters cast ballots, "Morris County Poll List, May 1776," PNJHS, Vol. LXVI (1948), pp. 114-21. White male population of the county came close to 6,000 according to Gerlach, "Revolution or Independence," p. 690. Only a very few of the newly chosen delegates openly opposed independence. In all they represented no more than "a scant dozen in a total of 65," Erdman, New Jersey Constitution of 1776, p. 26.
- ⁵¹Bernstein, "New Jersey in the American Revolution," p. 163.
- ⁵²PCCS, pp. 449-50.
- ⁵³Attorney General Cortlandt Skinner fled to New York in December 1775, Lundin, Cockpit of Revolution, p. 74.
- ⁵⁴See Gerlach, "Revolution or Independence," p. 668.
- ⁵⁵PCCS, pp. 454-57.
- ⁵⁶Ibid., pp. 457, 461, 462, 467, 470; and mss. minutes, June 21, 1776, NJHS.

⁵⁷PCCS, p. 460; Gerlach, "Revolution or Independence," pp. 696-97.

⁵⁸Mss. minutes, June 21, 1776, NJHS; Jensen, Articles of Confederation, pp. 111-116.

⁵⁹Mss. minutes, June 22, 1776, NJHS.

⁶⁰Mss. minutes, June 23, 1776, NJHS.

⁶¹For analysis of the 1776 Constitution see Erdman, New Jersey Constitution of 1776, pp. 43-69.

⁶²Mss. minutes, July 18, 1776, NJHS.

⁶³Mss. minutes, June 23-July 2, 1776, passim, NJHS.

⁶⁴The allegation was made by Cortland Parker in a speech at Princeton in 1899, see Erdman, New Jersey Constitution of 1776, pp. 34-35.

⁶⁵Mss. minutes, July 2, 1776, NJHS.

⁶⁶Erdman, New Jersey Constitution of 1776, p. 33n., Haskett, "William Paterson, Counsellor at Law," p. 99. Certainly Haskett goes too far here by describing Paterson as "more of a thoroughgoing radical than many of his fellows."

⁶⁷Erdman, New Jersey Constitution of 1776, p. 151.

⁶⁸Mss. minutes, July 3, 1776, NJHS.

⁶⁹See Chapter V below.

⁷⁰See Chapter VI below.

⁷¹PCCS, pp. 373-79. Paterson was not officially a member of the delegation at the time, but he was present as the secretary of the congress and must have been aware of why his Somerset fellows voted the way they did.

⁷²"The Constitution was framed in a very critical juncture, and, as it were, on the spur of the occasion. It was at the time considered as a temporary thing resulting from the exigency of the moment, and expected, it would undergo a dispassionate and thorough revision...." Newspaper essay No. 6 [c. 1793-96], oversize file, Paterson Papers, RUL.

⁷³This author can find no analysis of the 1776 Constitution that makes mention of this crucial fact.

⁷⁴Mss. minutes, July 2, 1776, NJHS.

⁷⁵The British landed (without difficulty) on Staten Island so that they could avoid an immediate confrontation with the Americans on Manhattan and Long Island. Staten Island became a staging area for the Battle of Long Island later that summer. See Henry P. Johnson, The Campaign of 1776 Around New York and Brooklyn, Memoirs of the Long Island Historical Society, Vol. III (Brooklyn, New York, 1878), p. 94.

⁷⁶Mss. minutes, July 2, 1776, NJHS.

⁷⁷"Popular approbation" was thought to be of particular importance because there was no provision for popular ratification. Erdman, New Jersey Constitution of 1776, p. 38.

⁷⁸The 1776 constitution of New Jersey is displayed in the State Museum at Trenton.

⁷⁹Journals of the Legislative Council of the State of New Jersey (Burlington, 1777), p. 14. Hereafter referred to as JLC.

CHAPTER V

PROSECUTING THE REVOLUTION

William Paterson's reputation as one of the leading architects of independence in New Jersey was a hard-earned one. As attorney general of the infant state during the years of revolution his position was in some ways the most crucial to the success of the independence movement. His most significant contributions were in the restoration of stability to the system of justice and the destruction of the loyalist opposition to the Revolution in the state. These were also the years in which Paterson married, started his family, and saw his professional career and personal fortune grow to considerable size. And in both his personal and professional life the Revolution had significant effect.

The young man who just a few years before had been teasing his friend about the favors of the ladies of Philadelphia, now had a lady of his own. MacPherson was dead, killed in the fighting at Quebec, but Paterson was struggling to set right the troubled legal system of the state

and at the same time making plans for marriage. The girl was Cornelia Bell, daughter of Somerset County landowner John Bell, and if Paterson's letters to her are any token, she was quite a captivating young lady.¹ Paterson seemed to have been swept off his feet at their first meeting in 1776. Despite the demands of his office and the pressures of the war, they were married in February 1779 and in 1780 a daughter was born.² The years of the Revolution would eventually provide Paterson with the estate and the open avenues to wealth that would enable him to offer his family a comfortable life, but in the meanwhile he was frustrated by the overwhelming demands that duty made on his energy and the long periods he had to spend away from home.

Revolution is a risky undertaking; to understand this is to understand why such reluctance and irresoluteness permeated the ranks of New Jersey's leaders in the months preceding independence. The most obvious danger was that they would lose to the British, and in the summer of 1776 with Howe just landed in New York and numerous loyalists threatening retaliation, this appeared a distinct possibility. Then there was the danger of the side effects that came with revolution: with the old institutions of government set aside how order could be kept, lawbreakers brought to justice and contracts enforced. Paterson believed that men of

his own honor and station who took their responsibilities seriously could be relied upon not to take advantage of the situation; but people of a meaner sort might raise havoc while, because of the exigencies of war, society had relaxed its guard at home.³

The rejuvenation of the judicial and executive institutions and the stabilization of the legal system of the new state were the most important contributions that Paterson made to the success of the Revolution. In his capacity as Legislative Councillor Paterson was responsible for the preparation of legislation which confirmed most of the old court system, established the punishment to be paid by convicted loyalists, and controlled the treatment of prisoners.⁴ The critical state of affairs however, forced Councillor Paterson to worry himself with military and administrative details as well, some as insignificant as arranging a military exemption for shoemakers, and others as potentially disastrous as intervening with the governor to recommend that the demoralized militia be sent home for the winter less than a month before Cornwallis led the first invading army into New Jersey.⁵

The new constitution of 1776 left no doubts that the legislature was supreme, but government by legislature now at war became all but impossible. The legislators had to

concern themselves with all the minute details of militia appointments, try to restore the flagging morale of New Jersey's soldiers, and deal with the critical problems presented by people disaffected from the Revolution--all at the same time they maintained a full legislative calendar.⁶ The result was that they did none of the jobs very well. With regard to the militia, for example, despite the military emergency the legislators insisted on continuing to allow the hiring of substitutes and the paying of exemption fees as ways to avoid military service. This policy must have been popular with constituents, but in the present state of affairs, it was a flirtation with disaster. General Philemon Dickinson wrote to legislator Paterson early in 1777 to comment on the choice of brigadier generals. Tongue in cheek he suggested that perhaps they should appoint a "baker's dozen" so that none of the thirteen counties would feel that its favorite son had been slighted.⁷ Another of Paterson's correspondents during this period complained about the calibre of superior officers appointed. Officers and men, he reported, "must now have a high opinion of their leaders or they will not take the field." The letter, signed Amicus, specifically suggested a few men of unimpeachable integrity, but one passage betrayed the author's secret doubts that the legislature was capable of choosing well: "Pray advise

your body to commission only gentlemen or as few others as possible."⁸ (italics mine) The weaknesses of the system are evident in these illustrations. In these critical days New Jersey simply could not afford the luxury of allowing all these decisions to be made by inefficient, inexperienced, and overworked legislators who were susceptible to obvious pressures from the electorate.

Paterson was among the first to recognize these difficulties, and with Governor William Livingston he led in the attempt to revitalize the executive power of the government. In August 1776 Paterson had been appointed to the office of attorney general, and for over a year he fulfilled the duties of this office at the same time he sat in the Legislature. This peculiar position (it was even incorrectly charged that by holding a salaried office while a legislator he was violating the constitution)¹⁰ made him particularly aware of the need for dynamic executive leadership. The failure of the legislature to act promptly and prudently when it came to the crucial issues of military preparedness and public safety became more and more clear during the first months of the fighting in New Jersey.

The loyalists, or the "disaffected," as the legislators usually called them, presented the most pressing problem. At the same time that the Provincial Congress had

been informed of the British fleet's arrival at New York, news came that the tories of Monmouth were arming and organizing themselves in the cedar swamps there. Local officers warned that Monmouth militiamen might refuse to go off to fight leaving "their wives and children to fall either Prey to the Enemy...or be murdered by the tories in their absence."¹¹ This crisis was met by sending in troops from the surrounding area to disperse the loyalist forces, but during the summer and into the fall of 1776 evidence of tory strength surfaced all over the state.¹² Cornwallis followed Washington across the Hudson in November 1776 and for the next two years New Jersey fully earned its designation as the "Cockpit of the Revolution."¹³ Paterson thought the darkest hour was the winter of 1776-77. In a subsequent newspaper essay he wished that "the Months of November and December 1776 could be erased out of the Calendar of Time."¹⁴ To further complicate affairs the state was effectively paralyzed during the months of December and January because the legislature, which alone had the power to call up troops and commit supplies, was not in session. Flagging morale was somewhat restored by the dramatic victories at Trenton and Princeton, but by February 1777, when the legislature met again, the customary institutions of justice had seriously deteriorated, loyalism was as big a problem as ever, and most of eastern

Jersey was still under enemy guns.¹⁵

Now it was mid-March, and the legislators were readying themselves for another recess. In order to avoid a further erosion of governmental authority William Livingston and William Paterson, the two most important executive officers, spoke up. On March 11 Livingston proposed the creation of a Council of Safety to investigate loyalism, invigorate the justice system, and make necessary decisions while the legislature was not in session.¹⁶ It was not a new idea--the Provincial Congress had resorted to the same kind of solution when it was faced with an emergency situation in 1775 and 1776¹⁷--but in March 1777 the emergency was a matter of survival.

The assembly and council each considered the governor's suggestion, but decided that they needed a joint meeting to finally thrash out the critical matter. Councillors Paterson, Symmes, Scudder and Cooper were instructed to meet with a committee of the assembly "in a free conference on the subject."¹⁸ The conference, held March 15, 1777, proved to be one of Paterson's finest hours as in a forceful address he described the wide scope of the domestic and military crisis facing the state and encouraged support for the governor's plan to revitalize the institutions of government. His argument began with a general discussion of the plight

of the state, including the activities of Tories and indecisive patriots, then he criticized the state's failure to vigorously enforce the law, and came finally to place most of the blame upon the vacillation of the magistrates in the local courts.¹⁹

According to Paterson's analysis, New Jersey was too late in getting their new government set up and operating smoothly. "The Irruption and rapid progress of the Enemy in this State has, with other causes of an internal Nature, prevented the Powers of Government from being established, & carried into Execution with the necessary force and energy." Part of the responsibility for this delay "in putting off the old rotten Constitution" and ushering the "Hour of Independence and Separation" was laid at the feet of the Tories. But much of the blame went to "a class of Beings called moderate Men," and even "some honest Whigs, who were either of a timid cast, & of weak nerves, or who had a...foolish dotting passion for Great Britain and the old Constitution." Like a "set of puppets," Paterson continued, these moderates and second guessers had been used by the British in their imperial schemes of the last decade. They "were continually declaiming in Favour of Patience and Forbearance, and Tenderness, and all the soft-eyed Virtues." Yet, when the time for independence and setting

up a new government came, they were "the most noisy and turbulent, and violent, and outrageous in their opposition. Paterson went on to describe how men of this sort could draw from deep wells of sympathy and compassion "whenever any Measure of a spirited stamp" was taken against the Tories. "They bewailed in the most pathetic Strains the misfortunes and Afflictions of a Tory, but I never knew one of them [to] lament over the miseries of a Whig." It was the continued widespread expression of such sympathies that made extraordinary action necessary on the part of the revolutionary administration of the state. "The period has at length arrived in which it behooves us to Mark the Complexion of Men, to view every Shade in their Character, and with an Eagle's Eye to look into their very souls."²⁰

Paterson thought that failure to adequately enforce the law was at the heart of New Jersey's troubles. The exceptional executive powers that Paterson proposed went beyond the political theory that he and his fellows had studied from the great philosophers. "It is the grand truth of all the fine Writers on Government, that they do not distinguish between Theory and Practice." Paterson was forced to admit that "it is easy to build up an ingenious system or Code of Law, which shall appear with singular Beauty on Paper, but which however will vanish the instant

we attempt to put it in use." Extraordinary situations required extraordinary political solutions, and this was particularly true when the cause of the disorder in society was related to the insufficient administration of justice. "A little practical virtue," he went on, "is preferable to the finest theoretical system in the world, if it cannot be put into exercise." This was precisely the problem as Paterson saw it in New Jersey. The legislature passed laws but they went unenforced because of the failure of the state constitution to provide for adequate executive authority. Not only were the laws disregarded, but the popular respect for the authority of the government had never really been established. "I do not know of anything," Paterson declared,

that can place the legislative powers and of course Government itself in a more debasing and contemptible Point of Light than the making of laws without Force sufficient to put such laws into Operation and use. Sir, if there be not energetick [sic] virtue in the executive Branch of Government to enforce Laws, we may at once take leave of each other, and go home. In the present state of warfare and confusion, we stand more in need of executive than legislative powers.²¹

With an absence of spirited administration on the state level, the organs of justice on the local level had failed to function properly. This was particularly true with regard to the county court system. Paterson asked his fellow conferees to "take a view of the bench[es] of justices [sic] in the several counties of the State, and tell me

where is the Magistrate who has acted up to the Line of Duty, and the Spirit of his Station." Then presuming the answer his question would receive, he went on

There may be a few Exceptions; there may be here and there an individual, who has had Firmness and Fortitude sufficient to make him bear up under the pressure of Adversity and in the Face of Danger. But alas! the Bulk of them, be the cause what it may, have forbore to act, notwithstanding the Nature and Urgency of publick [sic] Affairs required the most vigorous exertions.

Paterson thought that several reasons might "be assigned for the vapid conduct of the magistrates." Partly, of course, the "invasion of the State by a cruel and rapacious enemy" was responsible, as was the acknowledged "Want of Knowledge and Want of Spirit in several of the persons in Office."

But the chief factor as he saw it was

the Want of a particular Council or Body composed of the most spirited persons and invested with large and extensive Powers, to act with all Vigor and Energy, to be an example to the inferior officers, and, if I may so phrase it, to set the Wheels of Government in Motion.²²

From his central position as both member of the Legislative Council and attorney general, Paterson had eloquently professed his concern for the steadiness and stability of the county court system. New Jersey's leaders had realized from the beginning the importance of maintaining as much continuity in government as possible while undergoing the great transition from colony to state. For this reason the new

constitution had been rushed through the previous July, despite the opinion of some like Paterson that more time was needed to fully consider it.²³ Aware that the British threatened their families, and eager to hurry home to protect them, the delegates first took time to agree to an instrument of government. Then, just two days later "to prevent a failure of justice," the Convention ordered "all judges, justices of the peace, sheriffs, coroners, and other inferior officers of the late government within this Colony" to continue in their offices "under the authority of the people." The Convention ordered "that all actions, suits and processes be continued, altering only the style and form" to reflect the rejection of the King and Empire.²⁴ Now, a little over seven months later, the hastily adopted constitution had proved unequal to the test, and Paterson had identified one of its greatest drawbacks as the failure to encourage the strenuous enforcement of revolutionary justice in the county courts.

The role of local government in revolutionary America, stressed by Paterson in 1777 has lately been recognized by historians. Recent studies of New England and Virginia have emphasized the importance of local institutions in helping provincial societies to "bridge the transition from colonies to states with a minimum of disruption."²⁵ During

the Revolution, while the Continental Congress struggled to establish its authority and new governmental structures were set up in most of the states, local institutions in these states remained virtually the same as they had been for decades before. In many ways the real power of government had been retained in the county oligarchies of Virginia and the towns of New England from the beginning of the eighteenth century, and this was at least one reason why they had been able to install the new governments after 1776 with little chaos or confusion.²⁶

Local government was just as important in colonial New Jersey, but, without town meetings or powerful Anglican vestries, the organs of county administration were the most influential. The attitudes and activities of the governor and assembly often remained a mystery to the ordinary citizen, largely because there was no New Jersey newspaper until 1776 and one had to rely on reports in the papers published in New York or Philadelphia.²⁷ With colony-wide travel inconvenient, the regular meetings of the county courts were given increased significance because of the opportunity they provided for the leaders of the community--lawyers, litigants, and officials alike--to come together. County government represented the lowest common denominator of colonial administration. The sheriff's enforcement of

the county court's decisions and the official visits of the county tax collector were undoubtedly the most direct encounter with government that the average New Jersey colonist would have.²⁸ Neither is it insignificant that the basic component of revolutionary political activity in the colony had been the county committee, which was relied upon by the Provincial Congress to collect its taxes, administer its oaths of allegiance, and oversee the training of the militia.²⁹ Once reinforced and invigorated, the New Jersey county courts would assume the same central role played by the organs of local government in New England and Virginia.

During the first months of war, however, the county court system had (for reasons Paterson had noted) failed to prosecute justice with the energy and vigor the situation required.³⁰ Now, at least in part due to Paterson's speech, the conferees were convinced of the need for prompt action. That same day they reported to their respective houses, and the Council of Safety was authorized and set in motion.³¹ For the next eighteen months the Council of Safety would help Livingston and Paterson restore the executive leadership they felt was so sorely lacking in the infant state. The powers it had been granted were extraordinary, so extraordinary in fact that the legislature would only authorize the council to operate for three months at a time without a

reconfirmation of its authority.³² The legislation was renewed five times, and each time the powers of the council were increased or expanded. As first constituted the council had twelve members each of whom was a member of the legislature. Eventually its numbers were increased to 23, and the percentage of legislators represented went down. Governor Livingston personally presided over every meeting, and Paterson was one of the few who were chosen as a member for each of the six sittings. The council's primary responsibility was to seek out and indict the loyalists who were becoming such a threat to peace and security. The council convened in one county after another often calling upon local justices of the peace to sit with them to investigate and try to identify the suspected loyalists in the neighborhood. The county officials and militia officers were sent out to apprehend the suspects and bring them before the councillors for interrogation. If they were willing at that point to swear allegiance to the patriot cause their cases could easily be passed over, but if they refused the council would either have them imprisoned until the next meeting of the county court or arrange bond to assure their presence at a later date.³³

When they were not investigating loyalists the council acted out its general responsibility to see to the

well-being of the state while the legislature was not in session. In that capacity it encouraged the enforcement of the laws against profiteering, administered the distribution of passes necessary to travel across the state and cross the lines of the enemy, and even temporarily appointed officers to essential posts in the militia as they became vacant. It was given the power to move sessions of court from place to place for safety from the British and to grant exemptions from military service to people with strategic occupations.³⁴ But suppressing the tories remained their most important task.

As a member of the Council of Safety Paterson continued to argue for vigorous action against the loyalists. It was some weeks after the forming of the council when he tried to explain the reasons for the brazen attitude assumed by so many New Jersey tories and to account for the fact that there seemed to be more of them than there were before. "Many of the Whigs," he claimed, "have of late cooled down, & become quite lukewarm; while on the Contrary the Tories grow upon our Hands in the most rapid manner." This was seen as partially due to the fact that the burdens of military service, commandeered supplies and wagons, quartered troops, and the like were borne only by the whigs. Meanwhile the tories went unpunished for their crimes,

continued in business "asking the most exorbitant prices for everything they have to sell," and remained to plunder the property of the whigs whenever invasion of enemy troops caused the patriots to flee. "We have taken the most effectual Way to make Tories...." Paterson explained.

One well-timed & signal instance of public Justice in the Dawn of Toryism would have been attended with the most happy Effects. It would too have been the most successful Line of Conduct that could have been pursued. We shall be obliged to make an [sic] hundred Examples now, whereas one would have had the same, nay greater, Efficacy, in the Beginning.

Instead the "weak, timid, cruel [to the Whigs], and ill judged Policy" of the state had elevated the tories "to a Degree of Boldness and Barefacedness" that threatened to "work out our ruin." In Salem County, for example,

there is a group of Tories which threaten to give the State considerable trouble before they can be suppressed. Some parts of Hunterdon have been always infested with a Nest of disaffected people, of whom it is high time to get rid. The other Counties in the State are more or less pestered with them.³⁵

Much of the blame could be traced to the inadequate administration of justice. "It is really a laughable sight to view the conduct of our public Bodies with Respect to the Tories," he claimed, not trying to be funny at all. By treating the accused with unnecessary kindness, the Convention and some of the county committees had compounded the troubles with the tories and endangered the very fabric of society under law. Offenders would be called before them:

They would be examined, confess they had done wrong, put on a sort of penitential trim, be reprimanded from the Chair, with a world of good advice, and then be dismissed. Well, there is one Conquest made, one Profligate gained. Great Ground for rejoicing to be sure. The Mischief was, that the Rascal returned ten times more hardened than before.

And, what was worse, he suggested that the prosecution of the loyalists was still not strenuous enough.

We Still continue in the same Path, without considering, that the Line of Conduct should vary with the Complexion of the Times. And What has been the blessed Consequence? Why the Whigs are dispirited, and moulder imperceptibly away. The Tories are at ease, & increase daily in Number. We come together, acknowledge it to be a mournful truth; but wonder what it can be owing to. Owing to? What it is owing to ourselves! We do not act with Spirit; We want Decisiveness in our Conduct.

Turning to one of his more realistic political maxims,

Paterson went on:

It is a leading and well grounded Principle with Politicians, that those who are in power should always so rule as to make it the Interest of People to side with Government. For it is a Truth which holds equally good in political and private Life, that Interest is the Pole Star by which the Mass of Mankind steer their Course. Make it the Interest of People to be Tories, and my Life for it they will soon become so. And have we not made it the interest of People to become Tories, and do we not find, that, in Consequence of it, they grow wonderfully upon our Hands?

The only way to deal with the problem of the tories, Paterson thought, was to act swiftly and forcefully to make them pay for their transgressions. Otherwise the disaffected would never be put down, for "they have nothing to fear From the Enemy, if they should prove successful; and they have

Nothing to fear from us, for they laugh and push it in our very faces."³⁶

Apparently moved by Paterson's urgings, the council did act vigorously against the tories. Although its task was herculean, its time short, and the difficulties many, the Council of Safety was generally effective in its work. The legislature had been careful in granting powers to this extraordinary body, conservative in choosing appointees to the board, and vigilant in keeping the council within its bounds. Moreover, as thorough as its investigations were, the council always conformed to the formalities of legal procedure. This is a very significant point. Acting in his capacity as attorney general, Paterson could have sought authority to set up extraordinary courts to deal with the loyalists. Instead he worked through the Council of Safety which used the opportunity to invigorate and rehabilitate the institutions of local administration by calling upon the county sheriffs to serve their orders and by referring cases to the county courts for adjudication.³⁷ By the time the Council of Safety went out of existence in October 1778, toryism had not been crushed out, but the crisis situation that had existed a year and a half before had been brought under control, and the viability of the administration of justice on the county level had been at

least partially restored.

