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Reforming International Extradition: Lessons of the Past for a Radical New Approach

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The practice of international extradition is neither the product of sound legislative policy nor the outgrowth of judicious doctrinal thinking. Instead, it is the outcome of circumstances that brought certain legal issues before U.S. courts, which in turn generated legislative responses that are no longer in keeping with contemporary needs.

The early problems of extradition in the United States, which began in 1793, have survived the ages (with some mutation) despite persistent challenges to common sense and defiance of sound legal thinking. To understand some of the contemporary problems of extradition, it is useful to retrace their origins back to 1799.

International extradition presented itself to the American judicial and political arenas between 1799 and 1853 through three major cases that confronted federal district courts and the Supreme Court of the United States,[1] several presidents, and the

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1. For an insightful scholarly review of these cases and the legal issues they present, see John Parry, *The Lost History of International Extradition Litigation*, 43 VA. J. INT'L L. 93 (2002) and Ruth Wedgewood, *The Revolutionary Martyrdom of Jonathan Robbins*, 100 YALE L.J. 229 (1990). For a history of U.S. extradition law and practice, see JOHN BASSETT MOORE, A TREATISE ON EXTRADITION AND INTER-STATE RENDITION (2 vols. 1891) and SAMUEL T. SPEAR, THE LAW OF EXTRADITION, INTERNATIONAL AND INTER-STATE (3d ed. 1885). For a contemporary perspective on extradition history, see Ethan A. Nadelmann, *The Evolution of United States Involvement in the International Rendition of Fugitive Criminals*, 25 N.Y.U.J. INT'L L. & POL'Y 813 (1993).

U.S. Congress: *In re Robins,*[2] *In re Metzger*[3] and *In re Kaine.*[4] The first of these cases, certainly the most controversial of the three, involved the administration of President John Adams and Congressman John Marshall, who later became Chief Justice of the Supreme Court.

For the young nation that was the United States of America, having had only recently to fight for its independence, testing the limits of the executive branch's powers in foreign affairs presented major constitutional and political questions.[5] At the heart of that debate, with respect to extradition, was the constitutional doctrine of separation of powers, which still surfaces in many contemporary cases, particularly those involving the political offense exception[6] and the rule of non-inquiry.[7]

For a young nation jealous of its rule of law and the independence of its judiciary, the question of whether the federal executive branch could decide on surrendering to a foreign power a person within the United States, particularly a U.S. citizen, without a judicial determination was highly questionable. Underlying that constitutional debate were the politics of federalism, and the ever-suspicious public concern with the expansion of federal executive powers.[8]

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2. 27 F. Cas. 825 (D.S.C. 1799) (No. 16,175).

3. 17 F. Cas. 232 (S.D.N.Y. 1847) (No. 9,511); 46 U.S. (5 How.) 176 (1847). France requested the extradition of Metzger, a decision that Judge Betts made in chambers, without a public hearing. This provoked a public debate over such a procedure that violated the sense of fairness in the due process of law.

4. 55 U.S. (14 How.) 103 (1852).

5. *See, e.g.,* BLAND RANDALL WALTON, THE BLACK ROBE AND THE BALD EAGLE: THE SUPREME COURT AND THE FOREIGN POLICY OF THE UNITED STATES, 1789–1953 (1996).

6. *See* M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION IN U.S. LAW AND PRACTICE, 594 (4th ed. 2002) [hereinafter BASSIOUNI, EXTRADITION].

7. *Id.* at 569.

8. *See, e.g.,* ISAAC KRAMNICK, JAMES MADISON, ALEXANDER HAMILTON AND JOHN JAY: THE FEDERALIST PAPERS (1987); THE FEDERALISTS (Benjamin Fletcher ed., 1961); THE DEBATE ON THE CONSTITUTION, FEDERALIST AND ANTI-FEDERALIST, SPEECHES, ARTICLES AND LETTERS DURING THE STRUGGLE OVER RATIFICATION (1993); *see also* T.M. COOLEY, CONSTITUTIONAL HISTORY OF THE UNITED STATES (1889); ANDREW MCLAUGHLIN, A CONSTITUTIONAL HISTORY OF THE UNITED STATES (1935). It should be noted that President Adams was a federalist. *See* DAVID MCCULLOUGH, JOHN ADAMS (2001); JOHN R. HOWE JR., THE CHANGING POLITICAL THOUGHT OF JOHN ADAMS (1966). He was succeeded by President Thomas Jefferson, who was not a federalist. *See* THE WRITINGS OF THOMAS JEFFERSON (Andrew A. Lipscomb ed., 1903); *see also* DAVID P. CURRIE, THE CONSTITUTION IN CONGRESS: THE FEDERALIST PERIOD: 1789–1801 (1907).

The context, always very important in such matters, was laden with the emotionally charged undercurrent of America's suspicion of foreign governments. The facts of the first case in question, the *Robbins* case, were particularly gripping.[9] The fate of a U.S. citizen was at stake, one who was seeking the protection of his country from America's former colonial ruler, England. This was, after all, a country established in the name of freedom, to which people from all over the world, particularly the oppressed, were welcomed. To turn them back to their oppressors was something that rubbed raw American public sensitivities. The merger of all of these issues and the legislative and jurisprudential void on the subject of extradition made them more complex.

The request for Robbins was based on Jay's Treaty of 1794,[10] which provided for extradition with England. It was the second treaty involving extradition, the first being the 1788 Consular Convention with France[11] (1788 U.S.-France Treaty), providing for the same. Both treaties received the Senate's "advice and consent," but national implementing legislation was only enacted with respect to the 1788 U.S.-France Treaty.[12] It gave the task of determining extradition, as of 1792 when the national implementing legislation was passed, to "District Judges of the United States."[13] Thus, the judiciary was empowered to determine whether to issue a warrant of surrender based on what was most natural for U.S. courts to rely upon, namely the standard of "probable cause" which was contained in the Fourth Amendment to the U.S. Constitution, adopted in 1791.

This was also a time when one of the most important U.S. legislative acts had been adopted, the Judiciary Act of 1789.[14] It

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9. 27 F. Cas. 825.

10. Treaty of Amity, Commerce and Navigation, Nov. 19, 1794, U.S.-U.K., 8 Stat. 116, T.S. No. 105 [hereinafter Jay Treaty].

