Power, Justice, and Foreign Relations in the Confederation Period: The Marbois-Longchamps Affair, 1784-1786

Historians of the early Republic who have not ignored the Marbois-Longchamps Affair altogether have dismissed the case as being at best a minor diplomatic episode in the history of the young nation and at worst a trivial incident. However, a close examination of the political, legal, and diplomatic repercussions created by Charles Julian de Longchamps' assault upon the French Consul, François Barbé de Marbois, suggests that it played


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an important role in the shaping of Pennsylvania's constitutional arrangements at a crucial moment in that state's history. A careful exploration of its ramifications suggests, too, that few events in Pennsylvania during the Confederation Era did more to lay bare the difficulties faced by citizens of that state in their strivings to formalize republican ideals and practices and, so far as they could influence the tone and direction of American diplomacy, to promote foreign relations based on those enlightened concepts.²

Despite having achieved remarkable successes by 1784, the American Confederation remained beset by problems. The power of Congress dwindled in that year as did the number of members in attendance. Congressional foreign policy remained tentative and its strategy for defining the powers of foreign diplomatic personnel and for protecting their persons and property continued largely unformed. To what extent the young Republic recognized the law of nations was still virtually uncharted. Denied power to raise revenue or to secure acceptable foreign trade agreements, unable to pay its debts, faced with a nagging depression and fearful lest England undermine Franco-American friendship and successfully wed her former colonies once again to her interests, Congress gave every sign of becoming an "Invisible State." Strains between Congress and the states contributed their own force to Congress' deterioration throughout 1784. Longtime congressional disagreements with Pennsylvania officials, for instance, led the national government in June 1783 to desert Philadelphia in favor of a series of temporary residences. As Congress assumed what one foreign minister termed its "ambulatory character," states looked to their own resources for solutions to their problems.³

² Studies of early American republicanism and the implications of republican values and assumptions for America's domestic and foreign policies are numerous and increasing rapidly. Although now outdated, the best survey of the literature remains Robert E. Shalhope's "Towards a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography," William and Mary Quarterly, XXIV (1972), 49-89. The emergence of, and changes in, America's republican ideas are traced in detail in Gordon S. Wood, The Creation of the American Republic, 1776-1787 (Chapel Hill, 1969).

Yet confusion and turmoil were not strangers to individual states. Pennsylvania was more openly torn than most. Myriad political, constitutional, legal and social issues divided state leaders, fostered widespread discord, and stimulated jealousy and infighting among its governmental branches. In November 1783, the Council of Censors met, charged with evaluating past political and constitutional developments and proposing changes within the state. Partisan debate within that Council, especially over whether or not to call a convention to amend or abolish the current state constitution, exacerbated the already heated political climate throughout the remainder of the year and into 1784. Furthermore, violence in Pennsylvania's Wyoming Valley and an increasing number of reported robberies and assaults throughout the state fueled tension as did the ongoing and often vitriolic debate over the nature and direction of America's republican values and institutions.

It was this often turbulent and, in some respects, fragile society that Charles Julian de Longchamps encountered upon his arrival in Philadelphia in September 1783. His problems began almost immediately. A series of minor scrapes with the law brought him to the attention of city magistrates, though he was eventually found inno-
cent in one instance and permitted to remain free on a peace bond in another. His seduction of a well-to-do Quaker girl and his subsequent marriage to her against the wishes of her guardians outraged the local Quaker community. Suspecting that his claims of being well connected, even titled, were false, the girl’s guardians sought confirmation of Longchamps’ assertions from the French legation in Philadelphia. When informed that Longchamps’ claims were (as one member of the diplomatic corps put it) “a web of lies,” that he was a mere “adventurer,” the son of a petty merchant from Tours or St. Malo, the guardians initiated a campaign in the local press against him, belittling his reputation and warning local females against unscrupulous Frenchmen.

Longchamps himself visited French authorities on numerous occasions seeking certification of his titles and military honors. Suspicious of Longchamps and appalled by accounts of his criminal past, the Chevalier de la Luzerne, French Minister to the United States, advised his ride, Marbois, to have nothing to do with Longchamps, declaring that “it was clear that he intended to abuse” the authentication he desired. Offended by the legation’s reticence, Longchamps called at Luzerne’s residence on May 17, 1784, where he threatened to “dishonour” Marbois. Then, meeting the Consul in the street two days later, he physically assaulted him, forcing


Charles Thomson, Secretary of Congress, was convinced that Longchamps had been involved with the American military effort as early as 1775 and had, in fact, either spied on the Americans for the British, or tried to do so. Later court testimony refuted this. Thomson to Benjamin Franklin, Aug. 13, 1784, Bache Papers, American Philosophical Society (APS).

8 Besides claiming the title Chevalier for himself, Longchamps offered brevets and commissions purportedly establishing that he had served as a sub-brigadier to a company of dragoons in Noailles comprised exclusively of nobles.

Marbois (as Jefferson later described it) "to box in the street like a porter."\textsuperscript{10}

Luzerne, who hours before the May 17 incident had written his superiors reiterating the importance of France securing a consular agreement with the United States as a necessary step in reducing the "licentiousness" and "insolence" of French "adventurers" in Philadelphia, was beside himself. He ordered Marbois to bring the May 17 threats to the attention of the president of the state, John Dickinson.\textsuperscript{11} Following the May 19 assault Luzerne demanded Dickinson's "immediate Interposition" in providing "satisfaction of a violation of the Rights of Nations." He also insisted that Longchamps be taken into custody and released to French officials so that he might be returned to France and "punished, according to the Laws of the Kingdom." The French Minister hinted darkly that should "the security of all those who . . . reside here in a public character" be judged unsafe, steps might be taken to remove the diplomatic corps, like Congress before it, from the state. Sensitive to the realities of America's constitutional arrangements and vitally aware of local political currents, Luzerne determined that the first line of attack against Longchamps (and, indirectly, against those like him) should be Pennsylvania. As a courtesy to Congress, however, he sent that body details of the altercation.\textsuperscript{12}


\textsuperscript{11} Luzerne to Vergennes, May 17, 1784, AD:CP, XXVII, 367-368. The French minister had also brought the need for a consular treaty to the attention of Congress several days earlier. Initially he had submitted a draft for a consular treaty to Congress on July 26, 1781. A congressional committee did not report on this draft until January 1782, and it was discussed at length on the 25th of that month. There was criticism of the French draft from the outset. See W. C. Ford, et al., eds., The Journals of the Continental Congress, 1774-1789 (Washington, 1904-1937), XX, 792; XXII, 43-44, 46-54. For evidence of rampant crime in Pennsylvania, particularly in Philadelphia, see Pennsylvania Gazette, May 12, 17, 1784; Pennsylvania Packet, May 11, 15, 1784.

