"A Blaze of Reputation and the Echo of a Name": The Legal Career of Peter Stephen du Ponceau in Post-Revolutionary Philadelphia

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“A BLAZE OF REPUTATION AND THE ECHO OF A NAME”:
THE LEGAL CAREER OF PETER STEPHEN DU PONCEAU
IN POST-REVOLUTIONARY PHILADELPHIA

By
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ABSTRACT

Peter Stephen du Ponceau (1760-1844) was a member of the Philadelphia Bar for nearly fifty years, during a period in which America’s lawyers played an important part in fashioning the post-Revolutionary legal structure. Though contemporaries considered him to be an exceptional member of the legal profession on account of his command of history, his talent for learning languages, and most importantly, because of his scholarly knowledge of civil and foreign law (two legal areas little known to America’s common law trained lawyers), he is largely ignored by historians of early American law. The best explanation for this oversight is his specialization in civil and foreign law, as most legal historians believe that, outside of early legal education, these areas of law contributed little or not at all to the formation of the American legal system. While the purpose of this thesis is to examine du Ponceau’s contributions to the development of American law through his uncommon knowledge of civil and foreign law, this examination also suggests that these legal areas played greater roles in the origins of American law than previously thought.

Chapter one explores the first decades of du Ponceau’s professional life in America and traces the path by which he gained recognition as a scholar of the aforementioned legal areas. The turbulent international relations with Europe that characterized the post-Revolutionary period generated a constant supply of cases pertaining to international, maritime, and commercial law. Du Ponceau’s knowledge of foreign languages gave him access to important foreign legal sources, as well as to clients in need of his specialized legal skills. Though certainly benefitting from his unique position among his fellow lawyers, du Ponceau set aside time amidst his professional responsibilities to help fill what he recognized as a gap in American jurisprudential knowledge. Beginning around 1800, he promoted and contributed to the movement within the legal profession to translate important foreign and civil law works into English. He also made his specialized legal and historical knowledge available to U.S. political leaders.

Chapter two illustrates how du Ponceau utilized his legal expertise, as well as his many years
of experience practicing law, in his opinions on and his participation in the legal reform movement in the 1820s to codify American law upon a civil law model. Although du Ponceau had worked hard during his early years in the bar to familiarize his fellow lawyers with this alternative legal system, in the end he argued against transforming the United States into a civil law country. In *A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States* (1824) he set forth his positions on American law, legal reform, and codification, and concluded that the U.S. possessed its own common law. This American common law not only was distinct from that of England’s through its numerous alterations and improvements, but also was capable of resolving America’s legal problems. The evolution of du Ponceau’s ideas on American law emerged through earlier published writings and private correspondence, most notably through his letters to his eccentric and pro-codification friend, Irish lawyer William Sampson. Though he failed to persuade Sampson of the superiority of the common law method, he succeeded in convincing leading jurists on both sides of the Atlantic, including James Kent and Joseph Story in America and anti-codificationist lawyers in England.
INTRODUCTION

Historians of early American law generally neglect to mention the life and contributions of Philadelphia lawyer Peter Stephen du Ponceau (1760-1844). He was, however, a leader in the Philadelphia Bar for nearly fifty years, during which time America’s lawyers played an important part in fashioning the post-Revolutionary legal structure. Contemporaries of du Ponceau considered him to be an exceptional member of the legal profession on account of his command of history and his talent for learning languages (his legal papers and correspondence display his use of no less than seven foreign tongues). More importantly, his colleagues admired his scholarly knowledge of civil and foreign law, two legal areas less well known to America’s lawyers who were trained in the English common law tradition. Indeed, du Ponceau’s extensive knowledge and use of civil and foreign law throughout his fifty years of legal practice, and the recognition he received from colleagues for his uncommon skills challenge the perception commonly held by legal historians that


2 Civil law derived from Roman law and the Corpus Juris Civilis issued between 529 and 534 by Emperor Justinian (483-565) in which all of Roman law was systematized and codified in written form. Civil law is based on broad legal principles rather than precedent. In contrast, common law developed in England out of centuries of custom, tradition, and precedent, and remains to this day an unwritten body of law.
American law was only slightly or not at all influenced by either of these legal areas.

The topic of this thesis is du Ponceau’s legal career, which lasted half a century from the end of the American Revolution until the 1830s. Its purpose is to examine du Ponceau’s contributions to the development of the American legal system through his uncommon knowledge of civil and foreign law. Chapter one explores the first decades of du Ponceau’s professional life in America. Tracing the path by which he gained recognition as a scholar of the aforementioned legal areas, this chapter reveals how du Ponceau’s rare knowledge of foreign jurisprudential systems enabled him to engage in legal activities that were open to few of his colleagues. The turbulent international relations with Europe that characterized the post-Revolutionary period generated a constant supply of cases pertaining to international, maritime, and commercial law, all of which are areas of civil law. Du Ponceau’s knowledge of foreign languages allowed him access to important foreign legal sources, as well as to clients in need of his specialized legal skills. His business papers and letterbooks reveal a busy and lucrative law practice, illustrating that his expertise was in demand during this period, most notably by the consuls sent to America in the 1790s by the French Republic to protect France’s interests during its war with England and its Quasi War with the U.S.. Though certainly benefitting from his unique position among his fellow lawyers, du Ponceau, who was appreciative of the opportunities afforded to him by his adopted country, set aside time amidst his professional responsibilities to help fill what he recognized as a gap in American jurisprudential knowledge. Beginning around 1800, he promoted and contributed to the movement within the legal profession to translate important foreign and civil law works into English. He also made his specialized knowledge available to political leaders such as Secretary of State James Madison, who sought information on international law issues.

Chapter two illustrates how du Ponceau utilized his legal expertise, as well as his many years of experience practicing law, in his opinions on and his participation in the legal reform movement in the 1820s to codify American law upon a civil law model. Complaining about the complex and disorganized state of American law, advocates of codification blamed the U.S.’s adherence to the common law method of jurisprudence for America’s legal woes. Although du Ponceau had worked hard during his early years in the bar to familiarize his fellow lawyers with this alternative legal system, in the end he argued against transforming the United States into a civil law country. He set
forth his positions on legal reform and codification, as well as on the common law and civil law jurisprudential systems in *A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States* (1824). In his *Dissertation* he concluded that the United States possessed its own common law that was made distinct from that of England’s through numerous alterations and improvements, and that was capable of resolving America’s legal problems. Chapter two reveals the evolution of du Ponceau’s ideas on American law through both earlier published writings and private correspondence, most notably through his letters to his eccentric and pro-codification friend, Irish lawyer William Sampson. Though du Ponceau failed to persuade Sampson of the superiority of the common law method, he succeeded in convincing leading jurists on both sides of the Atlantic, including James Kent and Joseph Story in America and anti-codificationist lawyers in England. This chapter reveals both the significance and scope of du Ponceau’s influence and reputation as a lawyer and legal scholar during this period. At the same time, his private letters and published writings summarize well the frustrations that drove so many American lawyers and judges to consider the civil law remedy of codification, and the fears and concerns that ultimately kept these professionals from taking such a momentous leap.

Although at the time of his death in 1844 “his name [was] familiar to all lawyers,” such recognition was, regrettably, ephemeral.\(^3\) Du Ponceau himself is largely responsible for his nonappearance in the basic comprehensive studies of early American law, having left few written examples of his erudition behind for legal historians to analyze. Indeed, his responsibility is compounded in light of warnings he gave to his own students that “[t]he fame of a practising [sic] lawyer, however learned, eloquent, and able he may be, is fugitive and transitory, and seldom lasts beyond his life, unless he leaves behind him some traces of the knowledge and eloquence that he possessed.”\(^4\) However, the best explanation for du Ponceau’s absence from the pages of history is his specialization in civil and foreign law, as most legal historians believe that “the civil law tradition

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contributed only modestly to the origins of American law.” Those historians who acknowledge a greater contribution on the part of civil law believe that it was more influential on legal education rather than in the courtroom.6

In contrast to the standard works on American legal history, this examination of du Ponceau’s legal career suggests that civil and foreign law played greater roles in the formative years of American law than previously thought. Chapter one reveals that in the decades immediately following the American Revolution, civil and foreign law were both useful and necessary in addressing the international troubles then confronting the United States. Indeed, as America had yet to possess a leisure class, few, including du Ponceau, could afford to entertain hobbies and purely intellectual pursuits at the expense of income-producing endeavors. In other words, du Ponceau could not have specialized unless a demand existed for such knowledge and skill. These findings support the work of law professor Richard H. Helmholz who concludes from his study on the “Use of the Civil Law in Post-Revolutionary American Jurisprudence” that civil law sources “were not used simply for purposes of education, adornment, and occasional large thinking, although of course they clearly were used for all these purposes.”7 After examining law cases in fourteen states between 1790 and 1825, Helmholz discovered that civil law was used in all the states and most often in the areas of maritime and commercial law. He concludes that civil law served to fill gaps in or to buttress English common law, or to address cases “where fundamental principles of justice were at stake.”8 Du Ponceau’s legal career supports Helmholz’s conclusions and illustrates that civil and foreign law fulfilled a need and held positions of influence in post-Revolutionary American law.


8Ibid., 1664.
The method rather than the substance of civil law took center stage in the 1820s debate to reform American law through codification. Legal historian Charles M. Cook illustrates in his examination of the American Codification Movement that during this period civil law proved to be a viable and powerful threat to America’s common law system of jurisprudence.\(^9\) The very real possibility that U.S. law might undergo such a transformation caused the best legal minds in the country to enter the debate, and the newspapers and legal journals throughout the states to print their arguments, ideas, and concerns. Chapter two reveals that codification and the merits of the civil law system not only dominated legal reform debates in America, but also that both were being offered by English codificationists across the Atlantic as an alternative to England’s common law. Well aware that the “spirit of the age...[was] for change and innovation in everything,” and that codes were gaining a powerful following within the American legal profession, du Ponceau entered the debate in order to prevent what he considered to be a “rash and sudden” and ultimately disastrous move.\(^10\) The intensity and scope of the debate, and the necessity felt by the best legal minds to get involved suggest that the civil jurisprudential system was indeed an influential force in America in the 1820s.

Du Ponceau’s reputation as a skilled lawyer and legal scholar lasted slightly longer than the popularity of civil law in America. In contrast, he attained lasting fame (that is, space within history books) from other intellectual pursuits, which he accomplished later in his life. When he died in 1844, he was known on both sides of the Atlantic as both a scholar and learned jurist; however, he achieved his greatest recognition both at home and abroad for his work in philology. Edward G. Gray in *New World Babel: Languages and Nations in Early America* and Joan Leopold in *The Prix Volney: Early Nineteenth-Century Contributions to General and Amerindian Linguistics: Du Ponceau and Rafinesque* both discuss at length du Ponceau’s work as a philologist.\(^11\) His work in Native American

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Indian languages is also analyzed in Peter P. Pratt’s article “Peter du Ponceau’s Contributions to Anthropology,” and in Erminie Wheeler-Voegelin’s article “John Heckewelder to Peter S. Du Ponceau, Bethlehem, August 12, 1818.” Some historians have also noted du Ponceau’s extensive involvement in nineteenth-century learned societies. When he died at the age of eighty-four, he was president of both the American Philosophical Society (where his picture still hangs on the wall of the library) and the Historical Society of Philadelphia, he was a former president of the Athenaeum, and he was the senior member of the Philadelphia Bar. His intellectual interests were so extensive that by 1840 he held memberships in twenty-three American and nineteen foreign learned societies. Robley Dunglison, a secretary of the American Philosophical Society, discussed du Ponceau’s societal contributions in his “Biographical Sketch of Peter S. Du Ponceau,” written in 1845. Four chapters are dedicated to du Ponceau’s life and administration in A History of the Historical Society of Pennsylvania by Hampton L. Carson.

Du Ponceau himself furnished the best source of background information on the first two decades of his life in a series of autobiographical letters, written from 1836 to 1844, with the narrative ending with his admission to the Philadelphia Bar in 1785. The Pennsylvania Magazine of History and Biography published these letters under the title “The Autobiography of Peter Stephen Du Ponceau” in two parts in 1939 and 1940. Although his death in April of 1844 brought his project to an abrupt halt, earlier letters reveal that he never had intended to continue the narrative beyond his entrance into the legal profession, after which point, he humbly wrote, “my life becomes that of an ordinary man of business, engaged from morning till night either in his study or in Courts of Justice, acquiring a literary style by writing legal instruments and improving his mind by the study of the


13The two primary collections of du Ponceau’s papers and manuscripts are housed at the American Philosophical Society and the Historical Society of Pennsylvania in Philadelphia.


Du Ponceau’s “Autobiography” provides the most thorough description of his early years in France, before his journey to America at the age of seventeen. He was born Pierre-Étienne du Ponceau de Fontenoy on 3 June 1760 in the town of St. Martins, Isle of Ré, a small island off the southwestern coast of France. His family was wealthy and du Ponceau, his older sister, and his younger brother were schooled in the classics through both classroom instruction and private tutors. Du Ponceau’s father served in the French military and had intended for the young du Ponceau to do the same, but poor eyesight foiled any plans for a distinguished military career. However, it did not keep him from pursuing intellectual avenues. Du Ponceau revealed in his “Autobiography” that “at six years my fondness for languages began to develop itself.” He mastered Latin by the age of five and became proficient in English before his tenth year. His lessons in English started by mere chance when he discovered an English grammar at a neighbor’s house. Du Ponceau wrote that he had an early fascination with the English language and that his lessons consisted of self-instruction with opportunities for practice and recitation through interaction with the many English and Irish soldiers quartered near his hometown. At the same time he learned Italian from the quartered Italian soldiers. At this young age du Ponceau admitted that he “devoured Milton, Thomson, Young, Pope, [and] Shakspers [sic],” thus beginning his lifelong love of English poetry.

His interest in foreign languages extended to an interest in foreign cultures, and contributed to an early case of wanderlust. His classmates called him *L'evanté*, which means “one who does not know where he is, or what he is about.” His parents attempted to remedy his uncertainty and sent him at the age of thirteen to study under Benedictine Monks at St. Jean d’Angely in the province of Saint Onge. He excelled in all of his subjects, but later admitted that he “had no taste for the exact

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17Ibid., 195.


or physical sciences,” and that although he was “taught Mathematics in [his] infancy, that is to Arithmetic Algebra to Equations, of the third degree, the elements of Astronomy, Geometry and Military Fortifications...[he]...soon forgot all that [he] understood...” His true “delight was in the moral sciences,” particularly in the logic of Aristotle.\textsuperscript{21} The combination of his father’s death in Versailles while awaiting an appointment as Lieutenant Governor in 1775 and boredom with his studies caused du Ponceau to return home to St. Martins.

Du Ponceau’s mother desired that he become a Catholic priest, and though he claimed to have “imbibed...the principles of the Reformation” at an early age, with his father’s income gone, he submitted to duty and to her wishes.\textsuperscript{22} In 1775 he traveled to La Rochelle to begin his training for the priesthood. He graduated as Monsieur L’Abbé and was sent to an Episcopal college at Bressuire in Poitou to teach introductory Latin. Then only fifteen years old, du Ponceau did not look forward to a long life in Poitou. The torments of his fellow “pedants” ensured that he would not have to. The Bishop of La Rochelle was a family friend and oversaw du Ponceau’s teaching appointment. He also granted du Ponceau certain special privileges such as a light teaching load and a little dog for companionship. This special treatment caused a great deal of animosity from his colleagues who tormented and harassed du Ponceau and eventually drowned his dog. These harsh actions provided the small amount of incentive du Ponceau needed to flee Poitou and to indulge his adventurous spirit. With only a small amount of money (which he acquired from selling his few extra clothes), a clean shirt, and his copies of Milton and Juvenal, du Ponceau snuck away from his appointment on 25 December 1775.

Du Ponceau traveled by foot from December to January 1776 until he reached Paris. Aware of his father’s many military and professional connections in Versailles, he intended to find support from his father’s friends. He was not disappointed and received a warm welcome (and a few words of disapproval for his rash actions) from the Baron de Montmorency in Versailles. Du Ponceau relayed his interest in obtaining a clerkship in a governmental office, but later admitted in one of his autobiographical letters that his youthful foolishness and impatience spoiled his chances after he wrote

\textsuperscript{21}Ibid., 97.

a pert letter to the secretary of the navy questioning the delay in his appointment.

With the doors at Versailles now closed to him, he traveled to Paris with letters of introduction from his father’s friends. He became acquainted with the Count de Genlis, husband of the famous French writer Madam Stéphanie-Félicité de Genlis, and became the tutor of the Duke of Orleans’ children. When his knowledge of English became known, the Duke requested that du Ponceau write an English-French dictionary for him. Though du Ponceau resented that he never received pay for his work, he did delight in seeing his name among the many bound books within the Duke’s library. His knowledge of English also led to his acquaintance with Monsieur Capperonnier, the chief librarian at the Bibliothéque Royale and to his employment there as a translator. To earn extra money, he also translated letters for businessmen and gave private lessons in English and French. In light of his later fame as a leading jurist in the United States, ironically, he turned down numerous offers to clerk in legal offices.23

Du Ponceau explained in his “Autobiography” that even at a young age he preferred “men of letters,” and that while in Paris he became acquainted with various literary figures, including the philologist Count de Gébelin. Du Ponceau also frequented the house of “the well known Mons Beaumarchais,” author of the two famous comedic plays The Barber of Seville (1775) and The Marriage of Figaro (1785).24 Beaumarchais was an ardent supporter of American Independence, and, in 1776, he met with Silas Deane, the agent sent by the American Committee of Secret Correspondence, to discuss French assistance in the war effort.25 Through Beaumarchais both the French and Spanish governments provided clandestine aid to the American rebels. The French playwright set up a dummy trading company called Rodrigue Hortalez and Company as a way to send military supplies in the form of muskets, powder, and tents to the colonies.26 Du Ponceau, in effect,


25Members of the Committee of Secret Correspondence included Benjamin Franklin, Benjamin Harrison, John Dickinson, Robert Morris, and John Jay.

26The most recent biography on Beaumarchais is Brian N. Morton and Donald C. Spinelli, Beaumarchais and the American Revolution (Lanham, Md.: Lexington Books, 2003). Beaumarchais claimed that du Ponceau translated his work Observations on the justificative memorial of the court of London (Paris: Printed by the royal authority, 1781) [Evans, #17093].
was a part of the aid package as he was hand-picked by Beaumarchais to serve as both English translator and secretary to Baron von Steuben, who is credited by historians of the American Revolution with transforming the disorganized Continental Army into a disciplined fighting force capable of defeating the British. Steuben and du Ponceau traveled aboard Beaumarchais’ ship, the *Flamand*, on their journey from Marsailles to join the battle then raging in America. True to his French heritage, du Ponceau kissed the first woman he saw after reaching shore in Portsmouth, New Hampshire on 1 December 1777. Though he later admitted that he did not travel to America to support “freedom or republicanism,” but rather because he “wished to see different nations, different men, different manners, and above all, to learn different languages,” he was quickly carried away by the American struggle and sought to distinguish himself in his new military role.

Through his service as translator for Steuben, du Ponceau met numerous leading figures of the American Revolution, and entries in a personal diary reveal that he dined with General

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28Many years after du Ponceau settled into his new American life, the Historical Society of Pennsylvania asked him to write a biography of Steuben. Du Ponceau refused, stating that during his time with Steuben he was “too young to be admitted to that confidence, which might have induced him to relate to me the incidents of his former life.” [Baron von Steuben Letters, Peter Stephen Du Ponceau Papers, 1781-1844, Historical Society of Pennsylvania, Philadelphia]. He and Steuben resumed a correspondence by 1790, but their friendship cooled following du Ponceau’s refusal to join Steuben in a speculation scheme that involved settling French immigrants. [See du Ponceau to William Popham, 11 May 1836, Papers of the Morris and Popham Families, 1667-1892, Library of Congress, Washington, D.C.] This was perhaps the ill-fated Scioto Company fiasco into which the company owner William Duer had invited Steuben to invest. [John Palmer, *General von Steuben* (New Haven, Conn.: Yale University Press, 1937), 369] Misled by agents of the Scioto Land Company, in 1790 hundreds of French men and women settled in the wilderness town of Gallipolis on the banks of the Ohio River, only to discover later that they held no titles to their land. Du Ponceau summarized the French plight in a work entitled “Observations on behalf of the French Settlers at Gallipolis; Done the 2d February 1795,” which he submitted to the U.S. Congress in 1795 after his legal services were sought by a French representative of the Gallipolis settlers, Monsieur Jean Gervais, the previous year. Du Ponceau succeeded in securing from Congress a grant of 24,000 acres (known as the “French Grant”) on 3 March 1793 with each settler over the age of eighteen receiving around 200 acres of land. [See Peter Stephen du Ponceau, “Observations on behalf of the French Settlers at Gallipolis; Done the 2d February 1795,” Letterbook B, Du Ponceau Papers, 1781-1844, Historical Society of Pennsylvania; John L. Vance, “The French Settlement and Settlers of Gallipolis,” *Ohio History*, vol. 3 (1890): 45-81; Theodore Thomas Belote, *The Scioto Speculation and the French Settlement at Gallipolis* (New York: Burt Franklin, 1907).]

Washington often. In his “Autobiography,” du Ponceau recalled

I had frequent opportunities of seeing [General Washington] as it was my duty to accompany the Baron when he dined with him, which was sometimes twice or thrice in the same week. We visited him also in the evening when Mrs. Washington was at Head-Quarters. We were in a manner domesticated in the family.

In his diary, which covers the period from 24 February to 1 May 1778, du Ponceau described meeting General Duportail, Colonel Henry Laurens, Colonel Clement Biddle, John Muhlenberg, Jean Baptiste Ternant, and the Marquis de Lafayet. It was also during this time that he met James Monroe, then Lord Sterling’s aide-de-camp, marking the beginning of a life-long friendship. Achieving connections of this sort at such a young age boded well for du Ponceau’s future in America. Recalling his life during the war and acknowledging the life that might have followed, du Ponceau confessed, “[h]ad I been ambitious of places here was a fine opportunity afforded me to obtain that end, but I preferred my Independence, and suffered that opportunity to pass unimproved.” Du Ponceau’s ambitions instead led him to achieve fame within America’s legal profession.


31. Ibid., 207.

32. Ibid., 207-208.
CHAPTER 1

“THE GREATEST UNIVERSAL JURIST”: PETER STEPHEN DU PONCEAU AND CIVIL LAW IN THE NEW REPUBLIC

“It is regretted that the study of the civil law is not at all encouraged in the United States...”
Peter Stephen du Ponceau in Charles Butler’s *Horae Juridicae Subsecivae* (1808)

The linguistic skills that provided Peter Stephen du Ponceau’s passage to America in 1777 also provided the means by which he made both his money and his mark among the first generation of lawyers practicing in the decades following the American Revolution. After the war, his knowledge of French, English, German, Italian, Spanish, and Latin (and more importantly, legal Latin), and his working knowledge of low Dutch and Danish secured for him a position in the office of Robert R. Livingston, the first Secretary of Foreign Affairs. More importantly, in the 1780s, 1790s, and 1800s, decades of turbulent international relations between the U.S., England, and France, du Ponceau’s linguistic skills enabled him to utilize important foreign civilian legal texts on international, commercial, and maritime law, which the majority of his colleagues found inaccessible. With access came specialization and du Ponceau quickly became skilled in civil and foreign law, both areas of law less well known to his common law-trained colleagues. In du Ponceau’s obituary notice written in 1845, Boston lawyer John Pickering reminisced about the legal career of his long-time friend, and recalled that


Among his contemporaries at the Bar, his extensive and accurate knowledge of the Civil and Foreign Law gave him many advantages in the discussion of the great questions connected with international and mercantile law which were continually occurring while the European nations were at war and the United States maintained a neutral position, and for which our lawyers, generally, were not then prepared.\(^3\)

His “extensive and accurate knowledge” of these two legal areas earned du Ponceau the esteem of his colleagues, and a reputation as a scholarly jurist, as well as brought him lucrative legal work by foreign clients. After 1800 he achieved greater recognition for his linguistic talents and legal knowledge through his participation in the movement by U.S. lawyers to make translated, annotated, and Americanized editions of foreign civilian legal texts available through American publishing houses. Indicative of his growing reputation, political leaders such as Secretary of State James Madison sought du Ponceau’s ideas on matters critical to U.S. foreign policy. Similarly, legal leaders such as Supreme Court Justice Joseph Story called upon du Ponceau to contribute to the growth of American legal knowledge by directing lawyers and judges to the most important civil law sources. Colleagues came to hold du Ponceau in such high esteem that in *Law Miscellanies*, a guide to the study of law published in 1814, Pennsylvania Supreme Court justice Hugh Henry Brackenridge highlighted the legal scholarship of du Ponceau, whom, he asserted, “all will admit, I take it, possesses the greatest knowledge of general law of any, in the U[nited] States, and may be said to be the greatest universal jurist.”\(^4\)

Several decades earlier du Ponceau earned recognition for his scholarly and linguistic talents, as well as for his service in the American Continental Army. At the age of twenty-one, a prolonged illness in addition to severely poor eyesight forced du Ponceau to retire from his prestigious military appointment. He waited out his illness in Philadelphia during which time he became an American citizen. In the wake of such an honorable tour in the military and armed with both social and

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professional connections, he faced a civilian life almost limitless in potential and possibilities. The next rung on the political ladder for du Ponceau to climb was his appointment as one of two under-secretaries to the first Secretary of the new Department of Foreign Affairs, Robert R. Livingston of New York. And he came highly recommended. James Lovell, a member of the Massachusetts Congress, wrote the following letter to Livingston in October of 1781:

The manner in which...Capt. Duponceau has been recommended to Congress by Baron Steuben after long trial and experience in the Continental Connections of Secretary renders it almost needless for me to mention that the opinions of the Chevalier Du Portail and many other french Gentlemen warmly interested in our cause, have convinced to induce me to fix my attention upon this gentleman and to present him to you as being extremely well qualified to render service to the limited[?] states and facilitate your execution of the important Business of our foreign affairs by his uncommon knowledge of languages, his industrious disposition, his historical acquirements, his probity and his ambition to be useful to America.  

