

Reciprocal Sovereignty: The Franco-American Consular Convention, 1778–1788, and the Meaning of American Independence

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The Treaty of Amity and Commerce, signed between the revolutionary government of the United States and the Kingdom of France on February 6, 1778, provided one of the first instruments of international recognition for the fledging American republic. But the treaty, both significant in its impact and extensively studied by historians, has overshadowed another diplomatic agreement that would take place in the decade after the signing of the Treaty of Amity and Commerce: the Franco-American Consular Convention.¹ In contrast to the rather swift conclusion of the first U.S.-French treaty, the negotiation of the Consular Convention was a contentious and time-consuming affair, which commenced in the early months of 1778 and found its conclusion on the eve of the ratification of the U.S. Constitution.² By foregrounding the Consular Convention as an important



John Jay, U.S. secretary of foreign affairs from 1784 to 1789, considered the issue of a consular convention with France as a potential threat to the newly gained American independence. He advised Congress to not ratify a version of this convention signed by Benjamin Franklin in 1784, and eventually assented to the ratification of a modified Consular Convention in 1788.

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¹ On the Treaty of Amity and Commerce, see Samuel Flagg Bemis, *The Diplomacy of the American Revolution* (Bloomington: Indiana University Press, 1957 [original ed.: 1935]), 58–69. On the Franco-American Consular Convention, see Julian P. Boyd, “Editorial Note: The Consular Convention of 1788,” in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton: Princeton University Press, 1958): 67–92; Elizabeth M. Nuxoll, “The Franco-American Consular Convention: Editorial Note,” in *The Selected Papers of John Jay*, ed. Elizabeth M. Nuxoll (Charlottesville: University of Virginia Press, 2015), 4: 112–20; Ellen R. Cohn, “Editorial Note on the Consular Convention between France and the United States, 29 July 1784,” in *The Papers of Benjamin Franklin*, ed. Ellen R. Cohn (New Haven: Yale University Press, 2017), 42: 454–56.

² See Emory R. Johnson, “The Early History of the United States Consular Service. 1776–1792,” *Political Science Quarterly* 13:1 (1898): 19–40; Burt E. Powell, “Jefferson and the Consular Service,” *Political Science Quarterly* 21:4 (1906): 626–38; Wilbur Carr, “The American Consular Service,” *American Journal of International Law* 1:4 (1907): 891–913; R. L. Jones, “America’s First Consular Convention,” *Southwestern Social Science Quarterly* 13 (1932): 250–63.

process in the international history of the early Republic, this article emphasizes the significance of consular relations to the making of U.S. sovereignty in the Atlantic world. It argues that the Franco-American Consular Convention of 1788 created a new transnational and reciprocal notion of U.S. sovereignty as it gave extensive discretionary powers to consuls to assist national mariners, merchants, and citizens abroad.³

The main reason for the almost complete absence of the Consular Convention from histories of the early Republic lies in the relative neglect of the Republic's lower diplomatic echelons, such as consuls, commercial agents, agents for seamen and prisoners of war, etc., which have only recently begun to generate greater interest among historians.⁴ Unlike diplomats, whose rights and functions were strictly defined in international treaties, consuls' broad and somewhat opaque functions make them a challenging object of study.⁵ Consuls represented the commercial interests of their country abroad, supervised the execution of commercial contracts, oversaw the protection of the rights of their fellow merchants and seamen, monitored and stimulated the observance of laws and regulations relating to trade and navigation, and apprised their government of

³ On consuls' interactions with mariners, see Sean Perrone, "John Stoughton and the *Divina Pastora* Prize Case, 1816–1819," *Journal of the Early Republic* 28:2 (2008): 215–41; Matthew Taylor Raffety, *The Republic Afloat: Law, Honor, and Citizenship in Maritime America* (Chicago: University of Chicago Press, 2013); Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge, MA: Harvard University Press, 2015); Brian Rouleau, *With Sails Whitening Every Sea: Mariners and the Making of an American Maritime Empire* (Ithaca, NY: Cornell University Press, 2015); Simeon A. Simeonov, "'Insurgentes, Self-Styled Patriots': Consuls, Privateers, Slavers, and Mariners in the Making of the Privateering Archipelago," *Journal of Global Slavery* 5:3 (Fall 2020): 291–321. On consuls' discretionary powers, see Michael A. Schoeppner, *Moral Contagion: Black Atlantic Sailors, Citizenship, and Diplomacy in Antebellum America* (Cambridge, UK: Cambridge University Press, 2019).

⁴ On consuls as neglected extraterritorial agents, see Nancy Shoemaker, "Extraterritorial United States to 1860," *Diplomatic History* 42:1 (January 2018): 36–54. On the variety of titles in the early U.S. Foreign Service, see Walter Burges Smith, *America's Diplomats and Consuls of 1776–1865: A Geographic and Biographic Directory of the Foreign Service from the Declaration of Independence to the End of the Civil War* (Washington, DC: Center for the Study of Foreign Affairs, 1987). On the need to integrate consular perspectives into the theory and practice of foreign policy and foreign relations, see *Consular Affairs and Diplomacy*, eds. Jan Melissen and Ana Mar Fernández (Leiden, Netherlands: Martinus Nijhoff, 2011).

⁵ For more on this topic, see Shoemaker, "Extraterritorial United States to 1860," 36–54; Paul A. Gilje, "Commerce and Conquest in Early American Foreign Relations, 1750–1850," *Journal of the Early Republic* 37:4 (Winter 2017): 735–770; Simeon A. Simeonov, "'With What Right Are They Sending a Consul': Unauthorized Consulship, U.S. Expansion, and the Transformation of the Spanish American Empire, 1795–1808," *Journal of the Early Republic* 40:1 (Spring 2020): 19–44; Simeonov, "Jacksonian Consular Reform and the Forging of America's First Global Bureaucracy," *Journal of Policy History* 33:4 (October 2021): 401–428, and "Consular Recognition, Partial Neutrality, and the Making of Atlantic Diplomacy (1776–1825)," *Diplomatic History* 46:1 (January 2022): 144–72.

economic and commercial (but oftentimes, also political and military) affairs. At the same time, consuls exercised a kind of police power over their fellow citizens, and could perform administrative and judicial functions towards them, legalize acts and documents in their jurisdiction, and issue passports. Given the circumstances, consuls might also assume other functions, such as carrying out political missions in the absence of a titular diplomat, negotiating treaties, etc.⁶ In the absence of treaty provisions, the legislation of each state determined the powers it conferred on its own consuls and established within what limits foreign consuls may be admitted to represent their nationals.⁷

If consuls' various functions make them a challenging object of investigation, they were indispensable to the everyday conduct of international relations. As a fledgling state vying for international recognition, the United States recognized this reality and established their first consular relations in the midst of their War of Independence. The haphazard course of consular affairs quickly suggested the utility of a consular convention with their closest ally, France. In contrast to previous scholarly treatments of the Franco-American Consular Convention, which regard it as a minor victory for a small group of U.S. Founding Fathers in the first decade of their country's independence, this article emphasizes the post-colonial fears and anxieties that animated the transnational debate around the Consular Convention of 1788, embedding this event in a larger Atlantic framework and highlighting its significance as a foundational moment in the history of the early United States.⁸ In the turbulent first decade of U.S. independence, the article stresses, consular relations became an important parameter in defining the meaning and contours of U.S. sovereignty within a rapidly changing Atlantic world. Consuls were essential to the negotiation of such important matters as extraterritorial jurisdiction, sailors' rights, and commercial privileges and exemptions, which accompanied the transition of all Atlantic and trans-Atlantic powers from colonial subordination into post-colonial nationhood. Whether by means of exchanging consuls with other sovereign powers, sending (or failing to send) consuls to foreign states, or concluding a carefully regulated—if divisive—Consular Convention, the young American republic began to gradually realize the significance of its consular relations for its status as a sovereign polity, even if it failed to develop a robust and standardized consular service until the decade prior to the outbreak of the U.S. Civil War.

