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Gottfried Dietze

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JAY'S FEDERALIST — TREATISE FOR FREE GOVERNMENT†

By GOTTFRIED DIETZE*

I.

John Jay, who held the post of Secretary for Foreign Affairs when the Federalist Papers were written, had from the beginning a share in that enterprise. As his biographer points out, the precise origin of the idea of the work arose "from one among the many conferences of Jay and Hamilton, possibly early in October, 1787."¹ The original partnership is evidenced by the fact that the introductory essay, written by Hamilton, is immediately followed by four essays written by Jay. The collaboration between the two seemed to be natural in view of the fact that Jay's constitutional opinions, — we need only think of his desire to reduce the States to administrative units and his advocacy of a hereditary upper house,² — closely resembled those of Hamilton. Madison, on the other hand, was not taken into the Federalist partnership until the latter part of November, having been approached by Hamilton only as a last resort after close political friends, such as Duer and Gouverneur Morris, had failed him.³ However, Jay fell ill before the end of November, and as late as the following February the excruciating pains he suffered prevented any continuous writing. He wrote only one more essay in March 1788, No. 64, with Hamilton and Madison sharing in the rest of the total of eighty-five essays.⁴ Thus Jay's major contribution toward the ratification of the Constitution was probably not his writing in the Federalist, but, rather, his "Address to the People of New York", published about the middle of April, 1788.⁵

† This article forms part of a comprehensive study of the Federalist which Professor Dietze intends to publish as a book next year. See, in this connection, the author's *Hamilton's Federalist — Treatise for Free Government*, 42 Cornell L. Q. 307 (1957) and in the forthcoming summer issue thereof (1957), as well as *Madison's Federalist — Treatise for Free Government*, in the forthcoming fall issue of the Georgetown L. J. (1957).

* Assistant Professor of Political Science, The Johns Hopkins University; LL.B., 1948, Dr. jur., 1949, University of Heidelberg; A.M., 1951, Ph.D., 1952, Princeton University; author, *Ueber Formulierung der Menschenrechte*, (Berlin 1956), and various articles in American and European journals.

¹ FRANK MONAGHAN, JOHN JAY: DEFENDER OF LIBERTY (1935), 289.

² See Jay's letter to Washington of Jan. 7, 1787, in HENRY P. JOHNSTON, (ed.), THE CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY, III, 227-28.

³ Cf. Douglass Adair, *The Authorship of the Disputed Federalist Papers*, Wm. & Mary Q., 3rd series, I, 247 (1944).

⁴ MONAGHAN, *op. cit.*, *supra*, n. 1, 290. For the authorship of Hamilton and Madison, see Adair, *op. cit.*, *ibid.*, 97-122; 235-64.

⁵ Published in JOHNSTON, (ed.), *op. cit.*, *supra*, n. 2, III, 294 ff.

However, it would be wrong to imply from Jay's relatively few essays that his contribution to the Federalist was unimportant. Quite the contrary was the case! Jay, who according to John Adams was, among the early Federalists, "of more importance than any of the rest, indeed of almost as much weight as the rest",⁶ enjoyed, at the time the Constitution was before the ratifying conventions, a far greater prestige than his younger collaborators. Having served at intervals as a delegate to the Continental Congress of 1774 and to the Congress which declared Independence, Jay had, after a spell in New York politics which included the office of Chief Justice of the State, become President of Congress in December, 1778. In the following year, he was appointed ambassador to Spain and shortly afterwards, in 1781, he became one of the commissioners for the peace negotiations. Jay had thus played an active political and diplomatic role before and during the War of Independence, whereas Hamilton and Madison, although by no means inactive during the war, "were of a succeeding generation, men formed in and by the revolution itself".⁷ Having "imbibed the Spirit of the revolution",⁸ — a spirit which Jay helped to frame, — they played a more active part on the political stage after the war. Jay's connection with the Federalist enterprise thus gave these papers "more consideration than both the other writers could have given them",⁹ the more so since it was sickness only that prevented Jay from taking a more active part in the writing of the Federalist and not a disagreement with the purpose and content of the work, with which he remained associated to the very end.

Aside from the difference in the quantitative contribution to the Federalist, the essays of Hamilton and Madison can be distinguished from those of Jay with respect to their content. Hamilton and Madison had, in the post war years, a first hand experience of the system of government under the Articles of Confederation. They had seen a marked decline of freedom through the establishment of legislative supremacy and the ensuing sheer majority rule in many of the States, resulting in infringements upon the rights of the minority and the individual. Consequently, their essays are mainly concerned with the internal advantages the American people could expect from an adop-

⁶ To James Lloyd on Feb. 6, 1815, in CHARLES FRANCIS ADAMS, (ed.), THE WORKS OF JOHN ADAMS, X, 115.