Richard Peters, President of the War Board, also favorably recommended du Ponceau to the new foreign secretary:

The Baron has long wished him to be employed in the corps-diplomatic as his want of health and short sightedness will not admit of his distinguishing himself in the field. He has an exceeding industrious turn and has a most remarkable facility of acquiring languages. French is his native tongue, English he has acquired perfectly and he understands German, Italian and Spanish. He can translate Danish and Low Dutch with the help of a dictionary, but a little application will make him master of these. He is also a good Latin scholar. From his private history of which the Baron has often given me an account I have reason to believe his views are extremely confined to this country.

Du Ponceau served under Livingston from 1781 to 1783. Working in the office responsible for both negotiating treaties, as well as for formulating early American foreign policy and procedure, du Ponceau acquired firsthand knowledge of international law (or the “law of nations,” as it was then

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6Richard Peters to Robert R. Livingston, 19 October 1781, Du Ponceau Papers, 1781-1844, HSP. See also Thomas McKean to Robert R. Livingston, 22 October 1781, Du Ponceau Papers, 1781-1844, HSP.
He recollected that

The situation in which I was placed was very honourable for a young man just turned of his twenty first year, and not a native citizen of the country. It was, indeed, a station far beyond any one that I could reasonably expect. I was let into all the diplomatic secrets of the government. The secret Journals of Congress, the correspondence of our ministers abroad, were laid open to me without reserve, and the fullest confidence was placed in my integrity.

For this treatment so honourable to me, I need not say I felt the liveliest gratitude.

Indeed, du Ponceau was privy to the most important issues occupying the new American government. Robert R. Livingston was elected Secretary of Foreign Affairs on 10 August 1781, during the period of diplomatic maneuvering through which the new nation hoped to achieve recognition as an independent and sovereign country from France, England, and other European powers. Livingston maintained constant correspondence with American ministers abroad, and requested information not only regarding the progress of negotiations, but also details concerning the political, economic, military, and social situations in each country, as well as specific and intimate details about the various personalities with whom the ministers came into contact. Though his staff was small, Livingston required that three to seven copies be made of each piece of correspondence that flowed in and out of his office. He also made a request, which was granted by Congress on 29 October, to examine the papers and books held by the secretary of Congress, and then to copy for his office those parts relevant to his responsibilities.

After establishing order and method in the Office of Foreign Affairs, both Livingston and du Ponceau left their public positions in 1783 to pursue private legal careers. Robert Livingston returned to his once lucrative legal practice in New York, which had suffered during his time as Foreign Affairs Secretary.

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7 Du Ponceau also recounted the “great personages” who visited the office while he worked for Livingston “such as the Marquis La Fayette, Count Rochambeau, the Duke de Lauzan, Count Dillon, Prince Guemencé, &c. Our own great men, such as Madison, Morris, Hamilton, Mifflin, &c. were visitors of course.” John Fanning Watson, *Annals of Philadelphia, Being a Collection of Memoirs, Anecdotes, & Incidents of the City and its Inhabitants, from the Days of the Pilgrim Founders* (Philadelphia: E. L. Carey & A. Hart, 1830), 366.


Secretary. Du Ponceau, then age twenty-three, began a legal apprenticeship in the office of William
Lewis, a well-known Quaker lawyer in Philadelphia who specialized in treason cases and who was
a leader of the Philadelphia bar. Upon learning of his apprenticeship Livingston sent a
congratulatory letter to du Ponceau writing, “I rejoice most sincerely, my dear Sir, in your happy
establishment which, I cannot but hope will be the harbinger of more important appointments
hereafter. The law is the great road to them in this country and I doubt not you will travel it with
success.”

Indeed, the road upon which du Ponceau traveled during these early years was paved with
praise and recognition. In 1782 he received an honorary master of arts degree from the University
of Pennsylvania; both Washington and Steuben attended the ceremony. Even foreign travelers
recognized in du Ponceau’s young character a disposition for success. The Spanish military exile,
Francisco de Miranda, took special notice of du Ponceau when describing his travels through America
in 1783 and 1784. In his entry about Philadelphia Miranda mentioned du Ponceau, writing that the
“interpreter of foreign languages for the state, is a young man of very good intellectual disposition,
application, and extensive knowledge in the living languages, which he speaks with singular facility
and good dialect.” Miranda also listed du Ponceau among the men of Philadelphia who had
distinguished themselves as men of letters, placing him in the company of men such as David
Rittenhouse, Dr. Benjamin Rush, John Dickinson, Reverend Samual Stanhope Smith, John
Armstrong, Gouvernour Morris, and Reverend William White. Admission to such a prestigious club
by a young man of twenty-four was quite an accomplishment.

With such impressive credentials and connections, it is indeed surprising that du Ponceau did

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11 Robert R. Livingston to Peter Stephen du Ponceau, 10 December 1783, Peter Stephen du Ponceau
Letters, 1777-1847, HSP.

12 William A. Tieck, “In Search of Peter Stephen du Ponceau,” Pennsylvania Magazine of History and
Biography 89 (1965): 73.

de Miranda in the United States, 1783-84 (Norman, Okla.: University of Oklahoma Press, 1963), 45.

14 Ibid., 56-57.
not do as so many other young men of his time did and use law as a means to climb the ladder of public offices. After leaving the office of the Foreign Secretary, du Ponceau held, over the next twenty years, only minimal public appointments. The 1785 edition of Bailey’s pocket almanac lists du Ponceau as Philadelphia’s “Sworn Interpreter of Foreign Languages.” He is again listed as “Sworn Interpreter” in the 1786 publication of Gaine’s universal register. In 1785 du Ponceau became a Notary Public. The Journal of the First Session of the Fourth House of Representatives of the Commonwealth of Pennsylvania for December 1793 notes that du Ponceau was paid for his services as translator for the House secretary, however, there is no indication that this was an appointed office. John Hill Martin’s Bench and Bar of Philadelphia shows that du Ponceau was appointed as interpreter of French and English for the Board of Health in 1794, and then again in 1810.

Du Ponceau’s last, but certainly the most significant, public appointment offer came from President Thomas Jefferson. In 1803 President Jefferson asked du Ponceau to serve as a justice on the Superior Court in the newly-acquired Louisiana Territory, no doubt to utilize his knowledge of both the French language and French civil law. Du Ponceau, however, turned down the President’s

15 Bailey’s pocket almanac, being an American annual register, for the year of our Lord 1785 (Philadelphia: Printed and sold by Francis Bailey, 1784) [Evans, #18338]; Gaine’s universal register, or, Columbian kalendar, for the year 1786 (New York: Printed by Hugh Gaine, 1786) [Evans, #19016]; The Pennsylvania almanack, for the year of our Lord 1787 (Philadelphia: Printed by Eleazer Oswald, 1786) [Evans, #20023].

16 Listed as Notary Public in Poor Will’s Pocket Almanack for the Year 1786 (Philadelphia: Printed and sold by Joseph Crukshank, 1785) [Evans, #18914]; see also Macpherson’s directory, for the city and suburbs of Philadelphia (Philadelphia: Printed by Francis Bailey, 1785) [Evans, #19067].

17 Journal of the First Session of the Fourth House of Representatives of the Commonwealth of Pennsylvania, which commenced at Philadelphia, on Tuesday, the third day of December, in the year of our Lord one thousand seven hundred and ninety-three (Philadelphia: Printed by Francis Bailey, 1793-1794) [Evans, #27480].


19 Charles Gayarré, History of Louisiana. The American Domination (New Orleans: F. F. Hansell & Bro., Ltd, 1903), 19; Jefferson also turned to du Ponceau regarding the Lewis and Clark Expedition. Jefferson sent letters to du Ponceau, Caspar Wistar, Benjamin S. Barton, and Robert Patterson asking them to advise Lewis and Clark on topics to investigate during their travels. See Jefferson to Casper Wistar, 28 February 1803, The
prestigious request, preferring to remain in America’s most cosmopolitan and internationally important city, Philadelphia. During this period almost all of du Ponceau’s energy was spent cultivating his private law practice. Nowhere in his later writings did he seem to regret his early choices, and indeed, friends praised his decision to avoid public office. In 1822 his long-time friend James Monroe, then the President of the United States, assessed their chosen paths and concluded to du Ponceau, “You have held a more tranquil course, and your station has been honourable and distinguished in your profession, yet being in no other respect a candidate for public favor, I am convinced, that you have enjoyed more happiness than has fallen to my lot.”

Du Ponceau’s chosen “lot” was the coterie of lawyers who, following the American Revolution, rebuilt America’s legal structure within the context of a far from tranquil international scene. Free from British rule, Americans no longer were obligated to follow British law. However, without an established body of American law, New York Supreme Court Justice James Kent recalled that during this period “the profession was called into the most active business...everything in the law seemed, at that day, to be new; we had no domestic precedents to guide us.” At the same time, immediately following the American Revolution, the United States was thrust into the tumultuous realm of international relations. No longer under British control, the Americans also no longer enjoyed open and protected trade with Great Britain, which instead closed both its home ports and

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20 James Monroe to Peter Stephen du Ponceau, 13 June 1822, Du Ponceau Letters, 1777-1847, HSP. Du Ponceau maintained a life-long aversion to politics stating in 1831, “I admit that parties, when kept within moderate bounds, are a wholesome ingredient in a free community; but they are a deadly poison, when carried to excess; particularly when they are not so much founded on the difference of political opinions, as on a blind attachment to popular leaders.” Peter Stephen du Ponceau, A Brief View of the Constitution of the United States Addressed to the Law Academy of Philadelphia (Philadelphia: E. G. Dorsey, Printer, 1831), 8.


those in the West Indies to American ships while encouraging Barbary pirates in the Mediterranean to target American ships for attacks.\textsuperscript{23} The outbreak of the Revolution in France in 1792 and its subsequent declaration of war against Great Britain further complicated the international scene and placed Americans, who preferred to stay neutral, in an unpopular and untenable position. Though the U.S. Neutrality Act of 1794, issued in reaction to the attempts by the infamous French ambassador Citizen Genet to enlist American citizens into the French military, made official the U.S.’s policy of maintaining friendly relations with both France and Great Britain while offering military aid to neither, American ships and their cargoes were continually targeted by both belligerents. During this period

An American ship, large or small, was then an Ishmael of the ocean. It had a flag, but nothing else. There was no government to protect it, there were no consuls to guard its interests in the alien ports which it entered, no line-of-battleships or frigates to shield the peaceful merchantman with their rows of shotted guns. The English, French, or Dutch traders in the East were sheltered by a recognized nationality and an active naval force, but the American mariners had nothing to depend on but their own cool courage, their breadth of canvas, and the swiftness of their keels.\textsuperscript{24}

Lawsuits generated by the European war and the concomitant stopping, seizure, and condemnation of U.S. vessels and their cargoes by foreign privateers provided an endless supply of work for American lawyers. While under British control, international law, as well as its many civil law branches—maritime (or admiralty), commercial, insurance, and prize—were under the jurisdiction of the Crown and its officials within the Vice-Admiralty courts. However, as noted, following the Revolution American lawyers and judges no longer were obligated to adhere to England’s laws or legal procedures. Indeed, a small group of lawyers and laymen called for a complete severance from English legal tradition in order to complete the movement for independence. Though suppressed, this call reemerged with increased force in the 1820s. While the conservative nature of the legal profession prevented a drastic break from English legal tradition, American lawyers discovered that


\textsuperscript{24}Winthrop L. Marvin, The American Merchant Marine: Its History and Romance from 1620-1902 (New York: Charles Scribner’s Sons, 1902), 35.
English legal sources at times provided inadequate or undesirable solutions to questions pertaining to international, commercial, and maritime law, three legal areas of paramount importance to the new nation. Consequently, Americans were forced to search elsewhere for answers. Joseph Story recalled that after Independence

The Admiralty Law was in a great measure a new system to us; and we had to grope our way as well as we could by the feeble and indistinct light which glimmered through allusions incidentally made to the known rules and proceedings of an ancient court. Under these circumstances, every case, whether of practice or principle, was required to be reasoned out, and it was scarcely allowable to promulgate a rule without at the same time expounding its conformity to the usages of Admiralty tribunals.25

Law reports covering the first decades after the Revolution reveal that American lawyers and judges looked to foreign and civil law to fill the gaps where English common law was silent, ineffective, or hostile to American interests.26 Knowledge of alternative, non-English jurisprudential sources proved to be a coveted skill during these legally ambiguous years. James Kent recalled how his uncommon knowledge of several foreign authors made him exceptional among his colleagues during his early days in the New York courtrooms. He recollected that

as the judges (Livingston excepted) knew nothing of French or Civil law I had immense advantage over them. I could generally put my brethren to rout and carry my point by my mysterious wand of French and Civil law. The judges were Republicans and very kindly disposed to everything that was French and this enabled me without exciting any alarm or jealousy to make free use of such authorities and thereby enrich our commercial law.27

The numerous cases generated by the seemingly endless European conflict, and the ensuing need for Americans to investigate foreign laws and legal systems caused international, maritime, and commercial law to be the first areas of American jurisprudence to be developed.

When du Ponceau entered the legal profession in the 1780s, the best works in these areas of


law had been or were being written by French, German, Italian, and Dutch civilian jurists. The most influential author on the formation of international law was the Dutch legal scholar and natural law philosopher Hugo Grotius (1583-1645), whose works *Mare Liberum* (Freedom of the Seas) (1609) and *De Jure Belli ac Pacis* (On the Law of War and Peace) (1625) were the first comprehensive analyses of international law. English-born jurist Richard Zouch (1589-1660) also systematized international law in his work *Juris et Judicii Fecialis Sive Juris Inter Gentes et Quaestionum de Eodem Explicatio* (Exposition of Fecial Law and Procedure, or of Law Between Nations, and Questions Concerning the Same) (1650). German-born philosopher Samuel von Pufendorf (1632-1694) followed closely the arguments of Grotius in his work *De Jure Naturae et Gentium* (Of the Law and Nature of Nations) (1672). Dutch-born Cornelius van Bynkershoek (1673-1743) wrote important works on maritime law and the relationship between belligerents and neutrals such as *De Dominio Maris* (On the Rule of the Seas) (1702) and *Quaestiones Juris Publici* (Questions of Public Law) (1737), which also discussed international diplomacy. Abbé Ferdinando Galiani (1728-1787) published *De’ doveri de’ Principi Neutrali verso i Principi Guerreggianti, e di questi verso i neutrali* (Of the Duties of Neutral and Belligerent Princes Towards Each Other) in 1782. Swiss-born jurist Emmerich de Vattel (1714-1764) emphasized natural law over positive law in his widely-read work, *Droit des gens* (Law of Nations) (1758). German writer Georg Friedrich von Martens (1756-1821) published a comparative study of European law, *Précis du droit des gens modernes de l’Europe* (Summary of the Law of Nations), in 1789. Finally, Heinrich von Ompteda (1746-1803) published in German a comprehensive critical bibliography of international law texts in 1785 entitled *Litteratur des gesammen sowohl natürlichen als positiven Völkerrechts* (Literature of the Natural and Positive Law of Nations).

The best works on commercial law all were written by French civilian authors. Robert Joseph Pothier’s (1699-1772) *Traité des obligations* (Treatise on Obligations) (1761), Balthazard Marie Eméignon’s (1716-1785) *Traité des assurances et des contrats à la grosse* (A Treatise on Insurance) (1783), Giovanni Lampredi’s (1732-1793) *Trattato del commercis de popoli neutrali in tempo di guerre* (A Treatise on the Commerce of Nations in Time of War) (1788), and René Josué Valin’s (1695-1765) commentary of Louis XIV’s *Ordonnance de la marine* (Marine Ordinance) (1756) of 1681 and his *Traité des Prises ou Principles de la Jurisprudence Française concernant les Prises*
"qui se font sur mer" (Treatise on Prizes or Principles of French Law concerning Prizes at Sea) (1763) were the leading commercial law works of the late eighteenth century. The most authoritative works in maritime law included the fifteenth-century text *Consolato del Mare*, which had been translated into Italian and Spanish before 1800, and the French jurisprudential opinions on maritime captures published collectively in the *Code des Prises* (1784). Also important were Francesco Rocco’s (1605-1676) *De navibus et naulo* (Concerning Ships and Cargo) (1655), and Domenico Alberto Azuni’s (1749-1827) *Sistema Universale dei Principj del Dritto Marittomom dell’Europa* (The Maritime Law of Europe) (1795), which was translated into French in 1797.

As John Pickering noted in du Ponceau’s obituary, “in the discussion of the great questions connected with international and mercantile law” during the post-war decades of international conflict, American lawyers “generally, were not then prepared.”28 The lack of preparedness in these two areas was due to a general lack of knowledge of civil and foreign law in America. This deficiency was attributable to three factors. First, prior to the American Revolution, America’s legal history and foundation were British common law. Second, in the years between the war and 1800, the civil and foreign law texts listed above were hard to come by in the United States. Comments made by Benjamin Franklin suggest that foreign works on international law were greatly needed, but scarce in 1775. Upon receipt of a shipment of books from the Dutch diplomat Charles Guillaume Frédéric Dumas, Franklin wrote to Dumas in 1775,

> I am much obliged by the kind present you have made us of your edition of Vattel. It came to us in good season, when the circumstances of a rising state make it necessary frequently to consult the law of nations. Accordingly, that copy which I kept, (after depositing one in our public library here, and sending the other to the College of Massachusetts Bay, as you directed,) has been continually in the hands of the members of our Congress, now sitting, who are much pleased with your notes and preface, and have entertained a high and just esteem for their author.29

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29 William B. Willcox, ed., *The Papers of Benjamin Franklin*, vol. 22 (New Haven, Conn.: Yale University Press, 1982), 287-288. Franklin was referring to Emmerich de Vattel’s *The Law of Nations or the Principles of Natural Law Applied to the Conduct and the Affairs of Nations and of Sovereigns* (1758).
The difficulty of acquiring legal texts was made worse during the periods of commercial blockades imposed by the British Crown against the United States, as well as by the constant seizure by foreign privateers of ships transporting goods to America. A sort of legal isolation resulted, forcing American lawyers to continue an adherence to English legal tradition. However, this isolation also led to innovation, “throwing the lawyers and the courts upon strictly American resources in the solution of new legal problems.”

In the earliest years of the new republic, lawyers frequently resorted to borrowing legal texts from one another. Du Ponceau experienced the difficulty of obtaining legal works in his early days of apprenticing under William Lewis. Having digested Blackstone’s *Commentaries* and Thomas Wood’s *An Institute of the Laws of England*, du Ponceau’s mentor advised him to next read *Coke upon Littleton*. Du Ponceau recalled that

> I wanted to have a copy of the work all to myself, to read it at my ease; but it was not easy to be procured. After many fruitless applications, I bethought myself of putting an advertisement in the newspapers, in which I offered to give a set of Valin’s *Commentary on the French Marine Ordinances*, in exchange for the book I so much desired to have.

As Valin’s work was also hard to come by, not surprisingly, du Ponceau quickly found an interested party in Philadelphia lawyer William Rawle, with whom he subsequently developed a long-time friendship.

Compounding the problem of procuring foreign works, prior to 1800 American publishing houses offered few legal titles. Before the Revolution, the only work published in America that addressed aspects of international law was English jurist Sir William Blackstone’s *Commentaries on the Laws of England in four books*, printed in America in 1771 and 1772. Books I, III, and IV briefly discuss English maritime law. Only a few international law books were published in the U.S.

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Finally, in addition to a common law heritage and the scarcity of foreign legal texts, most American lawyers lacked a sufficient command of ancient and modern European languages to enable them to utilize those foreign texts that made their way into American cities. According to legal historian Michael H. Hoeflich, a knowledge of foreign languages, ancient or modern, was quite rare in the new republic. Though it might be expected that Latin and Greek were inaccessible to all but the wealthy, Hoeflich states that even within this classically-educated group, a general lack of use of these ancient languages left many within the professional class unable to utilize legal sources written in any language other than English. A knowledge of jargon-filled legal Latin was even less likely, and as late as 1817, an anonymous writer for the *American Law Journal* lamented this intellectual handicap. In the article “Civil Law,” this writer stated that “a translation of the body of the civil law has long been a desideratum in English literature...that rich fountain remains locked up, not only to the mere English scholar, but even, in part, to the classical Latinist, who has not studied the technical phraseology of the Roman jurisprudence.” However, even the modern European languages at this time were largely inaccessible to the lawyers practicing in America. While the inhabitants of the Louisiana and Arkansas territories spoke French fluently, the rest of the U.S., even during the brief

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phase of Francophilia following the French Revolution, received little instruction in this language below the college level. Since most American lawyers received legal training through the system of apprenticeship, and were not required to attend a college or university, few within the legal profession spoke or read French. Hoeflich states that even fewer American lawyers knew the German language, and notes that Harvard did not hire its first instructor of German, Dr. Charles Follen, until 1825.\textsuperscript{37} Spanish was even less common, and Dutch and Italian were virtually unknown. As will be shown, America’s lawyers, including du Ponceau, eventually took it upon themselves to make English translations of important foreign texts available in America, but only after 1800.

In light of America’s particular legal needs, and of du Ponceau’s particular talents and experience, it is no surprise that he enjoyed a successful and lucrative legal career, and that, as his professional letterbooks and private legal papers reveal, almost all of his legal work involved cases pertaining to international, commercial, and maritime law. Indeed, from the moment he was born, du Ponceau possessed an advantage over most of his future American colleagues. Du Ponceau was born and raised within France’s civil law tradition, which was based upon ancient Roman law and codified legal works such as Justinian’s Code, or the Corpus Juris Civilis. Also, in his “Autobiography,” du Ponceau wrote that he was educated by Benedictine monks at St. Jean Angely in France.\textsuperscript{38} During this period, du Ponceau received instruction in Roman law and canon law, which is a body of ecclesiastical jurisprudence compiled over two centuries beginning in the twelfth century, but based on ancient Roman texts. In the winter of 1789-1790, du Ponceau revealed his knowledge of both the classical authors and of Roman law by providing examples from both sources to his friend, Swiss-born Albert Gallatin, to support his proposal for a statement of a bill of rights regarding libel at the Pennsylvania state constitution convention.\textsuperscript{39} These factors combined enabled du Ponceau, like

\textsuperscript{37}Hoeflich, “Translation & the Reception of Foreign Law in the Antebellum United States,” 758.


\textsuperscript{39}Raymond Walter, Jr., Albert Gallatin: Jeffersonian Financier and Diplomat (New York: The Macmillan Company, 1957), 36. Du Ponceau and Gallatin, at that time, also tried and failed to draft a constitutional clause during the convention. In a letter to Jared Ingersoll in 1804, du Ponceau wrote, “What you have heard related as having fallen from me in conversation with some Gentlemen of our Bar, is substantially correct. It is true that during the sitting of the Convention which framed the present constitution of Pennsylvania, a respectable member of that Body and myself sat down together to frame a constitutional clause defining the nature and extent of contempts punishable by courts of Justice in a Summary manner, that several draughts were
produced, which proved unsatisfactory to us, and that after considering the subject in every point of view which then occurred to us, we found it involved in difficulties, and thought it most prudent to leave the matter where it stood, and to trust to the wisdom of succeeding Legislatures, to remedy what defects might appear in the existing Law, as experience should point them out. I do not feel myself at liberty to mention the name of the gentleman to whom I allude, I can only say that he is a gentleman of known ability and of Republican principles, and that he is entirely unconnected with the legal profession.”

Peter Stephen du Ponceau to Jared Ingersoll, 15 September 1804, Letterbook 1803-1809, Du Ponceau Papers, 1781-1844, HSP.

James Kent, to wave the “mysterious wand of French and Civil law.”

