

CONTENTS

Acknowledgments xiii

Prologue 1

1 The Responsibilities of States in International Law:

An Overview 3

 Mending Femurs 3

 A Sacred Doctrine 4

 Of Modern Origins 6

 An Exceptional Nature 12

 A Fragile Norm 15

 Parallel Histories 16

 Three Observational Standpoints 21

 Practitioners 21

 Philosophers 23

 Publicists 25

 Merchants of Legalism and Purveyors of Legitimacy 26

 Road Map 29

2 The US Turn to the Technique of International Arbitration 34

 1869: Fish Enters the White House 34

 A New Variation on an Ancient Theme 37

 Modern Arbitration as *Ad Hoc* Legalism 44

 An Effective Tool for an Emerging Power 47

Post Facto Protection 50

 The Willingness of Latin Americans to Arbitrate 57

 Recognition as Motivation for Arbitration 60

 Claims Flood the State Department 64

 The Diplomatic Importance of Alien Protection 66

 Fish Reshapes the State Department 68

 Lieber Becomes Umpire in 1870 72

x	CONTENTS	
	Justice, Delegated	74
	The General Rule of Location Protection	78
	Early Awards Yielded Inconsistent Results	80
	A Legacy of Legalism	86
	The Alabama as a Precedent of International Diplomacy	89
	“Arbitration in the Air”	96
	An Illusion of Legalism	99
	A Tale of Two Tribunals	102
	On the US Tradition of Legalism	108
	An International Regime of Property Protection	112
	1898: From Good to Great Power	116
3	The Creation of State Responsibility in the New World	119
	1870: The First Professional International Tribunal	119
	Protection as a Premise of International Intercourse	121
	An Exceptional International Standard	124
	The Early British Practice of Diplomatic Claims	126
	“A Confrontation of Civilizations”	130
	Anglo-American View: Property Rights Are Fundamental	131
	Emergence of an International Tort	135
	“Civis Romanus Sum” Becomes an International Standard	139
	Root Adapts Palmerston’s Position	142
	Latin American View: International Liability Is Disgraceful	144
	Initial Hostility towards State Responsibility	147
	Opposing Dollar Diplomacy	149
	Does Sovereignty Imply Liability?	151
	“Someone Ought to Pay”	153
	Protecting Property as a General Principle	155
	But Who Should Pay? The Attribution Problem of Mobs and Revolutions	158
	Quantifying Alien Injuries	164
	The Traditionality of <i>Chorzów</i>	167
	New Responsibility for the New World	174
	Creating Room for Argument	178
	The Power of Law	180
	1907: Latin Americans Move to Organizations	182
4	International Responsibility as German Philosophy	185
	1848: Ordnung among Revolutions	185
	The Quandary of Binding Sovereigns	186

CONTENTS xi

Heffter Initiates a Positive Law of State Responsibility	189
Bluntschli Codifies International Law as Confined to Sovereignty	193
Jellinek Provides for the Theoretical Possibility of State Responsibility	197
Triepel and Concentric State Responsibilities	202
German Theory beyond Germany	208
Hall Introduces State Responsibility to Anglo-Americans	209
Anzilotti Completes the International Theory of State Responsibility	210
Oppenheim Popularizes State Responsibility	215
After Versailles	219
Kelsen Brings Coherence to the Doctrine	223
Strupp Seeks Balance in State Responsibility	227
Lauterpacht Institutionalizes State Responsibility	232
Borchard Fails to Limit the Theory of State Responsibility	238
State Responsibility as <i>Buchrecht</i>	241
1919: The Kitchen and the Christmas Tree	245
5 State Responsibility as World Order	248
1947: Transformation with the UN	248
A Shift within World Bodies	250
Codification Begins where Arbitration Ends	254
1930: Year of Promise, Year of Crisis	262
The Legacy of 1930	268
García Amador Takes a New Approach	269
Is Responsibility Derived from Private or Public Law?	273
Codifying within a New Institutional Reality	277
Ago and the End of US Dominion	288
Latin Americans Find Their Place within World Bodies	291
1960: The Tongue If Not the Arm of International Enforcement	296
Epilogue: From State Responsibility to the Responsibility of States	299
Enforcing Hospitality in 1870	299
Three Phases of State Responsibility	302
Pre-legalism	302
<i>Ad Hoc</i> Legalism	303
Institutional Legalism	305
Some Themes	308
Consequentiality of Breach	308
Legalism as Method	310

xii	CONTENTS
	Legitimizing Political Interests 310
	Exceptional Rules 310
	ILC's Success in Geneva 311
	The Duality of State Responsibility 315
	Codifying an Unspoken Doctrine 318
	The Men of 1963 320
	A Signpost of International Law 322
	1960 and the Unmaking of International Law 324
	<i>Bibliography</i> 328
	<i>Index</i> 373