Jay, John (12 December 1745–17 May 1829)
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John Jay.
Engraving by Albert Rosenthal, 1889.

Jay, John (12 December 1745–17 May 1829), diplomat and first chief justice of the U.S. Supreme Court, was born in New York City, the son of Peter Jay, a prosperous merchant, and Mary Van Cortlandt, a member of one of the great Dutch patroon landed families of the Hudson Valley. On 28 April 1774 John Jay joined another powerful landlord clan by marrying Sarah Livingston, daughter of a future governor of New Jersey; the couple had seven children.

Jay’s family connections had a profound influence on him. His grandfather was a French Huguenot who had escaped imprisonment in the fortress at St. Malo and was taken by ship to America. As a consequence, Jay was a pious Protestant who distrusted both the Catholic church and the French nation that had persecuted his forebears. The wealth, power, and politics of his family connections also affected him. The Jay, Van Cortlandt, and Livingston families were among the minority of New York aristocrats who sided with the Whigs during the revolutionary crisis.

Jay was a latecomer to New York politics and the patriot cause. He graduated from King’s College (later Columbia University) in 1764, clerked in the offices of a prominent Tory lawyer, was admitted to the bar in 1768, and embarked on a legal career in which he represented Whig and Tory clients with equal energy. He concentrated on his law career until 1774, when he was elected to the Committee of Correspondence in New York City. Shortly afterward he was named one of New York’s five delegates to the First Continental Congress.
In both the Committee of Correspondence and the congress, Jay opposed radical moves toward resistance and war. Nevertheless, after militant members succeeded in passing resolutions that called Parliament’s acts unconstitutional, advised the arming of local militias, and recommended trade sanctions, Jay drafted the congress’s *Address to the People of Great Britain*, justifying their actions. In it he denounced Parliament for claiming the right to tax the colonists without their consent and proclaimed that Americans would “never consent to be hewers of wood or drawers of water.” In accommodating himself to the majority, Jay evinced a characteristic that made him invaluable to the conservative cause throughout his career—a willingness to compromise and cooperate with opponents.

As a delegate to the Second Continental Congress in 1775, Jay continued on his moderate course. Despite his wish to avoid all-out measures against Great Britain following the outbreak of war at Lexington and Concord, he again took up his pen to appeal to Canadians to join in the rebellion. “The fate of the Protestant and Catholic colonies” was linked, he said, despite his Huguenot background and anti-Catholic sentiments.

But Jay continued to resist the attempts of John Adams and other militants to declare outright independence. Jay was back in New York as a member of the colonial legislature when the Continental Congress finally voted for a declaration of independence. But he would surely have voted against independence because he was instrumental in instructing New York’s representatives in Philadelphia to oppose the measure.

Once the congress declared independence and the British simultaneously launched a major invasion of New York, however, Jay abandoned all reluctance and threw himself headlong into the war. He helped deliver cannon to George Washington’s troops defending New York, headed a council to root out spies and traitors in the colony, and organized an espionage ring that James Fenimore Cooper later immortalized in his novel *The Spy* (1821).

Jay also accepted the invitation of the New York Convention to help draft a constitution for the state. In it he again showed his ability to compromise and reconcile opposing views. On the one hand, for instance, the constitution reduced the property requirements to vote for the lower house of the legislature. On the other, it raised the requirements to vote for governor and the upper house. The delicately balanced constitution was readily accepted by all factions in the state and lasted many years, something of which Jay was pardonably proud.

One incident at the New York Constitutional Convention, however, showed a different side of Jay. He proposed a clause that denied civil rights to anyone who would not forswear allegiance to priest, pope, or other foreign power. When that was defeated he offered one variant after another until finally he settled for a mere warning against using freedom of conscience to encourage “licentiousness.”