Du Ponceau entered the American legal profession following his apprenticeship in the law office of William Lewis in 1783. During his time under Lewis, he worked with Philadelphia’s most respected lawyers including Jared Ingersoll, Moses Levy, Jasper Moylan, Jonathan D. Sargeant, Alexander Wilcocks, William Rawle, William Bradford, Jacob Bankson, Alexander J. Dallas, and Edward Tilghman. Lewis proved to be a good mentor, and du Ponceau recalled that

At last, at June Term 1785, my good master, Mr. Lewis, who had followed my progress, and had always been ready to assist me with his lessons and his advice, which I found of immense use and advantage to me, after a long and strict examination, thought he might venture to move for my admission as an attorney of the Court of Common Pleas, for the city and county of Philadelphia.”

On 24 June 1785 du Ponceau was admitted to the Philadelphia Bar, after which time his Continuance Docket reveals a significant increase in his workload; from three cases in the June 1785 Term to twenty-one in the September 1785 Term. A year after his admission to the Philadelphia Bar, upon the recommendation of Lewis, du Ponceau was admitted as an attorney of the Supreme Court of Pennsylvania. With this promotion, the young du Ponceau cemented both his position among Philadelphia’s elite, as well as a schedule of constant and time-consuming legal work for the next fifty

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40 Richard Peters to Robert R. Livingston, 19 October 1781, Du Ponceau Papers, 1781-1844, HSP.


In a letter to Thomas Wharton in 1837 du Ponceau recalled his early days of practicing in the Philadelphia Bar: “Mr. Rawle and I were engaged in a laborious profession, which affords little leisure for social intercourse; and though our literary tastes were in most things similar, such was the nature and urgency of our daily occupations, that we were seldom allowed to indulge our inclination, to wander into more flowery paths; for the law, as you well know is a jealous mistress, and requires undivided attentions from her votaries.” Wharton, “A Memoir of William Rawle,” 77.

From a perusal of du Ponceau’s letterbooks, which cover the period from 1792 to 1809 and which pertain almost exclusively to professional matters, two observations about the first twenty years of his legal career stand out: first, that the majority of his clients were French-born men and women who resided in the U.S., in the West Indies, or in France; and second, that his “important suits” turned on issues of international, commercial, and maritime law. One of du Ponceau’s earliest and most lucrative clients was French-born merchant Stephen Dutilh. Dutilh came to Philadelphia in 1783 and established Dutilh & Co. the following year. In 1790 he joined with John Wachsmuth

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43In a letter to Thomas Wharton in 1837 du Ponceau recalled his early days of practicing in the Philadelphia Bar: “Mr. Rawle and I were engaged in a laborious profession, which affords little leisure for social intercourse; and though our literary tastes were in most things similar, such was the nature and urgency of our daily occupations, that we were seldom allowed to indulge our inclination, to wander into more flowery paths; for the law, as you well know is a jealous mistress, and requires undivided attentions from her votaries.” Wharton, “A Memoir of William Rawle,” 77.


45Peter Stephen du Ponceau, Letterbook B, Letterbook, 1797-1801, Letterbook, 1803-1809, Du Ponceau Papers, 1781-1844, HSP.

to form Dutilh and Wachsmuth.\textsuperscript{47} Both companies traded with Europe and the West Indies in goods such as sugar, coffee, wine, and indigo. Du Ponceau’s Continuance Docket shows that he first represented Dutilh in June of 1786.\textsuperscript{48} Indeed, he proved to be a profitable client from the beginning, paying du Ponceau $600 “for sundry actions brought against the Mariners of the Ship Dorothea” in 1787.\textsuperscript{49} A “Statement of Account for Dutilh & Wachsmuch for 26 May 1791 to 18 December 1793,” reveals that this company kept du Ponceau quite busy with numerous court cases, and with drawing up legal documents in English, French, and Dutch.\textsuperscript{50}

Stephen Girard, the wealthy French-born Philadelphia merchant, owner of the “Bank of Stephen Girard,” and founder of Girard College in Philadelphia, was also one of du Ponceau’s clients.\textsuperscript{51} A case initiated by Girard in 1796 illustrates both a typical case for du Ponceau, as well as how during this period of international hostility, issues of maritime property and issues of jurisdiction often shared the same courtroom. In \textit{Waters v. Collot}, du Ponceau and Alexander J. Dallas asked the court to disallow the defendant special bail.\textsuperscript{52} The plaintiff was the captain of an American ship, the \textit{Kitty}, owned by Stephen Girard, which had traveled from Philadelphia to St. Domingue and had sold goods to the French at port. At that time the British seized the port, but allowed the \textit{Kitty} to proceed to Cayemite so that the captain could collect his money from the French. Returning to Philadelphia, the \textit{Kitty} experienced damage and headed toward the island of Guadalupe for repairs, but was stopped and boarded by a French privateer whose crew mistreated the American captain.

\textsuperscript{47}The Stephen Dutilh & John Wachsmuth company papers are at the Hagley Museum & Library Company, Delaware.

\textsuperscript{48}Peter Stephen du Ponceau, “Continuance Docket for 1783 to 1786,” Du Ponceau Papers, 1786-1842, APS.

\textsuperscript{49}Peter Stephen du Ponceau, “Receipt to Stephen Dutilh, 11 Dec 1787,” Du Ponceau Papers, 1786-1842, APS.

\textsuperscript{50}Peter Stephen du Ponceau, “E. Dutilh & Wachsmuch account, 26 May 1791 to 18 Dec 1793,” Du Ponceau Papers, 1786-1842, APS. Du Ponceau’s Letterbook reveals that he provided legal services to Dutilh until 1809. Peter Stephen du Ponceau to Stephen Dutilh, 7 April 1809, Du Ponceau Papers, 1786-1842, APS.

\textsuperscript{51}Several books have been written about Stephen Girard including John Bach McMaster, \textit{Life and Times of Stephen Girard, Mariner and Merchant} (Philadelphia: Lippincott, 1918) and Cheesman A. Herrick, \textit{Stephen Girard, Founder} (Philadelphia: Girard College, 1923). Girard’s papers are at the APS.

\textsuperscript{52}\textit{Waters v. Collot}, 2 Dallas 247 (1796).
The Kitty and its cargo were tried before a French tribunal at Baffeterre on the island of Guadalupe where the judge ruled that the Kitty and its crew should be restored to the Americans and that the captors should pay the costs. The French defendant, who happened to be both the Governor and the Commander-in-Chief of Guadalupe, subsequently appealed the case to his own office for review, which, not surprisingly, reversed the decision. The French defendant later traveled to Philadelphia where Girard called for his arrest in order to recover his losses. Counsel for the defendant argued that Collot had acted within his rights as an officer of Guadalupe and that he was only answerable to the French government for his actions. Du Ponceau and Dallas argued that Collot lacked jurisdiction and had directly violated the tribunal that did. They called for the case to be brought before a jury and for the defendant, a frequent traveler, to be denied bail. In its opinion the Court stated that “[i]t is a question of great delicacy, in which our regard for the rights of a fellow-citizen, and our respect for the sovereignty of a foreign nation are equally involved. When, therefore, the subject is judicially investigated, we shall be governed, as well by the law of nations, as by our municipal law.” The Court then denied Collot bail.53

The representatives of the French Republic, no doubt, were also aware of du Ponceau’s extensive aid to his French countrymen in America, as well as of his dedication to the French revolutionary cause. As noted, in 1795 du Ponceau assisted the French settlers at Gallipolis who had been ill-treated by the Scioto Land Company (see note 10). Du Ponceau was also a founding member of the French Benevolent Society, which was established in Philadelphia in 1793 to aid French men and women with pecuniary assistance and legal advice, particularly the

53 Another French-born client was Lewis Le Couteulx, the merchant who introduced Merino sheep into the U.S. In September 1800, Le Couteulx set out on a sales trip and with the intention of making a new home in Detroit. En route he stopped at Ft. George on the Canadian side of the Niagara where he was arrested by the British on charges of being a spy sent north by French radicals to incite the Canadians into declaring independence from England. He was imprisoned in Quebec from November 1800 to July 1802 during which time the U.S. did little to aid his release. In 1803, Le Couteulx wrote to du Ponceau requesting his aid in acquiring an indemnity from the British government for losses resulting from his imprisonment. Du Ponceau to Lewis le Couteulx, 27 February 1803, Edward E. Ayer Collection, Newberry Library, Chicago; Bradford Perkins, The First Rapprochement (Berkeley, Calif.: University of California Press, 1967), 101; see also Martha J. F. Murray, Memoir of Stephen Lewis Le Couteulx de Caumont (Buffalo, N.Y.: Buffalo Historical Society, 1906). Several years earlier, du Ponceau had helped Le Couteulx with a complicated international divorce. See du Ponceau to Lewis Le Couteulx de Caumont, 4 January 1797, Du Ponceau Papers, 1781-1844, HSP.

54 The representatives of the French Republic, no doubt, were also aware of du Ponceau’s extensive aid to his French countrymen in America, as well as of his dedication to the French revolutionary cause. As noted, in 1795 du Ponceau assisted the French settlers at Gallipolis who had been ill-treated by the Scioto Land Company (see note 10). Du Ponceau was also a founding member of the French Benevolent Society, which was established in Philadelphia in 1793 to aid French men and women with pecuniary assistance and legal advice, particularly the
the French, through Beaumarchais, lent aid to American Revolutionaries during the War of Independence. In 1778 the U.S. and France signed a Treaty of Amity and Commerce and a Treaty of Alliance. In 1780, however, the U.S. revealed its position on future international relations by supporting (though not joining) the European alliance called The Armed Neutrality. Created in reaction to British wartime domination of the seas and maritime trade, the alliance upheld “the right of neutrals to trade with countries at war, it adopted the principle that free ships make free goods, it undertook to limit contraband strictly to military supplies, and it declared that no port should be regarded as blockaded unless a sufficient number of vessels were maintained in front of it to make an attempt to enter dangerous.”

Begun by Catherine II of Russia, other countries who joined the alliance were France, Spain, Denmark, Sweden, Holland, and Portugal. England, though invited to join, refused and instead adhered to the British-made “Rule of 1756” established during the Seven Years’ War, which declared that a neutral could not in wartime engage in trade that was prohibited during peacetime.

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In January 1793, Louis XVI was executed and France became a republic, and a month later, France declared war on England, touching off a European conflict that would last for twenty-two years. Throughout the 1780s, the U.S. worked hard to establish itself as an independent commercial power in the international power structure, and consistently adhered to a policy of neutrality. Indeed, such a policy was necessary for America. Though bound by treaty to favor France commercially, by 1790 the U.S. still relied on England for long-term credit, 70% of its foreign commerce, and 90% of its imports.\(^{56}\) Choosing a side in the European conflict would in no way have benefitted the U.S., thus, it was reluctant to recognize the new French government or its obligations under the 1778 treaties. Despite the actions of Citizen Genet who came to the U.S. specifically to recruit American privateers to aid France in seizing Canada, Louisiana, and the Floridas, as well as in seizing British ships, the French did not invoke the U.S.’s obligations under the Treaty of Alliance. Instead, they too preferred that the U.S. remain neutral (indeed, with no navy, the U.S. would have proven an ineffective ally) in order to serve as a base of operations for acquiring supplies and selling prizes. A neutral status, however, offered no protection whatsoever to the U.S. against the British or the French, both of whom by 1793 were seizing American ships and their cargoes.

The final blow to the deteriorating relations between the U.S. and France came in 1795 when the U.S. signed Jay’s Treaty with the British. Jay not only agreed to accept the British definition of neutrality under the “Rule of 1756,” but also gave to the British most-favored-nation status, as well as a promise to no longer outfit French privateers in American ports. Thus began the Quasi War between the U.S. and France. The French broke diplomatic relations and over the next two years seized more than 300 American ships. Around the same time, the U.S. Supreme Court ruled that France no longer could establish tribunals in American port cities for the purpose of trying French prize cases, a procedure sanctioned in the U.S.-French treaty, and that all such cases belonged within the jurisdiction of the U.S. District Courts.\(^{57}\) Consequently, the French began to bring numerous cases into U.S. courts seeking reparations for lost cargo and prizes.

Within months of the diplomatic break between the U.S. and France, a representative of the

\(^{56}\) Ibid., 50.

French government (most likely Joseph Fauchet who was the Minister of the French Republic residing in the U.S. at the time) contacted du Ponceau to provide legal services on behalf of the French government. Over the next ten years, du Ponceau represented the French Republic in numerous cases, and appears to have made a good deal of money from his legal services. The French Republic also requested that du Ponceau refrain from taking cases that interfered with French interests. Discussing his salary arrangements, he wrote to Minister Joseph Fauchet, who replaced Genet in 1794,

> When Citizen Leblanc retained me in your name as counsel of the French republic he told me that an adequate salary would be affixed to the appointment. This I conceived to be so much the more reasonable that he laid me under an obligation not to be concerned in any cause which might militate against the interests of the Republic or her agents, to which engagement I have invariably continued faithful. But as the subject has never since been mentioned to me by you, and I have understood from Citizen LaForest that certain forms have been omitted on your part which would have been necessary to sanction the measure with you according to the mode prescribed by your government, I have thought that the mode I now adopt would obviate difficulties and be more agreeable to you.  

Du Ponceau, then working with Alexander J. Dallas on a prize case involving the French privateer, L’Ami de la Pointe à Petre, suggested to Fauchet that he and Dallas receive $300 each for their legal services, and also requested another $300 “[f]or the other services which I have individually rendered the Republic in my professional capacity since your arrival here” in 1794. Apparently, the French Republic continued to be slow in paying its legal fees. In January 1797 du Ponceau sent a bill to Citizen Le Tombe, the Consul General of the French Republic, for payment of legal services totaling $2000 rendered for France since September 1795. Though rumored at one time to have earned a $10,000 fee for his work on a single prize case, his personal papers reveal instead a more modest

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58 Peter Stephen du Ponceau to Joseph Fauchet, Minister of the French Republic, 9 June 1795, Letterbook B, Du Ponceau Papers, 1781-1844, HSP.


60 Peter Stephen du Ponceau to Citizen Le Tombe, 20 January 1797 [translated from French], Du Ponceau Papers, 1781-1844, HSP. Du Ponceau sent the same letter to the Consul Pierre Auguste Adet.
income, largely supplied by the French Republic and sufficient to support the lifestyle of a gentleman.  

From 1795 until the early years of the nineteenth century, du Ponceau corresponded with various French officials including Citoyen Hauterive, Citoyen Arcambat, Citoyen Bournonville, Citoyen Fauchet, Citoyen Adet, and Citoyen Le Tombe, all of whom served as consuls for the French Republic. In addition to du Ponceau and Dallas, Edward Livingston also represented French interests in American courts of law.  

In a 1797 letter to Talleyrand, the French Minister of Foreign Relations, the Minister Le Tombe wrote that “[a]ll three enjoy here the greatest reputations and all three are Republicans.”

Not only did his knowledge of civil and foreign law attract French-born clients, but, as noted by Pickering, this knowledge enabled du Ponceau to skillfully address “the great questions connected with international and mercantile law which were continually occurring while the European nations were at war and the United States maintained a neutral position.”

The U.S. federal law reports for the decades following the Revolution reveal that the most frequent question addressed by du Ponceau was that of jurisdictional conflicts between the U.S. and the major European powers. In 1794 du Ponceau participated in the famous case, Glass v. The Sloop Betsey, which established that U.S. District Courts, though not specifically designated by the Judiciary Act of 1789, are also prize

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61 Abraham Ritter, Philadelphia and Her Merchants, as Constituted Fifty @ Seventy Years Ago (Philadelphia: Published by the Author, 1860), 169.


63 Frederick J. Turner, ed., “Correspondence of the French Ministers to the United States, 1791-1797,” Annual Report of the American Historical Association for the Year 1903, vol. II (Washington: Government Printing Office, 1904), 1084. In 1798 du Ponceau and Dallas defended Le Tombe in court. In Jones v. Le Tombe John Coffin Jones of Massachusetts brought Le Tombe to court over a number of cash advances that the French Minister had allegedly made on behalf of the French Republic. Having acquired a debt of $70,052.46, Jones’ counsel stated that Le Tombe was responsible for the balance, arguing that although a Consul, he had acted as a merchant. The Court, however, ruled in favor of Le Tombe reasoning that Jones knew the risks of advancing money to a country whose economic situation had been disrupted by war. Jones v. Le Tombe, 3 Dallas 384 (1798).

Dallas summarized in his *Reports* the facts which led the case to be appealed to the Supreme Court:

Captain Pierre Arcade Johannene, the commander of a French privateer, called the Citizen Genet, having captured as prize, on the high seas, the sloop Betsey, sent the vessel into Baltimore; but upon her arrival there, the owners of the sloop and her cargo filed a libel in the District Court of Maryland, claiming restitution, because the vessel belonged to subjects of the king of Sweden, a neutral power, and her cargo was owned, jointly by Swedes and Americans. The captor filed a plea to the jurisdiction of the court, which after argument, was allowed; the Circuit Court affirmed the decree; and, thereupon, the present appeal was instituted.

The question facing the Supreme Court was whether a U.S. admiralty court had such jurisdiction. In his defense of the French privateer and of the ruling of the Circuit Court, du Ponceau argued that “the Judicial act by Congress specifically limits the jurisdiction of District Courts to civil causes of admiralty and maritime jurisdiction,” and also that the “District has no jurisdiction over issues involving the law of nations; especially in cases where claims are made between France and Sweden,” and further that “it is questionable whether any U.S. court can address an issue between two foreign nations with whom the U.S. is at peace.” Du Ponceau argued that such jurisdiction also violated the 17th Article of the treaty between the U.S. and France which allowed the latter to determine the validity of its own prize cases without U.S. intervention, and allowed the French to travel in and out of American ports at will. In support of his many points, du Ponceau cited works by Bynkershoek, Vattel, Blackstone, Rutherford, Wood, and Lee. The counsel for the plaintiff replied that

> The act of bringing the vessel into an American port, must be regarded as a voluntary election to give up jurisdiction, which they might otherwise have avoided. If the American courts have no jurisdiction, the captors avoid all jurisdiction, as they avoid that of their own country; for, the attempt by a French Consul to take cognizance in our ports, can never be countenanced. But shall they keep the vessel and cargo here *ad libitum*, and Americans, as well as neutrals, wait their motions?

The Court agreed and ruled that “every District Court in the *United States*, possesses all the powers

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of a court of Admiralty, whether considered as an instance, or as a prize court, and that the plea of the aforesaid Appellee...to the jurisdiction of the District Court of Maryland, is insufficient.”

The complexity of jurisdictional issues during this period is very well-illustrated in the 1796 case of *M’Donough v. Dannery*, in which du Ponceau defended the interests of France. An American ship called the *George* found a British ship, the *Mary Ford*, severely damaged and abandoned at sea with all of its cargo. Sailors from the *George* took over the *Mary Ford*, and with much difficulty brought it back to Boston where they claimed it and its cargo as prize. A British consul, Thomas M’Donough, came forward on behalf of a number of British merchants and claimed the ship and its cargo, but offered to pay salvage costs to the crew of the *George*. At that point, a French consul, J. B. Thomas Dannery, claimed the ship on behalf of the French Republic, stating that the *Mary Ford* had been legally captured by a squadron of French ships who had seized the British captain and crew, as well as their papers. However, damages rendered the captured ship unable to sail, at which point the French had attempted to burn it. All attempts failed and with an illness then plaguesing the French crews, no men could be spared to bring the *Mary Ford* to a French port. To this, the British argued that the French capture was incomplete in that the ship had been left open to recapture. The French consul maintained that the British ship had been abandoned out of necessity. The American, British, and French parties to the case all agreed to sell the ship and its contents, but the question remained: who should get the money? Without an American law precedent, the district court judge scoured the ancient and modern law sources and ruled that one third should go to the crew of the *George* for the risk taken in bringing the ship to port. The neutral status of the United States prevented the judge from deciding the legality of a prize between warring parties, and therefore, he ruled in favor of the British and agreed that the French had not completed the capture and therefore he was spared deciding on the case as lawful prize. The French appealed to the circuit court where the crew of the *George* was again awarded one-third of the sale money, but this time the court adhered strictly to the principles of neutrality. The court ruled that the last possessors of the *Mary Ford* according to both non-American parties had been the French, and thus the court awarded


67M’Donough v. Dannery, and the ship Mary Ford, 3 Dallas 188 (1796).
the final two-thirds to the French. At this point, the British appealed the case to the U.S. Supreme Court under a writ of error. The British restated their position that the U.S. had no jurisdiction to decide an issue of prize among warring parties, and that the French capture had been incomplete. On behalf of the French, du Ponceau, relying on the authority of Vattel and Grotius, among others, argued that the law of nations supports the principle that jurisdiction over the captors means also jurisdiction over the captured goods, and thus the United States did indeed have jurisdiction to rule in this case. He also re-stated the previous French argument that neutrality required that the U.S. refrain from deciding the legality (or thoroughness) of the French capture. The Supreme Court upheld the decision of the Circuit Court and allowed the French to retain two-thirds of the sale money.\(^{68}\)

In 1797, du Ponceau and Jared Ingersoll argued for the plaintiff in *Vasse v. Ball*, in which an American brig, the *Salmon*, had taken out two insurance policies from Mr. Ball totaling $28,000 to cover transporting non-contraband cargo to and from Port-au-Paix, France and Philadelphia.\(^{69}\) The American owner of the *Salmon* made a separate contract with French Minister Fauchet to transport American flour to France, as well as to carry back to Philadelphia a French officer and several injured French soldiers. On route to America, the *Salmon* was captured by a British privateer and taken to Bermuda to be condemned in a British admiralty court. The captain of the *Salmon* wrote the owner in Philadelphia of his fears of condemnation due to the flour and French passengers, however, in court, the defendant, the insurer, denied knowledge of any letter containing such information. The Bermuda Vice-Admiralty Court condemned the *Salmon* for the following reasons:

1. That the vessel and cargo were *French* property. 2. That the vessel was an *American* transport in the *French* service, employed to carry flour and soldiers to and from *French* ports. 3. That the vessel had been employed in carrying dispatches for the *French* Government. 4. That the vessel had been employed in trading with the enemies of *Great Britain*, supplying them with the means of sustenance and of war. And, 5. That the port from which the vessel came was in a state of blockade.

\(^{68}\)Ibid., 198.

\(^{69}\) *Vasse v. Ball*, 2 Dallas 270 (1797).
Du Ponceau and Ingersoll argued against the jurisdiction of English courts stating that

[T]his is not a question of English municipal law, in which the judgment of an English Court must be respected as evidence of the law: but it is a question arising in the Law of Nations; and if there is a diversity of opinion in the Courts of different nations, every nation is at liberty to examine the principle. Thus, then, it has been determined in France, that the sentence of a Court of Admiralty is not conclusive in a controversy between the underwriters and the assured.

In addition, they argued that the British contradicted themselves by declaring the ship to be both American and French, and that the ship was carrying only non-contraband cargo. The case went before a jury in which both the brig and its cargo were proven to be American, at which point the court ruled in favor of the plaintiff enabling him to collect his insurance.\(^{70}\)

Though the early U.S. federal law reports reveal the type of cases handled by du Ponceau, as well as provide the basic facts of the lawsuits and various arguments made, these reports do not reveal the extent to which he used his linguistic skills in his practice, nor the scope of his erudition in civil and foreign legal sources. For this, du Ponceau’s private legal notes are the best source. These notes show that he translated several foreign civilian works for his private use, including Galiani’s work *Of the Duties of Neutral and Belligerent Princes Towards Each Other* and Rayneval’s work on the right of neutral powers, *Concerning the Liberty of the Seas*. His legal notes also contain lengthy translated sections of the *Consolato del Mare* and of Lampredi’s *A Treatise on the Commerce of Nations in Time of War*.\(^{71}\) He translated from German an excerpt entitled “Arguments to Prove: That it would be more to the advantage than to the detriment of Belligerent Nations, if the freedom of the neutral flag were universally established,” from Professor Johann Georg Büsch’s *Uber die durch den jezigen Krieg veranlasste Zerrüttung des Seehandels* (On the Destruction of Maritime Trade occasioned by the Present War) (1783).\(^{72}\) In his investigation of French marine law in regards to salvage, du Ponceau bypassed English translations and copied extracts in French from René Valin’s

\(^{70}\)See also *Talbot v. Jansen, et al.*, 3 Dallas 133 (1795); *The United States v. Richard Peters, District Judge*, 3 Dallas 121 (1795).