⁶ Désiré de Garcia de la Vega, *Guide pratique des agents politiques du Ministère des Affaires Etrangères de Belgique: cérémonial national et cérémonial de la Cour* (Paris: Albert Fontemoing, 1899), 342–45.

⁷ Georges Bousquet, *Agents diplomatiques et consulaires* (Paris: Paul Dupont, 1883), 80.

⁸ Johnson, "Early History," 19–40; Powell, "Jefferson and the Consular Service," 626–38; Carr, "American Consular Service," 891–913; Jones, "America's First Consular Convention," 250–63.

Throughout these early diplomatic engagements, the United States' efforts to negotiate the parameters of consular authority with the Kingdom of France highlighted the principle of reciprocity as a cornerstone of American sovereignty in the Atlantic world. In a decade of intense discussions, officials on both sides of the Atlantic Ocean invoked the principle of reciprocity in an attempt to enshrine their own idea of bilateral relations in the Consular Convention. As American officials repeatedly sought to curtail wide-ranging French proposals of consular jurisdiction, they finally accepted several propositions that set certain limitations to their notions of national sovereignty. Voicing numerous fears and apprehensions about a perceived loss of sovereignty, American officials ultimately agreed on a practical acceptance of the muddled interpretation of freedoms and rights in a new Atlantic context of international economic and political relations.

Early Negotiations and the Consular Convention of 1784

The Franco-American Consular Convention was negotiated against the backdrop of revolutionary warfare and intense international jockeying for supremacy in the Atlantic world in the wake of the U.S. War of Independence. Prior to the American Revolution, the Western hemisphere had lacked formal diplomatic and consular representation in the Old World, and this changed in the course of the last decades of the 18th century.⁹ It was only after the signing of the U.S.-French Treaty of Amity and Commerce in 1778 that consulship became an important instrument in the conduct of U.S. foreign policy in the Atlantic world. By fall 1778, within months of the signing of the treaty, France had established four consulates at major U.S. Atlantic ports (Boston, New York, Philadelphia, and Charleston). The United States, too, made use of the treaty provisions by establishing a consular agency in Bordeaux and, later, a consulate in Paris. Soon, other powers like Spain, the Netherlands, and the United States' former nemesis, Britain, began to establish consular relations with the American republic, opening a new page in Atlantic diplomatic history.

Although the 1780s witnessed the birth of Atlantic consular relations, many state officials and observers were unsure what consuls were supposed to do. Some authorities claimed that they were merely commercial agents, prominent merchants speaking on behalf of a mercantile diaspora, while others insisted that they possessed

⁹ Ferry de Goeij, *Consuls and the Institutions of Global Capitalism, 1783–1914* (London: Pickering & Chatto, 2014); Simeon A. Simeonov, "The Consular Caribbean: Consuls as Agents of Colonialism and Decolonisation in the Revolutionary Caribbean (1795–1848)," in *Memory, Migration and (De) Colonisation in the Caribbean and Beyond*, Jack Webb, Roderick Westmaas, Maria del Pilar Kaladeen and William Tantam (London: University of London Press, 2020), 117–32.

a public character that rendered them official representatives of foreign sovereigns. A third contingent maintained that consuls were something in between—private merchants who could assume public character from time to time.¹⁰

This confusion about consuls' role in Atlantic affairs was prevalent throughout the U.S. revolutionary period. Part of the early Americans' anxiety about consular relations is both understandable and justifiable. Europeans had much greater experience in consular affairs, and they had developed sophisticated usages of consuls within their regional activities and expansive overseas establishments. Though consulates were supposed to be a shared institution and thus have reciprocal functions across the European states, the fact is that these states had different notions about what consuls should do. Small states like the Hanseatic cities were likely to use consuls as essentially commercial agents while powers like Spain, Britain, and France understood them as agents of high imperial politics.¹¹ Should the United States consider themselves as a state like Hamburg, the Netherlands, or France, and how would they utilize consuls to position themselves among the Atlantic powers?

U.S. officials' apprehensions about consulship also stemmed from the unclear structure of their national government. In the first decade of its existence, the United States did not have a clearly delineated authority over consular relations. The Articles of Confederation, for example, did not regulate whether the authority

¹⁰ On the variety of opinions, see Abraham de Wicquefort, *The Ambassador and His Functions* (London, 1716 [original edition: 1682]); Emer de Vattel, *The Law of Nations, or Principles of the Law of Nature Applied to the Conduct and Affairs of Nations and Sovereigns* (Philadelphia, 1883 [original edition: 1758]), II, 2, §34; Cornelius van Bynkershoek, *De Foro Legatorum*, Caput X, Opera Omnia, Vol. 2 (Lugdunum Batavorum, 1767); Charles des Martens, *Manuel Diplomatique, ou Précis des droits et fonctions des agens diplomatiques* (Paris, 1822), 27–8; “Acts of the Vienna Congress, Annex 17. Regulation concerning the relative ranks of diplomatic agents,” in Document A/CN.4/98. Codification of the International Law Relating to Diplomatic Intercourse and Immunities Memorandum prepared by the Secretariat. Diplomatic intercourse and immunities, Yearbook of the International Law Commission (1956): 2, 132–33.

¹¹ For a small sample of the literature on the different consular powers, see Aryo Makko, *European Small States and the Role of Consuls in the Age of Empire* (Leiden: Brill, 2019); Leos Müller, “The Swedish Consular Service in Southern Europe, 1720–1815,” *Scandinavian Journal of History* 31:2 (2006): 186–195; Müller, *Consuls, Corsairs, and Commerce: The Swedish Consular Service & Long-distance Shipping, 1720–1815* (Uppsala: Acta Universitatis Upsaliensis, 2004); Jesús Pradells Nadal, *Diplomacia y comercio: La expansión consular española en el siglo XVIII* (Alicante: Instituto de Cultura Juan Gil-Albert, 1992); Jorge Manuel Martins Ribeiro, “Comercio e diplomacia nas relações luso-americanas (1776–1822)” (Ph.D. diss., University of Porto, 1997); Jörg Ulbert, “A History of the French Consular Services,” in *Consular Affairs and Diplomacy*, eds. Jan Melissen and Ana Mar Fernández (Leiden, Netherlands: Martinus Nijhoff, 2011), 303–24.

for receiving consuls belonged to the individual states or to Congress, which created widespread misunderstanding.¹²

Given the lack of prior experience and the structural deficits of the U.S. government, it is perhaps unsurprising that the initiative for the conclusion of a consular convention came from France. Aware of both the frailty of the U.S. national project and the opportune moment for expanding French influence and power across the Atlantic, French Foreign Minister Charles Gravier, Comte de Vergennes, and the French ambassador to the United States, Anne-César de La Luzerne, began pressing for a more robust framework for bilateral consulship. Their initial proposals provided the foundations for the Franco-American Consular Convention, though neither of them anticipated the eventual complexity and controversy of the final agreement, which only materialized after a decade of conversations, intrigues, and conspiracies on both sides of the Atlantic Ocean.¹³

The initial French proposal, prepared by Vergennes, sought to invest consuls with broad discretionary powers in the realms of commerce, maritime relief, and international relations.¹⁴ A first draft of the Convention submitted by La Luzerne in 1781 created significant opposition in Congress, as its members feared that France wished to invest its consuls with full jurisdiction over French subjects abroad. Indeed, Vergennes proposed to turn consuls into agents of maritime police and exempt them, as well as their agents, from criminal and civil prosecution. French and U.S. consuls would enjoy ample public functions, authority, and jurisdiction in their receiving states, including in disputes involving third-party subjects or citizens.¹⁵

Edmund Randolph, the head of a congressional committee tasked with reviewing the French proposal, imputed that France was trying to invest its consuls with criminal jurisdiction, something prohibited by the Articles of Confederation.¹⁶ Indeed, the

¹² Emory R. Johnson, T. W. Van Metre, G. G. Huebner, and D. S. Hanchett, *History of Domestic and Foreign Commerce of the United States* (New York: Burt Franklin, 1915), 2: Ch. 38; Marie-Jeanne Rossignol, *The Nationalist Ferment: The Origins of U.S. Foreign Policy, 1789–1812*, trans. Lillian A. Parrott (Columbus: Ohio State University Press, 2004), 3–24; Paul Gilje, *Free Trade and Sailors' Rights in the War of 1812* (Cambridge: Cambridge University Press, 2013), 40–41.