No one was in a better position than William Paterson to know what was needed to restore the respectability essential to governmental authority. As Legislative Councillor he had helped to write the laws, as Council of Safety member he was responsible for investigating those suspected of wrongdoing and issuing indictments, and as attorney general it was Paterson who prosecuted the cases before the state's courts. After October 1777 Paterson left the Legislative Council and after the early months of the Council of Safety he attended its sittings less regularly;³⁸ as time passed his duties as attorney general were becoming more and more important. Of course, the better the job done by the Council of Safety in flushing out loyalists and other suspects to charge, the more work there was for the prosecutor who had to take the state's case into court.

The cases which the attorney general was called upon to prosecute ran the gamut of all the social evils. There were those who would steal and fornicate no matter what the political climate, and Paterson could bring these people to justice in the fullest spirit of his puritanical conception of right and wrong. The more important problems, however, were those brought about by the war, and these were much harder to treat in absolute moralistic terms. Profiteering,

for example, was common, and trading with the enemy was encouraged by the presence of the British in nearby New York. The ease with which goods could be brought in from New York made enforcement practically impossible, besides which, members of some of the most prominent whig families succumbed to the temptation. Elisha Boudinot must have been embarrassed when the garments he had smuggled in from New York for his bride to wear at their wedding were confiscated by revolutionary officers.³⁹ The task of enforcing the laws against illegal trade was made even more difficult when a subsequent law providing punishment for the mere possession of goods originating with the enemy was, due to a technicality, declared unconstitutional by the state's supreme court.⁴⁰

By far his most challenging task was prosecuting the loyalists. In proportion to population, New Jersey's loyalist problem was very serious. When the claims for loyalist compensation were presented to the British government after the war the fourth highest number in any state were from New Jersey.⁴¹ And Cortlandt Skinner's New Jersey Volunteers were the largest loyalist regiment to fight during the war.⁴² The extent of support for the crown in this state can be explained in part by the large Quaker population and in part by the presence of the British in New York and Philadelphia. These cities had long been the economic and cultural

centers of New Jersey, and the temptation for fraternization and trading in the old familiar channels was strong. The British army marching across New Jersey could only serve to encourage people of a hesitant spirit not to commit themselves too publicly to the American cause, and large areas of the state were forced to live in the shadow of the king's troops all during the war.⁴³ In fact, there might have even been more loyalist Jerseymen had the depredations by the British in the state not alienated some sincere moderates. Cornelia Bell explained to her brother that the troop's actions were "very impolitic, as they make themselves many enemies who would otherwise have been their friends."⁴⁴

Defining the number of loyalists in New Jersey has been a matter of some debate. The long accepted estimate was that there were about 5,000 throughout the state, and some historians thought this was much too high.⁴⁵ The latest scholarship suggests, however, that New Jersey's potential supporters of the crown may have numbered as many as 50,000 or more, amounting to 36 percent or 37 percent of the population (men, women or children), most of whom may never have been engaged in the service of the king due to age, sex or distance from the fighting.⁴⁶ The debate is at least partly due to the difficulty of distinguishing between "potentially active loyalists" and "moderate whigs". The

Bridgeton Plain Dealer, one of the several false starts at newspaper publishing before independence, reported in January 1776 that there were "great numbers of ignorant thoughtless beings who are one day Tories, and the next day Whigs; and the third day nothing at all."⁴⁷ Paterson had bemoaned the fact that the policies followed by the state had encouraged the undecided to become tories rather than whigs. He spoke of "prudent, moderate, compassionate, and merciful Men--None of your violent, heels over head Folks; but quite cool and phlegmatick [sic]" Jerseymen who had now become leaders of battalions of tories which made it so unsafe for good whig families that in some areas they "dare hardly venture to sleep in their own houses."⁴⁸ It was an unusual situation where political allegiance was switched from one side to the other and then back again. Richard Stockton, himself a signer of the Declaration of Independence, was captured by the British and prevailed upon to sign "Howe's declaration" renouncing the American cause. Although he was never thereafter politically active, Stockton did in 1777 reverse himself again and take the oath prescribed by the legislature of New Jersey.⁴⁹ These factors make it practically impossible to place many people at any certain point on the political spectrum. Indeed, the final clause of the state constitution which left open the

way for reconciliation with the crown suggests that even a majority of the whig leaders of the state were not willing to burn all their bridges behind them.

The fact that many families were split by the Revolution makes it even more difficult to establish the political complexion of some who kept close contact with family members of opposing political views. Cornelia Bell, who was to become Paterson's wife, saw her family shattered by the conflict. The family homestead, called Bellfield, was in Bridgewater Township, Somerset County, but during the Revolution all except her father, left home. Her mother went to live in Philadelphia, Cornelia stayed with the family of Anthony White at Union Farm in Hunterdon County,⁵⁰ and her brother Andrew went over to the British in New York. Andrew Bell had studied law under loyalist Attorney General Cortlandt Skinner, whom he followed to the British lines. There he sought his fortune as confidential secretary first to Henry Clinton and later to Sir Guy Carleton. In 1778 he accompanied the royal troops across New Jersey keeping a daily journal for the general,⁵¹ but much to Cornelia's relief he resisted the temptation to seek a commission in the king's army and served throughout the war as a civilian in the secure comfort of New York City. Brother and sister had been very close before the war, and now they maintained

an intimate correspondence all through the seven years of his exile.⁵² Cornelia believed firmly in the American cause, but she seldom wrote about politics in her letters, partly because she thought too much political talk was unladylike, and partly because she knew her opinions were upsetting to her brother. Nevertheless, much as she opposed the king and his troops, her letters indicate an essential social conservatism that her young suitor would appreciate. She assured her brother that her life was not upset by the fighting. As long as General Philemon Dickinson was quartered in the same house where she stayed, they could enjoy his personable manners and would not be called upon to put up common soldiers. When she forwarded the latest work of Thomas Paine to her brother, she called it "a mere piece of scurrility."⁵³ The devoted sister was continually concerned about her brother's welfare, tried again and again to arrange a meeting with him, and in the spring of 1777 went so far as to have his summer underwear carried to him across the British lines--a singular example of providing "aid and comfort" to the enemy.⁵⁴ When she decided to marry the young attorney general, Cornelia begged for her brother's approval and reported that "Mr. Paterson bids me to tell you his arms will always be ready to receive the beloved brother of his Cornelia."⁵⁵ Andrew Bell owned no property in New

Jersey, so as long as he remained behind enemy lines any legal action Paterson might take against him would be of little effect. But the repeated written assurances of Paterson's affection for Cornelia's tory brother do suggest a soft spot in the revolutionary armor he assumed against moderates and trimmers who condoned loyalism.⁵⁶

For the most part, however, Paterson's resolution to persevere in the American cause was firm and unshakeable. Like many others he had at first hesitated to become active in the colonial cause, but once the irreversible decision was made, Paterson threw himself into the fray with all his energies. The completion of the break with England and the establishment of a stable political and social structure in the independent state became for him a self-perpetuating motivation. The constitution of 1776 may have failed to provide all he thought it should, but now it was the only law that the state had. Once he was appointed attorney general, it became Paterson's personal responsibility to enforce the law and maintain the order of society as effectively as possible. He realized the significance of the role he had been asked to play and was aware of the opportunities for career advancement that his new fame would provide. His personality was such that he could do nothing but devote himself completely and unreservedly to the duties of his

office.

The responsibilities of the attorney general as Paterson fulfilled them were enough to tax any ordinary man, and they took their toll on him. He traveled from one end of New Jersey to the other attending as many county court meetings as possible and personally seeing to the prosecution of wrongdoers. The schedule which he described as "busy and fatiguing" was made more oppressive by the fact that he did much of the paper work himself. He complained about the court session at Newark in March 1779, that "besides trying causes of which we had a great plenty, I have written almost three quires of papers since I came to this place."⁵⁷ When the sitting at Newark ended he was prepared "to take horse" for Bergen where the business promised to be "still more intricate and disagreeable."⁵⁸ The constant traveling and long hours also affected his health; en route from the Sussex to the Monmouth County Court in spring 1778 he fell so sick that he was forced to stay over at Princeton for two days. Then, unable to arrange for someone to officiate in his place, he pushed on to Monmouth where he continued to work "constantly under the doctor's care." The drudgery of the business, he was sure, was "of itself sufficient to bring on sickness even in the healthiest."⁵⁹

There were other pressures too, more mental than

physical. The last significant battle in New Jersey had been fought at Monmouth in 1778, but it was not until much later that the attorney general could travel about without fear. He reported from Monmouth in 1782: "We have passed our time here more agreeably than we have done at any former Court; as we have not been under the most distant Apprehensions from the enemy."⁶⁰ When the Revolution began, Paterson was a bachelor who might not have minded spending long months away from home, but once he had met Cornelia he began to regret the demands of his schedule. Much of their courtship was carried out in letters written while the duties of office forced them to be apart. And once they were married, the long absences became worse. "My wish is ever to be with you my dear Cornelia." He wrote in February 1779, "Would to heaven I could! But business prevents; my duty forbids; and I must submit."⁶¹ A month later he told here, "this absence is tormenting."⁶² And if anxiety about the presence of the enemy and the heartbreak of separation from his bride were not strain enough, he could be depressed about the very bulk of the work that faced him. "Indeed, with respect to Business," he admitted in 1779, "I dare not suffer myself to take a look forward; if I did, I should sink under it in pure despair."⁶³

A great deal of Paterson's despair was related to

his efforts to crush out the threat of loyalism. While he remained in office he came to blame the tories for almost all the problems that the state had to face. Later in the war when some citizens complained about the salaries paid to state officials and the taxes necessary to pay them, the attorney general tried to change the subject by attacking the loyalists.

The publick [sic] would indeed be considerably enriched if those Railers [active loyalists] were brought before the bar of justice and made to answer for their conduct in the close of the year 1776 & Beginning of the year 1777, when the Enemy had Possession of great part of this state."⁶⁴

At the insistence of the attorney general and in the same spirit in which the Council of Safety was created, New Jersey adopted the same type of laws against the loyalists that other states were trying to enforce.⁶⁵ Previous legislation, some of it prepared by Paterson himself, was strengthened in June 1777 to include the death penalty for those apprehended on their way to the enemy lines.⁶⁶ Another act provided that anyone who had gone over to the British or otherwise made known his loyalty to the king could escape punishment by returning his allegiance to the state by August 1. Those who had not returned would soon have their property confiscated and disposed of by newly appointed Commissioners of Forfeited Estates, some of whom quickly distinguished themselves for their ability to find personal

profit in their service to the state.⁶⁷ Between the indictments of the Council of Safety and the activities of the invigorated county magistrates and commissioners, the loyalists of New Jersey were in for a bad time.

Earlier Paterson had criticized the magistrates for not being firm or thorough enough and now he resolved to become a model for vigorous enforcement of the law. He seems to have devoted his personal attention to all sorts of cases involving the disaffected, however serious or trivial the charge. For example, on July 27, 1779, Paterson recorded the result of the prosecution of William Stout before a special session of the court of Oyer and Terminer and General Gaol Delivery in Monmouth County. Stout had gone over to New York which was "then in the Possession of the Enemy.... without any License, Permission or Passport previously obtained...to the evil example of others." Stout had been detained in the county gaol under the watchful eye of the high sheriff of the county who had brought him to court for trial. The defendant's plea was guilty, sentence was set at a fifty pound fine and he was remanded to the gaol until the fine and fees were paid.⁶⁸ Presumably the punishment counteracted any bad example he may have given.

Some never seemed to learn their lesson. From the

beginning Paterson had openly criticized the county committees and vapid magistrates who let offenders get off with light penalties, only to find the conduct of the accused became even more bold then before. The situation called for exemplary punishments which would deter potential trouble-makers in the future.⁶⁹ Paterson's own experience seemed to bear this out. He had prosecuted Edward Price in 1779 for the same offense Stout had made. Price had been brought to Shrewsbury by his parents in August 1776 when the British invasion induced them to move from New York, and in 1777 although he was only 14 or 15 years of age he had borne arms in defense of the state.⁷⁰ But in 1779 Price neglected to get the proper papers before he traveled to New York with his mother, and on his return was arrested and brought to trial. A note on Paterson's bill of indictment indicates that a plea of guilty cost him only a fifteen pound fine.⁷¹ At that time it must have appeared a suitable conclusion to an insignificant case, but Price had not seen the end of Attorney General Paterson; in May 1782 he and some of his friends found themselves in far more serious trouble. According to Paterson's charge "not having the Fear of God in their Hearts, nor Having any Regard for the Duty of their Allegiance, but being moved and seduced by the instigation of the devil as false Traitors and Rebels," the accused had

armed themselves with guns and bayonets, and arrayed themselves near Middletown where they "did falsely and traitorously prepare, order, wage and levy a publick and cruel War against the State of New Jersey." They had ordered militiamen to surrender and committed other hostile acts with the intention to "raise and exalt George, King of Great Britain, to the imperial rule and government of this State." This time Price declared his innocence and was turned over for trial, resulting in still more work for the weary prosecutor.⁷² But while a few troublemakers like Price would return to plague the state time and time again, others were dealt with more conclusively. Paterson prepared the formal judgment against Robert Whitaker, a propertyless man charged with high treason before the Salem County Court who was sentenced "to be hanged by the neck until he be dead."⁷³

The evidence of tireless activity (to the extent of his holding three government posts at one time), his expressions of determination in the face of despair, and the resolute manner in which he pressed indictments, illustrate the firm and persistent prosecution that characterized New Jersey justice in the period of Paterson's service as attorney general. He had made it his personal duty to try to restore the viability of the system of justice, and his insistence on attending as many meetings of the county courts as

possible and pleading many cases himself made it easy to supervise the activity of the magistrates. The regular use of the traditional legal institutions gave them renewed public respect. The county sheriff and jailer and the county magistrate were the authorities who judged the guilt and enforced the sentences against Paterson's accused. When critical situations warranted (as was the case in Monmouth County in the summer of 1778) a special court session might be called but, the court itself was not an extraordinary or a military authority, but a familiar and legitimate arm of the law.⁷⁴ Even the order of execution against Robert Whitaker, mentioned above, was to be carried out by the Salem County jailer, not by the military or another extraordinary governmental power.⁷⁵ The people of New Jersey could clearly see that the establishment of new and revolutionary governments on the state and national levels had not materially altered the patterns of local justice as they had been known and relied upon in the past. Their willingness to accept the new political formula was encouraged by the old familiar bottles in which it was served up to them.

Paterson's record of service was not without its blemishes, but the type of indiscretions that might be traced to him were not of scandalous proportions. In 1779, for example, Aaron Burr, an old Princeton friend with whom

he had maintained relations, called on him to look after the interests of a Mrs. Prevost, the widow of a British officer living on land in New Jersey which had belonged to her husband. Paterson interceded with the commissioners who threatened to confiscate the land and send her to the enemy, and assured Burr that he would keep him informed of anything that might arise that would affect her interest.⁷⁶ Paterson purchased a valuable estate that was forfeited by a fleeing loyalist attorney Bernardus LaGrange.⁷⁷ He helped his sister's husband, Thomas Irwin, to accumulate some property in the same way, and it has been suggested that there was "at least a shadow of collusion" in the way the estate of Somerset loyalist David White was transferred to Irwin during the war only to be returned to White in the 1790's.⁷⁸

His wife's family presented some other problems. When John Bell died and Andrew became the owner of the family's property, Paterson had no alternative but to bring indictment against him and allow the commissioners to seize the estate.⁷⁹ There were a few things, however, that he could do with the help of some friends. He was able to save many of the movable articles by buying them at the appraised value without competitive bidding, thanks to the intercession of Frederick Frelinghuysen, who was the commissioner for

Somerset. Then Paterson proceeded to assess the value of all the articles he had been unable to recoup so that his brother-in-law could appeal to the King for compensation. "As to keeping possession of Bellfield," Cornelia wrote, "that was not possible," in part because of the ill temper of "the old woman" (her relationship is unclear) who stayed on at the homestead and claimed right to part of the house and land.⁸⁰ Moreover, while the attorney general bore the responsibility for enforcing the laws against trading with the enemy, with the help of friends who traveled back and forth under military passes, his wife carried on a regular mail-order service with her brother in New York. Before the war was over she had requested he send: English stays, gloves, hair pins, white sarsnet, materials for a cap, black calico for a petticoat, guitar strings, medicine for her newborn daughter, "and a half a dozen et cetera's."⁸¹

The way in which Paterson's personal practice and his official duties sometimes overlapped may also suggest the presence of flaws in his virtuous public character. Like Cortlandt Skinner before him, Attorney General Paterson continued his private legal practice at the same time he represented the people of the state. His presence before the judge and jury of a county court as the eloquent spokesman for the state supported by all the prestige of Governor

Livingston and the Council of Safety could only be to his advantage when he represented clients in private causes before the same judges and jurors in the same courts.⁸² This may help to explain his insistence on attending so many county court sessions. When he was unable to attend specific court meetings, he might arrange for the same lawyer who represented him in an official capacity to look after the interests of his clients as well.⁸³ There was even one occasion when he represented in a private cause a man he was prosecuting in the same of the state in the very same court session.⁸⁴

Before long, Paterson's practice, which before the revolution had languished, was flourishing with new and influential clients. Landholder Anthony White, who later became Paterson's second father-in-law, merchant John Neilson, Governor William Livingston, Chief Justice Robert Morris, and William Alexander "Lord Stirling" all entrusted their personal legal business to counsellor Paterson.⁸⁵ Such promising students as Robert Troup and Paterson's young friend Aaron Burr chose Paterson as the master under whom they would serve their apprenticeship in the law.⁸⁶ While one must assume that such men recognized the considerable talents of attorney Paterson, the implication remains that they may have given him their business or trusted to him

their education in hopes that his reputation before the courts would favor their causes.

As precipitously as his legal business increased, however, there is no evidence of a specific instance of real malfeasance on Paterson's part. He appears never to have committed a direct illegal act in representing the interests of his clients or his friends. The number of cases involved in his private practice did increase dramatically (from 15 in 1775 to 73 in 1781 and 124 in 1782),⁸⁷ but much of this increase was due to the natural influence of his newfound fame, the multiplication of cases brought on by the ramifications of the Revolution, and the fact that some of his most powerful competitors in the legal profession had fled the State to continue to serve their king.⁸⁸ Such successful members of the bar as Cortlandt Skinner and Bernardus LaGrange had become loyalists to the direct advantage of William Paterson, who inherited the office of one and the estate and practice of the other. There were few who would criticize Paterson for taking advantage of this opportunity, since Skinner had fled New Jersey with the militia at his heels and LaGrange, who had been cited by the colonial legislature for exorbitant fees and had long been the subject of widespread "hatred and aversion," was burned in effigy in his own New Brunswick in 1775. The loss

of neither of them was mourned.⁸⁹

Paterson was twice offered a position in the Continental Congress and twice turned it down. He explained to Henry Laurens in 1778 that he was very busy "trying disaffected persons, which at the present juncture sound policy, as well as social justice, renders particularly necessary."⁹⁰ In 1780 he told the legislators who again proposed him as a delegate to the Continental Congress that the business of being Attorney General required all the time he could devote to it.⁹¹ It has been suggested that at least in the latter case he must have been looking more after his own fortune than the well-being of the state, since the reduced number of loyalist prosecutions might indicate that "1779 was the last year of real revolution as far as the attorney general was concerned."⁹² When the nature of the cases that still arose is considered, however, this conclusion fails to stand. The brushfire crisis of 1776-77 that had necessitated the forming of the Council of Safety had been extinguished, but the threat posed by New Jersey loyalists continued on. Paterson prosecuted Richard Price and his cohorts for perpetrating an outright war against the state in 1781, and he did not feel free of anxiety about the presence of the enemy until 1782.⁹³ Even in that year the legislature was forced to alter the election law and do away with the secret ballot

for fear that the disaffected would otherwise secretly intrigue against the government.⁹⁴ To be sure, Paterson's personal interests would be served better if he remained in New Jersey rather than traveling south to Philadelphia, but there is no reason to doubt the sincerity of his concern for the safety of his constituents. Besides, serving on the Continental Congress would require still more long absences from his wife and family. Paterson remained in the office of attorney general, assiduously performing its duties until the treaty of peace was assured in 1783.⁹⁵ Surely a man who favored his private interests over his public service would have resigned earlier to concentrate on personal fortune if the circumstances would permit. Moreover, unlike many others of his experience and position, Paterson showed no interest in speculation. He purchased only one forfeited estate and immediately made that farm on the Raritan his home and office.⁹⁶ Paterson's compromises with the letter of the law were always matters open to interpretation. When he interceded for family or friends for example, the decisions he sought to influence were always of an administrative nature and never judicial.

Paterson had been accused of a willingness to "gamble his own future on the success of the Revolution, and prosecute both in the name of patriotism."⁹⁷ But the relatively minor

indiscretions he may have committed while in office indicate only that the strenuous enforcer of revolutionary justice in New Jersey was a human being under it all. Under his direction hundreds of loyalists were efficiently prosecuted and hundreds of estates confiscated during the war. The problems with effective enforcement of the law that Paterson had identified in March 1777 had been solved--largely through the efforts of Paterson himself. By the time he left government service in 1783 the popular respect for the authority of governmental institutions had been restored, the invading armies as well as the loyalist enemy within had been defeated, and William Paterson was somewhat richer and considerably more famous.

FOOTNOTES, CHAPTER V

¹Many of these letters are part of the Paterson Papers at the Library of Congress and will be discussed below.

²Paterson kept a record of family marriages, births, and deaths in his own hand. See notebook, n.d., misc. mss. Paterson, NJHS.

³By this time in his life Paterson had evolved a conservative political and social philosophy that would be evident in the way he handled his public responsibilities during the Revolution. See above Chapters I, III and IV.

⁴JLC, first session, passim.

⁵William Paterson to William Livingston, October 21, 1776, Livingston Papers, MHS.

⁶For a complete analysis of the ineffectiveness of the revolutionary legislature and the vacuum filled by Livingston's and Paterson's leadership of the Council of Safety and the Privy Council see Bernstein's, "New Jersey in the American Revolution." Some of his conclusions were summarized in a paper entitled, "William Livingston: The Role of the Executive in New Jersey's Revolutionary War," in New Jersey in the American Revolution II (Trenton, 1973), pp. 12-30.

⁷Bernstein, "William Livingston: The Role of the Executive in New Jersey's Revolutionary War," p. 18; and Bernstein, "New Jersey in the American Revolution," Chapter IX passim.

⁸Philemon Dickinson to William Paterson, March 13, 1777, folder A, Paterson Papers, RUL.

