Writing a Transnational (Global?) History of Extradition Law in the Short Twentieth Century: Beyond Western-Centric Approaches

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Abstract

The article examines the history of extradition in the twentieth century, to call for a broader engagement with extradition law not only as an under-explored chapter in international law in its own right, but also as a pathway to think more deeply about world-ruling projects. Extradition law, normally thought of as primarily bilateral, in fact has a long and rich history of multilateral engagement. This tension between multilateralism and bilateralism, we argue, showcases the role of technique to hide political projects in international law-making, as well as showcasing the need to include more non-Eurocentric voices in our narratives about the design of international law instruments and institutions. European nations in the period we survey were more invested in bilateral efforts, claiming the impossibility of multilateral treaty-making in extradition law; yet, Latin American states successfully undertook multiple initiatives in this realm, which are often excluded from mainstream narratives, at the cost of buying into a biased narrative of bilateral treaties that neglects how extradition law has been used to shape and hide key political tensions. In light of these findings, the article puts forth a research agenda that takes extradition more seriously into our accounts of the evolution of international law.
Keywords

transnational history – extradition – Latin America – multilateralism – interwar period

1 Introduction

Extradition law occupies a prominent place in international relations as a component of the international criminal justice system. Generally defined as the handing over of individuals who are accused or convicted of a criminal offence by one state to another which intends to prosecute or punish them in accordance with its laws, extradition procedures appear as an essential tool of international law enforcement, both in relation to domestic crime and, increasingly, transnational crime.\(^1\) In other words, international criminal law for our purposes consists of procedures for cooperation between states in the execution of their national criminal law, with extradition being often a key step for a state to gain enforcement jurisdiction.\(^2\) At the same time, extradition law has become ever more important in recent years given the spread of transnational criminal organisations, including those involved in terrorism, drug and human trafficking, counterfeiting, and cybercrime. The rise of the European Arrest Warrant in the early 21st century speaks to the growing importance of extradition. Whereas globalisation offers limitless opportunities for criminal actors to engage in illicit activities, law enforcement agencies typically operate within strictly delimited national boundaries and jurisdictions. Thus, in the era of transnationalism, cooperation through the use of international extradition has begun to emerge as a potentially promising tool for countries seeking to extend the long arm of the law beyond borders. However, extradition remains one of the long-standing un- or under-addressed issues in international law. Part of the problem stems from the fact extradition law lies at the intersection between diplomacy and foreign relations law.\(^3\) After all, extradition involves

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\(^3\) On the constant discussions about what is ‘political’ and what is (or should be) ‘legal’ within the context of international law, see Payk, Marcus M. and Kim Christian Priemel, eds. Crafting the International Order: Practitioners and Practices of International Law since c.1800 (Oxford:
surrendering of criminals by one country to another through diplomatic means, thus making the interplay between law and diplomacy inescapable.\textsuperscript{4}

Despite the importance of extradition within international law in an increasingly globalised world, to this day there is no study that looks at the evolution of this area of law during the twentieth century. Further, the few studies that examine the history of extradition present at least four shortcomings. First, scholarship has tended to neglect projects of multilateral cooperation in the field of extradition law. This oversight is based on the premise that “the use of extradition in treaties has been primarily bilateral and rested heavily on the [principle] of reciprocity”.\textsuperscript{5} As this article shows, though, the history of extradition law is filled with projects of multilateral cooperation since the nineteenth century; even though bilateral agreements remained the majority, that does not mean one can make sense of the full potential of extradition law without multilateral agreements.