¹³ Anne-César de La Luzerne, "Projet de Convention entre le Roi Très Chrétien, et les États-Unis de l'Amérique Septentrionale," Philadelphia, July 27, 1781, in *Journals of Continental Congress* (hereinafter *JCC*) (Washington, DC: Government Printing Office, 1912) 21: 792–811.

¹⁴ *Ibid.*

¹⁵ La Luzerne, "Projet de Convention."

¹⁶ Edmund Randolph, "Report on the Plan of a Consular Convention," January 9, 1782, *JCC* 22: 25–28.

French proposal did feature wide-ranging consular privileges and immunities in cases of maritime shipwrecks and criminal offenses committed by French or U.S. citizens extraterritorially. Its interpretation of consuls' jurisdiction was so extensive that it raised suspicions about possible encroachments upon U.S. jurisdictional autonomy and, concomitantly, U.S. national sovereignty. In the commercial realm, the proposal stipulated the creation of bilateral mercantile tribunals for the stimulation of U.S.-French commerce. Their jurisdiction over commercial affairs would supersede that of national judiciaries.¹⁷



Charles Gravier, Comte de Vergennes, French ambassador to the Ottoman Empire from 1755 to 1768 and French foreign minister from 1774 to 1787, was instrumental in the creation of the French alliance with the United States and the negotiation of the Franco-American Consular Convention.

In the eyes of many congressional representatives, these provisions were redolent of a type of imperial mercantilism that the U.S. revolutionary leadership and the republican citizenry had fought to dismantle.¹⁸ The apprehensions of U.S. officials were legitimate, insofar as France had used its extensive definition of consular jurisdiction to wrest unequal concessions from other powers, notably the Ottoman Empire and Morocco.¹⁹ Pivotal to the expansion of French mercantile interests, consulates had made ample uses of their wide jurisdiction, gradually eroding the sovereignty of the host states—an ominous development to a nation seeking to cast away its colonial dependence. Accordingly, the congressional committee worked out a more conservative “scheme” of the Consular Convention that limited consular privileges and immunities, rejected any allusions to criminal jurisdiction, and omitted references to mercantile tribunals as institutions too

¹⁷ La Luzerne, “Projet de Convention,” 792–811.

¹⁸ For more on this prerevolutionary legacy, see Simeonov, “The Consular Caribbean,” 117–32.

¹⁹ These treaties might include such provisions as exclusive consular jurisdiction over national subjects, the right to exempt nationals from local quarantines, and unrestricted consular authority over shipwrecked national vessels. See Vladimir Borisovich Lutsky, *Modern History of the Arab Countries*, trans. Lika Nasser (Moscow: Progress Publishers, 1969), Chp. 22; Mariya Tait Slys, *Exporting Legality: The Rise and Fall of Extraterritorial Jurisdiction in the Ottoman Empire and China* (Geneva: Graduate Institute Publications, 2014). See also Priscilla H. Roberts and James N. Tull, “Moroccan Sultan Sidi Muhammad Ibn Abdallah’s Diplomatic Initiatives toward the United States, 1777–1786,” *Proceedings of the American Philosophical Society* 143:2 (1999): 233–65.

unfamiliar to Americans.²⁰ Though the committee presented these changes as superficial—an assessment somewhat uncritically assumed by later scholars—in fact these modifications were quite substantial and altered the very basis of the initial French proposal.²¹

The most important changes introduced by the congressional committee concerned two points in particular: the concession of full consular reciprocity and the extension of consular rights, privileges, and immunities to all persons attached to consular and vice-consular establishments.²² Under the congressional scheme, consuls might appoint as many vice-consuls as they wished, though they would have to abstain from engaging in commerce, merely having the capacity to appoint unofficial agents in support of national commerce. Furthermore, consuls would enjoy full immunity from criminal prosecution, and their offices would be generally exempt from foreign authority. Similar to the French proposal, the congressional scheme invested consuls with nearly unlimited jurisdiction over their respective maritime community abroad. In commercial affairs exclusively involving citizens or subjects of one of the contracting nations, its consuls possessed full jurisdiction. Consular certificates would exempt French subjects and U.S. citizens residing abroad from personal services (e.g., *corvée*, military conscription, impressment, etc.). Though the congressional committee declined the creation of separate mercantile tribunals in the United States, it did allow U.S. citizens to use the commercial tribunals of France. In sum, the congressional scheme emphasized the equal status of the contracting parties (via its prioritization of reciprocity) and extended the commercial concessions to consuls in an attempt to attract more French merchants, while curtailing or jettisoning those consular privileges and immunities that concerned noncommercial matters and/or seemed to confer an advantage upon the more experienced French side.²³

The congressional scheme of 1782 became the new foundation upon which the bilateral Consular Convention would thereafter be negotiated. Despite the significant changes to the French proposal, the congressional scheme did not encounter insurmountable opposition from the French government. In fact, Minister La Luzerne had managed

²⁰ See U.S. Congress, “Draft of a Convention between his Most Catholic Majesty and the United States of America...,” January 25, 1782, *JCC* 22: 47–54.

²¹ Jones, “America’s First Consular Convention,” 253.

²² In the context of the Franco-American Consular Convention, consular reciprocity connoted the ability of each contracting power to establish consulates in the other’s territory (after an approval by the host country), as well as the investment of consuls with the same rights, privileges, and immunities granted by the contracting partner.

²³ See U.S. Congress, “Draft of a Convention.”

to insert himself in the negotiations of the congressional committee, insisting that the U.S. minister plenipotentiary at the Court of Versailles, Benjamin Franklin, be invested with ample authority to promptly conclude the Consular Convention in France. La Luzerne's energetic support of the convention played an important role in bringing this topic to the diplomatic table, even if he could not fully persuade Congress of the urgency of this agreement. In the ultimate instructions that the United States' first secretary of foreign affairs, Robert L. Livingston, issued to Franklin, the secretary asked him to adhere to the text of the congressional scheme as much as possible while not jeopardizing the negotiations on issues of minor significance. Though under conventional diplomatic intercourse, these instructions might be interpreted as investing Franklin with ample discretionary powers to conclude the negotiations, the uncertainties of the ongoing U.S. Revolutionary War created unique circumstances under which a more cautious approach to Livingston's instructions was perhaps preferable.



Anne-César, Chevalier de La Luzerne, French minister and ambassador to the United States from 1779 to 1784, supported the American Revolution and believed in the necessity of a Franco-American Consular Convention for the advantageous conduct of bilateral relations.

Despite the issuance of the congressional scheme, the discussion of the Consular Convention stretched over the next year and a half, mainly due to the changing course of the U.S. Revolutionary War, the related shifting attitudes in Congress, and continuing conflict between the French ministers of foreign affairs (Vergennes) and the Navy (Charles Eugène Gabriel de La Croix de Castries), each of whom wished to play a leading role in the negotiations. As both ministers were aware of Franklin's instructions, each of them used them to pressure the United States minister into negotiating exclusively with their ministry. Unsure of how to proceed, Franklin referred the congressional scheme to Thomas Barclay, the first U.S. consul at Paris, who largely agreed with its provisions, except for Article 3, which barred consuls from participating in commercial transactions. Barclay, who himself engaged extensively in commerce, believed that this stipulation should be discarded, and relayed his opinion to Congress in September 1782.²⁴ Barring

²⁴ Thomas Barclay to Benjamin Franklin, September 3, 1782, in *The Papers of Benjamin Franklin*, ed. Ellen R. Cohn (New Haven: Yale University Press, 2006), 38: 63–64.

consuls from engaging in commerce might jeopardize their ability to aid the war effort—something that Barclay and his colleague at Bordeaux, U.S. consular agent John Bondfield, were profoundly interested in.²⁵ Reluctant to sign an agreement as the war was nearing its successful conclusion and eager to explore the opinions of U.S. officials in France, congressional representatives spent the next months deliberating the proposed modification. They were deeply divided on whether to continue negotiations on the basis of the original scheme or an amended one according to Barclay's proposal, or to block further talks altogether. In the end, they reached no definitive solution.²⁶

In an attempt to revive the stalling issue, Vergennes, who received an appointment superior to that of Castries in February 1783, renewed his attempts to persuade Franklin into signing an agreement in Versailles. Concurrently, Castries continued to undermine this effort by suggesting that the convention be signed in Philadelphia, so that both parties would be certain of its subsequent ratification by the U.S. Congress. Coupled with the lack of congressional instructions regarding Barclay's proposal, these conflicts among the French ministers deepened Franklin's insecurities.

