

THE CORRESPONDENCE AND PUBLIC PAPERS

OF

JOHN JAY

VOL. I.

1763-1781

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June, 1890

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THE CORRESPONDENCE AND PUBLIC PAPERS

OF

JOHN JAY

FIRST CHIEF-JUSTICE OF THE UNITED STATES, MEMBER AND PRESIDENT OF THE
CONTINENTAL CONGRESS, MINISTER TO SPAIN, MEMBER OF COMMISSION
TO NEGOTIATE TREATY OF INDEPENDENCE, ENVOY TO GREAT
BRITAIN, GOVERNOR OF NEW YORK, ETC.

1763-1781

EDITED BY

HENRY P. JOHNSTON, A.M.

PROFESSOR OF HISTORY IN THE COLLEGE OF THE CITY OF NEW YORK

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VOL. I.

G. P. PUTNAM'S SONS

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PREFACE.

JOHN JAY'S public services extended over and beyond the formative period of our national life—from 1774 to 1801. During those twenty-seven years he devoted himself to varied important duties with a zeal, fidelity, ability, and success that from the beginning of his career entitled him to rank with the distinguished fathers of the Republic and framers of its Constitutional system. The several official positions he occupied called out his talents and energies in four directions. First, he promoted the general interests of the Colonies during the early years of the Revolutionary struggle, in serving at intervals from 1774 to 1779 as delegate in the Continental Congress. Again, as Minister or Envoy, at different periods, to Spain, France, and Great Britain, he rendered perhaps his most conspicuous service to the country. Again, as Chief-Justice, both of his own State and of the United States, he impressed grand juries and all concerned with the necessity of encouraging a profound respect for law and constitutions in the new order of things, and at the outset, through his own personal dignity and integrity, gave character to our highest courts since traditionally preserved. And again, in his native

State of New York, he proved himself invaluable as a member of Provincial bodies and committees in providing the sinews of war, in suppressing conspiracies, in drafting laws, in organizing the machinery of the new State, in urging, through the "Federalist" and in the New York Convention, the adoption of our common Constitution, and finally, in twice filling the office of Governor. As Congressman, diplomatist, jurist, and State leader, seeking in each sphere of action to secure substantial results without display or effect, he was pre-eminently a man for his times. Perhaps, also, as nearly as any one in our civil history, he filled the ideal of a public servant.

The first "Life" of Jay was published in 1833. This work, issued in two volumes, one of which was devoted to sections from his correspondence, was edited by William Jay, son of John Jay, and ranks as a standard contribution to our historical literature. For many years, however, it has been out of print, and practically inaccessible except in libraries. Other biographies have since appeared, the latest of which, published in the current year, and edited by Mr. George Pellew, is a re-study from the Jay papers and other authoritative sources.

To meet the need of a purely documentary edition the present set of four volumes has been prepared upon the plan of the writings of Washington, Franklin, Jefferson, Adams, Hamilton, and others. This change and expansion provides for the addition of numerous letters and documents from the Jay correspondence not published in the volumes of 1833.

Jay's papers were voluminous, and the greater portion have been carefully preserved by his immediate descendants and in public and private collections. What can be said of but few of his contemporaries, he retained with his own drafts most of the personal or semi-official letters written to him during a period of nearly half a century, many of which, received from eminent and observing men, throw those side-lights upon affairs and social and political life in general so much sought and prized by students of American history to-day. As the correspondence of this description supplements and explains much that Jay himself wrote, a considerable number of new selections have been introduced into, and constitute a feature of, the present edition. The principal space is allotted, necessarily, to Jay's own writings.

By courtesy of the Hon. John Jay, the fine collection of Jay papers in his possession has been placed in the hands of the publishers and editor for the preparation of this work. It should also be said that the labor of examination and selection has been greatly relieved by an exhaustive and critical index and analysis of the papers arranged by Miss Ruth Putnam.

Some selections have been made from other manuscript sources and from printed works.

HENRY P. JOHNSTON.

NEW YORK CITY, *June*, 1890.



