REPORT ON EXTRADITION: WITH RETURNS OF ALL CASES FROM AUGUST 9, 1842, TO JANUARY 1, 1890, AND AN INDEX

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649691456

Report on Extradition: With Returns of All Cases from August 9, 1842, to January 1, 1890, and an Index by John Bassett Moore

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

www.triestepublishing.com

JOHN BASSETT MOORE

REPORT ON EXTRADITION: WITH RETURNS OF ALL CASES FROM AUGUST 9, 1842, TO JANUARY 1, 1890, AND AN INDEX

Trieste

REPORT

ON

EXTRADITION,

WITH

RETURNS OF ALL CASES

FROM

AUGUST 9, 1842, TO JANUARY 1, 1890,

AND AN

INDEX.

BY

JOHN BASSETT MOORE
THIRD ASSISTANT SECRETARY OF STATE.

WASHINGTON:
GOVERNMENT PRINTING OFFICE
1890.

REPORT

BY

JOHN BASSETT MOORE,

THIRD ASSISTANT SECRETARY OF STATE.

EXTRADITION.

Improved means of travel which modern invention has afforded and the consequent ease of flight have made the extradition of criminals a subject of constantly growing importance. A person commits an atrocious offense, and in a few hours at most may be beyond the confines of the country whose laws he has violated. Once within the jurisdiction of another country he may defy the authorities of the place of his criminal activity unless the Government of the country to which he has fled, animated with a desire to promote the cause of general justice, shall take some action to deprive him of his immunity from punishment. Three methods of dealing with fugitive criminals have been suggested:

(1) Trial and punishment by the country of refuge.
(2) Expulsion.
(3) Extradition.

While the first method has found able advocates, it has generally been regarded as impracticable and as not satisfying the ends of justice, and its application has never seriously been attempted.

The inadequacy of expulsion lies in the fact that it only rids the country of refuge of a possibly dangerous individual, and affords no satisfaction to the laws which he has violated. It can be employed as a substitute for extradition only when, by reason of the character or circumstances of the offense, the fugitive ought not to be surrendered, but at the same time ought not to be afforded protection.

In extradition alone is found the efficient remedy for the evils to be treated. It rids the country of refuge of undesirable persons, and at the same time meets the demands of justice by handing the offender over to be tried according to the laws which he is charged to have broken.

It has been much discussed by publicists whether extradition is a matter of perfect or of imperfect obligation—a matter of duty or of comity. This question, however, has become of less and less importance as extradition has come to be more generally regulated by treaty. It has often been suggested that each nation should regulate extradition for itself, by a general law, enumerating the offenses for which fugitives should be delivered up, and that such delivery should be granted independently of treaty and of reciprocity. But the decided

tendency has been to the regulation of the practice of extradition by treaty, thus insuring reciprocity, not only in principle, but also in reality.

In the delivery up of fugitive criminals three systems of procedure are found to exist. The first of these systems may be called the executive. Under this system the fugitive is delivered up by the chief executive authority of the state, upon such evidence as he may deem proper or prescribe. The second may be termed the legislative system, under which the chief executive, while he determines the question of surrender, nevertheless acts under the provisions of an express statute. The third system may be called the judicial, under which, while the chief executive may render the final decision on the question of delivery, the judicial authorities make the preliminary investigation of the criminality of the person charged.

In the United States the judicial system prevails. The preliminary investigation of the charge of crime is by law committed to the judicial authorities. If the decision of the officer who conducts the preliminary examination is that the evidence adduced is not sufficient to sustain the charge, the alleged fugitive is released from custody and the question of surrender never comes before the executive for determination. If the decision of the examining magistrate is that the evidence is sufficient to sustain the charge, he commits the prisoner to await the action of the executive, to whom the record of the magistrate's proceedings is transmitted for consideration, and the executive may either order the fugitive's surrender or may decline to do so.