\textsuperscript{12} Luzerne to Dickinson, May 19, 1784, Pa. Arch., 1st Ser., XI, 462-464; Luzerne to Congress, May 20, 1784, Papers of the Continental Congress (Washington, National Archives Microfilm Project), Item 95. Luzerne chided Dickinson by observing "... it is the opinion of people who are badly informed that the greatest license prevails in this City." Luzerne left no doubt in his letter to Vergennes, dated May 17 (and cited above), that he believed, indeed, there was too much violence in Philadelphia.
As ordered on May 17, Marbois had brought the matter of Longchamps' threats before Dickinson, "for [his] private Information." He met with Dickinson the following day at Dickinson's request but refused to become part of a move to place Longchamps on parole to keep the peace, arguing that the proposal would make him, as well as Longchamps, subject to American courts. Persuaded in the end, however, that Dickinson's "Exhortations had recalled [Longchamps] to his duty," Marbois did not protest the lack of formal state action. When Longchamps subsequently attacked him in the street on the 19th, Marbois, acknowledging his subordinate position, deferred to Luzerne in articulating the legation's outrage.\(^{13}\)

What has appeared as a minor incident to later historians was viewed by state officials at the time as a potentially explosive situation. Thus, even though Marbois' note on May 17 to Dickinson indicated that "there [was] no actual occasion to take notice of [Longchamps'] conduct," Dickinson had immediately summoned Longchamps to the State House where he sought to persuade the tempestuous Frenchman to place himself voluntarily under a peace bond. However, he failed to secure from Longchamps anything more than a promise "as a citizen of the state" to "try to keep the peace." Dickinson's response to Luzerne's note of May 19 was somewhat more decisive. He convinced the Supreme Executive Council to issue a warrant for Longchamps' arrest, and ordered Associate Justice George Bryan "to give proper directions for its immediate and effectual execution." Under Dickinson's prodding, the Supreme Executive Council also offered a reward for Longchamps' capture.\(^{14}\)

Although inundated by problems and not anxious to face additional controversy, Congress did not minimize the importance of Longchamps' attack upon Marbois. Diplomatic questions posed particular problems for Congress, for America was without a Minister of Foreign Affairs and had been for some time. John Jay had been elected Secretary for Foreign Affairs on May 7 but was not...

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scheduled formally to take office for another seven months. There was some question as late as August as to whether he would accept the post. Diplomatic questions involving France posed special problems. In fact, if not in law, the Franco-American alliance had ended. Americans now preferred to exult their own glory and accomplishments rather than to stress their dependence on allies. Yet Americans readily acknowledged the pivotal role played by their French allies in the war, and many eagerly anticipated the enlargement of the Franco-American trade and amity agreement. Preliminary negotiations were underway between Benjamin Franklin and the Comte de Vergennes for a consular treaty but, as of May, Congress was ignorant of their progress. Complicating matters was the fact that a number of important congressmen adamantly opposed any consular agreement with France, and Jay himself was known to be cool to such a plan. The Longchamps incident and the question of a consular agreement were not easily divorced in congressional minds. Any consular understanding would perforce identify the powers, privileges and protections accorded foreign consuls. But even congressmen promoting a consular understanding with the French understood that such a treaty would not, under current conditions, bind the states. Thus, though the Articles of Confederation clearly conferred on Congress power to conduct foreign affairs by providing that body exclusive right to appoint and receive ministers, make treaties of commerce and amity, and to wage war and conclude peace, congressional circumstances in 1784 and the special nature of Longchamps' assault upon Marbois thrust Pennsylvania forward as the primary American voice in shaping Franco-American relations. France was compelled to treat with the state rather than exclusively with Congress in its efforts to secure Longchamps' release and to avenge Marbois.

16 Ford, et al., eds., *Journals of Continental Congress*, XXII, 54; XXVI, 355; Samuel F. Bemis, ed., *The American Secretaries of State and Their Diplomacy* (New York, 1927), 1, 261; Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (New York, 1979), 344. Most congressmen recognized, as they debated Luzerne's draft in January 1782, that any consular agreement would have to be tied to state legislation making a treaty part of each state's laws. James Madison and Charles Thomson were two who believed the states must defer to congressional treaty-making power.

16 There exists no adequate study of foreign policy questions faced by the individual states and the means by which they confronted them. State responses to foreign policy issues are generally mentioned only in passing, if at all.
Jefferson, preparing to take up his duties as American Minister to France, recognized the distance between the paper powers of the Articles and the realities of 1784. On May 21 he complained to Charles Thomson, Secretary of Congress, that the Longchamps incident (he characterized it as "a very daring insult") boded ill for him in his new duties. He promised Thomson he would "make [himself] acquainted with the facts because it will possibly be the cause of something disagreeable here, & perhaps on the other side of the water." His concern deepened in the next four days. He told James Madison on May 25 that he feared the case would "go next to France and bring on serious consequences." Yet he clearly understood that Congress offered no hope, for Congress had "the will but not the power to interpose." The state would have to act, according to Jefferson, and it was in little better position to resolve the issue than Congress. As he told Madison, Pennsylvania had no laws "to punish [Longchamps] sufficiently here or to surrender him to be punished by his own sovereign." He also thought Dickinson's congenital indecisiveness would frustrate efforts to wring from the State General Assembly appropriate legislation.

As a congressional committee pondered Luzerne's angry note of May 20 and contemplated a response to it, state authorities frantically tried to locate Longchamps. They were embarrassed to learn from Luzerne on May 22 that "Mr. Longchamps [had] appeared in town and went to and from his home without any difficulty." Luzerne's comment to the effect that he was "persuaded that this fact will appear as extraordinary to you as to me," gave the harried Dickinson and the Supreme Executive Council little comfort. Fortunately for the officials, Longchamps was taken into custody later that same day and Dickinson was able to hurry the details of the arrest to the French legation.

To the exasperation of the French, Dickinson also notified them that Longchamps had been released on bail. The bail required by Justice Bryan "was in fact very considerable"—"30 or 40 times more than ordinarily," the French were told—but a Phillip Weiss had


agreed to become answerable, and Longchamps was freed.19 The state's insistence that such proceedings were consistent with the general practice in America failed to pacify the angry French. Luzerne's obvious disenchantment with state action and Dickinson's own growing uneasiness over the course of the affair subsequently prompted authorities to re-evaluate their position. Under considerable pressure to retract his bond, Weiss capitulated a few days later. To the chagrin of the officials, Longchamps refused to surrender voluntarily.20

In the meantime, support for the French position among members of the foreign diplomatic corps became more strident. Peter John Van Berckel, recently-arrived Minister to the United States from the Netherlands, joined Luzerne in a campaign to ensure that the law of nations be recognized by both Congress and Pennsylvania. They pressed officials in accordance with the tradition of the law of nations to guarantee Longchamps' release to French jurisdiction. Once again they threatened to remove their delegations from the state should their wishes in the matters of Longchamps and the law of nations go unheeded, and warned that members of the Swedish and Spanish diplomatic staffs were prepared to follow their lead. This threat, coupled with rumors that Marbois was conducting his own search for Longchamps in the hope of challenging him to a duel, increased the consternation of the leadership on both state and national levels.21

19 Luzerne to Vergennes, June 19, 1784, AD:CP, XXVII, 424-431; Freeman's Journal, Aug. 4, 11, 1784. The French suspected that George Bryan's role in these developments was "political" and designed to make life difficult for Dickinson.


21 Van Berckel who, it was said, harbored "the most unfavorable opinions of men & things in [America]," was eager to pressure Congress. Insulted by his congressional reception, he remained disenchanted with Congress' reluctance to repay Dutch loans and distressed by the harassment of Dutch diplomatic personnel (including himself and his son) at the hands of local hoodlums. Luzerne to Vergennes, June 19, 1784, AD:CP, XXVII, 424-431; Luzerne to Vergennes, Nov. 1, 1784, quoted in William E. O'Donnell, The Chevalier de La Luzerne: French Minister to the United States, 1770-1784 (Bruges, 1938), 246n; Report of P. J. Van Berckel, Algemeen Rijksarchief, Legatie Archieven, no. 1161, The Hague. The fact that Marbois at one point sought to provide bail for the prisoner raised fears that the French wished to have Longchamps free so that he could be whisked away aboard a French vessel and returned to France.
Dickinson confessed in private that he would be pleased to have the French simply spirit Longchamps away and do with him what they might. Yet, in his formal correspondence, he continued to pursue a cautious if obsequious course. He knew that individuals interested in having Congress remain away from Philadelphia, and in having that body select another site as the national government’s permanent residence, pointed to Longchamps’ actions as proof the city was inhospitable, even hostile, toward foreign diplomatic personnel. He also was clearly, and justifiably, apprehensive that anything he might do under the circumstances would have dire political consequences for himself and fellow Republicans within the state.¹²

The Council of Censors, adjourned since January 21 but scheduled to be reconvened on June 1, promised an even more furious debate over the current state constitution than that which emanated from the earlier session. The state’s Republicans, who outnumbered their opponents in the first session of the Council, and who were often more cosmopolitan, urbane, and commercially oriented than the Constitutionalists, were more sympathetic toward, and tended to identify more closely with, the French. Indeed, profitable contracts between Republican merchants and the French helped to wed Republican interests to those of France. Constitutionalists were more ambivalent toward America’s foremost Revolutionary ally. Appreciative of the generous aid provided by the French during the Revolution and fully aware of how large a role French influence had played in the outcome of that struggle, Constitutionalists never lost sight of the fact that French assumptions and practices often remained incompatible with, and perhaps inimical to, America’s republican values and institutions. More than Republicans they feared that French “aristocratic” and “old world” ideals would compromise both America’s republicanism and its independence.