Jay could be stubborn and prickly. At times this took the form of an admirable refusal to compromise basic principles, as when he accepted suspension from college rather than inform on fellow students who had broken a table, even though he readily admitted his own guilt. At other times, however, Jay’s concern for his reputation could turn to pettiness, pride, and arrogance. He proclaimed to one minor offender that he “had rather reject the friendship of the world than purchase it by patience under indignities offered by any man in it.” He came close to a duel with a man whom he blackballed from a private club because of the man’s social status. Jay defended his personal dignity with a cold, formal, and taciturn public persona. Privately he could be much warmer, but still his wife, with whom he had a loving relationship, always referred to him as “Mr. Jay.”
Jay’s adversaries often believed that his excessive self-regard and concern for his own dignity was a weak characteristic of which they could take advantage. As one knowledgeable Briton reported, Jay could “bear any opposition to what he advocates provided regard is shown to his ability ... Mr. Jay’s weak side is Mr. Jay.”

When the New York Constitution was adopted in 1777, the convention elected Jay chief justice of the state supreme court. He spent two years judging mostly criminal trials, after which the legislature took advantage of the provision in the constitution that permitted the chief justice to serve simultaneously as a delegate to the Continental Congress, and it returned him to Philadelphia. Congress quickly elected Jay president, just in time for him to preside over a messy foreign policy debate about how closely the United States should cooperate with its ally France and on what terms it should offer to make peace with Great Britain.

Members of Congress, many influenced by the French representative in the United States, mistakenly counted Jay as a person who would favor French interests; that was one of the reasons they had elected him president to replace the more obstreperous Henry Laurens. It was also one reason why, nine months later, they selected Jay as U.S. representative to Spain and to serve concurrently with Adams and Benjamin Franklin as a commissioner to make peace with Britain whenever negotiations should become possible.

Jay’s sojourn in Spain was an unhappy one. Even though Spain had entered the war against Britain as an ally of France, it refused to ally with the United States or formally accept Jay as America’s representative. The Spanish were willing to supply some aid to the Americans, but they wanted no public connection with revolutionaries who denounced monarchy and threatened Spanish colonial claims to the Mississippi region. Even when Congress instructed Jay to give up American demands for navigation of the Mississippi to win other concessions from Spain, the Spanish refused. Although personally relieved that Spain had not accepted the Mississippi proposal, Jay considered Spanish conduct insulting to both himself and his country. When Franklin called him to Paris to join the peace negotiations with the British, Jay was seething at France as well as Spain for France’s refusal to do more to help him in Madrid.

By the time Jay arrived in Paris he was ready to defy Congress’s instructions that the commissioners keep the French allies fully informed on America’s negotiations with Great Britain and abide by French advice. When the French foreign minister, the comte de Vergennes, advised Jay and Franklin to open formal negotiations with the British envoy despite the fact that his credentials were addressed to the American colonies rather than to the independent United States, Jay refused. In forcing Franklin to join him in demanding new credentials for the British delegate that would recognize American independence prior to the conclusion of any formal treaty, Jay caused a major delay in the negotiations that Franklin had already informally begun. Meanwhile, Jay took another step toward negotiating peace independent of the French ally. When he heard that Vergennes’s secretary had left Paris on a secret mission to London, Jay immediately suspected that the French were negotiating separately to the detriment of American interests. Without informing Franklin, Jay sent his own messenger to ask the British to reject any proposals by the French that would adversely affect the United States.

When Adams arrived in Paris, he supported Jay against Franklin. Franklin loyally put aside his doubts and joined them in reopening negotiations without informing the French. In the end, Jay, Franklin, and Adams secured a treaty that recognized American independence and extended the nation’s borders to
the Mississippi River. Vergennes was chagrined at the commissioners’ independent agreement, but he
was also impressed by the terms and grateful that the agreement gave him an excuse to push Spain
toward peace without delivering on the French promise to continue fighting until Spain regained
Gibraltar. In 1783 the French, Spanish, Americans, and British all signed the Treaty of Paris that
incorporated America’s preliminary peace agreement.