\(^{72}\)“Arguments to prove,” n.d., Du Ponceau Papers, 1786-1842, APS.
Du Ponceau’s private legal notes display his need to investigate numerous foreign sources in order to answer the complicated questions of international law that arose during this period. In “Notes on the case of a mariner dying in the course of a voyage, whether his heirs shall recover his wages and how much,” (no doubt a common occurrence during this period of hostility upon the seas), he relied on several texts. He utilized *Sea Laws*, a collection of writings on maritime laws by both ancient and modern authors, which cites information from the older codified maritime works *The Laws of Oleron*, *The Laws of Wisby*, and *The Laws of the Hanse Town*. Stating that these sources were not clear on the issue, however, he turned to an excerpt by Étienne Cleirac, “an ancient and respectable author in Maritime Law,” quoted in René Valin’s *Nouveau Commentaire sur l’Ordonnance de la marine*. He next translated into English chapters 125 and 126 from the *Consolato del Mare*, though it is not clear whether he used the Italian, Spanish, or French edition as his original source. He compared his findings to extracts taken from two eighteenth-century French authorities on international, contract, and insurance law, Robert Joseph Pothier and Balthazard Emerigon. He also used foreign ordinances to shed light on the problem, probing the Marine Ordinance of France (1681), Spanish law in the *Curia Philippica*, the Maritime Ordinance of Emperor Charles V (1563), as well as the Ordinance of Amsterdam. Du Ponceau concluded that “the French Ordinance is the only one that lays down its doctrines with certainty and precision,” and that “the result of all the above authorities appears to be against allowing the wages out and home, where the mariner dies on the outward voyage.” He also concluded that the “Common Law authorities,” Lord Robert Raymond’s *Reports of Cases argued and adjudged in the Courts of King’s Bench and Common Pleas* (1790), G. W. Vernon’s *Irish Reports* (1790), and C. Durnford’s *Reports of Cases*...
Du Ponceau’s legal notes also reveal that he had a particular interest in the issue of neutrality. As noted, he translated for his private use Galiani’s *Of the Duties of Neutral and Belligerent Princes Towards Each Other*. He also copied a lengthy chapter from a work by Lampredi on “Whether Enemy’s goods are protected by the neutral flag,” as well as various cases from the French *Code des Prises* regarding the “Recapture of Neutral Vessels from Enemies.” He also wrote a refutation entitled “Neutral Chest” in response to Alexander Hamilton’s “Camillus” essays of 1795 in which Hamilton defended the Treaty of Commerce between the U.S. and England. The extent of du Ponceau’s preoccupation with neutrality issues, however, is best revealed in his “Index to my Collection of Newspapers in as much as concerns Neutrality or Captures.” This “Index” also illustrates the piecemeal manner in which early American international law took shape. His “Index” consists of two volumes, each containing over thirty items with a date range from 1783 to 1800. Volume 1 contains such entries as “Proclamation of the Treaty of Paris of 1783,” “Case of Prize at Antigua,” “Opinion of the attorney general at Martinique on matters of prize,” “President’s Instructions about hostile Expeditions,” “Decree of French Convention about American Treaty btwn 15 Nov 1794 and 20 March 1795,” “Spanish prize law,” “French Ordinance 1778,” and “Independent American on free ships free goods.” Further entries in Volume 2 include such items as the “Colonial decree to capture ships bound to the rebel ports,” “Adams’ Inaugural speech - 4 March 1797,” “Decree Isle of Rhe,” “French Reflecting on British Treaty,” and “New York Act about Aliens holding land.” Such a compilation makes it clear that the issue of neutrality was of central importance to du Ponceau’s legal work.

Du Ponceau’s colleagues took notice of his erudition and skill, and in 1808, while passing the time in the wilderness of Washington D.C. after his appointment as Justice of the Supreme Court,
Joseph Story described the lawyers who came before his bench to his friend Samuel Fay. About du Ponceau he wrote that he “is a Frenchman by birth and a very ingenious counsellor at Philadelphia. He has the reputation of great subtilty and acuteness, and is excessively minute in the display of his learning.”78 However, the professional life of a busy lawyer allowed for only limited glory, and many years later, du Ponceau conceded that

The life of a lawyer in the full practice of his profession, offers very little but the dull and dismal round of attendance upon courts, hard studies at night, and in the day fatiguing exertions, which however brilliant, are confined to a narrow theatre, and leave nothing behind but a blaze of reputation, and the echo of a name.79

Through published translations and legal advice, however, du Ponceau managed to step outside this “narrow theater” and to solidify outside of the courtroom his reputation as a scholar of both foreign and civil law.

By 1800 the ongoing international tensions between the U.S., England, and France showed no signs of slowing down. Du Ponceau recalled that “[i]n the beginning of the present century, during the reign of the embargo, non-intercourse, and other restrictive measures, produced by the British orders in Council, and the Berlin and Milan decrees, a great number of cases were carried from this city to the Supreme Court of the United States.”80 Philadelphia lawyer, Horace Binney, summarized the boom in business during the early years of the nineteenth century, almost thanking Napoleon:

The stoppings, seizures, takings, sequestrations, condemnations, all of a novel kind, unlike anything that had previously occurred in the history of maritime commerce,—the consequences of new principles of national law, introduced offensively or defensively by the belligerent powers,—gave an unparalleled harvest to the bar of Philadelphia. No persons are bound to speak better of Bonaparte than the bar of this city. He was, it is true, a great buccaneer, and the British followed his example with great spirit and fidelity, but what distinguished him and his imitators from the pirates of former days was the felicitous manner in which he first, and

78Joseph Story to Samuel P. P. Fay, 16 February 1808, Life and Letters of Joseph Story, 162-163.
80Ibid., 84-85.
they afterwards, resolved every piracy into some principle of the law of the nations, newly
discovered or made necessary by new events; thus covering or attempting to cover the stolen
property by the veil of the law. Had he stolen it and called it theft, not a single lawsuit could
have grown out of it. The underwriters must have paid, and have been ruined at once and
outright. But he stole from neutrals and called it lawful prize; and this led to such a crop of
questions as nobody but Bonaparte was capable of sowing the seeds of.  

Although few lawyers openly admitted gaining satisfaction from the “unparalleled harvest” brought
on by French and English hostilities, they no doubt appreciated the great increase in cases carried to
the Supreme Court after 1800. From 1790 until 1801, the U.S. Supreme Court decided only fifty-five
cases. However, between 1801 and 1835, 1,215 cases were decided, and of these, almost one-fifth
involved “questions of international law or in some way affect[ed] international relations.”

While the availability of foreign texts through booksellers began to increase by 1800, language
barriers still posed a problem for American lawyers. In the 1790s, Philadelphia bookseller George
Davis began publishing a catalogue specifically aimed at the legal profession. In Davis’s Law
Catalogue, For 1799, only three hard-to-get international law texts were offered: Clerke’s Praxis
Supremae Curiae Admiralitatis (1679; translated into English in 1722), Thomas Rutherforth’s
Institutes of Natural Law; being the Substance of a Course of Lectures on Grotius’ ‘de Jure Belli
ac Pacis’ (1754-56), and Robert Ward’s An Enquiry into the Foundation and History of the Law of
Nations in Europe, from the time of the Greeks and Romans to the age of Grotius (1795). Davis also
offered for sale European editions of Burlamaqui’s Principes du Droit Naturel et Politique and
Vattel’s The Law of Nations. His next catalogue in 1802, which he promised to be “infinitely more
extensive both in variety and learning, than any ever before presented to the Bar in America,” added
a few more titles to his inventory of books on international, admiralty, maritime, prize, and insurance
law. He added to the works above Christopher Robinson’s Admiralty Cases, Samuel Pufendorf’s


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In order to make more texts available, beginning around 1800 American lawyers began translating and annotating a lengthy and impressive list of foreign treatises and texts for American publishing houses. Not only did these translations reflect the rising level of American legal scholarship in the early nineteenth century, but they also “proved the lawyers of this country to be largely in advance of their English brethren, who, in general, took little interest in anything outside of the Common Law of England.” Du Ponceau played an important role in this campaign of translation. In 1797 he translated a popular work on the conflict of laws, Ulric Huber’s *De Conflictu Legum*, which was published in the third volume of Alexander J. Dallas’ *Supreme Court Reports*. In 1801 he contributed “A Summary View of the Law of France concerning Bankruptcy” and added translated sections from *Insolvency in Spanish law, the Ordinances of Bilboa* to British-born immigrant and civilian scholar Thomas Cooper’s *Bankrupt Law of America Compared with the Bankrupt Law of England*, the first comparative law book produced in the U.S.

In 1810 du Ponceau made his greatest contribution to this literary campaign when he not only translated from the original Latin, but also Americanized through omissions and annotations the first book of Cornelius van Bynkershoek’s *Quaestiones Juris Publici* (1737) or *A Treatise on the Law of War*. He wrote in the preface that

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84 George Davis, *Bibliotheca Legum Angliae, Davis’s Law Catalogue For 1802...1803, of Latest English and Irish Editions* (Philadelphia: James Humphreys, 1802).


86 Du Ponceau and his fellow lawyers also founded the Philadelphia Law Association in the beginning of the nineteenth century and established the Law Library Company of the City of Philadelphia in 1802. See Martin, *Bench and Bar of Philadelphia*, 219.

87 Kurt H. Nadelmann, “Peter Stephen Du Ponceau,” *Pennsylvania Bar Association Quarterly* XXIV (April 1953): 256; Nadelmann states that the work “was to play a role of prime importance in American conflicts law.”
It has long been...an anxious wish of the American jurists to see this celebrated treatise correctly translated into our language, and published in a portable form. It is very difficult to procure in this country a copy of the original, which is only to be found in a few of our libraries. Nor can it be obtained from Europe, without purchasing at the same time two folio volumes, which contain a great deal of matter of little interest to those who do not make civil law their particular study.  

In his translation of Bynkershoek, du Ponceau also included “a brief alphabetical notice of those writers on the civil law or the law of nations, whose works are not generally known, and are quoted or referred to in this book.” Assessing the impact of du Ponceau’s legal scholarship after his death, John Pickering wrote that

In his translation of Bynkershoek, he was the first to suggest the application of the distinction between an absolute and a qualified neutrality to the case of the United States and France, considering our neutrality to be not absolute, but qualified by the treaty of 1778. His remarks on the doctrine of the jus postlimini, in the same work, present some new views, which if we rightly recollect, are adopted by Mr. Wheaton in his useful work on International Law. We believe too, that Mr. Du Ponceau was the first to promulgate the opinion (in that work also) that piracy might be committed on land as well as at sea; which principle was afterwards incorporated into the act of congress on that subject.

Many contemporaries, however, immediately recognized the significance of du Ponceau’s contribution to America’s international law scholarship. Upon receipt of the book in December 1810, President James Madison wrote to du Ponceau,

I am glad to find that in the midst of your professional occupations, you have compleated [sic] a work which was so much wanted, and which required that accurate knowledge of both languages which you possess. The addition of your notes will contribute to recommend both

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the subject & the Author of that valuable Treatise, to the attention both of our Statesman & Students.\textsuperscript{91}

His long-time friend Robert R. Livingston told du Ponceau that “[y]ou appear to me to have done the amplest justice to your author, and rendered it much more interesting by your notes, as well as elucidated some passages which appeared obscure or contradictory in the original.”\textsuperscript{92} Du Ponceau offered only one more translation to his colleagues in 1811 with his publication of the “Penal Code of the French Empire” and the “Commercial Code of the French Empire,” both with annotations and both published in the \textit{American Review of History and Politics}.\textsuperscript{93}

Though he did not publish anymore translations, du Ponceau encouraged his colleagues to do so. Two American lawyers began journals that highlighted American translations of foreign works, as well as important cases and legal decisions contributing to the dissemination of knowledge of international and foreign law to an American legal audience. In 1808 Baltimore lawyer John E. Hall founded the \textit{American Law Journal and Miscellaneous Repository}, publishing six volumes from 1808 to 1810 and from 1813 to 1817, and dedicated to the exposition of important cases and decisions, and to works pertaining to issues of international law. When Hall established a new journal


\textsuperscript{92}Robert R. Livingston to Peter Stephen du Ponceau, 16 January 1811, Du Ponceau Letters, 1777-1847, HSP.

\textsuperscript{93}See \textit{American Review of History and Politics, and General Repository of Literature and State Papers}, vol. 2 (1811): Appendix, 1-69; 91-202. Du Ponceau was not the only lawyer seeking to make important foreign texts available in America. William Cobbett translated George Friedrich von Martens’ \textit{Summary of the Law of Nations} (Philadelphia: Published by Thomas Bradford, 1795); an American jurist translated Johan Schelgel’s \textit{Neutral Rights; or, an Impartial Examination of the Right of Search of Neutral Vessels under Convoy} (Philadelphia: Printed at the Aurora Office, 1801); William Johnson translated Domenico Azuni’s \textit{The Maritime Law of Europe} (New York: Printed by George Forman, 1806); John E. Hall translated Francis Clerke’s \textit{The Practice and Jurisdiction of the Court of Admiralty; in three parts} (Baltimore, Md.: Printed by George Dobbin and Murphy, 1809); Hall also translated and annotated Balthazard Marie Emerigon’s work in a publication entitled \textit{An Essay on Maritime Loans} (Baltimore, Md.: Philip H. Nicklin & Co., 1811); Jared R. Ingersoll translated Francesco Rocco’s \textit{A Manuel of Maritime Law} (Philadelphia: Hopkins and Earle, 1809); Thomas Cooper translated \textit{The Institutes of Justinian} (Philadelphia: Printed for P. Byrne, 1812) and included a comparison of Roman law and American law; John Rodman translated \textit{The Commercial Code of France} (New York: C. Wiley, 1814); William Frick translated Friedrich J. Jacobsen’s \textit{Laws of the Sea, with Reference to Maritime Commerce, during Peace and War} (Baltimore. Md.: Published by Edward J. Coale, 1818); and Caleb Cushing published Pothier’s \textit{A Treatise on Maritime Contracts of Letting to Hire} (Boston: Cummings and Hilliard, 1821).
in 1821 called *The Journal of Jurisprudence: A New Series of The American Law Journal*, he asked his friend and long-time supporter, Peter du Ponceau, to write the introductory essay.\(^{94}\) In “Testimon, erudit, vior,” du Ponceau expounded the continued goals of Hall’s new journal:

In the preceding volumes we were presented with several translations of valuable foreign works of jurisprudence, the originals of which are difficult to be procured. Among these we observe Bynkershoek’s celebrated treatise on the Law of War, a collection of the titles of the Justinian code, which relate to the maritime law, and the ancient and venerable *Consolato Del Mare*, which Mr. Hall has only published in part, but of which he promises to give us soon the remainder, having completed the whole of the translation of that excellent work. We understand that the same plan is to be pursued in the future numbers of the Journal, by means of which, we shall successively become possessed of several interesting legal works which are either out of print, or otherwise not easily obtained in this country. Selected extracts will also be given out of heavy volumes which contain but little that is interesting to the profession, but which little is of value. Thus it has long been a desideratum among lawyers to see a separate publication, out of the two huge volumes of sir Leoline Jenkins, of so much of the works of that great judge as relates to admiralty and prize law. This we understand is to be done through the channel of the Law Journal.\(^{95}\)

Another lawyer, Robert Walsh, requested assistance from a number of his colleagues including du Ponceau, Joseph Hopkinson, and Caleb Cushing for contributions to his journal, *The American Review of History and Politics*, which produced four volumes in 1811 and 1812.\(^{96}\) As mentioned before, du Ponceau contributed translations with annotations of the “Penal Code of the French Empire” and the “Commercial Code of the French Empire” in 1811.

In addition to aiding America’s legal profession, du Ponceau also assisted political figures who

\(^{94}\)Du Ponceau was a long-time supporter of Hall’s efforts to start a legal journal, and in 1811, upon hearing of Hall’s latest attempt, du Ponceau wrote to him, “I wish it success from the bottom of my heart.” Du Ponceau to John E. Hall, 11 September 1811, Du Ponceau Letters, 1777-1847, HSP.


sought his legal advice. Though he admitted towards the end of his life to have “for many years abjured angry politics,” he maintained that “my thoughts are entirely turned to the general good of our country, as far as it is in the power of an individual to promote it.” His correspondence reveals that he offered legal advice to supplement Secretary of State James Madison’s investigation into international and maritime law, and that he offered historical information on both ancient and foreign law to U.S. Representative Charles Jared Ingersoll.

In 1805 Secretary of State James Madison sought du Ponceau’s assistance, asking him to scour his sources for historical information pertaining to international law in order to determine past British policy on trading with neutrals. As noted, beginning in the 1780s the British adhered to the principle of the “Rule of 1756” regarding trade during wartime. This rule, created by the British during the Seven Years’ War, stated that a neutral could not in wartime engage in trade that was prohibited during peacetime. However, the British inconsistently applied this rule and backed off from it significantly after the U.S. and England signed the Jay Treaty in 1795. By 1800 England once again began reapplying it with rigor. In 1805 the British court used the rule in a case involving an American ship, the *Aurora*, which was carrying Spanish cargo from Havana, through an American port, and on to Barcelona. Before reaching its final destination, the British captured the vessel and sent it to Newfoundland, arguing that the U.S. had no established right to trade with Havana during peacetime, and thus could not now. In 1805 the British targeted American ships carrying cargoes to and from the French colonies, again under the rubric of the Rule of 1756.

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97Peter Stephen du Ponceau to Edward D. White, 23 September 1836, Du Ponceau Papers, 1781-1844, HSP. Du Ponceau continued throughout the course of his life to repay America and to promote its “general good” through such actions as organizing the collection of America’s historical documents while serving on the Historical and Literary Committee of the American Philosophical Society. He actually began this task years earlier: “I have received the Pamphlets which you have been so kind as to send to me, which have been very acceptable, as I have for a long time been collecting public Documents, & binding them up in volumes. I don’t believe that there is an other person in our City that does it, & when there is one who is known to take the trouble, it becomes a thing of general utility, as every one knows where to have recourse to a particular Document, in case of need. I am therefore very much obliged to you for those pamphlets, & I hope that you will continue to favor me in the same manner. On my part, I shall be happy to render you any service that will be in my power.” Du Ponceau to Benjamin Say [Member of House of Representatives, Washington], 6 December 1808, Du Ponceau Papers, 1786-1842, APS.

Outraged, Secretary of State Madison began to work on a publication to refute the British Rule, a principle of international law that no country except England sanctioned. Visiting Philadelphia during the summer and fall of 1805, Madison began to research the background and validity of the British position, examining sources by Grotius, Pufendorf, and Sir William Temple. Upon discovering that the leading international law authorities on neutrality did not address the topic at hand, Madison asked the State Department’s chief clerk, Jacob Wagner, to contact du Ponceau regarding assistance in Madison’s project.\footnote{Ibid., 296. It is noteworthy that Madison came to du Ponceau for assistance in light of the fact that just two years earlier he had threatened to prosecute du Ponceau, as well as Edward Livingston, Jared Ingersoll, William Rawle, and Joseph McKean under the Logan Act for having allegedly interfered with official U.S. policy. In 1803 while the U.S. and Spain were attempting to settle the issue of damages committed against American ships by the French while in Spanish waters, the Spanish minister worded the legal debate into a hypothetical inquiry and sent it to the American lawyers for their opinions, obviously aware of their extensive experience in such matters of the law. All replied that Spain was not culpable for French intrigues and consequently did not owe the U.S. reparations. President Jefferson and Secretary of State Madison were infuriated by what they considered a treasonous act, but eventually tempers calmed and the charges against the lawyers were dropped. See Brant, James Madison, 189.}

No doubt mindful of du Ponceau’s legal reputation and specialization, Madison was also aware of du Ponceau’s particular interest in neutral trading rights, having received in 1801 a copy (by means of his unofficial advisor Tench Coxe) of a section of du Ponceau’s private translation of Bynkershoek’s Questiones Juris Publici, which discussed the nature of contraband cargo.\footnote{Coxe wrote to Madison, “One of my neighbors when I lived in this place, Mr. Du Ponceau is about to publish a collection of state papers calculated to illustrate some important points of public law. One of them which he shewed me appeared to be so important that I begd a copy, which I might send to Washington. I have the pleasure to inclose it. You will observe it expressly mentions wheat, meat &ca. not to be contraband. This paper appears to merit a place among our public documents.” Tench Coxe to James Madison, 24 March 1801, The Papers of James Madison: Secretary of State Series, eds., Robert J. Brugger, Robert Rhodes Crout, Dru Dowdy, Robert A. Rutland, and Jeanne K. Sissons, vol. I (Charlottesville, Va.: University Press of Virginia, 1986), 40-41.} As noted, a significant portion of du Ponceau’s private legal notes concern the issue of neutrality. Du Ponceau’s letterbooks also reveal that since 1800 he had been vigorously requesting law books from Europe, the majority of which pertained to international law and neutrality. Notably, he requested editions of these works in their original language. In 1800 he wrote to a friend, Petit de Villers, relaying that he was trying to collect books on the topic of “the navigation of neutrals which currently agitates Europe,” and requested that Villers send L’ancien et le nouveau Code de prises, a collection of the work of the “current counsel of prizes,” as well as the reports of
the “célebre Portalis.” He also requested Azuni’s work on the maritime laws of Europe. In several letters between 1800 and 1806, he requested foreign works by Hübner, Galiani, Lampredi, Neumayr, Ompteda, Jacobsen, and Holst, as well as English works such as Sir James Marriot’s *Decisions in the Court of Admiralty*, Christopher Robinson’s *Reports of Cases argued and determined in the High Court of Admiralty*, and John Exton’s *Maritime Discaeologie; or, Sea Jurisdiction.*

Undoubtedly flattered by Madison’s request for assistance with his examination of British policy regarding neutrality, du Ponceau complied with the Secretary of State’s wishes. He sent a letter to Madison stating that

> Agreeably to your desire communicated to me by Mr. Wagner, I have sat down to collect and put together in the form of notes, the facts which had struck me in the course of my reading as throwing light on the history and motives of the British prohibition of the Trade of neutrals with the Colonies of her Enemies.

Du Ponceau divided his study into three periods, and sent all three parts of his investigation over the course of three weeks, including in the last an “appendix of Documents and authorities” that he deemed useful to Madison’s research. Madison again contacted du Ponceau in October seeking access to his law library, to which du Ponceau delightedly responded that he would be “very happy that any of the Books that he is possessed of can be useful to [Mr. Madison], & by his means to our Country, whose interests he has to support. Mr. Madison is welcome to make such use of them &

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101 Peter Stephen du Ponceau to Petit de Villers, 23 December 1800, [translated from French], Letterbook, 1797-1801, Du Ponceau Papers, 1786-1842, APS.


104 Du Ponceau to James Madison, 8 July 1805; Du Ponceau to James Madison, 15 July 1805; Du Ponceau to James Madison, 23 July 1805, James Madison Papers, Presidential Papers Microfilm.
as long as he pleases."\textsuperscript{105}

In January 1806 Madison published \textit{An Examination of the British Doctrine, Which Subjects to Capture a Neutral Trade, Not Open in Time of Peace} in which he declared that the Rule of 1756 ran counter not only to the law of nations, but also to England’s own past behavior.\textsuperscript{106} The exceedingly long work is an exhaustive study of seventeenth- and eighteenth-century international law, including an investigation into the legal ideas of such authors as Grotius, Pufendorf, Martens, and Vattel in relation to neutral rights and the foundations of international law. For many of his arguments, Madison relied heavily on Cornelius von Bynkershoek, whom he declared “treats the subject of belligerent and neutral relations with more attention, and explains his ideas with more precision, than any of his predecessors.”\textsuperscript{107} Bynkershoek based the law of nations on positive law and on consensus among nations through the mechanisms of treaties and established customs.\textsuperscript{108} Since the Jefferson administration, the U.S. has continuously adhered to this positivist position in international law.\textsuperscript{109} Unfortunately, it is not clear how much, if any, of du Ponceau’s work made its way into Madison’s final product. Du Ponceau’s notes and enclosures are lost and Madison offered few footnotes to his readers. That du Ponceau provided information about Bynkershoek, however, is clear not only by Tench Coxe’s gift to Madison in 1801, but also by a letter from du Ponceau to

\textsuperscript{105}Du Ponceau to James Madison, ca. October 1805, James Madison Papers, Presidential Papers Microfilm.


\textsuperscript{107}Ibid., 243.

\textsuperscript{108}The early writers on the law of nations are divided into three schools: the Naturalists, such as Samuel Pufendorf, Jean Barbeyrac, and Burlamaqui, who based the law of nations in the law of nature; the Eclectics, such as Hugo Grotius, Christian Wolff, and Emmerich de Vattel, who based the law of nations in both nature and in the consent of nations through treaties, and customs; and the Positivists, such as Bynkershoek, Richard Zouche, Samuel Rachel, and Johann Moser, who based the law of nations strictly on consent through treaties and customs.

\textsuperscript{109}Peter Onuf and Nicholas Onuf write that Madison’s “Examination” “represents the fullest and most authoritative statement of the Jefferson administration’s position on neutral rights,” and that it “provided the conceptual framework for Henry Wheaton’s landmark treatise on international law (1836), and through it the subsequent development of international legal thought.” Peter Onuf and Nicholas Onuf, \textit{Federal Union, Modern World: The Law of Nations in an Age of Revolution, 1776-1814} (Madison, Wis.: Madison House, 1993), 201.
Madison in October 1805 in which he translated from Latin to English a sentence pertaining to contraband from chapter nine of Bynkershoek’s work on “How War Affects Neutrals.”

