

**PREMIER JOHN JAY
THE MOST IMPORTANT MAN IN AMERICA**

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Introductory Remarks

Who were the five most important men in the Revolutionary Era? It is easy enough to come up with four. The fifth is the tough one: John Jay.

1. Primary author of the New York State Constitution of 1777 that along with the Massachusetts Constitution of 1780 served as the primary model for the U.S. Constitution
2. First Chief Justice of New York
3. Member of Congress
4. President of Congress
5. Minister to Spain
6. Peace Commissioner
7. Secretary for Foreign Affairs
8. First president of the New York Abolition Society
9. Co-author of *The Federalist*
10. Most important man in New York's ratification of the Constitution. Jay was to New York, what James Madison was to Virginia.
11. First Chief Justice of the United States
12. Special envoy to Britain negotiates the Jay Treaty
13. Governor of New York

Note: for those wishing to see the original manuscripts of the texts quoted, cross references have been added to identification numbers in the online image database of [The Papers of John Jay](#).

John Jay had a sense that the United States had a major role to play in world history. Two years after the end of the Revolutionary war, Jay wrote former British Prime Minister Lord Shelburne that “To what events this country may in the future be instrumental, is indeed uncertain; but I cannot persuade myself that Providence has created such a nation, in such a country, to remain like dust in the balance of others.”¹

Despite the actions of other nations and individuals, America and its leaders would need to follow certain moral imperatives to gain and sustain the blessings of Providence. That meant a strict moral code. Jay would employ the same moral compass to plot America’s course toward greatness as he used in his own personal life.

I’m writing a book right now called “The Founders’ Character” in which I examine the traits that the Founders deemed necessary for a good moral character—these traits applied not only to individuals, but also to societies and to countries. Above all things, a sense of order was necessary. Jay felt “that nations and individuals injure their essential interests in proportion as they deviate from order. By order [Jay meant] that natural regularity which results from attention and obedience to those rules and principles of conduct which reason indicates and which morality and

¹ To Lord Shelburne, New York, April 16, 1786, Henry P. Johnston, ed., *The Correspondence and Public Papers of John Jay* (4 vols., New York, 1891), 3:190. ALS, NjP ([EJ: 4070](#)); Dft, NNC ([EJ: 8172](#)).

wisdom prescribe. Those rules and principles reach every station and condition in which individuals can be placed, and extend to every possible situation in which nations can find themselves.”²

A host of character traits was necessary: honesty, trustworthiness, patriotism, justice, duty, industriousness, dedication, candidness, reserve, prudence, manliness, fortitude, frugality, and a resignation to God’s will were but a few. Equally important, it was necessary to avoid bad character traits: apathy, arrogance, disingenuousness, faintheartedness, foppishness, haughtiness, intemperance, licentiousness, pride, profligacy, and vanity.

The events leading to the Revolution showed Jay that Britain had strayed from the path of order and righteousness. His service abroad, especially his two and a half years in Spain, convinced Jay that other European nations were flawed as well—particularly Spain.

“This Government has little Money, less Wisdom, no Credit, nor any Right to it. They have Pride without Dignity, Cunning without Policy, Nobility without Honor.”³

Jay would shape American foreign policy on an independent, righteous course, but one that was also based on realpolitik. To accomplish

² Charge to the Grand Jury, Richmond, Va., May 22, 1793, *ibid.*, 3:478. Dft, NNC ([EJ: 8126](#)).

³ To Gouverneur Morris, St. Ildefonso, Spain, September 28, 1781, Mary A. Giunta, ed., *The Emerging Nation: A Documentary History of the Foreign Relations of the United States under the Articles of Confederation, 1780-1789* (3 vols., Washington, D.C., 1996), 1:238. Dft, NNC ([EJ: 8334](#)).

this goal, Americans would have to be strong morally, economically, politically, and militarily at home, while diplomatically and commercially unfettered by any long-term connections.

Jay's unsuccessful years in Spain taught him "the Virtue of Patience," while at the same time deepened his sense of patriotism and strengthened his resolve to increase the powers of Congress.⁴ His "honorable Exile," as he called his mission to Spain, made him homesick.⁵ "I never loved or admired America so much as since I left it." As he viewed the autocracy of Spain's Charles III, his "eyes and affections" were "constantly turned towards America." In comparing America with Spain, Jay believed that nothing could "compensate for the free air, the free conversation, the equal liberty, and the other numerous blessings which God and nature, and *laws of our making*, have given and secured to our happier country."⁶ This was Jay's difficult time of testing that would steel him for the work ahead.

⁴ Marquis de Lafayette to Robert R. Livingston, Bordeaux, March 2, 1783, Stanley J. Idzerda, ed. *Lafayette in the Age of the American Revolution: Selected Letters and Papers, 1776-1790* (5 vols., Ithaca, N.Y., 1977-1983), 5:105.

⁵ To Mrs. Margaret Cadwalader Meredith, Aranjues, May 12, 1780, Richard B. Morris, ed., John Jay: *The Making of a Revolutionary, Unpublished Papers, 1745-1780* (New York, 1975), 754. ALS, ICN ([EJ: 13396](#)); Dft, NHi ([EJ: 672](#)).

⁶ To Egbert Benson, Madrid, March [19] 1781; to the President of Congress, Madrid, April 21, 1781; to Robert Morris, Madrid, April 25, 1782, Johnston, *Correspondence*, 2:6, 19, 197. Italics added. ALS, NNC ([EJ: 13201](#)) and Dft, NNC ([EJ: 7515](#)); Dft, PPIN ([EJ: 11968](#)); ALS, CtY ([EJ: 12335](#)).