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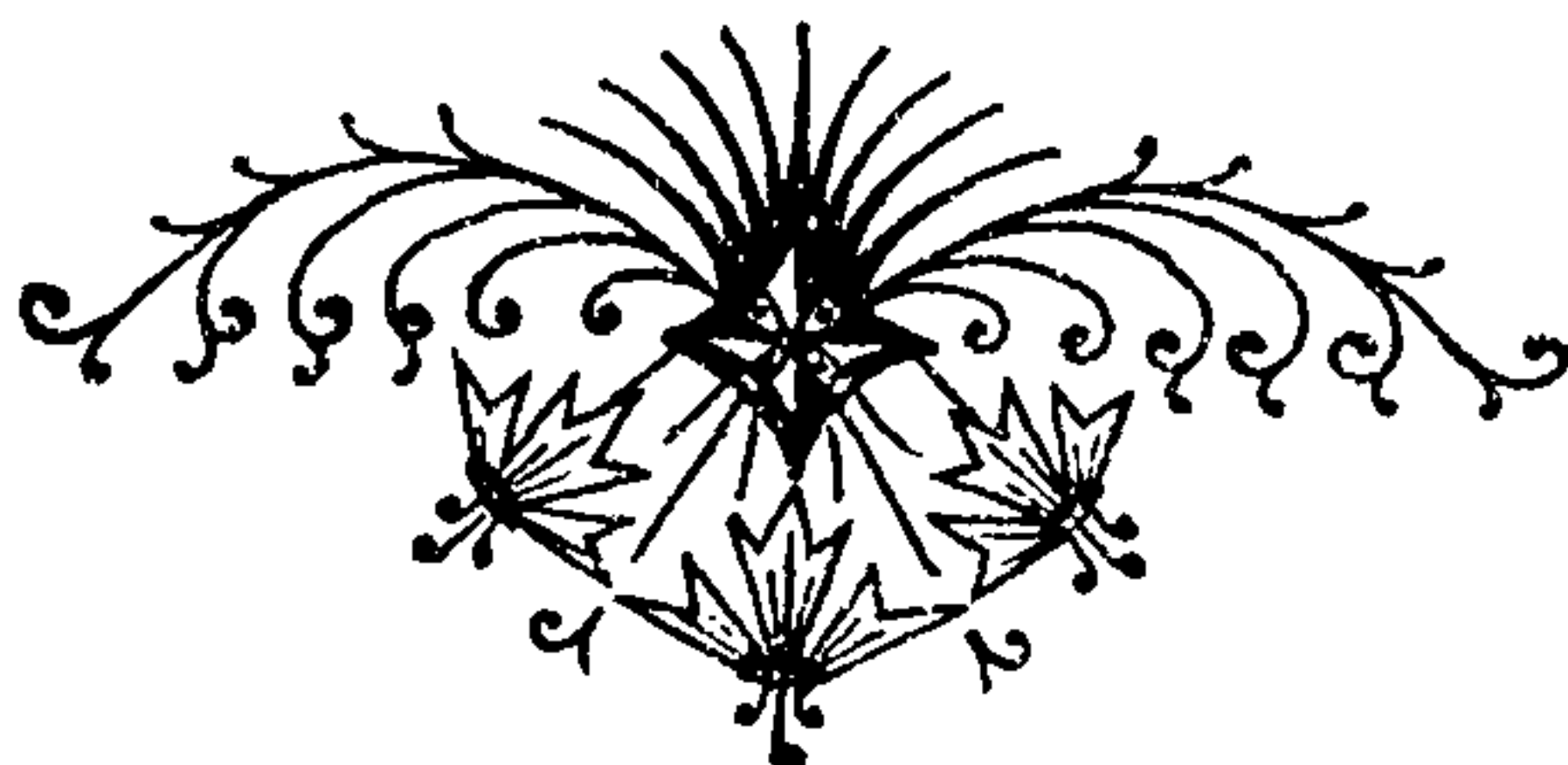
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JAY'S CHARGE TO THE GRAND JURY OF ULSTER COUNTY.¹

GENTLEMEN :

It affords me very sensible pleasure to congratulate you on the dawn of that free, mild, and equal government which now begins to rise and break from amid those clouds of anarchy, confusion, and licentiousness which the arbitrary and violent domination of Great Britain had spread in greater or less degree throughout this and the other American States. And it gives me particular satisfaction to remark that the first fruits of our excellent Constitution appear in a part of this State, whose inhabitants have distinguished themselves by having unanimously endeavoured to deserve them. This is one of those signal instances in which Divine Providence has made the tyranny of princes instrumental in breaking the chains of their subjects, and rendered the most inhuman designs productive of the best consequences to those against whom they were intended.