Second, and crucially, the bulk of work on extradition takes a rather Western-centric perspective.\textsuperscript{6} In this regard, scholars have mainly focused on the great (North Atlantic) powers and their role in debates about extradition law. Even though there are studies that look at bilateral extradition treaties signed by Western countries with non-Western states, the focus tends to be on implications for the Western party.\textsuperscript{7} The most notable exception to this trend

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\item In fact, there is the general notion that the study of international law has largely been done from a Western-centric prism, at least until very recently. Fassbender, Bardo and Anne Peters, eds. \textit{The Oxford Handbook of the History of International Law} (Oxford: Oxford University Press, 2012).
is the book “México y la Extradición Internacional” by Sara Pérez Kasparian. In it, the Mexican legal scholar highlights Inter-American multilateral efforts to achieve the systematization of the norms that regulate the extradition procedure. Although her primary focus is on Mexican practice, the book still opens a relevant avenue for research which this article seeks to expand. Indeed, in the following pages we will show how some of the most important developments in extradition law originate in Latin America, probably the most dynamic region in this particular field of international law.

Third, current scholarship tends to overlook certain periods of time in the history of extradition; overall, there is the general narrative that the most important developments took place in the nineteenth century (when the bulk of the bilateral treaties were signed), and from the 1980s onwards, when important steps were taken (mostly by the United Nations) in the context of the fight against transnational crime (especially the war on drugs), and culminating with the European Arrest Warrant in 2004. Nevertheless, this article will evidence that the advances of the 1980s, relevant as they might be, were clearly connected to the debates and initiatives which had taken place in previous decades. Specifically, it is important to look at the developments taking place after the two World Wars, with particular emphasis on the impact of the prosecution of war criminals.

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9 Ibid., 14–37 (‘Cambios y avances en la visión latinomericana’) and 223–287 (‘México en la Organización de Estados Americanos’).


Fourth, there is no study that merges historical and legal approaches. Whereas legal scholarship in this area falls short by decontextualising extradition and focusing exclusively on technique, historical scholarship does the reverse, focusing almost entirely on the broader context but losing sight of how the broader context actually impacted upon and shaped technique.\textsuperscript{12} Bringing the two fields together, as we do here, therefore allows us to map and critique the dual registers in which extradition law operates: as legal-technical tools that, through their technical design, can enshrine, perpetuate, and only occasionally challenge political assumptions about criminality, world-making, and the place of subaltern persons and nations in global ordering.

All in all, this article narrates the recent history of extradition law from a global perspective that includes non-Western actors. Following the work by Sebastian Conrad, we believe that this approach is better suited to explain the evolution of extradition law during the twentieth century, since we understand it as a process that transcend borders and boundaries, given that global history’s main focus lies on “the circulation and exchange of things, people, ideas, and institutions.”\textsuperscript{13} We note, however, that “global history” does not necessarily imply worldwide coverage. In this case, by looking at the debates within networks of legal scholars, politicians and diplomats in Western Europe, the US, Central America and South America, it is possible to identify the most important threads of a discussion which clearly had ramifications worldwide. Moreover, through the prism of global history, the International Organisations (IOs) and international associations analysed in this article appear as crucial spaces where new legal-political ideas around the figure of extradition and plans were discussed, exchanged and, in some instances, implemented. Understanding this type of circulation located at the intersection between international networks and specific groups within different national and transnational societies becomes essential because, as Sandrine Kott has elucidated, it was there “where internationalism was brought into being.”\textsuperscript{14}

By looking at attempts to achieve multilateral cooperation, this article also suggests the adoption of a different chronological framework which takes seriously the developments in the period between the end of the First World War and the end of the Second World War. Finally, this article fills a methodological gap by combining historical and legal approaches. In doing so, we will be able to shed light on one of the most challenging elements in international law, and examine the evolution of power relationships, strategic dynamics, and political considerations related to extradition, and how this legal figure has been used as a foreign policy tool.