⁷ JOHN QUINCY ADAMS, AN EULOGY ON THE LIFE AND CHARACTER OF JAMES MADISON (1836) 16.

⁸ *Ibid.*

⁹ ADAMS, (ed.), *loc. cit.*, *supra*, n. 6.

tion of the Constitution that established a more perfect Union. Fundamentally, Hamilton and Madison are dealing with the relation between the individual and the state, from a theoretical as well as a practical point of view. On the whole, their arguments run like this. Being aware that the state of nature is a *bellum omnium contra omnes*, the individuals in order to be protected from the vicissitudes of anarchy, conclude a social contract through which society is established. The government most likely to protect the individual is one in which he has a right to participate, that is, popular government. This is a representative majority rule. Since, however, popular government is nothing but a means to secure the individual's life, liberty and property, popular participation in government must be subordinate to the citizen's protection from government, and the majority prohibited from oppressing private rights. This type of government, in which the liberal protection principle has primacy before the democratic participation principle, corresponds to Hamilton's and Madison's ideal of Free Government. In view of the existence of an oppressive majority rule in various States, that ideal is negated under the Articles of Confederation because the weak national government is in no position to prevent the oppression of the individual by the State legislatures. On the other hand the Constitution, establishing a stronger national government, realizes Free Government to a substantial degree because under the new system a majoritarian tyranny on the State level is not likely to exist, while, simultaneously, a Congressional despotism is, owing to the separation of powers, rendered improbable. In the period preceding the writing of the Federalist, both Hamilton and Madison noticed with grave concern the infringements of the individual's liberties by "interested and overbearing" majorities,¹⁰ or factions, in some of the States. Consequently, a distrust of sheer majority rule, as reflected in the most democratic branch of government, the legislature, runs through their essays. Therefore, their advocacy of a stronger Union is primarily in praise of a means to secure the individual's freedom from the majority and to create Free Government.

In contrast to his collaborators, Jay, in the Federalist, does not offer a systematic theoretical account on the relation of the individual to the state and the organization of

¹⁰ The words are used by Madison in the FEDERALIST. THE FEDERALIST, No. 10, at 54 (Modern Library ed. 1937). Quotations from THE FEDERALIST will hereinafter be cited by number and page only, *i.e.*, 10, 54.

government, nor does he deal with the internal aspect of the United States under the Articles of Confederation and the Constitution to any large extent. Jay had not participated in the Philadelphia Convention in which Madison and Hamilton played more or less prominent parts. At that time and in the preceding years, he served as Secretary for Foreign Affairs of the Confederation, following various diplomatic missions to Europe. He was thus especially fitted to write on the international relations of the United States and the treaty power of the new government, and to point out to the American people the advantages they could expect from a ratification of the Constitution in the international field. His essays start out from the premise that under the Constitution the United States would be a subject of international law, that is as one state, a premise both Hamilton and Madison are careful to establish. Consequently, Jay advocates the more perfect Union primarily as a means which is to secure the American's freedom from foreign nations.

II.

Jay's essays contain an enthusiastic confession to the Union cause, possibly the most romantic that was ever made by a leading American. Admonishing his countrymen to stay united, Jay brings forth in the *Federalist* an idea which was pronounced by Patrick Henry in the First Continental Congress and which was taken up by Lincoln after the outbreak of the Civil War,¹¹ namely, that the Union is older than the Constitution. Jay is pleased to note that "independent America was not composed of detached and distant territories, but that one connected, fertile, wide-spreading country was the portion of our western sons of liberty".¹² He continues:

¹¹ Henry's words were:

"The distinctions between Virginians, Pennsylvanians, New Yorkers and New Englanders are no more. I am not a Virginian, but an American . . . All distinctions are thrown down. All America is thrown into one mass."

EDMUND BURNETT, *LETTERS OF THE MEMBERS OF THE CONTINENTAL CONGRESS*, I, 14-15. Lincoln stated:

"Union is perpetual . . . much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774, . . . matured and continued by the Declaration of Independence in 1776. It was further matured by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objectives for ordaining and establishing the Constitution was 'to form a more perfect union'."

RICHARDSON, (ed.), *MESSAGES AND PAPERS OF THE PRESIDENTS*, VI, 5.