Republicans controlled the General Assembly and held numerical superiority in the Supreme Executive Council at the onset of 1784,

but their position in both, as well as in the Council of Censors, was precarious. If, then, current Republican dominance in the state augured well for any favorable accord with the French over Longchamps, a number of factors made any swift concurrence unlikely. Certainly it made any rapid deference to French aims difficult, perhaps even politically suicidal.  

At least the question of Longchamps’ whereabouts was resolved by May 27 when he was again taken into custody. Dickinson, by now convinced that the foreign diplomatic community would make good its threat to leave the city should the Longchamps incident not be concluded to its satisfaction, hastened to inform Luzerne and Van Berckel of Longchamps’ capture. The state was able to take the first tentative steps toward lodging formal charges against him when Marbois, still reluctant to participate in the state’s legal proceedings for fear his actions would be interpreted as acknowledging Pennsylvania’s jurisdiction over himself and Longchamps, agreed to provide a deposition of the facts. He warned that his actions should not be considered a precedent of any kind. Luzerne added weight to the French push to have Longchamps incarcerated under heavy guard until he could be released to French authorities by providing Dickinson with still another request for Longchamps’ custody, and another exhortation to Congress to move swiftly to declare the law of nations part of American law.  

A proponent of a strengthened, vigorous central government and sensitive to Congress’ recent estrangement from Pennsylvania, Dickinson supplied the national government with details of the Longchamps developments and informed President Thomas Mifflin, a fellow Pennsylvanian, that Pennsylvania “should be much pleased to be favored with the sentiments of Congress upon the Business.” He and his colleagues in the Supreme Executive Council were “extremely desirous that [the] proceedings correspond with [con-

24 Sheriff to Dickinson, May 27, 1784; Dickinson to Van Berckel, May 27, 1784; Dickinson to Luzerne, May 27, 1784; Marbois to Dickinson, May 27, 1784, Pa. Arch., 1st Ser., XI, 469-471, 477. That Dickinson believed that the French and Dutch were prepared to leave the city “immediately” can be confirmed in his letter to McKean, May 25, 1784, McKean Papers, HSP.
gressional] Judgment,” he told them. Congress responded cautiously, passing a number of resolutions designed to appease the French and to commend recent state actions—but not without opposition. It also accepted a resolution on May 28 declaring it essential to the safety and harmony of the American union to make the law of nations an integral part of American law, but it was unprepared to take more direct action until Pennsylvania clarified its own course of action.

As became quickly obvious, however, no consensus existed among state leaders as to the wisest path to follow. Four times between May 20 and June 2 Dickinson wrote his Supreme Court justices, who were still on circuit, seeking their advice. His correspondence mirrored his ambivalence toward the Longchamps developments. He vacillated between urging the justices to “proceed to the Trial of the offender with all the dispatch which the rules of Law will permit, so that a proper punishment may be inflicted,” and bypassing the Court to favor French demands. On June 2 he and the Supreme Executive Council wished to know if the Council could “legally seize the offender and imprison him, till his trial or for a short time,” and if it could “legally deliver him to the Minister of France, according to the claims made by him.” The judges finally responded on June 7 that the Supreme Executive Council could not arbitrarily seize Longchamps once he had secured bail. More importantly, they ruled that the Supreme Executive Council could not deliver Longchamps up to Luzerne or to any other French official. The justices made it clear that Longchamps must be tried and punished under American law and in American courts. Chief Justice McKean observed that “there is no doubt but [that] the Consular power . . . extend[s] to cases of this kind, between subjects of the same Sovereign by a particular convention or Treaty . . . .” It was because McKean and

25 Ephraim Paine (NY), John Beatty (NJ), James Montgomery (Pa.), and Edward Hand (Pa.) voted against the resolution commending state action.
his fellow justices had "not heard of any such between His most Christian majesty and the United States" that the judges ordered Dickinson to proceed with a state trial against Longchamps. The justices did not at this point put themselves on record as to whether they accepted the assumption found in Emmerich de Vattel's *The Law of Nations* that when a diplomatic matter arises between two states where no treaty existed to cover the particulars, the solution must be found in the law of nations. Nor did they indicate to Dickinson whether they considered the law of nations part of Pennsylvania law. They did offer to move up the next Oyer and Terminer proceedings in Philadelphia by four days, to June 24, should that be of any help.  

But even as the judges pondered the Supreme Executive Council's questions and formed a reply, Longchamps was free again. On June 3 during a break in a habeas corpus hearing he hoodwinked the sheriff and fled the city. Despite Dickinson's passionate denials and a hastily convened hearing on the sheriff's conduct, the exasperated Luzerne suspected that state authorities were in collusion with the criminal and viewed his escape as a means of circumventing the whole embarrassing affair. Marbois dismissed talk of collusion but remained convinced that state personnel had been almost criminally negligent.  

On June 8 the elusive Longchamps was recaptured and confined under heavy security. His incarceration came just twelve days before Luzerne was scheduled to turn his legation over to Marbois and embark for France. Preparing for his departure, Luzerne, who had exercised great latitude in determining French policy in the United States throughout his long tenure as Minister, made his wishes re-  

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28 Consult *Pa. Arch.*, 1st Ser., X, 271-274, for various depositions, and Dickinson to Luzerne, June 4, 1784; Marbois to Dickinson, June 8, 1784, in *ibid.*, X, 275-276; XI, 482-483. Suspicion centered on John Reynolds, the sheriff, because he was said to be a "long time," "intimate" friend of the prisoner.  

29 Reynolds to James Ewing, June 8, 1784; Luzerne to Dickinson, June 10, 1784, *ibid.*, X, 277, XI, 487. Luzerne's decision to leave America had nothing to do with internal developments there. He had requested the termination of his duties long before the Longchamps case arose.
Regarding Longchamps clear to his successor. Marbois, now chargé d’affaires, was to “insist constantly” that Longchamps be returned to France under heavy guard to stand trial there, or “at the very least,” to insist that he be detained in an American jail until the King had the opportunity to make his wishes formally known. If Marbois had reason to believe that Pennsylvania’s judges were going to try Longchamps and were prepared simply to give him a fine and a short-term confinement, Marbois was to protest this as “contrary to the written assurances given on several occasions by Congress, and by . . . Pennsylvania . . . .” Finally, if the judges should put Longchamps “at liberty,” Marbois was to “withdraw immediately to the congressional residence to await orders . . . .”