In the fall of 1781 Jay was notified that he was to leave Madrid and move to Paris where he would be part of America's peace commission. Congress instructed the commissioners to consult with French officials before taking any serious action in negotiating with the British. Jay expressed his concerns about this subordination to President of Congress Thomas McKean. "As an American, I feel an interest in the dignity of my country, which renders it difficult for me to reconcile myself to the idea of the Sovereign independent States of America, submitting in the persons of their ministers to be absolutely governed by the advice and opinions of the servant of another Sovereign, especially in a case of such national importance."⁷ During the peace negotiations, Jay wrote to Secretary for Foreign Affairs Robert R. Livingston saying "Let us be honest and grateful to *France*, but let us think for *ourselves*."⁸ This he did as the most active and influential member of the American peace commission. Jay's fellow peace commissioner, John Adams, characterized Jay as the "Washington of diplomacy."⁹

⁷ To President Thomas McKean, St. Ildefonso, September 20, 1781, Giunta, *Emerging Nation*, 1:235. LS, encoded, DNA ([EJ: 11910](#)) and decrypted text, DNA ([EJ: 11911](#)); LbkC, DNA ([EJ: 4164](#)).

⁸ To Robert R. Livingston, Paris, September 18, 1782, Giunta, *Emerging Nation*, 582. LbkC, DNA ([EJ: 4241](#)).

⁹ John Adams, Peace Journal, Paris, November 30, 1782, *ibid.*, 694.

As Jay prepared to return to America in 1784, he had become a true Nationalist. He believed that, “every thing conducive to union and constitutional energy of government should be cultivated, cherished, and protected, and all counsels and measures of a contrary complexion should at least be suspected of impolitic views and objects.”¹⁰ He sensed that “The Rising power of America is a serious object of Apprehension to more than one Nation, and every Event that may retard it will be agreeable to them. A continental national Spirit should therefore pervade our Country, and Congress should be enabled by a Grant of the necessary powers [from the states], to regulate the Commerce and general Concerns of the Confederacy.”¹¹ It is time, he wrote, for “a *national* spirit in our country. . . . It is time for us to think and act like a sovereign as well as a free people, and by temperate and steady self-respect to command that of other nations. It is but too much the fashion to depreciate Congress, and I fear that, as well as many other of our new fashions, will cost us dear.”¹² Jay viewed “The jealousies respecting Congress . . . and the too little appearance of a national spirit, pervading, uniting, and invigorating the confederacy, are considered

¹⁰ To Gouverneur Morris, Passy, September 24, 1783, Johnston, *Correspondence*, 3:85. Dft, NNC ([EJ: 8340](#)).

¹¹ To William Livingston, Passy, July 19, 1783, Morris, *John Jay*, 2:564-65. Dft, NNC ([EJ: 90225](#); [8283](#)).

¹² To Charles Thomson, Chailot, near Paris, April 7, 1784, Johnston, *Correspondence*, 3:125. ALS, DLC ([EJ: 12590](#)); Dft, NNC ([EJ: 7676](#)).

as omens which portend diminution of our respectability, power, and felicity.” Jay was convinced that Americans possessed “too much wisdom and virtue to permit her brilliant prospects to fade away for want of either.”¹³ He believed that “Unless with respect to all foreign Nations and Transactions, we uniformly act as an entire united Nation, faithfully executing and obeying the Constitutional Acts of Congress on those Subjects, we shall soon find ourselves in the Situation in which all Europe wishes to see us, vizt. as unimportant Consumers of her Manufactures & Productions, and as useful Labourers to furnish her with raw Materials.”¹⁴ When Jay returned home after the peace, the states were reasserting their authority. Ironically as the prime architect of the New York state constitution of 1777, Jay had done much indirectly to weaken the power of the Confederation government—just the opposite of what he now advocated.

After five years abroad, Jay returned to America in July 1784 happy to retire from public service. Quite concerned that so many leading public figures were retiring to private life, Jay let it be known that he was still willing to serve if called upon to do so. And Congress did just that as it offered Jay the position of Secretary for Foreign Affairs, previously held by

¹³ To Alexander Hamilton, Passy, September 28, 1783, Johnston, *Correspondence*, 3:90. ALS, DLC ([EJ: 10346](#)).

¹⁴ Peace Commissioners to the President of Congress, Passy, September 10, 1783, Giunta, *Emerging Nation*, 1:938. LS, DNA ([EJ: 9942](#)).

Jay's close friend Robert R. Livingston. The appointment surprised no one. Jay was America's most accomplished diplomat, having negotiated closely with the three countries most important to America—Britain, France, and Spain. Secretary of Congress Charles Thomson wrote Jay: "I do not know how you will be pleased with the appointment, but this I am sure of—that your country stands in need of your abilities in that office."¹⁵

Jay did not rush into the job. Like a good diplomat, he negotiated with Congress before accepting the position. He obtained an enlarged staff and operating budget, more autonomy (including the authority to fire staff "at his discretion"), and an agreement that the seat of Congress would be moved to New York City.¹⁶

A month after taking office, Congress and its new secretary had their first dispute. Congress had received dispatches from abroad and submitted them to a committee to see which dispatches would be forwarded to the states. Jay presented Congress with an ultimatum, the duties and rights of the secretary should "be ascertained with Precision." If Congress did not want to accept Jay's ground rules, he would resign with "Gratitude for the Honor"

¹⁵ Charles Thomson to Jay, Philadelphia, June 18, 1784, John P. Kaminski, ed., *The Founders on the Founders: Word Portraits from the American Revolutionary Era* (Charlottesville, Va., 2008), 273. Als, NNC ([EJ: 7678](#)).

¹⁶ Congressional Committee Report, Trenton, December 14, 1784, Giunta, *Emerging Nation*, 2:511-12.

Congress had done him.¹⁷ Jay's letter was submitted to a six-man committee chaired by James Monroe of Virginia. The committee accepted Jay's position, despite the opposition of its chair who wrote that "I consider the servants of Congress in a different point of view from that in which Mr. Jay holds them: I would consult or not consult them at pleasure & make them respectful & obedient to the orders they receive."¹⁸ Yielding to Jay's wishes, Congress provided that all diplomatic communications were to pass through his office. All incoming papers written in a foreign language were to be translated, to accomplish which Jay was given funds and authorized to hire a translator. The secretary also received a \$1,000 contingency fund.¹⁹ Jay was satisfied.

One of the first things Jay did as Secretary was to ask the state governors to forward to him copies of their state laws, at federal expense. Jay told the governors that because "the Influence of our domestic Affairs on our foreign" will be substantial, he felt obliged to be "accurately informed of

¹⁷ To the President of Congress, New York, January 23, 1785, *ibid.*, 535. ALS, DNA ([EJ: 55](#)); LbkC, DNA ([EJ: 1546](#)).

