



UNIVERSITÄTS-  
BIBLIOTHEK  
PADERBORN

**Pirates own book, or authentic narratives of the lives,  
exploits, and executions of the most celebrated sea  
robbers**

**ELLS, CHARLES**

**New York [u.a.], 1842**

Introduction.

---

[urn:nbn:de:hbz:466:1-61163](https://nbn-resolving.org/urn:nbn:de:hbz:466:1-61163)



## INTRODUCTION.

---

By the universal law of nations, robbery or forcible depredation upon the "high seas," *animo furandi*, is piracy. The meaning of the phrase "high seas," embraces not only the waters of the ocean, which are out of sight of land, but the waters on the sea coast below low water mark, whether within the territorial boundaries of a foreign nation, or of a domestic state. Blackstone says that the main sea or high sea begins at low water mark. But between the high water mark and low water mark, where the tide ebbs and flows, the common law and the admiralty have *divisum imperium*, an alternate jurisdiction, one upon the water when it is full sea; the other upon the land when it is ebb. He doubtless here refers to the waters of the ocean on the sea coast, and not in creeks and inlets. Lord Hale says that the sea is either that which lies within the body of a county or without. That which lies without the body of a county is called the main sea or ocean. So far then



regards the states of the American union, "high seas," may be taken to mean that part of the ocean which washes the sea coast, and is without the body of any county, according to the common law; and so far as regards foreign nations, any waters on their sea coasts, below low water mark.

Piracy is an offence against the universal law of society, a pirate being according to Sir Edward Coke, *hostis humani generis*. As, therefore, he has renounced all the benefits of society and government, and has reduced himself to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him; so that every community has a right by the rule of self-defence, to inflict that punishment upon him which every individual would in a state of nature otherwise have been entitled to do, for any invasion of his person or personal property. By various statutes in England and the United States, other offences are made piracy. Thus, if a subject of either of these nations commit any act of hostility against a fellow subject on the high seas, under color of a commission from any foreign power, this act is piracy. So if any captain of any vessel, or mariner, run away with the vessel, or the goods, or yield them up to a pirate voluntarily, or if any seaman lay violent hands on his commander, to hinder him from fighting in defence of the ship or goods committed to his charge, or make a revolt in the ship, these offences are acts of piracy, by the laws of the United States and England. In England by the statute of 8 George 1, c. 24, the trading or corresponding with known pirates, or the forcibly boarding any merchant vessel, (though without seizing her or carrying her off,) and destroying any of the goods on board, are declared to be acts of piracy; and by the statute 18 George II. c. 30, any natural born subject or denizen who in time of war, shall commit any hostilities at sea, against any of his fellow subjects, or shall assist an enemy, on that element, is liable to be punished as a pirate. By statute of George II. c. 25, the ransoming of any neutral vessel, which has been taken by the captain of a private ship of war, is declared piracy. By the act of congress, April 30, 1790, if any person upon the high seas, or in any river, haven, or bay, out of the



jurisdiction of any particular state, commit murder or robbery, or any other offence which if committed within the body of a county, would by the laws of the United States, be punishable with death, such offender is to be deemed a pirate. By the act of congress, 1720, c. 113, if any citizen of the United States, being of the crew of any foreign vessel, or any person being of the crew of any vessel owned in whole or part by any citizen of the United States, shall be engaged in the foreign slave trade, he shall be adjudged a pirate. Notwithstanding the expression used in this statute, the question, says Chancellor Kent, remains to be settled, whether the act of being concerned in the slave trade would be adjudged piracy, within the code of international law. In England by the act of parliament passed March 31, 1824, the slave trade is also declared to be piracy. An attempt has been made to effect a convention between the United States and Great Britain, by which it should be agreed that both nations should consider the slave trade as piratical; but this attempt has hitherto been unsuccessful. In the time of Richard III, by the laws of Oberon, all infidels were regarded as pirates, and their property liable to seizure wherever found. By the law of nations, the taking of goods by piracy does not divest the actual owner of them. By the civil institutions of Spain and Venice, ships taken from pirates became the property of those who retake them. Piracy is every where pursued and punished with death, and pirates can gain no rights by conquest. It is of no importance, for the purpose of giving jurisdiction in cases of piracy, on whom or where a piratical offence is committed. A pirate who is one by the law of nations, may be tried and punished in any country where he may be found; for he is reputed to be out of the protection of all laws. But if the statute of any government declares an offence, committed on board one of their own vessels, to be piracy; such an offence will be punished exclusively by the nation which passes the statute. In England the offence was formerly cognizable only by the Admiralty courts, which proceeded without a jury, in a method founded on the civil law. But by the statute of Henry VIII. c. 15, it was enacted that piracy should be tried by commissioners nominated by the lord chancellor



the indictment being first found by a grand jury, of twelve men, and afterwards tried by another jury, as at common law. Among the commissioners, there are always some of the common law judges. In the United States, pirates are tried before the circuit court of the United States. Piracy has been known from the remotest antiquity; for in the early ages every small maritime state was addicted to piracy, and navigation was perilous. This habit was so general, that it was regarded with indifference, and, whether merchant, traveller, or pirate, the stranger was received with the rights of hospitality. Thus Nestor, having given Mentor and Telemachus a plenteous repast, remarks, that the banquet being finished, it was time to ask his guests to their business. "Are you," demands the aged prince, "merchants destined to any port, or are you merely adventurers and pirates, who roam the seas without any place of destination, and live by rapine and ruin." The laws of Solon refer to authorised associations for piracy; the tribute gathering fleet of the Athenians was a positive armament of speculating marauders; and almost all the early voyages were characterised by a union of fraud, robbery, and exaction, under the name of trade. The test of the heroic Alexander's honesty is given in the answer he received on questioning a captive pirate, as to what right he had to infest the seas. "The same that thou hast to infest the universe; but because I do this in a small ship, I am called a robber; and because thou actest the same part with a great fleet thou art entitled a conqueror."