Aside from the obvious political and diplomatic ramifications of the case, Longchamps’ assault upon Marbois posed a number of particularly thorny legal questions not specifically identified by Dickinson in correspondence with his judges. Vattel’s *The Law of Nations* (studied carefully by all concerned) offered no clear-cut answers. Nowhere did Vattel convincingly uphold French claims that Longchamps must be returned to France. Nor did he provide clear standards to guide American conduct. At one point (Book II, chapter 8) Vattel argues that a man in Longchamps’ position and charged with his crimes “ought to be punished according to the laws of the country” (in this case, America). In another (Book IV, chapter 7), he suggests that the punishment of an individual accused of Longchamps’ misdeeds “should be punished for his fault, and that the state should, at the expence of the delinquent, give a full satisfaction to the sovereign affronted in the person of his minister.” In still another, he notes that such punishment “does not depend on the prince, in whose country the crime has been committed, but on him who has been offended in the person of his representative.” Confusing the matter further, Vattel distinguished between protections accorded consuls under the law of nations, and protections held by other members of the embassy, such as secretaries. Therefore, whether Marbois (who was both Luzerne’s secretary and a French consul) was struck in his capacity as a consul or in the pursuit of his secretarial duties loomed large. Complicating matters still more was

30 Luzerne to Marbois, June 20, 1784, AD:CP, XXVII, 432.
the fact that the most public, obvious, and violent attack upon Marbois came outside the French legation. Vattel judged it a very different thing to have a consul assaulted in the streets than to have a secretary or, for that matter, a consul attacked within the sanctity of a legation. Finally, Pennsylvanians had to read Vattel in terms of what each separate “state” could do under particular circumstances and in light of specific developments. But because Vattel invariably used “state” to mean “nation-state,” his assumptions about “state” powers under the law of nations did not shed much light on options available to Pennsylvania, a state within a nation-state.  

American reaction to the law of nations was at best ambivalent. If a good many American Revolutionary leaders were attracted to the law of nations because of their faith in the rule of law in domestic society and America’s origin in natural law, and saw in the law of nations an important guarantee of America’s independence and sovereignty, there were those whose acceptance of the law of nations was qualified by the assumption that it should be, and would be, shaped by American standards. They acted on the assumption that the municipal law of civil society became the law of nations in the world society. The Longchamps incident, as we shall see, convinced many Pennsylvanians that if American standards were not part of an international law, they wanted no part of the law of nations.

Although serious disagreements remained among Pennsylvania's leaders, particularly between Court and Council on the proper disposition of Longchamps, feverish preparations for the trial produced a temporary illusion of unity. Bowing to the Court's determination to maintain its authority over Longchamps, Dickinson named his former protégé, the eminent James Wilson, to assist Attorney General William Bradford in the prosecution of the case. To Jonathan Dickinson Sergeant, former Attorney General, and to John Vannost, a young lawyer with six years practice in Philadelphia, fell the task of defending Longchamps against charges that he threatened bodily harm to Marbois, and that he had unlawfully struck him in violation

32 American reaction to the law of nations, including American desire to shape that law along American standards, is discussed in Greg L. Lint, "The American Revolution and the Law of Nations, 1776-1789," Diplomatic History, I (1977), 20-34.
of the law of nations and the peace and safety of the United States and Pennsylvania.

The prosecution was unsettled by the fact that Marbois, recently married to Elizabeth Moore, daughter of William Moore, one-time president of the State Supreme Executive Council, continued to vacillate on whether or not to testify. Even after he accepted the inevitable, that the state was going to defy French wishes and try Longchamps itself, he was reluctant to testify publicly. In the end he chose not to appear even though Bradford warned him his actions would weaken the state's case, judging it demeaning to attend court where he could be "compared with the criminal."  

Few watched the legal preparations more intently than Charles Thomson. By now he was convinced that the case bore "strong marks of a premeditated design to embroil [America] with France." But Congress offered no challenge to the state and its efforts to try Longchamps. Congress, through Thomson, seemed content at this point to keep Franklin and Jefferson closely apprised of developments and to collect all pertinent materials touching the case.  

The trial began on June 24, 1784. Sergeant and Vannost insisted that Longchamps' words during the May 17 meeting were too ambiguous to be construed as evidence of menaces of corporal harm. It was a maxim of law, they reminded jurors, that words should be taken in their mildest sense. Sergeant denied that the law of nations was involved: "Reparation sought and the remedy offered was confined to the municipal law of Pennsylvania," he contended. Sergeant and Vannost continually warned against permitting "foreign" interpretations to be imposed upon American laws and subjects. There was, as well, reason to question the propriety of the second charge regarding the May 19 assault, the defense protested. Sergeant pointed to one witness who testified Marbois struck the first blow.

For its part, the state stressed the need to "protect and secure the persons and privileges of ambassadors; the connection between the

33 Correspondence between Bradford and Marbois concerning the latter's appearance in Court is found in AD:CP, XXVII, 443-446. Marbois' rationale to his superiors for his reluctance to appear is explained in his letter to Vergennes, July 1, 1784, AD:CP, XXVIII, 3.

law of nations and municipal law, and the effect which the decision in this case must have upon the honor of Pennsylvania." No national court existed to exercise jurisdiction in the matter, Bradford contended; no state statute was pertinent to the case. Pennsylvania had to prosecute and to do so on the basis of the only applicable law in this instance: the law of nations. Only a verdict that left no doubt that the law of nations was an integral part of Pennsylvania law would assure respect of the world at large, according to Bradford and Wilson.35

The argument that Longchamps was a citizen of Pennsylvania and therefore subject only to state law was quickly dismissed, although Longchamps had taken an oath of allegiance to the state on May 18, the day following his threats against Marbois but prior to his physical assault upon the Consul. The large crowd in attendance and those who later discussed the case in the press insisted that Longchamps was an American citizen entitled to all the rights accorded to Americans, but neither Bradford nor Sergeant believed the oath had substantially changed his legal status. Neither did the judges.36 Thomson wrote Franklin, then in Paris, that Longchamps' "taking the oath [has] been variously interpreted, some imagining that he meant thereby to secure himself from the French laws and from the power and resentment of the Consul, others that his design was by becoming a citizen to involve the state in his cause and interest the populace in his favor . . . . The bench seem'd to be

35 Alexander J. Dallas, ed., Reports of Cases in the Supreme Court of Pennsylvania (Philadelphia, 1790–1807), I, 111–118; Marbois to Vergennes, July 1, 1784, AD:CP, XXVIII, 3. These paragraphs and succeeding ones rely heavily upon Rowe, Thomas McKean: The Shaping of an American Republicanism, 209–212.

Marbois complained to Vergennes in his letter of July 1 that Reynolds, the sheriff (and a close friend of Longchamps) deliberately chose jurors from the lower, ignorant elements of Philadelphia society in order to frustrate Bradford's efforts to concentrate on the subtleties of the law of nations. Marbois received this information second hand but from whom is not clear.

36 Bradford stressed that Longchamps' taking the oath of May 18 at best implied a "partial allegiance" to the United States. The fact that the defendant continued to wear his French uniform and to seek to confirm French honors indicated to Bradford that he still viewed himself as a French citizen. Sergeant argued that Longchamps was entitled to American rights and privileges but it was not the mainstay of his defense. The state constitution (section 42) held that "every foreigner of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance . . . after one year's residence, shall be deemed a free denizen thereof and intitled to all the rights of a natural born subject of this State . . . ."
decidedly of the opinion that the oath he had taken was of no effect and that he was to be considered only in light of an alien stranger.”