¹² 2, 8.

“Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances, present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities.”¹³

To this one-country idea Jay adds the concept of the one-people:

“With equal pleasure I have often taken notice that Providence has been pleased to give this one connected country to one united people — a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence.”¹⁴

To render the picture of American unity complete, Jay adds to his one-country and one-people concept that of one-nation:

“This country and this people seem to have been made for each other, and it appears as if it was the design of Providence, that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties . . . To all general purposes we have uniformly been one people; each individual citizen everywhere enjoying the same national rights, privileges, and protection. As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made treaties, and en-

¹³ 2, 9.

¹⁴ *Ibid.* The similarity of this passage to Chief Justice Chase's dictum in *Texas v. White*, 7 Wall. 700, 725 (U. S., 1869), that the Union came into being “out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations”, is striking.

tered into various compacts and conventions with foreign states."¹⁵

Not only is the Union older than the Constitution. It is also older than the Articles of Confederation, for "[a] strong sense of the value and blessings of union induced the people, at a very early period, . . . at a time when their habitations were in flames, when many of their citizens were bleeding, . . ." "to institute a federal government" in order to "preserve and perpetuate" the Union.¹⁶ The Articles were thus nothing but a confirmation of something already existent and, to Jay's regret, not too strong a confirmation. Complaining about the weakness of the national government,¹⁷ Jay finds the system of government under the Articles "greatly deficient and inadequate to the purposes it was intended to answer",¹⁸ namely, the protection of the freedom of the American people. He advocates the Constitution because it creates, in the more consolidated Union, a prerequisite for such a protection.

With these statements proclaiming the Union as something ideally suited to American conditions, Jay laid a solid basis upon which he could build his advocacy of a more powerful national government as a means conducive to the protection of the country from foreign force and influence. Warning that a partition of the United States into thirteen States or three or four great confederacies would lead to disaster, Jay shows the advantages of Union. It removes the "just causes of war" which "for the most part arise either from violations of treaties or from direct violence"¹⁹ because of the greater efficiency and better character of the federal government, as compared with the State governments.²⁰ The national government, as established under the Constitution, will therefore be in a good position to settle international disputes.²¹ Furthermore, the new Union will prevent unjust, or "pretended"²² causes of war. Due to its increased strength, it will be in a position to

¹⁵ 2, 9. Jay is not quite clear as to whether the geographical unity plus the ethnical unity constitute, while being a union, also a nation, or whether the 'nation' comes into being only by some federal pact, such as the Articles of Confederation. The context in which the word 'nation' is used in 2, 9, speaks for the latter alternative: The 'nation' appears as a subject in international law.

¹⁶ 2, 9.

¹⁷ 3, 16.

¹⁸ 2, 10.

¹⁹ 3, 14.

²⁰ 3, 14-15.

²¹ Essay 3.

²² 4, 18.

compel respect of other nations and to inhibit those nations from attacking.²³ Finally, the Union will prevent foreign influence in America by depriving the States of their quality as subjects of international law, thus rendering political alliances of these States with foreign nations impossible.²⁴

Since Jay in the *Federalist* deals mainly with the advantages of the Union as to the dangers from foreign force and influence, we can hardly expect to find in his few essays references to what constitutes the core of Hamilton's and Madison's contributions, namely, the concept of Free Government. Being concerned only with man's relation to the state and, in the main, with the question to what degree the majority should, for the sake of the individual's life, liberty and property, be restricted, that concept has nothing to do with the relations among the nations in the international sphere. This does by no means imply, however, that Jay in the *Federalist* does not accept the principle of Free Government. Not only can such an acceptance be concluded from his partnership in the work, but it follows from actual statements he made in his essays, no matter how loosely these statements may often appear to be connected with the idea of Free Government.

III.

Although Jay continually emphasizes the necessity of the Union — or, what amounts to the same thing, of power in the national government,²⁵ — for the protection against dangers from foreign countries, he leaves no doubt that the Union has a further end to achieve, namely, the people's "safety and happiness".²⁶ The Federal Convention was convened because the people wanted their threatened liberty protected,²⁷ and the men at Philadelphia "joined with the people in thinking that the prosperity of America depended on its Union".²⁸ Jay urges the ratification of the Constitu-

²³ Essay 4.

²⁴ Essay 5.

²⁵ 3, 13.

²⁶ 2, 8.