Historians have long debated whether the United States could have had an even more favorable
northern boundary with Canada if Jay had not delayed negotiations until the British had improved their
bargaining position by beating off the Franco-Spanish assault on Gibraltar. But Jay and Adams insisted
throughout their lives that their refusal to accept the guidance of the French had been essential to the
success of their mission. The terms they achieved were sufficient to muzzle congressional critics
tempted to argue against their treaty or their treatment of France.

Jay returned from the peace negotiations to a hero’s welcome and found himself appointed secretary
for foreign affairs under the recently adopted Articles of Confederation. As foreign secretary he
received reports from Adams and Thomas Jefferson, America’s representatives to Britain and France,
respectively, that the European powers were treating the United States with contempt. Consequently,
Jay chafed at the inability to retaliate under the weak confederation government. After Alexander
Hamilton and James Madison had failed to gain the unanimous congressional vote necessary to impose
a tariff on foreign commerce, Jay despaired of gaining the revenue and trade leverage needed to
secure American goals by independent action. He decided that he would have to trade away some
goals to win others. Thus in 1786 he agreed with Spanish minister Diego de Gardoqui that the United
States would give up the right to navigate the Mississippi for thirty years in exchange for a Spanish
trade treaty and a mutual guarantee of each other’s territory in the Western Hemisphere. Such a
commercial treaty would lock in the beneficial terms on which the United States was already
conducting its trade with Spain while the mutual guarantee of territory might exert pressure against
British occupation of several Great Lakes posts on American territory. When Jay broached the
possibility of this treaty to Congress, southerners were so outraged at Jay’s willingness to abandon the
Mississippi that they blocked any further negotiations. Many southerners and westerners distrusted
Jay ever after.

The Constitutional Convention of 1787 created a stronger federal government. Although Jay was not a
member of the convention, he helped secure ratification of the Constitution by joining Madison and
Hamilton in writing the classic defense of the new system, The Federalist Papers. Once the states had
ratified the Constitution, President George Washington appointed Jay to become chief justice of the
U.S. Supreme Court.

As chief justice Jay continued his attempts to strengthen the federal government. In 1793 he delivered
the majority opinion in Ware v. Hylton, in which the Court reinforced the sanctity of federal treaty
obligations. That same year, in Chisholm v. Georgia, Jay led the majority in deciding that individuals
could sue a state in federal court. This challenge to state sovereignty raised an immediate outcry. The
state of Georgia decreed a penalty of hanging for any person who assisted the federal courts in
carrying out the decision. By 1798 the states had ratified the Eleventh Amendment to the Constitution,
which denied that federal judicial power extended to suits against states by citizens of other states or
subjects of foreign nations.
In 1792 Jay accepted the nomination for governor of New York. He won a narrow majority of the vote but was defeated when a partisan election commission ruled invalid the returns of three counties. It was a mark of his character that he accepted the decision, discouraged his backers from the extralegal challenges some had planned, and continued his work on the Supreme Court.

Throughout this period, Washington often consulted Jay on matters outside the purview of the Supreme Court, particularly on foreign affairs. Jay wrote the first draft of Washington’s famous Neutrality Proclamation after war broke out between Great Britain and revolutionary France in 1793. When British violations of American neutral rights during that conflict brought the United States itself to the brink of war, Jay, still a justice of the Court, accepted Washington’s invitation to go as special envoy to London to negotiate a settlement. In doing so he stepped into a maelstrom of partisan combat.

Former secretary of state Jefferson and House leader Madison, along with many of their friends in Congress who were coming to be known as Republicans, had long advocated commercial retaliation against Great Britain. They supported trade restrictions not only to force the British to respect American neutral rights but also to make them abandon the occupied forts on the Great Lakes and open their West Indies to American shipping on terms similar to those that had existed when America had been part of the British Empire. Secretary of the Treasury Hamilton and his so-called Federalist advocates, including Jay, wanted desperately to avoid a conflict with Great Britain that could interrupt the flow of British imports and the tariff revenue the federal government derived from them. The tariff supported the financial system that Hamilton was using to strengthen the federal government.