11. Convention with the Purpose of Defining and Establishing the Functions and Privileges of Respective Consuls and Vice-Consuls, Nov. 14, 1788, U.S.-Fr., 8 Stat. 106, T.S.84 [hereinafter 1788 U.S.-France Treaty]. For a contemporary perspective, see Christopher L. Blakesley, *Extradition Between France and the United States: An Exercise in Comparative and International Law*, 13 VAND. J. TRANSNAT'L L. 653 (1980).

12. An Act Concerning Consuls and Vice-Consuls, § 1, 1 Stat. 254 (1792) [hereinafter U.S.-France Treaty].

13. *Id.*

14. *See, e.g.*, ORIGINS OF THE FEDERAL JUDICIARY: ESSAYS ON THE JUDICIARY ACT OF 1789 (Maeva Marcus ed., 1992); *see also* Paul M. Bater, *The Constitution as Architecture: Legislative and Administrative Courts under Article III*, 65 IND. L.J. 233 (1990). The debate over the Constitutional status of extradition hearings, and whether it is

vested the Article III powers of the U.S. Constitution in the "Justices of the Supreme" as well as "Justices of the District Court," who had the power to grant Writs of Habeas Corpus for the purpose of an inquiry into the cause of any commitment or deprivation of liberty. Extradition was a commitment resulting in deprivation of liberty, and thus should have naturally fallen within the meaning of Article III cases. That was not so clear then, however, nor is it now.[15]

At that time, as now, parallel legal tracks dealt with the same subject and were unconnected, even though each implicated the Constitution, treaties, national legislation, and judicial interpretation of all of the above. Constitutional questions arose concerning the separation of powers, the power of the federal executive branch in matters of foreign affairs, the consequences of the treaty-making powers of the executive, the overlapping congressional power to pass national legislation to implement treaties, federal legislation on the jurisdiction and powers of the Federal judiciary in light of Article III, and the limits of judicial prerogatives in hearing and interpreting of these questions.

All of these sources of law had some connection to international extradition, but none was explicitly applicable to that subject, and at best dealt with extradition only peripherally or partially. The exceptions, of course, are specific treaties, legislation, and judicial decisions. Any judicial decisions pertaining to a treaty, however, were limited to the provisions of *that particular treaty*, and thus not extendable to other treaties and

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within or outside Article III courts is persistent. *See* Kulekowski v. DiLenardi, 947 F. Supp. 741 (N.D. Ill. 1996), *rev'd sub nom.* DeSilva v. DiLenardi, 125 F.3d 1110 (7th Cir. 1997); LoBue v. Christopher, 893 F. Supp. 65 (D.D.C. 1995), *vacated on juris. grounds*, 82 F.3d 1081 (D.C. Cir. 1996). In contrast, see *Carreno v. Johnson*, 899 F. Supp. 624 (S.D. Fla. 1995), *In re Suttan*, 905 F. Supp. 631 (E.D. Mo. 1995), and *Werner v. Hickey*, 920 F. Supp. 1257 (M.D. Fla. 1996). These cases go so far as to deny the executive branch the "executive discretion," a proposition fully accepted by various Circuit Court and District Court opinions. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 890–97.

15. To date, review of extradition hearing orders are by means of *habeas corpus*. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 857. See in particular *Matter of Mackin* 668 F.2d 122 (2d. Cir. 1981) where the government argued for a right of appeal and Judge Friendly went back to *In re Metzger*, 17 F. Cas. 232 (S.D.N.Y. 1847) (No. 9,511); 46 U.S. (5 How.) 176 (1847), and *In re Kaine*, 55 U.S. (14 How.) 103 (1852). *Id.* at 125–30. For a review of early habeas corpus cases and doctrine, see WILLIAM S. CHURCH, A TREATISE ON THE WRIT OF HABEAS CORPUS (1886). For relevant decisions during that period, see *Kaine*, 55 U.S. (14 How.) 103, *Ex parte Milligan*, 71 U.S. (3 Wall.) 2 (1867), and *Ex parte Clarke*, 100 U.S. 399 (1879).

cases interpreting them. These legal sources and the legal issues arising from extradition practice have overlapped to create a confusing and uncertain body of law. For example, the 1788 U.S.-France Treaty[16] dealing with the surrender of fugitives specifically provided for a hearing, but a certain ambivalence or uncertainty was evident in the choice of words so that such a hearing be before "the courts, judges and officers competent" of the requested state. The Statute implementing that treaty specified that the hearing would be before "the District Judges of the United States."[17] One can only speculate that those who represented the United States in negotiating the Convention with France were uncertain as to the proper extraditing authority, since it referred to "judges and competent officers." The former are part of the judiciary and the latter are members of the executive branch. Assuming that those representing the executive branch at these negotiations were unsure as to whether the power to surrender was an executive or judicial one, Congress had no doubt that such power vested in the judiciary as evidenced by the national implementing legislation of the 1788 U.S.-France Treaty.[18] The executive branch's uncertainty however was reflected in the Attorney General's petition for a Writ of Mandamus to compel New York Federal District Judge John Lawrence to issue a warrant for the surrender of a French captain, who was sought by France pursuant to the 1788 U.S.-France Treaty, and had abandoned his ship in New York. The Supreme Court in *United States vs. Lawrence*[19] confirmed the judicial nature of the hearing and denied the petition for a writ of mandamus on the grounds that this was not a remedy available to the Executive for a case within the jurisdiction of a federal district court judge.[20]

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16. 1788 U.S.-France Treaty, *supra* note 11.

17. U.S.-France Treaty, *supra* note 12.

18. *Id.* Other examples of the confusion as to the proper authority to extradite are the U.S.-Mexico treaties of 1861 and 1899, which delegated that authority to border states without the involvement of the federal government or the federal judiciary. Treaty for the Extradition of Criminals, Dec. 11, 1861, U.S.-Mex., 12 Stat. 1199; Treaty of Extradition, Feb. 22, 1899, U.S.-Mex., 31 Stat. 1818; *see* Alona Evans, *Legal Bases of Extradition in the United States*, 16 N.Y.L.F. 525, 535–36 (1970).

