

Международное право как метанарратив

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Автор доводить, що міжнародне право є наративом і цей наратив є великим. Даний наратив зазнає глибокі зміни (фрагментація, втрата наративного, релятивізація та ін), що свідчать про його кризи. Вихід з кризи передбачає внесення радикальних змін до змісту наративу.

The author argues that international law is a narrative, and this narrative is great. This narrative is going through profound changes (fragmentation, loss of narrativeness, relativization, etc.), which prove its crisis. Exit of the crisis involves making radical changes to the content of the narrative.

1. Любое право является нарративом, поскольку описывает события и поступки, которые должны иметь место, но на момент повествования не являются частью реальности. А. Фердросс хорошо подчеркнул эту особенность: «Каждая устанавливаемая норма предполагает событие, которое должно совершиться в будущем и поэтому не может предусмотреть всех частных случаев. В силу этого норма не может быть полностью приурочена к «миру действительного»¹.

В международном праве нарративный элемент выражен значительно сильнее, чем в национальном праве, поскольку с момента своего создания оно представляло собой скорее доктрину, чем норму, т.е. описание описания, символ символа. Эта особенность повлияла на генезис международного права, сделав его, с одной стороны, устойчивым, независимым от политической конъюнктуры и проникнутым идеями естественного права, но, с другой стороны, - идеалистичным и абстрактным. Н.М. Коркунов писал по этому поводу: «...Совместное возникновение теории естественного права и науки международного права привело к тому, что философия международного права явилась раньше положительного его изучения. Философская система не явилась плодом обобщений, плодом изучения положительного материала, философская система уже была тогда, когда началось только изучение и обработка положительного материала. Поэтому первенство принадлежит философскому элементу, поэтому теория международного права, лишенная твердой положительной почвы, получила субъективный и даже произвольный характер»².

2. Следует обратить внимание еще на одно обстоятельство, усиливающее нарративный характер международного права. В юридической литературе неоднократно обосновывалась двойственная структура нормы права, предполагающая, с одной стороны, правило поведения, а с другой стороны, - его обязательность. Так, Ю.В. Кудрявцев выделял две структуры нормы права: юридическую и логическую структуру, которая выражает государственно-властный характер права, и информационную структуру, которая представляет собой «описание событий», модель поведения³. По мнению А. Батиффоля, норма права состоит из рационального элемента (правила поведения) и императивного элемента (обязывающей силы)⁴.

Императивный элемент нормы есть ее бытие, рациональный элемент – ее идея. Императивный элемент у разных социальных норм – различен и определяется свойствами субъекта нормотворчества. Рациональный элемент не уникален для каждой группы социальных норм, поскольку правило является родовым атрибутом социальных норм. Рациональный элемент выражается при помощи текста, представляющего собой совокупность букв и слов, относящихся к конкретному языку.

Императивный элемент и рациональный элемент находятся в диалектическом взаимодействии. Чем большим потенциалом обладает императивный элемент, тем менее убедительным может быть рациональный элемент. И, наоборот, при незначительном потенциале императивного элемента норма права должна обладать четким и убедительным содержанием, в противном случае она не

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будет реализована. Таким образом, суммарная мощь ресурсов, которыми обладает носитель власти для реализации своих команд, обратно пропорциональна требуемой убедительности данных команд.

Логическое обоснование данного правила является простым: человек подчиняется внешним предписаниям, только если за ними стоит ресурс принуждения либо ресурс убеждения. Идеальная норма в равной степени должна опираться на силу в ее прямом понимании и на силу убеждения. Практика, однако, далека от идеала: одного ресурса вполне может быть достаточно для создания функционирующего правопорядка; кроме того, парадигмы принуждения и убеждения противоречат друг другу, поэтому усиление одного неизбежно влечет умаление другого.

В национальном правопорядке возможны различные сочетания ресурсов убеждения и принуждения. В международном правопорядке ресурс принуждения практически отсутствует, поэтому главным неизбежно является ресурс убеждения. Будучи лишенной или почти лишенной императивного элемента, норма международного права с необходимостью должна обладать совершенным рациональным элементом.

Совершенство рационального элемента международного права проявляется не только в содержании норм, но и в доктринальных конструкциях и судебной практике. Международно-правовая доктрина является универсальной: вклад в нее вносят юристы различных стран. Кроме того, по вопросам международного права писали многие выдающиеся философы, экономисты, историки и представители отраслевых национально-правовых дисциплин. Решения международных судов обладают убедительностью, недоступной решениям судов большинства национальных правопорядков. Эта убедительность достигается благодаря большому объему решений; скрупулезной аргументации; использованию нескольких языков и концепций, имеющих различные корни; широкой практике составления особых мнений.

3. Нарративность международного права означает возможность его рассмотрения как самодостаточной идеологии, обусловленной политикой, историей, культурой, личными убеждениями и пр., но отграниченной от них. М. Коскенееми представил международное право, как определенное «понимание» («sensitivity»), т.е. совокупность взглядов и предубеждений: «Международное право... не является ни набором идей – многие такие идеи сегодня являются удивительно живыми, – ни набором практик, а является пониманием, которое охватывает одновременно идеи и практики, но также включает более широкие аспекты политических убеждений, представлений о себе и обществе, а также структурные ограничения, в рамках которых профессионалы международного права живут и работают»⁵. Она же означает возможность его эстетического восприятия, т.е. восприятия его формы, стиля, внутренней логики, драматизма и других качеств, обычно приписываемых литературному произведению. Наконец, она означает возможность его использования в тех сферах, которые оно прямо не регулирует или с которыми оно не пересекается. Так, международно-правовые концепции могут быть перенесены в национальное право, не достигшее соответствующего уровня развития. Изучение международного права, также как изучение истории, культуры и языка, обладает сильнейшим детерминирующим личностный потенциалом, независимо от того, будет ли конкретный человек практиковать международное право. Кроме того, также как и в конституционном праве, многие конструкции международного права воплощают политические концепции и в этой связи имеют большое символическое значение, не зависящее от их практической ценности.

Эти обстоятельства предопределяют независимость исследователя международного права от необходимости всегда ориентироваться на практику. Такая независимость стимулирует самостоятельность и способствует глубине проникновения в материал; с другой стороны, она неизбежно порождает элемент схоластики в научных дискуссиях.

4. Международно-правовой нарратив является великим.

Во-первых, международное право имеет отношение к устройству мира в целом и описывает все уровни человеческого бытия: индивидуальный, коллективный, национальный, наднациональный. В этом его отличие от любой отрасли или системы национального права, которые имеют отношение к устройству лишь части мира. Международное право состоялось как форма регулирования отношений в мире, разделенном на государства, и не состоялось как проект преобразования человечества в единую политическую форму. Тем не менее, символы и реальные проявления единства человечества в международном праве присутствуют: концепция общего наследия, нормы *jus cogens* и др.

Во-вторых, международное право оперирует архетипом человека. Универсальность регулирования предполагает, что человек в международном праве не опосредован регионально,

етнічески, релігійно, політически, – а являється человеком *per se*. Поэтому международное право пытается постигнуть и отразить саму экзистенцию человека. Другое дело, что конкретные стратегии, которые предлагаются для достижения этой цели, – мультикультурализм, универсализация западной модели, – иногда могут вызывать сомнения.

В-третьих, будучи продуктом воли нескольких или многих государств, международное право не зависит от воли одного государства. Оно является одновременно и продолжением и преодолением мощнейшей политической идеи современности – идеи суверенитета⁶. По мнению Г. Трипеля, внутригосударственное право может создаваться волей одного государства, однако в международном сообществе для создания права необходимо соединение волей отдельных государств. В результате такого соединения происходит появление нового феномена – совместной воли, которая и обеспечивает обязательность международного права. Позиция Г. Трипеля не является общепризнанной, однако немецкий автор одним из первых обратил внимание на мистический характер легитимации международного права и, по сути, преодолел зависимость международного права от национального права, следующую из учений Гегеля и Г. Еллинека (другая серьезная попытка – учение об основной норме).

В-четвертых, величие международного права определяется его стабильностью. Считается, что современное международное право возникло в середине XVII в.; на протяжении всей своей истории оно было трансформировано в меньшей степени, чем национальное право. Современное международное право все еще является правом Гуго Гроция, в то время как современное национальное право большинства государств является продуктом реформ последних пятидесяти лет.

В-пятых, важнейшей особенностью международного права является частичное совпадение права, доктрины и общественных отношений, – феномен, отсутствующий в большинстве национальных правопорядков и продуцирующий целостность международного права как глобального нарратива. Доктрина помогает устанавливать обычаи; является основным интерпретатором норм; разрабатывает *soft law*. Международное право знало период почти полного отождествления доктрины и нормы (XVII в. – XIX в.). Главный источник международного права – обычай представляет собой сферу отождествления права и общественных отношений; своими действиями государство может одновременно и создавать и реализовывать норму.

В-шестых, международное право, в отличие от национального права, выражается при помощи многих языков. Благодаря этому его теория и терминология отражают коллективный культурный и политический опыт всех государств, человечества в целом. Международное право соответственно представляет собой лингвистический «плавающий котел», обеспечивающий взаимодействие и взаимовлияние языков, их развитие, развитие теории и практики перевода, конкуренцию между языками, создание новой терминологии и т.п.

Французский специалист в области международного права П. Петер пишет: «Право основывается на определенном использовании языка, который сам по себе аккумулирует коллективный опыт и традиции, соответствующие конкретной ментальности. Когда человеческое сообщество имеет свой собственный язык, имеет место естественное выражение правовых норм на этом языке. Но международное сообщество является надсообществом: оно отделено от человеческой среды щитом национальных сообществ; международное сообщество не признает никакого гражданина или никакой язык своим собственным. Нормы международного права должны быть выражены, за неимением лучшего средства, на национальных языках, что проявляется в: медленном формировании права, двусмысленных фразах, бедном и эмпирическом выражении (*instantiation*)»⁷. Недостатки использования национальных языков, отмеченные автором, не исключают явно выраженной оригинальности международного права в этой части.

5. Международно-правовой нарратив пишут три группы авторов: ученые, государства, суды. Влияние каждой из этих групп было различным в различные эпохи. Доктрина играла главную роль с середины XVII в. по конец XIX в. Исследователи были в незначительной степени связаны договорным правом, которое практически отсутствовало или ограничивалось договорами – сделками, а также судебными решениями. Следствием стало разнообразие теорий, отсутствие единых стандартов, устремленность в будущее, «высокий» стиль.

Гаагские конференции 1899-1907 гг., озаменовали начало эпохи договорного права, создаваемого государствами. Главным достижением этой эпохи стали великие конвенции, кодифицировавшие целые отрасли. Государства придали международному праву невиданное доселе значение, хотя многие из них легко шли на нарушение его норм. Эпоха государств еще не

закончилась, однако есть определенные признаки ее заката: распространение наднациональных институтов, ренессанс обычного права, развитие *soft law*, упадок кодифицирующей деятельности.

Данные тенденции освободили место для нового автора – международных судов. Этот автор независим от государств, высокопрофессионален и ориентирован на конкретные проблемы. Одновременно он вынужден учитывать политическую конъюнктуру, т.к. его юрисдикция зависит от согласия государств, и формально лишен нормотворческих полномочий.

Похожим образом Ченг Бин предлагает делить международное право на толкующееся самостоятельно, подлежащее рассмотрению в суде и судебное (*auto-interpretative, justiciable and judicial*). Первое действует, когда государства настаивают на своем собственном объяснении права и фактов и отказываются в принципе или на практике принимать решение третьей стороны. Второе применяется государствами, которые желают или должны в соответствии с ранее взятым правовым обязательством, обратиться к арбитражу третьей стороны или судебному урегулированию. Третье толкуется и применяется международными судами и трибуналами. Автор указывает, что переход от опоры на индивидуальную государственную практику и мнения публицистов в сторону принятия международных судебных решений как наилучшего доказательства международного права является одной из наиболее значительных особенностей послевоенного периода⁸.