⁹Amicus to William Paterson, n.d., folder 1, Paterson Papers, RUL.

¹⁰The charge was made by "A Jersey Farmer," in the October 8, 1778 New Jersey Gazette. Actually the claim was incorrect, because the constitution which specified that members of the assembly not hold multiple offices did not mention legislative councillors in this regard.

¹¹Mss. minutes, July 2, 1776, NJHS.

¹²PCCS, for 1776 passim.

¹³Lundin, Cockpit of the Revolution, p. 141ff and passim.

¹⁴Newspaper essay, [c. 1793-96], oversize file, Paterson Papers, RUL.

¹⁵Lundin, Cockpit of the Revolution, Chapter VII passim.

¹⁶Votes and Proceedings of the General Assembly of New Jersey (Burlington, 1777), pp. 99-100. Hereafter referred to as Votes and Proceedings.

¹⁷See PCCS, passim.

¹⁸JLC, p. 65 (March 12, 1777).

¹⁹This document, entitled by Paterson "Address to a Conference," is clearly the speech he offered in March 1777. A cover sheet bears the date 1776, but since the Address discusses the events of the winter of 1776-1777 we can only assume that Paterson added the erroneous date later on. Folder 1, Paterson Papers, RUL.

²⁰"Address to a Conference," [March 15, 1777], folder 1, Paterson Papers, RUL.

²¹Ibid.

²²Ibid.

²³See Chapter IV above.

²⁴Mss. minutes, July 4, 1776, NJHS.

²⁵See Clarence VerSteeg, The Formative Years (New York, 1964), p. 276; Michael Zuckerman, Peaceable Kingdoms: New England Towns in the Eighteenth Century (New York, 1970), pp. 22, 227; and Charles S. Sydnor, Gentleman Freeholders: Political Practices in Washington's Virginia (Chapel Hill, 1952), pp. 75-85.

²⁶VerSteeg, Formative Years, pp. 274-76.

²⁷The New Jersey Gazette was set up with the aid of the legislature in 1776.

²⁸On New Jersey's counties see Edward Q. Keasby, Courts and Lawyers in New Jersey, 1661-1912 (3 vols.; New York, 1912), Vol. II, pp. 813-22.

²⁹PCCS, passim.

³⁰See above. For further examples of the temporary vacuum that existed in local government in the winter of 1776-1777 see Bernstein, "New Jersey in the American Revolution," p. 277.

³¹JLC, March 15, 1777.

³²The most complete analysis of the Council of Safety is in Bernstein, "New Jersey in the American Revolution," Chapter VIII.

³³Ibid., passim. See also Minutes of the Council of Safety (Jersey City, New Jersey, 1872). Hereafter MCS.

³⁴MCS, passim.

³⁵[Address on Loyalism], n.d., folder 1, Paterson Papers, RUL. Paterson began to write these comments on the same page where he completed his Address before the Legislative Conference of March 15. There can be no doubt however that these later pages were written after that date, because they include reference to the imprisonment of John Fell, justice of the state supreme court and Paterson's fellow legislative councillor, who was captured by the British on April 22, 1777, and taken by them to New York. See D.A.B. article on Fell. The tone of Paterson's remarks suggests that he may have been encouraging the legislature to widen the power of the Council of Safety, as they did on several occasions.

³⁶Ibid.

³⁷MCS, passim; and Bernstein, "New Jersey and the American Revolution," Chapter VIII passim. According to Haskett there were very few sittings of the Supreme Court during this period, leaving most of the business to the county courts; "William Paterson, Counsellor at Law," pp. 127, 139, 141. See also Haskett, "Prosecuting the Revolution," AHR, Vol. LIX (1954), p. 583.

³⁸MCS, passim.

³⁹Lundin, Cockpit of the Revolution, p. 408.

⁴⁰See Austin Scott, "Holmes v. Walton: The New Jersey Precedent," AHR, IV (1899), pp. 456-69.

⁴¹Wallace Brown, The King's Friends: The Composition and Motives of the American Loyalist Claimants (Providence, Rhode Island, 1966), p. 111.

⁴²Ibid.

⁴³See Adrian C. Leiby, The Revolutionary War in the Hackensack Valley: The Jersey Dutch in the Neutral Ground (New Brunswick, New Jersey, 1962); and Ruth M. Keesey, "Loyalism in Bergen County, New Jersey," William and Mary Quarterly, third series, Vol. XVIII (October, 1961), pp. 558-76.

⁴⁴Cornelia Bell to Andrew Bell, January 30, 1777, Andrew Bell Papers, LC. See also Paul Smith, Loyalists and Redcoats (Chapel Hill, 1964), passim.

⁴⁵Abraham V. D. Honeyman, "Concerning the New Jersey Loyalists in the American Revolution," NJHSP, Vol. LI (1933), pp. 117-33. Cornelius Vermule, "Active Loyalists of New Jersey," NJHSP, Vol. LII (1934), pp. 87-95. Vermule suggested that there were as few as 500.

⁴⁶Paul Smith, "New Jersey Loyalists and the British Provincial Corps in the War for Independence," NJH, Vol. LXXXVII (1969), pp. 69-78.

- ⁴⁷Bridgeton Plain Dealer, January 1, 1776, mss.
copy, RUL.
- ⁴⁸[Address on Loyalism], n.d., folder 1, Paterson
Papers, RUL.
- ⁴⁹Lundin, Cockpit of the Revolution, pp. 160-61.
- ⁵⁰Why the family split this way is unknown.
- ⁵¹Bell Papers, NJHS.
- ⁵²These letters are in the Andrew Bell Papers, LC.
- ⁵³Cornelia Bell to Andrew Bell, January 30, 1777,
Andrew Bell Papers, LC.
- ⁵⁴Cornelia Bell to Andrew Bell, April 2, 1777,
Andrew Bell Papers, LC.
- ⁵⁵Cornelia Bell Paterson to Andrew Bell, April 5,
1779, Andrew Bell Papers, LC.
- ⁵⁶Cornelia Bell Paterson to Andrew Bell, September
12, 1779, and August 26, 1780, Andrew Bell Papers, LC.
- ⁵⁷William Paterson to Cornelia Bell Paterson,
March 17, 1779, Paterson Papers, LC.
- ⁵⁸William Paterson to Cornelia Bell Paterson,
September 12, 1779 and August 26, 1780, Paterson Papers, LC.
- ⁵⁹William Paterson to Cornelia Bell, June 27, 1778,
Paterson Papers, LC.
- ⁶⁰William Paterson to Cornelia Bell Paterson,
June 2, 1782, Paterson Papers, LC.
- ⁶¹William Paterson to Cornelia Bell Paterson,
February 27, 1779, Paterson Papers, LC.
- ⁶²William Paterson to Cornelia Bell Paterson,
March 17, 1779, Paterson Papers, LC.

⁶³William Paterson to Cornelia Bell Paterson, March 29, 1779, Paterson Papers, LC.

⁶⁴Newspaper essay, n.d., Paterson Papers, LC.

⁶⁵Wallace Brown, The Good Americans: The Loyalists in The American Revolution (New York, 1969), Chapter V passim.

⁶⁶Ruth M. Keeseey, "New Jersey Legislation Concerning Loyalists," NJH, Vol. 79, no. 2 (1961), pp. 82-83.

⁶⁷Ibid., pp. 87-90, and passim. See also Lundin, Cockpit of the Revolution, pp. 286-293.

⁶⁸Charge of William Stout, July 27, 1779, Nelson Papers, NJHS.

⁶⁹[Address on Loyalism], see above.

⁷⁰Jurors of Monmouth County Report to William Paterson of Charge Against Edward Price, July 1779, misc. mss. Paterson, NJHS.

⁷¹Ibid.

⁷²Bill of Particulars against Edward Price and William Harbert, under indictment for treason, signed by William Paterson, May 1782, misc. mss. Paterson, NJHS.

⁷³Form of Judgement in Sentence of Death Against Robert Whitaker, n.d., mss. no. W.J. 28, NJHS.

⁷⁴The only complete study of New Jersey's colonial courts in Keasby, Courts and Lawyers, passim.

⁷⁵Form of Judgement in Sentence of Death Against Robert Whitaker, n.d., mss. no. W.J. 28, NJHS.

⁷⁶William Paterson to Aaron Burr, June 1, 1779, misc. mss. Paterson, NJHS. The story is related in Haskett, "William Paterson, Counsellor at Law," pp. 147-48; and in Matthew L. Davis, Memoirs of Aaron Burr (2 Vols., New York, 1836), passim.

⁷⁷Certificate of Sale, April 14, 1779, folder 1, Paterson Papers, RUL. Writing to her brother, Cornelia described the house as being only "tolerable," but we must assume that the £12,324 in depreciated money that Paterson paid was something of a bargain price. Cornelia Bell Paterson to Andrew Bell, September 12, 1779, Andrew Bell Papers, LC.

⁷⁸Michael P. Riccards, "Patriots and Plunderers: Confiscation of Loyalists Lands in New Jersey, 1776-1786," NJH, Vol. 86, no. 1 (1968), p. 25.

⁷⁹Cornelia Bell Paterson to Andrew Bell, September 12, 1779, Andrew Bell Papers, LC.

⁸⁰Ibid.

⁸¹Cornelia Bell to Andrew Bell, March 11, 1778, April 7, [1779], Andrew Bell Papers, LC. She also acknowledged the safe receipt of at least some of the articles, Cornelia Bell Paterson to Andrew Bell, September 12, 1779, Andrew Bell Papers, LC.

⁸²Haskett, "William Paterson, Attorney General of New Jersey: Public Office and Private Profit in the American Revolution," p. 29.

⁸³Ibid.

⁸⁴Ibid.

⁸⁵Ibid., passim.

⁸⁶See Davis, Memoirs of Aaron Burr, Vol. I, pp. 217-22.

⁸⁷Haskett, "William Paterson, Attorney General of New Jersey: Public Office and Private Profit in the American Revolution," pp. 32-33.

⁸⁸Ibid., p. 31.

⁸⁹Lundin, Cockpit of the Revolution, pp. 86-87.

⁹⁰William Paterson to Henry Laurens, March 6, 1778, Misc. mss. Paterson, NYHS.

⁹¹William Paterson to Alexander Stevens, December 4, 1780, Misc. mss. Paterson, NYHS.

⁹²Haskett, "William Paterson, Attorney General of New Jersey: Public Office and Private Profit in the American Revolution," p. 36.

⁹³Bill of Particulars Against Edward Price and William Herbert under indictment for treason, signed by William Paterson, May 1782, Misc. mss., Paterson, NJHS. See above.

⁹⁴Richard P. McCormick, Experiment in Independence: New Jersey in the Critical Period, 1781-1789 (New Brunswick, New Jersey, 1950), p. 36.

⁹⁵Paterson to Speaker of Assembly, March 17, 1783, folder 2, Paterson Papers, RUL.

⁹⁶Cornelia Bell Paterson to Andrew Bell, September 12, 1779, Andrew Bell Papers, LC.

⁹⁷Haskett, "William Paterson, Attorney General of New Jersey: Public Office and Private Profit in the American Revolution," p. 26.

CHAPTER VI

NEW JERSEY UNDER THE CONFEDERATION

News of the coming of peace was greeted in April 1783 with a celebration in Trenton and services of thanksgiving and festive illuminations all across the state, but the emotion evoked was more that of relief than victory. The cost of the war had been high in both physical destruction and psychological drain.¹ William Peartree Smith wrote to his friend Elias Boudinot, then President of the Continental Congress to share his feelings:

The fine air of this illustrious morning...has set my silent bells into a little jingle.... They are very weak, I must confess. I am incapable of ringing the Grand and Noble chimes of Triumph.²

Writing while the news of the Newburgh Conspiracy was still fresh, Smith was concerned about some of the problems that the infant nation would have to face in the near future, not the least of which was "to set all the parts of the Great acquired machine" of the Confederation into order. He told Boudinot of his fear that the structure was "all going to Pieces, without sufficient force in the Commanding

Spring." And if, as he thought, it would become necessary for some "Master Hand" to seize the reigns of government as had Cromwell, he only hoped it would be the great and meritorious General who had rescued the nation in war.³

The difficulties New Jersey would face in the years after the war were not very different from those of the years before. International politics was still of little concern to Jerseymen and a great deal of their governmental business was still carried out on the county level. But there were new complications in the economic changes and political pressures brought on by the new climate of republicanism. For many popular leaders the solutions to social problems would appear much more simple because of the political change, and they would expect the political institutions of the state to be more responsive to the needs of the people. For those more conservative, however, the decisions of the state government in these years would seem totally destructive of the true ideals of republicanism, and they would seek salvation in a reconstituted and more powerful national government of the type Smith had foreseen. Like any fine vintage the spirit of stable republicanism had to be distilled in the fire of contention and discord before it could begin the long process of maturation.

William Paterson would be at the center of the

contention in these crucial years of American political development, but his immediate reaction to the news of peace was a feeling of deliverance. He had not complained except to his wife of the rigors of his service during the conflict, but now that it was over he retired to private life and looked forward to a period of relaxation. He had considered a move to New York, but soon decided against it because of the insecurity and confusion there. He wrote of his desire to "pass the Remainder of Life in Quietude and Peace," and he wished especially to make up for the long months that the war had forced him to spend away from home and hearth.⁴

Paterson's father had died in 1781 and had been buried at the son's farm on the Raritan. This made William the head of his father's family, a responsibility he would assume by assisting his brothers and brother-in-law to establish their business careers with helpful advice and financial support.⁵ But his wife and children were closer to his heart. The war years had not been easy on Cornelia. It had been pleasant for her to move into a comfortable home, and she was certainly well provided for, but the long periods of her husband's absence were hard on her. She wrote to her brother Andrew about "the many tedious hours I pass alone," and told him how she looked forward to her mother's coming to stay at the Raritan farm, "for surely no

one ever required the presence of a Mother more than I do, being frequently indisposed and entirely alone."⁶ Then came children--Cornelia born June 4, 1780 and Frances born January 29, 1782.⁷ The busy father had missed some of the most cherished moments of parenthood, but in the summer of 1783, as he set aside the responsibilities of his office for the last time, he could look forward to a fuller family life. Instead he met with personal tragedy.

Frances, his youngest daughter, fell ill and in June 1783 she died.⁸ The shock would have been profound under any circumstances, but the child's mother was expecting another baby in the fall, and she took the loss very hard. A fleeting reunion with her brother managed to restore her spirits somewhat, but in October she became ill.⁹ When in a few weeks she presented her husband with their first son, the strain of childbirth proved to be too much for her weakened condition. Four days later she died.¹⁰ Cornelia's death was a traumatic experience for Paterson. He had loved her deeply and with all of his youthful passion, but they had been deprived of a normal life together. Now, just when it seemed that he would be able to spend with her the time he wanted, she was swiftly taken from him. He mourned her loss and wrote poetry to commemorate her death and its impact on his life:

...
Go Passenger,
Reflect upon your own mortality
and learn to die.

But if a part of Paterson died with Cornelia, he could not afford to mourn for long. With daughter Cornelia now three and his newborn son William to care for, self pity could not be one of his vices. He explained to Cornelia's brother that as deep as his grief had been "yet what consolation do my sweet babes afford, and he hoped that Bell and his mother would come and visit the Raritan farm before he broke up the house to move to the convenience of a house in the town of New Brunswick,¹² presumably to leave behind the poignant memories of his all too short romance. A little over a year later he married again, but as if he could never erase the mark she had left on his life Paterson chose as his second wife one of Cornelia's dearest friends. Euphemia White was the daughter of Anthony White, who had provided a roof for Cornelia in the early days of the war. She had been present at the first wedding in her own home and had watched the beginning of Cornelia's married life as the newlyweds moved in at Union Farm until they could find a place of their own.¹³ Now she stepped in to make a home for Paterson and the children that her friend had brought into the world.

Of course when Paterson retired from public life,

he had never thought of giving up his lucrative private practice; besides, to bury himself in work was a way to forget his grief. Paterson's legal practice in the years between 1783 and 1790 took him into twelve of New Jersey's thirteen counties, but it has been estimated that 65 percent of his cases were handled in either the county courts of Hunterdon, Somerset, and Middlesex, or in the Supreme Court.¹⁴ In these four jurisdictions alone he played a part in 947 cases over the eight years.¹⁵ With the cases he took in other jurisdictions and legal business such as writing wills and consultations that were never reflected on the court dockets, Paterson was a very busy lawyer.

As his business grew, so did his income. It has been estimated that even in 1787, when he would be pre-occupied with responsibilities at the Philadelphia Convention which kept his case load low, his professional income amounted to about £1,000.¹⁶ His fortune was swelled too, when he was chosen to participate in some of the most significant legal actions going on in the state at the time. Aside from maintaining his professional prestige, these cases afforded generous fees.

The single legal question which occupied the attentions of New Jersey's landed interests, almost to the exclusion of other critical confederation issues, was the dispute

over the boundary between East and West Jersey.¹⁷ The two boards of proprietors jealously protected their political influence and their respective land holdings on either side of the dividing line. The change made in the boundary between New York and New Jersey in 1769 had occasioned the setting of the exact point of North Station Point, which had been used as the northern terminus for the East-West line, several miles to the east of where it had been supposed to be. The West Jersey proprietors, who stood to profit considerably if the East-West dividing line were shifted to the east, fought in the Provincial Assembly to have the new location of North Station Point be taken as the terminus for a new dividing line. The East Jersey group resisted, but the Revolution intervened before any action could be taken. The political influence of the proprietors had been dealt a shattering blow by the Revolution, but their residual lands, particularly those in the disputed area, were still of very considerable value. Soon the West Jersey proprietors renewed their long and vigorous attempt to have the dividing line changed to reflect the difference in their favor. The authority to make such a change rested in the state legislature and from the end of the war until 1786 each of the respective boards of proprietors paid a

team of lawyers to defend their interpretation of the boundary to the legislators. Paterson was a member of the East Jersey defense team and with William Churchill Houston, Robert Morris, and John Rutherford appeared before the legislature in a three-day hearing in 1784.¹⁸ The result was a victory for the East by a one vote margin. After this Paterson appears to have taken a back seat in the affair; he found it "inconvenient" to attend another legislative hearing in 1785.¹⁹ By that time both he and Morris were also representing the interests of the West Jersey Society, an independent group of Englishmen with extensive interests in West Jersey, and Paterson had probably decided that it would be improper for him to again appear publicly for the Eastern proprietors.²⁰ In any case the interests of the East were confirmed in 1786.

Paterson's portfolio of clients also included the very lucrative business of Sir Robert Barker. Former loyalist sympathizer James Parker was agent for Barker, an Englishman whose extensive lands in New Jersey had been overrun during the war by tenants who now refused to recognize the rightful owner.²¹ Parker, a considerable landholder in his own right, was concerned that an "unrestrained licentiousness" in one area might make it difficult for any landlord to keep his "Tenants under proper behavior."²² Once

he received Barker's power of attorney, Parker hired a distinguished legal staff including James Kinsey, Elias Boudinot, Abraham Ogden, Frederick Frelinghuysen, young Richard Stockton, and William Paterson to help him prosecute the client's business.²³ Paterson's participation was partly in the form of consultation, but he was personally involved in some 30 cases of eviction of farmers in Sir Robert's name in 1785 and 1786.²⁴ The Barker business "provided a field day" for New Jersey lawyers.²⁵ It was not that Paterson was an indiscriminate fee grabber. To one of his other clients he had recommended an out-of-court settlement because he had no desire to load him down with costs. "The Play," he explained, "is not worth the candle."²⁶ Once in a generation of lawyers, however, cases come up in which it is possible to pyramid the legal fees to a point where they become truly a monument to the profession. For Paterson's generation two of these windfalls were the East and West Jersey boundary dispute and the Barker land case. Paterson was influential and well connected enough to get in on both of them.

His legal expertise and far-reaching reputation inevitably drew him back into public affairs, this time in the services of the Confederation. He was chosen in 1785 to be a commissioner in the settlement of a dispute between

the states of Massachusetts and New York.²⁷ When he accepted the appointment he had involved himself for the first time in the national affairs that would in the future absorb more and more of his energies. But at least until 1787 his concerns were still primarily centered in New Jersey.

The question of a policy towards loyalists remained a knotty problem even after the war ended. Once the peace was secure many loyalists scurried to find passage on ships for England and Nova Scotia. In a letter to his brother, Paterson said he thought loyalists were the only ones who were unhappy about the treaty; "speed them all" he wished.²⁸ Others who had remained loyal to the king now decided to make their ways back to New Jersey, and how to treat these returning Tories was a problem that plagued the state all through the Confederation.²⁹ In some areas there was tremendous popular resistance. In Monmouth County, Paterson explained, the people seemed "determined not to suffer any of the refugees to return and live among them."³⁰ By the end of the decade, however, many of the wounds seemed to have healed. The policy finally decided upon by the state was to encourage the repatriation of at least those who had not taken up arms against the United States, and although the confiscated estates were never returned, all other legal

restrictions against them were set aside. Some of the loyalists were welcomed back and rose to positions of respect and prosperity in the post war years. Paterson, for example, assured his brother-in-law that he needed no invitation to visit his niece and nephew. It is unknown whether Bell went again to the farm on the Raritan where his sister died, but he did give up his plans to follow his friends to England and instead returned to New Jersey. Eventually he settled in Perth Amboy where he became an active Federalist, Collector of the Port, and prominent representative of the East Jersey proprietors.³¹

Paterson participated in attempts during the Confederation to breathe new life into the state's business community. He was a signer in 1783 of a petition to establish a state impost to counterbalance the levies of New York and Pennsylvania, and encourage an independent foreign commerce for New Jersey--"that situation of Independence and Wealth, to which from their resources and local advantages they have a right to aspire."³² When the state legislature in 1784 initiated legislation that carefully regulated lawyers and rigidly limited their fees, Paterson voiced his obvious displeasure.³³ And before the end of the decade he was drawn again into the mechanics of the state's political system, when he successfully

defended the victors of a Hunterdon County election before the assembly against charges of tampering with the ballot boxes.³⁴ The matters of public concern that earned Paterson's closest attention during the Confederation period, however, were questions of political economy--debtor legislation, paper money, and public finance.

By far the largest part of Paterson's legal practice involved him in the collection of debts. Of the 947 cases represented in his four busiest jurisdictions at least 544 were debt cases, and of these he represented the creditor in 455. Moreover, it has been estimated that thanks to his efforts in these four jurisdictions alone, between 1783 and 1790, \$194,936 was collected by New Jersey creditors.³⁵ In the latter years of the war the problems of insolvent debtors had been complicated by a series of economic factors that soon filled the jails with unfortunates who could not meet the demands of their creditors.³⁶ Despite conservative opposition, the legislature took action in behalf of the beleaguered debtors, and in 1783 and 1786 laws were passed to ease their plight. The 1783 law made it possible for any debtor, with the consent of a majority of his creditors, to turn over all of his real and personal property (some clothes, tools, and a bed excepted), and thereby obtain his freedom. The 1786 code allowed the debtor to petition for bankruptcy on his own initiative. If the creditor wanted

to keep the debtor in prison, it became his responsibility to pay the jailer for the detainee's support. Another piece of legislation, the notorious "Bull Law" that was passed in March 1786 and repealed in November of the same year, sought to protect debtors from having their belongings sold off at a fraction of their real value. With a critical shortage of cash, the bids offered at public auction for the property of debtors were patently unfair. The "Bull Law" required creditors to accept sufficient property at appraised value to satisfy the debt. These laws appear to have been sincere attempts to save a considerable percentage of the State's population from "utter Ruin,"³⁷ but the creditors' influence was strong and one of their willing spokesmen, William Paterson, thought the laws were misguided.