²⁷ The quality of the Union as a means for the protection of liberty is indicated in 2, 10:

"This intelligent people perceived these defects (of the Articles). Still continuing no less attached to union than enamored to liberty, they observed the danger which immediately threatened the former and more remotely the latter; and being persuaded that . . . security for both could only be found in a national government more wisely framed, they, as with one voice, convened the late convention at Philadelphia, to take that important subject under consideration."

²⁸ 2, 12.

tion because "[a]n entire and perfect union will be the solid foundation of lasting peace: It will secure . . . religion, liberty, and property, . . . our present and future happiness."²⁹ At first sight, it may appear as if Jay's mentioning such ends of the union as the people's safety and happiness, their life, liberty and property, means only that these rights of the individual will be guaranteed from foreign attacks. However, if we consider the polemics of the time in which the challenge to individual rights had its origin mainly in the oppressive majority rule which existed in some of the States, we seem to be justified in thinking that Jay, when pleading for the prosperity of America and the rights of her citizens, recognizes the danger arising from the then existing democratic despotism, and wanted the individual protected from that quarter as much as from dangers threatening from foreign nations. This is confirmed by him in so many words when he states that the Union, as established under the Constitution, is securing "the preservation of peace and tranquility" not only "against dangers from *foreign arms and influence*", but also "from dangers of the *like kind* arising from domestic causes",³⁰ that is, from those factions that were considered by both Hamilton and Madison the most serious danger to Free Government. We have no reason to believe that Jay conceives of factions in a different way than his co-authors,³¹ when, obviously having in mind the infringements upon minority rights under the Articles of Confederation, Jay complains that "the prospect of present loss or advantage may often tempt the governing party in one or two States to swerve from good faith and justice", and is glad that "those temptations, not reaching the other States, and consequently having little or no influence on the national government, the temptation will be fruitless, and good faith and justice be preserved".³² Jay continues:

"[E]ven if the governing party in a State should be disposed to resist such temptations, yet, as such temptations may, and commonly do, result from circumstances peculiar to the State, and may affect a great number of the inhabitants, the governing party

²⁹ 5, 22-23.

³⁰ 3, 13.

³¹ Madison gives an exposition of factions in essay 10. Although Hamilton nowhere in the *Federalist* defines "faction", there can, from the context in which he uses the term, be no doubt that it has for him the same meaning as for Madison. Cf. 9, 47; 26, 163; 65, 424; 70, 454; 78, 508-9; 27, 167; 65, 428; 15, 92; 85, 568.

³² 3, 15.

may not always be able, if willing, to prevent the injustice meditated, or to punish the aggressors. But the national government, not being affected by those local circumstances, will neither be induced to commit the wrong themselves, nor want power or inclination to prevent or punish its commission by others."³³

Thus Jay's opinion on the dangers arising from local factions and the remedy against them has great resemblance to statements made by Hamilton and Madison in their famous essays 9 and 10. That similarity appears especially interesting in view of the fact that Jay, when writing the remarks just quoted, was obviously mainly concerned with the infringements upon the property of the minority as they occurred at that time.³⁴ The same apprehension can be noticed in Hamilton's and Madison's essays.³⁵ Therefore, it can admit of no doubt that Jay, in the *Federalist*, is as fearful of democratic despotism as are his co-authors.

This fear is based on Jay's opinion of man, which is by no means a very favorable one. He complains:

"It is too true, however disgraceful it may be to human nature, that nations in general will make war whenever they have a prospect of getting anything by it; nay, absolute monarchs will often make war when their nations are to get nothing by it, but for purposes and objects merely personal, such as a thirst for military glory, revenge for personal affronts, ambition, or private compacts to aggrandize or support their particular families or partisans."³⁶

Man is depicted as jealous,³⁷ who, motivated by the "dictates of personal interest",³⁸ is likely to "swerve from good faith and justice".³⁹ There will often be "little room for . . . calm and mature inquiries and reflections",⁴⁰ and people are likely to be deceived and deluded.⁴¹ On the other hand,

³³ *Ibid.*, 15-16.

³⁴ *Cf.* his letters to John Adams of Nov. 1, 1786 and Feb. 21, 1787; to Jefferson of Aug. 18, 1786, Oct. 27, 1786, April 24, 1787; to Washington of Jan. 7, 1787 — HENRY P. JOHNSTON, (ed.), *THE CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY, III*, 214, 234, 210, 212, 244, 226. In the *Federalist*, Jay says that "the case of the treaty with Britain adds great weight" to his reasoning (3, 15), probably having in mind the infringement of the rights of Englishmen and former loyalists.