Дихотомия «право, подлежащее судебному рассмотрению, - право, не подлежащее судебному рассмотрению» является одной из важнейших нормативных дихотомий международного права (другие - «обязательства поведения – обязательства результата», «договоры-законы – договоры-сделки», «нормы *jus cogens* – ординарные нормы»). Она определяет не только способ защиты нарушенного права, но также стиль нормы, степень ее конкретизации, ее эффективность и способность к развитию.

6. Международно-правовой нарратив претерпевает глубокие изменения, обусловленные как общекультурными тенденциями, так и процессами, происходящими внутри самого международного права.

Во-первых, он фрагментируется, т.е. распадается на отдельные режимы (нарративы). Объективные причины и одновременно следствия фрагментации - усложнение международного права и пролиферация международных институтов. Фрагментация и пролиферация ставят под угрозу общий «сюжет», т.е. совокупность универсальных межотраслевых принципов и норм. Все международное право становится специальным; отдельные режимы, по мнению М. Коскенъеми, должны сообщаться так, как сообщаются международное право и национальное право. Отдельная грань этой проблемы – конфликт позиций международных институтов, ущерб от которого состоит в том, что он не только порождает неопределенность, но и релятивизирует идею международного права в целом. Другая грань – усиление роли специалистов, ставящих перед собой локальные, а не глобальные задачи (об этом также см. М. Коскенъеми¹⁰). По сути, меняется природа консенсуса, лежащего в основе международного права: изначально он выражался в общественном сознании, «*conscience*»¹¹; затем - в согласовании воли государств; сегодня на передний план выдвигается мнение специалистов (правоведов, технических экспертов, менеджеров).

Во-вторых, международно-правовой нарратив утрачивает элементы нарративности, т.е. перестает быть образом будущего. Можно отметить несколько проявлений этого феномена. В рамках концепции решений (М. Макдугал, Р. Хиггинс) международное право представляется не как состоящее из норм, а как состоящее из решений, обеспечиваемых силой, - соответственно граница между нормой (настоящим) и отношением (будущим) исчезает. Как уже отмечалось, на рубеже XX-XXI в. наблюдается ренессанс международного обычая, одновременно представляющего собой и норму и ее реализацию на практике. И концепция решений и развитие обычного права питаются пролиферационными процессами; многочисленные новые институты принимают многочисленные решения, в т.ч. в тех сферах, которые не охватываются конвенционным правом.

В-третьих, изменяется «стиль» международно-правового нарратива. Международное право становится все более прагматичным, т.е. нацеленным на решение текущих проблем, а не на построение конструкций будущего. Пролиферация международных судов и другие факторы отразили и усугубили его ориентацию на регулирование двусторонних отношений в ущерб регулированию отношений многосторонних, и соответственно, - в ущерб глобальным федералистским и иным проектам. Международное право становится более консолидированным, конкретизированным и статичным: изначально высокая степень абстракции, допускающая множество альтернативных толкований и позволяющая рисовать различные контуры будущего, утрачивается. Информационная насыщенность международно-правового поля создает иллюзию «конца истории» и отсутствия необходимости в долгосрочных реформаторских проектах.

В-четвертых, серьезную угрозу международному праву как метанарративу представляет его релятивизация, т.е. отношение к идеям, выраженным в нем, как к обладающим относительной ценностью и допускающим альтернативу. Релятивизации способствует целый ряд факторов: современные постмодернистские философские (М. Фуко), исторические (А. Тойнби) и политические (Ф. Фукуяма) концепции; пролиферация международных органов и конфликты их позиций; обесценивание и размывание традиционных исторических и политических детерминантов международного права (государства, суверенитета, нации).

7. Международно-правовая доктрина также сыграла свою роль в релятивизации международного права. Как отмечает А. Карти со ссылкой на коллоквиум, организованный в Амьене (Франция) и посвященный юридической доктрине, еще Кельзен подорвал основание рабочего метода доктрины; с позиций чистой теории права теории естественного права или справедливости просто маскируют персональные предпочтения авторов и являются субъективными. Другой «могильщик» традиционной роли доктрины – скандинавский реализм, который атаковал концепции и естественного и позитивного права, предложив вместо них своеобразный социологический подход. В соответствии с данным подходом право представляет собой психологический факт, свидетельство ощущения обязанности в обществе¹².

Д. Кеннеди и М. Коскенъеми в своих работах показали двойственность правовых аргументов, отталкивающихся либо от того, что не связано с государством (мораль, общественный интерес, правовая логика, и т.д.), либо от того, что с ним связано (воля, интерес, основные права, самоопределение и т.д.); таким образом, аргументу одного порядка всегда может быть противопоставлен аргумент другого порядка. В эпоху модернизма источники права рассматриваются с обеих позиций; ни одной не отдается предпочтение, поскольку одна опирается на другую¹³. В своей другой работе М. Коскенъеми весьма убедительно обосновывает несколько тезисов: 1) международное право выражает столько реалии международных отношений, сколько определенный интеллектуальный проект; 2) данный интеллектуальный проект возник в районе 1870 г. и исчерпал себя в районе 1960 г. 3) содержание данного интеллектуального проекта – либеральная реформистская программа; 4) участники данного проекта – ограниченный круг западноевропейских и американских ученых¹⁴. Не преследуя цели релятивизировать международное право, автор, тем не менее, добивается соответствующего результата.

Некоторые общие замечания по этому поводу делает А. Карти. Он отмечает, что теория международного права была намеренно «убита» «великими» в 1920-х и 1930-х, в частности Оппенгеймом, МакНеером, Бриели и даже Лаутерпахтом. Именно они заложили интеллектуальные обоснования для так называемого практического подхода к дисциплине и затем отправили своих преемников в залы судебных заседаний. Теория экспрессии (the expression theory), придающая символическое, культурное и этическое значение международному праву, исчезла в Британии вследствие первой мировой войны и стремления защищать человечество от суверенитета государств. А. Карти отмечает увеличение количества судебных решений, в том числе судебных решений национальных судов по вопросам международного права. Акцент на судебном разбирательстве ведет к тому, что международные юристы начинают уделять внимание двусторонним аспектам отношений в ущерб более широким аспектам международного порядка, которые беспокоили исследователей прошлого. Доверие к рассмотрению поведения государств с точки зрения определенного независимого международного стандарта исчерпано. Равным образом исчезло вера в способность международных юристов формировать сознание наций. Вопрос о том, когда это случилось, является спорным и может варьироваться от государства к государству, но трансформация международного права имела место повсеместно¹⁵.

8. Таким образом, международно-правовой нарратив переживает кризис. Выход из этого кризиса предполагает внесение радикальных изменений в содержание нарратива: поиск и определение новых ценностей, которые могли бы служить точкой опоры; установление контуров желаемого будущего. Однако соответствующие ценности и контуры сегодня являются трудноразличимыми, а попытки их предугадывания – малоубедительными. Это касается разного рода предложений поставить во главу угла человека, гуманность, демократию и пр. Любой метанарратив должен нести себе идею преодоления, мобилизации усилий и иерархии действительности. Международный метанарратив не является исключением: в XIX в. преодолевалась отчужденность наций; во второй половине XX в. – угроза миру и безопасности. В обоих случаях международное право шло в общем русле основных духовных течений Запада. Постмодернистское международное право дезориентировано, также как дезориентирована современная западная культура, не предлагающая выхода из политического и культурного тупика, в котором оказалось человечество.

- ¹ Фердросс А. Международное право. М., 1959. С. 38.
- ² Коркунов Н.М. Лекции по международному праву. СПб., 1883-1884. С. 10-11.
- ³ Кудрявцев Ю.В. Нормы права как социальная информация. М., 1981. С. 72-79.
- ⁴ Batiffol H., Lagarde P. Droit international prive. Tome 1. 8-eme edition. Paris. 1993.
- ⁵ Martti Koskenniemi. The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960. Cambridge University Press. 2004. p. 2.
- ⁶ См.: Решение Постоянной палаты международного правосудия по делу «Уимблдон» («Wimbledon») от 17 августа 1923 г.
- ⁷ P. Reuter. Principes de droit international public // RCADI. Volume 103. 1961. p. 435. Цит. по Alain Paux, Rémi Samson. Article 33 // The Vienna Conventions on the Law of Treaties: A Commentary. Volume I. Edited by Olivier Corten, Pierre Klein. Oxford University Press. 2011. p. 868.
- ⁸ Cheng Bin. Whither international law? (1987) Contemporary issues in international law. A collection of the Josephine Onoh. Memorial lectures. Edited by D. Freestone, S. Subedi and S. Davidson. Kluwer Law International. 2002. P. 34-35.
- ⁹ Martti Koskenniemi. The Fate of Public International Law: Between Technique and Politics // The Modern Law Review. January 2007. Volume 70. № 1.
- ¹⁰ Ibid.
- ¹¹ См.: Martti Koskenniemi. The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960. Cambridge University Press. 2004. P. 16, 41, 47.
- ¹² Anthony Carty. Philosophy of International Law. Edinburgh University Press. 2007. P. 2-3.
- ¹³ Martti Koskenniemi. From Apology to Utopia. The Structure of International Legal Argument. Cambridge University Press. 2005. P. 307-308; Kennedy David. International Legal Structures. Baden-Baden 1987.
- ¹⁴ Martti Koskenniemi. The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960. Cambridge University Press. 2004.
- ¹⁵ Anthony Carty. Philosophy of International Law. Edinburgh University Press. 2007. P. 1-18.

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Peter Stephen du Ponceau and the development of international law in America

Стаття присвячена правовому аналізу існуючих регіональних та субрегіональних угод про повітряне сполучення. У статті надано юридичну характеристику змісту зазначених угод. Всі ці угоди містять елементи лібералізації, яка відбувається зараз у міжнародному повітряному праві, тобто усіма угодами передбачено надання п'яти «свобод повітря» серед держав-членів певного регіонального об'єднання. У дослідженні робляться висновки щодо недоліків та переваг таких угод, а також надаються перспективи майбутнього існування регіональних механізмів регулювання повітряних перевезень.

This article provides a legal analysis of regional and sub-regional agreements on air transport in force. The author gives a legal qualification to the named agreements. All such agreements include elements of liberalization which takes place in international air law. This means that all agreements provide for five «freedoms of air» among states-members of a certain regional union. In this research paper the author draws certain conclusions concerning pros and cons of such agreements, as well as overviews perspectives of further development of regional instruments for air transport regulations.

The history of international law may be traced from several vantage points. One of those is the life history of individuals who made substantial contributions to international law. In the instance of the United States of America, that is one of the vantage points least explored. Many individuals contributed to the development of views in America relating to international law and to the formal positions adopted by the Government of the United States in relations with other powers. They did so, as a rule, without special training in the law of nations; indeed, given the absence of law schools in post-revolutionary America, they did so without formal legal training at all. Nonetheless, issues of the law of nations figured significantly, sometimes prominently, in the political writings of eighteenth century America, and evidence was given of a wide acquaintanceship with the leading European works in the field.

One means of making European works not published in England available to an American audience was legal translation. Peter du Ponceau played a pre-eminent role in this respect, making the leading work by Bynkershoek on neutrality and the law of warfare at sea available to an American audience in a version universally acknowledged to be superior to one issued in London many decades before. He left translations of other works in manuscript.