Fundamentally, we argue that extradition law cannot be fully understood without this non-Western history. These events, against Eurocentric received wisdom, showcase extradition connected to multilateralism for much longer than we usually assume in the field. The result of this earlier push for multilateralisation is that extradition becomes much more open to global political dynamics than bilateral treaties would suggest, which helps better situate the ways in which central tenets of extradition law have evolved over time. Further, the earlier push for multilateralism inserts extradition law more squarely in the realm of international human rights law and national sovereignty entanglements. These connections evidence extradition law’s more prominent role in global legal ordering, and how legal technique (encapsulated in the usual narrative about extradition law) does significant work in creating and hiding the architecture of international legal projects (contained in struggles around sovereignty and human rights). We therefore contribute to the general literature on extradition law by making extradition clearly an integral part of international legal structures, rather than a technical bilateral mechanism more often than not described only in the intersection between domestic and international law. This shift is meaningful to understand the role of technique more broadly in forwarding, hindering, or hiding political projects of global ordering.

In what follows, we will first briefly describe the basics of extradition law, to situate the examples and legal mechanisms that appear in our historical narrative. Said timeline starts with the development of extradition law in the first third of the century, focused on Pan-American conferences. Next, we look at the impacts of the Second World War on the mechanics and politics of extradition law. The practice we discuss underscores the mismatch between Eurocentric and other narratives, and the marked contribution of Latin America in the evolution of extradition law. Before concluding, we add a section laying out an agenda for re-imagining research in extradition law on the basis of the lessons gleaned from our narrative. Concluding remarks follow, reinforcing the stakes of reimagining extradition law and its history.
Extradition Law at a Glance

Extradition law is, in short, about the surrender of an individual sought for a crime who is under the jurisdiction of one state (the requested state) to another state (the requesting state). This procedure requires a specific international legal agreement involving the affected states, and, because the dynamics are fundamentally bilateral (requesting and requested states), the assumption is that extradition law operates fundamentally on the basis of bilateral treaties (as opposed to multilateral ones, which would require multiple parties, within which a set of two would engage in extradition proceedings at any one time). The focus on bilateralism creates an impressive and entangled network of bilateral relationships that works to make these treaties appear as technical and of relatively low importance. The effect of this work is for the technique behind extradition to be foregrounded at the expense of the political choices underlying and driving the negotiation and renegotiation of these agreements. Further, the existence of so many treaties sharpens the need for historical contextualisation to unpack the stakes of extradition behind the relatively mundane technical implementation of international cooperation in criminal affairs.

Despite this web of bilateralism and its effects, some basic rules about extradition can be distilled as being of general application. Note that the focus on distilling rules also evokes the technical register of extradition (making sense of the myriad instruments), at the expense of understanding the political stakes underlying extradition (which one assumes are too diverse to fit one coherent narrative). From a technical standpoint, in order to be successful, extradition needs to meet three fundamental requirements. The first requirement is that of double criminality, meaning that the conduct for which extradition is sought must be a crime in both the requested and requesting jurisdiction. Relatedly, the crime must be listed in the relevant extradition treaty as one for which extradition may be sought, in line with the legality requirement for criminal law, despite there being a tension with the fact that prosecution is only sought in the requesting state. Partly in response to this tension, a question that has informed many of the difficulties in harmonising extradition law, as we will see below, is whether defining extraditable offences on the basis of

16 Ibid.
the severity of the possible punishment (instead of enumerating all possible offences) is sufficient to meet this legality requirement, which is a well-known requirement in international human rights law.

The second requirement is that of specialty, which determines that the person being extradited can only be prosecuted for the conduct for which they were extradited, and no other crimes. This rule reinforces double criminality and protects the person being extradited from having to face charges for crimes for which no prima facie case had been made ahead of their surrender. The third requirement is that the extradition complies with basic human rights requirements such as the ones contained in double criminality and specialty, but also there is general agreement that a requested state which does not accept the death penalty may refuse to extradite to a requesting state that may impose the death penalty for the relevant conduct.