Only the mediation of the president of the Confederation Congress, Elias Boudinot, in November 1783 helped end the impasse. In a letter to Franklin, Boudinot suggested the utility of consular officers as perfect substitutes to diplomats for the chief objective of U.S. foreign representation, the promotion of commerce.²⁷ Franklin apparently took Boudinot's statement to imply support of Barclay's proposition and a reaffirmation of his own inclination to continue the negotiations of the Consular Convention upon a modified footing from the original congressional scheme.

Having overcome two major obstacles to their objective, Franklin and Vergennes placed the discussion on a somewhat firmer footing by negotiating some

²⁵ John Bondfield to Benjamin Franklin, March 20, 1782, in *Ibid.*, 37: 12–13. Bondfield provided extensive commercial and naval intelligence and mediated with other consuls, especially those of neutral nations.

²⁶ James Madison, "Notes of Debates," January 6, 1783, in *Letters of Delegates to Congress, 1774–1789*, ed. Paul H. Smith et al., 25 volumes (Washington, DC: Library of Congress, 1976–2000), 19: 539–40.

²⁷ Elias Boudinot to Benjamin Franklin, November 1, 1783, in *The Papers of Benjamin Franklin*, ed. Ellen R. Cohn (New Haven, CT: Yale University Press, 2014), 41: 169–71. On Boudinot's activities as commissioner, see Francis D. Cogliano, *American Maritime Prisoners in the Revolutionary War: The Captivity of William Russell* (Annapolis, MD: Naval Institute Press, 2001), 159.

modifications to the congressional scheme of 1782.²⁸ Using this alternative model as a basis for the agreement, they affixed their signatures to a Consular Convention on July 29, 1784.²⁹ Though retaining the main points of the congressional scheme, the Consular Convention deviated from it in several ways, which posed the question of whether Franklin had exceeded his authority in its negotiation. To gain international legitimacy, the Consular Convention of 1784 needed to be ratified by Congress, which began debating the validity of the international compact. The diplomatic negotiations around the Franco-American Consular Convention were far from over—in fact, they were just about to enter their most contentious phase.

Repositioning the United States in the Consular Negotiations

The Congress of the Confederation, which began deliberating the ratification of the Consular Convention signed by Franklin, was quite a different body from the one that had first promulgated the congressional scheme of 1782. With the conclusion of the U.S. Revolutionary War and the signing of the Treaty of Paris on September 3, 1783, the wartime necessity of appeasing the French demands for a Consular Convention had disappeared. “The *consulate convention lately formed with France* is universally *disapproved*,” wrote Virginia congressional delegate James Monroe to Franklin’s newly appointed successor as U.S. minister to France, Thomas Jefferson.³⁰ Indeed, some more radical voices questioned the utility of a consular convention altogether. Was such an agreement really necessary, asked Francis Dana, U.S. minister to Saint Petersburg, and were U.S. interests not better served through simple commercial treaties without binding agreements on the privileges and immunities of diplomats and consuls?³¹ Mediated in direct correspondence with Congress, such extraterritorial voices influenced the national conversation. As similar opinions multiplied in the following months, it became incumbent upon the U.S. secretary of foreign affairs and U.S. representatives in France to remedy the early Republic’s frail reputation by rekindling the negotiation.

²⁸ Benjamin Franklin, “Draft Consular Convention between France and the United States,” [before 24 December 1783], in *The Papers of Benjamin Franklin*, ed. Cohn, 41: 320–32.

²⁹ On these negotiations, see Cohn, “Editorial Note on Consular Convention,” 454–56.

³⁰ James Monroe to Thomas Jefferson, August 15, 1785, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1953), 8: 381–84 (emphasis in original).

³¹ Francis Dana described consuls as spies and “petty ministers, see Dana to John Adams, January 30, 1785, in *The Adams Papers: Papers of John Adams*, ed. Gregg L. Lint, C. James Taylor, et al. (Cambridge, MA: Harvard University Press, 2012), 16: 500–505. Dana’s opinion was influenced by fierce disputes involving foreign consuls in the United States. See, for example, Alfred Rosenthal, “The Marbois-Longchamps Affair,” *Pennsylvania Magazine of History and Biography* 63:3 (1939): 294–301; G. S. Rowe and Alexander W. Knott, “The Longchamps Affair (1784–86), the Law of Nations, and the Shaping of Early American Foreign Policy,” *Diplomatic History* 10:3 (July 1986): 199–220.

In John Jay, Congress found a new type of leadership that might help it overcome the diplomatic crisis.³² Having assumed the office of U.S. secretary of foreign affairs in December 1784, Jay turned his attention to the Consular Convention with France in the following July, two months after Thomas Jefferson had assumed the office of U.S. minister at Versailles.³³ On July 4, 1785, Jay issued a report that detailed the discrepancies between the congressional scheme and the Consular Convention of 1784, and championed a new approach to this highly divisive subject. The differences between the original scheme and the final agreement, he noted, included the authority of admitting consular commissions; the ability of consuls to engage in commerce; their duties in observing religious practices; the extension of consular authority in cases of shipwrecks over third-party subjects or citizens; the delegation of consular authority to agents; the extension of consular authority over captains and masters; consuls' investment with deportation and law enforcement powers over sailors; the extent of consular jurisdiction in criminal matters; and consular powers in certifying nationality and facilitating naturalization.³⁴ Together, discrepancies between the congressional scheme and the Consular Convention on these matters amounted to, in Jay's words, "essential Deviations" that "shew that Congress have a Right to refuse the Ratification in Question."³⁵ Jay's objections were sufficient to appease the already strong congressional opposition to the Consular Convention, yet he also overcame widespread apprehensions (including his personal ones) about the eventual conclusion of such a convention, which he understood as important to salvaging the early Republic's image as a treaty-worthy nation.³⁶ Jay's report on the discrepancies between the congressional scheme and the Consular Convention of 1784 enabled both himself and Jefferson to strategically shift the terms of the discussion in conjunction with the changing circumstances following the conclusion of the Revolutionary War.³⁷

³² For more on this crisis, see James Monroe to Thomas Jefferson, August 15, 1785, in *The Papers of Thomas Jefferson*, ed. Boyd, 8: 381–84.

³³ The debacle of 1784 left a stain on Franklin's diplomatic reputation; it remained a vivid part of the historical memory as well as the political toolbox of the revolutionary generation well into the early 19th century. See, for example, Thomas Jefferson, "Notes on the Consular Convention of 1788," May 3, 1803, in *The Papers of Thomas Jefferson*, ed. Barbara B. Oberg (Princeton, NJ: Princeton University Press, 2013), 40: 306–9. Franklin himself seems to have been surprised by the congressional reaction to the Consular Convention he had signed with Vergennes. Otto to Vergennes, November 18 and 28, 1785, cited in *The Papers of Thomas Jefferson*, ed. Boyd, 8: 381–84.

³⁴ For a comprehensive report on the discrepancies between the congressional "scheme" and the Consular Convention of 1784, see John Jay, "Report to Congress," July 4, 1785, *JCC* 29: 500–515. Interestingly, many of these issues became hotly contested in the Jay Treaty of 1794—yet another way in which the Consular Convention of 1788 prefigured later developments in U.S. diplomatic history.

³⁵ Jay, "Report to Congress," July 4, 1785, 509.

³⁶ On treaty-worthiness, see Eliga Gould, *Among the Powers of the Earth: The American Revolution and the Making of a New World Empire* (Cambridge, MA: Harvard University Press, 2012).