The first quarter century in the history of the newly-formed United States of America was, so far as the seas and oceans were concerned, turbulent and uncertain. Whether a country was technically at war or not mattered little; its neutral vessels and cargoes were suspect in the eyes of belligerents elsewhere. The Law of Prize flourished in sufficient measure to provide a comfortable source of revenue for many lawyers in ports around the world, not least the City of Philadelphia. The threat of armed conflict hovered as a dark cloud on the horizon, whether in the form of engagement in European conflicts as part of the Napoleonic wars or relatively minor campaigns against Tripoli. For the legal practitioner the manual published some seventy-five or so years previously on the law of war by an eminent Dutch judge and legal scholar served as an authoritative statement of the relevant legal rules to be used in matters as different as foreign policy formulation and the resolution of individual cases in court or arbitration.

The book was known to the English-speaking world, as the American translator, Peter S. du Ponceau acknowledges in his Preface. A London barrister, Richard Lee, produced a version entitled *A Treatise of Captures in War*, whose insufficiency «... to supply the place of our author's text is everywhere admitted»¹. Both versions, by Lee

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and Du Ponceau, were however widely read and quoted in their day and throughout the nineteenth century. Du Ponceau did produce the superior version with useful commentary that has deservedly become a landmark in the history of international law.

Bynkershoek

Du Ponceau gives his own account below of the Life and Writings of Cornelius (sometimes: Cornelis) Bynkershoek that has stood the test of time very satisfactorily. Our version will stress certain information not available to du Ponceau with relatively minor overlap.

Cornelius van Bynkershoek (also spelled: Bijnkershoek) was born into a well-to-do sailmaking family at Middelburg, in the seafaring province of Zeeland, on 29 May 1673 (Du Ponceau, Phillipson, J. B. Scott) or 19 August 1673 (de Louter)². He distinguished himself at the local Latin school, where he acquired a sound grounding in the classics and in mathematics. A life in the church was originally contemplated for him, so he also studied Hebrew. At the Frisian University (Franeker) from 1689, he pursued interests initially in theology, the humanities generally, and then changed to Roman, Dutch, and public law. There he attracted the attention of the eminent Professor Ulrich Huber (1636-1694), who extolled his virtues and promise. He was awarded the *doctor juris utriusque* for a triple dissertation *De pactis juris stricti contractibus in continenti adjectis* in May 1694.

Bynkershoek became an advocate in The Hague upon completing his university studies and developed a successful practice. Until the authorities became annoyed with it, he published anonymously a journal *The New Hague Mercury* (1699), full of satire, observations, and criticism. He continued his interests in the Roman law and in Dutch law, producing several dissertations on subjects of Roman law and a substantial treatise, *Corpus juris Hollandici et Zelandici* (never published, at his request). He took to pamphleteering in 1701 to refute criticisms of some of his theses by a professor at the Groningen University in *Contentio literaria*. In 1703 the first of his three principal works on the law of nations appeared³, published together with *De lege Rhodia de jactu liber singularis*.

Shortly after publishing his work on dominion over the seas, he was appointed a judge of the Supreme Court of Holland, Zeeland, and West Friesland, becoming in 1724 the President of that Court. Shortly after his appointment he married Esther van Buytenhem (d. 1726), who gave birth to thirteen children, two of them sons (of the children, only six daughters survived their father)⁴. Based in The Hague, he had ample opportunity to see statecraft in action and consider the law of the sea against the numerous cases which found their way to his court for judgment. Rumour has it that in 1704 he resisted the blandishments of Tsar Peter the Great to take up service in Russia. He returned to Roman law with the first part of an extensive study, *Observationum juris Romani libri quatuor* (1710). In 1721 he published *De foro legatorum in causa civili, quam criminali, liber singularis*⁵, addressing the rights and duties of ambassadors with particular reference to immunities in civil and criminal cases (the Act of Anne (1709) in England had reduced some of these to statutory form, being followed a few years later by analogous enactments in Russia). Just as those legislative acts, Bynkershoek's monograph was stimulated by an actual incident, in his case at The Hague. By far his most substantial work appeared in two volumes: *Quaestionum juris publici libri duo, quorum primus est de rebus bellicis, secundus de rebus varii argumenti* (1737), which contained in volume one the *De rebus bellicis* – the work published herein in the Du Ponceau translation⁶.

Lesser works also touch upon the law of nations, but mostly in passing and not in ways that are central to understanding Bynkershoek's thought⁷. An uncompleted work, *Quaestiones juris privati libri quatuor* (1744), appeared after his death, which occurred on 16 April 1743.

Professor Béat Philippe Vicat (1715-1770), who held the Chair of Jurisprudence at the University of Lausanne, prepared a collected edition of Bynkershoek's published writings in folio format (Geneva, 1761); these were published again with greater editorial care by Luchtmans in 1767 at Leiden; Du Ponceau evidently worked from the 1761 edition, as a copy of this version was sold from his Library at auction in 1844. There also was an Italian edition published at Naples in 1766 in large quarto.

Bynkershoek's place in the history of international legal doctrine is undergoing reassessment. His place of eminence is undoubted and handsomely acknowledged by his contemporaries and followers. Being a figure of the judiciary rather than an academic theorist, his works amounted not to a comprehensive treatment of the system of international law in the tradition of Grotius, Pufendorf, or Vattel, but rather a jurisconsult's appraisal of the practical issues embedded in causes as they presented themselves in litigation. Respect for his works was enhanced by his willingness even while holding high judicial office to advance positions and arguments not necessarily consistent with Dutch maritime practice at the time nor with Dutch interests. He had a thorough command of the literature and an abundance of common sense. Whether, however, he should be grouped among the positivists or the natural lawyers remains the lively subject of debate, and readers may well conclude that he ultimately was a natural lawyer with a positivist bent.

In his writings on maritime law Bynkershoek is celebrated for advancing the cannon-shot rule as determinative of the breadth of the marginal territorial sea of a coastal State, which in those days was equated with the distance of three nautical miles (although whether he had introduced a flexible standard that moved with improvements in weaponry was much debated). As for diplomatic and consular law, Bynkershoek championed the cause of all public ministers, irrespective of title or rank, to enjoy equal protection of the law together with their families, servants, and suite. Many of the principles which he advocated were subsequently incorporated into the law of nations.

The work translated herein has been extolled for the attempt to resolve solutions to urgent problems of the law of war at sea:

It is not too much to say that his treatment of commercial and maritime questions, and especially the relationships between neutrals and belligerents, is more thorough, more searching, more related to actual practice, more pervaded with sound sense, with legal and statesmanlike skill, than that of any other work on the subject before his time⁸.

It was these qualities that no doubt commended the book to Du Ponceau for translation and to the United States Supreme Court, among others, for its helpfulness in determining the true state of the law applicable to causes coming before that tribunal.

The Translator

The translator of Bynkershoek is of no less interest than the learned Dutch jurist himself. Peter Stephen du Ponceau was born at St-Martins, Isle of Ré, a small island off the port of La Pallice in the southwestern part of France, on 3 June 1760, the son of a French army officer⁹. By the age of five he had memorized a Latin and French vocabulary. He began formal studies at a grammar school and was instructed at home by private tutors. Latin he studied with Father Raymond, later chaplain of the hospital La Charité, and a military officer, Mallorme. At a neighbor's home one day he accidentally found an English grammar and proceeded to undertake self-study of that language, testing his skills with English, Irish, and Welsh families quartered in the town. Soon he was devouring Milton, Thomson, Young, Pope, and Shakespeare¹⁰. As a student he shared a room with a young Irishman, Edmund Stack, and they «spoke English together to our hearts' content»¹¹. Then it was the turn of the Italian language, which he acquired in the same manner and tested his skills with an Italian regiment quartered locally. Tutoring in other disciplines – mathematics, geography, history, and military science – he received from various recruits who volunteered their services to his father. Hopes for a military career were dashed by extreme nearsightedness.

Greek he acquired a bit, partly through self-study and partly through informal classes which he arranged with like-minded colleagues. Ultimately, however, he was sanctioned for this and never worked serious with the language. As for Russian, this too he acquired, as he related in his Autobiography:

While I was employed as Secretary to the learned Count de Gébeline at Paris, I became acquainted with a Russian nobleman, who was then on his travels through Europe. His name was M. Pisaroff, and he told me he was a nephew to Admiral Count Gleboff. He lived in great style, and was attended by several of his serfs.

My acquaintance with him began in this manner. I was in a bookseller's shop, where I went to lounge almost every day, and where I found a grammar of the Russian language. I amused myself with copying a few Russian sentences in the proper character. M. Pisaroff, who was also in the habit of visiting the same shop, saw the paper which I had written, and was so pleased with it, that he desired the bookseller to introduce me to him, which he soon afterwards did. My Russian nobleman took a great fancy to me, and during five or six weeks that he remained in Paris, gave me lessons in his language in which I began to make some progress, and in return I gave him English lessons. He told me that he was going to Italy to finish his tour, and that if on his return he should find me in Paris, and I was willing to accompany him, he would take me with him to St. Petersburg and there obtain for me the place of teacher of the English language in the Imperial College of Cadets ...¹²

His next formal education at age thirteen he received at a Benedictine college, St. Jean Angely, where he excelled in philosophy and continued his studies of English. He left after eighteen months, at age fifteen, upon his father's death. Under a combination of maternal and clerical pressure agreed to enter a seminary ("took the tonsure", as he put it, and became monsieur l'abbé) on condition that he not be expected to enter the priesthood. Through the intervention of the Bishop of Rochelle, a friend of the family, the young abbé was appointed a regent in his episcopal college at Bressuire, in Poitou, where he instructed a much older class of students in the elements of the Latin language (for his period there he was credited with having received his bachelor's degree, having passed the exam-

inations with distinction)¹³. Bullying by the other regents and, at their instigation, students there persuaded him to leave, and on 25 December 1775 he repaired to Paris to seek subsistence. Eventually he found free lance work by translating English works on a per sheet basis for other professed translators who sold on his work as their own; he also translated commercial letters for merchants and tutored in the English and French languages. For several months he acted as secretary to the protestant minister, A. Court de Gébeline (d. 1784), a celebrated philologist.

He then found employment as secretary-interpreter with Baron Friedrich Wilhelm Augustus von Steuben (1730-1794)¹⁴ and sailed with him from Marseilles to America, landing at Portsmouth, New Hampshire on 1 December 1777¹⁵. As von Steuben spoke no English whatsoever, du Ponceau found himself obliged to cope with American English at once. After a few days in Portsmouth, von Steuben repaired to Boston, where du Ponceau, by now a stern republican, met John Hancock and Samuel Adams. He then accompanied Baron Steuben to Yorktown, where they met General Gates and, upon von Steuben's request, du Ponceau was appointed captain, by brevet, in the United States army¹⁶. On 19 February 1778 he and von Steuben went to Valley Forge, where on 24 February du Ponceau was presented to General George Washington. It was at Valley Forge that du Ponceau met his first American Indian. In time the Baron was appointed a major-general and inspector-general of the armies of the United States, in consequence of which du Ponceau, as secretary to the Baron, also became aide-de-camp and, by courtesy, the rank of major. During his Valley Forge days, du Ponceau also came to befriend General Lafayette, a relationship that endured until the latter's death.

For four years he served von Steuben¹⁷ with the rank of captain until ill health (consumption) obliged him to resign. His doctors believed him to be incurable, a judgment which alienated him from the medical profession for the remainder of his life. He settled in Philadelphia and became on 25 July 1781 a citizen of the Commonwealth of Pennsylvania by oath. Seeking employment, he was recommended to Robert R. Livingston (1746-1813), sometime chancellor of the State of New York who had been appointed secretary for foreign affairs. Judge Richard Peters wrote of du Ponceau to Livingston on 19 October 1781:

... 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 ...¹⁸

On 22 October 1781 took up his duties as secretary to Livingston at a salary of \$750 per annum payable in French crowns or louis d'or (the currency of the day). The house that Livingston occupied until his retirement from office became the house in which du Ponceau resided from 1801 until his death in 1844, at Sixth and Chestnut Streets in Philadelphia¹⁹.