Paterson's statements on the debtor laws defined his position on the sacred rights of property. In one comment on the interrelation of property and the law he explained:

To the State it is immaterial in whose hands the property remains, but it is of the last importance, that its citizens should be faithful and punctual in the Performance of Contracts and Payment of Debts. The Legislature therefore should leave the parties to the law under which they contracted.³⁸

The "Bull Law" he saw as particularly opprobrious. It was, he later claimed, "in direct controvention of contracts, and

in open violation of every principle of honor, honesty and good faith."³⁹ Perhaps Paterson's attitude was hard-hearted. After all his father had earlier faced some of the same misfortunes that Confederation debtors now had forced upon them. But there was more at stake here than the financial future of some marginal farmers. Paterson was concerned that the legislature was setting aside some basic tenets of republican government in its haste to satisfy the desires of the people. He reasoned that

The Legislature must have been sensible of the injustice and tergitude of the measure; but they supposed it would have been pleasing to the bulk of their constituents, and therefore suffered themselves to be carried away by what they conceived to be a popular current.⁴⁰

"The rights of private property were inviolable,"⁴¹ he maintained, and the debtor laws were only one way in which he thought the state legislature was compromising on this cardinal rule. Paper money was another.

The beginnings of New Jersey's paper money problems in the Confederation period can be traced back to March 1780, when New Jersey like the other states was called upon to withdraw at the rate of forty to one for specie all the continental currency then circulating in their state. The states were to replace continental bills with a new emission of state paper money which they would redeem in taxes within six years. In June 1780 New Jersey complied

with Congress' request, guaranteeing the new notes as legal tender. It soon became clear, however, that the problem of depreciation had not been solved. Within a year the new emission "was being reckoned at three to one for specie in spite of the tender laws."⁴² By June 1781 the legislature was forced to recognize the problem. In an attempt to straighten out the tangled financial situation, they enacted a new law which repealed all the legal tender provisions relating to paper currency within the state (finally taking official recognition of the depreciation) and suspended the sale of confiscated estates (which because of the depreciation were being sold at a fraction of their real value). Here was a simple declaration by the assembly that the guarantee they had given a year before was no good. To ease the blow on New Jersey debtors the legislators granted a one year grace period in which creditors who forced their debtors to pay would have to accept the paper at face value. Thereafter they could insist on being paid their debt in full either in specie or in paper money at market value equal to the full specie amount.⁴³

Creditors were angry because they could not insist on full repayment of debts for one year. Debtors were angry because they would eventually have to pay back their loans at face value (unless their creditor for some reason

forced payment within the year grace period). William Paterson was very angry, but he was most upset about the legal tender guarantee, a promise that the legislators had broken. "What a master stroke this in politicks [sic]," Paterson sarcastically remarked, "What a splendid display of honesty and skill."⁴⁴ "What encouragement can there be for industry," he asked, "when a man, having gleaned together a little money...has put it out upon use in expectation of receiving a full return of the principle...is paid in paper... which represents not a third of it."⁴⁵ Paterson recalled that when the state emission was first put forward the "faith of New Jersey was solemnly pledged for its redemption. The voice of our legislature declared that every Bill wore the Face of Truth, and not the mask of deceit and falsity," but the legislators had broken their promise.⁴⁶ In the haste of the revolutionary moment the authors of the 1776 constitution had accepted a matter of faith that the omnipotent legislators would not abuse their authority. Now it began to appear that "public contracts might be voided by a simple majority vote, and that the rights of property, in fact, were insecure in an unrestricted democracy."⁴⁷ Apparently Paterson believed that depreciation could have been avoided, or at least minimized, had the legislature stuck to its word and maintained the legal tender guarantee.

It was perfectly clear, however, that this act of irresponsible devaluation would damage future public faith in the state, particularly in matters relating to paper money.

The future came in 1785. Prompted by a shortage of currency and a hard-felt depression, hundreds of Jerseyans petitioned their legislature to establish a loan office or land bank with authority to loan out \$100,000 in bills of credit. The proposal was not a radical or unrealistic one. Colonial New Jersey had repeatedly turned to the paper money expedient to ease its economic problems and its record of fiscal responsibility was a good one. But, as Paterson had foreseen, any new attempt to enact paper money legislation, which, like this law, would include a legal tender clause, was in for serious opposition. There had always been a conservative group who opposed paper money, but now they were stronger than before, "reinforced by the conviction that the legislature could not be trusted to adhere to its promises."⁴⁸

Paterson became one of the prime spokesmen against the new loan office. Among the arguments he mounted was his contention that the scarcity of money did not in fact exist. "Money cannot be scarce," he claimed, "when the Commodities of a Country find a ready Market, and sell for a good Price."⁴⁹ People might find it difficult to borrow

cash even though they offered the best security, but this should not be taken as evidence of a scarcity of money. There would be plenty of money to lend, he thought, if the creditors did not fear that the legislature would again somehow undermine their investments. The problem was not a shortage of money but of moral integrity, and the whole matter could be reduced to moral weakness.

The indolent and dissipated may clamour about the Scarcity of Money; the one will not toil to get it, & the other squanders it as fast as he receives: their clamour would be the same, if they possessed all the mines of Peru.⁵⁰

Now "Labourers, Tradesmen and Mechanics demand for their Work and Services at least one fourth more than they did before the War." And, as still further evidence that there was no scarcity of money, the legislators had been collecting such high salaries that most were able to "lay up at least one half of their wages."⁵¹

While he was in the government, Paterson had defended the legislators against charges of overspending. Now he could not resist taking the opportunity to remark sarcastically to the anti-lawyer interest that the wartime assembly which had kept salaries low might have "pickt up perhaps," their spirit of economy "from some pidling Attorney, or some Business hunting, wonder-working Justice of the Peace." Now, however, any "spirit of saving" was

gone, and the "Yea and Nay men" of the legislature were playing "pernicious patriots" trying to exact whatever salary and expenses they could from the public treasury.⁵²

To accentuate his argument that there was no real scarcity of money, Paterson tied it together with his old ideas on luxury and moral corruption. Far from being destitute, "people of all Ranks purchase foreign Manufactures, and are emulous to excel in Dress, in Equipage, in living, and in all fashionable and expensive Amusements." Finally Paterson had returned to the puritanical moralizing that had influenced his political decision making in the past. His proposed solution must have appeared incredible to those threatened with foreclosure and imprisonment by impatient creditors or the county sheriff, but Paterson proclaimed:

It must be the Wish of every good Man, as it is the interest of every wise man, that Money should decrease and not increase among us. A decrease of Money will introduce a Spirit of Industry & Frugality, will restrain luxury, Extravagance and thoughtless Profusion, and will compel people to work for the Bread they eat, and not to go about seeking whom they may devour.⁵³

In deciding against both the "justness and utility" of new paper money legislation Paterson was quick to admit that colonial precedents had not worked badly.

Before the Revolution, Paper money within certain confined limits retained its value, & was equal to

coin. There was then no violation of Faith public or private; Credit had received no wounds; but on the contrary Honesty and Truth were considered as the basis of all Contracts, whether they respected Individuals, or the Community at Large.⁵⁴

Since the Revolution the actions of the legislature had raised grave doubts.

While the people remember the catastrophe of the Continental money, while they contemplate the Fate of the State money, While they bear in memory the act for enforcing payment in certificates [the war-time legal tender law] While the legislature of Today may break in upon and destroy the Contracts formed and ratified by the Legislature of Yesterday, while all property has become uncertain owing to the mutuabile principles of legislation heretofore practised to serve the Interest of the Moment or a present Exigency, it is the Height of political Frenzy to order a new emission of Paper, and by the compulsive edict of the Law to make it pass in payment equal to gold & silver.⁵⁵

For the state legislature, which had already proved itself unworthy of trust, to issue bills on the assumption that they would circulate without depreciation was, to use Paterson's word, preposterous (italics mine).⁵⁶

But the most effective arguments used by the opposition to the new loan office and paper money outlay were political rather than economic,⁵⁷ and for Paterson the whole question came to rest in the political principles that were at the heart of republicanism.

In Legislation the following principles are clear, that All the Citizens of a State ought to be viewed with equal Eyes; That one order of Citizens ought not to be preferred to another; that Property ought to be secured, and rendered inviolate, that Industry

ought to be encouraged, Honesty and good Faith inculcated and promoted, and Deception, Fraud, and Perfidy detected and punished.⁵⁸

The application of these principles was easy and direct.

The Sum which the Debtor owes makes up Part of the Substance of his Creditor, and ought not to be taken from him without his Consent; nor ought it to be paid in any other Kind of Money than that which was stipulated between them. If the Legislature interfere, and invent a new Species of Money to serve the Purposes of the Debtor, Though at the Risk of ruining the Creditor, is it not an Act of Partiality, and causeless Preference?⁵⁹

The popular will expressed through the elected legislature and unlimited with respect to property rights was destructive of the essential principles of republican government.

As a result of the public debate the assembly tabled the paper money bill in the fall of 1785 on the resolution of Abraham Clark, the state's paper money champion, who probably sought to find more support before putting it to a final vote.⁶⁰ When the legislators convened again in early 1786, the bill was approved by the assembly but turned back by the council. According to Paterson the measure was then "committed to the saddlebags of Mr. Clark," who carried it to a special session called in New Brunswick in May, where it was passed into law.⁶¹ The tyranny of the majority seemed to be at hand.

Paterson's disapproval of the popular posture of the state assembly would ultimately lead him to favor a

strengthening of the Confederation government at the expense of the states. But New Jersey's support for the Nationalist group in Congress had come early, and it was based on other issues as well. Once the war was over the Nationalists agreed that their best chance to invigorate the powers of Congress was to win for it an income independent of the voluntary state requisitions called for in the Articles of Confederation. The result was the financial plan of 1783 which had as its main feature the establishment of a national impost to raise revenue for the repayment of the war debt.⁶² New Jersey's leaders saw in the impost an opportunity to be free from the unfair burden placed upon them by New York and Pennsylvania. With no major port of her own, New Jersey was forced to import through these neighboring states, whose tariff duties were passed on to New Jersey buyers in the form of increased prices. New Jersey had her own contributions to pay to Congress, but as it was working out Jerseymen were paying a sizable share of their neighbors' contributions above and beyond their own. It was unlikely, however, that the financial plan would receive the required unanimous support, and before 1783 was over New Jersey had arranged to pay directly the interest on that portion of the continental debt held in the state rather than continuing to honor the inequitable requisitions of Congress.⁶³ This could only disappoint the Nationalists

who wanted the public creditors to look directly to Congress for satisfaction, but after 1783 New Jersey would pay no more monies to the Congress.⁶⁴

Nevertheless, New Jersey continued to support the movement for a national impost. In 1785 the legislature required its implementation as a precondition for the state to pay its share of the new congressional requisition. This 1785 requisition had a new twist. It was to be paid one third in specie and two thirds in indents (certificates given for interest due on the federal debt).⁶⁵ New Jersey citizens held a disproportionately large share of the debt and would therefore receive more than enough indents to satisfy two thirds of the state's quota. The catch was that Congress would issue no indents in states which did not agree to comply with the entire requisition and New Jersey refused to pay any specie as long as the 1783 impost was still not in effect.⁶⁶ Then, to increase the pressure on the Nationalists to win approval for the impost, the state assembly ordered its congressional delegates to vote against any resolutions involving expense for New Jersey from which the union as a whole or New Jersey in particular received no specific advantage.⁶⁷ A delegation from Congress tried to convince the assembly to withdraw the order on the grounds that it gave the appearance of an attack

on the national government rather than a tactic to encourage the extension of its authority. The special delegation suggested to the New Jersey lawmakers that, if they were so concerned about the state of the Confederation, they should "urge the calling of a general convention of the states for the purpose of amending and revising the federal system."⁶⁸ The problems that the federal system posed for New Jersey were already clearly in focus. As a small and relatively weak state a strengthened national government might help protect them from the unfair burdens imposed by selfish neighbors--but a more powerful central government could become a threat in itself. The problem would be to find some middle ground where New Jersey was protected but the central government was limited from encroaching upon the state's authority. Although Abraham Clark's opposition had not been altered, and there appeared to be no intention of actually paying the requisition, the Assembly quietly agreed to rescind its obstructionist resolution.⁶⁹

Paterson was one of the few who publicly spoke out in support of the requests of the Congress. In a petition prepared in May 1786 he assumed a position diametrically opposed to the legislators who chose to isolate New Jersey's problems rather than relying on the as yet unfulfilled

promises of the Confederation. "The more the interests of the states are intertwined," he reasoned, "the more close and perfect will be their Union; the more sure and permanent will be the Basis of National Credit & Honor."⁷⁰ "It is generally supposed," he went on, "that New Jersey has a surplus of certificates," and the surplus indents collected by Jersey creditors could be sold in other states which needed them to fill their obligations. It was therefore "emphatically in the Interest of New Jersey to adopt the resolution."⁷¹ To make full use of every opportunity to score the popular assembly, his petition was concluded with a demand that the doors of the assembly be thrown open for "the Admission of all Persons who are disposed to attend," and that the wages of the state's legislators be reduced.⁷²

Notwithstanding these criticisms of the legislature's secrecy and costs though, the popular branch of the New Jersey government was considerably more popular than it had been before the war, and this was at the heart of Paterson's worries. The suffrage qualifications that had been carried over from the Provincial Congress into the 1776 constitution called for a mere fifty pounds of personal estate as property requirement, and currency depreciation since 1776 had made the fifty pound provision practically

meaningless.⁷³ Not only were there many more voters from the lower ranks of society than before the Revolution, but they were electing a new type of representative who was more ready to respond to popular political interests. Whereas before the Revolution in New Jersey's assembly "four out of five members were either well-to-do or wealthy;" by 1785 "fully two thirds of the representatives were ordinary farmers;" lawyers and merchants "were all but eliminated."⁷⁴ The pre-Revolutionary willingness of the people to defer the making of political decisions to their "betters" had undergone a shattering blow.⁷⁵ The upper house remained more conservative, but the aristocratic character it had cherished in colonial days was lost forever during the Revolution. It might delay the passage of paper money legislation for awhile as it had with the loan office bill in 1785, but it could not hold out forever.⁷⁶ Ultimately the councillors like the assemblymen had to answer directly to the people.

The laws for debtor relief and state paper money that Paterson had spoken against so vigorously were economic in nature, and Paterson, because of his clients, had good reason to line up with the conservative opposition. But despite the generous income he was able to collect from legal business, his personal finances do not suggest large

landholding or speculation and at least some of his income was eaten up in expenses related to his practice. Township tax records indicate that in 1788 he maintained two riding chairs and a chariot to enable him to do the traveling he had in his younger years done on horseback.⁷⁷ He was invited to join R. R. Livingston and Elias Boudinot in a series of land investments in 1789, but Livingston had to report to his partner that "Mr. Paterson rather declines joining in our purchase."⁷⁸ In an age when great fortunes were to be made in land and securities, there is no evidence that Paterson participated in any of it. He was far from poor, owning a house and lot, 20 acres of improved land, two horses, four cattle and one of the 36 slaves in the entire township in 1788.⁷⁹ But his wealth was not expended in the investments and speculations that were common to some others who shared his conservative opinions on the issues of the day.

He had words of open criticism for speculators too, even suggesting that there was a hint of immorality to their business. One of the arguments he made against a new paper money issue was that the new notes would "bewilder Conscience in the Mazes of dishonest speculations."⁸⁰ In his mind, it was the responsibility of a virtuous government to encourage industry and honest commerce, and he found it hard not to

criticize the speculative spirit all around him even if he did earn generous fees from representing the speculators. In an essay written a few years later he asked sarcastically, "What is merchandizing [sic] & ploughing, and dealing out drugs and poring over Littleton and Coke, and plodding on in the common road of Industry to the bold and adventurous spirit of Speculation."⁸¹ And he could also, tongue in cheek, issue a call

Ye Men, who count your Guineas oftner than you say
your Prayers. Ye good Folks of New Ark, Elizabeth
Town & Brunswick, who had rather taken over 2 per
cent a month than pay your Parson a Groat a year.
Ye honest farmers of Long Island, and of New Jersey,
come hither--sell your farms, quit your ploughs, and
lend your Money.⁸²

Even speculators had rights though, which in a republic must be defended. The debtor laws and the loan office controversy of 1785 and 86 were simply the clearest examples of the willingness of the legislators, if pressed by popular demands, to set aside the basic and traditional rights of private property. "In a free Government," Pater-son explained,

Men expect to live under equal and certain Laws,
which like the sun will diffuse their Virtue, and
operate alike on every Member of the Community.
Where the Guards of Property are liable to be
removed at the Whim or pleasure of the Supreme Power
in a State, a Person has not any Thing that he can
call his own, or is sure of for a Moment....⁸³

To submit the rights of property to the transitory desires of the people, created a new kind of tyranny.

Paterson's education had impressed upon him--along with the other basic tenets of the British political system--the concept of a fundamental natural law to which every virtuous society should conform. Much to the distress of the colonists before 1776 the British relied upon Parliament balanced between king, lords and commons to maintain the fundamental as well as the statutory law of the society. The American colonists resisted what they saw as aristocratic attempts to set aside their fundamental rights as Englishmen by the edict of Parliament. But when it came time to write the wartime constitutions for their new states, the American leaders placed that same kind of faith in the people that the British had placed in Parliament. And for many like Paterson who harbored serious reservations as to the state constitution, it did not take long to find proof that their faith had been undeserved.⁸⁴ The issues of the Confederation which made the state legislatures appear insensitive to their fundamental responsibilities were economic, and in New Jersey they were specifically the debtor laws and the loan office bill.⁸⁵

The realization that the state legislatures could not be trusted to preserve the basic principles of

republicanism brought men such as Paterson to seek new and more specific limitations upon the authority of government. In what has been called "the most distinctive political idea of the American revolution,"⁸⁶ they sought to separate the fundamental law from the purview of everyday government and enshrine it as absolutely superior to the provisions of statute law produced by the legislatures.⁸⁷ At one point in the loan office controversy Paterson had wryly commented: "Opinion regulates Politics and governs the World."⁸⁸ The right of a man to his property was not for him an issue that could be left to statutory law to guarantee. The same stimuli that had brought Paterson the moderate to assume leadership in the movement for independence now moved him toward the argument for a new constitution. Whig history and the classics had constantly warned that the unrestrained rule of the popular will would be as undesirable as that of a despotic parliament or an absolute king. The fundamental law had obviously been betrayed, and there were signs, too, that the same kind of moral corruption and passion for "fashionable & expensive amusements" that had inflamed Paterson before the Revolution were at hand again.⁸⁹ To be sure his legal business might prosper and his friends might be guaranteed in their speculative investments if a new and stronger government

were set up, but, as with his decision to support the Revolution, such material motivations made up only a small part of his rationale. To debtor-farmers Paterson's feeling that a decrease in money was needed to restore the spirit of industry must have appeared ridiculous, and to more tolerant men his tirades against fashion in "dress and equipage" must have seemed overly passionate. But these were the ideas he continually returned to.

The first years of peace had been fateful ones for William Paterson. He had experienced professional success beyond any dreams he could have had before 1776, but had been struck by personal tragedy too. He found it impossible to retire completely from public affairs and was drawn inexorably into the movement for a new constitution. If the term "critical period" can at all still be applied to the Confederation period, this time was "critical" for William Paterson. His perspective upon transpiring events led him to view the absence of sufficient guarantees against the unlimited will of the people as a threat to all the hard work of the Revolution. The spirit of American democracy had begun to undergo a change, and Paterson's perspective on society had changed too. The idea of deference that had been an essential ingredient in colonial politics was disappearing, and Paterson, who in his early

life had been concerned with the development of aristocratic pretensions and social stratification when upward mobility seemed most difficult for him, now saw threats to society from a different perspective. He was now representative of the economic and social elite, and, while he claimed to disapprove of its penchant for speculation, the aspects of republican ideology that seemed to him most threatened reflected their interests. He was no less of a republican, but he could not divorce himself from the point of view assumed by the rich and influential men around him.

Neither could he free himself from his practice of tying together the precepts of politics and morality. Long ago he had reasoned that it was the responsibility of men in government to help those incapable of governing themselves to find the proper path.⁹⁰ Now, in opposition to the popular legislature, he claimed that irresponsible financial expedients would "allure some and constrain others into the Perpetration of dishonest acts, will turn Vice into legal Virtue, and santify iniquity by law." In a particularly histrionic passage he went on:

Men have, in their ordinary Transactions in Life, Temptations enou [sic] to lead them from the path of Rectitude, why pass laws for the Purpose, or give Legislative sanction to positive acts of Iniquity--Lead us not into Temptation is a part of our Lord's Prayer worthy of Attention at all times, and especially at the present.⁹¹

The critical nature of the times propelled him into the movement to create a new constitution. His moral code, his political beliefs, and his economic perspective would each help to shape his future public career.

FOOTNOTES, CHAPTER VI

¹See McCormick, Experiment in Independence, Chapter 1 passim.

²William Peartree Smith to Elias Boudinot, April 1783, in PNJHS, first series, Vol. IV (1849), p. 122.

³Ibid. Smith's idolization of Washington was typical in Revolutionary America. "Washington the patriot of patriots," he wrote to Boudinot on another occasion. "Talk of yr. Catos, yr. Brutus, & your Cassius--they are all mere Fools to him. In short, he is too good for an ingrate, base, degenerate world." April 22, 1783, in PNJHS, first series, Vol. IV (1849), p. 123.

⁴William Paterson to Thomas Paterson, May 12, 1783, Bancroft Transcripts, NYPL. William Paterson to Andrew Bell, February 27, 1784, Andrew Bell Papers, LC.

⁵Notice of death of Richard Paterson in New Jersey Gazette, August 8, 1781. William Paterson to Thomas Paterson, July 1783, Bancroft Transcripts, NYPL.

⁶Cornelia Bell Paterson to Andrew Bell, October 23, 1779, Andrew Bell Papers, LC.

⁷Mss. notebook, n.d., misc. mss. Paterson, NJHS.

⁸Ibid.

⁹Cornelia Bell Paterson to Andrew Bell, July 31, 1783, and Andrew Bell to Cornelia Bell Paterson, Andrew Bell Papers, LC.

¹⁰Mss. notebook, n.d., misc. mss. Paterson, NJHS.

¹¹Mss. poem, n.d., Paterson Papers, LC.