To the dismay of the large, vocal crowd the judges left no doubt that they considered the prisoner guilty as charged. After “minutely recapitulating the evidence,” Chief Justice McKean reminded jurors that this “was a case of the first impression in the United States.” He stressed that the case must be determined on the principles of the law of nations as the prosecution argued. State law was not operative in foreign legations where the May 17 confrontation occurred, but the “principles of the law of nations,” which were, “formed part of the municipal law of Pennsylvania,” as the prosecution maintained. McKean admitted that past practice was to construe words in their mildest sense, but he concluded that “words are now to be taken according to their ordinary import and meaning.” He concurred with the prosecution that Longchamps’ words on May 17 went beyond “colloquial dishonour” to imply “personal violence.” Justices George Bryan and Jacob Rush spoke briefly to the same points. When the jury initially returned a verdict of guilty on the second count only, the judges urged them to reconsider, not an unusual practice in Pennsylvania courts, and a verdict of guilty on both counts was subsequently returned.

The jury’s decision did not resolve the differences among state officials regarding Longchamps. On June 26 Dickinson and the Supreme Executive Council, still hoping to secure some accommodation to French wishes, stepped in to delay the Court’s sentencing of Longchamps until several pressing questions might be answered. The Council wished to know if Longchamps, having been convicted in a state court, could now be delivered up to the French. It also pressed for a ruling on whether Longchamps could be given a sentence by the Court to end when French authorities were satisfied. Finally, it asked if it could take steps of its own to see Longchamps

37 Thomson to Franklin, Aug. 13, 1784, Bache Papers, APS.
38 Dallas, ed., Reports, I, 86, 111-118; Marbois to Vergennes, July 1, 1784, AD:CP, XXVIII, 3. Marbois reported to Vergennes (August 14) that Frenchmen in attendance “tried everything . . . to prevent the jurors from declaring the accused guilty . . . some of them went so far as to shout loudly against the judges . . .” Ibid., XXVIII, 136-137. A survey of the cases reported in Dallas’ Reports confirms that juries were often sent back to reconsider their verdicts.
imprisoned. McKean, always sensitive to interference in his Court’s proceedings and powers, was piqued by the Council’s questions and by Dickinson’s failure to take to heart the judges’ letter of June 7. Nonetheless, he agreed to postpone sentencing until the Council’s inquiries could be argued by counsel in open court. Whether or not Dickinson had discussed his intention to prolong the proceedings with Marbois, the French chargé d’affaires was convinced that “the final judgment concerning [Longchamps’] punishment will not be given until the desires of His Majesty are known.”

To the chagrin of Court, Council, and Congress, public interest in Longchamps’ fate swelled. Two days after Dickinson submitted the Council’s questions to the judges a broadside, signed “An Independent Patriot,” began to circulate in the city, scoring the French for their claims on Longchamps. Directing his comments to “the Real Patriots and Supporters of American Independence,” the anonymous author warned Americans that “never were [their] rights and privileges . . . so much at stake as at [that] very moment. Never before was such a wound offered; such a radical stroke given the liberties of our country. An attempt . . . [was] now on foot,” he told them, “to deliver Chevalier LONGCHAMP [sic] to the court of France, to be dealt with at their discretion . . . .” He conceded that Americans “certainly owe France the greatest and most lasting obligations, for their generosity and kindness in assisting us in . . . the late war,” but “OUR OWN LAWS,” he protested, “are our BIRTHRIGHT, our SAFEGUARD, and our only SECURITY.” American laws were “fully competent to chastise and punish offenders of any kind, without introducing an arbitrary and very alarming measure, to send a subject of this state 3000 miles distance from his wife and relatives, to be tormented in a manner to which we are strangers.” He implored his fellow citizens to “oppose with a manly and spirited firmness every attempt, if seriously persisted in, which must invade [Longchamps’] liberty and . . . destroy [their] own.”

The decision by the Freeman’s Journal on June 30 to reprint the handbill provoked further comment. Eleazer Oswald’s Independent Gazetteer quoted a member of the Council of Censors who, when

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40 Freeman’s Journal, June 30, 1784.
asked what he thought of sending Longchamps to France, replied, "If they send him off, I think I shall not long be safe myself." It was also argued that returning the prisoner to France would not only reduce immigration and thus retard developments in the western part of the state, but also destroy America's reputation as an asylum for the oppressed. With inequities associated with pre-Revolutionary Admiralty Courts still fresh in their minds, Pennsylvanians outside governmental circles, and a good many within, were not anxious to surrender the state's jurisdiction over Longchamps.41

On July 10 and 12 Justices McKean and Bryan heard arguments on the Council's June 26 questions. One observer reported that "Respecting [Longchamps'] Punishment we had the Greatest Pleading that ever was heard at our Bar." But despite Bradford's passionate argument for the state that Pennsylvania could and should give the prisoner up to the French at this point, and Wilson's dire threat that refusal to do so would "expose ourselves to a thousand calamities," perhaps even war with "our dearest allies," the Court remained wedded to its position of June 7. The justices denied categorically that the Council had the power to deliver the defendant to the French or to acquiesce in any determination of the sentence by the French. They held that "punishment must be inflicted in the same country where criminals were tried and convicted," and that the sentence must be "certain and definite in all respects." Having sharply reminded Dickinson and the Council that they had no constitutional right to interfere in the judicial process at this point, or to determine Longchamps' sentence, the Court prepared to pronounce sentence upon Longchamps in the forthcoming (October) term.42

On the same day that the hearing on the Council's questions began, another broadside, signed "An Independent Patriot," appeared. "This day is really pregnant with the most alarming event," the

41 Independent Gazetteer, July 3, 1784; Marbois to Vergennes, Nov. 10, 1784, AD:CP, XXVIII, 366; Marbois to de Cabres, Nov. 7, 1784, Archives Nationale, Affaires Etrangeres, B1, 946, pp. 169-172.

42 Dallas, Reports, I, 114-115; Freeman's Journal, Aug. 11, Sept. 27, 1784; Samuel House to Jefferson, Aug. 10, 1784, Boyd, ed., The Papers of Thomas Jefferson, VII, 393. The Freeman's Journal reported that the Longchamps case was "a cause so new and so interesting [it] had raised to the highest pitch the curiosity of the public, everyone waited with anxiety the issue of this affair."
handbill warned; the question is “whether Freemen and Fellow-
citizens are to be tried agreeably to their OWN laws; or, whether
they are to be TRANSPORTED to other countries for prosecution—
like sticks or stocks or stones, or senseless and indifferent things—
subjected to an arbitrary despotic course of justice . . . destitute of
witnesses or evidence . . . .” The author pleaded with Pennsylvanians
to oppose any move to return Longchamps to France. The Freeman’s
Journal reprinted the broadside on July 14 coupling it with a long
discussion of the law of nations by “A Spectator.”

To argue that Pennsylvania must release the prisoner to the
French because the law of nations dictated it was nonsense, according
to “A Spectator.” There was nothing sacrosanct about the law of
nations, he protested; “nations [had] permitted unjust practices” to
be accepted. Piracy and poisoned weapons, for instance, had long
been part of warfare. Was America, was “every REPUBLICAN
empire,” forced to accept “barbarous practices” simply because
custom and usage had “authorized” them? he asked. Each practice
should be judged on its own merits against a higher law, a law of
nature. “Customs or precedents militating against the welfare and
safety of a body of people (for instance, pretended rules for surren-
dering the inhabitants of a FREE country and transporting them
abroad for trial) are incompatible with the grand original principles
on which they ought to be founded.” Enlightened republican law,
not foreign precedents, ought to determine Pennsylvania’s response
to Longchamps. Like the previous authors, “A Spectator” put a
high premium on Pennsylvania’s ability and willingness to act inde-
dependently of “foreign” influence. And like the others, he distinguished
between an American foreign policy (however much shaped by the
state) which reflected enlightened republican ideals, and the tradi-
tional practices and assumptions of old world diplomacy. The articles
by “An Independent Patriot” and “A Spectator” sparked public
comment critical of the French and supportive of America’s repub-
lican institutions.