When the War ended, du Ponceau decided to enter the legal profession and studied law with William Lewis (1751-1819), whom he regarded as «the most celebrated lawyer in Philadelphia, and perhaps in the United States»²⁰. On 24 January 1785, upon the motion of Mr. Lewis, du Ponceau was admitted as an attorney of the court of common please and on the favorable report of the examiners, he was received. He had previously been appointed by the executive council as notary public; in 1791 he was made sworn interpreter of foreign languages. Success as a lawyer came rapidly; by September 1785 the court docket showed that he was counsel in twenty-one actions either for plaintiff or defendant²¹. In 1786, once more upon the motion of William Lewis, du Ponceau was admitted as attorney of the Supreme Court of Pennsylvania. He promptly found himself traveling to Washington to argue cases before the United States Supreme Court²², together with other leading members of the Philadelphia Bar, as many cases ended up there. Joseph Story (1779-1845), who enjoyed observing the United States Supreme Court in 1808 and when disengaged would dine and sup with the judges, heard du Ponceau argue and described him as follows:

Duponceau is a Frenchman by birth, and a very ingenious counselor at Philadelphia. He has the reputation of great subtilty and acuteness, and is excessively minute in the display of his learning. His manner is animated but not impressive, and he betrays at every turn the impatience and the casuistry of his nation. His countenance is striking, his figure rather awkward. A small, sparkling, black eye, and a thin face, satisfy you that he is not without quickness of mind; yet he seemed to me to exhaust himself in petty distinctions, and in a perpetual recurrence to doubtful, if not to inclusive arguments. His reasoning was rather sprightly and plausible, than logical and coercive; in short, he is a French advocate²³.

Although himself a democrat in matters of politics, he was well connected with republican merchants and often represented them in property transactions or litigation. His letterbooks for the period from 1792 to 1809 show that the majority of his clients were individuals of French-origin in the United States, West Indies, or France and that

his «important suits» were concerned with issues of international, commercial, and maritime law²⁴. For a number of years he enjoyed a retainer from the French Republic.

In 1792 he became a founder and secretary of the Democratic Society of Philadelphia.

His command of Roman and European legal concepts and of international law, together with his language abilities, made him a natural advisor for European merchants, commercial agents, and diplomatic and consular officials. John Pickering (1777-1846) wrote of his law practice:

... he was engaged in all the important causes, which then came before the courts of the State as well as of the United States. At that day the controversies which arose between France and the United States, and the position of the United States as a neutral power, while all Europe was at war, gave rise to questions of international law for which our lawyers, generally, were then quite unprepared; and his knowledge of the civil and continental law of Europe, which were easily accessible to him, by means of his native language – a language then studied, or read, by very few persons in this country – gave him many decided advantages at the bar in cases of the kind alluded to²⁵.

Henry Hugh Brackenridge extracted two notes by du Ponceau under the head of «allegiance» from the American edition of the *Edinburgh Encyclopedia*, commenting that «... Mr. Duponceau, whom all will admit, I take it, possesses the greatest knowledge of general law of any, in the U. States, and may be said to be the greatest universal jurist»²⁶.

He never sought public office after he left the employ of Robert Livingston, devoting himself to private and professional business and scholarship and apparently quite comfortable financially.

President Jefferson offered du Ponceau the position of Chief Judge of the Territory of Orleans, having regard to his reputation as a jurist learned in French and Roman law. This was seriously considered but declined in light of his associations and prospects in Philadelphia. Apart from his practice of law and his legal translations, three learned societies engaged the attention of du Ponceau, as follows:

Law Academy of Philadelphia. Despite its name, this was not a law school in the traditional American meaning of the word, but it was dedicated to legal education. In many respects it resembled an Inn of Court in England, which was perhaps no coincidence. The origins of the Law Academy are traced to 1783, when du Ponceau, Bushrod Washington (later a Justice of the United States Supreme Court), and John Wilkes Kittera, recently admitted to the Bar, formed the Law Society of Philadelphia²⁷. Records are few, but apparently the members met from time to time to hear lectures upon legal topics or to engage in mootings. Various officers served from time to time, and possibly the name of the society itself changed²⁸. In 1811 du Ponceau was elected President of the Society, although by then he was 51 years of age.

In 1820 efforts were undertaken to create a permanent foundation for such an organization, and to this end the Society for the Promotion of Legal Knowledge and Forensic Eloquence was established by a group of judges and lawyers. The object of the Society, as articulated in the Preamble to its Constitution, was to “connect with the mode of instruction at that time exclusively pursued, a more scientific and academical system, whereby not only a greater degree of jurisprudential knowledge might be acquired, but the students might be exercised in the art of public speaking, so as to unite the talent of the orator with the science of the jurist”. This group then invited an alliance with the Law Society, of which du Ponceau was again the President, and suggested that the Law Society become a Law Academy as an appendage of the new Society and under its control. Du Ponceau was elected first Provost of the Academy.

The Law Academy formally opened on 21 February 1821 with what must have been a monumental address by du Ponceau in the room of the Supreme Court before the Trustees and members of the Society for Legal Knowledge and Forensic Eloquence. On this occasion du Ponceau referred to fledgling and unsuccessful efforts to persuade the University of Pennsylvania to establish a law school, noted the formation of law schools elsewhere, and strongly urged that a national law school be created in Philadelphia²⁹. The parent society soon came to an end (for essentially procedural reasons), but the Law Academy lived on well into the twentieth century (initially as an informal association, but incorporated by act of the legislature framed 14 April 1835).

Mooting was one activity of the Academy, the students being organized into teams and judged by legal professionals who actually produced a written opinion in judgment of the arguments presented³⁰. Students also wrote dissertations on legal subjects, several of which the Law Academy deemed worthy of publication. One, by a student twenty years of age, achieved the approbation of John Marshall and James Kent and became a standard work on equity³¹. Over the years the Law Academy published a number of works, including a seminal work by du Ponceau himself on jurisdiction³². At some later stage the Law Academy established the Peter Stephen du Ponceau Prize for an essay upon a subject, either legal or connected with the law, selected and proposed to the Law Academy by its

Faculty for worthy works submitted anonymously. This «Duponceau Medal» was awarded to the best essay as the medal highest in value; the medal next highest in value was the Laussat Medal³³.

In 1834 du Ponceau published another substantial monograph under the auspices of the Law Academy, this entitled *A Brief View of the Constitution of the United States*. It enjoyed considerable success and was widely cited and translated into French³⁵. His interests of matters of jurisdiction and evidence led him to seek legislative change when he deemed this to be desirable. On 27 March 1826 he wrote to Congressman William Morris Meredith at Harrisburg:

... [It was reported] in the *National Intelligencer* of last Friday that the House of Representatives on the motion of Mr. Livingston, of Louisiana, that the Committee of the Judiciary be instructed to enquire into the expediency of empowering the Consuls of the U. S. to take the acknowledgement or proof of Deeds & other writings, & also to take the affidavits and Answers in Chancery. Mr. Livingston is a Member of the Judiciary Committee, and I have no doubt that the Report will be favorable.

Seeing that Congress are taking the lead in a measure which had been one Year before our Legislature, would it not be well, on the ground of an honorable State pride, that we should be before ... with them – the Act of Congress can only affect lands in the District of Columbia, and affidavits &c. in the federal Courts; it can have no operation on State laws; I therefore beg leave to bring this Subject again before you, & request that it may be attended to this Session, if possible.

American Philosophical Society. Du Ponceau's contributions to the study of languages, particular those of the American Indians but also including Chinese and the Mexican heritage, were pioneering and immense, generating a larger secondary literature on this aspect of his life than his legal career³⁷. They seem to have begun with his membership in the American Philosophical Society (APS), where he became the secretary of and prime moving force behind the Society's Historical and Literary Committee founded in 1815 (having been originally suggested by du Ponceau in 1811). This was the seventh committee of the APS³⁸, adding the social sciences and humanities to what heretofore had been a purely natural science organization. The Committee was charged with, *inter alia*, quasi-legal interests, including the collecting of original documents, such as official and private letters, Indian treaties, ancient records ...».

The impetus for the early expansion of the APS outstanding holdings of native American linguistic collections was generated by du Ponceau and a Philadelphia wine merchant and bibliophile, John Vaughan (1756-1841)³⁹. During the first decade of the nineteenth century Thomas Jefferson (1743-1826) served simultaneously as the President of the United States and President of the APS, and in those dual capacities commissioned Albert Gallatin (1761-1849), assisted by du Ponceau, to undertake a study of Indian vocabularies. Jefferson believed there were relationships between the Indian tribes reflected in the similarities and differences of their respective languages. Du Ponceau and Gallatin determined that there was a correlation between similarity of language and the duration of time that had elapsed since the tribes had migrated to other regions of North America. Du Ponceau recorded his own findings in a monograph on the grammatical system of Indian languages⁴⁰, which on 2 May 1835 was awarded the Comte de Volney Prize of *Linguistique* of the Institut de France⁴¹.

He then expanded his studies of language to encompass the Chinese system of writing with his *A Dissertation on the Nature and Character of the Chinese System of Writing, in a Letter to John Vaughan, Esq. by Peter S. Du Ponceau, LL.D., President of the American Philosophical Society, of the Historical Society of Pennsylvania, and of the Athenaeum of Philadelphia, Corresponding Member of the Institute of France, &c. &c. to which are subjoined, A vocabulary of the Cochinchinese language, by Father Joseph Morrone, R. C. Missionary at Saigon, with references to plates, containing the characters belonging to each word, and with notes, showing the degree of affinity existing between the Chinese and Cochinchinese languages, and the use they respectively make of their common system of writing by M. de la Palun, Late Consul of France at Richmond, in Virginia; and A Cochinchinese and Latin dictionary, in use among the R. C. missions in Cochinchina* (1838)⁴². The main text of the book comprises a letter to John Vaughan, followed by appendices.

In assembling his materials on the American Indian languages he corresponded with individuals around the world. His correspondence with William Shaler, «On the Language, Manners, and Customs of the Berbers of Africa» was published by the APS⁴³, as were his letters to and from John Gottlieb Ernestus Heckewelder (1743-1823), a Moravian missionary in Ohio working with Indian tribes there⁴⁴.

Contemporary scholars in retrospect believe du Ponceau «can rightly be hailed as 'the father of American philology'» and his *Mémoire* «a pioneer work in language typology»⁴⁵.

A passing enthusiasm was the silk industry, to which he devoted three years of his life and four thousand dollars in order to introduce the production and manufacture of silk into the United States. An Act of Congress was required, and an appropriate bill submitted but not enacted. In the end he abandoned the project, «defeated in my patriotic design», but wrote two works on the subject in 1831 and, recounting his experiences, in 1837.

In all du Ponceau was a member of forty-two learned societies, of which nineteen were abroad, including the three above-mentioned. The University of Pennsylvania conferred the degree of M.A. (Hon.) on him on 21 March 1782 at a ceremony attended by General George Washington, Baron von Steuben, and members of Congress, among others. Harvard University conferred the degree of LL.D. (Hon.) in 1820. He later became a trustee of the University of Pennsylvania. He was elected to the American Academy of Arts and Sciences and, in 1791, to the American Philosophical Society; served as Provost of the Law Academy of Philadelphia (1821-1844), president of the American Philosophical Society (1827-1844), president of the Historical Society of Pennsylvania (1837-1844), president of the Athenaeum of Philadelphia (est. 1814; 1844), and on 20 April 1827 a Corresponding Member of the Institut de France.