¹⁸ James Monroe to John Francis Mercer, New York, January 29, 1785, and James Monroe, to James Madison, New York, February 1, 1785, Paul H. Smith, ed., *Letter of Delegates to Congress, 1774-1789* (25 vols., Washington, D.C., 1976-1009), 22:152, 157-58.

¹⁹ Congressional Resolutions Regarding the Secretary and the Department for Foreign Affairs, February 11, 1785, Giunta, *Emerging Nation*, 2:550-51.

the State of the former.”²⁰ Throughout his tenure as a diplomat, Jay kept abreast of domestic political matters. The effectiveness of his diplomacy depended on it.

Jay’s goal throughout his tenure would remain the same. He would do everything in his power to prevent the tone of the federal government “from becoming more relaxed, but that it should be invigorated in every manner and Degree which our Union and general Interests might require and a due Regard to our [state] constitutions and equal Rights permit. It is my first wish to see the United States assume and merit the Character of one Great Nation, whose Territory is divided into different States merely for more convenient Government and the more easy and prompt administration of Justice, just as our several States are divided into Counties and Townships for the like purposes. Until this be done the chain which holds us together will be too feeble to bear much opposition or Exertion, and we shall be daily mortified by seeing the Links of it giving way and calling for Repair one after another.”²¹ Jay strove to make America both virtuous and strong. His

²⁰ Circular to the Governors, New York, January 29, 1785, owned by Mrs. Anne Marie Davidson & John B. Davidson, from the Estate of Louis G. Davidson of Chicago, Ill. Also LS, MdAA ([EJ: 13259](#)); LS, MWA ([EJ: 2620](#)); LS, RPB ([EJ: 5262](#)); Dft, NNC ([EJ: 5706](#)); LbkC, DNA ([EJ: 1547](#)). Later Jay complained that few states complied with his request. See Jay’s Report on Complaints from French Merchants, Office for Foreign Affairs, October 7, 1785, DS, DNA ([EJ: 3864](#)) and LbkC, DNA ([EJ: 4534](#)); and Jay to John Adams, New York, October 14, 1785, Dft, NNC ([EJ: 13148](#)), and LbkC, DNA ([EJ: 2437](#)); and , Giunta, *Emerging Nation*, 2: 844, 863.

²¹ To John Lowell, Office for Foreign Affairs, May 10, 1785, Giunta, *Emerging Nation*, 2:624. Dft, NNC ([EJ: 5726](#)); LbkC, DNA ([EJ: 1642](#)).

two long-range goals were (1) that America “should be always in the Right, and (2) that it should never be opposed or ill-treated with Impunity.”²²

After his first year in office, Jay’s influence was described by French Consul General Otto:

Mr. Jay’s political importance increases every day. Congress appears to govern itself only by his impulses, and it is as difficult to obtain anything without the concurrence of this minister as to have a measure that he has proposed rejected. The indolence of most of the members of Congress and the ignorance of some others occasion this Superiority. It is much more convenient to ask the opinion of the minister of foreign affairs regarding all current business than to resolve themselves into a Committee, so that Mr. Jay’s prejudices and passions insensibly become those of Congress, and that without being aware of it this Assembly is no more than the instrument of its first Minister.²³

Jay had thus become the de facto prime minister of the United States—a position previously held by Superintendent of Finance Robert Morris. But when Morris threatened to retire one too many times if Congress did not do

²² Jay’s Report on the Stanhope Affair, Office for Foreign Affairs, August 16, 1785, *ibid.*, 753. DS, DNA ([EJ: 3850](#)); LbkC, DNA ([EJ: 4522](#)).

²³ Louis Guillaume Otto to Comte de Vergennes, New York, January 10, 1786, *ibid.*, 3:64-65.

his bidding, Congress accepted the offer and Morris resigned. Immediately upon taking office, Jay moved to fill that political vacuum.

Although Jay did not personally care for French Foreign Minister Vergennes, he greatly admired Vergennes' skills and modeled his own secretaryship on Vergennes's *realpolitik* sprinkled with a considerable dose of Jay's own ever-present sense of morality.²⁴

Jay brought with him into office a general distrust of other governments, particularly the three European superpowers. Alexander Hamilton described Jay as "a man of profound sagacity & pure integrity, yet he was of a suspicious temper."²⁵ Jay admitted to his predecessor "I have no faith in any Court in Europe, but it would be improper to discover that sentiment." Boundary disputes with the North American colonies of Britain and Spain concerned Jay throughout his tenure, and Spain's refusal to allow free American navigation of the Mississippi River proved to be Jay's diplomatic Achilles' heel. Jay worried that Spain was "turning her eyes to England for a more intimate connection. They are the only two European powers which have continental possessions on our side of the water, and

²⁴ Louis Guillaume Otto to Comte de Vergennes, New York, October 1, 1785, *ibid.*, 2:840.

²⁵ Hamilton: Speech in Congress, Philadelphia, March 19, 1783 (taken from James Madison's notes), Kaminski, *Founders on the Founders*, 271.

Spain I think wishes for a league between them for mutual security against us.”²⁶

Jay’s distrust of France had begun with his appointment as a peace commissioner and intensified during the war when France supported Spain’s territorial claims east of the Mississippi and when it was revealed that the French were negotiating with the British for additional fishing rights off Newfoundland, at the Americans’ expense. After the Revolution, Jay de-emphasized the Franco-American alliance of 1778, actively opposed any European combination against American interests, and always sought to counter-balance the three European powers.