Assuming all these requirements are met, extradition can proceed. There is still, however, one overarching exception to extradition. In general, it is assumed that extradition does not apply to crimes of a political nature. This doctrine is known as the political offences exception, and is closely related to the practice of granting asylum to those fleeing persecution from their homelands. The political offences exception is generally considered to be a general principle of international law, binding upon all states. The use of this exception has been in steady decline since the advent of treaties on international crimes (whether genocide, war crimes, terrorism, or transnational organized crime), but it is still normally thought of as a general principle underlying extradition law.

Asylum, relatedly, is the practice of granting refuge to someone being sought for political crimes, and it is a particularly important doctrine in Latin America, being recognised as a norm of regional customary international law in the region. In other words, Latin America is more invested in safeguarding the rights of alleged criminals being sought for their political conduct than other

18 Ibid., 65.
19 Ibid.
21 See generally ICJ, *Asylum Case (Colombia v. Peru)*, Merits, Judgment of 20 November 1950, ICJ Reports 266, 1CGJ 194. For a more contemporary discussion, see IACtHR, *The Institution of Asylum, and its Recognition as a Human Right under the Inter-American System of Protection (Interpretation and Scope of Articles 5, 22(7) and 22(8) in Relation to Article 1(1) of the American Convention on Human Rights)*, Advisory Opinion OC-25/18 of 30 May 2018, Series A No. 25.
parts of the world, which is one of the reasons why the Americas have been particularly invested in developing international extradition law.

Extradition, even though framed as an instance of primarily cooperation between Judiciaries in the requesting and requested states, in fact also involves the Executive branch inasmuch as the Executive branch holds the prerogative for foreign affairs, and therefore all requests are channelled through it. Further, as a result of this role of the Executive, the Executive has final sign off on whether to request the extradition, or grant it. States can deny extradition requests after being granted by their Judiciaries via Executive fiat, which works as a pathway to use the political offence exception, and the doctrine of asylum.

This basic description of the mechanics of extradition underscores that it is often a fairly technical exercise (requiring checks on double criminality and speciality), involving the exchange of extensive diplomatic correspondence and the activity of the Judiciary. Extradition, however, is also closely intertwined with the political nature of crimes, and the ways in which states can politically, via their Executive branches, react to requests for extradition. While often anchored in bilateral efforts, there are basic commonalities that support multilateral action, and the idiosyncrasies of Inter-American international law have prompted states in this region to lead thinking about extradition as an integral part of international legal ordering. To these efforts we move next.

3 From Montevideo to Montevideo: Key Developments in International Law during the Interwar Years

Latin American legal scholars had been at the forefront of innovative developments in extradition law since the end of the nineteenth century. The best example was the First South American Congress of Private International Law, an international congress on private international law (or conflict of laws) and an ad-hoc codifier forum of international conflict of laws treaties held in Montevideo from 25 August 1888 to 18 February 1889. During this congress, eight treaties and an additional protocol were adopted that covered practically all the subjects of conflicts of laws of that time. These agreements were pivotal for the legal world: they were some of the first treaties on conflict of laws to come into force in the world. The conference also had an enormous impact

on extradition law through the Montevideo Treaty of International Penal Law of 23 January 1889. Ratified by Argentina, Bolivia, Paraguay, Peru, and Uruguay, the agreement contained extensive provisions on extradition. Among other things, it determined that the speciality principle only applied for the first prosecution of the person being extradited. In relation to the political offences exception, the treaty protected it, and determined that whether the crime was political would be determined by the requested state. This treaty attempted to create uniform extradition law for the region, overcoming many of the complexity obstacles raised by European powers in their regional relations, partly perhaps because of shared cultural roots and Iberian languages. It also established clear rules for when extradition could be refused, and on what grounds.

The 1889 Montevideo treaty opened the door for more advancements regarding extradition in South America. Thirteen years later, on 18 July 1911, the republics of Ecuador, Peru, Colombia, Bolivia and Venezuela held the Congreso Bolivariano de Caracas to continue advancing down the road of multilateral cooperation in legal affairs. During this meeting, the governments of these five countries signed an agreement on extradition which further specified the crimes and transgressions for which citizens could be mutually delivered to one another. This treaty further advances the possibilities of multilateral extradition regimes as a pathway for cooperation in the continent, evidencing trust in the concept and implementation of multilateral extradition, which had hitherto been considered unfeasible in Europe.