The consideration of the proceedings for the examination of the charge of criminality naturally suggests the question, What should be the kind and degree of evidence required for the purpose of surrender? In some countries it is held that it is sufficient if it appear that a criminal prosecution for the offense charged is actually pending against the accused in the country by which his extradition is demanded. In other countries it is requisite that at least *prima facie* evidence should be adduced of the guilt of the person charged. Such is the case in the United States, in which the rule is that such evidence of guilt must be furnished as would warrant the commitment of the alleged fugitive for trial for the offense with which he is charged if it had been committed in this country.

What crimes should be made the subject of extradition? The answer to this question must depend upon various conditions. Between contiguous countries the list of offenses would naturally be more extensive than between countries remote from each other, and would reach crimes of a more trivial character. The internal policy and the juridical system of a country would also affect its readiness to grant or its ability to procure extradition of fugitive criminals. It is generally conceded that no extradition can be required for political offenses save under the obligations of treaty, and such offenses are not generally admitted in conventions. But the question often arises as to what is a political offense. In the treaty between the United States and Belgium, concluded on the 13th June, 1882, there is the following provision:

> The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such a crime or offense. A person who has been surrendered on account of one of the common crimes or offenses mentioned in Article II shall consequently in no case be prosecuted and punished in the State to which his extradition has been granted on account of a political crime or offense committed by him previously to his extradition or on account of an act connected with such a political crime or offense, unless he has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for

one month after having suffered his punishment or having been pardoned. An attempt against the life of the head of a foreign government, or against that of any member of his family, when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offense or an act connected with such an offense.

This provision is understood to be merely declaratory of the law that a sovereign or a member of his family may be made the victim of a non-political crime. Offenses against customs laws are also generally excluded from extradition treaties, as well as offenses against laws relating to religion or to matters of peculiarly local concern, growing out of particular national polity.

It is not unusual to find in conventions a limitation of the crimes for which extradition may be demanded, based upon the length or severity of the punishment to which they may be subject. It may well be questioned whether such a limitation will be found to be satisfactory in its operation and secure such reciprocal action as may be desirable. The rule would appear to depend for its successful application chiefly upon the assimilation of penal legislation.

One of the most important practical questions relating to extradition is that of the provisional arrest and detention of alleged fugitives. The employment of the telegraph for the purpose of securing such arrest and detention is often essential to the capture and reclamation of the criminal. Frequently appropriate provisions on this subject are embodied in the treaties, although few of the extradition conventions which the Government of the United States has concluded with foreign powers contain such a stipulation. It is believed, however, that law and practice in the United States afford ample opportunity to secure the apprehension of fugitives from justice and their commitment for examination, in advance of a formal requisition for their surrender. In such case, some authorized agent of the foreign government, usually a consul, makes complaint on oath, upon information and belief, charging the alleged fugitive in proper form with the commission of a treaty offense within the jurisdiction of that government. This complaint is made with as great particularity as possible and is frequently supported by telegraphic information furnished by the complainant's government. If the complaint be sufficient, the magistrate before whom it is made issues his warrant for the arrest of the person charged, and, when he is arrested, commits him for such time as may, under the circumstances, be reasonable for the production of the formal evidences of criminality. (See Appendix A.)

Should citizens be surrendered? The general rule unquestionably is to refuse to surrender them. The justification for this rule is thought to be found in the provision which the laws of most countries make for the punishment of citizens for offenses committed abroad, and in the alleged superior right of trial belonging to the country of which the fugitive is a citizen. As the great object of extradition is the trial and punishment of an offender under the laws which he has violated and at the place of such violation, an object rendered important by considerations of convenience as well as by the just requirements of the penal law, it may well be questioned whether nations should persist in the general exemption of their citizens from extradition process.

Should a person surrendered for one offense be tried for another, before he has had an opportunity to return to the jurisdiction from which he was taken? The argument against such trial has been that to admit that it might take place would encourage abuse of extradition process and open the door to prosecutions for political offenses. In reply to

this it may well be said that if the good faith of the demanding government be clear and the prosecution sought to be instituted non-political, it is an unnecessary defeat of justice to require the culprit to be set at liberty, merely because he was surrendered for another offense. It has been suggested that at least a partial remedy for this condition might be found in limiting the right of trial to treaty offenses. This, however, does not meet the objection. But might not a complete remedy be found in the provision that a person surrendered for one offense should not be tried for another, if the surrendering government object; and that before trial for an offense other than that for which the extradition was granted, notice should be given to the surrendering state of the intention to try for such other offense.

