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The Law of Piracy

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demise of the individual service chiefs.”

Still another assertion: “From now on, as the JCS chairman grows in power, it will be easier and easier for a president and a chairman of the Joint Chiefs to run any American war. In time, of course, we risk a situation where the chairman alone can first run a war and then, as drastic as it sounds now, the whole country.”

As to what should be done, the author recommends among several changes, that: the Joint Chiefs become the Secretary of Defense’s military staff, with the Chairman as the military chief of staff, that the chiefs be put back in operational command of, and thus again be made responsible for, their services; that the service secretaries be made deputy secretaries of defense and constitute the civilian staff of the Secretary of Defense; and that congressional leaders and the Joint Chiefs attend National Security Council meetings which deal with decisions involving use of American military forces.

The author has made no attempt to evaluate the actual effects of Goldwater-Nichols, most likely because of the short time between the law’s passage and the writing of the manuscript. Mr. Previdi would do his readers and the nation an invaluable service if he were to make a study of the real initial impact of the Goldwater-Nichols Act of 1986, perhaps on its fifth anniversary. If the effects in fact appear to be of the nature forecast by the author, and

civilian control over the military is eroding, changes can still be made before we have gone too far down the wrong road.

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Rubin, Alfred P. *The Law of Piracy*. Newport, R.I.: Naval War College Press, 1988. 444pp. \$22

The Law of Piracy is the latest in a long series of “Blue Books” published by the U.S. Naval War College. Blue Books are styled “international law studies” and generally are intended to grapple with international legal issues germane to the naval environment. Alfred P. Rubin is a well-known international lawyer and scholar on the faculty at the Fletcher School of Law and Diplomacy, Tufts University.

Because both “Blue Book” and “piracy” may evoke certain images for the potential reader, it is useful to begin by describing what *The Law of Piracy* is not. First, it is not light reading. Although “piracy” summons swashbuckling images of Errol Flynn and adventure on the high seas, *The Law of Piracy* is scholarly, not flamboyant. Far from pleasurable reading, the book is frequently tedious in style and in terminology. Second, it is not so much a study of the “law” of piracy as it is a historical study of varying perceptions of “piracy” over time and the legal consequences flowing from those perceptions. Finally, this book

does not focus on international law issues relevant to the operational requirements of the naval officer. *The Law of Piracy* is primarily an academic treatise with a rigidly narrow scope of utility.

The positive aspects of this book are equally notable. *The Law of Piracy* is meticulously researched and thoroughly documented. Professor Rubin's scholarship and documentation will be a delight for those who require information from the fields he has so effectively plowed in gathering his resource data. But the information and the presentation alike are esoteric in nature. In order to appreciate the marvelous scholarship, the reader must have a scholar's knowledge of both international law and jurisprudence.

Several "quirks" serve to disconcert the reader. For example, this book is heavily dependent on Latin phraseology that rapidly becomes distracting. Undoubtedly the intent is to convey precise meaning, and in this the author succeeds. Nevertheless, the usually unnecessary use of terminology now hoary with age is all too common.

The frequent "shorthand" reference to case history and juridical writing documented in earlier pages may also vex those who failed to memorize all the preceding material. Further, the need constantly to refer to endnotes referencing text is cumbersome. And while Dr. Rubin's long sentences convey meaning precisely, they too, can irritate some readers.

Yet, the author succeeds in illustrating some crucial truths about piracy. Despite the existence of an internationally recognized definition, that definition is of little use. Piracy, it turns out, is not a subject susceptible of easy, logical or consistent explication.

Rubin clearly demonstrates that, through the centuries, nations, jurists and courts alike have treated piracy as needs of the moment dictated. *The Law of Piracy* cites numerous political uses of the term that had little, if any, relevance to "law," and frequently not even to "piracy" as it was understood at the time. Despite this, the author attempts constantly to put case histories, juridical writings and state practices regarding "piracy" into a consistent thread either of "positivist" or "naturalist" legal theory. The reason for this is paradoxical; it seems clearly at odds with the scholarship he produces.

As Professor Rubin demonstrates, piracy is not only difficult to define, it is also difficult to correct, and replete with legal and practical conundrums. Hence, the book's meager conclusions should be forgiven—even expected. Sometimes real life just doesn't get any better than so-so.

With one conclusion, however, many will disagree. The author determines that all valid international law relating to piracy is derived solely from domestic laws. His corollary is that only passive personality theory (nationality of the victim or property affected) has ever been a logical basis for jurisdiction.

These opinions yield a contentious and impractical premise.

The "bottom line" conclusion is that if a state assumes jurisdiction over piracy on other than the passive personality basis, legal complications "beyond the bounds the legal order accepts" will result. That conclusion completely misses any mark of relevancy for either the contemporary world or the historical one.

Any scholarly work will be subject to criticism for omissions, though this one less so than most. There is, however, one omission that is puzzling. For an analysis so heavily dependent on the passive personality theory of jurisdiction, the absence of the *Lotus* case (P.C.I.J., Ser. A, No. 10 (1927), 2 Hudson, World Court Reports 20 (1935) is perplexing. That is a small matter, but a potentially important one.

In sum, *The Law of Piracy* is a treasure-trove for academics and scholars who have need of the research Professor Rubin has accomplished over many years. Interestingly, the book is both more and less than the title promises. It holds no succor for those whose mission it is to resolve practical problems. It does, however, yield an immense amount of scholarship and research data exceeding, perhaps, even the ephemeral limits of "piracy." For some, *The Law of Piracy* will be an invaluable research tool and aid. For others, particularly the naval officer who ostensibly has a part to play in eradicating piracy (whatever that term really means), the book is largely irrelevant. "Aye, there's the rub." For all its meticulous

scholarship, in the final analysis, *The Law of Piracy* does not serve its logical audience.

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Nicholson, Nigel and Nicholson, Adam. *Two Roads to Dodge City*. New York: Harper & Row, 1987. 291pp. \$17.50

From Alexis deTocqueville's *Democracy in America* to Jonathan Raban's *Old Glory*, Americans have provided a ready and continuing market for the travel writings of Europeans in America. The why doesn't matter, the genre has often been worth the read. Such is the case with this father and son team of well-known British writers.

In the Spring of 1986, Nigel Nicholson, author of *Napoleon 1812* and the biography of Field Marshall Alexander, and his son Adam, author of several British travel books, simultaneously but separately toured the United States. Each day they wrote to one another about their impressions, sights and visits. Their letters make up the book. Nigel the father, as befitting an elderly British Tory, toured the eastern part of the country visiting a number of established people known to him from his previous works. Adam, the son, toured the new West from Los Angeles to the Pacific northwest, down through the mountain, desert and the high Plains states. The people he met were new to him and from