³⁷ Jay, "Report to Congress," July 4, 1785, 500–515.

Jay believed that the divergences between the scheme and the convention were so significant that Congress should refuse to ratify the convention on the grounds that its minister, Benjamin Franklin, had exceeded his authority. Franklin's instructions, he opined, entailed complete adherence to the congressional scheme, which "so blend[ed] his Authority and his Instructions that he could not communicate to the French Minister, the one without the other." In fact, Jay went so far as to claim that the French minister's knowledge of Franklin's instructions reinforced the Convention's illegitimacy. Since French officials had known that Franklin's deliberations were subject to strict instructions, the French negotiators themselves must have realized that the convention was subject to ratification and, ultimately, legitimate rejection.³⁸

While Jay's extensive report revealed his objections to the already concluded agreement, it also signaled his apprehensions about any consular convention that the United States might adopt. "[T]he true Policy of America," wrote Jay, "does not require, but on the contrary militates against such Conventions."³⁹ The Consular Convention's goal was to strengthen France, not the United States. "[I]t is clear to your Secretary," he observed, "that the *three* great Purposes which the Convention is calculated to answer"—the protection of national commercial laws, the control of emigration, and the creation of a consular corps—"are such as the United States have no Interest in promoting."⁴⁰ Unless a future convention adopted different principles, it would position the United States unfavorably to France. Furthermore, Jay claimed that the convention was not reciprocal since it excluded the French colonies from its purview and exempted French possessions from the free exercise of non-Catholic religious practices. These general apprehensions were compounded by a slew of particular objections, from the erroneous official name of the United States used in the original documents to issues such as the preferential judicial treatment of consuls and the possibilities for their clashes "with the internal Policy" of individual states and Congress.⁴¹ Given all these complexities, Jay's inclination was to thwart the passing of a consular convention altogether;

³⁸ Jay, "Report to Congress," July 4, 1785, 508.

³⁹ *Ibid.*, 514.

⁴⁰ One of the main reasons for the French interest in a consular convention with the United States was the widespread belief that this agreement would empower French consuls to limit the number of French subjects who wished to become U.S. citizens. This issue had been addressed by a congressional commission as early as 1782.

⁴¹ Jay, "Report to Congress," July 4, 1785, 501, objected to the use of "the United States of North America" or "the Thirteen United States of North America" in the congressional scheme or the Consular Convention signed by Franklin, respectively, preferring a simple reference to "the United States of America."

he only advised further negotiation with France due to the United States' former commitments and the risk of tarnishing its treaty-worthiness.⁴² While a consular convention with France was harmful to U.S. interests and potentially damaging to national sovereignty, it would be even more harmful to abstain from such a convention altogether after the U.S. minister to France had already signed an international treaty with the early Republic's closest international ally.

Rather than simply stalling negotiations, Jay used the existing discrepancies between the congressional scheme and the Consular Convention of 1784 to reposition the United States more favorably in the ongoing diplomatic negotiation, even as he strategically distanced himself from a full adherence to the "scheme" of 1782. For example, on the crucial point of initial disagreement with the French side, the prohibition of consuls' commercial pursuits, Jay actually favored an approach closer to the loose interpretation of the Consular Convention of 1784 than the stronger language of the congressional scheme.⁴³ Jay regarded the ban on consuls' commercial exploits, so prominently anchored in Article 3 of the congressional scheme, as damaging to the early Republic's commerce and, possibly, its ability to conduct its diplomatic affairs. Contrary to his European counterparts, Jay regarded consuls' ability to engage in commercial enterprises as an important component of the nascent U.S. consular practice, which should feature in the bilateral negotiation of reciprocity. With the ascension of the United States to the Atlantic diplomatic world, these new ideas of the relationship between commerce and consular representation would thus make their forceful entrance into a traditionally Eurocentric sovereign practice, changing the very meaning of this practice's core organizing principles. In contrast to European powers' attempts to dissolve consuls' entanglements in commerce, the United States did not enforce a comprehensive ban on their consular officials to engage in commerce, thus shifting the terms of the Atlantic debate on consular establishments.

⁴² Jay, "Report to Congress," July 4, 1785, 508–15.

⁴³ The congressional scheme's Article 3 read: "Consuls and vice consuls shall be subjects or citizens of the power appointing them, and interdicted from all traffick or commerce for their own or another's benefit." Article 3 of the Consular Convention signed by Franklin and Vergennes read: "The respective consuls and vice consuls may establish agents in the different ports and places of their departments, where necessity shall require. These agents may be chosen among the merchants, either national or foreign, and furnished with a commission from one of the said consuls. It shall be their business, respectively, to render to their respective merchants, navigators, and vessels, all possible service, and to inform the nearest consul or vice consul of the wants of the said merchants, navigators and vessels, without the said agents otherwise participating in the immunities, rights and privileges attributed to the consuls or vice consuls, and without power to exact from the said merchants any duty or emolument whatever under any pretext whatsoever."

The discrepancy between the congressional scheme and the Consular Convention of 1784 provided an opportunity for an even more overt innovation, Jay's suggestion of limiting the duration of the Consular Convention to 8 or 10 years.⁴⁴ The introduction of this new provision as a major component of the negotiation was a clear sign of the divisiveness and decreasing popularity of the Consular Convention in the United States. Having made these major objections to the Consular Convention of 1784, Jay instructed Jefferson to adhere as strictly as possible to the original congressional scheme of 1782 and to base his objections to the already concluded (but not ratified) Consular Convention of 1784 upon its deviations from the scheme.

With the refusal to ratify the Consular Convention of 1784, Congress once again relinquished the initiative to the French negotiators. Jay's next communication with Jefferson on the matter occurred in May 1786 upon a complaint by the new French minister to the United States, Louis-Guillaume Otto, who sought to place the issue of the Consular Convention once again on the diplomatic agenda.⁴⁵ Explaining that Congress had to "Confine [its] Attention . . . to such of the national Objects then under Deliberation, as were more immediately interesting," namely elections and treaties with Native American nations, Jay explicitly acknowledged that the Franco-American Consular Convention was an issue of only peripheral concern to the United States.⁴⁶ His reluctance to assume a leading role in the conversations, of course, masked his conviction that the Consular Convention was not just a minor development, but a rather contentious and perhaps undesirable one as well. Indeed, Jay failed to pursue dynamic actions and provide constructive instructions to Jefferson until Otto observed the discrepancy between the United States' energetic approach to a new commercial treaty with Prussia and their lack of commitment to a similar agreement with its close ally, France.⁴⁷ Was the United States favoring other powers over France, and how long would it delay the ratification of the Consular Convention?⁴⁸

⁴⁴ Jay, "Report to Congress," July 4, 1785, 515.

⁴⁵ Otto was acting in tandem with Vergennes, who "required a ratification" of the Franco-American Consular Convention in early 1786. See James Monroe to Thomas Jefferson, June 16, 1786, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1954), 9: 652–55. On Otto's tenure in the United States, see Margaret M. O'Dwyer, "A French Diplomat's View of Congress, 1790," *William and Mary Quarterly* 21:3 (July 1964): 408–44.

⁴⁶ John Jay, "Report to Congress," April 28, 1786, *JCC* 30: 216–17.

⁴⁷ Louis-Guillaume Otto to Count de Vergennes, January 10, 1786, in *The Selected Papers of John Jay*, ed. Nuxoll, 4: 273–76.

⁴⁸ John Jay to Thomas Jefferson, May 5, 1786, in *The Papers of Thomas Jefferson*, ed. Boyd, 9: 450–51.