Commercially, Jay discarded Congress’s previous open-ended, most-favored-nation policy in favor of limited-term commercial treaties based on bilateral reciprocity with as much free trade as was advantageous to both parties. Under the Articles of Confederation, Congress did not have the power to regulate commerce, therefore Jay possessed limited leverage in negotiating commercial treaties with Britain and Spain, and he never removed the restrictions placed on American commerce with the British, French, and Spanish West Indies. But he did nothing to stop the tried and true, and patriotic, method of American commerce—smuggling American

²⁶ To Robert R. Livingston, Paris, April 22, 1783, Johnston, *Correspondence*, 3:42-43. LS, DNA ([EJ: 11916](#)); LbkC, DNA ([EJ: 4246](#)).

agricultural produce into prohibited West Indies ports. (As Chief Justice of the United States, Jay would seek to end smuggling goods into American ports under the new Constitution when the federal government became dependent on the revenue produced from impost duties.) In the mid-1780s, Jay encouraged the efforts of Jefferson and Lafayette in obtaining commercial concessions from France (including the creation of four free ports in France itself). He even proposed that the French government make subsidies directly to American merchant houses, so that they in turn could extend long-term credit to their customers.

Many of Jay's policies anticipated the later role of the president in foreign affairs under the Constitution. Jay believed that secrecy was vitally important in his office. Only on "extraordinary Occasions and for cogent Reasons" should the public be privy to diplomatic negotiations. In particular, Jay did not want to compromise his extensive spy network in Europe. Even relatively ordinary, non-sensitive matters should be kept secret because it was "better to keep many unimportant Things secret, than by observing too little Reserve, destroy or impair that Opinion which encourages Information and free Communications."²⁷ Repeatedly, Jay was described as reserved. In dealing with foreign diplomats, Jay kept his own opinion secret and,

²⁷ Jay's Report on a Letter from Richard Soderstrom, Office for Foreign Affairs, October 6, 1785, Giunta, *Emerging Nation*, 2:844. DS, DNA ([EJ: 3863](#)); LbkC, DNA ([EJ: 4533](#)).

according to Otto, “never responds directly to any question that is put to him, and the few words that he permits himself to say, are so laconic that it is difficult to divine the sense of them.”²⁸

After receiving information from abroad, or after being requested by Congress to investigate a matter, or after deciding to take the initiative himself, Jay would make a report to Congress. (He made over 500 of them.) The report would often contain a draft of instructions to him or a draft of a letter that he should write to some diplomat—American or foreign. Congress would often assign the secretary’s report to a select committee, which would almost always report favorably on Jay’s recommendations. Congress would then approve the committee report and instruct Jay to do its bidding. On other occasions, Congress avoided the sham of a committee, and merely read and approved Jay’s report and referred it back for him “to take Order.”

Of course Jay had to struggle against various divisive forces throughout his time in office. The weakness of Congress, the jealousy of the states and their congressional delegations toward each other, the personal enmity and jealousy of a handful of members of Congress toward Jay himself, the institutional framework in which the secretary was presumed to be the servant—not the leader—of Congress, the rise of political factions

²⁸ Louis Guillaume Otto to Comte de Vergennes, New York, January 10, 1786, *ibid.*, 3:65.

within Congress, and the disgruntlement of foreign diplomats who believed that Jay did not particularly favor their own country—all presented Jay with obstacles. Working in his favor, however, was the difficulty of finding anyone who could replace him. The list of Jay’s advantages in this respect is long: his reputation as an industrious and conscientious man; the requirement that all communications from abroad be channeled through him; the ignorance of most members of Congress of foreign affairs; the mandatory rotation in office required of members of Congress; the relative youthfulness and inexperience of members of Congress as compared to Jay’s prominence in state, continental, and diplomatic service; his effort to disconnect foreign ministers in America from Congress; and his technique of obliging foreign emissaries in America to seek his direct assistance in correcting diplomatic difficulties.

Jay regularly employed delaying tactics in conducting his diplomacy. Otto called it a “system of reserve.” This approach drew heavily on Jay’s experience in Europe, especially while in Spain. The reasons for delay, Secretary Jay would lament, were varied: the translator was overwhelmed with work, information from U.S. ministers abroad had not yet arrived, Congress was too busy or was torn over whether it had power to act, Congress was either in recess or poor attendance prevented it from acting, or

illness prevented the Secretary from acting. Jay wrote Jefferson that “It is painful to me to reflect that altho’ my Attention to Business is unremitted, yet I so often experience unseasonable Delays and successive Obstacles in obtaining the Decision and Sentiments of Congress, even on Points which require Dispatch. But so it is, and I must be content with leaving nothing undone that may depend upon me.”²⁹ When Congress procrastinated, Jay told Jefferson that he was obliged “to observe a Degree of Reserve in my Letters respecting those Subjects, which I wish to be free from, but which is nevertheless necessary lest my Sentiments and Opinions should be opposed to those which they may adopt and wish to impress.”³⁰ The Secretary pleaded for understanding because everyone knew that “the same Expedition cannot be expected from public deliberative Bodies as from Executive officers or Boards composed of a few Members.” In a candid conversation with French Consul-General Otto, Jay explained the difference between conducting diplomacy under a republic as opposed to a monarchy. The former was far more difficult because “the great number of personages to humor rendered political operations infinitely more intricate and slower, that in place of two or three well-

²⁹ To Thomas Jefferson, New York, August 18, 1786, Julian P. Boyd et al., eds., *The Papers of Thomas Jefferson* (Princeton, N.J., 1950—), 10:271. Dft, NNC ([EJ: 5860](#)).

³⁰ To Thomas Jefferson, New York, January 19, 1786, Boyd, 9:185. Dft, NNA ([EJ: 6656](#)); LbkC, DNA ([EJ: 2450](#)).

organized brains there were several hundred of various capacities, whose interests and fashions of thinking could not easily be made to agree; that a King could assemble around him a Council of wise and well-intentioned persons, while in a republic the most numerous part preponderated, and that the most numerous party was not always the wisest. The happiest Government is a well-administered Monarchy.”³¹ “Wise kings will always be served by able ministers.”³²

Jay always pled for patience and assured all ministers “that the affairs to which you solicit the attention of Congress will not be neglected but that they will continue to treat all your applications with that Respect which is justly due” to every government. Soon, however, the foreign ministers came to realize that measures Jay supported received quick congressional attention and measures Jay opposed languished. Without a direct connection to Congress except through Jay, foreign ministers had to bide their time even when confidentially informed by members of Congress that Jay was indeed the reason for delay.