19. United States v. Lawrence, 3 U.S. (3 Dall.) 42 (1795) (per curiam). For a narrative of the case, see CHRISTOPHER H. PYLE, EXTRADITION, POLITICS, AND HUMAN RIGHTS 19–21 (2001).

20. *Lawrence*, 3 U.S. (3 Dall.) 42.

The 1794 Treaty with England[21] also required a hearing and also reflected the Executive's uncertainty as to whether that hearing was to be a judicial adjudication. But Congress did not, as it did with respect to the 1788 U.S.-France Treaty,[22] provide national implementing legislation for the 1794 Treaty with England.[23] However, Article 27 of the 1794 Treaty required the parties to:

> [D]eliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the country's of the other, provided that this shall only be done on such evidence of criminality, and, according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed.[24]

While it is clear that this provision analogized the hearing to that of a "commitment for trial" as contemplated by the 1788 U.S.-France Treaty[25] and the implementing legislation,[26] it was still deemed an open issue. Instead, it should have been treated by analogy to any other "commitment for trial" under U.S. law. Consequently, there should have been no doubt that the hearing was to be a "probable cause" judicial hearing, even though the Fourth Amendment, which refers to this standard was only adopted in 1791 along with the ten first amendments.

Curiously enough, the debate still exists in contemporary practice as to whether the judicial hearing required by 18 U.S.C. § 3184[27] and which refers to "probable cause" is a reflection of the Fourth Amendment or whether it is purely a statutory requirement, which can therefore be statutorily abrogated.[28]

The ambiguity, which could have been easily resolved on the basis of reasoned logic and analogy, soon became the basis of a national controversy in which politics and the then vibrant

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21. Jay Treaty, *supra* note 10.
22. U.S.-France Treaty, *supra* note 12.
23. Jay Treaty, *supra* note 10.
24. *Id.*
25. *Id.*
26. U.S.-France Treaty, *supra* note 12.
27. The judicial hearing controversy was resolved with the adoption of the 1848 Act, Ch. 167 §5, 9 Stat. 302.
28. *But see* Parretti v. United States, 122 F.3d 758 (9th Cir. 1997), *withdrawn on other grounds*, 143 F.3d 508 (9th Cir. 1998), *cert. denied*, 525 U.S. 877 (1998).

American sense of fairness aroused public passion.[29] The case involved one Thomas Nash, alias Jonathan Robbins, who was arrested in 1799 in Charleston, South Carolina for the charge of murder, allegedly committed during the course of a mutiny on the *Hermione*, a British ship, which was moored in Charleston's port.[30] The British were eager to have Nash, alias Robbins, surrendered with the ostensible purpose of trying him for mutiny and murder, and hanging him for such offenses, even though he was a U.S. citizen who was "shanghaied," that is, seized by force and kept against his will to serve on the ship.[31] They addressed their request to Secretary of State Timothy Pickering, while at the same time the matter was brought before District Court Judge Thomas Bee to order the surrender of the requested person. Secretary of State Pickering advised President John Adams that Judge Bee should be directed to deliver the offender in question, since the United States had obligated itself under Jay's Treaty to do so.[32] Having apparently convinced President Adams, Secretary Pickering informed Judge Bee of the President's request that Nash be delivered to a representative of England. However, Secretary Pickering was careful to indicate that Judge Bee should do so on the basis of evidence of criminality to be produced by England that would justify, as the treaty requires, his "commitment for trial."[33] At the outset, it appeared uncertain as to whether the President, acting through the Secretary of State, was seeking to influence Judge Bee; or, whether he merely wished to emphasize that it was the judiciary's prerogative to hear and consider the evidence and to determine whether it was sufficient to constitute, presumably, "probable cause" in order to justify "commitment for trial," after which the judge was to issue an order for the surrender of the requested person. In fact, one can feel this same impatience on the part of the government in many contemporary cases where the government argues that the treaty obligation of the United States

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29. See John Parry's detailed and incisive description of the facts and context of this case, *supra* note 1, as well as *In re Metzger*, 17 F. Cas. 232 (S.D.N.Y. 1847) (No. 9,511); 46 U.S. (5 How.) 176 (1847) and *In re Kaine*, 55 U.S. (14 How.) 103 (1852). *See also* Wedgewood, *supra* note 1; PYLE, *supra* note 19, at 24.

30. *See* sources cited *supra* note 29.

31. The facts are described in Judge Bee's opinion, *supra* note 2; Parry, *supra* note 1; Wedgewood, *supra* note 1; and PYLE, *supra* note 19.

32. WALTON, *supra* note 5; see also Parry *supra* note 1, at 109–113 & nn. 78–80 & 104 (explaining the positions of Adams and Pickering through reference to original sources).

33. Jay Treaty, *supra* note 10.

would be impaired if extradition would not be granted.[34] A more benign interpretation of that directive could be that the judge should order the surrender of the requested person to the requesting state without having to wait for any further action by the executive branch, but that does not seem borne out by the circumstances and context of the case.[35] There could have been a reasonable and logical interpretation of the President's direction as a delineation of the overlapping powers of the Judicial and executive branches.[36] However, at that time there was no legislation concerning extradition and, as stated above, no statute implementing the 1794 Treaty.

Judge Bee treated the case as a federal question case under Article III and made the analogy between international extradition and inter-state rendition of a fugitive fleeing from one state to another. He also interpreted the judicial power as extending to treaty interpretation. Consequently, Judge Bee's jurisdictional ruling was intuitively correct, but it was not based on statutory authority. Since he viewed the action by Secretary Pickering as executive interference with a judicial function, a constitutional controversy erupted. Nevertheless, Judge Bee ruled that Robbins was to be surrendered to the British Consul.[37] Robbins was then promptly convicted and executed by British authorities, fueling the controversy in light of his U.S. citizenship. John Marshall took the position in Congress that the Judicial Branch does not have the power to deal with treaties and that Article III does not cover matters that are within the jurisdiction of a foreign state's judicial prerogative.[38] He thus concluded that

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34. In my personal experience with over 100 extradition cases, rarely was it not said by the Assistant U.S. Attorney, during or at the end of the proceedings, that the treaty obligations of the United States were at stake, and that somehow the judiciary should be conscious of this—the implication being that because of overlapping powers, the judiciary should be mindful of the Executive's power.