It may happen that several demands are presented by different governments for the surrender of a single individual. In such a case, which demand should be complied with? The rule generally adopted in the treaties of the United States is to honor the demand first presented.

To what extent may a government intervene in behalf of one of its citizens who is in a foreign country and is made the subject of a demand of extradition by a third state? Can an objection to his surrender be based upon the fact that no treaty of extradition exists between the demanding state and that within whose jurisdiction he is? And, if it be held that the true rule is that he is entitled only to the same treatment as a citizen of the country on which the demand is made, may his government make it a ground of objection to his extradition that citizens of that country are by its laws or its practice exempt from surrender?

It is the practice of the Government of the United States to decline extradition in the absence of treaty. It has concluded with foreign countries, in relation to extradition, the following conventions:

Countries.	When concluded.	Countries.	When concluded.
Austria	July 3, 1856	Mexico	Dec. 11, 1861
Baden	Jan. 30, 1857	Netherlands‖	May 22, 1880
Bavaria	Sept. 12, 1853		June 2, 1887
Belgium*	Mar. 19, 1874	Nicaragua	June 25, 1870
	June 13, 1882	North German Union	Feb. 22, 1868
Bremen	Sept. 6, 1853	Oldenburg	Dec. 30, 1853
Dominican Republic	Feb. 8, 1867	Orange Free State	Dec. 22, 1871
Ecuador	June 28, 1872	Ottoman Empire	Aug. 11, 1874
France	Nov. 9, 1843	Peru¶	Sept. 12, 1870
	Feb. 24, 1845	Prussia and other States of the Germanic Confederation.	June 16, 1852
	Feb. 10, 1858		
Great Britain†	Nov. 19, 1794	San Salvador	May 23, 1870
	Aug. 9, 1842	Schaumburg-Lippe	June 7, 1854
	July 12, 1889	Spain**	Jan. 5, 1877
Hanover‡	Jan. 18, 1855		Aug. 7, 1882
Hawaiian Islands	Dec. 20, 1849	Sweden and Norway	Mar. 21, 1860
Hayti	Nov. 3, 1864	Swiss Confederation	Nov. 25, 1850
Italy§	Mar. 23, 1868	Two Sicilies††	Oct. 1, 1855
	Jan. 21, 1869	Venezuela‡‡	Aug. 27, 1860
	June 11, 1884	Würtemberg	Oct. 13, 1853
Japan	Apr. 29, 1886		July 27, 1868
Luxemburg	Oct. 29, 1883		
Mecklenburg-Schwerin	Nov. 26, 1853		
Mecklenburg-Strelitz	Dec. 2, 1853		

*Replaced by treaty of 1882.
†Expired October 28, 1807.
‡Terminated by absorption of Hanover by Prussia.
§Amended by treaties of 1869 and 1884.
‖Replaced by treaty of 1887.
¶Terminated March 31, 1886.
**Amended by treaty of 1882.
††Replaced by treaty of 1868 with Italy and its amendments.
‡‡Terminated October 22, 1870.

P. S.—Since the above report was submitted to the International American Conference, dispatches have been received from our ministers containing statements of the law and practice of extradition in Denmark, Mexico, Spain, and Sweden and Nor-

way. Those statements are printed at their proper places in this document. Under Spain, a copy of a dispatch from the consul-general at Havana is printed, in order to show what was the course pursued in obtaining the extradition of two criminals from the island of Cuba.

I am also able to print, as one of the appendices to the report, a tabular statement which has for a long time been in preparation, of the requisitions made by the United States upon foreign governments, of those made by foreign governments upon the United States, and of warrants of surrender and mandates of arrest granted by the Government of the United States, since the conclusion of the treaty with Great Britain of August 9, 1842, from which the history of extradition in the United States under conventions practically dates. I desire to acknowledge my obligations to James Wilson Bayard, esq., of the Department of State, for assistance in compiling the lists of requisitions; and to John D. Lindsay, esq., assistant district attorney for the city and county of New York, for information touching the results of numerous applications to foreign governments for the extradition of fugitives from the justice of the State of New York.