¹²William Paterson to Andrew Bell, March 2, 1784, Andrew Bell Papers, LC.

¹³Cornelia Bell Paterson to Andrew Bell, April 5, 1779, Andrew Bell Papers, LC. Mss. notebook, n.d., misc. mss. Paterson, NJHS.

¹⁴Haskett, "William Paterson, Counsellor at Law," pp. 189-91.

¹⁵Ibid.

¹⁶Ibid., pp. 223-24. See also Mss. account book, Paterson Papers, RUL.

¹⁷McCormick notes that the boundary dispute occupied so much of the Proprietors' attention, that they missed their opportunity to play an influential role in other important issues of the period and seriously weakened the conservative cause. He goes on to suggest that some lawyers deeply involved in the boundary dispute (such as John Stevens Sr., James Parker, and Robert Morris) were so busy with it that they showed no particular interest in other matters such as paper money and debtor laws. Paterson was apparently one of the few who played a role in the boundary question and was still active in other affairs. Experiment in Independence, pp. 147-57. The description below is based upon McCormick's detailed account.

¹⁸Notes for a Legislative Hearing, November 2, 1784, Pyne Henry mss., PUL.

¹⁹William Paterson to Robert Morris, December 12, 1785, General Mss. Misc., PUL.

²⁰McCormick, Experiment in Independence, p. 145. Haskett, "William Paterson, Counsellor at Law," pp. 205-06.

²¹For a general discussion of the case and its repercussions see Richard P. McCormick, "The East Jersey Estate of Sir Robert Barker," PNJHS, Vol. LXIV, no. 3 (1946), pp. 119-55. On Parker's mixed loyalties see Lundin, Cockpit of the Revolution, pp. 78-80.

²²James Parker to Robert Barker, August 16, 1783, quoted in McCormick, "East Jersey Estate of Sir Robert Barker," p. 128. Parker closed the letter offering his services by listing as references former Royal Governor William Franklin, Cortlandt Skinner (his brother-in-law), "or any Gentlemen of note in England" who had fled from New Jersey due to loyalty to the king.

²³Ibid., pp. 131-32.

²⁴Haskett, "William Paterson, Counsellor at Law," pp. 206-08.

²⁵Ibid., p. 26.

²⁶William Paterson to Robert Morris, December 12, 1785, General Mss. Misc., PUL.

²⁷William Paterson to the President of Congress, March 26, 1785, General Mss. Misc., PUL. The dispute had to do with Massachusetts's claim to lands within the reserved boundary of New York, and, in accordance with the Articles of Confederation, a court was set up by Congress to consider the dispute. Edmund C. Burnett, The Continental Congress (New York, 1941), p. 601.

²⁸William Paterson to Thomas Paterson, May 12, 1783, Bancroft Transcripts, NYPL.

²⁹The return of the loyalists to New Jersey is discussed by McCormick in Experiment in Independence, pp. 28-39 passim. R. R. Palmer notes that the percentage of returning loyalists was far less in America than it was in France after their Revolution, and he considers it significant evidence for the contention that the American Revolution was a "real revolution," Age of Democratic Revolutions, Vol. I, pp. 188-89.

³⁰William Paterson to Thomas Paterson, May 12, 1783, Bancroft Transcripts, NYPL.

³¹William Paterson to Andrew Bell, March 2, 1784, Andrew Bell Papers, LC. On Bell's later life see Alfred Jones, "The Loyalists of New Jersey in the Revolution," PNJHS, Vol. XI, no. 2 (1926), pp. 219-21.

³²The Humble Petition of Merchant and Other Citizens of the State of New Jersey, December 12, 1783, NJSL.

³³William Paterson to John Lawrence, February 9, 1785, Paterson Papers, LC.

³⁴Notes on a Contested Election before the House of ssembly, 1788, Legal Opinions Folder, Box 1, Paterson Collection, PUL. See also McCormick, Experiment in Independence, pp. 93-94.

³⁵Haskett, "William Paterson, Counsellor at Law," pp. 191-92.

³⁶For the complete and detailed description upon which my comments are based see McCormick, Experiment in Independence, Chapters VII and VIII.

³⁷Ibid., p. 205n.

³⁸[On Principles of Legislation], n.d., Paterson Papers, RUL.

³⁹Newspeper essay, Horatius no. 15, [c. 1793-96], Oversize file, Paterson Papers, RUL.

⁴⁰Ibid.

⁴¹Notes of a Legislative Hearing, November 2, 1784, Pyne Henry Mss., PUL.

⁴²McCormick, Experiment in Independence, p. 163.

⁴³Ibid., pp. 159-64.

⁴⁴Newspaper essay, Horatius no. 15 [c. 1793-96], Oversize file, Paterson Papers, RUL.

⁴⁵[On Principles of Legislation], n.d., Paterson Papers, RUL.

⁴⁶[On a New Emission of Paper Money], n.d., Paterson Papers, RUL.

⁴⁷McCormick, Experiment in Independence, p. 169.

⁴⁸Ibid. Also see McCormick for a discussion of New Jersey paper money before the war, pp. 190-92.

49"Value of Gold No. 2," n.d., Paterson Papers, RUL.

50Ibid.

51Ibid.

52Ibid.

53Ibid.

54[On A New Emission of Paper Money], n.d., Paterson Papers, RUL.

55Ibid.

56Ibid.

57McCormick, Experiment in Independence, pp. 191, 195, 206, 217. Also see Curtis Nettles, Emergence of a National Economy, 1775-1815 (New York, 1962), pp. 80-81.

58[On Principles of Legislation], n.d., Paterson Papers, RUL.

59Ibid.

60McCormick, Experiment in Independence, p. 193.

61"Value of Gold No. 2," n.d., Paterson Papers, RUL.

62E. James Ferguson, Power of the Purse: A History of American Public Finance, 1776-1790 (Chapel Hill, 1961), p. 166 and passim. The plan proposed again the impost that had been turned down by the states in 1781, and also called for a pattern of supplementary taxes to be collected by the states for Congress.

63Ibid., p. 222; McCormick, Experiment in Independence, pp. 173-76.

64E. James Ferguson, "The Nationalists of 1781-1783 and the Economic Interpretation of the Constitution," JAH, Vol. XVI, No. 2 (1969), p. 246; Ferguson, Power of the Purse, Chapter 11 passim.

- ⁶⁵Ferguson, Power of the Purse, p. 225.
- ⁶⁶McCormick, Experiment in Independence, pp. 238-40.
- ⁶⁷Ibid., p. 240.
- ⁶⁸Quoted in McCormick, Experiment in Independence, p. 242.
- ⁶⁹Ibid., pp. 242-43.
- ⁷⁰Draft of Petition, [May, 1786], Bancroft Transcripts, NYPL.
- ⁷¹Ibid. See McCormick, Experiment in Independence, p. 239.
- ⁷²Draft of Petition, [May, 1786], Bancroft Transcripts, NYPL.
- ⁷³McCormick, Experiment in Independence, pp. 80-81.
- ⁷⁴Jackson Turner Main, "Government by the People: The American Revolution and the Democratization of the Legislatures," William and Mary Quarterly, third series, Vol. XXIII, no. 3 (1966), pp. 391-407 passim.
- ⁷⁵See Bailyn, Ideological Origins, p. 302ff.
- ⁷⁶McCormick, Experiment in Independence, pp. 201-02. On the upper house see Jackson Turner Main, The Upper House in Revolutionary America (Madison, Wisconsin, 1967).
- ⁷⁷North Brunswick Tax Records, 1788, NJSL. Haskett, "William Paterson, Counsellor at Law," did find 10 cases where Paterson was suing for a debt due to himself, but it is likely that most of these were for fees due from his clients, p. 198.
- ⁷⁸R. R. Livingston to Elias Boudinot, June 25, 1789, Elias Boudinot Papers From the American Bible Society, PUL.

⁷⁹North Brunswick Tax Records, 1788, NJSL.

⁸⁰"Value of Gold No. 2," Paterson Papers, RUL.

⁸¹[On Speculation], n.d., political essays folder,
PUL.

⁸²Ibid.

⁸³[On Principles of Legislation], n.d., Paterson
Papers, RUL.

⁸⁴See Gordon Wood, Creation of the American Republic,
p. 273.

⁸⁵Paterson was not a man who had always concerned himself with economic and financial affairs. He showed no interest in such matters before the Revolution, and after 1790 his attention would turn to matters of foreign affairs and political partisanship. Perhaps the reason he became so involved in financial arguments during the 1780's was simply that these were the major issues of the day--the issues in which the constitutional and political questions that interested him were most clearly reflected.

⁸⁶R. R. Palmer, Age of the Democratic Revolution,
Vol. I, pp. 214-17.

⁸⁷Ibid. On the developing idea of a constitution see also Wood, Creation of the American Republic, pp. 273-82.

⁸⁸[On Principles of Legislation], n.d., Paterson
Papers, RUL.

⁸⁹See above Chapter III.

⁹⁰See above Chapter I.

⁹¹[On Principles of Legislation], n.d., Paterson
Papers, RUL.

⁹²Ibid.

CHAPTER VII

THE PHILADELPHIA CONVENTION

William Paterson is best remembered for the role that he played in the 1787 Federal Convention. Many of the delegates there were more illustrious than he, and some attended the Convention sessions more regularly. The Constitution that emerged after four months of detailed labor bore little resemblance to the New Jersey Plan which he presented and which popularly bears his name. In fact, the supremacy clause, the one provision of Paterson's Plan which ultimately made it into the completed document, first underwent fundamental change in its substance and intent. Yet in the dynamics of debate and compromise that gave birth to a new and durable formula for American government, Paterson played a central and productive role.

The hopes and fears that were represented in the Philadelphia Convention had long been brewing. The years between the Declaration of Independence and 1787, when life was first breathed into the new Constitution, had been

eventful ones for the newborn states. The decade had offered numerous opportunities for the independent sovereign states and the Congress to test their power and influence, and by and large the record had not been a bad one. Many of the problems relating to the loyalists had been settled, the postwar economy had begun to show signs of recovery, and after years of distress some matters of serious interstate rivalry had been brought to amicable conclusion-- considerable achievements for a new nation so recently ravaged by war.¹ But New Jersey's "experiment in independence," like the experience of her sister states, had not been entirely successful. Two issues in particular irked Jerseymen: the unsettled ownership of the land west to the Mississippi (which represented an unfair advantage to other states), and the patterns of Confederation finance (which represented a distinct disadvantage to New Jersey).² Paterson who had complained long and loud about Confederation financial affairs, later described it as "a low and wretched situation," in which as a result of the schemes of neighboring states and the "mischievous" policies of New Jersey's own legislators "an air of despondency had spread itself over the face of the country."³

As early as 1778, three years before the Articles of Confederation were adopted by the states, New Jersey

recognized that the Confederation would be too weak unless additional powers were granted to Congress. In that year a "Representation" by the state legislature suggested that the "sole and exclusive" authority of Congress to regulate foreign trade and dispose of western lands was crucial, and hoped that the income from customs duties could be utilized for the general concerns of the Confederacy.⁴ New Jersey cooperated with the Nationalists in their subsequent attempts to strengthen the government through amendment, at least until 1785 when in desperation the state withheld support of a new requisition until a national impost was agreed to.⁵ In the course of the Confederation decade Paterson also came to favor the Nationalists' cause, influenced no doubt by his experience as a congressional commissioner and the "poverty and distress" he saw resulting from financial chaos.⁶ But more important in Paterson's evolving political conscience was his concern for the "sacred rights of property." Before it had really had a chance to take root, he thought, America's experiment in virtuous republicanism had begun to degenerate because property was unprotected from the whims of the people. The more effective the paper money party became in pushing through their popular legislation--culminating in the 1786 loan office--the deeper became his fears. While many of his worries were based

upon what might happen if at some time in the future the new currency were to be devalued, his gloomy prospects betrayed a fear that all the high hopes of the Revolution might soon be lost forever.

Many of the men who sat in Congress from 1781 to 1783 had tried to infuse the Confederation with more power. A financial program to guarantee public credit and encourage stable economic growth had been conceived by Robert Morris, Alexander Hamilton, James Madison and other leaders who worked to win the necessary taxing power for Congress; but their labors were in vain.⁷ When the war ended in 1783 many of the leaders left Congress, partly because (like Paterson) they sought to return to ordinary lives, but also because the war's end brought shrinking chances for a strengthened union. Disheartened as they were by earlier failures, these Nationalists nevertheless maintained their concern for the state of the Confederacy. Some had mercantile and speculative interests that tied their attention to national affairs, others were moved by more selfless patriotic concerns, but whatever their motives the precarious state of the union became more and more evident to them as time passed. On top of the financial prostration of Congress, the ultimate failure to win unanimous state approval for a national impost in 1786 and the potential dangers

exposed by Shays' rebellion seemed to threaten impending doom. A few men such as Madison and Hamilton realized that these ominous events presented them with a unique opportunity to seek once more an exalted national government. It seemed somehow ironic that these ultra-nationalists who had campaigned without success for partial reform through congressional impost, now sought to bring about a thorough and organic change. If the impost had been approved, an opportunity for more sweeping reform may not have arisen until much later, and then under very different circumstances.⁸ But if the situation of 1786-87 was unique and fortuitous, it was also critical; if they failed now, the Confederacy might simply dissolve.

The 1786 Annapolis Convention was the first act in what became a carefully orchestrated plot to reconstitute the American republic. Wary New Englanders who doubted the sincerity of Virginia planters inviting them to discuss commercial affairs, refused to attend. But New Jersey was not passing up any chance to improve her position. Three delegates were sent to Annapolis (William Churchill Houston, James Schureman, and Abraham Clark), with instructions to seek "a uniform System in...commercial Regulations and in other important matters...effectually to provide for the Exigencies of the Union...."⁹ But when

representatives from only five states arrived, there seemed little reason to go on. It was Hamilton, most nationally minded of them all, who proposed with Madison's moderating counsel to issue the call to a new and more general convention. The Jersey delegates enjoyed the most generous mandate from their state government, so they were asked to make the formal motion. As fate would have it the task fell the Abraham Clark, the leader of the popular paper money faction back in New Jersey, who was senior member of the state's delegation.¹⁰

As the New Jersey legislature jumped to approve the Annapolis recommendations and choose its commissioners, Paterson's political star again began to rise. He had held no state office since 1783, but the legislature now chose him along with David Brearly (Chief Justice of the State Supreme Court) and William Churchill Houston (who had been at Annapolis) to go to Philadelphia. Also chosen were John Neilson (a merchant and one of Paterson's clients) and Abraham Clark, but both declined.¹¹ Clark claimed that his current position as representative of New Jersey in Congress was reason enough to disqualify him, but his later lukewarm attitude toward ratification and subsequent opposition to Federalist positions in the Congress (1791-94), suggest that he might have felt uncomfortable in the company

at Philadelphia.¹² William Livingston, the respected Governor, and Jonathan Dayton, a rapidly rising young businessman and financier, agreed to serve in place of Clark and Neilson.¹³

When he arrived in Philadelphia, Paterson found himself in a very respectable company of men, the vast majority of them with his same concern for the state of American society and government. For Paterson, most of the financial problems of New Jersey had been translated into political terms; inflating paper currency and expedients for debtor relief had become for him challenges to the sacred rights of property which should be protected in a republican system. Presumably, delegates from other states would perceive the needs of the nation in different context, and some may have been thinking more of themselves than they were of the public interest.¹⁴ But almost all of them were prepared to see considerable new powers lodged in the central government.¹⁵ William Pierce, a delegate from Georgia who recorded capsule sketches of the assembled gentlemen, described Paterson as:

One of those Men whose powers break in upon you, and create astonishment. He is a Man of great modesty, with looks that bespeak talents of no great extent,--but he is a Classic, a Lawyer, and an Orator;--and of a disposition so favorable to his advancement that everyone seemed ready to exalt him with their praises.¹⁶

There is no record of the praises spoken by any other than Pierce, but by the end of his stay in Philadelphia, Paterson would have earned the respect if not the praise of his colleagues. Unlike Livingston, who was described by Pierce as seeming "little acquainted with the guiles of policy,"¹⁷ Paterson was to prove himself one of the most cunning and effective politicians in the hall.

Once the assembled delegates had chosen officers and established rules of procedure, Madison's faction seized the initiative. The Virginia Plan presented on May 29 by John Randolph as the first act of business was the result of long months of planning. Madison had corresponded widely in support of the scheme, and had prevailed upon the other Virginia delegates to caucus before the formal sessions began so they could present a united front.¹⁸ The result of their labors must have been a shock to Paterson and his colleagues.

The plan called for a consolidated national government with a legislative, executive and judicial department. The first branch of the legislature would be chosen directly by the people and the second would be chosen by the first. They were to be empowered "to legislate in all cases to which the separate States were incompetent," and they were to enjoy a negative over all state laws that the national

legislature considered to be "contravening...the articles of union." A national executive was to be chosen by the legislature and, with members of the judiciary, would sit as a council of revision to check the decisions of the legislature. Specific articles also covered a guarantee of the territory and republican government of each state, the admission of new states into the union, etc.¹⁹

While most of these proposals would become the object of heated debate in the ensuing months, the provisions for proportional representation in both houses and the very wide power of Congress to veto state laws were the most crucial challenges placed before the delegates. According to Robert Yates, Randolph had "candidly confessed" his intention to set up a "strong consolidated union," very unlike the Articles of Confederation. Such total reform had not been discussed before, at least not in the open.²⁰ Although they had not been able to come up with the unanimous approval of the states required to amend the Articles, the nationalists had found growing support for granting additional powers to Congress. Now they put all that aside and struck out for much more.²¹ Moved by the "perils" around him, Randolph stated his fear that the country was "on the eve of war," and explained how he saw "incontrovertible" evidence of the dangers of democracy in the recent experience

of the various states. Congress, as constituted by the Articles, now seemed too democratic to be infused with further powers--unless some radical changes were made.²²

New Jersey's leaders had given consistent support for supplementing the powers of Congress but had always meant them to be supplementary. There is no evidence that they had even given serious thought to total change which might cost their equal vote in Congress.²³ But this was precisely what the Virginia Plan proposed, and Madison and his colleagues came to Philadelphia prepared to stand absolutely firm on that principle. Madison's followers, generally referred to as the large state group, and their opponents in the small state group led by Paterson, quickly assumed battle lines for what turned out to be a six week struggle over the principle of representation. Recent scholarship suggests that the issues behind the division were based less on relative state population, and more on sectional location and whether or not the states possessed considerable amounts of unoccupied land (thereby making them potentially "large states"),²⁴ but whether their differences were potential or actual the confrontation between the two groups came at several points to the brink of destroying the Convention. From the beginning the leaders of the large state group, even though they could muster a

a clear majority on some questions, were aware of the diplomacy that might be necessary to bring success to their cause. For example, Madison and his fellows talked the Pennsylvania delegates out of demanding from the outset that even the deliberations of the Convention be carried out according to proportional representation; presumably they realized that the small state delegates would never even take their seats under those conditions.²⁵ Throughout the long struggle over the basic issue of representation each side would hurl threats at the other, some concealed in the language of legal technicality and some brazenly obvious to everyone in the hall, but the ultimate threat was to walk out of the Convention and destroy what appeared to most to be America's last chance for preserving national peace and unity. In the end both groups had to be convinced that this was the only alternative before they could be brought to compromise.

The notes that Paterson took while at Philadelphia, while sometimes quite revealing, were usually sketchy, uneven, and (unlike the fine paragraph summaries prepared by Madison) clearly intended solely for his own reference.²⁶ His first cryptic lines, penned on the day the Virginia Plan was presented, were no exception, but they do provide clear evidence that Paterson understood the large state

challenge from the first. The Virginia Plan was unclear about what would happen to the states under the new system. They were not specifically denied their existence as sovereign entities, but neither did they have any place in the new government which was apparently to be formed directly on the authority of the people rather than on the authority of the already existing states. In his listing of the basic resolutions of Randolph's plan the only objection Paterson inserted was beneath the provision for proportional representation: "Sovereignty is an Integral thing." There could only be one sovereign authority, he believed, and to grant that sovereign power to the central government directly on the authority of the people, could only destroy the states. If, as Paterson also noted, Randolph believed that "We ought to be one nation" rather than a union of states, the issue of representation was clearly at the heart of it. The idea that sovereignty might be divided up among different and distinct governments ruling the same people made sense to no one, at least not yet. That idea, unique to American political thought at the time, would eventually emerge from the struggle that the large and small states were about to take up. Paterson also took notice of the firmness with which Randolph phrased the demand for proportional representation. "This," he

wrote beside the resolution on representation, is "the basis upon which the larger States can assent to any Reform."²⁷ It was clear to Paterson, even from the first day of debate, that if the large states could not win support for this principle, they would refuse to take part in any other proposals for revising the government, and risk the dissolution of the union.

For the next ten days the deliberations of the Convention were directed to the other Randolph resolutions, but it became evident that the real drama would be when the question of representation came up. The Virginians had maneuvered the Convention into a serious and formal consideration of a total change in the Articles of Confederation and also the method of representation within that government. Paterson was already convinced of the need for a strong and consolidated national government. Like other small-state nationalists such as George Read from Delaware, he was clearly committed to organic change,²⁸ and certainly had no relish for the prospect of continuing with the popular legislature of New Jersey as the only protector of public and private rights in his state. His objection was to the unfair representation that the Virginia Plan proposed for the less populous states. The reason he voiced no objection to Randolph's other proposals was

probably that he had none serious enough to deserve immediate attention. Whatever other questions he had could wait for the essential matter of representation to be settled.²⁹ Until this all important matter came up in its turn for debate Paterson bided his time.

Paterson took no part in the initial debates, even though the large vs. small state division began to impinge on every issue that came up, whether it was the means of choosing the senators, the relative size of the Senate, or the congressional veto over acts of state legislatures. When John Dickinson suggested on June 7 that the Senate be chosen by the state legislatures, Madison and James Wilson from Pennsylvania were immediately on the defensive. They wanted representation in the Senate to be proportional, but also wanted the number of senators kept small. If the legislature of the smallest state elected even only one senator, then to keep the figures proportional the largest state's delegation would become huge.³⁰ On the previous day it had been decided to have the lower house chosen by popular ballot, now Dickinson argued convincingly that the states would be completely extinguished if they were allowed to play no role in the new national scheme. Decided to leave aside the volatile issue of proportioning the seats, even Virginia and Pennsylvania gave way and voted to have

the state legislators choose the Senate.³¹ Tempers rose again on the following day (June 8) as Delaware's Gunning Bedford correctly identified a proposal to grant absolute power to the new government to veto state laws as an integral threat to the small states. If "Delaware would have about 1/90 (for its) share in the General Councils, whilst Pa. & Va. would possess 1/3 of the whole," there was nothing to stop the large states from vetoing every act of the small state's own legislature.³² This time Madison and Wilson were able to deliver the votes of their respective delegations, but the absolute veto proposal was defeated nonetheless.³³

It was on June 9 that Paterson placed the central issue squarely before the Convention. With Brearly seconding, Paterson moved that the Committee of the whole turn to consider "the rule of suffrage in the Natl. Legislature." Drawing upon all the oratorical skills he had practiced as a son of Clio, and all the political knowhow he had absorbed over the turbulent years since, Paterson put together a forceful and convincing speech. Beginning with the argument least likely to change many minds, he reminded the delegates that the official instructions issued by Congress to the Convention specifically limited the scope of their powers to the "sole and express purpose of revising

the Articles of Confederation." As must have been clear to the large state leaders, Paterson was taking the same type of unshakeable position that they had assumed. Paterson's legalistic argument constituted a potential threat, whereby the small states might use the limits imposed upon the Convention as legitimate basis for repudiating the Convention entirely if it overrode their interests. To reinforce his point Paterson had the instructions of Massachusetts containing the same restrictive phrases read from the floor. He reminded the delegates that the Virginia Plan went far beyond this legal mandate, and in the process he laid down a challenge equal and opposite to the one posed by the large state men a week before.³⁴ In one sense it was a gamble that the large states would compromise on the matter of representation before they would see the entire Convention flounder. In another sense it was no gamble at all, because any new government which preserved no sovereign authority for the individual states would be quickly rejected back home in New Jersey.