Early in his tenure, Jay established the protocol for receiving foreign diplomats in America. Jay would welcome all newly arrived ministers. A

³¹ To François Barbè Marbois, New York, March 21, 1785; Louis Guillaume Otto to Comte de Vergennes, New York, August 20, 1785, Giunta, *Emerging Nation*, 2:595, 787-88. Dft, NNC ([EJ: 5717](#)); LbkC, DNA ([EJ: 1593](#)).

³² “Publius,” *The Federalist*, No. 64, *New York Independent Journal*, March 5, 1788.

meeting would be arranged with the president of Congress at which the diplomat's commission and letter of credence would be left to be translated. At an appointed time, Jay would conduct the minister to Congress in its chambers. While members of Congress remained seated and covered (that is, with their hats on), the diplomat (uncovered) would turn over the translation of his credentials to the secretary of Congress, who would read the document aloud. The diplomat might then say something to Congress and present anything he thought proper in writing to the secretary of Congress. Jay would then escort the diplomat out of the chambers and "hint to him that a Visit would be expected by every Member of Congress,"³³ quite an onerous assignment for the foreign diplomat.

The country faced a delicate issue of protocol when Sir John Temple arrived in New York in November 1785 as Britain's consul-general. Two questions were posed by Jay to the president of Congress. Should Temple be received *de jure* (by right or by law) or whether it was expedient to receive him *de gracia* (by favor). Citing Vattel's *Law of Nations*, Jay answered the first question by saying that consuls are useful officials and that the nation wanting a consul must procure them by commercial treaty. Because Great Britain refused to enter into a commercial treaty with the United States, it

³³ Jay's Report on the Reception of Don Diego de Gardoqui, Office for Foreign Affairs, May 31, 1785, Giunta, *Emerging Nation*, 2:645-46. DS, DNA ([EJ: 3838](#)); LbkC, DNA ([EJ: 4511](#)).

had no right to expect America to receive its consul. The second question was far more important to Jay because of the “interesting Consequences [that] will result from its Decision.” Jay reasoned that having a consul in America was “not a Matter of so much Importance to Britain.” The denial of the consul would not force Britain into a commercial treaty with America. “Severity on small Points,” Jay suggested, “may irritate, but they very seldom coerce.” If Americans wanted to coerce Britain, it should be done with a united, federal program of “Retaliatory Restrictions on Trade and Navigation.” Such a policy would be “very consistent with the Pride and Dignity as well as Interest of a Nation. . . . To refuse to receive a consul would (whatever might be the true Motives), be generally ascribed to a Degree of Pique and Irritation which though Nations may feel, they ought not expressly or impliedly to declare.” Thus, in his report to Congress, Jay recommended that it would “be proper for the United States on this, and every other Occasion, to observe as great a Degree of Liberality, as may consist with a due Regard to their national Honor and Welfare.” Jay then suggested and Congress agreed that Temple be received and recognized as Great Britain’s consul-general.³⁴

³⁴ To the President of Congress, Office for Foreign Affairs, November 24, 1785; Jay’s Report on the Reception of Sir John Temple as British Consul General, Office for Foreign Affairs, November 28, 1785, *ibid.*, 2:918-19, 929. LS, DNA ([EJ: 163](#)); Dft, NNC ([EJ: 5785](#)); LbkC, DNA ([EJ: 1808](#)). DS, DNA ([EJ: 3874](#)); LbkC, DNA ([EJ: 4544](#)).

Remembering the unreasonable limitations placed upon the peace negotiators by Congress during the war, Secretary Jay gave the diplomats under his direction much more latitude to operate. He told them that they would “probably meet with Difficulties and Embarrassments of various kinds in the Prosecution” of their business. “But Difficulties and Embarrassments are not new to You, and Experience has taught us that there are very few which Talents, Assiduity and Perseverance cannot overcome.”³⁵

In dealing with European and North African courts, Jay understood that it might be necessary to bribe “Men who may have no other Recommendation than their influence with their Superiors.” Jay acknowledged the expediency of purchasing “the Influence of those whom you may find so circumstanced, as to be able to impede or forward your Views.” Rather than paying any such “Gratuities before the Work is done, [which] might tempt them to delay it,” in hopes of extracting more money, Jay suggested that it might be “prudent to promise Payment on the Completion of the Treaties.” These, Jay said, “are delicate Subjects which

³⁵ To the American Commissioners in Europe, Office for Foreign Affairs, March 11, 1785; Giunta, *Emerging Nation*, 2:574-76. LbkCs, DNA ([EJ: 2403](#)); DNA ([EJ: 3584](#)); DNA ([EJ: 3823](#)).

your greater Experience well enables you to manage.”³⁶ Jay followed his own advice and promised an aide of the emperor of Morocco that Congress would “take a proper Opportunity of acknowledging the Sense they entertain of your Regard for their Interests.”³⁷

Although bribes to individuals to speed along negotiations were acceptable, Jay adamantly opposed tribute to countries as the price of avoiding war. War should not be entered into lightly, but should be legitimately declared when honorable alternatives were unavoidable. Jay believed that it was America’s true interest “to prepare for War, and yet be tenacious of Peace with all the World.”³⁸ The Barbary Powers put Jay’s philosophy to the test toward the end of his first year as Secretary for Foreign Affairs.

After months of cordial negotiations, the United States, with the good auspices of Charles III of Spain, signed a treaty with Morocco. Simultaneous negotiations took place with Algiers but in a far more hostile climate. Soon Algiers captured two American merchantmen and enslaved their crews. The Dey of Algiers demanded tribute. Believing that a war with Algiers would

³⁶ Ibid.

³⁷ To Giacomo Francisco Crocco, Office for Foreign Affairs at the City of New York, March 11, 1785, *ibid.*, 580. LbkC, DNA ([EJ: 2404](#)); C, DNA ([EJ: 3819](#)).

