

Justice James Iredell



JAMES IREDELL
1751-1799

*Associate Justice,
United States Supreme Court
1790-1799*

Justice James Iredell

Willis P. Whichard



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To the memory of

WILLIS G. WHICHARD

*My father, who gently guided me into the career in law
he had wanted for himself*

and

WILLIAM H. BOBBITT

*My mentor and friend, who was, like Iredell, an important
part of the North Carolina judicial tradition.*

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Author's Note

The Iredell papers are located mainly in the North Carolina State Archives, Raleigh; the Manuscripts Department, Duke University, Durham; and the Southern Historical Collection, the University of North Carolina at Chapel Hill. Many have been published in the two-volume work by Griffith J. McRee (1857–58), the two-volume set by Don Higginbotham (1976), and the multi-volume *Documentary History of the United States Supreme Court* (in progress, six volumes to date). For the reader's convenience, I have cited published sources when available, while noting the content parenthetically.

Judged by modern standards, Iredell and his contemporaries used excessive capitalization and punctuation as well as archaic or abbreviated forms of spelling. To enhance readability, I have conformed capitalization, punctuation, and spelling to modern custom. Except where expressly indicated by the use of brackets, in no instance have I intentionally altered the words themselves or their significance in the context in which used, though I may occasionally have failed to translate with total accuracy the virtually inscrutable handwriting Iredell and his contemporaries sometimes employed.

PROLOGUE

A Very Affecting Death

GEORGE WASHINGTON DID NOT ATTEND FUNERALS. PERHAPS THE DEMANDS OF THE PRESIDENCY WERE TOO GREAT, OR THE POLITICAL PROBLEMS IN SELECTING AMONG SO MANY TOO SEVERE, TO PERMIT IT. WHATEVER THE REASON, HIS POLICY WAS NOT TO GO.

But this one was different. Tobias Lear, the deceased's husband, was the president's senior and most-trusted aide. Originally employed to tutor Martha's grandchildren, he had long since penetrated Washington's veneer of formality and become like family. In April 1790, when Lear had married his longtime inamorata, the president had been present. The bride and Martha Washington soon became inseparable, as Polly Lear attended the first lady as assiduously as her husband did the president.

Only two days before Polly's death in July 1793, the president noticed that she was ill. West Indies trading ships had brought mosquitos to the infant nation's capital, and with them, the yellow fever. Before the autumn frosts, over five thousand Philadelphians would join twenty-three-year-old Polly Lear in premature graves.

Polly's was "a very affecting death," and not surprisingly, her rites attracted the luminaries of the Washington era to Philadelphia's Christ Church, among them the pallbearers her anguished husband had selected. As the grieving president watched these notables convey the youthful remains to an untimely tomb, he saw among them his feuding secretaries of state and treasury, Thomas Jefferson and Alexander Hamilton; his secretary of war, Henry Knox, himself still mourning the death of a son; and three whom he had appointed to federal judgeships: Richard Peters of Pennsylvania, a district court judge; James Wilson, also of Pennsylvania, an associate justice of the Supreme Court; and James Iredell of North Carolina, the junior justice of that Court as initially constituted.¹

The prominence of the forty-one-year-old North Carolinian in this esteemed assemblage reflected the relative egalitarianism of the infant American experiment. The rigid class structure of his native England likely would have precluded the attainment of similar status by this grandson of an unremarkable clergyman and son of a failed merchant. But this was a new country and a new age, and ironically, the dire family circumstances that had thrust responsibility upon the youth, suddenly and prematurely, had worked to his advantage.

The oldest of five surviving children of Francis Iredell, a merchant of Bristol, England, and his wife, the former Margaret McCulloh of Ireland, Iredell sailed to the New World in 1768, at age seventeen, to be King George III's comptroller of customs in the northeastern North Carolina village of Edenton. Family poverty impelled his voyage. In 1766 his father suffered a paralytic stroke that forced his retirement from the mercantile business. Even while healthy, the elder Iredell fared poorly. According to his brother Thomas, he was weak and wanting in enterprise and ambition. As a result, he and his family soon experienced penurious circumstances.