Moving directly from legal technicalities to practical political realities, he stressed that the present plan could never be ratified; the "people [were] not ripe" for it. "The idea of a national Govt. as contradistinguished from a federal one, never entered into the mind" of the

people. In the same words he had used at a critical juncture in 1777, he suggested that sometimes "A little practicable Virtue [is] to be preferred to Theory." The Convention should limit itself to proposals "that will meet with the Approbation of the People."

We must follow the People; the People will not follow us--the Plan must be accommodated to the public Mind--consult the Genius, the Temper, the Habits, the Prejudices of the People."³⁵

These were not words usually to be found on Paterson's lips. It is likely that he was throwing the idea of the "sovereignty of the people" back at Wilson who, arguing in support of proportional representation, had made himself the passionate spokesman for "the mind of sense of the people at large." "The democrattick [sic] Spirit beats high," Paterson intoned (but just one line away in his notes for the speech was the injunction that it be "properly regulated and modified").³⁶

In a rhetorical flourish that served to introduce the meat of his argument, Paterson referred to a comment made by David Brearly a few moments before. If the government they planned was to be truly national, then the present state boundaries should be completely erased, and new equal districts established in their stead. Calculating to raise apprehension among the landed states jealous of their claims to western territory, and hoping to win

over some of the loyal sons of the "Old Dominion" and the Massachusetts "Commonwealth" who wished to retain the traditional states, he claimed "the whole must be thrown into a hotchpot, and when an equal division is made, then there may be fairly an equality of representation."³⁷

Then he launched into a carefully reasoned argument on the integral nature of sovereignty, how it must exist either completely in the states or in them not at all, and how sovereign states were by definition equal. In answer to Wilson, who had on the previous day phrased an argument against state sovereignty by comparing the state to an individual citizen, Paterson asked if "a rich individual citizen should have more votes than indigent one?" If so, the poor would be "entirely at the mercy" of the wealthy in the same way that the small states would "have every thing to fear" if they lost their equal vote with the large. Granting that the Articles of Confederation had to be amended "to mark the orbits of the States with due precision," Paterson explained that otherwise he was "attached strongly to the plan of the existing confederacy." Why could not the new strong national government act upon the states rather than directly upon the people. As he saw it, all the argument for "representation from the people at large" rather from the existing state legislatures, was purely a maneuver to justify proportional representation

for the larger states. Whether the authority of the national government emanated from the people or the states would make no difference in its operation. The new government's effectiveness would depend upon the "Quantum of Power" lodged in it, not on the source of that power. The large states, Virginia, Massachusetts and Pennsylvania," were concealing their real purpose, the destruction of the smaller ones. It was not a strong government he was worried about, indeed, he admitted the necessity of coercive power. But "why not operate on the States--if they are coerced, they will in Turn coerce each individual." The "democratick spirit" could be restrained without destroying whosale the existing political system.³⁸

At this point Paterson put aside his notes and concluded his remarks with an extemporaneous challenge to the supporters of the Virginia Plan. The large states had already made it known that they would only agree to reform if it were based upon proportional representation. Wilson had gone so far as to threaten that if their proposals were not approved, the large states might set up their own confederation. Now Madison carefully wrote down what Paterson had to say in reply:

Let them unite if they please, but let them remember that they have no authority to compel the others to unite. N. Jersey will never confederate on the plan before the Committee. She would be swallowed up.

He had rather submit to a monarch, to a despot than to such a fate. He would not only oppose the plan here but on his return home do everything in his power to defeat it there.³⁹

Paterson's speech of June 9 was the first open challenge to the position of the large state nationalists, and it incorporated every argument that the small state faction would use in the next five weeks to have Randolph's resolution on representation thrown out. His opening argument, the challenge to the legal authority of the Convention to discuss reform as far-reaching as the Virginia Plan, was a bombshell. It may have appeared petty, unimaginative, and obstructionist to committed nationalists from the larger states, but it was the best legal argument that the small state delegates could have mustered, and if necessary, it could deal a lethal blow to hopes for a new national system. The principle of state equality was at the heart of the old system that Paterson's position sought to retain, and events would show that once equality was restored, at least in one branch of the legislature, Paterson and his small state colleagues would calmly agree to set aside the legal technicalities. Each and every one of his points of analysis on June 9 were aimed directly at the matter of representation: the proclaimed attachment to the principles of the confederacy, the definition of sovereignty, the total subjection to which the small states would have

to submit, and his belief that the source of authority was inconsequential to the exercise of governmental powers. Each of these same points would be at the core of the small state position.

Paterson had also identified yet another challenge to the small states that apparently even the authors of the Virginia Plan themselves had failed to notice. Randolph's 11th resolution was poorly worded. It read:

Resd. that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State.⁴⁰

On June 5, when Paterson asked that discussion of this article be left until after the matter of representation was decided, no one objected. It is likely that he was primarily concerned that the large states could use the territorial guarantee to cheat the small states out of a fair share of the value of the western lands.⁴¹ But Paterson's devious and legalistic mind had also noticed that, theoretically at least, it was possible for several of the smaller states to join themselves together for defense against the large. Now he pointed out that if they did so, the unfortunate wording of Randolph's 11th resolution would make them run the risk of losing all of their guarantees (territorial and political) from the national government. It appeared to be an attempt at intimidation

to "prevent a Consolid[ation] of Gov[ernment] and Territory" of the lesser states for their own protection.⁴² The point was minutely academic, and it couldn't have gained the Jersey lawyer any praise for magnanimity. It does however illustrate the degree of careful concentration that Paterson had given to the threat of proportional representation and all of the possible repercussions that might come with it. His attention to the representation question was absolute. Paterson was acknowledged as the prime spokesman of the small states on this central issue, and at every crucial step on the long road to the "Great Compromise" he would be at the forefront.

He had spoken boldly, in the uncompromising terms he thought were necessary, and most of the arguments were ones in which he sincerely believed. The only obvious exception was the first point, that the Convention did not have the legal authority to go beyond the precise boundaries of its instructions. Once an acceptable compromise was finally agreed to, Paterson quickly dropped the objection, and in the end he signed the Constitution which clearly represented more than a "revision" of the Articles.⁴³ But otherwise he was being forthright and honest; the justifications of the small state position were real and significant.

He was probably right about the practical matter

of ratification; there was scarcely a chance in a thousand that the small states would have gone along with the Virginia Plan as it then stood. And when it came to ratification the small states would also include New Hampshire (whose delegates had not yet reached Philadelphia) and Rhode Island (who had refused to appoint any at all).⁴⁴ Paterson knew that if he could convince the large state leaders of this point they might feel themselves backed into a corner. If the Convention represented a last chance to save the union, and if the emergency was as serious as they claimed, then they had to report out a plan that at least had a chance of ratification by all the states.

There were very real and tangible reasons why the small states' interest required equal representation. Paterson had illustrated how the large states would be able to overrule the small states on any question in the proposed new government, but the argument was not made in a vacuum. There were specific issues that the small states were concerned about and that they were certain would be decided against them if the threatened proportional representation became a reality. Paterson had been involved at least symbolically in the attempts of New Jersey merchants to win protection from the unfair imposts of the neighboring states.⁴⁵ When it came to making commercial decisions the

small states had had previous experience--all bad. They had promptly agreed to send delegates to the commercial convention at Annapolis, and the instructions New Jersey issued to her Philadelphia delegates also made specific reference to "the State of the Union, as to trade...." New Jersey and Connecticut were in a like position, with no ports of their own and yet taxed by their commercial neighbors. Now they would not agree to a program which did not give them at least an equal role with New York, Pennsylvania, and Massachusetts in making commercial decisions.⁴⁶

The other most obvious tangible question was that of the western lands. Since the outbreak of the Revolution New Jersey had stood firm for the joint ownership by all the states of the former crown lands west to the Mississippi. This great resource, they reasoned, had been earned by the efforts and expenditures of all the states during the war against England. It should be sold to pay the war debts of all the states, not just to serve the selfish interests of those that had previous charter claims to the west. New Jersey had been unhappy with the way the land question had been handled under the Confederation,⁴⁷ but like the other landless states at least she had an equal say over the Northwest territory that did finally fall under undisputed

confederation control in 1784. By the time of the Philadelphia Convention the only transmontane lands still claimed by individual states were those of Virginia (the area south of the Ohio that later became Kentucky), North Carolina, and Georgia, and much of that territory was already in the hands of speculators. But, as Paterson had suggested in his speech, there were also grounds for argument about the vacant or unoccupied lands that lie within the boundaries of the large states. If the Virginians wanted a truly national government, Paterson had suggested, they should be willing to agree to see all the states' boundaries erased, have all the land thrown into a "hotchpot," and then reorganize the states on an equal basis. This type proposal might win serious support from land speculators in New Jersey, Maryland, and Delaware where the states were relatively saturated with population,⁴⁸ but Paterson saw the lands issue more as a matter of state interest than private concern. For him it was primarily another argument for equal representation. What if the large states ever did agree to turn over the rest of their transmontane lands? Under the Randolph proposal for proportional representation little New Jersey would have no real say over what happened to them. The "hotchpot" idea was one that would be brought up again in the Convention, especially by Maryland's Luther

Martin, and some may have taken it seriously.⁴⁹ For Paterson, however, it was merely one more sensitive point upon which he could apply pressure in search of an equitable solution of the representation issue. Madison, for example, saw the point immediately.⁵⁰ Here was a veiled threat from Paterson to the large states: either give in on proportional representation, or risk having the explosive western lands issue fought out on the Convention floor.

There were probably other matters in Paterson's mind too when he rose for the first time to defend the equality of the small states. His tie to the state of New Jersey was more than that of a concerned citizen or elected representative. With William Livingston, who sat by his side in Philadelphia, Paterson had nurtured the state into independent existence. Many of the most ardent nationalists at the Convention had established their political careers in the service of Congress, and achieved their first public reputation through their identification with the continental war effort.⁵¹ Paterson, while he had several times been asked to serve in Congress, had remained in New Jersey, striving throughout the war to establish and stabilize the legal authority of the state. To be sure, he had lost some of his benign feelings toward the state legislature during the paper money fights of the 1780's, but he was not

prepared to see the sovereign state of New Jersey simply written out of existence. This was a matter of philosophy as well as paternal affection. Rapid changes in government or society, he thought, presented a threat to stability and order.⁵² As attorney general of New Jersey he had gone to considerable trouble to reinforce the people's faith in the institutions of local county government. This had served to ease the transition from colony to state, and made the shift in governmental authority--from royal governor to popular legislature--less apparent on the surface.⁵³ He had come to Philadelphia in search of some absolute guarantees which he thought were essential to a virtuous republican system, but found men who wanted total innovation instead. If complete constitutional revolution could be so easily rationalized (on the basis of a supposed emergency situation and ratification by popular conventions superceding the state legislatures in a manner totally different from the legal procedure for amending the Articles of Confederation) what was to stop some cabal from calling yet another convention in a few years and sweeping away the whole system again?⁵⁴ He agreed that thorough reforms were called for, but he hoped that (even if a new system was needed rather than a revision of the old) whatever emerged from the Convention would not be so different from the Confederation

as to be totally unrecognizable. On this score as well as all the others, state equality had to be retained. Practically everything Paterson did during his entire time in the Convention was directly related to achieving equal representation for all the states.

Meanwhile his speech of June 9 had said it all. On the next day of business (Monday, June 11) Roger Sherman could do little more than repeat some of Paterson's points before the votes were taken. The small states lost the issue of equal representation in the lower house (by vote of 9-2) and the upper house as well (by vote of 6-5). Paterson's notes were terse. They did not even record the final verdict. Two days later the Virginia Plan was reported out of Committee, and the resolutions already agreed to were read aloud to the delegates.⁵⁵ These basic principles were supposedly agreed upon. All that was left was to fill in the details.

The 6 to 5 vote for proportional representation in the Senate was too close to call overwhelming, and there was still the problem of limiting the size of the upper house. (The delegates had previously agreed to let senators be chosen by the state legislators). The operating rules of the Convention did allow for the delegates to change their minds on any particular issue and open debate again.⁵⁶

But if Paterson's arguments had not been convincing enough before, how could they have more weight now, especially with the already approved Randolph resolves spread out on the table. The only recourse was to rephrase the same arguments and try to present them again, this time with some new twist. The new twist would be called the New Jersey Plan, but it was only the second phase in what would become a three-phase struggle to get the large state nationalists to accept the principle of equal representation. The final phase, perhaps Paterson's boldest stand, would lead to the ultimate adoption of the Great Compromise.

The New Jersey Plan was phase two in Paterson's small state crusade. He conceived of it as a way to present again his ideas on representation--this time giving them the added weight of a complete plan of government. Paterson's resolutions could be laid on the table next to Randolph's, and the small states could argue that they deserved the same degree of serious attention that the Virginia Plan had already been given.

The resolutions as they were presented on June 15 were not all of Paterson's authorship. In fact, the coalition that came together to write and present the New Jersey Plan was a very loose and unstructured one. Some of the ideas in Paterson's speech of June 9 had apparently been worked

out by Brearly and Paterson acting together.⁵⁷ June 9 was also the date on which Paterson's old college friend Luther Martin took his seat for the first time.⁵⁸ It is likely that Paterson helped to fill in the Marylander on what had happened up till then, and perhaps the idea of presenting a complete alternative plan came up in these conversations. It is possible that Sherman or Lansing, also contributing authors, came up with the idea and presented it to Paterson and others. But whoever contrived the scheme, the first mention of it before the Convention came on June 14 when Paterson asked for one day's time so that several of the delegations, "particularly that of New Jersey...might... contemplate the plan reported from the Committee of the Whole, and...digest one purely federal, and contradistinguished from the reported plan." The large states could hardly object, so Randolph himself moved an immediate adjournment until the next day.⁵⁹

As it emerged from several preliminary drafts into the form in which Paterson presented in on the floor, the plan was a hodgepodge⁶⁰ of different proposals with a little something for everybody who had collaborated in it. The first article defined the proposals as revisions, corrections and enlargements upon the powers of the Articles--clearly to be distinguished from Randolph's preface to the

Virginia Plan: "that a national government ought to be established." The powers of the government were to be vested in a unicameral legislature where each state would have an equal vote. The powers of Congress were expanded to allow it to levy an impost on foreign trade, collect a stamp tax, and regulate trade, as well as to compel the payment of future requisitions levied in the states. Congress was to elect a plural executive, and the executive would appoint judges of a supreme court. The only provision of the plan which after being altered in several crucial respects was incorporated into the final version of the Constitution was the one declaring that the acts of Congress as well as the treaties of the United States "shall be the supreme law" of the land.⁶¹

The different interests of some of the individual members of the small state faction can be found here. Martin, the author of the "supremacy clause,"⁶² was clearly looking out for factions and special interest groups in his home state. Marylanders who had paid off their debts to British factors in depreciated state paper money were not now anxious to see the possibility of the Treaty of Paris being enforced to the letter,⁶³ and Martin still hoped for an opportunity to pry away a share of the rich lands of Virginia and the other landed states for Maryland

speculators.⁶⁴ The supremacy clause, as Martin phrased it, was an ingenious blend of these interests in a form that gave the impression of being a sincere attempt to assure the rest of the Convention that the small state group did not seek to completely emasculate a new government. Martin used the words "supreme law" as a "smoke screen" to conceal his real intentions. The precise wording of the clause as recorded by Madison is as follows:

Resd. that all Acts of the U. States in Congs. made by virtue & in pursuance of the powers hereby & by the articles of confederation vested in them, and all Treaties made & ratified under the authority of the U. States shall be the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their Citizens, and that the Judiciary of the several States shall be bound thereby in their decisions, anything in the respective laws of the individual states notwithstanding; and that if any State, or any body of men in any State shall prevent ye. carrying into execution such acts or Treaties, the federal Executive shall be authorized to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce and compel an obedience to such Acts or an Observance of such Treaties.⁶⁵

Since the New Jersey Plan included no provision for inferior courts, any judicial enforcement of federal acts or treaties would have to be carried out in the appropriate state courts, but while the proposed clause did proclaim the supremacy of such laws and treaties "respective laws of the individual states to the contrary notwithstanding," (italics mine) it said nothing about the

state constitutions. A state court could not be compelled to enforce a federal law or a treaty if it was contrary to the provisions of that state's constitution. This meant that Marylanders could not be deprived (by federal act or treaty) of their right under their state constitution to pay debts in Maryland paper currency.⁶⁶ Conveniently, the state courts were the only place in which the state constitutions were still to be superior to acts of the federal government. Martin's intentional misrepresentation of the words "supreme law" did not go unnoticed. Madison quickly pointed out that in reality the New Jersey Plan offered no more assurance of state adherence to treaty provisions than the Articles of Confederation did.⁶⁷ And when the phrase "supreme law" was ultimate included in Article VI of the completed Constitution it was immediately followed by the injunction that "the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding." (italics mine)

No one in the Hall could have doubted that the latter part of the "supremacy clause" as included in the New Jersey Plan was intended to grant specific authorization for whatever drastic measures might be necessary to put down popular uprisings in the states. The spectre of Daniel Shays was

too vivid in their memories for the delegates to think of anything else when they read that if "any body of men in any state" prevented the execution of a federal law or treaty, the "power of the Confederate States, or so much thereof as may be necessary to enforce and compel" obedience could be immediately called out. But there was another side to these phrases as well. If (as Martin would later in the Convention propose) new states might be carved up out of the present landed ones (Virginia must have been his special target), and if the Congress passed a law to such effect, the "supremacy clause" called for the joint force of the Confederacy to be used to enforce the law. The state courts would, of course, have no jurisdiction, and the victimized state would have no recourse but to cooperate in its own dissolution. As unrealistic and far-fetched as such a scheme would have been, Maryland speculators, jealous of the vast lands of Virginia, must have regarded the prospect of dismembering the "Old Dominion" with relish.⁶⁸

Lansing's contributions to the plan were also shaped by the peculiar interests of his state.⁶⁹ The powers of Congress as he proposed them would concern only commercial matters, and would have to be enforced through the state courts, though he did allow appeal to the federal judiciary.

An earlier draft of Lansing's proposal would have specifically maintained the right of the individual states of "laying Embargoes in Times of Scarcity," and stated a certain percentage beyond which the income from the federal impost would "accrue to the Use of the State in which the same may be collected." While not spelled out in the New Jersey Plan as presented, the plan did not specifically deny the states' right to collect trade duties collaterally with Congress, nor did it close the door on the future enactment of a revenue sharing proposal, such as the one Lansing had in mind.⁷⁰

Paterson was interested primarily in the matter of representation. That he accepted the contributions of Martin (which would protect paper money) and Lansing (which would allow New York to continue to unfairly profit from taxes on New Jersey) should be taken as a measure of his desperation in seeking allies in the representation debate.⁷¹ Tying together this group (which also included Roger Sherman, John Dickinson and the Delaware men, Yates from New York, and the rest of his Jersey group) was no easy job. Sherman's proposals for the plan included a guarantee for payment of foreign debt that must have made Martin from Maryland squirm, but Paterson was apparently able to soothe both his Connecticut and his Maryland ally.

The only contribution that seems in the end to have been taken from Sherman was a guarantee of equal rights for citizens of one state charged with committing a crime in another.⁷² Since they were not mentioned in his colleagues' proposals, Paterson appears to have been primarily responsible for the clauses on the executive and the judiciary which were adapted from the Virginia Plan just so his resolutions would be clearly contradistinguished from Randolph's.⁷³ The fact that Paterson was willing to include the provisions of Martin and Lansing, each of which went against his personal belief and the interests of his state, is an indication that he did not expect all of his Resolves to be considered seriously. To Martin and Lansing the New Jersey Plan provided a convenient way to further their own special interests, but as Paterson planned it and as the most important people in the Convention read it, the plan was intended as a stalking horse for equal representation, pure and simple. Paterson knew that few if any of the men in the Convention would even consider letting the positions of Martin and Lansing stand, but he had to get support from somewhere for the larger question which he at least hoped had a chance. It may seem, especially when one notes their later antifederalist staunchness, that Martin and Lansing used Paterson and forced him to compromise his

political principles. But Paterson believed there were critical times when expediency and a little common sense should prevail over the scruples of theoretical principle.⁷⁴ Here he used Martin and Lansing to press every advantage he could in defense of state equality.