Among his other works were *English Phonology; or an Essay towards an analysis and description of the component sounds of the English language* (1817)⁴⁶; *A Discourse on the Early History of Pennsylvania* (1821); *Eulogium in Commemoration of the Honourable William Tilghman, LL.D.* (1827); *An Historical Review of the Rise, Progress, Present State and Prospects of the Silk Culture* (1831); *An Historical Discourse Delivered Before the Society for the Commemoration of the Landing of William Penn* (1832); *A Discourse on the Necessity and Means of Making our National Literature Independent of that of Great Britain* (1834); and *The History of the Silk Bill, in a Letter to D. B. Warden* (1837).

A number of his legal writings which appeared as part of other works are among his most important. There is a certain poetic irony that his translation of passages from Huber should become available to the legal profession thanks to the United States Supreme Court, who in an otherwise brief opinion appended the extract that «was translated for, and read in, this cause»⁴⁷. His first major published contribution, entitled «A Summary View of the Law of France Concerning Bankruptcy», was inserted as an appendix to Thomas Cooper's treatise comparing American and English bankruptcy law⁴⁸. Nadelmann describes the Cooper/du Ponceau work as «the first comparative law book ever produced in the United States and also the first scholarly presentation in English of the bankruptcy law of France»⁴⁹. He also contributed notes to the American edition of Butler's *Horae Juridicae Subsecivae*⁵⁰. Following the Bynkershoek quickly were du Ponceau's translations of the French Commercial Code of 1808 and then the French Criminal Code⁵¹. For the Edinburgh Encyclopedia (American edition) he contributed the articles on «Allegiance» and «American Law»⁵². When Kent's Commentaries on American Law appeared, he published a review of volume one⁵³.

His translations of works on language and travel include: T. Campanius Holm, *A Short Description of the Province of New Sweden. Now Called by the English Pennsylvania, in America*, translated from the Swedish by P. S. du Ponceau (1834); John Eliot, *A Grammar of the Massachusetts Indian Language. A New Edition with Notes and Observations by Peter S. Du Ponceau and an Introduction and Supplementary Observations by John Pickering* (1822); John Heckewelder, *Histoire, moeurs et coutumes des nations indiennes qui habitaient autrefois la Pennsylvanie et les états voisins*, transl. from the English by Chevalier du Ponceau (1822); D. Zeisberger, *A Grammar of the Language of the Lenni Lenape or Delaware Indians*, transl. from the German manuscript by Peter S. Du Ponceau (1830).

His work as a translator, however, goes far beyond the fields of law and linguistics. Many papers submitted to the APS for possible publication were in foreign languages and required to be translated either for publication or for review by the publications committee. The records of the APS disclose, for example, that he translated the thermometrical observations of Peter Legaux; Pierre Samuel Du Pont's theory of winds; the last three volumes of Hollandsche Maatschappij der Wetenschappen te Haarlem; Italian medical works; a Spanish paper on the analogy of Spanish and English; among others.

On 21 May 1788 he married Anne Perry (1768-1792), of Massachusetts, the eldest daughter among eleven children of the Presbyterian pastor, Rev. Joseph Perry⁵⁴. After the death of her parents, she moved to Philadelphia, where she met du Ponceau. There were three children: two sons who died in early infancy and a daughter, Louisa Frances (1790-1825). Anne died shortly after the birth of their third child. On 12 September 1794 du Ponceau married Anne Latouche (1759-1817), of New York; there were no issue of this marriage.

His nearsightedness was legendary, and accompanied by and doubtless contributed to an habitual preoccupation which could amount to complete absent-mindedness: «He walked always in deep thought, and must needs be addressed or arrested to recognize a passing acquaintance»⁵⁵. He also was intensely American to a degree that goes far beyond the normal understanding of patriotism. Although he preserved a «tender attachment» for France, his country of origin, he took to the United States immediately upon arrival with a passion that intensified over the years. «My American Character», he wrote, «I prize above all things». Although raised in the milieu of Catholicism, he formed an early attachment to the principles of the Reformation, notwithstanding having become «monsieur l'abbé». In Philadelphia he worshipped for more than half a century at the local Presbyterian Church.

Personal Library

There are few, if any, better indicators of the breadth and depth of intellectual interests than a personal library. Du Ponceau was a serious book collector in his own home and through acquisitions made by the Library of the American Philosophical Society under his guidance⁵⁷. He presented hundreds of volumes to the APS over the years, including manuscripts of unpublished translations, and by bequest. Although apparently du Ponceau did not have his own bookplate, some of his books bear what appears to be a stenciled ex libris «P.S.DUPONCEAU.»; the APS described this as a «book stamp» in its Association File. Only a few volumes are recorded with this mark of ownership. Gifts to the APS commonly bore his manuscript ex-libris in his own hand and from time to time a donative inscription⁵⁸.

Upon his death there passed to the APS by bequest 353 volumes and uncounted pamphlets, the great majority comprising grammars, dictionaries, histories, encyclopedias, and journals⁵⁹. It was a collection of staggering quality, probably unsurpassed anywhere in the world at the time. Legal materials figured in the gifts he made from 1816 to 1840, and less so in his bequest. Among important titles with respect to the law of nations were: a collection of Spanish treaties⁶⁰; Rayneval's treatise on the freedom of the seas⁶¹; Madison's anonymous tract on neutral rights⁶²; Selden's classic on the closed sea⁶³; von Steuben's disciplinary regulations for the American armies⁶⁴; and Zouche's early work of the seventeenth century⁶⁵.

The quality of his library may be measured by the auction catalog published for the public sale of his books on 16 October 1844⁶⁶. Comprising 66 pages in all, the first half of which are devoted solely to law books, this was a substantial dispersal of a private library by any standard. The importance of the collection for public and private international law may be measured by the presence of, *inter alia*, the following titles: *A View of the Admiralty Jurisdiction* (London, 1685); N. Atcheson, *Report of a Case Recent Argued and Determined in the Court of King's Bench on the Validity of a Sentence of Condemnation by an Enemy's Consul in a Neutral Port &c.* (London, 1800); D. A. Azuni, *Principes de Systême Universel de Droit Maritime de l'Europe* (Paris, 1802); A. Browne, *A Compendious View of the Civil Law and of the Law of the Admiralty* (London, 1802); G. G. Burlamaqui, *Natural and Political Law* (Nugent transl.; Dublin, 1791); J. G. Büsch, *Über die durch den jetzigen Krieg veranlasste Zerrütting des Seehandels* (Hamburg, 1793); C. van Bynkershoek, *Opera omnia* (1761); J. Chitty, *Law of Nations* (Boston, 1812); *Code des Prises* (Paris, 1784); *Code Nouveau de Prises* (Paris, 1799); *Code des Prises Maritimes, et des Armemens en course* (Paris, 1797); *Collection de Decisions du Conseil des Prises de la Republique Francaise sous le Consulat de Napoleon Bonaparte* (Paris, 1800-04); G. F. Martens, *Cours diplomatique* (Berlin, 1801); L. B. de Wolff, *Institutions de droit de la nature et des gens* (Leiden, 1772); F. N. Dufriche-Foulaines, *Code des Prises et du Commerce de Terre et de Mer* (Paris, 1804); Galiani, *Recht der Neutralitat*, transl. from the Italian (Leipzig, 1790); Hugo Grotius, *De Jure Belli ac Pacis* (1773) and the French edition of 1724; Hubner, *De la Saisie des Batimens neutrs* (Paris, 1759); M. Koch, *Abrégé de l'Histoire des Traités de Paix entre les Puissances de l'Europe depuis la paix de Westphalie* (Basle, 1796); Lampredi, *Über den Handel Neutraler Völker in Kriegszeiten* (Leipzig, 1792); Samuel Livermore, *Dissertations on the Contrariety of the Positive Laws of Different States and Nations; De Jure Maritimo et Navali, or a Treatise of Affairs Maritime and of Commerce* (London, 1707); J. Marquardus, *De Jure Mercatorum et Commerciorum* (1662); G. F. Martens, *Essai concernant Les Armateurs, les Prises, et surtout les Reprises* (Gottingen, 1795); De Steck, *Essais sur divers sujets relative à la Navigation et au Commerce pendant la Guerre*; G. F. Martens, *Summary of the Law of Nations* (Philadelphia, 1795); *Ordonnance de la Marine du Mois d'Aoust, 1681* (Paris, 1714) and numerous others of France; S. Pufendorf, *Law of Nature and Nations* (London, 1729); Chr. Robinson, *Collectanea Maritima* (London, 1801); Roccus' *Manual of Maritime Law* (Philadelphia, 1809); T. Rutherford, *Institutes of Natural Law* (1779); J. Savary, *Le parfait Negociant* (Paris, 1777); J. F. W. Schlegel, *Neutral Rights* (Philadelphia, 1801); Sea Laws, *A Complete Body of, and a General Treatise on the Domination of the Sea* (3d ed.; London); Stypman, Kunke, and Loccenius, *Jus Maritimum* (Halase, 1740); A. Verwer, *See-Rechten, Nederlants* (Amsterdam, 1764); Robert Ward, *Law of Nations in Europe* (London, 1795); D. B. Warden, *On the Origin, Nature, Progress, and Influence of Consular Establishments* (Paris, 1813); H. Wheaton, *A Digest of the Law of Maritime Captures and Prizes* (New York, 1821); Wheaton, *Enquiry into the Validity of the British Claim to a Right of Visitation and Search of American Vessels Suspected of Being Engaged in the Slave Trade* (Philadelphia, 1842); Wicqueforth, *L'Ambassadeur et ses Functions* (1724); and R. Zouche, *The Jurisdiction of the Admiralty of England* (London, 1663).

He had two sets of Blackstone's *Commentaries* (Philadelphia, 1774; and Philadelphia 1825). Catherine II's celebrated *Nakaz* was present in a French translation published at Amsterdam in 1775. The *Consolato del Mare*, excerpts of which he translated, was present in French (1808), Italian and Dutch (1794) versions. Vattel was represented by the first edition (London, 1758) and a Dublin edition (1792); a massive collection of law reports from around the world, including Coke (London, 1776) in seven volumes. Six single-spaced pages were devoted in the auction catalog alone to reports.

For all of its strength in international law, however, the collection was even stronger in comparative law and must have had few, if any, rivals in the United States at the time. Du Ponceau purchased widely and wisely, scouring continental and English book dealers for desired titles and using, sometimes imploring, friends and colleagues to seek titles which he required. No less impressive is the non-legal component, rich in choice editions of belles-lettres in many languages, history, biography, travels, classics, philosophy, and a modicum of theology. Measured by the quality of his library alone, du Ponceau deserves to be number among the leading American intellectuals of his generation.

The Translation

Du Ponceau relates in the Preface to Bynkershoek his approach to the translation and the various emendations and excisions he made to the text. They require no repetition here. He does say, however, that he had commenced the translation several years earlier for his own private use. Although the manuscript of his labors is not known to have survived, he did apparently enjoy the arduous, demanding, and challenging task of translating. In a Note accompanying another as yet unpublished translation whose manuscript was presented to the American Philosophical Society on 17 July 1840 Du Ponceau wrote in his own hand: «Translating is one of my methods of Studying. It may serve those who do not understand the original»⁶⁷.