³⁸ To Marquis de Lafayette, Office for Foreign Affairs, July 15, 1785, *ibid.*, 695. Dft, NNC ([EJ: 5742](#)); LbkC, DNA ([EJ: 2416](#)).

be too costly and too difficult to win, John Adams recommended that America should pay the tribute. Thomas Jefferson thought Algiers could be defeated easily and would thus be a good enemy for America to flex its muscles with. Jay told Jefferson he “prefer[red] War to Tribute.” Jay felt that the United States should recognize that a state of war existed with Algiers and should do whatever was necessary to repel the aggression. In his report to Congress, Jay argued that this “War being unprovoked, and made solely with [the] Design to acquire Plunder; it would not in the Opinion of your Secretary, become the United States to answer it by Overtures for Peace, or Offers of Tribute.... That both the Honor and Interest of the United States demand that decided and vigorous Measures be taken for protecting the American Trade and meeting these predatory Enemies in a proper Manner.”³⁹

French Consul-General Otto reported that Secretary Jay had ulterior, political motives for war with Algiers. First, Jay believed that the United States could easily “overawe the Barbary Corsairs, without stooping to pay them tribute.” And equally important, Jay allegedly told Otto that he “would not be angry if the Algerians came to burn some of our maritime Towns, in

³⁹ Jay to Thomas Jefferson, New York, January 19, 1786, Boyd, 9:185; Jay’s Report on the Algerine Declaration of War, Office for Foreign Affairs, October 20, 1785, Giunta, *Emerging Nation*, 2:868-70. Dft, NNC ([EJ: 6656](#)); LbkC, DNA ([EJ: 2450](#)). DS, DNA ([EJ: 3867](#)); LbkC, DNA ([EJ: 4538](#)).

order to restore to the United States their former energy, which peace and Commerce have almost destroyed. War alone can bring together the various States, and give a new importance to Congress; we will not lack means, but we lack that republican and national spirit which alone can give vigor to our operations. We have more need of soldiers than of Merchants, of patriotism than of foreign manufactures, of Citizens than of rich privateers. War, and war alone, will give us Citizens, patriotism, and soldiers. Commerce has already separated the interests of the various States, war will give them identity. I want the New Englanders to fight for the wheat, tobacco, and rice of the Southern people, and the Carolinians to shed the last drop of their blood for the fisheries of Massachusetts.”⁴⁰ Sensing the ill preparedness of the country, Congress preferred to negotiate first before declaring war. But if the tribute demanded was too high, war would ensue.

In the meantime, Jay suggested that American merchants trading in the area should be encouraged “to employ none but Vessels well armed and manned.” Private vessels that could accommodate armaments should be equipped by Congress with twenty cannon and the military stores and sailors necessary to man these weapons. Congress should also begin construction of five forty-gun frigates to cruise those dangerous waters, and establish a

⁴⁰ Otto to Comte de Vergennes, New York, December 25, 1785, Giunta, *Emerging Nation*, 2:968.

department of the navy headed by a single secretary. Jay also recommended military and commercial alliances with Portugal, another country at war with Algiers. At one time Jay advocated a coalition of tribute-paying countries to ally in their attacks on the Barbary pirates—a sort of short-term, ad hoc NATO. Jay’s report presumed “that the United States should extend their Views and Wishes to naval Strength and maritime Importance.” Now was the time to decide “Whether it would be more wise in the United States to withdraw their Attention from the Sea, and permit Foreigners to fetch and carry for them; or to persevere in concerting and pursuing such Measures as may conduce to render them a maritime Power?” Jay told the President of Congress that “while we lend our Attention to the Sea, every *naval* War however long which does not do us essential Injury, will do us essential Good.” “The more we are treated ill abroad,” Jay suggested, “the more we shall unite and consolidate at Home.” Jay wrote John Adams that the Algerine war, the construction of a navy, and the granting of commercial powers to Congress seriously divided members of that body. The Northern and Middle States supported these policies, while the Southern States and Westerners opposed them.⁴¹

⁴¹ To the President of Congress, Office for Foreign Affairs, October 13, 1785; to John Adams, New York, November 1, 1785, *ibid.*, 862, 885. DS, DNA ([EJ: 157](#)); C, DNA ([EJ: 5152](#)); LbkC, DNA ([EJ: 1796](#)). Dft, DNA ([EJ: 2441](#)); Dft, NNC ([EJ: 7456](#)).

Provoked into an aggressive posture by Algiers, Secretary Jay also recommended to Congress that it advise Massachusetts “to proceed without *Noise or Delay* to garrison such places” on its northern borders that seemed threatened by settlement from the British in the Province of New Brunswick (Canada). Because “one unopposed Encroachment always paves the way for another,” Jay suggested that the whole disputed area could be lost if Massachusetts failed to act. Garrisons manned by Massachusetts militia, paid by Congress, and relieved by Continental troops “should not be so large as to give alarm,” but they should encourage local inhabitants to pledge their allegiance to the United States while overawing New Brunswick peace officers, “whom Impunity might tempt to be insolent and troublesome.” These military forces should be ordered to stay in American territory and to act only defensively. This delicate mission could be safely entrusted to the prudence of the governor and council of Massachusetts. “Nothing should be done to provoke Hostilities on the one Hand, and on the other it must be remembered that too great and manifest Reluctance to assert our Rights by Arms, usually invites Insult and offence. Your Secretary is very apprehensive that to permit these disputes to remain unsettled, will be to risque mutual acts of violence which may embroil the two Nations in a war.” Jay warned Congress “that no Nation can consistent with the Experience of

all Ages, expect to enjoy peace and Security any longer than they may continue prepared for war, and he cannot forbear expressing his Fears, that the United States are not at present in that desirable Situation.”⁴²

Jay felt anxious about the disputed territory between Massachusetts and Canada because of the growing number of separatist movements taking place throughout the country. Vermont kept up its battle for independence from New York, while demands for independence surfaced in Maine from Massachusetts, in Kentucky from Virginia, and in Frankland from North Carolina. Jay lamented that Congress had not acted more swiftly in suppressing these rebellious Americans. “Congress should have recollected the old Maxim obsta principiis”—resist the beginnings; stop it now.⁴³

Jay’s ability as a diplomat was stretched to the limit in dealing with Britain’s refusal to abandon its eight frontier forts along the coasts of the Great Lakes. By retaining the forts, contrary to a provision in the Treaty of Peace, the British controlled the lucrative fur trade, intrigued with Indians, encouraged an American separatist movement, and perhaps of most importance to Jay, was a blatant, public snub of America’s sovereignty. Jay wondered why Britain would jeopardize its long-term relationship with

⁴² Jay’s Report on the Eastern Boundary of the United States, Office for Foreign Affairs, September 22, 1785, *ibid.*, 2:902-3. DS, DNA ([EJ: 3860](#)); LbkC, DNA ([EJ: 4530](#)).