³⁵ *Cf.* the author's articles cited in the first (†) footnote.

³⁶ 4, 18.

³⁷ 5, 23-25.

³⁸ 2, 11.

³⁹ 3, 15.

⁴⁰ 2, 10.

⁴¹ 2, 11.

Jay admits that there are positive qualities in man. He is glad to note that the majority of the American people, when accepting certain recommendations of the Congress of 1774, "reasoned and decided judiciously",⁴² and that "this intelligent people perceived and regretted" the defects of the Articles of Confederation.⁴³ The Federal Convention, he feels, was composed of men many of whom "had become highly distinguished by their patriotism, virtue, and wisdom", who were not "awed by power, or influenced by any passions except love for their country".⁴⁴ Also, Jay expresses his confidence in the new national government, trusting that, since it will be composed of the "best men in the country",⁴⁵ its administration, political counsels and judicial decisions will be "more wise, systematical, and judicious than those of the individual States",⁴⁶ and wisdom and prudence will govern its decisions.⁴⁷

Jay, by not committing himself as to the nature of man, puts himself, just as Hamilton and Madison do, in a position which is most advantageous for an adherent of Free Government. By depicting man as bad and passionate, he can denounce the system under the Articles of Confederation for being too democratic and thus oppressive of minority rights. On the other hand, by describing man as good and reasonable enough to be trusted with self-government, as provided for by the Constitution, Jay can come forward with his advocacy of the new government.

The new system is to be recommended because it diminishes, while remaining a popular government, the chances of faction and democratic despotism. This is due to a selective process by which the national government will become a highly refined body.

"[A]lthough town or country, or other contracted influence, may place men in State assemblies, or senates, or courts of justice, or executive departments, yet more general and extensive reputation for talents and other qualifications will be necessary to recommend men to offices under the national government, — especially as it will have the widest field for choice, and never experience that want of proper persons which is not uncommon in some of the States."⁴⁸

⁴² *Ibid.*

⁴³ 2, 10.

⁴⁴ *Ibid.*, see also 3, 13; 3, 15.

⁴⁵ 3, 14.

⁴⁶ 3, 15.

⁴⁷ 3, 16.

⁴⁸ 3, 14-15. A similar statement is made at 4, 20.

Owing to its superior composition, the national government is unlikely to be swayed by passions that result in violence.⁴⁹ Rather, its proceedings will be characterized by "moderation and candor".⁵⁰ Being "more temperate and cool" in their deliberations,⁵¹ the national government will be relatively free from those local factions that result in grave injustice toward minorities in the States.⁵²

Seeing the danger to the protection of the individual's rights arise mainly from the legislative body, Jay is careful to point out the refined character of that branch on the national level in essay 64, where he comments on the treaty-making power. It is in this essay where Jay's distrust of democracy seems to be most evident. On the whole, it may be said that his scepticism toward popular government increases with the immediacy of that government. Jay is happy to note that the power to approve treaties is not vested, under the Constitution, in the popular assembly, directly elected by the people, but, rather, in the Senate, the members of which are appointed by the State legislatures,⁵³ which "will in general be composed of the most enlightened and respectable citizens", whose votes "will be directed to those men only who have become the most distinguished by their abilities and virtue, and in whom the people perceive just grounds for confidence".⁵⁴ Since the Constitution excludes men under thirty from the office of senator, "it confines the electors to men of whom the people have had time to form a judgment, and with respect to whom they will not be liable to be deceived by those brilliant appearances of genius and patriotism, which, like transient meteors, some times mislead as well as dazzle".⁵⁵ Treaties and laws will thus bear the mark of human wisdom rather than passion, because they are "cautiously formed".⁵⁶

In a polemic against majority despotism in the States, both Hamilton and Madison denounce, in the *Federalist*, the mutability of the laws. In a like manner Jay considers the instability of treaties, which after all are the supreme law of the land, as being destructive to public morale. Consequently, he lauds the new system for matching a wise

⁴⁹ 3, 16.

⁵⁰ 3, 17.

⁵¹ 3, 16.

⁵² 3, 15.

⁵³ 64, 417-18.

⁵⁴ 64, 417.