Jay immediately sided with Hamilton in advising Congress against the commercial retaliation that Jefferson and Madison proposed. Instead, he favored a conciliatory manner and a compromising stance. The threat that war would inevitably occur if no agreement could be found was implicit. The Jay Treaty that he negotiated was only a partial success. The British did agree to evacuate the Great Lakes posts. They also promised to open their West Indies to American ships, although on terms so onerous that the Senate ultimately rejected that article. The British also promised to compensate American shipowners for some of the most egregious of British seizures. But Jay could not get British recognition of America’s claims to neutral rights. Moreover, by agreeing not to interfere with British trade for ten years, Jay gave away the right of commercial retaliation, the one lever with which the Republicans thought they could extort a proper respect for neutral rights and other concessions from the British.

Republicans roundly attacked Jay and his treaty. They accused him of purposely selling out American interests to protect Hamilton’s financial system and to support monarchical Britain against democratic France. They held mass meetings and submitted petitions to Washington to get him to refuse ratification of the treaty. When that failed they sent massive petitions to urge Congress to refuse the monetary appropriations necessary to implement the treaty.

The Federalists at first defended Jay and his treaty only tepidly, saying that at least he had prevented a ruinous war. But as they saw the challenge the Republicans were mounting, they turned to similar meetings and petitions to defend the treaty and themselves, eventually securing Senate consent to the treaty and defeating an attack on the implementation of the treaty in the House. Thus did Jay and his treaty act as a catalyst to help transform the Federalists and Republicans from mere factions in Congress to organized grassroots parties.
Jay detested the hurly-burly of partisan politics, but he found on his return from England in 1795 that he had already been elected governor of New York. He accepted and served two terms. His most notable contribution as governor was to reject a scheme Hamilton urged on him to change the method by which New York selected its presidential electors so as to deprive Jefferson of victory in the election of 1800. Jay’s integrity on this occasion was a fitting climax to his public career.

In November 1800 Jay refused Adams’s offer to reappoint him chief justice on the ironic grounds that the federal court system was too weak to support the national government properly. Thus he opened the way for John Marshall to prove him wrong. Jay then retired with his wife to a small estate in Bedford, New York, a two days’ ride from New York City. His wife died shortly thereafter in 1802 and left him to live out his lengthy retirement without her. He died twenty-seven years later at his home in Bedford.

Despite John Jay’s contributions to revolutionary America, he has been overshadowed by his more illustrious compatriots. He was eclipsed by Adams as a revolutionary legislator, by Jefferson as an author of revolutionary justifications, by Franklin as a diplomat, by Madison as a constitution-maker, by Washington as an executive, by Hamilton as a party leader, and by Marshall as a chief justice. Nevertheless, Jay contributed significantly in all of these areas, and he bore a great responsibility for the creation and survival of the United States. Above all, his qualities of intelligence, integrity, and cooperativeness at critical times of great emotional conflict helped institute the civility and compromise necessary for a democratic culture.

Bibliography


Online Resources

The Federalist Papers http://www.law.ou.edu/hist/federalist/ A full-text version from the Project Gutenberg.

See also

Adams, John (1735-1826), second president of the United States, diplomat, and political theorist
Washington, George (1732-1799), first president of the United States
Cooper, James Fenimore (1789-1851), novelist
Laurens, Henry (1724-1792), planter-merchant and revolutionary war statesman
Franklin, Benjamin (1706-1790), natural philosopher and writer
Jefferson, Thomas (1743-1826), philosopher, author of the Declaration of Independence, and president of the United States
Hamilton, Alexander (11 January 1757–12 July 1804), statesman and first secretary of the treasury
Madison, James (05 March 1751–28 June 1836), "the father of the Constitution" and fourth president of the United States
Marshall, John (1755-1835), fourth chief justice of the United States

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