While the newspapers continued to report that "the greatest unanimity" existed between all parties at the Convention, Paterson was steering it to another showdown.⁷⁵ After he submitted his nine resolutions on June 15, a day was allowed for delegates to copy them, and an interval of time granted so that "the friends of the plan...wd. be better prepared to explain and support it."⁷⁶ But when Lansing and Paterson arose to present their arguments on the following day, they said nothing fundamental that Paterson had not already brought up on June 9. Lansing mentioned the insufficient authorization and the impossibility of the Virginia Plan receiving popular approval. Paterson echoed these themes and, claiming that he would avoid "repetition as much as possible," proceeded to say almost exactly what he had said a week before. He referred to the precedent of state equality in the Confederation⁷⁷ and the argument that the authority of the new government depended on the "quantum of power" in it, not the source of that power. He brought up the "hotchpot" again. This time he asked more

explicitly whether, once proportional representation were implemented, Pennsylvania would be voluntarily willing to "admit a participation of their common stock of land to the citizens of New Jersey," and then provided the reply himself--"I fancy not."⁷⁸ His own notes indicate that he also argued for the solemnity of the Confederation as a contract entered into by all the states. If that contract were simply wiped away now he reasoned, "why [could] not the new or present one be broke in the same Manner."⁷⁹ Pater-son closed his speech with some window dressing to maintain the fiction that his plan was intended as a complete form of government equal to the Virginia resolutions--Randolph's bicameral legislature, he claimed, would cost the government too much to maintain.⁸⁰

Wilson, Hamilton and Madison each took their turn in destroying whatever credibility the new resolutions had. Hamilton was primarily interested in presenting his own candid sentiments about the needs of the union and dis-associating himself from the other two New Yorkers, but Wilson and Madison tried to deal with the small state proposals point by point. The latter pointed up the devious loopholes left in the wording of Martin's supremacy clause.⁸¹ When they were through⁸² and the votes were taken, the New Jersey Plan took its place in history.⁸³ The plan had

failed, and with it went all hopes of restraining the Convention from setting the Articles completely aside. But had the preservation of the Confederation really been the intention of the scheme? As far as Paterson was concerned, his dogged defense of the Confederation was essentially another tactic for winning equal representation. He saw it as a means to the end of state equality, not necessarily an end in itself. Aside from the idiosyncracies of Lansing's and Martin's contributions, there were many matters in the jointly authored resolutions which Paterson believed in--that there was no need for two houses in Congress for example--but none was so crucial in his mind that he would not willingly have sacrificed it in order to achieve state equality.⁸⁴

To the extent that the New Jersey Plan had been intended by Martin or Lansing to protect their special interests or perhaps even to break up the Convention, it was a dismal failure. But to the extent that Paterson and some others (especially Dickinson, Sherman, and the Connecticut group) saw the resolutions as another attempt to convince the Convention of their firmness on the matter of representation, the desired result was achieved. As early as June 16, while Paterson's words still rang through the hall, C. C. Pinkney realized what it was all about. "If

New Jersey was indulged with one vote out of 13," he explained to the Convention, "she would have no objection to a national government."⁸⁵ Dickinson is said to have told Madison that the New Jersey Plan represented "the consequence of pushing things too far" in pressing for proportional representation in both branches of the Congress.⁸⁶ And Madison himself saw that equal representation was the crux of the whole business. "The great difficulty lies in the affair of Representation," he said, "and if this could be adjusted, all others would be surmountable."⁸⁷ To have Madison even contemplate changing his position was quite an accomplishment. The fact that Connecticut shifted its vote just before the question was called and voted against the plan it had helped to form, suggests that by then its delegates thought compromise on the representation matter was at least possible.⁸⁸

After the vote was taken on the 19th, the debate continued. While Martin could not be stopped from sounding as obstreperous as ever, Wilson was trying to appear friendly and assure the small states that he would not go as far as Hamilton in supporting a national government "that would swallow up the state governments" in their entirety.⁸⁹ As if to soften the blow of the day before, on the 20th the Convention agreed to change the wording of

the first Virginia resolution from "national government" to read "the government of the United States."⁹⁰ The change was only cosmetic. Madison and Wilson would not be prepared to give in to compromise until they had carried on the fight for a completely proportional system for another month. For that matter, Paterson may not have yet been ready to accept equal representation in only one house. The verbal battle for state equality had not yet been won. But, as a skirmish between the contenders, the debate over the New Jersey Plan stimulated movement in the right direction.⁹¹ Madison and Wilson certainly knew they had not heard the last of the small state arguments, and all Paterson and his colleagues had to do was prepare for the next confrontation.

The third and final phase of the representation struggle included the formulation of the Great Compromise and the process of getting the Convention to agree on it. Paterson had some part in the formulation of the compromise, but he was especially influential in putting it over with the delegates. Madison and his followers knew they needed a wider margin of support than they had in the Convention if they expected the constitution they were writing to be ratified by all the states. New Jersey and Delaware were firmly against a proportional system; Connecticut and

Maryland were not quite so firm but were unlikely to ratify on the basis of inequality; no one knew what would happen with New York; and, with nobody to speak for them, it would have to be assumed that New Hampshire and Rhode Island would stand with the small states too. With all these states outside of the system, a national government would be national in name only. During the debate on the New Jersey Plan the large state men realized that a compromise on the matter of representation would be sufficient to bring Paterson and most of the others over to support a strong central government, but they thought the issue was so important that they wanted to try every other possible means of persuasion. When Connecticut changed its vote on July 19, and Paterson and his colleagues did not walk out after their decisive defeat (even Lansing and Yates stayed on until the 10th of July),⁹² it might have been taken as evidence that the small state delegates were not unshakeable in their determination. On the other hand, the strategy of the small state delegates was to make it absolutely and unmistakably clear to the large states that equality and only equality would bring them around. This was the task which fell to Paterson.

Meanwhile the Convention went back to a step-by-step reconsideration of the Randolph resolutions as reported

by the Committee of the Whole on June 13. The apparent reduction in tension was short lived, however, and by June 27 the Convention had returned to the 7th and 8th of Randolph's resolves--the ones that dealt with the composition respectively of the House and the Senate. Luther Martin had been cooling his heels for a week, and now he exploded in a two-day harangue on state equality. The speech "might have continued for two months," Ellsworth later said, except for the expressions of "fatigue and disgust" evident on every face.⁹³ As soon as Martin stepped down from his soap box, Lansing and Dayton began to squabble with Madison and Wilson, and the debate became so animated that Franklin wound up suggesting that prayer might help to temper their tongues.⁹⁴ The next morning the Connecticut men were talking compromise again, and Ellsworth claimed that he at least did not despair for the fate of the Convention. The same might not be said of Madison, however; he begged the small state men "to renounce a principle...which cd. never be admitted, & if admitted must infuse mortality into a Constitution which we wished to last forever."⁹⁵ Then it was resolved (6 to 4 with one divided) to reject state equality in the first house, and Ellsworth immediately moved for equality in the second.⁹⁶

Paterson had never tried to conceal the firmness of

his belief in the need for equality, and on the morning of the 30th he and Brearly tried to remind the others of where the small state men still stood. They proposed that Washington be instructed to write to the governor of New Hampshire and request the "immediate attendance" of that small state's delegates in Philadelphia. Only New York was willing to go along with this idea.⁹⁷ One whole day of animated debate was devoted to Ellsworth's proposal for equality in the Senate. Madison and Wilson were still adamant; Dayton called the proportional alternative an "amphibious monster;" and Delaware's Gunning Bedford got a little carried away. According to Madison's notes, he practically dared the large states to break up the Confederation: "if they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice."⁹⁸ July 1 was a Sunday. When the tally was taken on Ellsworth's motion on Monday morning, the vote was tied. It seems that Luther Baldwin had decided to vote with his friends from Connecticut (thereby dividing Georgia) and Martin's colleague from Maryland was late that morning, allowing Martin to place Maryland solidly with the Paterson group. Even though the tardy Marylander showed up a few moments later, the large states dared not try to have the vote taken

again.⁹⁹ Madison's and Wilson's hold on the body seemed to be falling apart. There were dangerous signs of weakening even in their own delegations. For the first time since the New Jersey Plan was introduced, the Convention had come to a dead stop. What cool heads there still were realized that if compromise were to come, it had to come now. And over the objections of Madison and Wilson they set up a grand committee with one member from each state "to devise & report some compromise." Paterson was chosen to represent New Jersey.¹⁰⁰

The members of the committee were carefully chosen to encourage the likelihood of compromise, and the delegates were not disappointed. On July 5, as the Convention was called to order again after a two-day recess for Independence Day celebrations, Chairman Elbridge Gerry reported that a middle ground had been found. If an equal vote were allowed to each state in the Senate, the small states would allow proportional representation in the House and, to make the arrangement more palatable to the large states, they would also preserve for the House the sole power to write money bills.¹⁰¹ From the 5th until the 16th of July, the delegates debated various elements of the proposal, aware that the fate of the whole Convention hung in the balance. To be sure that no one forgot just how precarious

the situation was, Paterson spoke three times during this period, and each time he made it clearer and clearer that no other grounds for compromise existed. On July 5 he defended Bedford who had been criticized for his idle threats of a few days before, and took the opportunity to reply in kind to the challenges of Madison and Gouverneur Morris. Madison had been letting off steam about the committee's proposals. He thought that granting the House sole right to initiate money bills was no compromise at all, and he ended suggesting that it might be best for "the principal States comprehending a majority of the people of the U.S." to agree on a plan they thought was just, whether or not the minority delegates in the Convention went along. Madison claimed that "he had the firmest hopes that the other States would by degrees accede to it."¹⁰² Gouverneur Morris carried the emotion still further:

This country must be united. If persuasion does not unite it, the sword will.... The scenes of horror attending civil commotion can not be described, and the conclusion of them will be worse.... The stronger party will then make traytors of the weaker; and the Gallows and Halter will finish the work of the sword.¹⁰³

Paterson acknowledged that the warmth of Bedford's argument might have been "improper; but he thought the Sword and the Gallows as little calculated to bring conviction," and he complained of the manner in which Madison and Morris "had

treated the small states."¹⁰⁴

The release of emotion in rhetoric was not sufficient to calm tempers. For the next two days the debate continued at fever pitch. The exact proportions of representation in the lower house were to be decided by a special committee. Meanwhile, the large state men argued the insignificance of the money bill provision, and the small states (represented by Ellsworth, Sherman, and Bedford) urged acceptance of the compromise. When Paterson spoke up again on July 7 it was to set the scales straight again. It did not matter to him whether the matter of money bills was thought to be important or not, but he reminded the delegates that the small states had already agreed to proportional representation in the lower house, and now they would accept nothing less than equality in the upper. Madison recorded: "There was no other ground for accommodation. His resolution was fixt. He would meet the large states on that Ground and no other." And then to further impress the opposition with his steadfastness, Paterson added that "for himself he should vote agst. the Report [the compromise] because it yielded too much."¹⁰⁵ According to King's notes Paterson was even stronger: "If we cannot agree in this,... we had better divide & lose no longer Time."¹⁰⁶ The only way to negotiate a compromise was to keep trying to convince the large states that they were not the only ones

doing the compromising. Just to make crystal clear how accommodating his small state colleagues were being, Paterson stuck to the opposite extreme. If the small states were going to convince the large state men of the firmness of their position, they needed someone to act the unbending and dogmatic role being played by Madison and Wilson on the other side. Paterson filled the bill.

When they came back together on Monday, all was confusion. The special committee reported its proposed figures for representation in the lower house, but, when asked whether population or wealth had been their guide, the committee would give no straight answer. Morris and Rutledge tried to side-step the problem by postponing discussion of the exact numbers and taking up the second paragraph of the committee's report, which allowed the Congress to regulate its own representation in the future. As it turned out, Gouverneur Morris was most worried about the back country men who might come to dominate the union as new states were created,¹⁰⁷ but Paterson dropped another bombshell when he flatly challenged the counting of slaves in the proportioning of representation. "He could regard negroes slaves in no light but as property." Madison, counting on at least a three-fifths clause, must have gulped as he wrote down those words. "What is the true

principle of Representation," Paterson asked.

It is an expedient by which an assembly of certain individuals, chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then shd. they be represented.¹⁰⁸

This was a good point. Paterson also noted that such a provision would be likely to encourage the slave trade as southern states tried to increase their representation.¹⁰⁹ But besides speaking his mind, Paterson was opening a wedge between Wilson and Madison. On July 10 New Jersey quietly agreed to the percentages suggested for the first house (including slaves), but from the 11th to the 13th things went from bad to worse for the large state men. Wilson and Morris from Quaker Pennsylvania argued against any formula for counting slaves being written into the constitution, while Madison's allies from South Carolina held out for slaves to be counted in their full number. By the 13th Gouverneur Morris was wondering if equality in the Senate would not be the only way the northern states might defend themselves against the south, and other delegates from large northern states began to weaken.¹¹⁰

On the morning of July 14 Ellsworth moved that the delegates vote on the whole report of the committee, that is, to accept or reject the entire compromise. One more day of cajoling the moderates and warning the opposition

had to be endured until the tally was taken. Paterson sat back and let Sherman, Martin, and Dayton carry the debate against Madison, Wilson, and Charles Pinkney, who tried once more to undercut the compromise with a proposal for a partly proportional Senate. But the sides did not budge. After what could hardly have been a very restful Sunday the delegates reconvened on Monday morning, and the vote was taken. The small states won. William R. Davie and Hugh Williamson had swung over North Carolina to the side of the compromise, and Elbridge Gerry and Caleb Strong split the vote of Massachusetts because they realized that not to compromise now was to give up all hope of agreement on a new government. New Jersey, Delaware, Connecticut, Maryland, and North Carolina outnumbered Virginia, Pennsylvania, Georgia, and South Carolina, thanks to Strong and Gerry who paralyzed Massachusetts.¹¹¹ There was no doubt where the votes of New Hampshire, Rhode Island, and New York would have gone had they been cast.

The large states took the defeat as though in a state of shock. For the first time in weeks neither Madison nor Wilson nor Morris had anything to say. In an atmosphere of disbelief the delegates moved on to the next of Randolph's resolution, at the point where they had left off back on June 27. Butler, Gorham, and Rutledge began

to bicker about the wording of the clause that would grant powers to Congress. The vote on whether or not to submit the question to a committee came up a deadlocked 5 to 5. Then Randooph rose to speak. "The vote of this morning (involving an equality of suffrage in 2d. branch) had embarrassed the business extremely." He claimed to have come that morning with another plan for compromise whereby equal votes might be allowed to the small states in certain cases,

But finding from the preceding vote that they persist in demanding an equal vote in all cases, that they have succeeded in obtaining it, and that N. York if present would probably be on the same side, he could not but think we were unprepared to discuss this subject further. For these reasons he wished the Convention might adjourn, that the large states might consider the steps proper to be taken in the present solemn crisis of the business, and the small States might also deliberate on the means of conciliation.¹¹²

It is clear that Randolph (like Madison, Wilson, and the other large state delegates) was unhappy with the morning's decision. But it was also clear that he wanted the rest of the day free for the different factions to put their heads together and decide where to go. The large states had probably not given serious consideration to what they would do if they lost, especially after the New Yorkers had left on July 10 seemingly detracting from the small states' vote. If they should decide to stay on, they wanted to

reconsider some important provisions in their plan. They obviously would not grant the same powers to a legislature representative of the small states as they would to one representative of the people. As Randolph said in his comments that morning, all of the resolutions in his plan "were founded on the supposition that a Proportional representation was to prevail in both branches of the Legislature."¹¹³ Now the large state delegates needed time to rethink their position.

Paterson was not going to allow them to browbeat the small states into accepting anything less than had been won that morning. As Randolph finished, the angry Jerseyman was on his feet, twisting the meaning of Randolph's words and creating a situation more emotionally charged than any moment in the Convention thus far. Here are Paterson's dramatic words as Madison recorded them:

Mr. Patterson [sic] thought with Mr. R. that it was 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 could be admissible 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, he would second it with all his heart.¹¹⁴

A month before, when he was trying to hold together the loose faction that presented the New Jersey Plan, Paterson had proved himself a master at subtle political maneuver.

Since the opening of this third phase of the struggle for equal representation, however, he had become increasingly blunt in delineating his position. The Connecticut men who had proposed the idea of the compromise and worked for it all through the detailed and unpleasant negotiations deserve a great deal of credit for their labors, but convincing the large states of the need to give in on this critical point required more than the skillful yet friendly manner of debate exhibited by Ellsworth or Sherman. There had to be someone standing absolutely firm--as intransigent as Madison and Wilson remained on the other side. Paterson, of course, did not do this alone. There were others who occasionally took a decisive stand. In the closing hour of debate on the compromise it was his New Jersey colleague Dayton who reiterated firmly that he would "in no event" give up state equality.¹¹⁵ It was Paterson, however, who provided the constant backstop upon which the compromisers could base their efforts. His stance had become firmer and firmer as the days went on. Veiled threats to broach openly the matter of unoccupied lands had given way to flat refusals to consider the 3/5 formula for representation. Now the victory had been won, and he was telling Randolph in no uncertain terms to take it or leave it.

Randolph dared not call his bluff. He said he "was

sorry that his meaning had been so readily & strangely misinterpreted," but he was thinking only of adjourning

till tomorrow in order that some conciliatory experiment might if possible be devised, and that in case the smaller States should continue to hold back, the larger might take such measures, he would not say what, as might be necessary.¹¹⁶

Paterson had made no mistake. He knew that the further conciliation Randolph and the Virginians wanted would have given New Jersey and the others less than they had won fairly and squarely on the floor of the Convention. Paterson now seconded the motion for "adjournment till tomorrow, as an opportunity seemed to be wished by the larger States to deliberate further on conciliatory expedients."¹¹⁷ But his downright nonsequitur of a few minutes before had made its point. There could not be many delegates who believed the small states would do any more compromising. Apparently, quite a few of them thought Paterson was absolutely serious. Broome from Delaware joined Gerry in opposing Paterson's suggestion: "adjournment sine die...would be fatal." Rutledge from South Carolina, allied from the beginning with his neighbors from Virginia, now saw "no chance of a compromise: beyond the one that had already been voted on. "The little States were fixt.," he at long last observed,

All that the large States then had to do, was to decide whether they would yield or not. For his part he conceived that altho' 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.¹¹⁸

Then it was voted to "adjourn till tomorrow."

Rutledge was unhappy with the situation, but not as unhappy as Madison, Wilson or Randolph. Madison described in his notes a meeting that was held by "a number of members from the larger States" on the following morning. There was a group, Madison no doubt at the head of them, which was prepared to break from the Convention and propose its own plan--which as Madison pointed out to the meeting would have the support of the principal states and the majority of the people. But that any such forceful conclusion should emerge from this meeting was made impossible by the others present who

seemed inclined to yield to the smaller States, and to concur in such an Act however imperfect & exceptionable, as might be agreed on by the Convention as a body, tho' decided by a bare majority of States and by a minority of the people of the U. States.¹¹⁹

Here then was the last meeting of that large state caucus which Madison had begun to put together even before the Convention met. Fearing that without compromise they would have to go home empty handed, many of the large state delegates had finally acquiesced in the small states' demands, and any realistic chance for overturning the Great Compromise

approved the day before disappeared.

In the long struggle for representation that had begun back on June 9 and had proceeded through three phases (from Paterson's first stand in debating the original Virginia resolves through the New Jersey Plan to the final showdown over the Great Compromise), Madison and Paterson had led the opposing factions in heated debate. More than a few times during those weeks the fate of the entire Convention hung in the balance, but both Madison and Paterson realized the importance of their task and persevered.

Actually they were closer together than this struggle implies. They both agreed, unlike many outside the Convention, that a new and vigorous form of national government was needed.¹²⁰ After July 17, with the question of representation settled, both of these men and their colleagues from large and small states alike concentrated on the more delicate matters of shaping a government that could govern firmly yet not get out of control.

In the course of their struggle over representation, Paterson and Madison had acted as the main agents in the development of the most unique aspect of the American Constitution. The Randolph plan had left purposely vague its statements on the role of the states in the new system, but if representation were to be proportional and based directly

on the people then, by definition, sovereignty would be placed in the new government. There was no explicit denial of the state sovereignty, but, as everyone would agree at the time, the sovereignty had to be either in one place or the other--not both. Paterson had noted at the very outset of the Convention that sovereignty was "an Integral thing," it could not be split up or divided between different governments. Thereafter, when Paterson spoke of a "federal" system (as opposed to the "national" system of Randolph) he meant one which had no sovereignty of its own, but was delegated powers by the sovereign states. Inherent in the arrangement that became known as the Great Compromise (which called for a representation of states as well as people) was a basic theoretical change in the nature of sovereignty. No longer an integral thing, it was to be shared by the central and the state governments in their various capacities. From here on the term "federal" took on new meaning, and ever since it has been used to represent this unique concept of shared sovereignty in the American Constitution.¹²¹

Ultimately the Great Compromise was a victory for the nation and the states. Madison, Wilson, King and the other large state people had finally been convinced that "New Jersey was almost as real a political entity to Jerseyites as was Virginia to Virginians."¹²² Moreover, once the

Great Compromise helped the small states to feel themselves to be important in the new system, they no longer looked with fear upon the proposed new and more powerful central government. To the extent that Paterson was responsible for forcing the large state delegates to recognize these political facts of life, he deserves credit for the ultimate success that the Convention achieved.

His contribution made, Paterson wrote his wife later on the 17th asking her to send money so he could settle accounts for his Philadelphia expenses, and telling her of his expectation to be home by the end of the month. The letter continued:

The business is difficult and unavoidably takes up much time, but I think we shall eventually agree upon and adopt a system that will give strength and harmony to the Union and render us a great and happy people. This is the wish of every good, and the interest of every wise man.¹²³

He remained in Philadelphia and continued to attend the sessions until July 23. Ironically, the same day he left for New Jersey was the day that the long awaited New Hampshire delegates arrived.¹²⁴

During August and September, as the Convention labored over the details of the document, Paterson was looking after his business at home. Explaining that he was "under the necessity of being absent," he had asked that Dayton be present to help Brearly and Livingston with the

work.¹²⁵ Even when Brearly wrote on August 21, to report that the business was dragging on terribly because "every article is again argued over, with as much earnestness and obstinacy as before it was committed," and to ask if Paterson could not possibly join them, he declined to return.¹²⁶ A few days later he wrote to Ellsworth to ask what was happening in the Convention.

Full of Disputation and noisy as the Wind, it is said, that you are afraid of the very Windows, and have a Man planted under them to prevent the Secrets and Doings from flying out.¹²⁷

He went on to hope that they "would not have as much Altercation upon the Detail, as there was in getting the Principles of the System." And closed with earnest good wishes, but no offer of help.

I wish you much Speed, and that you may be full of good Works, the first mainly for my own Sake, for I dread going down again to Philada. [sic].¹²⁸

He did return, though, in September to sign the completed document.¹²⁹

The completed Constitution was reported to the Confederation Congress, and sent out to the states with instructions that it be ratified by special conventions to be chosen for the purpose.¹³⁰ There is no indication that Paterson played any role in winning support for the ratification in New Jersey.¹³¹ But there was no significant opposition to be worried about in Paterson's home state. Surely the

situation would have been very different if the Virginia Plan, as originally proposed, had been fully implemented, but the Great Compromise was easy for most Jerseymen to accept. Other obvious benefits to New Jersey were to be found in the provisions which gave Congress the sole power to impose import taxes and to establish congressional regulation of interstate trade.¹³² There was the likelihood that the state's taxes could be dramatically reduced because the congress had been empowered to take over the debts of the Confederation, and, although there was no explicit mention of it in the completed document, the Constitution did not deny the new government the power to assume the debts of the individual states.¹³³ The farmers who had borne the brunt of the state taxes over the years could only breathe a sign of relief.