This treaty encapsulates relevant shifts in extradition practice. Importantly, this treaty included in the list of crimes including two international crimes (piracy and slavery), which later become the seeds to further weaken the political offence exception, protected in this treaty in fairly broad terms. An important distinction in relation to the 1889 treaty has to do with the statute of limitations applicable to the crimes for which extradition is sought: whereas the 1889 treaty requires that the statute of limitations be assessed under the

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24 Ibid., art. 26.
25 Ibid., art. 23.
27 Extradition Agreement between Bolivia, Colombia, Ecuador, Peru and Venezuela, 18 July 1911, Ven. Tr. Ac., 11, 435, 214 CTS 129.
28 Ibid., arts. 2(22) and 2(23).
29 Ibid., art. 4.
requesting state’s law.\textsuperscript{30} The 1911 treaty determines that the statute of limitations is to be considered under the law of the requested state.\textsuperscript{31} The 1911 treaty also included an exception allowing for extradition to be refused when the requested state wanted to impose the death penalty but the requesting state was against it.\textsuperscript{32} Lastly, under this treaty, states recognise asylum as a general exception ‘according to the principles of international law.’\textsuperscript{33}

The ripples of these developments eventually made it past Latin America, in the form of a global trend. By the beginning of the 1920s, there was already a fever for international cooperation on legal aspects that ran extremely high worldwide. As U.S. legal scholar John Mervyn Jones wrote, ‘These were days when the movement in favour of the codification of international law, especially the international law of peace, reached a height of enthusiasm which it had never before, and has not since, attained.’\textsuperscript{34} Specifically, this trend reflected the modern tendency to regard crime as transnational, and to broaden extradition accordingly.

It was not long before these discussions took root within the League of Nations, whose legal committees were already considering the possibility of improving extradition as a branch of international law. In this case, the memory of certain events of the First World War also acted as an important catalyst in the process. Indeed, the numerous crimes committed beyond national borders, plus the issue of deserters convinced many legal scholars in Geneva that the nineteenth century agreements that regulated extradition from an exclusive bilateral level were no longer sufficient.\textsuperscript{35} In this context, a post-First World War example is illustrative because of its notoriety, which has helped shape many of the assumptions in the field since, underscoring the limitations of traditional conversations about extradition. The German failure to obtain the extradition of Kaiser Wilhelm II from the Netherlands highlighted these shortcomings in stark relief. After the signing of the Treaty of Versailles in 1919, Wilhelm II was charged with ‘a supreme offence against international morality and the sanctity of treaties’ and the allies demanded his extradition.\textsuperscript{36} Queen Wilhelmina of the Netherlands refused and granted him political asylum and on 23 January 1920, the government of the Netherlands officially communicated

\textsuperscript{30} Treaty on International Penal Law, 1889 (n. 33), art. 19(4).
\textsuperscript{31} Extradition Agreement, 1911 (n. 34), art. 5(b).
\textsuperscript{32} Ibid., art. 10.
\textsuperscript{33} Ibid., art. 18.
\textsuperscript{34} Jones, ‘Modern Developments’ 1941 (n. 17), 113.
\textsuperscript{36} Schabas, William A. The Trial of the Kaiser (Oxford: Oxford University Press, 2018).
its decision to refuse the extradition request against the former Kaiser of Germany. The case was extensively covered by international media of the time, and the Dutch refusal led legal scholars working inside the League of Nations to realise that extradition law was outdated, inadequate to deal with the most pressing issues of the emerging post-war society.