⁴³ Jay to Thomas Jefferson, New York, January 19, 1786, *ibid.*, 3: 70. Dft, NNC ([EJ: 6656](#)); LbkC, DNA ([EJ: 2450](#)).

America to obtain only short-term benefits. “They may hold the Posts, but they will hold them as Pledges of Enmity; and the Time must and will come when the Seeds of Discontent, Resentment and Hatred which such Measures always sow, will produce very bitter Fruit.”

In a remarkably blunt and yet equally obscure statement, Jay suggested that it would be “very Justifiable in Congress to take a certain Step that would be longer and more sensibly felt by Britain than the Independence of these States.”⁴⁴ John Adams, serving as U.S. minister to Britain, searched out Secretary Jay for his meaning. Adams thought that Jay alluded to two possible courses of action—one commercial; the other military. British ships could be prohibited from carrying American exports and heavy import duties could be placed on British manufactured goods. More militant, Adams wondered whether Jay was proposing “a defensive Alliance with France, Spain and Holland” in which Canada and Nova Scotia and at least one-half of the best British West Indies would be acquired by the United States, while France, Spain and the Netherlands would open their West Indies to American produce and French home ports would be opened to free American trade.⁴⁵

⁴⁴ Jay to John Adams, Office for Foreign Affairs, September 6, 1785, *ibid.*, 2:802. Dft, NNC ([EJ: 5768](#)); LbkC, DNA ([EJ: 2427](#)).

⁴⁵ John Adams to Jay, Grosvenor Square, October 15, 1785, *ibid.*, 2:864-65. DNA ([EJ: 11860](#)).

Before proceeding with diplomatic discussions with Britain, Jay unofficially asked and then officially instructed Thomas Jefferson, serving as U. S. minister to France, to sound out French Foreign Minister Vergennes. “Does France consider herself bound by her Guarantee to insist on the Surrender of our Posts? Will she second our Remonstrances to Britain on that Head?” Such a united diplomatic stand, Jay hoped, “may render any less pacific Proceedings unnecessary.”⁴⁶

In discussions between John Adams and British Foreign Secretary Lord Carmarthen, the British asserted that they retained the Northwest posts because Americans had violated at least two provisions of the Peace Treaty. The states had adopted laws that made it impossible for British creditors to collect pre-war debts and the states refused to compensate Loyalists for property illegally confiscated from them and refused to restore voting rights to Loyalists. Not until these violations were removed, would the Northwest posts be evacuated.

Jay advised Adams to proceed cautiously “so as to avoid demanding a categorickall Answer. . . . in the Negative [which] would involve the United States either in War or in Disgrace—They are not prepared for the former,

⁴⁶ To Thomas Jefferson, New York, January 19, 1786, *ibid.*, 3:70. Dft, NNC ([EJ: 6656](#)); LBkC, DNA ([EJ: 2450](#)).

and should if possible avoid the latter.”⁴⁷ Furthermore, Adams should not push the matter while France’s intentions remained uncertain. Jay then reported to Congress that it was unlikely that the forts would be surrendered. The Secretary recommended “that what wrongs may have been done [by the state legislatures], should be undone; and that the United States should, if it were only to preserve Peace, be prepared for War.”⁴⁸

Responding to the impasse over the forts, Jay sent Congress one of his longest and most important reports. In adopting the Articles of Confederation, Jay argued that “the thirteen independent Sovereign States” had “formed and vested in Congress a perfect though limited Sovereignty for the general and National purposes specified in the Confederation.” Article IX gave “Congress the sole and *exclusive* Right and Power of determining, on war and *peace* and of entering into *treaties* and Alliances &c &c—When therefore a treaty is constitutionally made, ratified and published by Congress, it immediately becomes binding on the whole Nation, and superadded to the laws of the land, without the intervention, consent or fiat of State Legislatures.” Thus, it was Congress’ responsibility “to see that

⁴⁷ To John Adams, Office for Foreign Affairs, May 1, 1786, *ibid.*, 161. Dft, NNC ([EJ: 7460](#)); LbkC, DNA ([EJ: 2455](#)).

⁴⁸ Jay’s Report on Relations with Great Britain, Office for Foreign Affairs, May 8, 1786, *ibid.*, 163. DS, DNA ([EJ: 3898](#)); LbkC, DNA ([EJ: 4567](#)).

National treaties be faithfully observed throughout the whole extent of their jurisdiction.”

Jay’s report continued. In examining the British accusations, Jay found that the states had indeed violated two treaty provisions by enacting laws that impeded the collection of prewar British debts and by confiscating Loyalist property after the treaty had been adopted. “Under such circumstances,” Jay told Congress, “it is not a matter of surprize to your Secretary that the Posts are detained.”

Recognizing Congress’ lack of power over the states, Jay outlined a three-point plan that would allow America to escape from its embarrassing diplomatic dilemma. First, Congress should declare that no state could pass any act “for interpreting, explaining or construing a National treaty or any part or Clause of it; nor for restraining, limiting, or in any manner impeding, retarding or counteracting the operation and execution of the same.” Treaties properly made were the law of the land. Secondly, all acts now existing “repugnant to the treaty of Peace ought to be forthwith repealed.” And finally, that instead of repealing individual acts separately, Congress should recommend that each state “pass an Act declaring in general terms that all such Acts and parts of Acts repugnant to the treaty of Peace . . . are repealed.” State courts would then have the authority and would have “no

difficulty in deciding” in various cases before them which state laws were repugnant to the treaty and thus were null and void under this general act of repeal.⁴⁹