Du Ponceau does not indicate what edition of Bynkershoek he used for the translation. When his Library was sold at auction in Philadelphia on 16 October 1844, two lots were devoted to Bynkershoek. One was a copy of the present translation; the other was the 1761 edition of Bynkershoek's works which contained the present volume and would have been the version available to du Ponceau. He did not present any version of Bynkershoek to the American Philosophical Library except his own translation, and that Library does not hold any other edition of Bynkershoek that could be a candidate for having served as the source of du Ponceau's translation. Circumstantial evidence therefore points to the 1761 edition having served as the source.

The translation was well regarded by contemporaries. There is circumstantial evidence that James Madison may have seen an early version of du Ponceau's translation of Bynkershoek long before publication was being considered. Madison was in frequent touch with du Ponceau when preparing his celebrated *An Examination of the Conduct of the British Doctrine, Which Subjects to Capture a Legal Trade, Not Open in Time of Peace* (1806). Bynkershoek is relied upon extensively by Madison, whom «treats the subject of belligerent and neutral relations with more attention, and explains his ideas with more precision, than any of his predecessors»⁶⁸. Du Ponceau helped Madison with a passage from Bynkershoek, and when his translation was published sent a copy at once to Madison with an accompanying note:

I had the honor of mentioning to you when you was 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 Publici*. 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 writings⁶⁹.

A copy sent to the President of the United States, James Madison, in December 1810 prompted the following response:

I am glad to find that in the midst of your professional occupations, you have completed 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 the subject & the Author of that valuable Treatise, to the attention both of our Statesmen & Students⁷⁰.

His friend and former employer, Robert R. Livingston, wrote upon receiving the book that «you 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»⁷¹.

William Pinkney (1765-1822), colleague and sometime adversary, wrote to du Ponceau on 3 July 1815 from Baltimore:

In a Case in the Supreme Court of the United States (The Nereid) it is a Question whether the Prize Code of Spain does at this Time contain the Rule laid down by its old Ordinance, that the Goods of a Friend found on board the Ship of an Enemy shall be confiscated as Prize of War. Proof of the old Ordinance is found in Azuni and else-

where; but full Satisfaction as to the present State of the Spanish Law on that Stead can perhaps only be obtained from the translation of D' Abreu by M. Bonnemant in 1802⁷².

I suppose it probable (from what I see on p. 130 of your Translation of a portion of Bynkershoek – for which we are all much indebted to you – that you are in possession of Bonnemant's Work – and if so you would perhaps do me the Favour (instead of Sending me the Book) to cause an Extract to be forwarded to me at Washington of the passage which touches the matter). – It must necessarily be short – at least a very short Extract will be sufficient to show M. Bonnemant's opinion (if he entertained it) that the Old Ordinance was in force when he wrote. – I incline to think that you have given an Opinion in the Case of the Nereid against that which I am bound to maintain; but if this should be so I venture to believe that my Request is not out of Rule. – I have the Honour to be – with sincere Respect Your most obedient Servant⁷³.

Joseph Story pleaded du Ponceau to continue his translation contributions: «why 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?»⁷⁴

Du Ponceau added notes and commentary to the translation that also influenced the state of the law as it existed when this American translation appeared:

In his translation of Bynkershoek, he first suggested the application of the distinction between an *absolute* and a *qualified* neutrality, to the case of the United States and France; considering our neutrality not to be absolute, but qualified by the treaty with France, in 1778. His remarks (in the same work) on the doctrine of the *jus postliminii*, present some new and important views, which, if we rightly recollect, have been adopted by Mr. Wheaton, in his valuable work on International Law. We believe, too, that Mr. Du Ponceau was the first to announce the opinion, in the same work, that *piracy* might be committed on land as well as at sea; which principle was afterwards incorporated into the act of Congress on that subject⁷⁵.

The Publisher

If not unique, then Du Ponceau's translation of Bynkershoek must be unusual among works on international law for having appeared first in a journal for circulation in book format to all subscribers with extra copies offered for sale to the general public. So Du Ponceau relates in his Preface:

It is, according to its first destination, published in and for the *American Law Journal* and will be delivered to its subscribers as the third number of the third volume of that publication; but a sufficient number of copies will also be struck off for such as may wish to possess it as a separate work⁷⁶.

The publisher of the *American Law Journal*, John Elihu Hall (1783-1829), originally, according to du Ponceau, expressed a wish to publish the translation as a part of this periodical. As du Ponceau relates, «the manuscript was accordingly handed over to the printers of the Journal ...»⁷⁷. This was the «first law review ever to appear in the United States»⁷⁸. Hall would have appreciated the quality and importance of du Ponceau's translation, for he himself produced major legal translations, among them: B. M. Emérigon, *An Essay on Maritime Loans, with Notes, to which is added an Appendix* (1811); «Commentaries of the Ordonnance de la Marine», *Journal of Jurisprudence*, I (1821), 176, 123; and substantial extracts from Justinian's Digest and Code.

His credo was well-stated in an advertisement for his *American Law Journal*:

However the annals of our domestic jurisprudence might fail in the contribution of materials, we should be at no loss. The legal lore of former ages and foreign nations is an abundant treasury, to which the scientific lawyer can always resort for those abstract principles of right which are applicable at all times and in all places⁷⁹.

Hall was born in Philadelphia, the eldest of ten children. He attended Princeton without completing a degree, returned to Philadelphia in 1804 and studied law with Joseph Hopkinson (1770-1842). He was admitted to the Bar in 1805. Six volumes of his *American Law Journal* appeared between 1808 and 1817, specializing in the publication of new decisions and statutes that were not readily available and the texts of foreign legal materials, usually of a commercial or maritime nature. Hall hoped to attract a general readership, not only legal professionals, and encouraged law reform in the direction of the harmonization of State and federal laws and the emergence of a more systematic national jurisprudence. He joined the American Philosophical Society in 1814. Between 1816 and 1827

he also edited the *Port Folio*, which his brother had purchased. Besides his translations enumerated above and a considerable number of literary works, Hall wrote *The Practice and Jurisdiction of the Court of Admiralty* (1809)⁸⁰; *Tracts on Constitutional Law, Containing Mr. Livingston's Answer to Mr. Jefferson* (1813); and *Office and Authority of a Justice of the Peace in the State of Maryland, to Which Is Added a Variety of Precedents in Conveyancing* (1815)⁸¹. From 1813 he briefly held a professorship in the University of Maryland.

Du Ponceau contributed the introductory preface to the relaunched *Journal of Jurisprudence* with the hope that Hall would continue his good work of publishing translations of foreign legal materials. Du Ponceau's vision was expressed with his customary eloquence:

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 *disideratum* among lawyers to see a separate publication, out of the two huge volumes of sir Leoline Jenkins, of such 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 Journal⁸².

William Fry and Joseph Kammerer, Printers of the Bynkershoek and the *American Law Review*, were specialist publishers in Philadelphia of newspapers or periodicals⁸³. They rarely, if ever, ventured into the publication of books on their own. Records of the period show them located in Philadelphia at 15 North Seventh Street during 1807 and 1808, next door at No. 13 in 1809, and at Prune near Debtors Apartment from 1810 to 1812⁸⁴.

The «Publishers» of Bynkershoek were bookseller-publishers led by William P. Farrand in Philadelphia in collaboration with Charles Nicholas and co-venturers in Boston, Baltimore, Albany, New York, Portland, Maine, and Middlebury, Vermont. This would be characterized in printing history as a «publishing combination» – a «method of financing and producing books that fit specifically the wholesale approach to publishing or the extension of publishing to a national market»⁸⁵. Partners in the combination obtained their books at a cost or at a price lower than offered to other members of the trade. Literary fairs, commenced in 1802, operated as gatherings where publishers could network and personally meet co-venturers with whom they had corresponded by post. In the instance of Bynkershoek, the co-venturers covered the area thoroughly from Baltimore northwards to Maine and left the New York City and Washington D.C., as well as the southern markets, to presumably any of the venturers prepared to serve them by exchange, commission, or consignment (all methods of distribution widely used at the time by booksellers and publishers).

Farrand and Nicholas, «law booksellers and publishers», were located literally around the corner from du Ponceau's home, with a shop in October 1810 at the corner of Chestnut and Sixth Streets and during 1811-1812 at the northwest corner of Sixth and Chestnut, second door on Sixth Street⁸⁶.

The appearance of Bynkershoek occurred in autumn 1810, commencing with the October/November issue of *American Law Journal*. Farrand and Nicholas, in the District of Pennsylvania, deposited with the Clerk the title of Bynkershoek on 8 October 1810; matters will have moved quickly, for Du Ponceau's Preface is dated October 1810. The book was being advertised in Baltimore by 25 November 1810 at the retail price of \$2.50 by Philip H. Nicklin & Co., «opposite Gadsby's» as «Published This Day»⁸⁷.

Du Ponceau in the meantime was distributing copies to friends and colleagues. A copy held by the Harvard Law School inscribed from the «Editor to Thomas Cooper» (1759-1840) and dated 22 November 1819 bears the bookplates of three subsequent owners: William Bell, Samuel P. Bell, and Samuel Seabury. The copy held by the American Philosophical Society, of which Du Ponceau later became the President, was presented by the author on 7 December 1810. Of an autumn appearance we can therefore be certain.

¹ Preface, p. vii. Du Ponceau refers to Richard Lee, *A Treatise of Captures in War* (London, Printed for W. Sandby, 1759). viii, 264 p.; a second edition appeared in London, Printed for W. Clarke & Sons, 1803, with enlargements. In Du Ponceau's view, the Lee version was «incorrect and incomplete».

² This account of Bynkershoek is based collectively on the following: J. S. de Louter (1847-1932), «Introduction», in C. van Bynkershoek, *On Questions of Public Law. Two Books of which the First is On War the Second on Miscellaneous Subjects* (1930), pp. ix-xlvi; A. Nussbaum, *A Concise History*

of the Law of Nations (1947), pp. 142-148; C. Phillipson, «Cornelius van Bynkershoek», in J. MacDonell and E. Manson (eds.), *Great Jurists of the World* (1914), pp. 390-416 (with portrait), having first appeared in the *Journal of the Society of Comparative Legislation*, IX (1908), 27-49; Bynkershoek's place in the history of international law has been reassessed, but without biographical data of consequence, in K. Akashi, *Cornelius van Bynkershoek: His Role in the History of International Law* (1998). By common consent the leading account of Bynkershoek's life is Oncko Wichen Star Numan (b. 1840), *Cornelis van Bynkershoek, zijn leven en zijne geschriften* (Leiden, J. Hazenberg, 1869), which deserves an English translation. For Bynkershoek's writings, see L. G. Arias, «Cornelio van Bynkershoek, su vida y sus obras», *Boletín de la Universidad de Santiago de Compostela*, nos. 49-50 (1947). De Louter offers a superb précis of this book in his Introduction, cited above. Also see: «Bynkershoek, Cornelis van», in D. M. Walker, *The Oxford Companion to Law* (1980), pp. 163-164.

³ Bynkershoek, *De dominio maris dissertatio* (Hague Batavorum, apud Joannem Verbessel, 1703). There is a copy at the Harvard Law School Library which bears this date. Many authorities (Du Ponceau, Henry Wheaton, Phillipson, J. B. Scott, and others) give the date of this work as 1702, but no example has been discovered of this date. Akashi and Numan both concur with the 1703 date. See Akashi, note 2 above, pp. 7-8, who viewed the copy at the Royal Dutch Library in The Hague. The confusion may originate in the Dedicatory letter that appears in the work, the letter being dated 20 September 1702.

⁴ After the death of his first wife, Bynkershoek married Gererdina Cloot, a widow with one son; her marriage to Bynkershoek was childless.

⁵ A second edition appeared in 1744, the year following his death.

⁶ All three of Bynkershoek's works were freshly translated for the Carnegie Endowment «Classics of International Law» series, reprinted several times and also available in digital format.