Vergennes' and Otto's maneuvering successfully spurred Jay to action. In August 1786, he submitted a report on the Consular Convention to Jefferson, acknowledging that Congress was once again debating the issue and reaffirming the scheme of 1782 as the basis of negotiations.⁴⁹ Jay acknowledged this matter "to be a delicate one, and to require delicate management."⁵⁰ At stake was nothing less than the reputation of the early Republic, which had already endangered its treaty-worthiness by reneging on an agreement signed by its minister at the French Court. Therefore, though Jay admitted that the original congressional scheme was "far from being unexceptionable," he nevertheless opined that "a former Congress having agreed to it, it would be improper . . . to recede."⁵¹ Even the new leadership provided by Jay, it seemed, could not overcome the diplomatic debacle of nonratification or the larger concerns that plagued the negotiation. The subsequent conversations were also beset by errors in Jay's own version of the congressional scheme, as more than 20 inconsistencies with the original text were discovered, the issue promptly relayed to Jefferson in late October 1786.⁵² As the text of the congressional scheme continued to provide the basis of Jefferson's authority, much as it had in Franklin's case, these alleged errors provided a convenient excuse for Jay to further delay the transatlantic correspondence and distance himself from the course of negotiations in Europe.

Jefferson promptly responded to these developments by seizing the initiative. In a lengthy dispatch to Jay, dated January 9, 1787, he outlined a new course of action:

I will certainly do the best I can for the reformation of the Consular Convention, being persuaded that our states would be very unwilling to conform their laws either to the Convention, or to the Scheme. But it is too difficult, and too delicate to form sanguine hopes. However that there may be room to reduce the convention as much as circumstances will admit, will it not be expedient for Congress to give me powers, in which there shall be no reference to the scheme? The powers sent me, oblige me to produce that scheme, and certainly the moment it is produced, they will not abate a tittle from it. If they recollect the scheme and insist on it, we can but conclude it: but if they have forgotten it (which may be) and are willing to reconsider the whole subject, perhaps we

⁴⁹ John Jay, "Report on the Consular Convention with France," August 18, 1786, in *The Selected Papers of John Jay*, ed. Nuxoll, 4: 402–4.

⁵⁰ John Jay, "Report to Congress," August 18, 1786, *JCC* 31: 648.

⁵¹ *Ibid.*, 648–49.

⁵² John Jay to Thomas Jefferson, October 27, 1786, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1954): 10: 488–89.



Thomas Jefferson, U.S. minister to France from 1785 to 1789, helped overcome the impasse after the non-ratification of the Consular Convention of 1784. Jefferson adopted dilatory tactics in the hope of wresting greater concessions and, recognizing the importance of this matter to France, ultimately signed the Franco-American Consular Convention in 1788.

may get rid of something the more of it. As the delay is not injurious to us, because the Convention whenever and however made is to put us in a worse state than we are in now, I shall venture to defer saying a word on the subject till I can hear from you in answer to this. The full powers

may be sufficiently guarded by private instructions to me not to go beyond the former scheme. This delay may be well enough ascribed (whenever I shall have received new powers) to a journey I had before apprised the minister that I should be obliged to take to some mineral waters in the South of France.⁵³

Jefferson's dispatch articulated both the (undesirable) inevitability of a congressional ratification and a change in the negotiation strategy of the United States' diplomatic corps at Versailles. Ready to use the distinction between private instructions and public correspondence to delay the negotiations, while also exploring opportunities to deviate from the congressional scheme of 1782, Jefferson expected "new powers for the Consular convention" in a dispatch dated February 13, 1787. Under his current authority, he argued, it would be "impossible to make the change in the convention which may be wished for."⁵⁴ His correspondence coincided with Vergennes' death and with the ascendancy of Armand Marc, Comte de Montmorin Saint-Hérem, at the helm of French foreign affairs. These developments, along with the looming political crisis in France—Louis XVI had just summoned the Assembly of Notables—provided an auspicious opening for an eventual conclusion and bilateral ratification of the Consular Convention.

Composed just two days after the Confederation Congress had called a convention to Philadelphia to propose revisions to the Articles of Confederation, Jefferson's

⁵³ Thomas Jefferson to John Jay, January 9, 1787, in *The Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton, NJ: Princeton University Press, 1955), 11: 29–33.

⁵⁴ Thomas Jefferson to John Jay, February 23, 1787, in *The Papers of Thomas Jefferson*, ed. Boyd, 11: 179–80.

dispatch coincided with important political shifts across the Atlantic Ocean. As Congress was hastily preparing for the convention—which would ultimately draft the U.S. Constitution—Jay seized the opportunity to provide Jefferson with a new set of instructions. On May 10, 1787, days before the official commencement of the Constitutional Convention, Jay presented a report to Congress in which he advised the body to send Jefferson “an express and special Commission . . . that he may thereby have an Opportunity of endeavoring to realize the Advantages he expects from [a Consular Convention], and which under a new Administration (perhaps not well advised of what has passed) may be attainable.”⁵⁵

Jay’s dynamic initiative on this topic contrasted with his dilatory tactics and hostility toward the Consular Convention signed by Franklin in 1784. This indicated his changing attitude toward the convention but also suggested the likelihood that he had come to regard Vergennes as an impediment toward an agreeable development on this matter. It is likely that this transition toward a more energetic approach was also influenced by the continuing reports from the U.S. consular agent in Bordeaux, who opined that the failure to regulate consular relations exposed the increasing U.S. commerce with France to British machinations.⁵⁶ Either way, Jay’s desire to conclude a convention with an administration that lacked concrete understanding of the preceding negotiations highlighted his readiness to give Jefferson ample authority to negotiate the agreement. For the first time since his assumption of office, Jay willingly invested the U.S. representative at Versailles with what Franklin had deemed necessary for the conclusion of the Consular Convention, ample diplomatic powers that, this time, would extend beyond comprehensive congressional instructions. It is a sign of this changing attitude that Jay extended the duration of the convention to 12 years, rather than the more conservative suggestion of 8 to 10 years formulated two years earlier.

The Confederation Congress, eagerly debating the creation of a stronger federal government, supported Jefferson’s and Jay’s efforts on July 27, 1787, to conclude a Franco-American Consular Convention. Finally, the negotiating parties would be able to place the issue on a new foundation, putting behind the debacle of 1784 and the already dated scheme of 1782. Still, Jay’s official commission to Jefferson revealed lingering anxieties about the consular convention. “Considering that Conventions of this Nature, however apparently useful in Theory, may from

⁵⁵ John Jay, “Report on Thomas Jefferson’s Letter on the Consular Convention,” May 10, 1787, in *The Selected Papers of John Jay*, ed. Nuxoll, 4: 514–16.

⁵⁶ John Bondfield to Thomas Jefferson, December 12, 1786, in *The Papers of Thomas Jefferson*, ed. Boyd, 10: 589–91.

some Defects or unforeseen Circumstances be attended with Inconveniences in Practice,” Jay informed Jefferson that the consular convention would have to be limited to a duration of 12 years.⁵⁷

A New Diplomatic Climate and an Agreement on a Consular Convention

Within several months of Jefferson’s suggestion of a new course of action, the consular convention had not only been resurrected but had come to the fore of U.S. foreign policy considerations. The significance of this subject can be gleaned from Jay’s October 24, 1787, dispatch to Jefferson, which contained enclosures on issues as varied as the U.S. treaty with Morocco, the question of the U.S. debt to France, Jefferson’s new letter of credence at Versailles, and a “Copy of the federal Government proposed by the late Convention,” or “the new Constitution, as it is called.” Among all these issues, the consular convention took a prominent role in both the number of enclosures devoted to this topic and its enumeration in the long list of diplomatic priorities.⁵⁸ From a marginal issue that deserved at best a half-hearted remark by Jay to appease the impatient French ministers in 1783, the convention had turned into a significant diplomatic affair that required expeditious conclusion.

Despite this auspicious turning point in the negotiations, which greatly facilitated the ultimate passing of the Consular Convention, both U.S. and French negotiators spent several months debating the final text. The newly appointed French minister to the United States, Elénore François Elie, Comte de Moustier, blamed the delay of the entire consular convention on Jay, whom he accused of secretly trying to undermine the negotiations. In a memorandum on Jay’s July 4, 1785, instructions to Jefferson, Moustier informed the Foreign Ministry that Jay’s objections to the consular convention were so far from reality that he could only suspect ulterior motives as the reason for its unfortunate delay.⁵⁹ Moustier addressed Jay’s objections point-by-point, arguing that his apprehensions vis-à-vis the naming of the United States were paranoid and that his anxiety about a missing clause on consuls’ nonengagement in commerce was unfounded. France, Moustier insisted, had already enforced this clause internally and had nothing to gain from its absence in the negotiated agreement. Furthermore, Moustier explained Jay’s fears

⁵⁷ John Jay to Thomas Jefferson, July 27, 1787, in *The Papers of Thomas Jefferson*, ed. Boyd, 11: 627–29.