On July 20 Dickinson called the Pennsylvania Assembly into
special session to consider legislative redress in the Longchamps

43 Freeman’s Journal, July 14, 1784. Also Independent Gazetteer, July 17, 1784.
44 Freeman’s Journal, July 14, 1784.
affair, and to forestall future incidents, a move he had contemplated as early as May 25. Rumor had it that the state’s judges “thought it a Matter of too great Importance for them to decide,” and were content to have the legislature resolve the case. Dickinson knew better. It was his Court’s intransigence, not acquiescence, that prompted his call for legislative action. The General Assembly, controlled by Republicans and thus receptive to pro-French measures, might prove more responsive to French wishes than had the Court. But it was doubtless in part to put pressure on the judges that Dickinson called the extraordinary session. He was unable to muster a quorum until July 30, but a committee began work on the Longchamps developments almost immediately thereafter.

By August 7 the committee brought forth a draft of a bill entitled, “An Act for preserving the Privileges of public Ministers of foreign Princes and States.” The bill was hotly debated and revised throughout August and into September. Thomson’s optimism that the Assembly would produce a bill “which will pass for effectually securing the rights and immunities of public ministers and punishing the violators of them” (which he expressed to Franklin on August 13) faded in late September. Bitter divisions over the test laws ultimately ground the Assembly to a halt on September 29. The bill designed to protect diplomatic personnel was not among the ten bills passed in that truncated session.

45 Minutes of the 3rd Session of the 8th General Assembly (Philadelphia, 1784), 255; Dickinson to Luzerne, May 25, 1784, Pa. Arch., 1st Ser., XI, 468. Dickinson mentioned other factors in his decision to call the extraordinary session, including developments in the Wyoming Valley.


47 Test laws had been supported by Constitutionalists during the war and after in their efforts to disenfranchise and otherwise reduce the civil liberties of persons refusing to take an oath of allegiance to the state. Republicans sought to amend or eliminate the laws.

48 Minutes of the 3rd Sess., 267–268, 283, 359; Minutes of the 1st Sess. of the 9th General Assembly (Philadelphia, 1785), 7, 20, 22, 35, 38; Thomson to Franklin, Aug. 13, 1784, APS. A committee of the legislature (representatives Clymer, Long, and Hanna) consulted with the Council on August 5, but details of the meeting have not survived. See Pennsylvania Colonial Records, XIV, 171. That Dickinson discussed the bill with Marbois early in September is confirmed by Marbois to Vergennes, Sept. 7, 1784, AD:CP, XXVIII, 173. Marbois’ account of the bill’s death and the dissolution of the Assembly is in his letter to Vergennes, Nov. 10, 1784, ibid., 366.

Alfred Rosenthal (“The Marbois-Longchamps Affair,” 299) mistakenly claims that the
The general elections in October 1784 reduced Republican strength in the Assembly, diminishing any chance Dickinson might have to secure favorable legislation regarding Longchamps. Yet Marbois informed Vergennes on November 10 that Dickinson was still prepared to defy the Court by encouraging legislation to send Longchamps to France. If Dickinson persisted in his efforts to persuade assemblymen of the wisdom of such a course, he did so on a private, personal level. When he addressed the second session of the ninth General Assembly in February 1785, he made no mention of the Longchamps case.\(^{49}\) Not only did the first session of the ninth General Assembly fail to produce legislation sought by Dickinson and the French but, to Dickinson's bewilderment, it passed several bills antithetical to French interests, including a bill which discriminated against French holders of state loan certificates. The second session also produced a strong indictment against interference by Dickinson and the Supreme Executive Council in judicial matters.\(^{50}\)

Even as the Pennsylvania General Assembly sputtered through a seemingly endless series of debates and delaying tactics on the legislation urged by Dickinson, anti-French sentiment in the city became more strident. Daniel Boinod and Alexandre Gaillard, publishers of the *Courier de l'Amerique*, a French language newspaper printed in Philadelphia, were among those most vocal in their condemnation of French officialdom both inside and outside Pennsylvania. When it was learned that the King of France had sent to Marbois "a well chosen collection of books" to be turned over to the universities in Philadelphia and Williamsburg, Boinod and Gaillard denigrated the

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\(^{50}\) The legislature's criticism of Dickinson for his interference in judicial matters centered primarily on his intervention in the Doan outlawry cases, but the message for the Longchamps developments could not have been lost on him. The outlawry cases and Dickinson's role in them are treated in G. S. Rowe, "Outlawry in Pennsylvania, 1782-1788, and the Achievement of an Independent State Judiciary," *The American Journal of Legal History*, XX (1976), 227-243.
value of the books and the motives of the King. They followed up by publishing the most detailed and sympathetic account of the Longchamps case yet to appear. The *Courier de l'Amerique* articles were subsequently translated and published in the *Freeman’s Journal* and the *Pennsylvania Packet*. Charles Thomson railed that Boinod and Gaillard had appeared in the city at the same time Longchamps had arrived and that the three conspired to "excite fears and jealousies" between the United States and France. Dickinson stated flatly that Boinod and Gaillard were in the pay of the British.\(^5^2\)

If Pennsylvanians in private and public stations were becoming increasingly interested in Longchamps and the implications of his fate for American law and foreign relations, so too was the French Ministry. Earlier, on July 1, Marbois had sent a detailed account of Longchamps' trial to Vergennes, informing him of options apparently open to the judges. He enclosed a copy of the June 28 broadside by "An Independent Patriot" with its protestations against any return of Longchamps to France. Maréchal de Castries, Minister of the Marine, upon assessing Marbois’ report as well as earlier ones from Luzerne, informed Vergennes that the King wished Longchamps to be returned and he did not care "what means you use to convince Congress and the State of Pennsylvania to do so." Castrics himself thought it "essential" that Longchamps "be judged by one of the Tribunals of the Kingdom."\(^5^3\)

While Castrics relayed to Vergennes the King’s wishes regarding Longchamps, Marbois was reassessing public opinion in Philadelphia. On August 14 he reported that the "impression that the verdict in the Longchamps trial has made on the public has been even more unfavorable to [Longchamps] than we imagined .... The public has joined the judges in asking that he be punished." Marbois admitted

\(^5^1\) *Courier de l'Amerique*, July 27, Aug. 3, 10, 17, 24, Sept. 23, Oct. 5, 12, 19, 1784.


\(^5^3\) Marbois to Vergennes, July 1, 1784, AD:CP, XXVIII, 3; Castrics to Vergennes, Aug. 8, 1784, *ibid.*, 90. Castrics believed the only way to guarantee the presence and freedom to work of the King's officials in North America would be to curb "the audacity of some Frenchmen who have gone to live there."
that "there [had] been . . . pamphlets passed around, but none of them [had] tried to exonerate [the prisoner]. The articles have concerned only the type of punishment he deserves." The Consul conceded that the cry against "the consequences of sending a criminal back to France on the request of a minister of the King" had struck a responsive chord.