⁷ For example, *Observationes Tumultuariæ*, ed. E. M. Meyers, A. S. de Blécourt, et al. (Haarlem, 1926-62), continued by Willem Pauw (1712-1787) as *Observationes tumultuariæ novæ*, containing decisions of the Hooft Raad 1743-87 (1964-67).

⁸ Phillipson, note 2 above, p. 404. Akashi likewise was impressed by the «practicality» that permeates Bynkershoek's works, accepts that Bynkershoek was a «realist» who demonstrates modern legal thinking, was not a «pure positivist»; his real contribution to the law of nations was «his practical approach in resolving the questions of jus gentium, rather than his cosmetic positivist tendency». Akashi, note 2 above, pp. 178-179.

⁹ Du Ponceau deserves a thorough biography that gives full due to his achievements as a jurist and a specialist in languages. For this study I have consulted printed sources: «Duponceau, Peter S., LL.D.», in J. L. Blake (ed.), *A Biographical Dictionary: Comprising a Summary Account of the Lives of the Most*

Distinguished Persons of All Ages, Nations, and Professions: Including More than Two Thousand Articles of American Biography (1856), p. 391; «Duponceau, Peter Stephen», in J. G. Wilson and J. Fiske (eds.), *Appletons' Encyclopedia of American Biography* (1888), II, p. 263; «Duponceau, Peter Stephen», in *The Biographical Encyclopedia of Pennsylvania of the Nineteenth Century* (1874), p. 194; G. W. Gawalt, «Du Ponceau, Pierre Etienne», in J. A. Garraty and M. C. Carnes, *American National Biography* (1999), VII, pp. 112-113; J. Mooney, «Peter Stephen Duponceau», *The Catholic Encyclopedia*, V (1909), p. 205; K. H. Nadelmann, «Peter Stephen du Ponceau», *Pennsylvania Bar Association Quarterly*, XXIV (April 1953), pp. 248-256; John Pickering, «Peter S. Du Ponceau, LL.D.», *Journal of the American Oriental Society*, I, no. 2 (1844), p. 167; «Ponceau, Pierre Etienne du», in M. le Hoefer (ed.), *Nouvelle Biographie générale depuis les temps les plus reculés jusqu'à nos jours* (1862), XL, cols. 733-735; W. A. Tieck, «In Search of Peter Stephen Du Ponceau», *Pennsylvania Magazine of History and Biography*, LXXXIX (1965), pp. 52-78; R. F. Weigley (ed.), *Philadelphia: A 300-Year History* (1982); T. I. Wharton, «Peter S. Duponceau», in H. Simpson, *The Lives of Eminent Philadelphians, Now Deceased Collected from Original and Authentic Sources* (1859), pp. 329-333; James L. Whitehead (ed.), «Autobiography of Peter Stephen Du Ponceau», *Pennsylvania Magazine of History and Biography*, LXIII (1939), 189-227, 311-343, 432-461; (1940), LXIV, pp. 97-120; 243-269. Among manuscript sources, see the relevant holdings of the American Philosophical Society and of the Historical Society of Philadelphia, both of which enjoyed Du Ponceau's services as President at some point. Also see W. E. Butler, *Peter Stephen du Ponceau: Legal Bibliophile* (2010).

¹⁰ Recounted in R. Duglison, «Biographical Sketch of Peter S. Du Ponceau», *American Law Magazine*, no. 9 (April 1845), pp. 1-33.

¹¹ See P. S. du Ponceau, «Autobiography», ed. J. L. Whitehead, note 9 above, LXIV, pp. 99-100, 102, 110.

¹² *Ibid.*, LXIII, pp. 443-444. This episode may help date the manuscript «Sea Terms» which du Ponceau later presented to the APS. There are Cyrillic jottings, mostly the word «Louis» in Russian, rendered as «Ludwig» transcribed. No Russian materials dating from du Ponceau's Paris period were included in his bequest of books to the APS. Pickering records that «in early life he had studied the Russian, which at that period was a terra incognita to scholars in general; and on his arrival in this country he kept his journal in the French language, written in the Russian character». Pickering, note 9 above, p. 168. In his will he left to the APS his Russian grammar and dictionary: Johann von Heym (1758-1821), *Dictionnaire portative ... françois-russe-allemand* (Riga, Hartmann, 1805); *Russische sprachlehre* (new ed., enl.; Riga, Hartmann, 1804).

¹³ Du Ponceau relates the examinations with relish in his autobiography. See Whitehead, note 9 above.

¹⁴ See F. Kapp, *Life of Friedrich William von Steuben* (2d ed.; 1858), pp. 192-199.

¹⁵ Of this period there survives a little journal and notebook containing a variety of incidental materials, including scribe

blings, some poetry, small maps, and an account of the journey from Portsmouth to Yorktown. Although the text is mostly in French, du Ponceau often has recourse to Russian, suggesting that he was resorting to code and also was studying some Russian on his own. This item is held by the Historical Society of Delaware. He did own a copy of John Locke (1760) in Russian, which he later gave to the APS; his notebook on «Sea Terms» also contained some Russian words.

¹⁶ In due course du Ponceau received a revolutionary war pension as a captain of infantry of the line until his death.

¹⁷ Among his tasks of international legal interest was to translate, see through press, and arrange the distribution of von Steuben's Regulations for the Order and Discipline of the Troops of the United States (Philadelphia, 1779). A draft entitled «L'Exercice des Troupes» survives in the New York Historical Society. This, the first manual of discipline for the United States Army, was reprinted numerous times and amended from time to time. For his labors on the manual du Ponceau was rewarded by Congress with the sum of \$400 in addition to his pay.

¹⁸ Note 10 above, p. 16.

¹⁹ The house was diagonally opposite the State House. Du Ponceau purchased the house at a sheriff's sale, also acquiring at the same time the adjoining property to the rear along Sixth Street, described as a three-story brick tenement where Livingston had accommodated the foreign affairs office. Between the mansion and the tenement was a small low cottage that du Ponceau used as his law office. Du Ponceau later rented out space to a bookseller who proved to be delinquent in his rent. See Tieck, note 9 above, pp. 59-60.

²⁰ Note 10 above., p. 17.

²¹ There is some evidence to suggest that he may have formed a partnership with Maurice Desdevens. In September 1816 du Ponceau presented a book to the American Philosophical Society which bore the inscription: «The Partnerships of Peter Stephen Duponceau and Maurice Desdevens 8th September 1785». The book was Case of Peter du Calvet, esq. of Montreal in the Province of Quebec, containing (amongst other things worth notice) an account of the long and severe imprisonment he suffered in the said Province by the order of General Haldimand, the present gouverneur of the same, without the least offence, or other lawful cause whatever ... (London, 1784).

²² See, among others, 1 Dallas 366 (C.P. Phila. 1788), 1 Dallas 436, 449 (Sup. Ct. Pa. 1789); 2 Dallas 111, 144, 234, 270 (Sup. Ct. Pa. 1792-97); 3 Dallas 6, 121, 133, 285, 297, 302, 321, 336, 384 (U.S. 1794-98); 4 Cranch 209, 241 (U.S. 1808). Du Ponceau is mentioned in passing in Warren, *The Supreme Court in United States History* (rev. ed.; 1937), I, pp. 55, 106, 114, 116, 133, 150, 318, 320. Du Ponceau describes himself on the title page of our work as «Counsellor at Law in the Supreme Court of the United States of America».

²³ W. W. Story, *Life and Letters of Joseph Story* (1851), I, pp. 162-163. Joseph Story wrote to du Ponceau on 30 January 1841: «To you and to Chancellor Kent I mainly owe what-

ever attainments I have made in foreign jurisprudence and the civil law». Cited in R. H. Heindel, «Some Letters of Peter Stephen Du Ponceau», *Pennsylvania History* (1936), p. 199.

²⁴ His Letterbooks are held at the Historical Society of Philadelphia, this data being drawn from J. D. Henderson, «'A Blaze of Reputation and the Echo of a Name': The Legal Career of Peter Stephen du Ponceau in Post-Revolutionary Philadelphia» (unpublished M. A. Thesis, Florida State University, 2004), p. 27.

²⁵ See Pickering, note 9 above, p. 164.

²⁶ See H. H. Brackenridge, *Law Miscellanies* (1814; reprint 1972), p. 417.

²⁷ See G. Sharswood, *The Origin, History, and Objects of the Law Academy of Philadelphia: An Address Delivered Before the Academy, March 13, 1883* (1883); W. MacLean, Jr., *The Law Academy and the Growth of Legal Education in Philadelphia* (1900); For du Ponceau's own recollections of its founding, see P. S. du Ponceau, *Address Delivered Before the Law Academy of Philadelphia on the Opening of the Session 1831-2* (1831).

²⁸ MacLean and Sharswood quote sources who can document the existence of law societies during the period 1785 to 1811. Du Ponceau himself said he had «heard no more of Law Societies in this city, although some might have existed without my knowing it». Du Ponceau, note 27 above, p. 6.

²⁹ The theme of a «national law school» comes up with some frequency at this period, also being encouraged during the 1820s by John Reed, who founded the Dickinson School of Law in Carlisle, Pennsylvania in 1833, now part of Pennsylvania State University. A close reading of du Ponceau's address suggests that he believed a national law school was being created by the opening of the Law Academy.

³⁰ The Opinion Book, entitled «Opinions Delivered Before the Law Academy of Philadelphia by the Provost and Vice Provost», covering the years 1820 to 1822 and signed by du Ponceau is preserved in the Manuscript Division of the American Philosophical Society, having been presented in 1862 by Robley Dunglison. 340.7 L41.

³¹ A. Laussat, *Essay on Equity in Pennsylvania* (1826).

³² P. S. du Ponceau, *Dissertation on the Nature and Extent of the Jurisdiction of the Courts of the United States* (1824); this volume appends du Ponceau's opening Address to the Law Academy delivered in 1821. Cited in *Seminole Tribe v. Fla.*, 517 U.S. 44 (U.S. 1996); *Planters' Bank v. Neely*, 8 Miss. 80 (Miss. 1843). Also cited in J. Kent, *Commentaries on American Law* (1826), I, p. 322. The book was reviewed in *North American Review*, XXI (1825), 104 (C. S. Davies); *Thémis ou Bibliothèque du Jurisconsulte*, VII (1825), 420 (Daligny).

³³ See Article XII, *Charter, Constitution and By-Laws of The Law Academy of Philadelphia* (1867), p. 23. The Prize for 1904 was awarded to George J. Edwards, Jr., of the Philadelphia Bar, for his work *The Grand Jury: An Essay* (1906; reprinted in the Gryphon Legal Classics Library, 2003).

³⁴ See, for example, *Welch v. Texas Dep't of Highways & Public Transp.*, 483 U.S. 468 (U.S. 1987).

³⁵ Du Ponceau, *Exposé sommaire de la Constitution des Etats-Unis*, transl. by d'Homergue (1837). An abridged version printed in New York for distribution in Cuba and Puerto Rico appeared posthumously: *Breve Resena de la Constitución de los Estados Unidos* (1848).

³⁶ Letter in the Manuscript Archive, American Philosophical Society.

³⁷ See R. E. Goodman and P. Swiggers, *The American Philosophical Society and the Study of Language in the Early Nineteenth Century* (1993); M. D. Smith, «Peter Stephen Du Ponceau and His Study of Languages: A Historical Account», *Proceedings of the American Philosophical Society*, CXXVII (June 1983), pp. 143-179; P. Swiggers, «Americanist Linguistics and the Origin of Linguistic Typology: Peter Stephen Du Ponceau's 'Comparative Science of Language'», *Proceedings of the American Philosophical Society*, CXLII (March 1998), pp. 18-46.