35. For the context of the case, see Parry, *supra* note 1, at 108–24. In today's practice, it is not the judiciary that surrenders an individual to a requested foreign government, but the Executive. *See* 18 U.S.C. § 3196 (2003).

36. The debate over the foreign affairs powers of the Executive has remained constant from these early days on. *See, e.g.*, LOUIS HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION (2d ed. 1996).

37. *Robbins*, 27 F. Cas. at 833.

38. *See* Statement of Representative John Marshall, 10 ANNALS OF CONGRESS 660th CONG., FIRST SESSION 1ST 607 (Mar. 7, 1800). This and other relevant facts and analysis are described in Wedgewood, *supra* note 1, at 229; and PYLE, *supra* note 19, at 24–47. More particularly, see Parry, *supra* note 1, at 105–20. It should be noted that Chief Justice

the case was for the Executive to decide and not subject to judicial decision by a federal district court judge. In a sense, Congressman Marshall raised the issue that subsequently became known as the "political question doctrine." There is much debate as to what Marshall really advocated, though he supported, in part, Adams' position limiting the role of the judiciary. Marshall, however, did concede that a person sought for extradition had the right to question the legality of his arrest by means of a Petition for a Writ of Habeas Corpus.[39] The pendulum then swung in favor of a greater role for the Executive in matters of extradition,[40] as the constitutional interpretation of the doctrine of separation of powers favored the executive branch in the absence of statutory authority to the contrary.[41]

Between 1794, when Jay's Treaty was entered into and the controversial *Robbins* case subsequently decided, and 1848 when the first extradition legislation was enacted,[42] extradition in the United States was carried out without the benefit of national legislation.[43]

Marshall in his seminal opinion in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), held that a writ of mandamus was an appropriate remedy under Section 13 of the 1789 Judiciary Act. But in the *Lawrence* case, it was not judged to be an appropriate remedy. *See Lawrence*, 3 U.S. (3 Dall.) 42.

39. 10 ANNALS OF CONG. 615 (1800). Chief Justice Marshall's majority opinion in *United States v. Rauscher*, 119 U.S. 407 (1886), was most enlightened, solidly upholding the judiciary's role in international extradition. But this opinion came after Congress had enacted the 1848 Act. Ch. 167 §5, 9 Stat. 302; *see also* sources cited *infra* note 43 (providing the legislative history of extradition).

40. *See* H. Jefferson Powell, *The Founders and the President's Authority over Foreign Affairs*, 40 WM. & MARY L. REV. 1471, 1511–28 (1999).

41. The issue of separation of powers was raised in LoBue v. Christopher, 893 F. Supp. 65 (D.D.C. 1995), *vacated on juris. grounds*, 82 F.3d 1081 (D.C. Cir. 1996). That proposition was revisited by the Second Circuit in *Lo Duca v. United States*, 93 F.3d 1100 (2d Cir. 1996). The position was also followed by other circuits in cases that raised the issue of the overlapping roles of executive and judicial powers. *See* Lopez-Smith v. Hood, 121 F.3d 1322, 1326 (9th Cir. 1997); Martin v. Warden, 993 F.2d 824, 828 (11th Cir. 1993); Eain v.Wilkes, 641 F.2d 504, 513 (7th Cir. 1981); *see also* cases cited *supra* note 14.

42. Act of Aug. 12, 1848, ch. 167, § 5, 9 Stat. 302, 303.

43. As stated above, the first legislative act concerning extradition was the Act of Aug. 12, 1848. *See* Ch. 167, § 5, 9 Stat. 302 (1848). The Act provided that extradition of relators from the United States could be performed only pursuant to a treaty, and set forth the procedure to be followed by judges or commissioners. During those years, the following legislation was passed: Act of Aug. 12, 1848, Ch. 167, § 5, 9 Stat. 302, 303; Act of June 22, 1860, Ch. 184, 12 Stat. 84 (requiring authentication of documents); Act of Mar. 3, 1869, Ch. 141, §§ 1–3, 15 Stat. 337–38 (establishing procedure for delivery of relator from United States to requesting state); Act of June 19, 1876, Ch. 133, 19 Stat. 59 (providing that authenticated foreign documents are admissible into evidence); Act of Aug. 3, 1882,

In 1847, the Supreme Court revisited the issue of extradition in *In re Metzger*[44] and thereafter in *In re Kaine*.[45] The latter, however, was decided after the 1848 Act.[46] Yet both of these cases were subsequently misinterpreted.[47] In more recent times, the same debate continued with respect to the political offense exception, the role of the executive,[48] and the rule of non-inquiry in respect to violations of internationally protected human rights.[49] Once again, the judicial versus executive powers controversy arose with the United Kingdom in connection with that country's extradition request for persons charged with violent crimes in connection with the conflict in Northern Ireland.[50] The contemporary debate over the executive's power in matters of extradition continues, notwithstanding the existence of legislation regulating the practice.[51] Understandably, the Executive is

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Ch. 378, §§ 1–6, 22 Stat. 215–16 (establishing fees and costs for extradition); Act of June 6, 1900, Ch. 793, 31 Stat. 656 (specifying extraditable offenses and established political offense exception); Act of June 28, 1902, Ch. 1301 (judicial), 32 Stat. 419, 475 (providing for collection of costs from requesting state); Act of Mar. 22, 1934, Ch. 73, §§ 1–4, 48 Stat. 454–56 (establishing procedure for extradition to and from countries or territories controlled by the United States); Act of June 25, 1948, Ch. 645, 62 Stat. 822 (codifying existing practice not previously set forth in statute); Act of May 24, 1949, Ch. 139, 63 Stat. 96 (amending list of extraditable offenses); and Act of Oct. 17, 1968, Pub. L. No. 90-578, § 301(a)(3), 82 Stat. 1107, 1115 (substituting "magistrate" for "commissioner" in extradition statutes). From 1848 to date, the original Act was amended in a piecemeal fashion eleven times. For a description of the history of U.S. extradition legislation, see BASSIOUNI, EXTRADITION, *supra* note 6, at 72–85.