It is to be regretted that we are unable to give the results of applications in the majority of cases for the extradition of criminals who have sought refuge in British North America. In the countries in which diplomatic representatives reside the result of the application is given if the fugitive was found. The information from the consuls in Canada is meager. It is also to be observed that information has not been obtainable as to the surrenders granted under the border States clause in the treaty between the United States and Mexico. It is very seldom that a case arising under that clause is brought to the attention of the Department of State.

An index has been added to the present edition of the report.

J. B. M.

APPENDIX A.

PROVISIONAL ARREST AND PROCEDURE

No. 18.] DEPARTMENT OF STATE,
Washington, January 28, 1889.

JOHN R. PARKHURST, Esq.,
&c., &c., &c., Brussels:

SIR: I have to acknowledge the receipt of Mr. Tree's dispatch, No. 406, of the 31st of October last, in which he informed the Department of the provisional arrest and detention by the Belgian authorities, upon the request of this Government, through its legation at Brussels, of one Sambalino, who has since been extradited to the United States.

With his dispatch Mr. Tree inclosed a copy and translation of a note of his excellency the Prince de Chimay, Belgian minister of foreign affairs, bearing date the 27th of October, and responding to Mr. Tree's request for Sambalino's provisional detention. His excellency states that the consul of the United States at Antwerp had solicited the temporary arrest of the fugitive, who had, accordingly, been detained at Antwerp since the 19th of October. His excellency then observes that the convention between the United States and Belgium of the 30th of June, 1882, does not contain any stipulation determining the conditions under which provisional arrest may be claimed from the Belgian Government and reciprocally from the Government of the United States. His excellency further states that until 1886 the telegraphic requests of the Belgian Government for such arrest had been welcomed by the Secretary of State of the United States and the judicial authorities in this country; but that a change then took place. The Belgian Government, he states, having solicited the temporary arrest of two fugitives, named Mandelius and Edelhausen, the Secretary of State informed His Belgian Majesty's representative at Washington, on the 2d of August, 1886, that, although the Department of State had in some preceding cases issued a warrant with a view to the arrest of fugitive criminals without waiting for the presentation of formal evidence of the offense charged, such a proceeding would not be followed thereafter unless expressly authorized by treaty stipulation. It is remarked, however, that in the note conveying this decision the Secretary of State observed that the provisions of section 5270 of the Revised Statutes of the United States were sufficient, in the absence of treaty stipulations, to cover the case then under consideration. But the minister of foreign affairs states that the judge at New York decided differently, and that subsequently the Belgian chargé d'affaires at Washington unsuccessfully endeavored to secure an additional provision in the treaty to secure arrest on telegraphic information.

It does not appear by our records in what form the question above stated came before a judicial magistrate in New York; whether he gave his opinion in a case actually before him, or merely by way of advice in advance of a case arising. But in the view the Department takes of the subject these considerations are not material.

At or near the time when this Department, in 1886, notified the minister of Belgium, in the case of Mandelius and Edelhausen, that the issuance of preliminary certificates to obtain the provisional arrest of fugitives had been discontinued, save in cases of explicit treaty requirement, applications for such papers were made by other governments than that of Belgium and refused. It is well known that the issuance of these so-called warrants of arrest was not required by any statute of the United States, but was begun many years ago, and practiced from time to time, in consequence of the opinion expressed by some of our judges that our judicial magistrates possessed no jurisdiction to entertain proceedings for the apprehension and committal of alleged fugitive criminals without a previous requisition from the government of the country in which the offense was committed upon the President of the United States, and the obtainment of his authority for such proceedings.

In recent years, however, there had been a decided preponderance of opinion to the effect that the intervention of the President was not essential, under our laws, to secure the arrest and detention of fugitives from justice in this country, and in consequence of this, and as no such intervention was expressly authorized, the Depart-