Jay’s report also considered the British violation of the treaty provision forbidding them from carrying away slaves at the end of the war when their armies were evacuating. Not surprisingly, Jay was somewhat sympathetic to the British position. He posed a hypothetical case of a war between France and Algiers in which the former would rescue and free American sailors held as slaves by the latter. Would it be justifiable after the restoration of peace for France to return “those American Slaves to their Algerine Masters?” The only difference in the two cases was “that the American Slaves at Algiers are *white* People, whereas the African Slaves at New York [that the British carried off] were *Black* People.” Consideration must be given to “How far an obligation to do wrong may consistent with morality be so modified in the execution as to avoid doing injury and yet do essential Justice.” By agreeing to this article of the treaty, Britain “bound herself to do great Wrong to these Slaves, and yet by not executing it she would do great Wrong to their Masters.” Jay suggested a solution to this “painful dilemma.” No slave should be returned but the British should

⁴⁹ Jay’s Report on State Laws Contrary to the Treaty of Peace, Office for Foreign Affairs, October 13, 1786, *ibid.*, 334-47. C, DLC ([EJ: 10135](#)); LbkC, DNA ([EJ: 4574](#)).

compensate all American masters who lost slaves carried off by the British. “In this way neither [slaves nor masters] could have just cause to complain.” An independent commission should be established to determine how many slaves were carried off and their value.⁵⁰

On March 21, 1787, Congress adopted Jay’s report. Three weeks later the president of Congress sent a circular letter (drafted by Jay) to the state governors explaining the diplomatic morass and asking that their states comply with Congress’ resolution. Public faith demanded that the treaty be honored. “Not only the obvious dictates of Religion, Morality and National honor, but also the first principles of good policy, demand a candid and punctual compliance with engagements constitutionally and fairly made. . . . honest Nations like honest men require no constraints to do Justice, and though Impunity and the Necessity of Affairs may sometimes afford temptations to pare down contracts to the measure of Convenience yet it is never done but at the expence of that esteem, and confidence, and credit, which are of infinitely more worth than all the momentary advantages which such expedients can extort.”⁵¹ Congress meant “to act with the most Scrupulous regard to Justice and Candor toward Great Britain, and with an

⁵⁰ Ibid., 344-45.

⁵¹ President Arthur St. Clair to the Governors of the States, New York, April 13, 1787, *ibid.*, 472-75.

equal degree of delicacy, Moderation, and decision towards the States” who had violated the treaty. “Justice to Great Britain, as well as regard to the honor and Interests of the United States, require that the said Treaty be faithfully executed.” Minister John Adams was ordered to inform George III that “Congress are taking effectual measures for removing all Cause or Complaint on their part.” It was expected that Britain too would carry “every article [of the treaty] into real & compleat effect.”⁵² Part of Jay’s diplomatic philosophy was to put America in the position of right. As he later wrote to President Washington, “To put an enemy in the wrong is to obtain great advantages.”⁵³ Jay’s expectations were not immediately realized. Not until 1794 was Britain willing to surrender the frontier posts.

Jay hoped that his tenure as de facto prime minister would serve as a transition. Most of America’s problems could be solved according to Jay, if Congress would be given sufficient powers to regulate commerce and to levy a federal tariff that would bring in a revenue independent of any solicitation upon the states. Jay felt that “Our affairs are settling by degrees

⁵² Ibid.; Congressional Committee Report on Efforts to Fulfill the Terms of the Treaty of Peace, New York, July 20, 1787, 475-77, 481-82, 553-54.

⁵³ To President George Washington, London, March 6, 1795, Johnston, *Correspondence*, 4:167. ALS, DLC ([EJ: 10644](#)); C, NNC ([EJ: 8456](#)).

into order.”⁵⁴ With these few additional congressional powers, Congress would look more and more like the British House of Commons.

By the end of 1786, however, Jay’s hopes for change and optimism about America’s future waned. Postwar economic depression; continuing diplomatic problems with Great Britain, Spain, and the Barbary States; and secessionist movements in almost half of the states and in the west all weighed heavily on America. The limited authority allowed Congress by the Articles of Confederation made it unlikely that solutions to America’s problems would emanate from the central government. “Although a Disposition prevails” to increase the powers of Congress, Jay was “apprehensive that however the Propriety of the Measure may be admitted, the Manner of doing it will not be with equal Ease agreed to.”⁵⁵ Jay told Jefferson, “It takes time to make sovereigns of subjects.”⁵⁶

When, in mid-1786, Jay’s negotiations with Spanish envoy Don Diego de Gardoqui exploded in bitter sectional hostility, any attempt to strengthen the Articles of Confederation out of Congress seemed hopeless. In fact, because of the South’s outrage over the Jay-Gardoqui negotiations

⁵⁴ To William Bingham, New York, May 31, 1785, *ibid.*, 3:153. Dft, NNC ([EJ: 7480](#)).

⁵⁵ To Thomas Jefferson, New York, January 19, 1786, Giunta, *Emerging Nation*, 3:69. Dft, NNC ([EJ: 6656](#)); LbkC, DNA ([EJ: 2450](#)).

⁵⁶ August 18, 1786, Johnston, *Correspondence*, 3:211. Dft, NNC ([EJ: 5860](#)); DNA ([EJ: 2467](#)).

and the potential loss of the navigation of the Mississippi River, Congress tabled seven amendments to the Articles of Confederation that had been prepared to be sent to the states for their ratification.⁵⁷ These amendments would have significantly increased Congress' powers and would have been a major step in moving Congress toward Jay's parliamentary model. Thus, ironically, the actions of the country's "prime minister"—the staunchest advocate for empowering Congress—doomed the effort to amend the Articles of Confederation and forced nationalists to seek a different method of strengthening America's central government.

As the Constitutional Convention ended its sessions, Jay confided to Jefferson: "For my own part, I have long found myself in an awkward Situation, seeing much to be done and enabled to do very little. All we can do is to persevere—if Good results our Labor will not be in vain, if not we shall have done our Duty, and that Reflection is valuable."⁵⁸

⁵⁷ Merrill Jensen, John P. Kaminski, and Gaspare J. Saladino, eds., *Constitutional Documents and Records, 1776-1787*, Volume I of *The Documentary History of the Ratification of the Constitution* (Madison, Wis., 1976), 163-68.

⁵⁸ To Thomas Jefferson, New York, September 8, 1787, Giunta, *Emerging Nation*, 3:578-79. Dft, NNC ([EJ: 5907](#)); LbkC, DNA ([EJ: 2514](#)).