44. 17 F. Cas. 232 (S.D.N.Y. 1847) (No. 9,511); 46 U.S. (5 How.) 176 (1847).

45. 55 U.S. (14 How.) 103 (1852).

46. *Supra* note 42.

47. For a discussion of this and other misconceptions about extradition, see John G. Kessler, *Some Myths of United States Extradition Law*, 76 GEO. L.J. 1441 (1988).

48. *See* Steven Lubet, *Extradition Reform: Executive Discretion and Judicial Participation in the Extradition of Political Terrorists*, 15 CORNELL. INT'L L. J. 247 (1982); *see also* sources *infra* note 60.

49. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 69.

50. *See* In re Mackin, 668 F.2d 122 (2d Cir. 1981); United States v. Doherty, 786 F.2d 491 (2d Cir. 1986). For an extensive discussion of these cases and others relating to the political offense exception, see BASSIOUNI, EXTRADITION, *supra* note 6, at 594–681. For a contemporary discussion on the executive's power over foreign affairs, see Saikrishna B. Prakash & Michael D. Ramsey, *The Executive Power over Foreign Affairs*, 111 YALE. L.J. 231 (2001) and Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617 (1997) (favoring a predominant role for the executive over the judiciary in matters of foreign affairs).

51. *See* sources cited *supra* note 50; *see also* United States v. Lui Kin-Hong, 110 F.3d 103 (1st Cir. 1997) (dealing with the issue of the rule of non-inquiry with respect to potential re-extradition from Hong Kong to China).

concerned over delays in the extradition process,[52] the lack of uniformity in the jurisprudence of the circuits, and the opportunity for requested persons with financial means, not only to delay the process, but also to prevail against extradition, all of which impact on U.S. treaty obligations and foreign relations.

One would assume that the existing overlap between executive and judicial powers is not that complex to delineate and distinguish. The executive has the power to enter into treaties and, if it were not for 18 U.S.C. § 3184,[53] the executive could engage in extradition with executive agreements not subject to the Senate's "advice and consent," and even on the basis of comity.[54] The executive also has the power to use discretion in conditioning extradition or not surrendering a person otherwise found to be judicially extraditable.[55] As to the judiciary, its role is to determine whether a treaty exists and the identity of the person sought, find the existence of "probable cause," and apply the conditions of the treaty and any conditions arising under customary international law or other relevant applicable treaty. These include substantive conditions and defenses, exceptions, exemptions, and exclusions,[56] and of course any applicable provisions of the Constitution.

Within that context, there are two major legal issues that remain controversial in terms of the overlapping powers of the executive and the judiciary. They are the political offense exception[57] and the rule of non-inquiry[58] with respect to issues concerning the treatment of the relator once surrendered, including the penalties that the requesting state may inflict upon him/her. The jurisprudence of the United States has been somewhat consistent with respect to the political offense exception.[59] This jurisprudence presents no issue except that, on

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52. Two landmark cases stand out: one in the Second Circuit, Caltagirone v. Grant, 629 F.2d 739 (2d Cir. 1980), and one in the Seventh Circuit, In re Assarsson, 635 F.2d 1237 (7th Cir. 1980), *cert. denied*, 451 U.S. 938 (1980), in which this writer represented the respective relators. The *Caltagirone* case lasted over four years and extradition was denied. The *Assarsson* case lasted almost five years and extradition was granted.

53. 18 U.S.C. § 3184 (2003); *see also* Factor v. Laubenheimer, 290 U.S. 276 (1933); Valentine v. United States, 299 U.S. 5 (1936); United States v. Alvarez-Machain, 504 U.S. 655 (1992).

54. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 90–92.

55. *See id.* at 890–98.

56. *See id.* at 461–750.

57. *See id.* at 594.

58. *See id.* at 569.

59. *See id.* at 594.

occasion, judicial outcomes are not always satisfactory to the executive.[60] The rule of non-inquiry, however, presents different problems in so far as it offers the opportunity to raise at the judicial hearing a number of issues which the executive would prefer to deal with on a political level.[61] Understandably, the judiciary is reluctant to give up its prerogatives in this matter insofar as it is using its powers to order the surrender of a person, who could also be a U.S. citizen, to a foreign country where his treatment and punishment could be contrary to both public policy and the Eighth Amendment prohibition against "cruel and unusual punishment."[62]

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60. For example, *Mackin*, 668 F.2d 122, and *Doherty*, 786 F.2d 491, resulted in the United States and the United Kingdom entering into a supplemental extradition treaty. Extradition Supplementary Treaty, June 25, 1985, U.S.-U.K., T.I.A.S. No. 12050; *see also* M. Cherif Bassiouni, *The "Political Offense Exception" Revisited: Extradition Between the U.S. and the U.K.—A Choice Between Friendly Cooperation Among Allies and Sound Law and Policy*, 15 DENV. J. INT'L L. & POL'Y 255 (1987); *United States-United Kingdom Extradition Treaty: Hearing Before the S. Foreign Relations Comm.*, 99th Cong., 1st Sess. 276 (1985) (statement of M. Cherif Bassiouni, Professor of Law, DePaul University); Christopher L. Blakesley, *The Evisceration of the Political Offense Exception*, 15 DENV. J. INT'L L. & POL'Y 109 (1986).

61. *See* United States v. Lui Kin-Hong, 110 F.3d 103 (1st Cir. 1997).