In assuring Vergennes that his policy would be a cautious one, Marbois refused to put more immediate pressure on the judges, for he remained convinced that "they will try to drag this affair out to give themselves time to find out how the King views it." He was reluctant to protest the anti-French tone and substance of several local newspapers because, as he told Vergennes, freedom of the press was "one of the Rights most dear to these people" and there were individuals in Philadelphia who would relish a fight over that issue "to make themselves popular among the people."54

By the first week in September Marbois was less willing to be magnanimous. Still insisting that he did not wish to engage in any contest over the freedom of the press (he refused, for instance, to add his weight to a complaint by Van Berckel against Oswald's *Independent Gazetteer*), Marbois nonetheless furnished his superiors with a damaging assessment of Boinod's and Gaillard's *Courier de l'Amérique*. Although he did not share Dickinson's belief that the paper was financed by the British, he suggested a variety of ways to frustrate the editors and reduce their subscriptions. Marbois, whose popularity among Pennsylvanians plummeted during these months, never acknowledged the fact but it was largely his criticism of the *Courier de l'Amérique* that prompted Dickinson to pressure Ebenezer Hazard, the postmaster general, into imposing exorbitant postal rates on the newspaper, a move which quickly spelled the paper's demise.55

It was not until October 12, 1784, that Vergennes officially notified

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54 Marbois to Vergennes, Aug. 14, 1784, AD:CP, XXVIII, 136-137.
55 Marbois to Vergennes, Sept. 7, 1784, *ibid.*, 173, and Marbois to Vergennes, Mar. 14, 1785, *ibid.*, XXIX, 102-110; Allan J. Barthold, "French Journalists in the United States," *The Franco-American Review*, II (1937), 217. An anonymous writer later told Vergennes that Marbois was "entirely disliked by every citizen amongst us, and we truly confess we believe he never will be otherways as long as he lives." Unknown to Vergennes, Aug. 20, 1785, AD:CP, XXX, 230.
Marbois that the King "reacted with indignation . . . to the threats and actual acts that Longchamps [had] made against [Marbois]." It was the King's opinion that "the justice and even the dignity of the United States will cause them to extradite [Longchamps]." Louis desired Marbois to "formally demand the extradition of Longchamps," offering some type of reciprocity, if necessary. If that demand failed, Marbois was to "insist that at least the guilty one be punished in the United States in a manner which can satisfy the King." Marbois was to pursue this last option "only when [he had] lost all hope of obtaining the first." 56

By the time the news of the King's official position reached Marbois, the Pennsylvania Supreme Court had pronounced sentence. McKean's Court pursued an independent, scrupulously middle-of-the-road course, ignoring demands for Longchamps' extradition as well as those that he be given a light sentence or set free. On October 7 the Court sentenced the Frenchman to hard labor until July 4, 1786, a period of just under two years, and fined him 100 crowns and costs. In addition, the Court required a £1,000 recognizance and two £500 sureties to assure Longchamps' good behavior for seven years following his release from confinement. Although the Court's stand was not popular, it made clear that within Pennsylvania the Court, not the Supreme Executive Council, held power to try and punish offenders. 57

The Court's ruling in the Longchamps case and the importance of its role throughout the entire proceedings for Pennsylvania's legal history can only be fully understood when viewed against the backdrop of certain constitutional questions debated continually in Pennsylvania from 1776 through 1784. Historians have long recognized that a fundamental issue dividing Pennsylvanians between 1776 and 1790 concerned the proper separation of governmental

56 Castries to Vergennes, Oct. 12, 1784, AD:CP, XXVIII, 319-320.
57 Dallas, Reports, I, 118; Freeman's Journal, Oct. 13, 1784; Independent Gazetteer, Oct. 16, 1784; David Paul Brown, The Forum: or Forty Years Full Practice at the Philadelphia Bar (Philadelphia, 1856), I, 331. Marbois admitted to de Cabres that editors in the city saw the sentence as "an act horrible and tyrannical. They . . . incite the people," but Marbois expressed the view that he himself looked upon the sentence as light because of the judges' "timidity," the influence of popular opinion on the state government, fears of riots, and the need of the state to encourage foreign immigration, especially among Germans. Marbois to de Cabres, Nov. 7, 1784, Archives Nationale, Affaires Etrangeres, B1, 946, pp. 169-172.
powers within the state. This constitutional debate traditionally has been discussed almost exclusively in terms of the organization of Pennsylvania's General Assembly. Only recently has attention been paid to the state's judiciary and its struggle to function as an independent branch of government. Bitter arguments surrounded the Court's constitutional position from its inception. Opponents of the 1776 state constitution identified what they considered the dependence of the judiciary on both the Supreme Executive Council and the legislature as a fundamental defect in that frame of government. They argued that judges must be given more security, that an independent Court was essential for the preservation of the people's liberties and the protection of their property. With a cavalier disregard for the facts, Constitutionalists, on the other hand, insisted that the constitution, by having judges appointed for seven years and retained during good behavior, and by calling for fixed salaries for them, sufficiently ensured an independent Court. They joined Republicans in publicly advocating a strong, autonomous judiciary.

The Court in its early years exhibited neither impressive power nor much independence. Whatever their rhetoric, Constitutionalists and Republicans alike at various times undermined the judiciary. Opposition to the state constitution on the part of lawyers (most of whom later became Republicans), for instance, led to an early boycott of judicial and clerical offices which compromised the state's superior courts by delaying the organization of its inferior courts.


60 Selsam, *The Pennsylvania Constitution of 1776*, 224; *Journal of the Council of Censors Convened at Philadelphia . . . November, 1783* (Philadelphia, 1783), passim; Arnold, "Political Ideology and the Internal Revolution in Pennsylvania," chapt. 5. Arnold maintains that while both parties advocated a strong, independent judiciary, Republicans sought to achieve that goal through constitutional checks, the Constitutionalists through public and private virtue. It is a provocative thesis but his evidence does not establish it beyond doubt.

61 The next several paragraphs represent a brief overview of Rowe, *Thomas McKean: The Shaping of an American Republicanism*, chapts. 7, 8, 10–12.
For their part, Constitutionalists in the General Assembly and in the Council moved to frustrate the Court when in 1777 Chief Justice McKean issued writs of habeas corpus to individuals inimical to the state government. Also devastating to the independence and autonomy of the Court were conditions spawned by the war. Even before the Court was fully organized and manned, military exigencies forced it into the backcountry and scattered its personnel. The proliferation of extra-legal committees during the war years proved deleterious to the judiciary’s reputation and powers, as did the Court’s prominent role in the determination of unpopular questions such as those touching the treatment of Tories, the fate of the College of Philadelphia, and whether or not English laws and precedents were to survive within the state.

Throughout the early tribulations McKean, and to a lesser extent his associates on the bench, strove to achieve recognition of the Court’s powers. By dint of his strong personality, by insisting on the prerogatives of his Court and punishing those who by their actions and comments weakened it in the eyes of the public, and by defying the Assembly and the Council when they sought to usurp judicial powers and functions, McKean slowly enhanced the status, and thus the sovereignty, of his Court. By 1784, when the Longchamps case broke, McKean and his fellow justices were confident that the struggle for a truly independent Court could be pushed even further, and McKean’s actions in that year established clearly that he for one was prepared, even eager, to raise the stakes in his Court’s ongoing battle with the legislature and the Council.