In 1810 du Ponceau sent the following note to Madison along with the first copy of his translation of Bynkershoek’s *Quaestiones Juris Public*:

> I had the honor of mentioning to you when you was [sic] last in this City in 1805 that I had made, for my private use, a Translation of the first Book of Bynkershoek’s *Quaestiones Juris Public*. I have since been induced to publish it & beg leave to present you with the first copy of it that has issued from the press. It is an homage due to the Statesman who has best understood and appreciated the merits of my author, & who has given to the world the most correct character of his writings.

Over the years du Ponceau and Madison continued to discuss the merits of many authors through a continuous correspondence.

Charles Jared Ingersoll, member of the U.S. House of Representatives, Philadelphia lawyer, and the son of du Ponceau’s long-time friend Jared Ingersoll, also sought du Ponceau’s assistance in the winter of 1813-1814 on the history of impressment and expatriation. As Chairman of the Judiciary Committee, as well as a member of the Foreign Relations Committee, legal issues resulting from the War of 1812 were of primary importance. The ongoing problem of the British impressment of American sailors was again paramount. By the beginning of the latest war, over 6,257 cases had been filed at the U.S. State Department involving impressed seamen who claimed American citizenship. Like Madison, Ingersoll sought to understand the history, and thus the validity of England’s behavior. In a series of letters, du Ponceau provided to Ingersoll his “ideas of the law of the ancient enlightened nations of the world on the subject of expatriation,” as well as of the modern

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nations, in the process displaying his erudition in ancient and international law and history. In his letters to Ingersoll, du Ponceau restated many of the arguments that he had made two years earlier in his entries on “Allegiance” for *The American Edition of the New Edinburgh Encyclopedia*.115

Du Ponceau began his discussion with Section 8 of Plato’s *Dialogue between Socrates and Crito*, in his attack against the British notion of “perpetual citizenship.” Not only did Ancient Greece disavow such an idea, but also the Ancient Romans saw citizenship or allegiance as “a right of the citizen, not a duty,” and “it being his right, he might part with it when he pleased.” This notion of citizenship as right was the law of the Roman Republic, it was incorporated into Justinian’s Code, and consequently became the law of Europe, “at least of the Roman provinces, England, France, Spain, Italy, the West & South of Germany, Illyria &c &c at the time of the invasion of the Barbarians.”116 Turning to the established authorities, he declared that “all writers on the law of nations, when expounding that universal code as contradistinguished from municipal law, admit the free right of emigration. The Swiss Vattel, the Dutch Grotius, the Swede Puffendorff, the German Heinecories, the Prussian Coucius, all unite in the same doctrine, with some trifling exceptions & reservations.”117 Reinforcing his statement that “perpetual allegiance is not and never was the public law of Europe,” du Ponceau pointed out the practice of “almost every power in Europe having foreign soldiers in their service,” both in the distant and in the recent past. He argued that

Machiavelli tells us how the armies of Europe were composed in the 14th and 15th century. The wars were carried on by bands of adventurers of all nations, led by captains or chiefs who were then called Condottieri (conductors or leaders) – Those condottieri sold the services of themselves and men to whomever paid them best...Prussia, says Mirabeam (Monarchia

114Du Ponceau to Charles Jared Ingersoll, 21 December 1813, Charles Jared Ingersoll Papers, 1803-1862, HSP.


116Du Ponceau to Charles Jared Ingersoll, 10 December 1813, Charles Jared Ingersoll Papers, 1803-1862, HSP.

117Du Ponceau to Charles Jared Ingersoll, 27 December 1813, Charles Jared Ingersoll Papers, 1803-1862, HSP.
Only England, according to du Ponceau, deviated from this established law of nations. He also offered arguments displaying the irrationality underlying British arguments for impressment, as well as asserted that Vattel, himself, proposed the idea of the territoriality of ships. He wrote to Ingersoll that Vattel “lays it down as a rule, that children born on board a ship of a particular nation, are natural born subjects of the sovereign of that nation.”

In addition to refuting specific contentious points, du Ponceau warned Ingersoll not to be distracted by tangential arguments concerning impressment or expatriation, but rather to stay focused on “the real point, which is really [the] freedom of the neutral flag, & resolves itself into the old controversy of free ships, free goods.”

By the first decade of the nineteenth century, du Ponceau had earned a reputation as one of America’s best legal scholars, particularly in the areas of civil and foreign law. In his research on the influence of civil law in antebellum America, Michael Hoeflich reveals that the list of such scholars remained quite short well into the nineteenth century. Notably, of the ten lawyers and judges that he lists who knew civil and foreign law on a scholarly level, only three, du Ponceau, James Kent, and Thomas Cooper, practiced law in the U.S. prior to 1800. As his own busy law practice made clear, American lawyers needed an understanding of civil and foreign law in order to adequately address the legal problems generated by the international hostilities between the U.S., England, and France. Not surprisingly, du Ponceau was one of the first legal voices to advocate the study of civil law in the

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118 Du Ponceau to Charles Jared Ingersoll, 23 January 1814, Charles Jared Ingersoll Papers, 1803-1862, HSP.

119 Du Ponceau to Charles Jared Ingersoll, 27 December 1813, Charles Jared Ingersoll Papers, 1803-1862, HSP.

120 Du Ponceau to Charles Jared Ingersoll, 21 December 1813, Charles Jared Ingersoll Papers, 1803-1862, HSP.

121 Michael Hoeflich, “Roman Law in American Legal Culture,” Tulane Law Review 66 (1991-92): 1723-1743. Indeed, du Ponceau (1760-1844), Kent (1763-1847), and Cooper (1759-1839; he came to the U.S. in 1794) were the only ones old enough to practice law or who were alive prior to 1800. The other lawyers and judges on Hoeflich’s list are John Pickering (1777-1846), Joseph Story (1779-1845), Simon Greenleaf (1783-1853), Hugh Swinton Legare (1797-1843), Francis Lieber (1800-1872), William W. Campbell (1806-1881), and James Murdock Walker (1813-1854).
Charles Butler, *Horae Juridicae Subsecivae*, a history of the world’s legal systems. First published in London in 1807 and then the following year in Philadelphia “with Additional Notes and Illustrations by an Eminent American Civilian,” du Ponceau contributed to Butler’s sections on Roman and canon law, and noted that

[i]t is regretted that the study of the civil law is not at all encouraged in the United States, where there are but few lawyers who have made it in any degree the object of study. Perhaps it is to be attributed to the want of good elementary books, there being but few extant in the English language, and those mostly out of print.\(^\text{122}\)

He revealed that fellow lawyer Edward Livingston planned to publish a translation of the entire body of civil law, but du Ponceau advised against such a monumental task for a man active in the legal profession, and instead hinted to colleagues that an English translation of Domat’s work on civil law would be useful.\(^\text{123}\) Contemporaries encouraged such suggestions from du Ponceau, in order to help fill this gap in American legal knowledge. After reviewing du Ponceau’s translation of Bynkershoek, Justice Joseph Story, in his 1818 essay “Literature of the Maritime Law,” asked, “[w]hy will not Mr. Duponceau increase the public gratitude by translating the works of other learned foreigners, and by a critical account of the writings of those civilians who are best entitled to the attention and study of American lawyers?”\(^\text{124}\) Though du Ponceau did not offer his colleagues more useful translations, he did provide to the next generation of Philadelphia lawyers instruction on civil law both through his work in the Law Academy of Philadelphia, and through his participation, as will be seen in the next chapter, in the 1820s debate over reforming American law through the civil law method of codification.

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“...Reformation is wanted, but not Revolution.”
Peter Stephen du Ponceau to James Madison, 13 September 1824

By the time Peter Stephen du Ponceau entered the reform debate in the 1820s over whether or not to codify American law, he had been practicing law in Philadelphia for almost forty years. Indeed, his learned views on the American legal system were among the most well-informed in the nation. Aside from the legitimizing power of experience, a number of other factors rendered his opinion particularly authoritative in the minds of many of his contemporaries: he had been raised in a civil law country; he had an uncommon talent for languages, which gave him access to important civil and foreign law works; his first twenty years, from 1785 to 1805, practicing in the Philadelphia Bar were spent almost entirely on cases involving international, commercial, and maritime law, all of which required a specialized knowledge of civil and foreign law; he played an important role in the movement by legal professionals in the early nineteenth century to make English translations of important foreign legal works available in America; and finally, his advice and ideas were sought after by political and legal leaders such as James Madison and Joseph Story.

Du Ponceau’s many years of legal practice and specialization not only made him a respected authority of various legal systems, but it also by 1820 made him acutely aware of (and often frustrated by) problems within the American legal system. Indeed, many of his complaints (though few of his remedies) mirrored those of lawyers who proposed that all of American law be reduced to written codes. His public and private writings on the heated debate of unwritten common law versus codified

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law, as well as on American law in general, reveal the evolution of du Ponceau’s views, which had been fine-tuned through scholarly research and academic discussion with friends, colleagues, and students. Though he seemed at one point to swing both legs over to the radical codificationist side of the fence, ultimately du Ponceau emerged as a “moderate codificationist,” advocating the reduction of American law to codes where applicable, but decidedly against abolishing common law. Effective reform, according to du Ponceau, would only be achieved through legal education and scholarly research and discussion, which would bring to light the basic principles underlying law. His most significant published writing pertaining to common law, codification, and legal reform was *A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States* (1824), through which his learned views added force to the intellectual currents directing the course of American law during its “formative era.” Individuals on both sides of the reform debate and on both sides of the Atlantic sought his expertise in both common and civil law; two of America’s most noted early jurists, James Kent and Joseph Story, admitted an intellectual debt to his ideas; and, last but certainly not least, his vision of American law ultimately prevailed.

The movement to convert all of American law into a single written form came to the forefront of public debate in the early 1820s. The idea of codification in America, however, had been in the air since the 1790s. Though they had broken political ties with England during the War of Independence, Americans continued to rely heavily upon English common law and legal methods at both the federal and state level where it did not conflict with the U.S. Constitution or the many state constitutions and statutes. The lack of availability of important foreign texts in the U.S. prior to 1800 also left American lawyers and judges unavoidably reliant upon the English legal tradition. The situation worsened as the United States faced growing external tensions in the form of international conflict with England and France, and internal tensions resulting from the emergence of partisan divisions within the U.S. government. Indeed, these party-based tensions were behind the first calls by pro-French Jeffersonian-Republicans to discontinue the use of English common law in American courtrooms. In this earlier phase of the movement for codification, reformers, then composed of more laymen than lawyers, specifically attacked the substance of common law. William

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Duane, editor of the radical Jeffersonian Philadelphia newspaper, the *Aurora*, took the lead in the attack. As the “declared Enemy of the Common Law,” Duane successfully persuaded a “great portion of the people that it [was] a system of worse tyranny than the Inquisition of Spain.” These radically-minded reformers argued that the best law for America was a purely American law, whether codified or not. The desire for a distinctly American body of law was verbalized again and again during the reform movement; however, other factors led to a broader acceptance among legal professionals to reduce the mass of unwritten law into a system of written codes.

The staggering rate at which statute law grew throughout the states, as well as the increased variation in law from state to state following the Revolution (resulting from the quick implementation and subsequent repeal of a great deal of legislation) led to complaints within the legal profession that American law was becoming too complex and unmanageable. This ever-growing pile of new and changing law combined with the lack of some sort of organized research tool for lawyers in the form of indices or digests added to further frustration among professionals. As early as 1792 James Wilson, then an Associate Justice of the Supreme Court, set out to reform Pennsylvania’s body of statutes and to determine what British law was being utilized in the state. While there existed by 1815 over one hundred volumes of home-grown case law and a huge body of statutory law, only ten of the eighteen states then in existence attempted to follow Pennsylvania’s lead by revising and digesting their state laws. Of this ten only seven met with any sort of success. American lawyers attempted to keep the problem in the family and to utilize law journals as a way to educate one another about changes in the law, differences in laws throughout the states, and about various foreign legal systems; however, the effort met with limited success during these years of constant warfare. Historian of the codification movement Charles M. Cook writes that it was “a time when statute law

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4Cook, *The American Codification Movement*, 46.

was, at best, inaccessible and the common law was often little better than slippery darkness.”

Reformers blamed the legal profession’s adherence to the common law method of jurisprudence for the increasing complexity and disorganization in American law, arguing that its unwritten form and concomitant mysterious, uncertain, and even arbitrary nature made the legal system appear both chaotic and unpredictable to the layman. In addition they complained about the lack of accountability inherent in judicial positions, particularly in light of the long list of abuses that blackened the history of English common law. By 1820 a small but vocal group within the legal profession was calling for the adoption of a new legal structure in America in the form of codified law. These “codificationists” turned to France’s Code Napoleon of 1804 as their primary model for reform, though they did not seek to adopt the substance of French law, only the method. They praised the thoroughness, simplicity, clarity, and brevity of the French code system, and in it saw the solution to all of America’s legal problems. To achieve a codification of American law, codificationists called for a committee of expert jurists to study and reduce all law into simplified codes after which the legislature would vote them into law, thus the creation of law would not technically be handed over to the legislative branch. The judge’s role in the courtroom would no longer be that of interpreter, but of implementer—he would find the appropriate code for the case at hand and apply it accordingly. When no code could be found, the judge would recommend to the legislature that a code be written to fill the gap. The codificationists did not provide a clear solution for what the judge was to do with the case at hand in the meantime. Most agreed, however, that the legislature would review and revise the codes at a specified interval of time in order to keep the legal system applicable to the changing needs of society.

Adhering to Enlightenment notions, which were waning by the 1820s, the codificationists believed that law could be scientifically dissected, reduced to its basic principles, classified and categorized, and then reapplied in a perfected state. The majority of the legal profession, whose conservative nature generally precluded any break from established practice, but who specifically were unreceptive to any reform that would weaken or abolish the common law system, strongly resisted such innovations. Though both radicals and conservatives alike within the profession

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6Cook, The American Codification Movement, 12.
recognized the need for reforms within the American legal system, those who opposed codification refused to sacrifice centuries of legal wisdom at an altar that lay in the legislative branch and under the control of a small group of men. In 1823 the debate over codes erupted, forcing both sides into the fray.

Like those who called for the codification of American law, du Ponceau, having practiced law for over three decades, also saw problems within the American legal system. Indeed, at times his complaints mirrored the grumblings of the codifiers. Like so many of his colleagues, he criticized the increasingly complex and “babel-like confusion” within American law. In his essay “American Law,” written for publication in The American Edition of the New Edinburgh Encyclopedia, but published first in the Philadelphia literary journal The Port folio in 1819, du Ponceau provided a brief, but detailed description of the United States legal system. He asserted that “there is, in fact, properly speaking, no general law of the United States of America, except the federal constitution, and the statutes enacted by Congress in pursuance of it.” Because Congress possessed a limited scope of legislative power, he argued, “it is in the laws of the different states, that we are to look for what may be called the general system of American jurisprudence.” However, according to du Ponceau, therein lay the problem because in the states “we find nothing like a general system of legislation; they are at present, like the different provinces of France before the late revolution, each governed by its own local laws, usages, and customs.”

Three years later in his “Address Delivered at the Opening of the Law Academy of Philadelphia,” du Ponceau, who had been invited to serve as the first Provost of the Academy, again addressed the disparate independent legislative actions taking place throughout the many states. The result of these numerous alterations within the states, he asserted, was that “the common law in its details has already suffered many considerable changes,” and he warned that “in process of time, unless speedy measures are taken to counteract or at least to direct that spirit of innovation which

9Ibid., 276-7.
10Ibid., 277.
appears everywhere to prevail, [it] will branch out into as many different systems as there are states in the union, in which the great features of the parent jurisprudence will at last in vain be sought for." He also predicted that “the immense increase of bulky reports which has lately taken place...does not seem likely to diminish,” and concluded that this increase “will at last drive the student in despair to compilations and the works of private jurists”

Concerned with the growing complexity within the American legal system, as well as the lack of uniformity in law among the states, du Ponceau disagreed with those states that had passed laws prohibiting the utilization of English common law decisions in American courts of justice. Though he empathized with codificationists over the chaotic state of American law, he criticized any solution that served to “cut down the tree [rather] than to prune it,” and instead advised patient and cautious amendment rather than a complete eradication of the common law. His writings make it clear that more than complexity and disunity, du Ponceau’s greatest fear was that “some Justinian or Napoleon shall, sword in hand, establish uniformity, by a code which will bear his name.”

Because codification was historically a tactic used by despots, du Ponceau refused to sacrifice state sovereignty for the sake of imposed order.

Many times in his private correspondence du Ponceau himself seemed to approach the same despair that he feared would drive frustrated lawyers to seek what he considered the false solution of codification. This became most evident when he discussed the huge burden of labor placed upon the lawyer by America’s complex legal structure. He repeatedly lamented how the demanding nature of the legal profession (made more demanding by its lack of organization) infringed upon time that could be dedicated to intellectual pursuits that would increase American knowledge, as well as increase the esteem of the United States among Europe’s intelligentsia. By the 1820s, his work


12Ibid., 216. Notably, du Ponceau did not lament the increased publication of learned legal works, a floodgate, as seen in the previous chapter, that he helped throw open.


involving complex land trusts and tedious real estate cases for longtime clients such as Tench Coxe, Timothy Pickering, and Charles White, had taken a toll on his passion for the profession. In a letter dated 3 March 1820 to his close friend, Boston lawyer John Pickering, du Ponceau expressed disgust with his inability to find enough spare time to fulfill his personal correspondence obligations. He complained to his friend and colleague that

among us, disciples of Coke, literary correspondences must occasionally take their chances; our professional mill is a horse mill which must be propelled by much bodily and mental exertion; the powers of steam, as yet, have not been, at least that I know of, successfully applied to it. I fear this grand desideratum is even beyond American skill and ingenuity.15

In November of the same year he shared with Pickering his attempts to alleviate some of this burden, writing,

If you are involved in a sea of professional business, I am not left so; I have Equity, Common Law, Admiralty, etc., all but criminal business which I now seldom undertake. I began to be fairly disgusted with this pettifogging, 'till I had the bright thought of taking to my aid in troublesome causes a young man of activity and talents, who goes through what I call the drudgery and leaves me only the flowers to sip. I delight in an interesting law argument and also in a trial, where I have not to marshall the witnesses, take long notes, etc. All this is now done to my hand, and I am fully reconciled to our noble Profession. Yet I am overwhelmed with labour, having several heavy trusts of land to manage, a large one in particular, in a part of which your venerable father is concerned and that worries me not a little; but I must go through as well as I can.16

By 1821, du Ponceau’s desire to explore intellectual fields outside of the legal realm, namely philology, history, and literature, further compounded his frustration. Once again he commiserated with Pickering, complaining that “I think I could compass much if I had not professional business and


16Du Ponceau to John Pickering, 2 November 1820, Du Ponceau Papers, 1781-1844, HSP.
heavy land trusts upon my hands, which take up a great part of my time in a manner not the most pleasant to me.”

To a fellow “inmate” in New York, du Ponceau wrote

we men of business cannot indulge much in the luxury of friendly correspondence; I say, ‘we men of business’ with a sigh, which, I know will be responded, for you and I, if I mistake not find no delight in the cave of the monster Chicane, and would delight more in treading the paths of elegant Literature. Sed sic voluere fata. I find means, however, to devote some time to literature, but still in an imperfect manner, the fear of the clients being always upon me.

His interest in intellectual pursuits eventually replaced his passion for practicing law, so that at the age of sixty-nine, before heading to court “on a Matter of Chancery,” du Ponceau declared that “I believe that I had rather be whipped than go through this tedious affair.”

Such disgust and frustration, carrying the distinct mark of disillusionment, did not, however, cause du Ponceau to see codes in a more favorable light.

Like many supporters of codes, du Ponceau often argued that it was necessary for America to declare an intellectual independence from England, in order to complete the process of separation began by the American Revolution in 1776. Through his many international connections, du Ponceau worked hard to gain recognition overseas for American achievements in literature, science, and the arts, and his desire to impress Europeans with a distinctly American body of law was no exception. On a personal level, du Ponceau still carried a hostility toward the British that began during his service in the American military during the War of Independence. Fifty years after the battles had ended, he still maintained that the “English are cold people, cold as a dog’s nose.”

Du Ponceau appears to have had a personal crusade to distinguish America’s history and its heroes. In 1815 he became the corresponding secretary for the American Philosophical Society’s new Historical and Literary Committee, whose goal, as he wrote to Thomas Jefferson in his first letter on behalf of the

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17 Du Ponceau to John Pickering, 15 July 1821, in Mary Orne Pickering, Life of John Pickering, 309.

18 Du Ponceau to William Sampson, 21 December 1821, Papers of William Sampson, 1806-1849, LoC.

19 Du Ponceau to John Pickering, 5 August 1829, Du Ponceau Papers, 1781-1844, HSP.

committee, was “to rescue from oblivion a great multitude of interesting tracts of the early history of our country, which at present lie scattered in private hands, trusted only to perishable memorials or to the more perishable memory of man.”

Du Ponceau also rescued from oblivion the memory and reputation of William Penn by establishing in 1824 a society to commemorate his landing on 24 October 1682. In 1834 he summarized his views on American intellectual independence in the well-received pamphlet “A discourse on the necessity and the means of making our national literature independent of that of Great Britain delivered before the members of the Pennsylvania Library of Foreign Literature and Science,” in which he accused England of trying to hold America in a state of mental dependence. Indeed, at different points in his life, du Ponceau seemed ambivalent toward the necessity for Americans to perform on the international stage. After an English author poorly reviewed one of his works in the Quarterly Review, du Ponceau blustered that “it is a great weakness, I think, in this country to think so much about what is said by those English folliculists. Who are they and what are they? And what are their compilations? –Sibylline leaves, bone to day and to morrow, ludibria ventis. My friends are, I know not why, condoling with me on the subject.”

However, at the calmer and wiser age of eighty-three, when offering career advice to an up and coming lawyer, du Ponceau stated that “[i]t is essential to you to have echoes in that part of the world [Europe] otherwise I am convinced that you cannot succeed.”

By 1820 du Ponceau was in complete agreement with the supporters of codification that American law, though still in its infancy, needed its umbilical cord cut from its mother, English common law. In his 1821 address to the new Law Academy in Philadelphia, he stated that the goal

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21Du Ponceau to Thomas Jefferson, 14 November 1815, Historical and Literary Committee Letterbook, vol. I, APS.

22See Proceedings of a Meeting Held in Philadelphia on the 4th of November, 1824, to Commemorate the Landing of William Penn on the Shore of America, on the 24th of October, 1682, being the 142d Anniversary of the Memorable Event (1824), Annenberg Rare Book and Manuscript Library, Van Pelt-Dietrich Library, University of Pennsylvania, Philadelphia.

23Peter S. du Ponceau, “A discourse on the necessity and the means of making our national literature independent of that of Great Britain delivered before the members of the Penn. Library of Foreign Literature and Science, on Sat, Feb 15, 1834” (Philadelphia: E. G. Dorsey, 1834).

24Du Ponceau to William Sampson, 20 March 1825, Sampson Papers, 1806-1849, LoC.

25Du Ponceau to Francis Markoe, Jr., 14 April 1843, Simon Gratz Collection, HSP.
of the institution was to “preserve the purity of the law in our extensive country.” He asked his audience of colleagues and law students, “are we to wait for every spring and autumn ship from England for cargoes of decisions of the courts of Westminster Hall?” Du Ponceau declared that such parasitic behavior “would be derogatory to our national independence.”

Though no friend of the English, intellectual independence did not, for du Ponceau, require abolishing the common law, which he viewed as the repository of centuries of legal wisdom. Rather, he sought to distinguish American common law from its parent and noted the changing nature of and the growing divergence between the American and English legal systems. He pointed out that

the common law, by the mere force of circumstances, is becoming more and more, in England as well as here, but more particularly in this country, a science of principles, which appears from the great number of elementary books that have lately been published, in which a more luminous order, a more regular method, and a greater freedom of opinion display themselves than were formerly met with in works of this description.

He predicted that this new scientific approach to law would ultimately “subvert the ancient basis of the jurisprudence of England and that system of judiciary legislation which has been preserved there for so many ages.”

In his essay “Testimon, erudit, viror,” which served as both an introduction and a sales pitch for Baltimore lawyer John E. Hall’s new legal periodical *Journal of Jurisprudence* in 1821, du Ponceau forecasted the successful reception of the journal among legal professionals in America where “there are among them few trading and more scientific lawyers than in any other part of the world.” Noting that attempts to begin a law journal in England had all ended in failure, du Ponceau suggested that Americans had reason to boast for “having advanced in this respect, beyond our masters in the science.”

In addition to his extensive personal experience in the American legal system, du Ponceau’s friendships, professional and social relationships, and intellectual correspondences with individuals

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27Ibid., 216-7.