62. *See* Neely v. Henkel, 180 U.S. 109 (1901) (setting forth the rule of non-inquiry). B*ut see* Gallina v. Fraser, 278 F.2d 77 (2d Cir.), *cert. denied*, 364 U.S. 851 (1960) (opening the door to questioning the rule of non-inquiry). For a discussion of this question, see BASSIOUNI, EXTRADITION, *supra* note 6, at 572–583. More recently the United States, having ratified the United Nations Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits extradition whenever there is a likelihood that the relator will be tortured, addressed the question in specific legislation which gives that power to the Secretary of State. For the United Nations Convention, see U.N. REV. 39–46, 39 U.N. GAOR, Supp. No. 51, at 197 (1984), which entered into force with respect to the United States on November 20, 1994. The Convention's Article 3 prohibits extradition if there is a likelihood that the relator is going to be tortured in the requesting state. Foreign Affairs Reform and Restructuring (Farr) Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681 (1998). The Secretary of State's prerogative is discretionary. 22 C.F.R. § 95.4 (2001). That discretion is reviewable under the Administrative Procedure Act (A.P.A.) 5 U.S.C. § 1104 (2001). Thus the extradition court does not have the right to deal with claims arising under the Torture Convention. For the application of this legislation, see Cornejo-Barreto v. Seifert, 218 F.3d 1004 (9th Cir. 2000). *See also* Castillo v. Forsht, 623 F.2d 1098 (5th Cir. 1980), *cert. denied*, 450 U.S. 922 (1981). This case involved an issue of torture of the relator who fled from Mexico. Even though there was no question that the fugitive had been tortured in Mexico, the Fifth Circuit was not swayed by the argument that U.S. courts, as a matter of judicial integrity, should not extradite persons likely to be tortured. Since then, the United States adopted legislation consonant with the obligations of this country under the U.N. Torture Convention of 1984, but the determination of non-extradition is left with the executive, not with the judiciary.

It is astonishing that some of the same issues and debates which occurred in connection with the *Robbins* case and which lasted until the passage of the 1848 legislation still linger on. It is equally astonishing that the 1848 Act has not been comprehensively overhauled since then, notwithstanding congressional efforts between 1981 and 1984.[63]

To a large extent, this stagnation is due to lack of sufficient congressional interest in the passage of progressive non-partisan legislation addressing the issue. Such legislation should provide a balance between the need to surrender to other countries persons accused or charged with crimes, and the need to observe "due process of law," and, where appropriate, uphold international human rights norms as well as constitutional norms and standards. Regrettably, ideological battle lines have been drawn between what is commonly referred to as "conservative" and "liberal" thinking on international human rights and domestic civil rights issues.[64] Instead, the proper balance should be drawn along the lines of efficient and expeditious extradition proceedings—unhampered by undue formalities—but consistent with the application of the same norms and standards the judiciary must apply in ordinary criminal cases. By no means should extradition be converted into a mini-trial, but neither should it become a rubber-stamp judicial procedure for the requests of foreign governments that a given administration may support, as in the case of President John Adams' message to Judge Bee in the 1795 case of *In re Robbins* discussed *infra*.

The result of ambiguity in the existing legislation[65] has led to a divergence in the jurisprudence of the courts[66] and the politicization of extradition.[67] The government, sometimes out of

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63. *See* M. Cherif Bassiouni, *Extradition Reform Legislation in the United States: 1981–83*, 17 AKRON L. REV. 495 (1984); BASSIOUNI, EXTRADITION, *supra* note 6, at 70.

64. *See* cases cited *supra* note 62.

65. *See, e.g.*, BASSIOUNI, EXTRADITION, *supra* note 6 (providing a critique of some of the provisions of 18 U.S.C. §§ 3181–3196 in connection with various legal issues).

66. One example is the long-standing divergence of views between circuits on the question of whether a relator has standing to raise the rule of specialty. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 511 *et. seq.*

67. A case in point is *Alvarez-Machain* , 504 U.S. 655 (1992), in which the Supreme Court took the absurd position that because the treaty between the United States and Mexico does not expressly prohibit kidnapping, such a practice is permissible. The Supreme Court's ruling became more embarrassing when the Federal District Court in California ruled that Dr. Alvarez-Machain, who was kidnapped from Mexico, was not the person believed to have committed the act charged in the indictment. In contrast, the

understandable frustration, but sometimes also out of a disregard for the rule of law, engages in conduct that challenges the integrity of the legal process.[68] Such conduct is sometimes tolerated by magistrates and federal district court judges who come from the ranks of federal prosecutors and tend to favor the government's position.[69] Since most extradition cases involve drug offenses, the bending of the rules is all too easily rationalized. After the September 11 attacks and the climate of fear created in their aftermath (in large part by the Administration), the tendency to give "due process" short shrift is all too evident.[70] Yet it is difficult to understand why it is preferable to engage in questionable constitutional and ethical practices when institutional reform is a more just *and* efficient solution.

What is needed is a new radical approach to the existing law of extradition practice that can be integrated into comprehensive legislation on all modalities of international cooperation in penal matters.

The outlines of such an approach would include:

1. Abandoning the cumbersome process of basing extradition on treaties. Instead, it should be based on national legislation, supplemented by executive agreements establishing reciprocity subject to our national legislation, but not requiring Senate "advice and consent" for these executive agreements. Moreover,

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Supreme Court of Israel, in the highly emotionally-charged case of John Demjanjuk, who was extradited from the United States on the assumption that he was "Ivan the Terrible," a Nazi guard at the infamous Treblinka Camp, acknowledged that Demjanjuk was not in fact the person charged with "crimes against humanity" at that time and place. But John Demjanjuk was extradited from the United States with the knowledge that he was not the person sought, namely "Ivan the Terrible." The Office of Special Investigations of the Department of Justice acted in this improper and unethical manner, for which the Sixth Circuit duly chastised it. But none of those responsible were ever disciplined or brought before the Ethics Committee of the Bar. Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993).

68. *See* United States v. Abello-Silva, 948 F.2d 1168 (10th Cir. 1991); Demjanjuk v. Petrovsky, 10 F.3d 338, 352 (6th Cir. 1993), *cert. denied*, 513 U.S. 914 (1994); Wang v. Reno, 81 F.3d 808 (9th Cir. 1996); Lindstrom v. Graber, 203 F.3d 470 (7th Cir. 2000). For a case giving rise to disciplinary action, see *Lightfoot*, 217 F.3d 914 (7th Cir. 2000) (citing In re Snyder, 472 U.S. 634 (1985)). *See also* BASSIOUNI, EXTRADITION, *supra* note 6, at 885–890.

69. *See* BASSIOUNI, EXTRADITION, *supra* note 6, Preface and Introduction to the Fourth Edition, XI–XXI.

70. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 183 (discussing the "Patriot Act," Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. No. 107-56, 115 Stat. 272 (2001)).

extradition based on national legislation could be practiced on the basis of comity. This eliminates the lengthy process of negotiating treaties and encumbering the U.S. Senate with treaties to which it has to give "advice and consent." It would also avoid the problem of treaty obsolescence and the need to negotiate additional protocols.[71]

2. The judiciary's role should clearly include the power to address issues such as the principle of specialty without the need for a foreign government's protest.[72] Moreover, in order to clarify the overlapping powers of the executive and the judiciary, the rule of non-inquiry should be limited, allowing the judiciary to inquire into certain fundamental human rights issues such as torture[73] and re-extradition by the requesting state to another state.

3. Review of extradition should be by appeal[74] and not through the process of *habeas corpus*.[75] This would streamline cases that go before a federal district court on a habeas petition, and, if denied, by a review before the circuit court of appeals. Giving the government an opportunity to review on appeal would also bring finality to the case.

4. National legislation should eliminate the *sui generis* nature of extradition and consider it a criminal proceeding to which the Federal Rules of Criminal Procedure and the Federal Rules of Evidences apply, with the exception of limitations on hearsay evidence, since evidence presented by requesting states cannot be tested on this basis. It should also be made clear that the extradition hearing is in the nature of a "probable cause" hearing, and not a mini-trial on the guilt or innocence of the requested person.

5. Lastly, improper conduct by government attorneys and private counsel should be subject to disciplinary action.[76] The proposed national legislation should be comprehensive and detailed. Further, the legislation should take into account the conflicting decisions involving the applicability of the

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71. The United States has 137 treaties and protocols with 103 countries. *See* BASSIOUNI, EXTRADITION supra note 6, at 925.

72. *See id.* at 546.

73. *See supra* note 67.

74. This issue was raised by the government in *Mackin*, 668 F.2d 122 (2d Cir. 1981).

75. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 857.

76. *See* sources *supra* note 68.

constitutional norms on "probable cause" and bail;[77] clarify the standards and duration for preliminary arrests before the filing of a formal extradition request; set forth with specificity the contents of an extradition complaint; establish the limited right of discovery; and fix the length of proceedings.

Extradition should become a reasonably expeditious process, which respects the integrity of our legal processes and upholds international human rights standards and U.S. Constitutional standards.

Extradition problems originate not only from the United States, but also, and maybe mostly, they come *to* the United States from foreign countries. Some of these problems involve the non-extradition of nationals, which some constitutions forbid.[78] Others have to do with the complex criminal laws that the United States has enacted, which few foreign countries have.[79] This poses a problem with respect to satisfying the requirement of "double criminality."[80]

Of greater significance are two sets of problems that are not of a legal nature. In some developing countries, there are few experts in their ministries of foreign affairs and justice or among the ranks of public prosecutors and judges to deal effectively with international extradition requests. In part because of the lack of sufficient expertise and in part because of a selective approach to engage in extradition only through bilateral treaties, the United States has relatively few treaties with developing countries.[81] Thus, the absence of a treaty makes such a country a safe-haven for U.S. fugitives. When coupled with the non-extradition of nationals in some countries, the number of safe-havens increases.

If we combine the problems of extradition stemming from and presented to the United States, we realize that this modality of

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77. For a discussion on bail, *see* BASSIOUNI, EXTRADITION, *supra* note 6, at 794. In *Parretti*, the Ninth Circuit was the first circuit to uphold the applicability of the constitutional right to bail, as well as the applicability of the constitutional standards of "probable cause." Parretti v. United States, 122 F.3d 758 (9th Cir. 1997), *withdrawn on other grounds*, 143 F.3d 508 (9th Cir. 1998), *cert. denied*, 525 U.S. 877 (1998).

78. Among such constitutions are those of Israel, Germany, Italy, and Columbia. *See* BASSIOUNI, EXTRADITION, *supra* note 6, at 682.

79. *See id.* at 504.

80. *Id.*

81. For a list of these treaties, see 18 U.S.C. §§ 3181–3196 (2003) and BASSIOUNI, EXTRADITION, *supra* note 6, at 925 (Appendix II - Bilateral Treaties of the United States).

international cooperation in penal matters is not as effective as it should be. Despite this ineffectiveness, there is no legislative policy aimed at finding remedies to the weaknesses of the extradition process—a process that is crucial to the prevention and suppression of criminality, whether it be national, transnational, or international.

In part, these problems derive from a lack of legislative imagination, which would require casting away the 1848 legislative scheme that still governs us (albeit with some modification) and developing a radically new approach. This approach is based on the assumption that extradition is only one of the modalities of international cooperation in penal matters. The others are mutual legal assistance, transfer of criminal proceedings, transfer of sentenced persons, recognition of foreign penal judgments, freezing and seizing of assets, intelligence and law enforcement cooperation and exchange of information, and regional judicial spaces.[82]

Extradition must therefore be integrated into a single comprehensive code of international cooperation in penal matters that includes all of these modalities, which are dealt with discretely in many treaties as well as addressed in several parts of U.S. legislation.[83] The following modalities are addressed in a compartmentalized fashion: extradition (treaties and legislation), mutual legal assistance (treaties and no legislation except for "Letters Rogatory"), transfer of sentenced persons (treaties and national legislation), freezing and seizing of assets (treaties and no international legislation, only domestic).

The reform of extradition discussed above must be integrated in a comprehensive code of international cooperation because, while it is the best way of enhancing the effectiveness of all these modalities, it will be particularly beneficial to extradition. For example, under the present approach, if a country does not

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82. For a discussion of these modalities by various experts, see 2 INTERNATIONAL CRIMINAL LAW (M. Cherif Bassiouni ed., 2d ed. 1999).