In this context, a Sub-Committee of the Committee of Experts of the League of Nations was asked in 1924 to consider whether there were problems connected with extradition which it would be desirable to regulate. John Leslie Brierly, British lawyer and professor in the field of international law in 1925 became the main rapporteur and hurried to produce a paper on the matter. In this regard, it is noteworthy that Brierly’s report on the desirability of an international convention to regulate extradition started by referencing the recent multilateral extradition treaties stipulated on the other side of the Atlantic. There is little doubt that the British lawyer was well informed about the abovementioned initiatives undertaken by countries in South and Central America, developments which had an undeniable impact on his own report about the subject.

In it, Brierly, who would also teach at the Hague Academy of International Law after 1928, argued that extradition between states called ‘for a certain degree of mutual confidence in each other’s judicial institutions’, and that a general convention on the subject might be desirable. This report was quickly supported by Charles de Visscher, legal advisor to the Belgian Foreign Ministry and Dean at the Ghent University faculty of law, where he also taught courses on civil law, criminal law and private international law. In the case of the Belgian scholar, his inspiration by the Latin American model is even more evident. In fact, he argues that many of the issues raised by Brierly in his report would be better addressed through “a general convention analogous to the Montevideo Treaty” of 1889. Indeed, De Visscher, who would eventually become a judge at the Permanent Court of International Justice, explained that the obvious problems related to extradition law (including the difficulties of generating a single


39 League of Nations, Archive of the League of Nations (ALN), Study, by the Committee of Experts for the Progressive Codification of International Law, of the Question of extradition. Report by Professor J. Brierly, on behalf of the Sub-Commission, File No. R1294/19/47295/47295, 7 December 1925.
list for extraditable crimes, which is a legal harmonisation question tied, in De Visscher’s view, to the need for harmonised substantive criminal law) should not discourage governments from ‘undertaking measures of codification limited to those points upon which an agreement in the form of a convention seems already to be possible and desirable.’ In essence, an important part of the transnational community of legal scholars working within the League of Nations embraced the idea of putting forward a multilateral treaty to regulate extradition; this development, however, would not have been possible without the previous circulation of some of key ideas and points of reference that came from the other side of the Atlantic.

Nevertheless, the initial support and the ensuing hope for a multilateral solution quickly came to a halt. Indeed, the Committee of Experts for the Progressive Codification of International Law headed by Hjalmar Hammarskjöld and Joost Adriaan van Hamel finally decided that projects for such regulation had to be temporarily postponed. According to the two legal scholars, even though the suggested solution to aim for an international agreement appeared very desirable, the difficulties were too great for such solution to be achievable in the near future. Notably, these difficulties included several issues related to sovereignty (such as the difficulty of reaching agreement on the definition of political offence, and the extradition of nationals), and what later became known as human rights (such as the relationship between extradition requests and asylum, as well as the matter of whether extraditable offences could be defined on the basis of the degree of punishment, rather than the narrower reading of legality in double criminality).

It is clear that the community of legal scholars working in the project within the LoN (most of them coming from Western Europe) was more divided than what it might have appeared at the beginning. Be that as it may, the preliminary
suspension of the Brierly report dealt a considerable blow to the League of Nation’s pursuit of multilateral extradition agreements for the interwar international society. In fact, the issue of multilateral extradition began to lose relevance as the new decade confronted the League of Nations with new challenges. As Mervyn Jones explained in a lecture in front of the Grotius Society on 16 July 1941,

> It is not perhaps surprising, therefore, that, if agreement on so comparatively un-political and technical a matter was not thought practicable, agreement on the larger questions which touch the life of the average man should have become progressively more difficult to achieve.44