29Ibid., 3.
from points all along the legal reform spectrum exposed him to numerous different views on the
debate over American codification. Indeed, du Ponceau was privy to the learned opinions of some
of the best legal minds in America at that time. On the side of those who either completely opposed
codification or conceded that codes might be useful on a limited scale—the “moderate
codificationists”—du Ponceau conversed with Alexander James Dallas, James Kent, Joseph
Hopkinson, John Pickering, Joseph Story, Richard Rush, and Daniel Webster.30 His list of
correspondents on the other side of the ideological fence included English-born Thomas Cooper,
Swiss-born Albert Gallatin, Edward Livingston, and Henry Wheaton.31

Du Ponceau also maintained a close friendship and continuous correspondence with the
flamboyant Irish lawyer William Sampson (1764-1836), the person to whom both historians and du
Ponceau give credit for setting the movement for codification in motion in the early 1820s with a
witty, but caustic oration to the New York Historical Society.32 This oration was subsequently

30 Alexander James Dallas (1759-1817), Philadelphia lawyer and U.S. Secretary of the Treasury under
President James Madison; James Kent (1763-1847), New York lawyer, New York Supreme Court Chief Justice,
and author of Commentaries on American Law, 4 vols. (New York: O. Halstead, 1826-1830); Joseph Hopkinson
(1770-1842), Federalist, Philadelphia lawyer, and author of the anti-codificationist pamphlet Considerations on the
abolition of the common law in the United States (Philadelphia: William P. Farrand & Co., 1809); John Pickering
(1777-1846), son of Timothy Pickering, Boston lawyer, philologist, and civil law scholar; Joseph Story (1779-
1845), Massachusetts lawyer, Associate Justice of the U.S. Supreme Court, first Dane professor of law at Harvard,
and author of numerous legal commentaries; Richard Rush (1780-1859), son of Dr. Benjamin Rush, statesman,
U.S. Secretary of the Treasury under President John Quincy Adams, and author of the moderate codificationist
Hampshire and Boston lawyer, and member of both the U.S. House of Representatives and the U.S. Senate.

31 Thomas Cooper (1759-1839), author of The Bankrupt Law of America, compared with The Bankrupt
Law of England (Philadelphia: John Thompson, 1801) (to which du Ponceau contributed), co-author with David
James McCord, The Statutes at Large of South Carolina, 10 vol. (Columbia, S.C.: Printed by A.S. Johnston, 1836-
1841), Pennsylvania District Court Judge, and President of South Carolina College; Albert Gallatin (1761-1849),
Secretary of the Treasury under both Thomas Jefferson and James Madison, a U.S. Senator and Representative
from Pennsylvania, Minister to both England and France, and correspondent with British thinker Jeremy Bentham,
who was responsible for the philosophy of utilitarianism and for coining the term “codification”; Edward
Livingston (1764-1836), son of Judge Robert R. Livingston, New York lawyer, member of the U.S. House of
Representatives, member of the Louisiana legislature, author of the Livingston Code (1826) and A system of penal
law for the United States of America: consisting of a code of crimes and punishments: a code of procedure in
criminal cases: a code of prison discipline: and a book of definitions (Washington: Gales & Seaton, 1828), and
U.S. Minister to France; Henry Wheaton (1785-1848), Rhode Island and New York lawyer, U.S. Supreme Court
Reporter, U.S. diplomat, and author of Elements of International Law (Philadelphia: Carey, Lea & Blanchard,
1836).

32 Cook, The American Codification Movement, 106; Du Ponceau wrote to Sampson, “You are one of the
fathers of the system, which was broached in this country, before it was taken up in England; I might even say you
are the Patriarch of it, the first inventor (Bentham excepted) who by the bye was not much thought of before the trumpet was sounded from hence, with Sampson’s strength.” Du Ponceau to William Sampson, 26 June 1827, Sampson Papers, 1806-1849, LoC. For background on Sampson see Maxwell Bloomfield, *American Lawyers in a Changing Society, 1776-1876* (Cambridge, Mass.: Harvard University Press, 1976), 59-90.

33Cook, *The American Codification Movement*, 75.

34William Sampson, “An Anniversary Discourse, Delivered before the Historical Society of New-York, on Saturday, December 6, 1823: Showing the Origin, Progress, Antiquities, Curiosities, and the Nature of the Common Law.” In Sampson’s “Discourse, and Correspondence with Various Learned Jurists, upon the History of the Law, with the addition of Several Essays, Tracts, and Documents, relating to the subject” (Washington City: Pishey Thompson, 1826), 5-9.

35Ibid., 11, 14.
advanced and applicable, were no longer relevant. Continuing to base American law on the “Saxon, Scandinavian, Gaul, Greek, or Trojan, is what unsophisticated reason will not endure.” New American law must sever its ties with the old. Sampson proclaimed, “we owe it to the growth of knowledge, and to the struggles of virtuous patriots...we owe it to fortunate occasion and favoring Providence.” Its unwritten form and reliance upon capricious judicial decisions rendered common law, by its very nature and method, uncertain and doomed to complexity, and he advocated codification to solve America’s legal dilemma. This remedy, argued Sampson, was not a blind experiment, but rather a tried and true solution. He reassured his audience that

[i]f the experiment had never before been made of a judicial code, substituted in the place of antiquated legends, usages, and customs, we might fear to engage in an untried and hazardous undertaking. If no attempt had ever yet been made, to reduce to a body of written reason, the scattered fragments of a nation’s laws or usages, or if, when such attempts were made, disorder and mischief had constantly ensued, we might take warning from such examples. If no wise jurists had ever recommended the digesting and new ordering of the law, there might be temerity in the proposal; but Hale and Bacon have not only approved, but offered their views and plans. And are not our own written statutes periodically revised; why not that part of our laws that rests upon less solid evidence?

The result of a clear understanding of the historical background of English common law and of the reformation of American law through a process of codification, concluded Sampson, would be that “our jurisprudence then will be no longer intricate and thorny; nor will it need those fictions, which give it the air of occult magic, or those queer and awkward contrivances, which, by rendering it ridiculous, greatly diminish its dignity and efficacy.”

Sampson’s “Discourse,” published in early 1824, received wide recognition in American newspapers and periodicals from both supporters and critics alike. Sampson, however, already had submitted his ideas months before to a learned and esteemed audience, his friend Peter du Ponceau. By 1823, du Ponceau and Sampson appear to have had enjoyed a close friendship for many years.

36Ibid., 36.

37Ibid., 37.

38Ibid., 38.
In a letter dated 13 February 1818, in response to a letter in which Sampson put into writing his feelings of friendship, du Ponceau wrote “I thank you most cordially, and with the strongest feelings of a reciprocity which I cannot express so well as you have done, either in French or English.” In February or March of 1823, Sampson sent du Ponceau a draft copy of his “Discourse” for review and editorial suggestions. For the next four years, few letters from du Ponceau to Sampson failed to mention the issues of codification and legal reform. In the earlier letters, du Ponceau’s views appear radical, boldly toying with the idea of codes in a manner absent from his previous public writings. Such seemingly inconsistent behavior, however, in the case of du Ponceau—whose life was marked by a love of learning, intellectual exploration, and debate—can perhaps be better interpreted as the curved path of one willing to challenge his own conclusions, to retrace steps thought well-known and to contain nothing new, and to venture down numerous avenues before deciding upon a final course. Or perhaps it was simply the result of du Ponceau’s intense frustration with the legal profession at that time. Whatever the reason, it is clear that du Ponceau gave serious and interested attention to Sampson’s radical views before finally choosing to advocate the limited use of codes within the extant of the common law system.

In a letter dated 18 March 1823, du Ponceau offered to his friend historical information on the background of the first civil code and on past attempts in English history to remedy problems within the common law system. He also recommended to Sampson that he read Sir Francis Bacon’s *Leges Legum* in which the author discussed improving England’s laws. In his letter, du Ponceau, obviously familiar with Sampson’s satirical style of writing, suggested to him that he use humor and make his work an oration rather than a dissertation. Sampson took his advice and sent du Ponceau a copy of the finalized version in December 1823, a month before it came out in pamphlet form. After reading the completed work, du Ponceau wrote to his friend (who sought his “candid opinion”) that he was “highly pleased” with his work. He complimented Sampson on his “elegant and classical” writing, as well as his “close and cogent” reasoning, and did not think that any revisions were necessary. He particularly admired Sampson’s statements that “in proportion to the law’s wisdom

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39 Du Ponceau to William Sampson, 13 February 1818, Sampson Papers, 1806-1849, LoC.

40 Du Ponceau to William Sampson, 18 March 1823, Sampson Papers, 1806-1849, LoC.
will be the dignity of the people,” and “the efficacy of the law depends on the confidence it creates.” Though he anticipated that the initial public response would be “restricted,” he stated that “the work will do most good,” and suggested to Sampson that he send copies to David Baillie Ward, the late consul general of the U.S. in Paris, to Monsieur Jullien, editor of the internationally read Revue Encyclopédique in Paris, and to Richard Rush, the U.S. Minister in England.41

Du Ponceau seemed particularly delighted with Sampson’s sense of humor. In a letter of 5 January 1824, he declared with amusement that

Ridiculum ani is a good method and you wield the instrument in a masterly manner. Our Saxon ancestors will not thank you; I see old Ethelwolf with a massive club striking at your head. And remember, when in Paradise, not to come too near the venerable Bede or the great St. Gildas. I fear they will prove to you troublesome neighbors. As to Sir Wm Blackstone, he spent all his power in his Commentaries (if so that they are his own); he made afterwards a sorry figure on the bench of justice, and did not acquire a jot of additional fame. He is not to be dreaded.42

Du Ponceau’s letters give the distinct impression that he fully supported his friend’s views. In the letter above, he offered Sampson tactical advice telling him that

you have, I think, not used policy enough in your Discourse. I would have praised New England to the stars for this that they have always rejected the common law of England as such, and only consider that they have adopted of it as their own common law, say of Massachusetts, Connecticut, &c. This would have secured their approbation and enlisted them on your side.43

In a letter dated ten days later, du Ponceau told his friend of his plans to have his “Discourse” put into “a handsome volume” along with “Mr. Adams’s, Mr. Webster’s, Mr. Verplank’s, Mr. Ingersoll’s and Mr. Biddle’s Discourses.” Indeed, du Ponceau appeared to be fully enraptured by the reform spirit and even the thought of revolution, declaring to Sampson that “the spirit is rising and will rise higher, all that is to be feared is too rapid a revolution, but a revolution will come, and hands will be wanted

41Du Ponceau to William Sampson, 29 December 1823, Sampson Papers, 1806-1849, LoC.

42Du Ponceau to William Sampson, 5 January 1824, Sampson Papers, 1806-1849, LoC.

43Ibid.
to build, which is the most difficult task – Prepare to take up your trowel!” Sampson was not the only person to whom du Ponceau revealed an appreciation for codified law. A long-time friend and correspondent of Edward Livingston, du Ponceau took strides to have his work involving the codification of Louisiana law made known in Europe, just as he had done by advising Sampson to send copies of his “Discourse” to France and England. In a letter dated 18 April 1823 to Monsieur Jullien, editor of the Revue Encyclopédique, du Ponceau wrote

> The favorable note that you had the kindness of inserting in the Review Enc of December last of the report of my friend Mr. Livingston on the Criminal Code of Louisiana, that I sent to you...compels me to send to you a second report of his and two Colleagues, which shows the current progress of the Legislation of this State, and which serves as an example to others on such an important matter.

Never turning completely against the utility of limited codification, in 1836 du Ponceau sent a request to Louisiana Governor Edward D. White on behalf of the Governor of the State of Guatemala (which had adopted Livingston’s Penal Code into its judicial structure) for copies of that state’s civil code and statutory laws.

Sampson’s “Discourse” set the pens of both critics and supporters in motion, particularly after its publication in pamphlet form in 1824. Even Sampson was surprised by how his views stirred up great recognition and controversy, writing later to a friend that “its success has been beyond my anticipation.” The very wit that pleased du Ponceau so much was criticized by a reviewer called “Jay” in the New York American, who deemed Sampson’s work a “feeble production” of trite satire.

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44Du Ponceau to William Sampson, 15 January 1824, Sampson Papers, 1806-1849, LoC. There are two letters with this date from du Ponceau to Sampson in the Sampson Papers.

45Du Ponceau to M. Jullien, 8 April 1823, Peter Stephen du Ponceau Papers, 1786-1842, APS; translated from French. See also du Ponceau to Johann Severin Vater, 24 September 1822, Historical and Literary Committee Letter Book, 3 vols, 1815-1826, APS.

46Du Ponceau to Edward D. White, Governor of Louisiana, 23 September 1836, Du Ponceau Papers, 1781-1844, HSP.

designed only to incite ridicule against the common law. Sampson, however, seemed far more focused on the abundant praise that his work received. He took du Ponceau’s advice and sent his work to the editor of the Revue Encyclopédique in Paris where it was favorably reviewed. Excited by the enthusiastic reception of his work, Sampson began a personal crusade to reform American law and from 1824 to 1826 maintained correspondence with politicians and jurists throughout the states, including du Ponceau, Thomas Cooper and Governor John L. Wilson of South Carolina, Charles Watts in Louisiana, and George M. Bibb in Washington, D.C. This correspondence touched off a reform debate in the pages of American newspapers and journals. In 1826, Sampson’s “Discourse,” as well as many of his letters discussing codification appeared in book form in Sampson’s Discourse, and Correspondence with Various Learned Jurists, upon the History of the Law, with the addition of Several Essays, Tracts, and Documents, relating to the subject. Historian Charles Cook states that “almost every law writer after 1825 felt compelled to include Sampson’s views on the reform in his works of whatever sort,” revealing that Sampson, with the support of du Ponceau, had succeeded in bringing the codification debate to the forefront of public discussion.

Sampson not only succeeded in prompting a public debate, but also may have inadvertently pushed his friend du Ponceau to pick up his pen and to state definitively his own ideas on American codification. A letter to Boston lawyer John Pickering reveals that by 10 January 1824, within days of writing letters of praise to Sampson, du Ponceau began preparing the work later entitled A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States, which he delivered as the valedictory address at the Philadelphia Law Academy on 22 April 1824. Since no notes or drafts of his project have survived, it is difficult to determine at what point du Ponceau’s


49 Bloomfield, American Lawyers in a Changing Society, 79.


views assumed a more conservative stance. A simple fear of guilt by association, strengthened by Sampson specifically mentioning du Ponceau’s name and work in his “Discourse,” may have prompted du Ponceau to clarify his position to himself and to his colleagues, and most likely, to posterity. In his Dissertation du Ponceau addressed a number of questions: Is English common law applicable in American courts? Does there exist an American common law? Are codes the proper remedy to America’s legal dilemma? What jurisprudential system, written or unwritten, best suits America’s needs? Reading du Ponceau’s Dissertation it is clear that his purpose was to respond to radical codificationists, including his friend Sampson whom he specifically mentioned.

When he published his “Discourse,” Sampson probably did not intend to bring to light the views of one of America’s most learned and experienced jurists, but also one of its most reluctant legal writers. In 1818 Supreme Court Justice Joseph Story pleaded with du Ponceau to “increase the public gratitude” by translating and writing more legal works. A reviewer of du Ponceau’s Dissertation for the North American Review referred to him as “one of our most valuable, though least obtrusive jurists.” Du Ponceau’s personal correspondence reveals that he was a cautious, and, at times, uncertain writer. A month after presenting his Dissertation to the Law Academy, he wrote to John Pickering, “I wish I had had you here to consult you on my Dissertation on Jurisdiction. I

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52 It is quite possible that du Ponceau’s views on common and codified law were, in part, shaped by Gustav Von Hugo and Karl Friedrich Von Savigny’s new German Historical School of Jurisprudence, which not only advocated the study of Roman law, as did du Ponceau, but also argued against codification and instead for the slow evolution of common law. Du Ponceau had numerous connections to Germany including his friendship with German clergyman and classical scholar Frederick Schaeffer (1760-1836) [see Schaeffer to du Ponceau, 17 July 1819, Du Ponceau Papers, 1786-1842, APS], and his connection through Edward Livingston to German law professor and journal editor Carl Mittermaier. Du Ponceau fostered intellectual connections between the U.S. and Germany, sending his work to be reviewed in the first German literary journal, Allgemeine Lesung, in 1820 [see du Ponceau to William Sampson, 30 August 1820, Sampson Papers, 1806-1849, LoC]. In 1836, du Ponceau’s work A Brief View of the Constitution of the United States (Philadelphia: E.G. Dorsey, 1831) appeared in Mittermaier’s comparative law journal, Kritische Zeitschrift Für Rechtswissenschaft und Gesetzgebung des Auslandes along with works by James Kent and William Rawle. By 1828, du Ponceau was pleased to hear that his friend John Pickering was “getting Germanized in Boston,” asserting that “Germany is the nearest to us in point of language and the current of thought.” [du Ponceau to Pickering, 4 September 1828, Du Ponceau Papers, 1781-1844, HSP]. For Germany’s influence during this period see Michael H. Hoeflich, “Transatlantic Friendships and the German Influence on American Law in the First Half of the Nineteenth Century,” American Journal of Comparative Law 35 (1987): 599-611.


have been led into a wider field than I meant, and fear that I shall displease both the friends and the enemies of the Common Law." In 1819 after sending a copy of his essay “American Law” to Sampson to review, du Ponceau told him to use it as a “tobacco stopper” if he deemed it unworthy for public consumption! For a man who rarely entered the fray, taking on the controversial topic of legal reform in light of such inhibitions suggests that du Ponceau must have considered the subject, as well as the clarification of his position, to be of the utmost importance. Reminiscing about his friend, Job R. Tyson jotted down in his “Memoir of Du Ponceau” the following description:

*Averse to controversy.* Never had a written controversy - few better able to point a sarcasm and enforce an argument or multiply by various reading, an illustration. But though his opinions were attacked, he never replied. The only cases in which he felt like making war was in defense of the republican principle when attacked by the briary pen of Porcupine Cobbett’s challenge.

By clearly stating his own views on codification, du Ponceau was preventing the attackers from taking aim. Afterwards, some viewed him as Sampson’s ideological counterpart. In an anonymous article written after July 1825 and published in *Sampson’s Discourse* in 1826, the author summarized the published debate over codification between Sampson and a number of correspondents, but singled out du Ponceau’s position above all other “formidable objections” stating that “this difference of opinion between these two, seems if it could be fairly stated to bring the matter to its true bearing.” The author also noted the respect and “affectionate regard” always shown between the two antagonists.

In April 1824 du Ponceau presented *A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States, Being a Valedictory Address Delivered to the Students of the Law Academy of Philadelphia, at the Close of the Academic Year.* Du Ponceau’s work served the dual purpose of addressing both the prickly issue of common law jurisdiction and

55 Du Ponceau to John Pickering, 24 May 1824, Du Ponceau Papers, 1781-1844, HSP.

56 Du Ponceau to William Sampson, 25 February 1819, Sampson Papers, 1806-1849, LoC.


58 “The Law As It Should Be,” *Sampson’s Discourse*, 123.
the even more prickly debate over reforming American law through codification. To achieve the
former he argued that there existed an American common law in which federal courts could seek legal
solutions, and for the latter he argued that this common law not only embodied a sound and
applicable legal method, but also that this method surpassed that of codified law. In his Dissertation
du Ponceau reiterated positions expressed in his earlier writings. He had made clear in his 1819 essay
“American Law” his belief in pruning the tree of common law through gradual amendment rather than
simply cutting it down, and had declared his fears in his 1821 Address to the Law Academy that the
growing divergence in American law would open the door for a Justinian or a Napoleon to impose
uniformity through a code. However, while he had addressed many of the specific complaints made
by codificationists in attacks on common law—that its origins lay in a barbaric past, that its utilization
kept America intellectually chained to England, and that it had led to legal disunity among the many
states—his current work focused on the loudest and latest codificationist criticism that the method
of unwritten common law was inherently defective, intentionally ambiguous and mysterious, and,
consequently, inferior to written codes. Du Ponceau disagreed and hoped that his Dissertation would
prevent the rash move to codify American law. Many aspects of du Ponceau’s argument had been
articulated by previous moderate codificationists such as Nathaniel Chipman, Jesse Root, Isaac
Parker, and Richard Rush, and by anti-codificationists such as Joseph Hopkinson.59 The difference
lay in the timing: du Ponceau was writing in Sampson’s wake, at a time when codification had been
transformed from a theory into a practical possibility.

In his preface he stated that the primary purpose for his work was to determine “whether the
Federal Courts have a right independent of the people of the United States or their representatives,
by virtue of some occult power supposed to be derived from the common law, to mould [sic] the
Constitution as they please, and to extend their own jurisdiction beyond the limits prescribed by the

59 Nathaniel Chipman, Sketches of the Principles of Government (Rutland, Vt.: J. Lyon, 1793); Jesse
Root, The Origin of Government and Laws in Connecticut (1798); Isaac Parker, “Inaugural Address Delivered in
Jurisprudence,” Carolina Law Repository II (1816): 347-63, 543-56; Joseph Hopkinson, Considerations on the
national compact?" The debate over common law jurisdiction had been raging since the 1790s, and was one of the main areas of complaint for the codificationists. The Judiciary Act of 1789 gave federal circuit courts jurisdiction over “crimes and offenses cognizable under the authority of the United States,” but did not specify the crimes nor the extent of federal authority. The issue quickly became a partisan debate between Federalists who maintained that federal courts did indeed have such jurisdiction, and Jeffersonian-Republicans who instead argued that federal courts could only declare law where a statute had been written. By 1824, the issue was still hot, and du Ponceau cited a number of cases over a fifteen year period where the issue was debated, but not settled—Worrall’s Case (1798), Burr’s Case (1807), Hudson & Goodwin’s Case (1812), and Coolidge’s Case (1813). He noted that the greatest argument made by opponents was that if federal judges possessed such jurisdiction “there was no knowing where they might stop, that they would not only have an almost unlimited authority over the lives and fortunes of the citizens, but might, in a great degree, impair, if not destroy, the sovereignty of the States, which the Constitution had meant to preserve, and even had guaranteed.”

Providing the foundation for all his other arguments, du Ponceau asserted that America possessed its own common law. At one time, indeed, English common law had held power in American courtrooms. Prior to independence, English common law had been the birthright of every British subject in the North American colonies; however, the War of Independence had ended its domain. Even by that time, du Ponceau argued, English common law already had been transformed to suit the needs of British settlers in the North American colonies, with laws varying from colony to colony as situations differed. The U.S. Constitution, as well as the numerous state constitutions

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60 Du Ponceau, A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States, 2. Du Ponceau many years before had planned to write a work entitled “Commentary on the Jurisprudence of the Courts of Admiralty in England and the United States of America,” but I have not found a copy of this work. See Du Ponceau to unknown, 1 April 1789, Henry E. Eccles Papers, Southern Historical Collection, the Library of the University of North Carolina at Chapel Hill.

61 Morton J. Horwitz sees this fear of judicial discretion as a new phase in American legal history. He writes that “[i]n spite of a continuing colonial preoccupation with the ‘uncertainty’ of statutory rules, there is no evidence that before the Revolution Americans ever thought that the reception of common law principles endowed judges with the power to be arbitrary.” Horwitz, The Transformation of American Law, 1780-1860 (Cambridge, Mass.: Harvard University Press, 1977), 13. With the post-Revolutionary notion that the common law was uncertain and mysterious came the idea that judges cannot simply find law, but must in effect make law, and because of this, risked being arbitrary.
further modified English common law. Finally, the countless U.S. court decisions rendered to address American problems since the Revolution culminated into a uniquely American body of case law. Du Ponceau wondered aloud why he even needed to provide an elaborate argument for what he considered to be “a self-evident principle.”⁶² He declared that

we live in the midst of the common law, we inhale it at every breath, imbibe it at every pore; we meet it when we wake and when we lay down to sleep, when we travel and when we stay at home; it is interwoven with the very idiom that we speak, and we cannot learn another system of laws without learning at the same time another language. We cannot think of right or of wrong but through the medium of the ideas that we have derived from the common law.⁶³

He cited numerous examples where common law is found in the U.S. Constitution, such as the privilege of habeas corpus in Article 1, Section 9, the mention of “corruption of blood” in Article 3, Section 3, and the suits at common law mentioned in the 9th Amendment.⁶⁴ At the same time, he boldly asserted that he considered “the common law of England as the jus commune of the United States” where American law was silent and where English common law was applicable.⁶⁵

Next he tried to remove the muddiness from the debate over common law jurisdiction by arguing that the question of jurisdiction was the result of “a carelessness of expression unfortunately too common in our legal language” regarding the legal term common law jurisdiction. Interpreting these words one way made such jurisdiction “perfectly lawful,” but a different interpretation made it “a power in direct opposition to the letter and spirit of our national charter.”⁶⁶ In a note, du Ponceau admitted that he “did not, any more than others, escape the general contagion,” and that “it was not until repeated discussions of these questions in the law academy, that [he] began to perceive

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⁶³Ibid.

⁶⁴Ibid. “Corruption of blood” is derived from the ancient English penalty for treason and forbids the family of the accused from inheriting his or her property following execution.

⁶⁵Ibid., 43.

that the words ‘common law jurisdiction’ had no definite meaning.”