83. For example, mutual legal assistance is reflected in a number of U.S. treaties with foreign countries. *See* Mutual Legal Assistance in Criminal Matters Treaties (MLATs) and Other Agreements, *at* http://travel.state.gov/mlat.html (last visited Sept. 21, 2003). But there is no legislation that regulates the practice. In contrast, 28 U.S.C. § 1781 (2003) regulates "Letters Regulatory." That title applies to federal civil procedure, but "Letters Rogatory" have been extended to criminal matters. Transfer of sentenced persons is covered by a few treaties and by Title 18 U.S.C. § 4100 (2003).

extradite its nationals, no alternatives exist. Instead, the integrated approach proposed would offer several options. One would be conditional extradition for only the trial, subject to the return of the relator, if found quietly, to the originally requested state where the convicted person's sentence would be carried out. This of course presupposes the acceptance of the originally requested execution of sentence. Another option is that of transfer of the criminal proceedings from the requesting state to the requested state that does not want to extradite. The originally requested state would then carry out the obligation of *aut dedere aut judicare*.[84]

This "gear-shifting" technique permits the use of other modalities of international cooperation to achieve the ultimate goal of prosecution even when extradition fails. Suffice it to recall more than ten years of stalemate between the United States/United Kingdom and Libya with respect to the extradition of two persons indicted in Scotland and in the United States for the Pan-Am 103 explosion, known as the "Lockerbie Case."[85]

Shortly after the tragic incident of Pan Am 103's explosion over Lockerbie, Scotland on December 21, 1988,[86] the United States and Scotland issued indictments against two Libyan intelligence operatives, Abdelbasset Ali Al-Megrahi and Lamine Khalifa Fhimah. They were charged with planting explosives on the plane, which resulted in the death of 259 passengers and eleven persons in and around the town of Lockerbie, Scotland. Thus, the United Kingdom and the United States sought the extradition from Libya of these two Libyan nationals charged with crimes arising out of that explosion. The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation provides for the duty to prosecute in Article 7, and for the duty to extradite in

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84. *See* M. CHERIF BASSIOUNI AND EDWARD M. WISE, *AUT DEDERE AUT JUDICARE*: THE DUTY TO EXTRADITE OR PROSECUTE IN INTERNATIONAL LAW (1995).

85. The case was first brought before the International Court of Justice (ICJ). *See generally* Questions of Interpretation and Application of 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, General List No. 88 (Libyan Arab Jamahiriya v. U.K.) (instituted in ICJ registry Mar. 3, 1992), at http://www.icj-cij.org/icjwww/idocket/iluk/iluk2frame.htm (last visited Sept. 21, 2003) (providing application, pleadings, orders, oral arguments, and judgments arising out of this incident).

86. Scotland has autonomy within the United Kingdom, and has its own distinct legal system in which the death penalty has been abolished. Nevertheless, the government of the United Kingdom acts on behalf of Scotland in matters of foreign affairs, as does the U.S. government with respect to the states within its federal system.

Article 8.[87] Libya argued that it had the priority right to prosecute. The United States and the United Kingdom argued that no prosecution in Libya would be effective because Libyan authorities were involved in the plot; instead, they claimed a priority right for their extradition request over Libya's claim of the right to prosecute. Libya responded by arguing that these two governments would not provide its nationals with a fair trial. Consequently, the unarticulated premises of effectiveness and fairness in the execution of the alternative duties to prosecute or extradite became the legal basis for a political stalemate.

In 1992, Libya filed suit against the United States and the United Kingdom in the ICJ.[88] To forestall the ICJ's decision on the merits of the case filed by Libya, the United States and United Kingdom obtained from the Security Council Resolution 731 requiring Libya to surrender the two accused to the United States and to the United Kingdom.[89] Because the U.N. Charter does not give the ICJ the express power of judicial review over Security Council decisions, the ICJ felt estopped from passing judgment on whether such a resolution was a valid exercise of the Council's prerogatives under Chapter VII, which deals with issues involving peace and security. Thus, a finding by the Council—that the non-extradition of two accused bombers constituted a threat to world peace and security—was not judicially reviewable by the ICJ.[90] But the ICJ was nonetheless faced with the merits of the case filed by Libya pursuant to the 1971 Montreal Convention,[91] namely, whether the duty to prosecute had precedence over the duty to extradite, and by implication, if there were any unarticulated conditions relating to effectiveness and fairness.

The stalemate lasted for ten years but was never resolved by the ICJ. Instead, the interested states brought the stalemate to an end. Libya, the United States, and the United Kingdom agreed to

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87. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Hijacking Convention), Sept. 23, 1971, 24 U.S.T. 564, 974 U.N.T.S. 177, 10 LL.M. 1151; *reprinted in* M. CHERIF BASSIOUNI, INTERNATIONAL TERRORISM: MULTILATERAL CONVENTIONS (1937–2001), 135 (2001).

88. *See supra* note 85.

89. S.C. Res. 731, U.N. Doc. S/Res/731 (1992), *reprinted in* 1 M. CHERIF BASSIOUNI, INTERNATIONAL TERRORISM: A COMPILATION OF U.N. DOCUMENTS (1972–2001), 20 (2002).

90. *See, e.g.*, INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS (Mohammed Bedjaoui ed., 1992).

91. *Supra* note 87.

have what was equivalent to a change of venue—Scottish judges sitting in an unused Dutch military facility outside The Hague, applying Scottish criminal law and procedure. There, after a two-year trial, one defendant, Abdelbasset Ali Al-Megrahi, was found guilty and sentenced to life imprisonment. The other defendant, Lamine Khalifa Fhimah, was found "not guilty by reason of insufficient evidence" (which is a form of verdict available under Scottish law when the evidence does not rise to the standard of "beyond reasonable doubt").[92]

In the era of globalization, with increased forms and manifestations of international crimes causing major harmful consequences,[93] and transnational crimes like drug trafficking and terrorism, [94] international cooperation in penal matters is indispensable, and extradition the most important of all its modalities. These goals can only be accomplished through non-partisan, comprehensive, and detailed legislation, which fairly balances the sometimes-competing interests of efficient justice and its fair execution.

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92. While the legal stalemate over prosecuting the two Lockerbie accused has been brought to an end by means of a practical arrangement that satisfied the concerns of the interested governments, the arrangement did not provide an answer to the basic question of whether prosecution has priority over extradition, nor to the corollary questions pertaining to requirements of effectiveness and fairness. The ICJ had the opportunity to clarify these issues, but failed to do so. Thus, the questions concerning the duties to prosecute or extradite and the premises of effectiveness and fairness remain substantially unanswered, except for what is expressed in the writings of scholars.

93. *See* M. Cherif Bassiouni, *Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights*, *in* POST-CONFLICT JUSTICE 3 (M. Cherif Bassiouni ed., 2002).

94. CHRISTOPHER L. BLAKESLEY, TERRORISM, DRUGS, INTERNATIONAL LAW AND THE PROTECTION OF HUMAN RIGHTS (1992).