The stagnation of multilateral extradition law within the League of Nations, contrasted once again with the dynamism in Latin America. In 1928, Latin American countries ratified the Bustamante Code (also known in Spanish as Código de Derecho Internacional Privado), a treaty intended to establish common rules for Private International Law in the Americas. This treaty is one of the first instances in which extradition is treated not as a discrete legal-technical mechanism, but as an integral part of an ambitious international regulatory framework, which, as we will see below, sets an example for important developments in future decades. The common ideas of the treaty were developed by the Cuban legal scholar Antonio Sánchez de Bustamante y Sirven, and solidified during the Sixth Pan American Congress held in La Havana in 1928. The treaty was not widely accepted: the United States withdrew in the middle of negotiations; Mexico and Colombia did not sign it; Argentina, Uruguay and Paraguay decided to abide by the rules of the earlier Treaties of Montevideo with regard to private international law instead; and the countries that did ratify the Code did so with extensive reservations. Still, the treaty was important for extradition law because it solidified a set of rules which sought to regulate the conditions under which certain criminals could be delivered among the states parties.45

However, the most important development regarding extradition law of the interwar years was the convention signed in Montevideo on 26 December 1933. This convention was drafted during the Seventh International Conference of

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44 Jones, ‘Modern Developments’ 1941 (n. 17), 113.
45 The signing countries were: Argentina, Bolivia, Brasil, Chile, Colombia, Costa Rica, Cuba, República Dominicana, Ecuador, El Salvador, Guatemala, Haití, Honduras, México, Nicaragua, Panamá, Paraguay, Perú, Uruguay, Venezuela. Convención sobre Derecho Internacional Privado (Código Bustamante), 20 February 1928, Organization of American States.
American States. The Convention is best known in international law circles for codifying the declarative theory of statehood (now accepted as part of customary international law), but it also contains provisions on extradition as an integral part of this ambitious international legal ordering project. The conference is also notorious because it was when the United States President Franklin D. Roosevelt and Secretary of State Cordell Hull declared the Good Neighbour Policy, which opposed U.S. armed intervention in inter-American affairs. The convention was signed by nineteen states. The acceptance of three of the signatories (Brazil, Peru, and the United States) was subject to minor reservations. The convention entered into force on 26 December 1934. This convention supplemented the Havana Convention by stating that asylum did not apply to ‘those accused of common offenses who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice,’ or to deserters. Further, it established that the state offering asylum had the right to determine whether or not the offence of which the refugee is accused is political. Last, political asylum was not subject to reciprocity.

Extradition law further developed in the Americas through the Central American Extradition Convention signed at Guatemala City on 12 April 1934. These changes caught once again the attention of the transnational network of legal scholars who was still pondering the potential advantages in trying to emulate the South American model worldwide. However, the previous experience with the League of Nations persuaded many of them that a global endeavour perhaps needed a more cautious and incremental approach than their South American counterparts. The logic was that, if the Codification Committee of the League of Nations (the Hammarskjöld Committee) set up in 1926 had stipulated that extradition was not a matter ripe for regulation by a general international convention, these objections to a general convention could not apply to a model treaty. In this regard, the main advantage of a model treaty was that it could be modified to suit the requirements of any pair of countries, or even any group of countries which chose to take it as the

basis of their extradition practice. As the U.S. legal scholar Albert Lieck argued in 1933,

when the promoters of the model treaty speak of a ‘normal model extradition treaty applicable to all States with the same legal culture’ they are dealing with something practicable. When they profess to aim at general agreement of all States ‘with an advanced legal system’ they are undertaking a task which in the present condition of things is next to hopeless.49

This quote highlights one of the key challenges of legal codification and harmonisation: that states focus on idiosyncrasies in their extradition practice, as well as assume certain narratives of practice of countries that are more or less ‘advanced’, as pretexts not to take action in this realm. In this way, certain (particularly Western European) states find reasons not to harmonise their extradition law, based on and fostering intra-European animosity in an European continent still reeling from the turmoil of the War, whereas Latin America, more dedicated to ideas of sovereign equality and regional solidarity and drawing on a more embedded tradition of shared identities, is able to advance in the codification of extradition law. To focus on the challenges of Europe at the time without a clear connection to the disfunction animating general diplomatic relations in the region, and to ignore the comparative success of Latin America at the time, yields a narrative of extradition law that is grounded on bilateralism as the only viable way, hiding the diplomatic posturing that drove European practices to bilateralism in favour of an ostensibly neutral narrative about technical legal cooperation.