⁵⁵ *Ibid.*

⁵⁶ 64, 419.

mode of election by good provisions pertaining to the tenure of senators, which will contribute to a steady policy. Jay wrote:

“[A] popular assembly, composed of members constantly coming and going in quick succession . . . must necessarily be inadequate to the attainment of those great objects, which require to be steadily contemplated in all their relations and circumstances, and which can only be approached and achieved by measures which not only talents, but also exact information, and often much time, are necessary to concert and to execute.”⁵⁷

He was glad that the Convention was so wise as to provide:

“. . . not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with our national concerns, and to form and introduce a system for the management of them.”⁵⁸

Finally, Jay praises the Convention for providing for a partial renewal of the Senators only, “for by leaving a considerable residue of the old ones in place, uniformity and order, as well as a constant succession of official information, will be preserved”⁵⁹

Although Jay likes the idea of vesting the treaty-making power in a high-caliber legislative chamber like the Senate, he opposes those who argue that this power should, since treaties are to have the force of laws, exclusively reside in that body. In this connection, he comes forth with a strict denial of legislative supremacy. He reminds the inhabitants of New York that “the judgments of our courts, and the commissions constitutionally given by our governor, are as valid and as binding on all persons whom they concern, as the laws passed by our legislature”.⁶⁰ Jay states that:

“All constitutional acts of power, whether in the executive or in the judicial department, have as much legal validity and obligation as if they proceeded from the legislature; and therefore, whatever name be given to the power of making treaties, or however obligatory they may be when made, certain it is, that the

⁵⁷ 64, 418.

⁵⁸ *Ibid.*

⁵⁹ 64, 419.

⁶⁰ 64, 420.

people may, with much propriety, commit the power to a distinct body from the legislature, the executive, or the judicial. It surely does not follow, that because they have given the power of making laws to the legislature, that therefore they should likewise give them the power to do every other act of sovereignty by which the citizens are to be bound and affected."⁶¹

Therefore, the Constitution is to be praised for giving the President a substantial share in the conclusion of treaties. Since the chief executive is elected by a process which is even more selective than the one used for the election of senators,⁶² he is likely to be a man of great integrity who in many cases will be able to assume the leadership of the Senate. Jay, being afraid that the size of the Senate might prevent an effective foreign policy under circumstances which make an immediate action imperative, is glad to note that "those matters which in negotiations require the most secrecy and the most despatch", can be dealt with by the President directly, and that, on the other hand, "should any circumstance occur which requires the advice and consent of the Senate, he may at any time convene them".⁶³ The Constitution thus provides for the compatibility of an effective foreign policy with the democratic process while, at the same time, making sure that even the more conservative chamber of the most democratic branch of government will be checked in the exercise of its treaty and law making power. Once treaties are approved and ratified, Jay comments in a concluding remark against the will of the democratic majority, "they are just as binding, and just as far beyond the lawful reach of legislative acts now, as they will be at any future period".⁶⁴

IV.

The preceding pages have demonstrated that Jay's Federalist, although mainly concerned with aspects of international relations, also deals with the position of the individual in the state. There can be noticed a distrust of sheer majority rule and democratic despotism stemming from an apprehension lest the individual's life, liberty and property might be oppressed, which is so characteristic a feature of Hamilton's and Madison's essays. Similarly the

⁶¹ 64, 420-21.

⁶² 64, 417-18.

⁶³ 64, 420.

⁶⁴ 64, 421.

Union, while increasing the prestige of the nation abroad, also has the function of securing freedom at home. This cannot be surprising in view of the fact that Jay, by participating in the Federalist enterprise, naturally had to identify himself with the fundamental ideas that were expounded by his collaborators. Besides, this political belief is absolutely in line with Jay's thinking ever since he entered political life. And his early career shows him as an unequivocal believer in a popular government which protects individual rights.⁶⁵ Few in numbers, Jay's essays in the Federalist are, like those of Hamilton and Madison, imbued by the spirit of Free Government.

⁶⁵ For Jay's advocacy of the protection of individual rights, see the letter to the Committee of Correspondence at Boston of 1774, his address to the People of Great Britain of the same year, his address to the New York Convention, and his charge to the Grand Jury of Ulster County. Cf. also his letters to Florida Blanca of April 25, 1780; to Washington of June 27, 1786; to Jefferson of Aug. 18, 1786 and Feb. 9, 1787; to Gov. Morris of Sept. 24, 1783 — HENRY P. JOHNSTON, (ed.), *THE CORRESPONDENCE AND PUBLIC PAPERS OF JOHN JAY*, I, 13 ff., 17 ff., 102 ff., 158 ff., 284; III, 204-5, 211, 232, 85. Cf. also the letters referred to *supra*, n. 34. For his fundamental belief in popular government, see Jay's letter to Washington of Jan. 7, 1787, *ibid.*, 226.