Du Ponceau believed that he could eliminate confusion and “[disarm] the common law of its only dangerous attribute, the power giving capacity,” by distinguishing between common law as a source of law and common law as a system of law. From the many modifications made to English common law, as well as the subordinate position of common law to written and statute law in the U.S. legal system, du Ponceau concluded that

> [t]he common law, therefore, is to be considered in the United States in no other light than that of a system of jurisprudence, venerable, indeed, for its antiquity, valuable for the principles of freedom which it cherishes and inculcates, and justly dear to us for the benefits that we have received from it; but still in the happier state to which the revolution has raised us, it is a SYSTEM OF JURISPRUDENCE and nothing more. It is no longer the source of power or jurisdiction, but the means or instrument through which it is exercised. Therefore, whatever meaning the words common law jurisdiction may have in England, with us they have none; in our legal phraseology they may be said to be insensible.

He determined that U.S. federal tribunals did indeed enjoy common law jurisdiction, arguing that “whenever jurisdiction is completely vested in [the federal tribunals], they have cognisance of the law, whatever it may be, that is necessary to give effect to that jurisdiction, and they are not in all cases to wait until Congress have legislated upon the subject.” For example, the Constitution grants to the U.S. Supreme Court jurisdiction over ambassadors, public ministers, and consuls. Du Ponceau stated that if a consul commits a crime against the common law of the state in which he resides, the Supreme Court, standing in for the state judges, can utilize all relevant state law, including common law, in the adjudication process. He cited section 34 of the Judiciary Act of 1789, which states that “the laws of the several States, except where the Constitution, treaties or statutes of the United States shall otherwise require or provides, shall be regarded as the rules of decision in trials at common law,

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67 Ibid., 4, 14.
68 Ibid., 5.
69 Ibid., 4.
70 Ibid., 23.
in the Courts of the United States, in cases where they apply.”\textsuperscript{71} To those who contended that federal courts have such jurisdiction in civil, but not criminal cases, du Ponceau recognized their underlying concerns that many barbaric English common law punishments (the ducking stool, drawing and quartering, and burning) would be open to judicial discretion. However, not only does the Constitution forbid against “cruel and unusual punishments,” replied du Ponceau, but also “the common law as modified by our Constitution, by our laws, manners and usages, is as wholesome and as harmless a system, in criminal as well as in civil cases, as any that can be devised.”\textsuperscript{72} Americans were simply above such barbarity.

Du Ponceau dedicated the rest of his \textit{Dissertation} to proving that the common law system of jurisprudence was not only superior to codified law, but also viable, sound, and perfectible. In the course of repudiating the attacks made on common law, he made special mention of Sampson and his “Discourse,” seemingly attempting to remove his friend’s name from the blacklist of radical codificationists. Du Ponceau declared that while some critics added Sampson to the list of those who attacked common law

\begin{quote}
for my part, I rather believe that he meant to point the keen arrows of his wit against the superstition, not against the pure religion of the common law. Mr. Sampson is an \textit{Iconoclastes} in jurisprudence; he has made pretty free with the Saxon and Norman idols, and may have displeased those who would wish to bring us back to the ancient worship of \textit{Thor} and \textit{Woden}.\textsuperscript{73}
\end{quote}

Of the many debatable points set forth by du Ponceau in his \textit{Dissertation}, on this he was entirely wrong. Sampson not only carried the torch for those who advocated a complete codification of American law, but also expressed frustration that du Ponceau did not support reform through codes.

As a method of jurisprudence du Ponceau instead argued that common law was far superior to that of codified law. Of the numerous flaws in common law specified by codificationists—“its ancient abuses, its uncertainty from the immense number of volumes in which its doctrines are to be

\textsuperscript{71} Ibid., 25.
\textsuperscript{72} Ibid., 46.
\textsuperscript{73} Ibid., 49.
sought for, its various and daily increasing modifications in the different States, the contradictory
decisions which occur among so many independent tribunals, and above all the supposed danger to
our institutions from its being still the law of a monarchical country”--du Ponceau believed that “not
all the codes of all the Benthams” would be able to fix them.\textsuperscript{74} Despite its flaws, the unwritten nature
of common law allowed for malleability and adaptability, traits not possible within the rigid and
limiting method of codified law, which forced judges to follow the words of a given statute to the
letter even when wisdom and justice led to contrary conclusions.  Unlike codified law, which was
created by a single mind or group of minds at a given time, within a specific context, and in response
to specific circumstances, common law was built on the “accumulated wisdom of the ages” and had
stood the test of time representing centuries of legal experimentation.\textsuperscript{75} Its malleability provided for
the further characteristic of timelessness.  While codifiers criticized this as uncertainty and
unpredictability, du Ponceau praised it for its flexibility that allowed common law to change, albeit
slowly, with the needs of society.  Pennsylvania jurist James Wilson called this characteristic an
“accommodating principle” in his lectures on law in the 1790s, and linked it with the capability within
common law for improvement.

Du Ponceau used supposed codification success stories to support his position, and contended
that a closer inspection of the experiments with codes in Louisiana and France revealed their own
flaws.  In Louisiana, through the actions of such “men of distinguished talents” as Edward Livingston,
du Ponceau argued that there existed a system of jurisprudence that combined “the excellencies of
the common and the civil law.”\textsuperscript{76} Though the Louisiana legislature called on skilled lawyers such as
Livingston to revise the civil code, as well as to draft a criminal code, du Ponceau declared that
do what they will, legislators will never be able to provide for every possible case, and much
will still have to be left to the sound discretion of the constitutional expositors of the laws.
The celebrated code of Justinian is not free from obscure laws, on the true sense of which
commentators have not yet agreed, and even antinomies not unfrequently occur in the

\textsuperscript{74}Ibid., 50.
\textsuperscript{75}Ibid., 5-8.
\textsuperscript{76}Ibid., 41.
decisions and edicts which compose the body of the civil law. In every country there is what the French call jurisprudence, and we, common law; which is nothing else than the aggregate of the successive decisions of Judges on points which the textual laws have not foreseen, or have not sufficiently explained.  

Even in France, so celebrated for its Code Napoleon, a common law grew alongside the system of codes. Referring to the work by the “eminent advocate of the Paris bar” Monsieur Dupin, *De la jurisprudence des arrêts* (Paris, 1822), du Ponceau pointed out that “there are, nevertheless, voluminous collections of reports of judicial decisions, the knowledge of which is an important branch of the legal science, and is called la jurisprudence des arrêts.” The impossibility of writing a perfect code that would address all problems in all situations at all times would inevitably lead to commentaries and learned treatises to fill the gaps inherent in a written law system. Thus, concluded du Ponceau, common law could never be entirely abolished, as it would reemerge to fill the vacuum left by imperfect codes.

Though he conceded that, at present, American common law possessed the form of a “rudis indigestaque moles” or a rude and misshapen mass, du Ponceau argued, consistent with early nineteenth-century thought, that common law could be brought to a state of perfection. Indeed, he saw in the history of common law a consistent characteristic of self-improvement with age. He declared the greatest era of common law to be the years following the Glorious Revolution of 1688, and praised the subsequent progress made during the reigns of William, Anne, and the first two Georges. Before the English Revolution

the method of induction, which Bacon recommended and exemplified, and which the

77Ibid.

78Ibid.; Du Ponceau restated this point in a letter to Sampson: “The dominant opinion is that Codes are the panacea that will cure every evil; but what are Codes? They are little Books containing general principles – the application still remains, and there the difficulty lies. Littleton’s Tenures was a Code; where is it now? Buried under the rubbish of Coke, Hargrave, Butler, &c. – The Constitution of the United States is a code – what is become of its principles since only 25 years? Rawle, Kent, Sargent, Taylor of Virginia, cum multis aliis, already have adumbrated it with their Commentaries.” Du Ponceau to William Sampson, 26 June 1827, Sampson Papers, 1806-1849, LoC.

celebrated Stewart and the philosophers of the Scotch school have so elegantly elucidated, was then unknown, or not understood; the logic of the schools prevailed, and everything was discussed by syllogisms in *Barbara* and *Baralipton*. A highly complicated system of *litis contestatio*, or, as we call it, *pleading*, overdriven to excess, excluded plain reason and common sense from the bar and from the bench, and a great majority of the cases brought before the Courts of justice were decided upon some nice point of form...The plain roles of right and wrong were lost sight of in the midst of a sea of metaphysical subtleties. The greatest talents were misapplied in endeavoring to find reason beyond the bounds of common sense.  

Bacon’s method of induction had placed common law upon the path of order, reason, and perfection. Improvements by Americans moved common law further along that path. Among these were the establishment of religious toleration and religious equality, a constitutional definition of treason, the right of an accused party “to defend himself by counsel in all criminal cases,” a constitutionally sanctioned freedom of the press, and milder punishments and more humane penitentiaries. Also, lawmakers throughout the states were slowly eradicating the penalty of imprisonment for debt.  

Du Ponceau noted that Americans also improved English civil law by abolishing primogeniture and by simplifying many aspects of the law, making it more accessible to the poor.

According to du Ponceau, these positive alterations indicated that common law was “susceptible of being carried to the highest degree of perfection,” and that the United States possessed the talent “to shew to a great, learned, and intelligent nation their own common law improved by their sons.” Most important, through perfecting common law, Americans would achieve a level of intellectual independence from England. This perfection could only be accomplished by treating jurisprudence as a scientific discipline, and by uncovering its “eternal and immutable principles of right and wrong.” Discovery of these principles could only be done by studying the common law itself, as well as other types of law, in the “works of the immortal ancients,

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81 Ibid., 53.

82 Ibid., 5, 57.
and of those eminent modern writers who have followed in their footsteps,” such as “Cicero, the authors of the Roman Imperial Digests, Bacon, Pufendorf, Pothier, and many others.” Du Ponceau had a profound respect for Sir Francis Bacon, the man “whom no country and no age ever surpassed, who held up the torch to a generation whose eyes were too weak to bear its resplendence.” This seventeenth-century philosophical jurist recommended to his scientific age the method of induction, moving from particulars to the universal, from experience to abstract principles, in scientific investigations. Du Ponceau urged his students to read “with the utmost attention” Bacon’s treatise “De justitia universali, seu de fontibus juris” (Concerning Universal Justice; or the Sources of Law) in the eighth book of De dignitate et augmentis scientiarum (Concerning the Dignity and Growth of Science) (1623). He also praised the efforts made by members within the legal profession to improve American jurisprudence by increasing American knowledge of U.S., civil, foreign, and ancient law. He noted Baltimore lawyer John E. Hall’s law journal, Supreme Court Reporter Henry Wheaton’s contributions by appending learned notes on comparative law to his eight volumes of Reports, Thomas Cooper’s publication of Justinian’s Institutes with valuable annotations, the annotated translations of the French commercial and criminal codes, and the long list of works by important foreign authors—“Roccus, Bynkershoek, Martens, Schlegel, Pothier, Emerigon, Valin, Jacobsen, and others”—translated by American jurists. He concluded that these efforts “shew the inclination of our professional men to cultivate jurisprudence as a philosophical science.”

Rather than codes, du Ponceau proposed creating a system of legal education through formal schools and informal publications to rescue American law from the hole of chaos into which it seemed to be sliding. He argued that

The only remedy that I can think [of] is to encourage the study of general jurisprudence, and of the eternal and immutable principles of right and wrong; of that science by which Cicero enlightened, not only the praetors of his days, but the Judges of succeeding ages, and which, I am sorry to say, has fallen too much into neglect. When the principles of that science are

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83 Ibid., 5.
84 Ibid., 51-52.
85 Ibid., 6.
sufficiently disseminated, they will fructify, and statutes and judicial decisions will gradually take their colour from them. System will be introduced where it is wanted. Sound theories will take the place of false ones, and the rules of genuine logic will direct their application to particular cases. All this will be done gradually and insensibly, and the benefit of it will be felt by our remotest posterity.\textsuperscript{86}

For many years he had advocated using legal education as a means of reforming the law, and was an active proponent of developing an avenue for legal education in Philadelphia. In the mid-1780s he belonged to one of the many “ephemeral associations of students of law” that seldom lasted for more than two or three years, and in 1811 was the president of another short-lived law society.\textsuperscript{87} In 1821 he helped create and became the first Provost of the Law Academy in Philadelphia.\textsuperscript{88} Twice in the three years of its existence, the Academy debated the topic of common law jurisdiction to which du Ponceau dedicated his \textit{Dissertation}, and it was through this academic and scientific inquiry that he formulated his arguments.\textsuperscript{89}

Within the few law schools established before 1850, little uniformity existed in the teaching of legal method or the substance of the law. George Wythe, a signer of the Declaration of Independence, became the first college law professor in the U.S. when Governor Thomas Jefferson established his appointment at the College of William and Mary in 1779, and Judge Tapping Reeve established his famous private law school in Litchfield, Connecticut in 1784. It was not until 1817 that the first university established a law school, and this was done at Harvard.\textsuperscript{90} Philadelphia, then America’s most cosmopolitan city, offered no sort of legal education beyond the old method of

\textsuperscript{86}Ibid., 59-60.

\textsuperscript{87}Peter S. du Ponceau, \textit{Address Delivered before the Law Academy of Philadelphia, on the Opening of the Session 1831-2} (Philadelphia: Published by the Law Academy, 1831), 5-6.

\textsuperscript{88}For a history of the Law Academy see George Sharswood, \textit{The Origin, History, and Objects of the Law Academy of Philadelphia} (Philadelphia: Kay & Brother, 1883). Du Ponceau served as Provost of the Law Academy, through annual re-election, until his death in 1844.

\textsuperscript{89}Du Ponceau, \textit{A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States}, 18.

\textsuperscript{90}Though Harvard was the first university to establish an official law school, the University of Pennsylvania claims the distinction of having established the first law program through James Wilson’s law lectures conducted at the University from 1790 to 1791.
apprenticeship. While apprenticeship education had served the early bar sufficiently, the increasing complexity in American law, as well as the fast-growing bulk of legal writings, made learning the law a difficult and tedious task. Codificationists used this complaint to argue for changes in the law that would offer systematic and organized research tools in the form of codes.

Du Ponceau sought reform through systematized education and hoped that his Law Academy would eventually be annexed to the University of Pennsylvania. More than teaching the law as it then existed, however, du Ponceau hoped to utilize the Academy as a means to improve the law. While calling upon his colleagues in the Philadelphia Bar to provide lectures on common, civil, and constitutional law for the students of the Academy, du Ponceau also pushed the students themselves to challenge and reevaluate existing law. In a lecture dated 22 November 1821, he chastised his students stating that

I have observed with regret in some of the members of this academy an unwillingness to argue certain questions, because it appears to them that the law is settled, and that they do not admit of any argument. For my part I must own that it appears to me that such questions are often those which admit of the greatest display of talent and ingenuity. The disputant has an opportunity to search into the history and reason of the law, to trace it thro’ the various adjudications that have brought it to the present point, and if he should reap no other fruit from his labour, he will have the satisfaction at least to know why and how the law is at present understood and established, and his researches will throw light on incidental points that never before occurred to him, and be of great use to him in his future practice. I wish, gentlemen, [that you] would fully understand that we are not here in a court of practice, but in an academy of jurisprudence where the acquisition of legal knowledge and exercise in the art of forensic debate, are the objects of which we are in pursuit, and the intelligent and industrious student will stroke light out of questions apparently the most simple, as the poet can adorn and beautify the most trifling and insignificant object in nature.\footnote{“Mr. Du Ponceau’s Law Lecture, Nov 22 1821,” Law Academy File, Du Ponceau Papers, 1781-1844, HSP.}

By reevaluating the history and reasoning of past cases, students discovered for themselves the universal principles of justice, which they would later apply to improving American law as judges and legislators. Du Ponceau told his friend Pickering in 1822 that he did not think it “amiss that our youth
should gradually prepare for an improved System of Jurisprudence in those points on which ours needs improvement.”

Proper legal reform could only be accomplished by an educated body of philosophical jurists, who, when the time was ripe, would carve the new form of American law as “able sculptors” rather than as “stone masons.”

Indeed, du Ponceau saw far too many “stone masons” and not enough “able sculptors” among those practicing law. Evaluating the legal profession in 1825, he complained to Sampson that “everything that wears a head is now a lawyer, and some even that wear no head.” Not only was common law in need of systematization in order to clear away centuries of accumulated monarchical and feudal rubbish, but there also existed few American legal scholars trained in other important legal areas, particularly civil and foreign law. Roman and civil law historian Michael H. Hoeflich states that the generation of the founding fathers had an interest in ancient, foreign, and civil law, but few knew these areas on a scholarly level. As seen, the political and economic struggle among the U.S., France, and England in the decades following the Revolution forced many lawyers to learn more, but language barriers and limited texts, as well as an unyielding dedication to common law among legal professionals, impeded the growth of knowledge in these areas. Hoeflich argues that those who could be considered experts in the 1820s made up quite a short list and included du Ponceau in Philadelphia, Joseph Story, John Pickering, and Simon Greenleaf in Boston, James Kent and William W. Campbell in New York, and Thomas Cooper, Francis Lieber, Hugh Swinton Legaré, and James Murdock Walker in South Carolina. These men possessed an interest in law beyond its daily practice and sought to utilize civil and ancient sources in order to better understand contemporary

92 Du Ponceau to John Pickering, 23 November 1822, Du Ponceau Papers, 1781-1844, HSP.

93 Du Ponceau, A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States, 60.

94 Du Ponceau to William Sampson, 25 April 1825, Sampson Papers, 1806-1849, LoC.

95 This fact was no doubt a disadvantage to the codificationists, and was evident in that few who promoted codifying the law appended a workable plan to this end to their attacks on common law.


jurisprudence and legal philosophy. Many had received legal training beyond the apprenticeship system, were able to read the original sources, and maintained correspondence with foreign scholars and jurists, as well as each other. Most of these men actively collected civil, foreign, and ancient law works, and, as a result, built the first great personal law libraries of the period. However, when du Ponceau presented his Dissertation in 1824, no college or university offered lectures in civil or Roman law. In 1825, William Short, the Philadelphia diplomat and financier, notified Thomas Jefferson of the recent arrival into Philadelphia of Dr. Charles Follen, a German emigré and former professor at a Swiss university, who was currently studying common law under du Ponceau. He informed Jefferson that du Ponceau “estimates his talents very highly” and thought that Follen “would be a great acquisition to any University.” Short also mentioned to Jefferson that “Duponceau had some hopes that you would have a professorship of Civil Law. He says there has never yet been one in any of our Colleges & he thinks the first which shall establish such a chair will acquire the greatest credibility.” While Jefferson did not appoint Follen as the first civil law professor at the University of Virginia, Harvard hired him in 1825 as the first professor of German.

The arguments and solutions offered by du Ponceau in the pages of his Dissertation place him in the middle of the law reform spectrum, among the moderate codificationists. Though he came out on the side of common law and feared the “rash and sudden” innovation of codification, he did not think that codes were entirely useless. Certain areas of the law, he believed, were certainly “ripe” and ready to be written down, namely commercial and maritime law. He also asserted that “while the common law is and ever will be the best system of political and criminal legislation that has ever been known,” he did not “think it entitled to the same praise in what may properly be called the jus civile,”

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98Du Ponceau wrote of Follen, “[t]he Holy Alliance have thought him dangerous, because he was a Republican in a Republic, and the Government of Basil, much against their will, have been compelled to expel him. He is come to this, the only country where he can be safe. He is studying the Common Law and intends to practice it in our German Counties, for which he will soon be qualified.” Du Ponceau to John Davies, 12 June 1825, Du Ponceau Papers, 1786-1842, APS.


100Various coastal towns in the past had codified maritime law in works such as The Tablets of Amalfi (a town near Naples) and The Laws of Oleron (one of the French islands).
or civil law.\textsuperscript{101} Having been born in a civil law country, and having spent years practicing and studying ancient, civil, and foreign law, du Ponceau had great respect for this alternative legal system. He simply felt that “it is much better that things should remain as they are until the common law shall by successive improvements have attained its highest degree of perfection.” At that point, he argued, “it will be time to reduce its principal provisions to a text.”\textsuperscript{102} Codifying the law sooner would result in an unavoidably imperfect code. He urged his audience to further improve the common law through philosophy and science, and through “learned treatises and free discussions,” at the same time acknowledging that “there is no polar star to direct our uncertain wanderings.” This uncertainty meant that Americans must accept one of two alternatives:

We must either tacitly submit to receive the law from a foreign country, by adopting the opinions of the English Judges, however they may vary from our own, or even from those which they formerly entertained, or we must find some expedient to preserve our national independence, and at the same time to prevent our national law from falling into that state of confusion which will inevitably follow from the discordant judgments of so many coordinate judicial authorities.\textsuperscript{103}

Indeed, the \textit{modus operandi} of the moderate codificationists mirrored closely the ideas Sir Francis Bacon, the man to whom du Ponceau gave credit for opening the door for improving common law. In his essay “Of Innovations” Bacon wrote that

\begin{quote}
[s]urely every medicine is an innovation, and he that will not apply new remedies must expect new evils; for time is the greatest innovator; and if time of course alter things to the worse, and wisdom and counsel shall not alter them to the better, what shall be the end? It is true, that what is settled by custom, though it be not good, at least it is fit. And those things which have long gone together are as it were confederate within themselves: whereas new things piece not so well; but though they help by their utility, yet they trouble by their inconformity [sic]. Besides, they are like strangers, more admired and less favoured. All this is true, if time stood still; which contrariwise moveth so round, that a forward retention of
\end{quote}

\textsuperscript{101}Du Ponceau, \textit{A Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States}, 55.

\textsuperscript{102}Ibid., 5-6.

\textsuperscript{103}Ibid., 59-60.
custom is as turbulent a thing as an innovation; and they that reverence too much old times are but a scorn to the new. It were good therefore that men in their innovations would follow the example of time itself, which indeed innovateth greatly, but quietly and by degrees scarce to be perceived....

Cautious, steady, and patient innovation combined with the scientific study of law would slowly bring about improvements.

Six months after du Ponceau presented his Dissertation, he and Sampson resumed their correspondence and their conversation about codification. In these later letters, du Ponceau retreated from his earlier excitement, instead elucidating his fears about codification and laying out his alternative plan of gradual reform to his long-time friend. Du Ponceau was also upset that after he presented his Dissertation, some friends kept their distance. He wrote to Sampson, “I fear my friend Livingston is not pleased with me for not having entered into all his ideas; for he has been a long while without writing to me.” He believed that he and many of the more radically-minded reformers, including Sampson and Livingston, sought the same goals of consistency, certainty, and systemization in American law, and that the only difference lay in their means to achieve this reform. In a letter dated 22 October 1824, du Ponceau turned to medical terminology to distinguish between his and Sampson’s methods. He declared that Sampson advocated the “Brunonian system,” while he himself adhered to the “Boerhanvian system.” The Brunonian system refers to eighteenth-century Scottish doctor John Brown’s Brunonian system in medicine. Introduced in 1780, he theorized that diseases were the result of too much or too little external stimulation to the body, and his method of treatment involved introducing large amounts of stimulants to a patient to cure a given ailment (incidently, Brown was quite a heavy drinker). Not surprisingly, Brown’s methods resulted in numerous dead patients. The Boerhanvian system refers to Hermann Boerhaave, the influential eighteenth-century surgeon. His greatest contribution to medicine was his use of post-mortem


105 Du Ponceau to William Sampson, 22 October 1824, Sampson Papers, 1806-1849, LoC.

examinations in order to determine the cause of death. He also was in poor health, suffering from numerous painful illnesses, which rendered him more sympathetic to his patients.\textsuperscript{107} Du Ponceau told his friend, “you fear lest my diet drinks should produce no effect, I fear your lime and bark will kill the patient,” and predicted that Sampson’s heroic remedies would throw “all of the moderate men into [du Ponceau’s] arms, and even the incorrigible pedants, [would] be obliged to take refuge in [his] Doctrines for fear of worse.”\textsuperscript{108} Though he suspected that his views would cause Sampson and others to class him “among the Goths and Vandals, the enemies to improvements,” du Ponceau continually asserted that he was not against reformation, only revolution.\textsuperscript{109} Even though they differed in opinion, du Ponceau never ceased admiring his friend’s talent for sarcasm and wit, telling Sampson, “I hope that you will give old madam [common law] the slip, and give her two or three more of those five fillips, with which you saluted her rubicund nose last summer. You will make it up afterwards, and be a good boy the remainder of the year.”\textsuperscript{110}

Although confident in his views, du Ponceau, being an uncertain writer, was at times less confident that his \textit{Dissertation} would be effective in preventing a codificationist victory. His work was but one in a flood of writings, mostly in newspapers, written after Sampson published his biting criticism of common law, and which continued long after Sampson himself had retired from the debate in 1826 due to poor health. In his private correspondence, du Ponceau anticipated the inevitable victory of his friend, and in 1825 he wrote to Sampson, “[y]ou have hit upon the spirit of the age, which is for change and innovation in every thing,” taking notice that “[e]ven Old England takes the lead.”\textsuperscript{111} A few months before, he had admitted a defeat to Sampson after his \textit{Dissertation} had been poorly reviewed by the French advocate, Monsieur Dupin, in the \textit{Revue Encyclopédique}. He wrote

\begin{footnotes}
\footnote{Rina Knoeff, \textit{Herman Boerhaave (1668-1738): Calvinist Chemist and Physician} (Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen, 2002).}
\footnote{Du Ponceau to William Sampson, 20 December 1824, Sampson Papers, 1806-1849, LoC.}
\footnote{Du Ponceau to William Sampson, 24 June 1825, Sampson Papers, 1806-1849, LoC.}
\footnote{Ibid.}
\footnote{Du Ponceau to William Sampson, 13 August 1825, Sampson Papers, 1806-1849, LoC.}
\end{footnotes}
my five arguments against codification have had no effect upon Mons Dupin, and he concludes his review with a strong recommendation to set us immediately about making Codes. There’s a victory for you! I told you that the code making mania would come soon enough, and that we should be spurred into it some how or other. You have begun the dance in New York, Messrs Duer and Co. are going to try their hands at code-making. I like this mode well because it is gradual; but wait by and by until the hobby horse is completely saddled, and you will not want those who will ride it like Jehu, and perhaps throw themselves. Livingston’s Code is now set up as a model; by and by will come Duer’s Code, and you will see presently that code makers will be in great demand. Then prepare yourself and accinge te ad laborem.  