⁵⁸ John Jay to Thomas Jefferson, October 24, 1787, in *The Papers of Thomas Jefferson*, ed. Boyd, 12: 265–68.

⁵⁹ Elénore François Elie, Comte de Moustier, “Observations sur le délai de la Signature d’une Convention Consulaire,” in *The Papers of Thomas Jefferson*, ed. Boyd, 14: 92–100.

of possible disparities in the acknowledgment of consular notaries' certificates as reflecting the conditions of "a country where one does not interpret the law but rather follows it by the letter."⁶⁰

Moustier also criticized the American opposition to the proposed consular convention's Article 14, a crucial stipulation that enabled consuls to issue certificates of nationality, as an example of the "extremely extended ideas that people have about liberty in America." Even if naturalized, French subjects continued to carry rights and privileges conferred upon them by the French king. "An act done in America," Moustier insisted, "cannot denaturalize the things in France. Congress can very well give the rights of an American citizen to a French [subject] in America, but it cannot give him that quality in France, at least without the King's formal consent to an exception in favor of a particular individual." Jay's objection, however, was entangled with deeper misunderstandings about U.S. naturalization that drove French subjects to immigrate to the new republic. The way to address this deeper problem, Moustier proposed, was "to publish a work which paints the true difficulties that all French [subjects] have to endure in America, and which destroys the false impressions made by certain exaggerated works, which depict as current the particular customs and advantages of the United States that have not existed since the revolution and especially after the peace." Even without such a publication, the problem was diminishing as the new U.S. Constitution limited itself "to attracting the rich and talented emigrants," who would "not be tempted to go to a country where they would certainly not find what they would have left in Europe," namely "the taste of the amenities and conveniences of a more civilized Society."⁶¹

The looming ratification of the new U.S. Constitution thus provided a propitious opening not only for the U.S. negotiators but for the French officials as well. Moustier believed that the lack of expertise among the members of the U.S. Congress regarding the consular convention inordinately increased Jay's leverage, and he stressed that the creation of a new federal executive branch and an upper legislative chamber, the Senate, would be beneficial to U.S. foreign affairs and the Franco-American Consular Convention. "It is certain that the establishment of Consuls in the United States is infinitely useful in all regards," he summarized. These establishments necessitated a firm institutional structure. "Nothing can be worse than the total failure of a Consular Convention," Moustier exclaimed. "There would perhaps be fewer inconveniences in Turkey than here if none were concluded."⁶²

⁶⁰ Moustier, "Observations sur le délai."

⁶¹ *Ibid.*

⁶² *Ibid.*

Moustier's parallel to the Ottoman Empire envisaged the newly established United States at the opposite extreme of a formalized, institutionalized Eurocentric diplomatic order. In his view, U.S. opposition to the Consular Convention stemmed from the insecure posture of the postcolonial nation, which meticulously scrutinized each minute stipulation as a tyrannical attempt by a European empire to undermine its sovereignty. "Arbitrary power is as much for as against the enjoyment of the favors one may desire in Commerce," Moustier reasoned. "Where the law reigns, to the letter, one must renounce all that it does not expressly grant and often expect to experience that strict justice produces the greatest inconveniences." Notwithstanding the U.S. tendency to legal formalism, he concluded that French-U.S. relations would be gravely affected without the consular convention. "If the Convention does not take place," Moustier concluded, "it would be as well to annul the Treaty of Commerce."⁶³

Moustier's critique mostly coincided with the opinions at Versailles and throughout the French consular establishment, at this point already a decade-long institutional feature of French foreign affairs in the Americas.⁶⁴ Foreign Minister Montmorin reminded Moustier that the delay in the negotiations had not been entirely due to Jay's tactics. French insistence on an agreement in Versailles—and he might have added, institutional struggle for control of the consulates—had also hampered the negotiations.⁶⁵ Montmorin instructed Moustier to accede to the American demands for limiting the consular convention's duration, especially given Jefferson's commitment to a final ratification. Moustier should be attentive to American sensibilities, rather than antagonize them. He should strive to highlight the common advantages of the future rather than linger in the divisive ruptures of the past. "It is as much in the interest of the Americans as of us to protect our respective trade against the vexations and abuses of authority," he stressed; "thus the convention in question interests them as much as us; this is what I beg you to observe to Mr. Jay." "You will also observe to him," Montmorin instructed Moustier, "that all the stipulations of the agreement are reciprocal; we don't see how it can hurt the dignity and the absolute

⁶³ Ibid.

⁶⁴ See Comte de Moustier to Comte de Montmorin, New York, June 25, 1788, in "Correspondence of the Comte de Moustier with the Comte de Montmorin, 1787–1789," *American Historical Review* 8:4 (1903): 709–33. In the month before the conclusion of the Consular Convention by Jefferson and Montmorin, the French vice-consul at Norfolk (Virginia), Martin Oster, drafted a comprehensive memorandum on strengthening the agreement. In many ways, it exemplified the earlier calls for a robust and extensive treaty, which were never materialized. See Martin Oster, "Articles à Examiner, pour Servir à La Convention," [18 October 1788], in *The Papers of Thomas Jefferson*, ed. Boyd, 14: 100–113.

⁶⁵ See Comte de Montmorin to Comte de Moustier, Versailles, June 23, 1788, *ibid.*



Armand-Marc, Comte de Montmorin de Saint-Hérem, French minister of foreign affairs and secretary of state for the Navy under Louis XVI, sought to alleviate American fears about a consular convention with France by stressing the mutual advantages and reciprocal principles that such a convention would have.

sovereignty of the United States: if that were so, it would hurt likewise the sovereignty of His Majesty.”⁶⁶ More than any other agreement, the Consular Convention embodied the notion of reciprocal sovereignty that French officials claimed to have been promoting since the conclusion of the Treaty of Amity and Commerce.

In this new diplomatic climate, the conclusion and ratification of the consular convention proceeded swiftly. Jefferson’s and Jay’s unconditional interventions—changing the name of the contracting party to “the United States” and limiting the treaty’s duration—were adopted without greater difficulties. Despite his positive tone, Jefferson still harbored profound apprehensions about the treaty, whose provisions, in his assessment, “extend[ed] their preeminences far beyond those which the laws of nations would have given,” and violated “principles . . . of such antient foundation in our system of jurisprudence, and . . . so much valued and venerated by [U.S.] citizens, that perhaps it would be impossible to execute articles which should contravene them.”⁶⁷ His requests of limiting consuls’ jurisdiction over maritime disputes, of denying them maritime police powers, and of limiting their powers to arrest subjects or citizens, ultimately failed to make their way into the final agreement. However, he did manage to convince the French negotiators to replace references to the law of nations with references to the laws of the land, to limit consuls’ coercive (and deportation) powers over nationals to mariners (including deserters), and to curtail their prerogatives in gathering and using legal evidence.⁶⁸ Overall, both sides had managed to achieve some of their main priorities: the French inscribed maritime police powers in the treaty text, while the Americans limited the duration and the scope of consular powers, particularly those interfering with national jurisdiction.

⁶⁶ Ibid.

⁶⁷ Thomas Jefferson to Comte de Montmorin, June 20, 1788, in *The Papers of Thomas Jefferson*, ed. Boyd, 14: 121–26.

⁶⁸ Thomas Jefferson to John Jay, November 14, 1788, in *Ibid.*, 14: 56–66.