The infatuated sovereign of Britain, forgetful that kings were the servants, not the proprietors, and

¹ Upon the adoption of the State Constitution, April 20, '77 (see note p. 126), the New York Convention appointed a committee, distinct from the Council of Safety, to establish the authority of the new government in all its branches. As the situation required the organization of the judiciary without delay, the convention itself proceeded, on May 3d, to name the officers, and elected, among others, John Jay, as Chief-Justice of the Supreme Court. He received nineteen votes, against fifteen cast for John Morin Scott. The Supreme Court was not formally opened until September 9th following, at Kingston, when Jay delivered the above charge to the grand jury, a body described at the time as "composed of the most respectable characters in the County, no less than twenty-two of whom attended and were sworn." The charge was published at the jury's request.

ought to be the fathers, not the incendiaries of their people, hath, by destroying our former constitutions, enabled us to erect more eligible systems of government on their ruins ; and, by unwarrantable attempts to bind us in all cases whatever, has reduced us to the happy necessity of being free from his control in any.

Whoever compares our present with our former Constitution will find abundant reason to rejoice in the exchange, and readily admit that all the calamities incident to this war will be amply compensated by the many blessings flowing from this glorious revolution—a revolution which, in the whole course of its rise and progress, is distinguished by so many marks of the Divine favour and interposition, that no doubt can remain of its being finally accomplished.

It was begun and has been supported in a manner so singular, and I may say miraculous, that when future ages shall read its history they will be tempted to consider a great part of it as fabulous. What, among other things, can appear more unworthy of credit than that, in an enlightened age, in a civilized and Christian country, in a nation so celebrated for humanity as well as love of liberty and justice as the English once justly were, a prince should arise who, by the influence of corruption alone, should be able to reduce them into a combination to reduce three millions of his most loyal and affectionate subjects to absolute slavery, under a pretence of a right, appertaining to God alone, of binding them in all cases whatever, not even excepting cases of conscience and religion ?

What can appear more improbable, although true, than that this prince and his people should obstinately steel their hearts and shut their ears against the most humble petitions and affectionate remonstrances, and unjustly determine by violence and force to execute designs which were reprobated by every principle of humanity, equity, gratitude, and policy—designs which would have been execrable if intended against savages and enemies, and yet formed against men descended from the same common ancestors as themselves—men who had liberally contributed to their support and cheerfully fought their battles even in remote and baleful climates. Will it not appear extraordinary that thirteen colonies, the object of their wicked designs, divided by variety of governments and manners, should immediately become one people, and though without funds, without magazines, without disciplined troops, in the face of their enemies, unanimously determine to be free, and, undaunted by the power of Britain, refer their cause to the justice of the Almighty, and resolve to repel force by force, thereby presenting to the world an illustrious example of magnanimity and virtue scarcely to be paralleled? Will it not be matter of doubt and wonder, that notwithstanding these difficulties, they should raise armies, establish funds, carry on commerce, grow rich by the spoils of their enemies, and bid defiance to the armies of Britain, the mercenaries of Germany, and the savages of the wilderness? But, however incredible these things may in the future appear, we know them to be true; and we should

always remember that the many remarkable and unexpected means and events by which our wants have been supplied and our enemies repelled or restrained, are such strong and striking proofs of the interposition of Heaven, that our having been hitherto delivered from the threatened bondage of Britain ought, like the emancipation of the Jews from Egyptian servitude, to be forever ascribed to its true cause ; and instead of swelling our breasts with arrogant ideas of our powers and importance, kindle in them a flame of gratitude and piety which may consume all remains of vice and irreligion.

Blessed be God ! the time will now never arrive when the prince of a country in another quarter of the globe will command your obedience, and hold you in vassalage. His consent has ceased to be necessary to enable you to enact laws essential to your welfare ; nor will you in future be subject to the imperious sway of rulers instructed to sacrifice your happiness whenever it might be inconsistent with the ambitious views of their royal master. The Americans are the first people whom Heaven has favoured with an opportunity of deliberating upon, and choosing the forms of government under which they should live. All other constitutions have derived their existence from violence or accidental circumstances, and are therefore probably more distant from their perfection, which, though beyond our reach, may nevertheless be approached under the guidance of reason and experience.