Fortunately, felicitous family connections enabled Francis to survive and produced remunerative positions for three of his sons. Margaret Iredell's uncle, Henry McCulloh, and his son, Henry Eustace McCulloh, aided the eldest son, James, in securing the comptroller's post at Edenton. The position was thought to be "genteel, requir[ing] little or no duty," to pay adequately, yet to allow time for other business. Notwithstanding James' lament that he was "pressed by the narrowness of [his] income, which occasion[ed] very disagreeable difficulties in [his] situation," the emoluments from the office allowed him to assist his family of origin in England throughout his early years in America.²

As predicted, the job also left time for other pursuits — among them, a fervent courtship with Hannah Johnston, sister of Samuel Johnston, his law teacher and probably Edenton's most respected and influential citizen. Iredell's letters and diary entries for this period exemplify the flowery language in which eighteenth-century men verbalized their ardor, proposed marriage, and sought permission therefor. His union with Hannah in July 1773 failed to diminish the suitor's fervor, for years later he continued to express his affection for her with near equal grandiloquence.

While Iredell's nomadic lifestyle as lawyer and jurist often strained the relationship, the marriage proved durable and appears to have been generally happy. It was childless for over twelve years but then produced four children, three of whom survived: Annie (b. 1785), James (b. 1788), and Helen (b. 1792). They, too, suffered from their father's frequent, often prolonged ab-

sences, yet the father-offspring associations could hardly have been more affectionate.³

Iredell's love for spouse and family was not unrivaled, however, for through these years he courted learning as ardently as he had wooed Hannah. While most men of that era passed their days in fields and forests, not libraries, Iredell was perhaps foremost among "a respectable proportion of the men in the colony who cultivated both the arts and the sciences." His brother-in-law, Samuel Johnston, had probably the best library in the province in that period, containing books on a wide variety of subjects, and Iredell patronized it. His pre-American Revolution reading included history, literature, and classical authors such as Livy, Horace, and Virgil. He apparently became familiar with *Cato's Letters*, for his revolutionary-period political essays reflect themes developed there. His voluminous correspondence contains frequent literary allusions and other reflections of his extensive scholarship.⁴

Iredell's zealous pursuit of worldly culture did not preclude a serious commitment to matters metaphysical. He was devoted to the Anglican church, in which his grandfather was a clergyman, and his spiritual interests clearly surpassed mere formal, organized religion. The church was also one of many outlets for his always-active social life.⁵

Iredell's comptroller position also allowed him leisure for the study of law. Samuel Johnston was his mentor, and Johnston's tutelage prepared the youthful emigrant for a professional practice in which he acquired both a reputation as a superior lawyer and more business than he reasonably could handle.

As a lawyer, Iredell participated as counsel for the plaintiff in *Bayard v. Singleton*, a 1787 North Carolina suit that was among the first American cases to apply the doctrine of judicial review of the constitutionality of legislative enactments. He was a cogent and vigorous advocate of the theory, supporting it first in a pre-*Bayard*, pseudonymous letter addressed "TO THE PUBLIC" from "AN ELECTOR," and later in a post-*Bayard* missive to Richard Dobbs Spaight, a champion of legislative supremacy.

While practicing his profession, Iredell was a model of the lawyer-public servant. His adopted state of North Carolina benefited from his service as a member of a commission to prepare statutes for its new government, draftsman of its initial court bill, one of its first three superior-court judges, its second attorney general, an original trustee of its university, and the initial revisor of its statutes. The country joined the state in profiting from his more-significant exertions in behalf of the American cause in the Revolution and the adoption of the federal Constitution.

Iredell came to the revolutionary cause reluctantly, yet became the leading essayist in his region in support of independence. His treatise "Principles of

an American Whig” predates, and bears unmistakable traces of consanguinity with, the American Declaration of Independence. His papers convey a sense of life in North Carolina in the Revolutionary War period, one of considerable personal consequence for him in that it brought temporary severance of his ties with his family of origin in England and disinheritance by a wealthy bachelor uncle who heartily disapproved of his disloyalty to the mother country.

Following the Revolution, Iredell was the foremost advocate in his state of adoption of the proposed federal Constitution. While financial limitations barred his being a delegate to the Philadelphia convention, he corresponded regularly with the North Carolina delegates, and this correspondence unfolds the progress of the convention. He then inaugurated the first public movement in North Carolina in favor of the proffered document and maintained a busy pen as an essayist urging the birth of the new government. In particular, he responded seriatim to George Mason’s eleven objections to the Constitution, drawing national attention to himself in the process.