Undoubtedly these factors made the farmers and the paper money party less interested in fighting ratification on the grounds that it made impossible the loan office and stay law schemes they had tried before.¹³⁴ Paterson and his fellow hard money men could rest assured that, deprived of the power to abrogate contracts and meddle with paper money, the state governments could not cause too much trouble. And with many Jerseymen and others from all over the nation, he could put to rest some of the apprehensions he had felt about

the future of the American experiment launched so auspiciously in 1776. With the perspective of just a few years after the adoption of the Constitution, he looked back upon it as America's salvation:

Shortly after the present government was put in operation, a wonderful change was visible in every class of men, and in every part of the State. Money became plenty, confidence was restored, and credit placed on its proper basis; for contracts were rendered sacred by the constitution, and paper money was forever interdicted. The imposts arising from merchandize, [sic] and the whole proceeds of revenue being deposited in a common treasury, and appropriated to the general purposes of the confederacy, it is not in the power of one state to injure another by a sudden stroke of finance, or partial scheme of policy. Great and glorious transition! Perhaps, history does not afford an instance of the kind. My fellow citizens, let us be grateful for the benefits and blessings, which we enjoy. Highly does it become us to support and preserve the constitution and government of the United States, from whence, under Heaven, all our prosperity proceeds.¹³⁵

The Constitution, Paterson would maintain, represented "the ark of safety and the palladium of our liberties."¹³⁶ And, as long as the Constitution was followed, and the government used its power wisely, the opportunity to establish a great and glorious American Arcadia might finally be realized.

The rest of Paterson's life would offer numerous opportunities for him to look to the Constitution and to apply its principles. Serving on the Supreme Court during some of its most creative years, he would help to clear up a few of its inconsistencies and see the nation over some of

the most troubled of her early national years. And all the while he could maintain the belief that the service he had given to the success of the Revolution and the writing of the Constitution had brought America closer to the great and virtuous prospects he had in view. "We are laying the foundation of a great empire;" he wrote while sitting in the first Senate of the United States, "the prospect widens and brightens as we proceed; and to every enlarged mind must give the highest pleasure."¹³⁷

FOOTNOTES, CHAPTER VII

¹See Merrill Jensen, The New Nation: A History of the United States During the Confederation (New York, 1950), and McCormick, Experiment in Independence, passim.

²McCormick, Experiment in Independence, pp. 233-244.

³Newspaper essay [c. 1793-96], oversize file, Paterson Papers, RUL.

⁴McCormick, Experiment in Independence, pp. 219-220.

⁵Ibid., p. 240; and Chapter VI above.

⁶Newspaper essay [c. 1793-96], oversize file, Paterson Papers, RUL.

⁷Ferguson, "The Nationalists of 1781-1783 And the Economic Interpretation of the Constitution," passim.

⁸According to John C. Miller: "success in the policy of gradual change would have merely blunted the wedge which Hamilton hoped to drive into the heart of the Articles." Alexander Hamilton and the New Nation (New York, 1959), p. 140.

⁹McCormick, Experiment in Independence, p. 253.

¹⁰Miller, Alexander Hamilton, p. 138.

¹¹McCormick, Experiment in Independence, pp. 255-56.

¹²Ibid., pp. 256n., 276-77.

¹³Ibid., p. 256.

¹⁴For Paterson's political and moral outlook on confederation finance see above Chapter VI. For the specific interests of some of the other delegates see Charles Beard, Economic Interpretation of the Constitution of the United States (New York, 1913), and Forrest McDonald, We The People: The Economic Origins of the Constitution (Chicago, 1958).

¹⁵One of the very fortunate circumstances of the Convention was the fact that very few of those who were opposed to a new stronger government were in attendance in Philadelphia. See Stanley M. Elkins and Eric McKittrick, "The Founding Fathers, Young Men of the Revolution," Political Science Quarterly, Vol. LXXVI, no. 2 (1961), p. 212 and passim.

¹⁶Max Farrand, The Records of the Federal Convention of 1787 (4 Vols., New York, 1937 and New Haven, 1966), III, 90.

¹⁷Ibid.

¹⁸Clinton Rossiter, 1787: The Grand Convention (New York, 1966), pp. 160-61. Irving Brant, James Madison: The Nationalist (New York, 1948), Chapters XXV and XXVI; and Brant, James Madison: Father of the Constitution (New York, 1950), Chapter I. See also Farrand, Records, III, pp. a3, 409.

¹⁹Farrand, Records, I, pp. 20-22.

²⁰Madison had proposed a sweeping interpretation of the implied powers of the Confederation Congress in 1781, and in a committee report to the Congress he had suggested an amendment to the Articles that would have granted Congress the authority to use force against the states who did not conform. The proposal was never submitted to the states. Jensen, New Nation, p. 59.

²¹According to Gordon Wood: "The Federalists of the late eighties wanted and believed they needed much more than the Nationalists of the early eighties had sought." Creation of the American Republic, p. 475.

²²Hamilton now wondered how he could have previously sought to increase the powers of so democratic a body. See Miller pp. 131-50 passim. Of course, Hamilton did not think the Virginia Plan went far enough either.

²³McCormick, Experiment in Independence, p. 259.

²⁴Forrest McDonald, The Formation of the American Republic (Boston, 1965), pp. 164-65.

²⁵Farrand, Records, pp. 10-11n.

²⁶The manuscript copy of Paterson's notes is preserved at the Library of Congress. With a very few minor exceptions, Farrands, Records, represents a correct transcription.

²⁷Farrand, Records, I, p. 27. For Hamilton's comment see McHenry's notes, I, p. 27.

²⁸Read's nationalism would be obvious throughout the Convention. He had had the foresight to request that Delaware instruct their delegation specifically not to assent to unequal representation. This way he would not be forced to participate in any "disagreeable argumentation: over the question." Rossiter, 1787, p. 151.

²⁹Paterson had formally requested on June 5th that Randolph's resolution for guaranteeing the territory and republican government of the individual states be considered only after "the point of representation could be decided." Farrand, Records, I, p. 121.

³⁰Wilson suggested setting up special districts from which the people could directly choose senators. Presumably Delaware and New Jersey would each be a part of a district larger than themselves. Ibid., I, pp. 151-53.

³¹Ibid., I, pp. 152-56.

³²Ibid., I, p. 167.

³³Ibid., I, p. 168.

³⁴Ibid., I, p. 185; III, p. 584.

³⁵Ibid., I, pp. 178, 185-86.

³⁶Ibid., I, pp. 132, 168, 179. Partly because of these populistic sounding statements, David Hackett Fischer has described Paterson's attitude as somewhat of "a puzzle." Revolution of American Conservatism (New York, 1965), p. 325.

³⁷Farrand, Records, I, pp. 178-86. Brant suggests that the "proposal of a hotchpot and redivision was about as practicable as a motion to carve up the moon." James Madison: Father of the Constitution (New York, 1950), p. 51.

³⁸By the time the Virginians and Pennsylvanians had skillfully twisted the phrases around so that for them "equality of representation" meant an equal representation for every person rather than for every state. See Farrand, Records, I, pp. 180, 187-88.

³⁹Ibid., I, p. 179.

⁴⁰Ibid., I, p. 22.

⁴¹Ibid., I, p. 121. See also William Wiecek, The Guarantee Clause of the United States Constitution (Ithaca, New York, 1972), p. 53.

⁴²See notes for his speech, Farrand, Records, I, p. 188.

⁴³Farrand, Records, II, p. 664. It is interesting to note that New Jersey's instructions to its delegates did not restrict them to only "revising." III, p. 588.

⁴⁴The New Hampshire representatives did not show up until July 23, the day Paterson left for home, Ibid., III, p. 588.

⁴⁵See Chapter VI above.

⁴⁶McCormick, Experiment in Independence, pp. 233-44; Farrand, Records, III, p. 563; Brant, James Madison: Father of the Constitution, p. 65.

⁴⁷McCormick, Experiment in Independence, pp. 220-33.

⁴⁸Luther Martin and Jonathan Dayton were probably the most intimately involved.

⁴⁹Farrand, Records, II, pp. 464-66.

⁵⁰When Madison later reported to Jefferson of Paterson's speech, the "hotchpot" idea was all that he thought was important enough to mention. Brant, James Madison: Father of the Constitution, p. 52.

⁵¹Elkins and McKittrick, "The Founding Fathers," p. 203.

⁵²He had suggested in his Address on the Rise and Decline of Nations before the war that in a declining state "men of unbounded ambition frequently break in upon the principles of the constitution, & if joined to an innovating spirit, seldom fail to model the government anew," and in a 1798 Fourth of July speech he suggested that any sudden increase in the power of government might prove fatal: "a great and sudden enlargement of dominion and power, generally indicate a great and sudden declension and ruin." Political essay folder, Box 1, Paterson Collection, PUL.

⁵³See above Chapter V.

⁵⁴Farrand, Records, I, p. 274.

⁵⁵Ibid., pp. 224-232.

⁵⁶Ibid., I, p. 16.

⁵⁷The idea of a hotchpot, for example, was mentioned in Brearly's seconding speech before Paterson had a chance to develop the idea. Ibid., I, p. 177-78.

⁵⁸Ibid., I, p. 174.

⁵⁹Ibid., I, p. 240.

⁶⁰According to Rossiter it "showed the strains of its multiple paternity," 1787, p. 175.

⁶¹Farrand, Records, I, pp. 242-45.

⁶²That he wrote this article is clear from his later letters which acknowledged the fact and carefully pointed out the precise phrasing of his proposal that would have benefited his friends at home in Maryland. Ibid., III, 286-87.

⁶³Until 1786 there were legislative roadblocks to court settlement of such debt cases, but after that year debts could be collected through the courts with no restriction other than the requirement that payment be accepted in state paper money. Jensen, New Nation, pp. 278-79.

⁶⁴Maryland and New Jersey had been the most obstreperous members of Congress when it came to settling questions of western lands. They were also the home states of some of the most active speculators. Jensen, New Nation, pp. 350-59.

⁶⁵Farrand, Records, I, p. 245. Surprised to find such apparently nationalistic feeling in the small states, Rossiter uses the word "astonishing" to describe the clause, but he seems not to have appreciated just how extraordinary Martin's devious reasoning actually was. Rossiter, 1787, p. 176.

⁶⁶Martin himself later described these intentional loopholes in the proposal. Farrand, Records, III, pp. 286-87. See also Jensen, New Nation, pp. 278-79; Brant, James Madison: Father of the Constitution, p. 66.

⁶⁷Farrand, Records, I, p. 316.

⁶⁸Ibid., III, pp. 286-87; Brant, James Madison: Father of the Constitution, pp. 67-68. In their recent biography of Martin, Paul S. Clarkson and R. Samuel Jett are more generous to Martin. They suggest that his concern was primarily with the protection of personal liberty, and was especially tied to the fact that the new federal Constitution would have no bill of rights; Luther Martin of Maryland (Baltimore, 1970), pp. 114-18.

⁶⁹Brant suggests that Yates and Lansing were willing to support the movement for equal representation because they hoped it would torpedo the entire Convention. James Madison: Father of the Constitution, p. 65.

⁷⁰Farrand, Records, III, pp. 612-13.

⁷¹In one of the early drafts of the Plan Paterson indicated that he would bring up the hotchpot idea again. Perhaps because he figured that the loophole left by Martin for the dividing up of the rest of the states was explicit enough a reminder of the land issue, he dropped the hotchpot proposal from the final document. Ibid., III, p. 613.

⁷²Ibid., III, p. 615-16.

⁷³Ibid., III, p. 613.

⁷⁴He had made this point in 1777 when arguing for the establishment of a Council of Safety, and had referred to it as well on June 9, and again on June 16. Ibid., I, pp. 186, 274. See above Chapter V.

⁷⁵Charles Warren, The Making of the Constitution (Boston, 1928), p. 225.

⁷⁶Farrand, Records, I, p. 242.

⁷⁷He even used the fact that voting in the Convention was done on an equal basis to strengthen his point. Ibid., I, pp. 249-50.

⁷⁸His own notes for the speech identified Maryland and New Jersey as the states most interested in the western lands issue. Ibid., I, p. 274.

⁷⁹The notes of Madison, Yates, King, and Hamilton each mention his consideration of the Confederation as a solemn contract, but to find a note of his fear that too much innovation would undermine the stability of the new system one must look at his own notes. Ibid., I, pp. 250, 258, 264, 268, 274.

⁸⁰Ibid., I, pp. 251-52.

⁸¹See notes for June 16, 18, and 19. Ibid., I, pp. 260-322.

⁸²There were two attempts to prolong the debate and have the resolutions presented one at a time on the floor (one by Ellsworth and another by Dickinson) but each failed. Ibid., I, pp. 255, 282.

⁸³Historians have as a rule been rather generous to the New Jersey Plan, treating it as a serious attempt to offer an alternative to each of Randolph's original proposals. In 1913 Max Farrand wrote "It is altogether possible, if the New Jersey Plan had been presented to the Convention at the same time as the Virginia plan, that is on May 29, and if without discussion a choice had been made between the two, that the former would have been selected. It would seem," he continued, "as if the New Jersey plan more nearly represented what most of the delegates supposed that they were sent to do. But in the course of the two weeks' discussions, many of the delegates had become accustomed to what might well have appeared to them at the outset as quite radical ideas." The Framing of The Constitution of the United States (New Haven, 1913), p. 89. These "might have beens" can sometimes raise interesting historical theories, but in this case to guess what might have happened two weeks earlier is impossible. The particulars of the New Jersey plan were shaped primarily by the situation in the convention after Paterson's arguments failed on June 9, and by the very diverse (at times even contradictory) interests of the particular men who shaped it. If conceived two weeks earlier, before things seemed to get out of hand for the small states, the document probably would have looked very different.

⁸⁴See Brant, James Madison: Father of the Constitution, p. 54.

⁸⁵Farrand, Records, I, p. 261.

⁸⁶According to Farrand, Dickinson went on to explain that "some members from the small states wish for two branches in the General Legislature, and are friends to a good National Government; but we would sooner submit to a foreign power, than submit to be deprived of an equality of suffrage, in both branches of the legislature, and thereby be thrown under the domination of the large States." Ibid., I, p. 242n.

⁸⁷Ibid., p. 321. Later in life Madison remembered in a letter that "the main object of that [the Paterson Plan] being to secure to the smaller States an equality with the larger in the structure of the Govt." it was impossible to presume that the other elements of the plan were sincerely agreed upon by all the plan's supporters. On the question of the powers to be granted to Congress for example, Madison said that no "abstract" opinions could be perceived until the matter of representation was finally settled. Ibid., III, p. 496.

⁸⁸Roger S. Boardman, Roger Sherman, Signer and Statesman (Philadelphia, 1938), p. 245. Within two days of the vote Sherman, Ellsworth and Johnson were each on the floor calling for compromise. Farrand, Records, I, pp. 334, 341, 354. Connecticut, on the basis at least of the western lands issue, could afford to compromise more than Delaware, Maryland and New Jersey could. They had won a reserve of western territory for themselves in their confrontation with Pennsylvania during the Confederation, Jensen, New Nation, p. 336; see also Brant, James Madison: Father of the Constitution, p. 65.

⁸⁹Farrand, Records, I, pp. 322-23, 324.

⁹⁰As it appeared in Randolph's first resolution. Ibid., I, pp. 134-35.

⁹¹See Rossiter, 1787, pp. 180-81.

⁹²Yates stopped keeping his notes on July 5. Farrand, Records, III, p. 588, 590.

⁹³Ibid., I, pp. 437-445; III, p. 272.

⁹⁴Ibid., I, pp. 445-51.

⁹⁵Ibid., I, p. 464.

⁹⁶Ibid., I, p. 468.

⁹⁷Ibid., I, pp. 481-82.

⁹⁸A few days later Bedford backed down from his previous position, explaining that speaking in such an animated fashion was one of the weaknesses of his profession-- he was a lawyer. Ibid., I, pp. 492, 531-32.

⁹⁹Ibid., I, p. 510.

¹⁰⁰Ibid., I, p. 511.

¹⁰¹The Convention had already agreed that representation in the first house should be proportional. Now they were suggesting that apportionment should be one representative for every 40,000 individuals. Ibid., p. 526.

¹⁰²Ibid., I, p. 529.

¹⁰³Ibid., I, p. 530.

¹⁰⁴Ibid., I, p. 536.

¹⁰⁵Ibid., I, p. 551.

¹⁰⁶Ibid., I, p. 554.

¹⁰⁷Ibid., I, p. 573.

¹⁰⁸Ibid., I, p. 561. A few years later Paterson was criticizing those who had worked against the Constitution. He called the 3/5 question a fuss over nothing. "Slaves are men and also a species of property, and therefore of double value in a land of liberty." Newspaper essay [c. 1793-96], oversize file, Paterson Papers, RUL.

¹⁰⁹Farrand, Records, I, p. 561.

¹¹⁰Ibid., I, p. 604. See also Caleb Strong, Ibid., I, p. 7.

¹¹¹Ibid., II, p. 16.

¹¹²Ibid., II, p. 17-18.

113 Ibid.

114 Ibid., II, p. 18.

115 Ibid., II, p. 5.

116 Ibid., II, p. 18.

117 Ibid., II, p. 19.

118 Ibid.

119 Madison recorded that there were even some small state men at the meeting, but he did not mention any names. Ibid., II, p. 20.

120 Rossiter, 1787, p. 183.

121 Leonard Boyne Rosenberg, "The Political Thought of William Paterson," (unpublished Ph.D. dissertation, New School for Social Research, 1967), pp. 98-109.

122 Rossiter, 1787, pp. 193-94.

123 Farrand, Records, IV, p. 70.

124 Ibid., II, p. 84.

125 Ibid., IV, p. 73.

126 Ibid., III, p. 73.

127 Ibid., IV, p. 73.

128 Ibid.

129 Ibid., II, p. 664.

¹³⁰Paterson had seconded a motion by Ellsworth on July 23 to send the completed Constitution to the state legislatures rather than special conventions, but he had left for home before the vote on the question was taken later in the day. Ibid., II, pp. 88, 91, 93. If Paterson had been motivated by his scrupulous legalistic mind when he opposed going beyond the instructions of the Congress, he certainly should not have now signed the Constitution that called for ratification by only nine states and in those states by conventions especially called for the purpose. On both points the Constitution ignored the established procedures of the Articles of Confederation.

¹³¹For some unknown reason Paterson did not sign the official report submitted to the state legislature by the delegation he had led. McCormick, Experiment in Independence, p. 264n.

¹³²Ibid., p. 272; McDonald, We the People, p. 126.

¹³³McCormick, Experiment in Independence, p. 272. Paterson realized the importance of the assumption of state debts and he included in his notes for the last day he attended the Convention a reference to a speech by Oliver Ellsworth: "The debt will go with the Govt.--This is a prevailing *lea*." Farrand, Records, II, p. 96.

¹³⁴Abraham Clark was one of the few who even questioned the Constitution publicly. McCormick, Experiment in Independence, pp. 276-77.

¹³⁵Newspaper essay [c. 1793-96], oversize file, Paterson Papers, RUL.

¹³⁶Fourth of July Oration [July 4, 1798], political essays folder, Box 1, Paterson Collection, PUL.

¹³⁷William Paterson to Euphemia Paterson, August 1, 1790, folder no. 13, Paterson Papers, RUL.

CHAPTER VIII

CONCLUSION

Paterson's hopes for a "republic of virtue" could not be realized until there were protections assured against what he saw as the irresponsible popular party which dominated New Jersey's legislature. The new federal Constitution provided that protection, and, for Paterson at least, it represented the culmination of the revolutionary era, and the fulfillment of the ideals that had led to independence.

Between 1763, when he graduated from the College of New Jersey, and 1787, when he returned from Philadelphia having played a significant role in shaping the future of the American nation, Paterson's personal and professional life had closely paralleled the American struggle for self identity. The social and political world-view he had in 1787 was substantially the same one had had conceived during his college days. It was based on the lessons of history (ancient and modern) and moral philosophy, and imbued with an almost religious urgency learned from his Princeton

tutors. It related the moral vitality of the nation with the individual morality of the people who made up the society, and it included a particular responsibility for the best educated, the moral and social leaders of the community, to guide the society in the proper paths. These leaders, to whom he assumed the less prominent members of the community were willing to defer in most social and political matters, were entitled to a prestigious place in the community, but they had crucial responsibilities, too--highest among them being moral righteousness. If ever the leaders of the society became so enamored of material pleasures or so concerned with their personal position or fortune, that they set aside their responsibility to serve the public unselfishly, then the decline and fall of that society could not be far behind. Paterson had made these points clearly in his "Address on The Rise and Decline of Nations," and by relating the fear of incipient aristocracy introduced from Britain to the taste for luxury that he saw developing in America and the venality and corruption that was evident in the British Empire, he brought together a classic statement of the ideological rationale for the Revolution in New Jersey.

Although his rationale was fixed, Paterson, like most other Jersey patriots, resisted the movement for

independence. Of primary concern for him was the fear of what unstable social forces might be unleashed by breaking the traditional ties with Britain. This was a fear shared by many in other colonies and represented in the Continental Congress too, by those who would not agree on independence until the only alternative seemed to be abject slavery to the British. Once the decision was made, it became crucial to establish a forceful new government that could pick up where the old one left off and avoid any serious social and economic dislocation. Paterson opposed the 1776 New Jersey Constitution because it did not provide the governmental tools necessary to this task. Yet as attorney general of the state during the long uncertain years of the war he was largely responsible for establishing public faith in the new system (by concentrating on revitalizing the old and familiar institutions of local government rather than instituting new and extraordinary ones), and seeing the state through the challenges posed by those disaffected with the Revolution (by personally overseeing the prosecution of loyalists throughout the state). By 1783, when he retired again to private life, Paterson had purchased the confiscated estate of one of the loyalists he had brought to justice, and had accumulated a considerable legal clientele, but these moderate gains to his personal fortune did not

detract from the exemplary manner in which he provided the even-handed leadership that the legal system of the state so desperately needed during the struggle for independence.

In 1783, after the devoted service he had given through the hardest of times, Paterson felt he had the right to leave the public responsibilities to someone else. But over the next few years it became increasingly clear that he could not divorce his personal thoughts from the problems of state. Again he saw the beginnings of corruption in government (the assemblymen who insisted on drawing large salaries) and again he found it necessary to speak out in defense of the ideals of republican virtue that he believed the Revolution had been fought for. Ultimately he was drawn back into public service and, beginning with that hot summer in Philadelphia, he would devote the rest of his life to various offices of public trust: first in the United States Senate, then in the Governor's chair of New Jersey, and finally as Associate Justice of the United States Supreme Court where he served for thirteen years.

The historical personality of William Paterson presents what on the surface appears to be a series of paradoxes. A young man from little known but not disreputable origins, he rose to membership in the prestigious councils of

Revolution and finally to the federal Convention. He sat among the great minds of his day (at any rate, the great American ones) and became accepted as one of them (he was admitted to the American Philosophical Society in 1788), but his own political and social ideas remained colored by an almost insufferable Puritan moralism that stayed with him through his whole career. In many ways he seemed politically naive; a young man dominated by literary affectation who had even referred to himself as "a rose in the wilderness." Yet in the darkest days of civil war and later in face-to-face battles with Madison and the large state delegates at the Philadelphia Convention, he proved to be a dogged (and successful) political fighter. As this study has sought to show, these seeming paradoxes are not contradictory at all, but simply the complex dimensions of a human personality. That a man with such a personality could have lived the life he did can only be attributed to a political system which (despite all Paterson's concern for presenting the right appearance and knowing the right people) chose its leaders primarily on the basis of talent, and to the extraordinary capacities that men find within themselves when faced with a critical situation.

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