Indeed, being a civil law country, it is not surprising that France’s legal profession was un receptive to du Ponceau’s ideas. 

At home, du Ponceau’s work received mixed reviews. C. S. Davies wrote a complimentary article for Boston’s North American Review, and Sampson wrote a respectful criticism of his Dissertation for New York’s Atlantic Magazine. About his friend Sampson wrote, “Mr. Duponceau is a scholar and an accomplished lawyer, and, moreover, a zealous and disinterested friend to his country and to mankind, and one of whom we are proud,” but added that  

[w]e cannot help thinking that the acute genius of that gifted writer must have been under a bias, (either from a too prudent and over cautious fear of innovation, or, from the point of view in which he stands, in a state, where some unsuccessful attempts at reformation have created a temporary re-action) when he declares so strongly against a code. More inclined to peaceful debate rather than open combat, du Ponceau sought a truce with Sampson stating that “[y]ou view the subject differently; be it so; I am not so opinionated to quarrel with you for it; while you pursue your course, I will pursue mine; and if we succeed, we will not wage battle

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to decide to where the success is to be attributed.”

While criticized by continental reviewers in France and by his friend Sampson, du Ponceau’s Dissertation found a more receptive audience in England. By 1827 codification was threatening common law on both sides of the Atlantic. Du Ponceau wrote to Pickering,

I have long foreseen the Codifying Mania, which is now overspreading our country. It has blown hither by an Eastern gale. The Napoleon Code has set all Europe codifying, and England has at last caught the Rabies. It is now proposed there not only to codify but to new model the whole Common Law. The Government itself is bitten by the Animal; or rather is seems to me they are trying to direct the storm which they cannot lay. Otherwise, the Nation will certainly go to extremes.

Anti-codification lawyers in both London and Edinburgh opened correspondence with du Ponceau, pursuing his ideas on gradual reform and sending him copies of their own works. British author, Joseph J. Parkes, relied upon du Ponceau’s Dissertation for his essay “Progress of Jurisprudence in the United States.” English barrister C. P. Cooper revealed the respect and appreciation that those who defended common law had for du Ponceau, stating that his Dissertation soon discovered to me how much already we have to learn from you, and the few [American] publications which I have since had the good luck to meet with, have strengthened that impression. At this period I had no occasion to use the valuable materials, and my friend Park informing me that he was about to write upon the subject of codification I urged him to seek for facts and arguments, not in England only, but in France & America also, and furnished him with nearly every book he cites, and I am glad to find that justice is likely to be at last done to the great talent which he has displayed in the use of the information that he

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115Du Ponceau to William Sampson, 17 July 1825, Sampson Papers, 1806-1849, LoC.

116Du Ponceau to John Pickering, 9 January 1827, Du Ponceau Papers, 1781-1844, HSP.

117Du Ponceau to John Pickering, 20 July 1829, Du Ponceau Papers, 1781-1844, HSP: “You must know that my little Essay on Jurisdiction has procured me the Correspondence of several eminent Barristers in London and Edinburgh, with copies of their works. My Correspondents are on the Anti Codification side, but in favor of a gradual reform of English Jurisprudence.”

obtained.¹¹⁹

Edinburgh lawyer John Reddie, a proponent of gradual law reform and author of *Historical Notices of the Roman Law and of the Progress of Its Study in Germany* (1826), also sought a correspondence with du Ponceau to discuss the issue of codification. Du Ponceau’s hopes of gaining independence from and then surpassing the British intellectual scheme materialized, at least temporarily, as American lawmakers appeared to have advanced “beyond [their] masters in the science.”¹²⁰ This glory quickly faded after England passed the Reform Bill of 1832 and no longer needed the advice of Americans.

Though he voiced concerns just after publishing his *Dissertation* that he would “displease both the friends and the enemies of the Common Law,” it is evident that du Ponceau did not drive any of his former friends on either side of the fence away.¹²¹ As illustrated, he and Sampson’s friendship emerged from the conflict unscathed. The New York legislature called upon du Ponceau’s friend and younger colleague Henry Wheaton to serve on the committee to revise and codify New York’s laws. Though aware of his views, Wheaton sent a draft copy of the committee’s work to du Ponceau, asking him to “speak freely” about his opinion of their progress. Du Ponceau replied

> I have read with great pleasure the result which you have sent me of you and your colleagues first labours in the revision of the laws of your state. The undertaking appears to me to be immense, and to be well executed requires more time than the legislature and perhaps yourselves have fondly imagined – Nor can you expect to make it a perfect work at the first throw; you will perceive yourselves when it is ended many things that will not strike you while engaged in it; but it is the fate of all human things; perfection is not for this world, nor is the nearest degree to it to be suddenly attained. – As far, however, as I am able to judge of your performance, I am free to tell you that I am very much pleased with both the plan and the execution, as far as you have gone.

Wheaton asked permission to continue to send drafts to du Ponceau, to which the latter replied, “I

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¹¹⁹ C P. Cooper to du Ponceau, 6 November 1829, Du Ponceau Papers, 1781-1844, HSP.


¹²¹ Du Ponceau to John Pickering, 24 May 1824, Du Ponceau Papers, 1781-1844, HSP.
shall be happy to trace and enjoy your progress, if you put it in my power the means to do it.”

Even his old friend Edward Livingston, a professed disciple of Jeremy Bentham, resumed
correspondence with du Ponceau, seeking legal advice in 1826 on an issue involving treason.

Historian Perry Miller in *The Legal Mind in America* argues that du Ponceau played an
influential role in the controversy between common law and codification. Miller concludes that du
Ponceau “did in the end supply valuable assistance to [common law] because he, the only one actually
bred in the civil law, came out firmly against an American codification, and showed the Common
Lawyers how to resist even the Code Napoleon.”

Evidence showing that du Ponceau’s ideas influenced two of America’s greatest jurists, James Kent and Joseph Story, both lawyers and justices in the U.S. court system, well-respected commentators on American law, and against legal reformation through codification, proves the accuracy of Miller’s conclusions. Kent picked the brain of du Ponceau when writing his four-volume work *Commentaries on American Law* (1826-1830). In 1826 he sent a copy of his first volume to du Ponceau to review. In response to du Ponceau’s suggestions, Kent wrote back explaining at length his ideas and omissions, as well as the ideological framework in which he planned to discuss the difficult topic of American common law in the next volumes. He concluded with words of respect, writing to du Ponceau that “[i]t will be my highest
ambition to deserve the approbation of such jurists as yourself, and permit me to say that your
observations are most useful and grateful.” In volume I of his *Commentaries*, Kent utilized du
Ponceau’s *Dissertation* for Lecture XVI entitled “Of the Jurisdiction of the Federal Courts in Respect
to the Common Law, and in Respect to Parties.” Kent wrote that “Mr. Du Ponceau in his
‘Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States,’ has ably
examined the subject, and shed strong light on this intricate and perplexed branch of the national

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122Du Ponceau to Henry Wheaton, 17 May 1826, Henry Wheaton Papers, Pierpont Morgan Library, New
York.

123Du Ponceau to Edward Livingston, 10 April 1826, Historical and Literary Committee Letter Book, vol. II, APS.

124Perry Miller, *The Legal Mind in America: From Independence to the Civil War* (New York: Harcourt,

125James Kent to du Ponceau, 29 December 1826, Peter Stephen du Ponceau Letters, 1777-1847, HSP.
jurisprudence,” and followed closely du Ponceau’s argument and examples in his own work. Just as du Ponceau, he believed that Americans “live in the midst of the common law, [inhaling] it at every breath, imbib[ing] it at every pore,” and quoted du Ponceau’s own words, evidently with the idea that it would increase the legitimacy of his own work.

Like du Ponceau and Kent, Joseph Story also defended common law as the best system of law for the United States. Story also saw the usefulness of codification in certain legal areas, and indeed, believed that the Code Napoleon was “perhaps the most finished and methodical treatise of law, the world ever saw.” But he was a common law lawyer at heart, and though he studied foreign and Roman law, he sought solutions in common law first and foremost and made no attempt in any of his many writings to insert civilian or Roman rules where common law doctrine was sufficient. He thought highly of du Ponceau’s Dissertation, calling it “a work that should be profoundly studied by all American lawyers,” and expressed many of the same views regarding American common law in his own Commentaries on the Constitution (1833). Many years later, Story expressed his intellectual debt in a letter to du Ponceau in which he wrote, “[t]o you and to Chancellor Kent I mainly owe whatever attainments I have made in foreign jurisprudence and the civil law”—strong words from a man considered by both contemporaries and historians to be one of America’s most learned jurists. The similarity between du Ponceau and Story’s views is illustrated in the arguments set forth in “A Report of the Commissioners Appointed to Consider and Report upon the Practicability and Expediency of Reducing to a Written and Systematic Code the Common Law of Massachusetts, or any Part thereof.” The commission, of which Story was one of five members, concluded that the common law of Massachusetts was not capable of undergoing a codification, and gave many of the same reasons that du Ponceau expressed in his Dissertation. The commission did,

127 Joseph Story, “Progress of Jurisprudence,” Miscellaneous Writings, 238.
128 Hoeflich, Roman and Civil Law and the Development of Anglo-American Jurisprudence in the Nineteenth Century, 41-42.
however, determine that certain areas of law were “ripe” for codes and, like du Ponceau, named commercial and maritime law, but also added criminal law and the law of evidence to the list.\footnote{131}{A Report of the Commissioners Appointed to Consider and Report upon the Practicability and Expediency of Reducing to a Written and Systematic Code the Common Law of Massachusetts, or any Part thereof; made to his Excellency the Governor, January, 1837,” Miscellaneous Writings of Joseph Story, 730-732. The other commissioners were Theron Metcalf, Simon Greenleaf, Charles E. Forbes, and Luther S. Cushing.}

Though the published response to his \textit{Dissertation} by colleagues was small, it is clear that du Ponceau’s ideas added force to the intellectual currents then directing the course of American law. This silence except by the learned few must have pleased du Ponceau who told his friend Sampson several years earlier that “[p]opular applause is intoxicating and dangerous, the applause of the few is more lasting, and the only one that reaches beyond the grave.”\footnote{132}{Du Ponceau to William Sampson, 22 August 1817, Sampson Papers, 1806-1849, LoC.}

While du Ponceau himself did not achieve the immortality granted by historians to certain figures of the past, his views certainly lasted beyond the grave, and this is most evident in the fact that his vision of American law prevailed. Supported by such weighty figures as Kent and Story, du Ponceau’s theory pertaining to common law jurisdiction within U.S. federal courts soon acquired the status of a “principle” within American law. Three years after du Ponceau’s death, J. G. Marvin published an extensive list of American, English, Irish, and Scottish law books along with “critical observations” in his \textit{Legal Bibliography} (1847). Under du Ponceau’s \textit{Dissertation}, Marvin wrote that “[t]he learned author of this dissertation has clearly pointed out the nature and extent of the jurisdiction of the United States Courts; and has shown that the English Common Law is recognized, and has become a part of our national jurisprudence.”\footnote{133}{J. G. Marvin, \textit{Legal Bibliography, or A thesaurus of American, English, Irish, and Scotch law books. Together with some continental treatises, interspersed with critical observations upon their various editions and authority. To which is prefixed a copious list of abbreviations}, (Philadelphia: T & J. W. Johnson, 1847), 281.}

That case law is still a dominant feature in American law today is proof that the movement for a total codification of American law failed. Du Ponceau’s prayers that “God preserve us from the extreme remedy of general codification” prevailed.\footnote{134}{Du Ponceau, “Kent of American Law,” \textit{American Quarterly Review} I (March 1827): 188.} However, his desire to see American law improved, as well as his wish to see Americans engaged in intellectual debate incited him to almost
gleefully assert that “[c]odes are the toy of the present age—Play on, my merry men all!”

Play on the men did and a flurry of activity aimed at codifying the law marked the end of the 1820s, which resulted in victory in several battles, but an overall defeat in the war to reform American law. More than any other state New York took the lead in attempting to convert its law into a codified form. Using Livingston’s earlier work in Louisiana as a model, David Dudley Field wrote the Field Code of Civil Procedure in 1848. Other states such as Idaho, Montana, and California adopted the Field Code, and indeed it was met with open arms in the new western states where ready-made law was greatly needed. But as the lawyers and judges who settled in these areas eventually reverted to ingrained common law practices, undermining and even ignoring certain codes, these laboratories ultimately proved correct du Ponceau’s Dissertation hypothesis that it would be impossible for Americans to abolish common law since “it is interwoven with the very idiom that we speak, and we cannot learn another system of laws without learning at the same time another language.”

In addition to reforming procedural law, New York also successfully adopted a new penal code in 1881. Du Ponceau also had argued that certain areas of law were both ripe for and well-suited to codification, particularly commercial and maritime law, which were areas of law that transcended state lines and did not interfere with state sovereignty (and thus did not interfere with his Republican sensibilities). Notably, codification was triumphant in the area of commercial law. At the end of the nineteenth century the American Bar Association requested that each state send representatives who would collectively work to establish uniform state laws, and their first accomplishment was the Negotiable Instruments Law which served to regulate trade and commerce throughout the United States. The Uniform Commercial Code replaced the NIL in the 1950s.

Many factors contributed to the failure of the codification movement. The implementation of judicial elections undermined codificationist arguments that common law judges lacked accountability. While du Ponceau played no role whatsoever in the move to subject judges to the election process, he was a loud proponent for the next reform. In response to the codificationist

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135 Du Ponceau to William Sampson, 26 June 1827, Sampson Papers, 1806-1849, LoC.


complaints that American law was complex, inaccessible, and too huge, lawyers, continuing in their pattern of self-education, provided their own remedy in the form of commentaries, treatises, digests, dictionaries, bibliographies, and indices of cases, in the process making legal research significantly easier and American law significantly more manageable. Historian Charles M. Cook believes that without this move on the part of American lawyers codification would have succeeded. Du Ponceau specifically called for this route to reform not only to prevent “rash and hasty” codification, but because it was, in his mind, the only path to improving and organizing American law. Concluding his arguments in his *Dissertation*, du Ponceau wrote

> The true principles of jurisprudence, in order to fructify, ought first to take root in the minds of the members of the legal profession. Then, and not till then, will false principles gradually give way, as the ripe fruit falls from the tree. But in order to produce that effect, we ought to invite each other to reflection on these important subjects by learned treatises and free discussions, and the labours of the jurist ought not to be confined to mere compilations. In short, jurisprudence ought to be treated as a philosophical science. If Montesquieu had not written, the distinction between the three powers of government would be yet unknown, and their limits undefined. If Beccaria had not written, the torture and its horrid concomitants would not have disappeared from the face of Europe, and sanguinary codes would not almost every where have given way to mild punishments.

In the 1820s and 1830s, “the minds of the members of the legal profession” were active indeed. American texts and digests written before 1830 included Tapping Reeve’s *Baron and Femme* (1816), Willard Philip’s *Insurance* (1823), Nathan Dane’s *Abridgement* (1823-29), and James Kent’s *Commentaries* (1826-30). After 1830, the number of such writings greatly increased with no fewer than fifty-one digests of American reports written by 1842. Joseph Story surpassed all others in the contribution of legal writings, penning nine texts in twelve years on topics such as constitutional law, equity law, and partnerships. Cook writes that “[i]nterest in codified law waned as the numbers

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140 Cook, *The American Codification Movement*, 204, 207.
of legal texts increased.”

Just as du Ponceau had predicted, these efforts on the part of American lawyers eventually brought about greater uniformity in American law.

Du Ponceau’s many years of experience as an American lawyer and as a specialist in common, ancient, foreign, and civil law enabled him to see clearly the many problems inherent in the legal structure. Such a learned perspective made his views on law reform valuable to contemporaries on both sides of the Atlantic, and make them of special interest to historians seeking to understand changes within the “formative period of American law.” As a moderate codificationist he sought a balance between common and code law where applicable and best suited. However, he believed that the best route to understanding, reforming, and improving law was through education, and he optimistically asserted that “[o]ur young men are full of zeal–the next generation will be ripe and able for substantial improvements in the law; what is now considered, perhaps, as mere abstract theory, will in time become prejudice, and thus legislations are improved.” Such a path would allow for slow, cautious reformation rather than bring about the threat of a destructive revolution.

\[141\] Ibid., 206.


\[143\] Du Ponceau to William Sampson, 2 May 1826, Sampson Papers, 1806-1849, LoC.
CONCLUSION

Du Ponceau ended his legal practice in the 1830s, after half a century in the Philadelphia Bar. Before his death in 1844, he pursued his interests in philology, continued to promote American literature and history, and explored silk production in the United States. However, during his remaining years, America’s political and legal figures continued to seek his learned opinions. In 1842 he addressed the debate over the contested seat of David Levy, the delegate from Florida to the U.S. Congress. In response to du Ponceau’s published opinion on the case, the Law Reporter concluded that “the extensive learning, particularly in the civil law part of the argument, and the large and statesman-like views, could have come from no other of our jurists; and it is gratifying to see the same mind, which has so long contributed to enlighten and instruct us, still in full vigor, and able to grasp the greatest questions.” In February of 1844, just two months before du Ponceau’s death, Peleg W. Chandler, a member of the Massachusetts House of Representatives, wrote to him seeking his “humble opinion” on a citizenship matter then before the House. In his response, du Ponceau revealed his continued commitment to an American common law stating that

There is no need I believe of entering into the consideration of foreign laws on this subject.

Our common law is I think sufficient, provided we take a clear view of its principles unembarrassed by collateral questions and adjudged cases, which may perhaps differ, though many I believe and probably the majority will support your side of the question. The principles of the common law of England which we have adopted are clear in my opinion.

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Such continuing inquiries reveal that du Ponceau’s scholarly reputation was as strong in his eighties as it had been fifty years earlier.

In what would be his last letter to his friend John Pickering in December of 1843, du Ponceau mused over requests from family and friends to continue the narrative in his autobiographical letters beyond his admission to the bar in 1785. Arguing against extending his story, he concluded that “[t]here is no great interest in fifty years spent among the labours of the legal profession...The lawyer’s life is in the books of Reports.”4 As seen, however, du Ponceau’s five decades in the Philadelphia Bar went well beyond the published reports and the courtroom walls. First and foremost, through his knowledge of languages, history, and legal systems, du Ponceau added a distinct scholarly element to the legal profession in the early republic. His specialized knowledge of civil and foreign law, particularly in the years following the Revolution, greatly benefitted the legal profession, which, according to Pickering, was not at that time prepared to address the “great questions” resulting from the international conflict that plagued the Atlantic world. Outside of the courtroom du Ponceau urged colleagues to increase the level of legal scholarship in the United States in all fields, but particularly in the area of civil law. He not only contributed to the pool of translated and Americanized foreign civilian works, but also, through his promotion of early law journals, solicited other legal professionals to display America’s best legal talents. Finally, he entered the fray on legal reform in the 1820s in order to protect America’s inchoate common law system from the pens of the codificationists.

As noted, beyond his translations du Ponceau chose, to the regret of contemporaries, to leave behind few works dedicated to the exposition of the law. Du Ponceau greatly admired those who enlightened others through their writing, and seemed frustrated, at times, with his own inability to do the same. To his friend William Sampson he complained, “I have spent my life in thinking and written little; now that I have collected my little store of ideas, I am at a loss to give them expression. How few are those who can both think and write!”5 For the most part, however, du Ponceau was content to play the behind-the-scenes roles of supporter, motivator, and teacher, no doubt contributing to the

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4Du Ponceau to John Pickering, 12 December 1843, Du Ponceau Papers, 1781-1844, HSP. On the backside of the letter, Pickering wrote, “The last he ever wrote me!”

5Du Ponceau to William Sampson, 25 February 1819, Sampson Papers, 1806-1849, LoC.
obscurity of his name following his death. When Pickering used a series of philological conversations between himself and du Ponceau in the creation of his work *Memoir on a Uniform Orthography for the Indian Languages of North America*, he expressed disappointment that his intellectual partner had not written on the topic instead. Du Ponceau assured his friend that

I do not regret not having written upon the subject, as I find you are so fully adequate to it. You say the public will have the benefit of my observations as far as I will permit. They are intended for any use that you may think proper... I always laugh at those who are afraid of communicating their thoughts to others, lest they should make use of them; besides that it evinces a great deal of vanity, it shows a very scanty stock in the minds of those who are so afraid, – and avarice in such cases is generally connected with poverty. I am poor indeed in this respect; but literary avarice never was, and never will be my passion.6

Instead, du Ponceau’s passion was learning. With this passion, not only did he inspire legal colleagues such as the prolific writer Joseph Story, who admitted an intellectual debt to him in the areas of civil and foreign law, but he also stimulated the minds of the next generation of Philadelphia lawyers through his work in the Law Academy of Philadelphia. Even as Provost of the Academy, du Ponceau did not seek fame, stating instead that “I wish to make as little noise as possible in this humble career, looking only to the usefulness of the thing. I am well rewarded by the attachment of the students and their increasing numbers.”7 Preferring men of letters over politicians, he also made little noise in the emerging American political party system. Indeed, it was his contentment in the realm of ideas rather than in the realm of action (except for his membership in the politically-charged and short-lived Democratic-Republican Society of Philadelphia in the 1790s) that generally kept du Ponceau out of the crossfire of partisan squabbles, and that enabled him to engage friends and intellectual acquaintances with varied viewpoints and agendas. This was exemplified when both codificationists and anti-codificationists sought his advice during the reform debate of the 1820s. Unfortunately, the result of having assumed the less obtrusive roles of scholar and educator during his life was that, in the end, all that he left behind was “a blaze of reputation, and the echo of a


7Du Ponceau to John Pickering, 24 November 1821, Du Ponceau Papers, 1781-1844, HSP.
name.”

This thesis serves to restore both his name and reputation as a leader among the early republic’s first generation of lawyers.

A perusal of du Ponceau’s legal career opens some paths worthy of exploration. First, that du Ponceau earned and held for a long time a reputation as a leading scholar of civil and foreign law in America reveals that these legal areas were considered to be both valuable and important to his contemporaries. Such commendations suggest that the significance of civil and foreign law, particularly in the decades immediately following the Revolution, deserves a reappraisal. Though the United States eventually settled upon a common law path, as shown, these two alternative legal systems also enjoyed time in the spotlight. Second, du Ponceau’s early intellectual connections with European lawyers, particularly during periods of tense international relations, provide an angle for investigation into the international “Republic of Letters,” which attempted to separate the realm of the intellect from the realm of warfare. Finally, du Ponceau’s commitment to common law as well as to Americanism raises questions about America’s early legal profession, much of which supported the British Crown during the Revolution and continued to maintain a conservative Federalist stance after the war had ended. An investigation on the evolution of this patriotic sentiment within the American legal profession would add an intriguing chapter to American legal history. Certainly a chapter on du Ponceau’s legal work and contributions would add an important civil law dimension to the study of the development of American law. In addition, any history on the codification movement in America would be less than comprehensive if it failed to mention du Ponceau’s ideas on American law and reform.

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8Wharton, “A Memoir of William Rawle,” 77-78.

9John M. Murrin explores an earlier phase of this issue in “Anglicizing an American Colony: The Transformation of Provincial Massachusetts” (Ph.D. diss., Yale University, 1966).
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BIOGRAPHICAL SKETCH

Jennifer Denise Henderson received her B.A. in history from the University of Alabama in Huntsville in 1998 and her M.A. in history from Florida State University in 2004. In 2002 the National Society of the Colonial Dames of Florida awarded her their annual scholarship. The following year she received the J. Leitch Wright Jr. Award for Outstanding Research from the History Department at Florida State University. Also in 2003 she received a Kingsbury Fellowship from Florida State University for 2003-2004. Her areas of research are United States history to 1865, Anglo-American legal history, and U.S. intellectual history.