How far the people of this State have improved

this opportunity, we are at a loss to determine. Their constitution has given general satisfaction at home, and been not only approved but applauded abroad. It would be a pleasing task to take a minute view of it, to investigate its principles and remark the connection and use of its several parts ; but that would be a work of too great length to be proper on this occasion. I must therefore confine myself to general observations, and among those which naturally arise from a consideration of this subject, none are more obvious than that the highest respect has been paid to those great and equal rights of human nature, which should forever remain inviolate in every society, and that such care has been taken in the disposition of the legislative, executive, and judicial powers of government, as to promise permanence to the constitution, and give energy and impartiality to the distribution of justice. So that while you possess wisdom to discern and virtue to appoint men of worth and abilities to fill the offices of the State, you will be happy at home and respectable abroad. Your lives, your liberties, your property, will be at the disposal only of your Creator and yourselves. You will know no power but such as you will create ; no authority unless derived from your grant ; no laws but such as acquire all their obligation from your consent.

Adequate security is also given to the rights of conscience and private judgment. They are by nature subject to no control but that of the Deity, and in that free situation they are now left. Every man is permitted to consider, to adore, and to worship

his Creator in the manner most agreeable to his conscience. No opinions are dictated, no rules of faith prescribed, no preference given to one sect to the prejudice of others. The constitution, however, has wisely declared, that the "liberty of conscience thereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State." In a word, the convention by whom that constitution was formed were of opinion that the gospel of Christ, like the ark of God, would not fall, though unsupported by the arm of flesh ; and happy would it be for mankind if that opinion prevailed more generally.

But let it be remembered that whatever marks of wisdom, experience, and patriotism there may be in your constitution, yet like the beautiful symmetry, the just proportion, and elegant forms of our first parents before their Maker breathed into them the breath of life, it is yet to be animated, and till then may indeed excite admiration, but will be of no use : from the people it must receive its spirit and by them be quickened. Let virtue, honour, the love of liberty and of science be and remain the soul of this constitution, and it will become the source of great and extensive happiness to this and future generations. Vice, ignorance, and want of vigilance will be the only enemies able to destroy it. Against these be forever jealous. Every member of the State ought diligently to read and to study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will sooner per-

ceive when they are violated, and be the better prepared to defend and assert them.

This, gentlemen, is the first court held under the authority of our constitution, and I hope its proceedings will be such as to merit the approbation of the friends, and avoid giving cause of censure to the enemies of the present establishment.

It is proper to observe that no person in this State, however exalted or low his rank, however dignified or humble his station, but has a right to the protection of, and is amenable to, the laws of the land; and if those laws be wisely made and duly executed, innocence will be defended, oppression punished, and vice restrained. Hence it becomes the common duty, and indeed the common interest of those concerned in the distribution of justice, to unite in repressing the licentious, in supporting the laws, and thereby diffusing the blessings of peace, security, order and good government, through all degrees and ranks of men among us.

I presume it will be unnecessary to remind you that neither fear, favour, resentment, or other personal and partial considerations should influence your conduct. Calm, deliberate, reason, candour, moderation, a dispassionate and yet a determined resolution to do your duty, will, I am persuaded, be the principles by which you will be directed.

You will be pleased to observe that all offences committed in this country against the people of this State, from treason to trespass, are proper objects of your attention and inquiry.

You will pay particular attention to the practice of counterfeiting bills of credit, emitted by the General Congress, or either of the American States, and of knowingly passing such counterfeits—practices no less criminal in themselves than injurious to the interests of that great cause, on the success of which the happiness of America so essentially depends.

ROBERT TROUP¹ TO JAY.

CAMP 3 MILES ABOVE STILL-WATER,
Sept. 14, 1777. 11 o'clock at night.

MY DEAR SIR :

On the 9th Instant about 8 o'clock A.M. the army marched from Van Shaack's Islands, & London's Ferry ; at 3 in the afternoon it incamped at Forts Mills, and early next morning reached Still-water.

We took Post on the Heights, began to open Communications and throw up a few small redoubts principally with a view of amusing the Enemy. On the 11th we recd. Intelligence that Gen. Burgoyne had called in his Out-posts, collected his Carriages, and was making every Preparation to advance. The General conceiving the Ground we occupied was not calculated for Defence went to reconnoitre & 3 Miles in Front discovered a Spot which fully answered his wishes.—On the 12, he marched the Army upon it and made the necessary dispositions for Action. But in this he was disappointed.

Gen. Burgoyne, like his Colleague, seems to be exceedingly embarrassed. For some time past, he has had his Army in Point, without making a single Motion, till to-day. By the Information of our Scouts he has brought the main

¹ Colonel Robert Troup, *aide-de-camp* to General Gates. Subsequently Judge United States District Court of New York.