³⁸ Du Ponceau was elected to membership on 15 July 1791, serving on committees and acting as councilor, secretary, and vice-president before assuming the Presidency of the Society in 1827. Prior to joining he made a spectacular gift to the Society Library, reported on 6 March 1789, which included a Russian language version (1760) of John Locke's *Essay on education*.

³⁹ Vaughan had joined the APS on 16 January 1784 and was appointed librarian on 18 March 1803, a post which he held until 1841. See R. E. Goodman and P. Swiggers, «John Vaughan (1756-1841) and the Linguistic Collection in the Library of the American Philosophical Society», *Proceedings of the American Philosophical Society*, CXXXVIII (June 1994), pp. 251-272. Apart from an astute acquisitions policy, Vaughan was generous to the APS with gifts of his own, itemized in *ibid.*, p. 253, fn. 10. The APS preserves a printed version of its Library catalog from 1824 with interpolations of new acquisitions in Vaughan's own hand.

⁴⁰ P. S. du Ponceau, *Mémoire sur le système grammatical des langues de quelques nations Indiennes de l'Amérique du Nord* (1838). A later authority said that the Volney Prize had for du Ponceau the effect of certifying him as «one of the few great linguists of the world». See C. Wissler, «The American Indian and the American Philosophical Society», *Proceedings of the American Philosophical Society*, LXXXVI (1943), p. 193.

⁴¹ Du Ponceau had competed for the Volney Prize in 1825, submitting an *Essai de solution du problème philologique* propose en l'année 1823 par la Commission de l'Institut Royal de France chargée de la disposition du legs de M. le Comte de Volney, but was unsuccessful. The manuscript of the submission reposes in the Manuscript Division of the APS at 410. D921. See Swiggers, note 37 above, pp. 18-19, 43.

⁴² The book appeared as volume 2 in the *Transactions of the Historical and Library Committee of the American Philosophical Society*; reviewed favorably in *The North American Review*, XLVIII (1839), pp. 271-310 (John Pickering (1777-1846)).

⁴³ *Transactions of the American Philosophical Society*, II (n.s.; 1824).

⁴⁴ *Ibid.*, I (1819).

⁴⁵ Swiggers, note 37 above, p. 41; V. V. Belyi, «P. S. Duponceau – the Father of American Philology», *Zeitschrift für Phonetik, Sprachwissenschaft und Kommunikationsforschung*, XXVIII (1975), pp. 41-49.

⁴⁶ Published in *Transactions of the American Philosophical Society*, I (n.s., 1817), pp. 228-264.

⁴⁷ Ulrich Huber was, as noted above, Bynkershoek's teacher. The passages concern the conflict of laws and appear in *Emory v. Grenough*, 3 U.S. 369 (1797). The particular work of Huber is not cited, but undoubtedly was *Praelectiones juris civilis* (1687). Pickering confirms that the translation was by du Ponceau. See note 9 above, pp. 164-165. Alan Watson confirms that the translation is from the *Praelectiones* 2.1.3.5, but credits the translation to Alexander J. Dallas, the reporter of the United States Supreme Court. See A. Watson, *Joseph Story and the Comity of Errors: A Case Study in the Conflict of Laws* (1992), pp. 49, 51.

⁴⁸ T. Cooper, *Bankrupt Law of America Compared with the Bankrupt Law of England* (1801); Cooper wrote the book while serving a prison sentence for violation of the Sedition Act under the Adams administration. Du Ponceau also added a translation of the Ordinances of Bilbao concerned with insolvency in Spain.

⁴⁹ Nadelmann, note 9 above, p. 249.

⁵⁰ See Charles Butler, *Horae Juridicae Subsecivae* (Philadelphia, 1808).

⁵¹ Both appeared as appendices in the *American Review of History and Politics* (July and October 1811).

⁵² Reprinted in *Port Folio*, VII (4th ser.; 1819), p. 267. Du Ponceau also wrote for Lieber's *Encyclopedia Americana* (1829).

⁵³ *American Quarterly Review*, I (1827), 162.

⁵⁴ A manuscript *ex-libris* («Anne du Ponceau») appears with his on «Sea Terms in Different Languages», a notebook apparently carried by him to record the meanings of marine terms, mostly in Italian, Portuguese, and Spanish, but with some Russian jottings and Danish. Bound in are pp. 561-570 of an unidentified French marine conversation book. Presented by Du Ponceau to the American Philosophical Society and held by them in the Manuscript Division: 359.03 D92. Which «Anne» signed is not apparent.

⁵⁵ Quoted in Tieck, note 9 above, pp. 74-75.

⁵⁶ *Ibid.*, p. 76.

⁵⁷ As secretary of the Historical and Literary Committee of the APS, du Ponceau «provided much of the impetus for the early growth of the Society's Native American Indian linguistic collections ... and the development of the Society «... into one of the premier centers for the study of Native American Indian languages». Quoted from APS finding aids for the «DuPonceau Collection». He also sat on committees of the APS which made decisions about bidding for books at auctions of private libraries, among them the library of Thomas Jefferson.

⁵⁸ The APS maintains an «Association File» that records bookplates, manuscript *ex-libris*, donative inscriptions, and the like, together with dates when available of the presentation or acquisition of the item concerned.

⁵⁹ A list of the books pertaining to language and the study of language which du Ponceau presented to the APS in the course of a half century, but mostly by his bequest in 1844, is appended to Smith, note 37 above, pp. 173-177.

⁶⁰ Coleccion de los tratados de pas, alianza, comercio &c. Madrid (1796-1801). 3 v. Presented by du Ponceau on 15 November 1839.

⁶¹ J. M. Gerard de Rayneval (1746-1812), *De la liberté des mers* (Paris, 1811). 2 vols. Presented by du Ponceau on 17 July 1840, together with his manuscript translation.

⁶² [James Madison, 1751-1836], *An Examination of the Conduct of Great Britain Respecting Neutrals* (Philadelphia, 1807). Presented by Bequest on 3 May 1844.

⁶³ John Selden (1585-1654), *Mare Clausum* (London, 1636). Presented by du Ponceau on 1 May 1840.

⁶⁴ Friedrich Wilhelm August Heinrich Ferdinand, Baron von Steuben (1730-1794), *Regulations for the Discipline of the Troops of the United States* (Philadelphia, Printed by Styner and Cist, 1779). Presented by du Ponceau in October 1824 and inscribed by him: «By Frederick William Baron de Steuben, Inspector General of the American Armies. Original Ed.». The Regulations contains passages which today we would recognize as part of international humanitarian law. There is no specific mention of the law of nations.

⁶⁵ Richard Zouche (1590-1661), *Juris et judicil fecialis ...* (The Hague, 1659). Presented by du Ponceau on 1 May 1840.

⁶⁶ Catalogue of Valuable Law and Miscellaneous Books, from the Library of the Late Peter S. Du Ponceau, LL.D. To Be Sold by Order of Executors On Wednesday Evening, Oct. 16, 1844, at 6 ½ o'clock, at M. Thomas & Son's Auction Store, No. 93 Walnut Street. (Philadelphia, E. G. Dorsey, 1844). The APS holds a copy of this title.

⁶⁷ See Gerard de Joseph Maistre de Rayneval, «On the Freedom of the Sea», translated from the French by Peter S. De Ponceau. 2 vols. in manuscript. He completed the Rayneval after the Bynkershoek, as he worked from the 1811 edition of Rayneval.

⁶⁸ Madison's text is published in *Letters and Other Writings of James Madison* (1865), II, p. 243 and appeared anonymously under the title above. According to notes in the Library of Congress, the text was prepared in the Department of State in 1805. The work was twice reprinted in London from the American edition also in 1806. See Cohen 7490-7492; Sabin 43707. Madison's work is often confused with another tract published under the pseudonym «Juriscola», *An Examination of the Conduct of Great Britain, Respecting Neutrals* (Philadelphia, 1807; 2d ed., Boston, 1808), which some have attributed to Madison, although authorship now seems certainly to belong to Tench Coxe (1755-1824), who acted as an unofficial advisor to Madison. See P. Onuf and N. Onuf, *Federal Union, Modern World: The Law of Nations in an Age of Revolutions, 1776-1814* (1994), p. 201. Du Ponceau wrote to Madison on 8 July 1805 in his capacity as Secretary of State, assuring Madison of his «zeal in any thing that may be agreeable to you ...» and sending notes «... on the history and motives of the British prohibition of the Trade of neutrals with

the Colonies of her Enemies». The Letter is in the Library of Congress holdings of Madison papers.

⁶⁹ Letter of 15 November 1810, cited in Henderson, note 24 above, p. 50.

⁷⁰ Letter of 8 December 1810, in J. C. A. Stagg, et al. (eds.), *The Papers of James Madison* (1984), III, p. 60.

⁷¹ Letter of 16 January 1811, *Historical Society of Pennsylvania*; cited in J. E. Henderson, note 24 above, p. 44.

⁷² Pinkney refers to Felix Joseph de Abreu y Bertodano (1700-1775), author of *Tratado juridico-politico sobre pressas de mar*, translated into French by Guillaume Bonnemant (1747-1820) as *Traité juridico-politique sur les prises maritime et sur les moyens qui doivent concourir pour rendre ces prises légitimes* (2d ed.; Paris, Laurens, 1802), 2 vols.

⁷³ The Letter was postmarked Baltimore, 3 February 1815, and addressed simply to «Stephen Peter du Ponceau, Esquire. Philadelphia». Retained in 1815 for the Nereid case, Pinkney «contended in vain that the shipment by the Argentinian merchant of goods from London to South America on a British vessel justified capture by an American privateer and condemnation of its cargo». *Dictionary of American Biography*, XVII, p. 548. Pinkney argued 84 cases before the United States Supreme Court. The Supreme Court decided the case on 6 March 1816, Pinkney appearing for the respondents and captors. See 14 U.S. 171, 1816 WL 1749 (U.S.N.Y.), 4 L.Ed. 63, 1 Wheat. 171.

⁷⁴ See Story, «Literature of the Maritime Law», in W. Story, note 23 above, II, p. 110.

⁷⁵ Pickering, note 9 above, p. 167.

⁷⁶ Preface, pp. v-vi.

⁷⁷ Preface, p. v.

⁷⁸ Nadelmann, note 9 above, p. 250. The journal appeared from 1808 to 1817 inclusive; in 1821 Hall undertook the *Journal of Jurisprudence*, which did not survive its first year.

⁷⁹ Quoted in P. Stein, «The Attraction of the Civil Law in Post-Revolutionary America», *Virginia Law Review*, LII (1966), p. 415.

⁸⁰ Comprised of three parts, the second part consisted of a translation of Francis Clerke, *Praxis Curiae Admiraltatis* (1679).

⁸¹ See M. Bloomfield, «Hall, John Elihu», in *Dictionary of American Biography* (1999), IX, pp. 863-864.

⁸² Du Ponceau, «Testimon, erudit, viror», *The Journal of Jurisprudence: A New Series of The American Law Journal*, I (1821), p. 5.

⁸³ See R. Remer, *Printers and Men of Capital: Philadelphia Book Publishers in the New Republic* (1996), p. 70.

⁸⁴ See H. Glenn Brown and M. O. Brown, *A Directory of the Book-Arts and Book Trade in Philadelphia to 1820, Including Printers and Engravers* (1950), p. 52.

⁸⁵ Remer, note 83 above, p. 87.

⁸⁶ Brown and Brown, note 84 above, p. 47.

⁸⁷ *Federal Republican & Commercial Gazette*, III, no. 383 (29 December 1810), p. 1, col. 4.