When delegates convened in Hillsborough, North Carolina, to consider ratification, Iredell was the floor leader for the Federalist forces. After the convention refused to ratify the Constitution, he continued to promote it. He and William R. Davie, later the founder of the University of North Carolina, published the convention debates at their own expense and distributed them widely. Iredell persisted in applying his considerable talents as a political essayist to the cause of the new government. He joined other Federalists in circulating petitions requesting a second ratification convention. When the Federalist cause finally triumphed in North Carolina, he was widely recognized as a principle architect of its victory.

The bereft president who would join the pallbearers at Polly Lear’s graveside rewarded these efforts by appointing Iredell to the original United States Supreme Court, where he served for almost a decade. While there, he had intimate associations with George Washington, John Adams, and their administrations; and both on and off the bench, he was their vigorous, highly partisan defender. He also served as a chronicler of important events and personalities during these years.

Ordinarily, treatments of Supreme Court justices devote considerable attention to the cases in which they participated, particularly to the opinions they wrote. With Iredell, this is impossible. The Court’s caseload was so low during his tenure that the justices went to the capital only twice annually to hear arguments. They apparently did not always reduce their opinions to writing. As a consequence, in his near decade on the Court Iredell wrote opinions in only a handful of reported cases. Of these, only *Chisholm v. Geor-*

gia (1793), in which as the lone dissenter he supported the result that ultimately prevailed through adoption of the Eleventh Amendment to the federal Constitution, merits expansive consideration.

Instead of sitting together at the capital to decide cases, the early justices logged mile after mile riding the federal circuits, hearing appeals from the federal district courts in some instances, but mainly serving as the primary federal trial courts for several categories of cases. The life, Iredell bemoaned, was one of “perpetual traveling and almost a continual absence from home, [and was] a very severe lot.”⁶ The justices thus were in the vanguard of efforts to alter or remove this onerous duty; Iredell, who was the most severely affected because he most often traveled the harshest circuit, the Southern, was their leader. The attempts were unsuccessful, however, and Iredell thus spent a considerable portion of the last near decade of his life traveling the circuits and doing the work of the circuit courts.

As with the cases, surviving information on this work is somewhat sparse. Iredell as correspondent and chronicler, more than as jurist, makes biographical consideration of this aspect of his life feasible. Such treatment thus perhaps accords more with the early-American travel genre of literature than with typical judicial biography and resonates more of the general life of the period than of the era’s jurisprudence.

General biographical treatment of this early American jurist-traveler is attainable, however, and long neglected. Many years ago, Hugh T. Lefler, probably the foremost disciple of Clio of his time who specialized in North Carolina history, lamented the vacuum in full biographical treatment of the state’s leaders. “In the field of biography,” he wrote,

where one might expect to find the greatest interest and perhaps the largest number of books, one encounters the most frustration. The plain fact is that most North Carolina leaders, in all areas of activity, have simply not been studied. . . . Time will permit me to list only a few leaders who merit study and, perhaps, full-length books.

The initial name on Lefler’s attendant list was “James Iredell, distinguished judge and ‘letter writer’ of the American Revolution.”⁷

To view Iredell merely as a North Carolina leader slights him severely, for during much of his life he was a truly national figure. This, though, renders the void Lefler correctly perceived still more enigmatic. The narrative that follows addresses this void thematically, briefly considering its subject as a professional and focusing more extensively on his roles as statesman and jurist. It concludes by considering aspects of the man himself: his family relations, slave ownership, friends, finances, religion, and general humanity.

As a statesman-jurist, Iredell should perhaps be remembered foremost as a consummate Federalist who retained an abiding (to some, counterintuitive) commitment to the residual sovereignty of the states. At a time when the modern Supreme Court is accused of verging on reinstating the Articles of Confederation,⁸ yet many still fret over a perceived erosion of state powers, a consideration of Iredell's life and work may have uncommon relevance. The story is as old as the American republic, but it has pertinency as current as the Clinton impeachment proceedings and the Supreme Court's 1998–99 Term.