In sum, the Consular Convention of 1788 represented the last iteration of the congressional “scheme” of 1782 and the Consular Convention of 1784, its organic predecessor. As such, the Consular Convention was profoundly disruptive of the notions of national jurisdiction and territorial sovereignty that animated other landmark achievements in United States’ early political and diplomatic history, for instance the Treaty of Amity and Commerce, the Articles of Confederation, and the U.S. Constitution. Clearly, the French negotiators ultimately succeeded in wresting concessions from U.S. officials as they sought to invest their consuls with the powers to regulate French commerce, control French emigration, and promote French interests in the United States. Though U.S. negotiators were largely reluctant interlocutors, they too, acquired a great deal of experience in the diplomatic negotiations, while also vigorously defending the contours of their sovereignty against the perceived encroachments of an imperial power. The resulting agreement would not directly cause the colonization of America by other means, but it would force the United States to adhere to norms of Eurocentric diplomacy even as it slowly and systematically began to modify them.

Conclusion

Given the deep and persistent apprehensions of many U.S. officials in the decade-long negotiations with France, one may wonder why Congress finally ratified the Franco-American Consular Convention in 1789. The simplest answer to this question is that members of Congress had very limited ability *not to*. For over a decade of constant negotiations, French ministers and consuls had continuously insisted on the need for a consular convention. They repeatedly stressed that such a convention was the least the United States could do in return for French support of U.S. independence. In this way, French consuls and ministers tied the enjoyment of U.S. sovereignty to the existence of a consular convention. Such an agreement, they argued, would strengthen the transatlantic ties between France and the United States, and ensure the young republic of France’s continuous gratitude and support. By contrast, the failure to conclude such an agreement would irreparably destroy France’s relations with the United States; in fact, the congressional refusal to ratify the Consular Convention of 1784 severely undermined U.S.-French diplomacy and precipitated the aggravation of minor conflicts in the bilateral relationship.

Reassessing the Consular Convention’s place in U.S. history also entails examining its influence on the Atlantic interactions of the early Republic beyond its immediate temporal and geographic context. In regard to the history of U.S.-French relations, the significance of the Consular Convention did not disappear with its conclusion in 1788. In fact, consulship remained a highly divisive issue in the following

decade, which witnessed a dramatic deterioration of U.S.-French relations and the outbreak of open hostilities in the “quasi war” with France. Historians have rightfully considered these conflicts as emerging from the context of the French Revolution and as being fundamentally about American sovereignty in Atlantic commerce.⁶⁹ But what should be equally emphasized is that much of the tension that led to that conflict stemmed from the lingering uncertainties around consulship, never fully resolved by the Consular Convention of 1788. As became evident at numerous points during the discussion of the Consular Convention, U.S. and French officials interpreted the agreement as conferring different rights upon their consuls, from their ability to engage in commerce to their powers to intervene in maritime disputes and their immunities from criminal or civil jurisdiction.

Another important aspect of the Franco-American Consular Convention lies in its comparative significance for nascent U.S. foreign relations with the Atlantic world. Despite being a rather unique episode in the history of the early United States, the Franco-American Consular Convention is by no means exceptional if we conceive of it as a diplomatic instrument regulating bilateral consular relations.⁷⁰ Anxieties about the role of consuls as promoters of national sovereignty were not confined to U.S.-French relations; the necessity to regulate consulship also pervaded U.S. relations with other Atlantic states, notably the Barbary States as well as Spain, Portugal, and Britain. In fact, the discussion of the Franco-American Consular Convention was profoundly embedded in these debates. Hostilities with the Barbary States undergirded the necessity of concluding a consular convention

⁶⁹ See Marco Sioli, “Citizen Genêt and Political Struggle in the Early American Republic,” *Revue Française d’Études Américaines* 64 (1995): 259–67; Christopher J. Young, “Connecting the President and the People: Washington’s Neutrality, Genet’s Challenge, and Hamilton’s Fight for Public Support,” *Journal of the Early Republic* 31:3 (2011): 435–66; Seth Cotlar, *Tom Paine’s America: The Rise and Fall of Transatlantic Radicalism in the Early Republic* (Charlottesville: University of Virginia Press, 2011); Shira Lurie, “Liberty Poles and the Fight for Popular Politics in the Early Republic,” *Journal of the Early Republic* 38:4 (2018): 673–97.

⁷⁰ Early U.S. treaties regulating consular affairs include: Morocco (1787 and 1836), France (1788 and 1853), Spain (1795 and 1902), Tripoli (1805), Algiers (1815 and 1816), Colombia (1824 and 1846), Central America (1825), Denmark (1826), Brazil (1828), Prussia (1828), Austria-Hungary (1829, 1848, and 1870), Mexico (1831), Russia (1832), Chile (1832), Venezuela (1836 and 1860), Peru-Bolivia (1836), Sardinia (1838), Ecuador (1839), Portugal (1840), Hanover (1840 and 1846), Two Sicilies (1845 and 1855), Mecklenburg-Schwerin (1847), Guatemala (1849), Hawaiian Islands (1849), Switzerland (1850), Salvador (1850), Peru (1851, 1870, and 1887), Costa Rica (1851), Argentine Republic (1853), Netherlands (1855 and 1878), Persia (1856), Bolivia (1858), Paraguay (1859), Honduras (1864), and Haiti (1864). See Irvin Stewart, “American Treaty Provisions Relating to Consular Privileges and Immunities,” *American Journal of International Law* 20:1 (1926): 81–102, esp. 81–82.

with France in the hope that French support against Barbary raids would enable U.S. vessels to escape depredations.

It is also important to note the entanglement of the Franco-American Consular Convention with the simultaneous contestations with Spain over the Mississippi basin. As already mentioned, John Jay used the tedious negotiations with Diego de Gardoqui to explain the delays in ratifying the Consular Convention.⁷¹ But it is also possible that his perceived lack of success in the negotiations with Gardoqui might have incentivized him to grant greater concessions to France at a crucial moment in the negotiations of the Franco-American Consular Convention.⁷²

At the same time, the negotiation of a Franco-American Consular Convention also influenced the conduct of U.S. affairs with Britain, whose officials jealously regarded this agreement in search for greater concessions to their own consuls.⁷³ As the United States feared the exposure of their diplomatic correspondence to the French, their minister to Britain, John Adams, assumed an important role as a safe channel of transatlantic communications at a time of international hostility following the recent conclusion of the U.S. Revolutionary War.⁷⁴

The Franco-American Consular Convention never really attained the national and international appeal of the Treaty of Amity and Commerce or the U.S. Constitution, and yet in many ways it sought to address the same questions that animated these more famous revolutionary documents. The chief reason for its relative obscurity as a major document of U.S., French, and Atlantic statecraft is the reluctant and hostile attitude of a majority of U.S. officials toward the convention and the consular institution in general. The failure of the Franco-American Consular Convention to gain enduring international legitimacy led to early flareups in U.S.-French relations and a deteriorating Atlantic diplomatic framework. And yet,

⁷¹ See Jay, “Report to Congress,” April 28, 1786, 216–17; Nuxoll, “Franco-American Consular Convention,” 112–120.

⁷² See John Jay, “Report on Spanish Territorial Claims and on French Sentiments Regarding American Navigation of the Mississippi River,” August 17, 1786, in *The Selected Papers of John Jay*, ed. Nuxoll, 4: 395–402, esp. fn. 17.

⁷³ Elizabeth M. Nuxoll, “Consuls de Gratia: The Role of British Consuls: Editorial Note,” in *The Selected Papers of John Jay*, ed. Nuxoll, 4: 245–50; Nuxoll, “Anglo-American Relations: Editorial Note,” *ibid.*, 33–41.

⁷⁴ See John Adams to John Jay, May 8, 1785, in *ibid.*, 4: 79–83; ; Thomas Jefferson to John Jay, July 8, 1786, 99–101, and John Jay to Thomas Jefferson, October 27, 1786, 488–89, both in *The Papers of Thomas Jefferson*, Boyd, ed. vol. 10.

the Franco-American Consular Convention *did* pass, and its ratification should ultimately serve as a reminder of the frailty of United States' independence and of the reciprocal character of American sovereignty. It was only by agreeing to cede a portion of their newfound sovereignty in the form of discretionary consular authority, that U.S. officials managed to resolve the international tensions that beset their entry onto the global stage.

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