

TABLE OF CONTENTS

FOREWORD	xi
PREFACE	xiii
I. THE ORIGINS	1
Introduction	1
The Greek and Roman Conception of "Piracy"	4
The Reorganization of the Renaissance	13
"Piracy" Enters Vernacular English as "Privateering"	13
"Piracy" Enters the Legal Vocabulary as "Outlawry"	18
The Legal Order and Outlawry	19
Positivist Theory; Law as a Support for Policy	19
Some Technicalities: Property Law and Privateering	21
Naturalist Theory: Law as a Moral Order Governing Policy	26
Some Implications	30
English Municipal Law and Piracy in the Renaissance	32
Jurisdiction and Substance; Admiralty and Common Law	32
Admiralty Commissions and Common Law: The Statutes of 1535 and 1536	36
In Rem Property Adjudications	38
Outlawry, Crime and Licenses	40
Coke's Synthesis	44
Summary	48
Notes	50
II. THE EVOLUTION OF THE CONCEPT OF PIRACY IN ENGLAND	66
English Law and International Law	66
Commissions: Privateers as "Pirates"; Positivism Rampant and Naturalism Resurgent in the 1690s	69
English Commissions: Positive Grace v. Natural Justice	78
Animo Furandi and Hostes Humani Generis	82
Jurisdiction and Legal Interest	86
Naturalists v. Positivists (Again): Molloy v. Jenkins	86
The Courts	92
Jurisdiction	92
Commissions Become Evidentiary Instead of Determinative	94

viii Contents

“Piracy” or “Felony” in English Law as Adopted in American Courts	101
The Classical Publicists: Zouche to Bynkershoek	104
The “Law of Nations”	104
The Growth of Positive Law Concepts as an Implication of National Sovereignty	105
The Classical English Synthesis: Blackstone and Wooddeson	108
Notes	113
III. THE UNITED STATES OF AMERICA AND THE LAW OF PIRACY	122
The Basic Framework	122
“Piracy” as a Municipal Law Crime in the United States	127
The Court System	127
The Substantive Law of 1790	128
The Definition	128
Jurisdiction	137
The Substantive Law of 1819	144
The Attempt to Avoid Problems of Definition, Jurisdiction and Foreign Commissions	144
Substance Re-Examined	147
Jurisdiction Re-Examined	151
Foreign Commissions and Unrecognized Belligerents	154
The Statutes	154
The Early American Experience	156
The Latin American Wars for Independence	157
Evolution of the Labels	162
The Civil War of 1861-1865	174
The Later Practice	184
Summary and Conclusion	186
Notes	188
IV. BRITISH PRACTICE IN THE NINETEENTH CENTURY	201
Eurocentrism and British Imperial Law	201
“Pirates” as Permanent Enemies in British Imperial Law	203
The Legal Rationale for Naval Action	203
The Bounty Legislation of 1825 Retroactive to 1820	204
The New Law Applied	206
The East India Company in the Persian Gulf	206

The British Navy in the Eastern Mediterranean Sea 211

The East India Company, the Navy and the Courts in
Southeast Asia 220

 Politics and “Piracy” in Southeast Asia 220

 Mohamed Saad; “Pirate” or Patriot? 226

 Lushington Unleashes the Navy’s Naturalists 230

British Imperial Legal Policy and Real Public International Law 238

 The British Change of Definition 238

 Applying the New Definition 240

 The Kwok-A-Sing Case 240

 The Law Officers Retreat 242

 The Empire Advances 245

 The Selangor Incident 245

 The Legal Tangle 249

 Dropping the Legal Facade 254

 The Limits of the British Imperial Law of Piracy 258

 Introduction 258

 The Huascar Incident 259

Conclusions 270

Notes 275

V. “PIRACY” IN THE TWENTIETH CENTURY 292

 “Piracy” by Analogy 292

 Rebels and War Criminals 292

 Aircraft Hijacking 298

Attempts to Codify the International Law of Piracy 305

 Introduction 305

 The League of Nations Effort 305

 The Harvard Research in International Law 308

 Introduction 308

 The Theory Behind the Harvard Draft 309

 The Text of the Harvard Research Draft Convention 313

 The Anglo-American Position 317

 The Law of the Sea Codification of 1958 319

 The International Law Commission Draft 319

 “Piracy” Today 337

Notes 346

APPENDICES

I. *English Statutes* 359

 I.A Offences at Sea Act of 1536, 28 Henry VIII c. 15 359

x Contents

I.B	The Piracy Act of 1700, 11 & 12 William III c. 7	362
I.C	The Bounty Act of 1825, 6 George IV c. 49	370
II.	<i>American Statutes</i>	373
II.A	15th Cong., 2nd Sess., ch. 77, Piracy Act of 3 March 1819 with notes by Peters, 3 Stat. (1850) (510-514)	373
II.B	16th Cong., 1st Sess., ch. 113, Piracy Act of 15 May 1820, 3 Stat. 600-601	381
II.C	18 U.S.C. Sec. 1651-1661, United States Code (1982 ed.) Vol. 7, pp. 323-325	383
III.	CODIFICATIONS	386
III.A	The Harvard Research Draft Articles on Piracy, 1932, 26 <i>American Journal of International Law Special Supplement</i> 743-747 (1932)	386
III.B	The United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, U.N. Doc. A/CONF. 62/122, articles 100-107	391
	ABBREVIATIONS	393
	BIBLIOGRAPHY	397
	INDEX	429
	INDEX OF CASES	443