Seventeen hundred and eighty four was a propitious time for a move to enhance the Court’s independence and stature. Wartime conditions no longer existed. As a result, the early 1780s witnessed an increased public sensitivity to the powers of various governmental branches and the need to have a clearer separation of the executive, legislative, and judicial functions of government. In 1781 “A Pennsylvanian,” writing in the Pennsylvania Packet, criticized the legis-

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62 It is important in this respect to note his reaction to the challenge by Dickinson and the Council in the Doan cases during the last months of 1784, discussed in ibid., chapt. 12, and Rowe, “Outlawry in Pennsylvania, 1782-1788, and the Achievement of an Independent State Judiciary,” 227-237.
lature for not fixing judicial salaries as mandated by the constitution, thereby granting to the judges the kind of independence framers of the state constitution had meant them to have. Another writer, signing himself "Caution," admitted that the Court's independence had been seriously compromised by the war as conditions had encouraged a pervasive overlapping of executive, legislative, and judicial powers. He, too, thought it high time the separation became clearer. The convening of the Council of Censors late in 1783 brought these issues even more prominently before the public as both political factions closely examined the previous seven years' constitutional developments and argued what powers should be exercised, and by whom.63

Even as the Longchamps particulars unfolded, Constitutionals within the Council of Censors freely admitted that in the previous seven years both the Supreme Executive Council and the General Assembly had exercised powers constitutionally reserved to the judiciary (the latest example, according to them, had occurred as recently as November 1783). They conceded that the Constitutionalist-dominated Assembly in the early years of the war had been as guilty as Republicans in this respect, but they again went on record as favoring an independent Court and again professed faith in the current constitution to accomplish that end. Indeed, despite the periodic usurpations of judicial powers and prerogatives by the Assembly and Council, Constitutionals viewed the Court as having achieved a remarkable independence by 1784. Not so, according to the state's Republicans who complained that the Court remained too dependent on the Assembly and the Council. They proposed a convention to rewrite the constitution, or replace it entirely, and in the process strengthen the position of the judicial branch. Arthur St. Clair spoke for many Republicans when he declared publicly that, "by our constitution, it is not sufficient that the Judges are made dependent on the Council, but they are made dependent likewise on the Assembly, not only for their salaries, but for their continuance in office." He concluded that the judges "should be incapable of influence or corruption. For this purpose, they should be independent—\textit{wholly} independent of the Assembly—of the Council—

nay, more, of the people. Liberty, property and life are held by a precarious tenure, where this is not the case.”

Republican disappointment in the Court and the list of usurpations of the judiciary compiled by the Constitutionalists notwithstanding, the Court had achieved a remarkable autonomy by 1784. Powers and influence once wielded by extra-legal Revolutionary committees had been regained. The internal workings and record of the Court in the day-to-day routine after 1781 illustrates its growing power, influence, and reputation, as does the growing trepidation with which both Council and Assembly faced provoking the judges. It is testimony to the Court’s progress in this regard that Dickinson, despite his own inclination to act quickly and directly in the Longchamps matter to placate the French, made every effort to consult and to involve his Court. It is also testimony to the Court’s power and confidence in 1784 that McKean and his associates on the bench successfully sought, gained, and maintained its right to determine the legal questions in the Longchamps developments. The judges’ conduct in the Longchamps affair gave assurance that the Court would function regardless of the turmoil around it and the pressure applied to it, whether the pressure came from inside its own government, or outside. If the public, Republicans and Constitutionalists alike, had viewed the Court as a tool of the administration before the Longchamps verdict, few did afterwards.

Dickinson was among those most upset by the verdict against Longchamps. He informed Marbois that “the sentence given [had] increased the worry this affair had caused him.” He admitted, when

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65 Rowe, Thomas McKean: The Shaping of an American Republicanism, 214. The growth and expression of the Pennsylvania Supreme Court’s independence during this period is traced from a slightly different perspective in ibid., chapt. 12. The strength of the Court was recognized by the state constitutional convention in 1789–1790 and its new status was written into the new constitution of 1790. It should be noted, however, that the Court was not provided a veto on the actions of the Assembly or the Council. See Minutes of the Second Session of the Convention of the Commonwealth of Pennsylvania . . . (Philadelphia, 1790), 156–158, 162; Minutes of the Grand Committee of the Whole Convention of the Commonwealth of Pennsylvania . . . (Philadelphia, 1790), 54–74.

66 Marbois to Vergennes, Nov. 10, 1784, AD:CP, XXVIII, 366. See also footnote 57.
pressed by Marbois, that he still longed to see the prisoner returned "to France as a Frenchman," but he saw no way to accomplish this now except by an act of the General Assembly. He was, he told Marbois, still prepared to push the issue in the legislature, but he was candid enough to admit "he was not sure [the General Assembly] would agree to that. 67

By this time persuaded that Dickinson had "never been able to make a final decision in important matters," Marbois had no faith in a move by the General Assembly to return the culprit. As Republican strength in the state waned in the last months of 1784, and as his superiors became more insistent upon a national solution, Marbois shifted his primary attention to Congress. 68 Thus, even with the Pennsylvania Court's pronouncement on Longchamps' punishment for his assault upon the French consul, the Marbois-Longchamps Affair was far from over. 69 For its part, however, the state washed its hands of the matter, content merely to see the prisoner's sentence stand as a warning to others who might act as he had. When he was finally released early in 1786, Longchamps sank from sight as abruptly as he had appeared. 70

He left in his wake some tentative answers and a multitude of questions regarding the progress of America's republican experiment. Although his actions did not provoke the General Assembly into establishing proper legal protection for foreign diplomatic personnel

67 Ibid.
69 On Feb. 10, 1785, Marbois formally approached Congress to request that Longchamps be extradited. Congress wrestled with the problem throughout 1785 where it caused a good deal of strife and complicated that body's efforts to conclude a satisfactory consular treaty with the French. The details of congressional reaction to the Marbois-Longchamps Affair, its impact on America's first consular treaty, and its overall importance in shaping both American foreign policy and the Federal Constitution of 1787, are found in Rowe and Knott, "Congress, the Marbois-Longchamps Affair (1784-1786), and America's First Consular Treaty" (unpublished, 1979).
70 Longchamps was released a few months short of the termination of his official sentence after plaguing the Council with petitions complaining of ill-health. Pennsylvania Colonial Records, XIV, 395, 466, 572, 589, 638; Pa. Arch., 1st Ser., X, 742. Continuing complaints from Van Berckel and Marbois' replacement, Louis Guillaume Otto, suggest foreigners in Philadelphia learned little from Longchamps' tribulations.
within its borders, as some historians claim, Virginia’s legislature was moved to do so for that state.\textsuperscript{71} Longchamps’ legal difficulties stimulated a series of public discussions touching on such diverse questions as the role of the press in a free society, the nature of republican law, and the legal protections to be accorded aliens and foreign diplomatic officers. Legal strategems connected with Longchamps’ actions and status provided a public demonstration of the state Supreme Court’s growing assertiveness and independence. Though the Court in ruling against Longchamps declared the law of nations part of Pennsylvania’s municipal law, the Court’s reluctance to surrender its jurisdiction, indeed, to surrender America’s jurisdiction, reaffirmed American intent to remain an asylum for Europe’s discontented, and to provide them protection from their former governments, if necessary.

The Pennsylvania Supreme Court might declare the law of nations an integral part of Pennsylvania law but neither it nor Pennsylvanians who spoke out in the press permitted that fact to override their republican sensibilities that Longchamps must not be released to foreign authority. If the surviving record accurately reflects public opinion regarding the handling of this case, the position taken by Dickinson, Bradford, and Wilson did not represent the public will. The Court, and even those Pennsylvanians critical of its harshness toward Longchamps, believed in the end that the state’s solution was more equitable and enlightened than any facing Longchamps in France.

To turn Longchamps over to the French would not only compromise many of America’s most cherished domestic goals, but it would as well defeat several of America’s foreign policy aims. The handling of the first phase of the Marbois-Longchamps Affair sent a warning to Congress as well as to France that Pennsylvanians at least judged traditional assumptions and modes of diplomatic practice incompatible with America’s republican ideals. American foreign policy, then, just as much as America’s domestic programs, must reflect

American aspirations, not France’s old world mentality. It was an important message for a Congress facing the prospect of ratifying America’s first consular treaty.  

72 Franklin had affixed his signature to a consular treaty with France on July 29, 1784, and, after some delay, forwarded the draft to Congress for ratification. It did not reach Congress until June 6, 1785. It was debated at length in July of that year and rejected until modifications could be negotiated. The final treaty was accepted in 1788. See footnote 70.