Focusing on the possibilities in Latin America instead of the challenges raised by European legal scholars within the League of Nations, the Research in International Law organised under the auspices of Harvard Law School prepared a draft of an international convention for the law of extradition. Previously, this group of prominent legal minds from academia, the U.S. State Department, judges at international courts, and beyond,50 had


50 The Research in International Law group was directed by Manley O. Hudson. Manley Ottmer Hudson (19 May 1886–13 April 1960) was a US lawyer, specialising in public international law. He was a judge at the Permanent Court of International Justice (since 1936), a member of the International Law Commission, and a mediator in international conflicts. The American Society of International Law named a medal after him; as did Harvard University and University of Missouri School of Law with a professorship. He was nominated twice for the Nobel peace prize. He became editor of the American...
drafted international instruments on each of the subjects then placed on
the agenda of the League of Nations’ First Conference for the Codification of
International Law in 1930: Nationality, Responsibility of States for Injuries to
Foreigners, and Territorial Waters.\textsuperscript{51} Although the work of this group did not
represent the views of the Government of the United States, it still showed
the position of American jurists and scholars after thorough consultation, and
as such ‘it is hoped that they may merit the attention of persons interested
in the codification of international law.’\textsuperscript{52} This group relied heavily on Latin
American experiences, showcasing the advances made in the field of extradi-
tion and listing regional multilateral efforts, particularly Montevideo, as exam-
pies to drive global codification efforts.\textsuperscript{53}

These multiple efforts at drafting model treaties did not supplant previous
goals, however, and plans for the adoption of a multilateral agreement contin-
ued to be debated. Despite the trepidations of many legal scholars in Europe
and the U.S., there were still groups and associations who continued to push
for more ambitious agreements. One notorious example is the International
Penal and Penitentiary Commission (IPPC), which placed efforts in extradi-
tion more squarely in the domain of criminal cooperation, and away perhaps
from broader efforts at international legal codification in public and private
international law. The IPPC was officially formed in 1925 with a mandate to
collect penitentiary statistics, encourage penal reform and convene further
international conferences. It later affiliated with the League of Nations and
held three conferences in European capitals from 1925 to 1935. Among differ-
ent initiatives, it produced the first set of minimum rules for the treatment
of detainees (the Standard Minimum Rules for the Treatment of Prisoners),

\textsuperscript{51} For a report of this Conference, see Hudson, Manley O. ‘The First Conference for the
Codification of International Law’. \textit{American Journal of International Law} 24(3) (1930),

\textsuperscript{52} The findings of the Research in International Law, including the Draft agreement were
published by \textit{The American Journal of International Law} 29 (1935), Supplement: Research
in International Law.

\textsuperscript{53} Ibid.

In this context, the IPPC prepared a Draft International Convention on extradition which was sent in 1935 to all members of the League of Nations, aimed at ‘the progressive improvement and unification of the law of extradition and its application.’\footnote{Draft International Convention on Extradition, 1935, Archivo General de la Administración (AGA): Box 82/4369, folder R.1361, files 40–52.} This project noted a series of predecessor initiatives in the early twentieth century, which were described as ‘courageous, but lacking in effect.’\footnote{National Archives of the United Kingdom (NAUK), Call by International Criminal Police Commission for international unification of rules: departmental views on proposed model extradition treaty, 1928–1953, Louis Decloux, L’Extradition, Commission Internationale de Police Criminelle (XVII Session – Prague, 6–10 September 1948), folder HO45/24923. Note that the English translation of the text omits the words ‘but lacking in effect’, which we drew from the French original.}

Despite good intentions, the project was postponed indefinitely, largely because international politics were increasingly in turmoil, and therefore extradition law was becoming more and more difficult to practice. These difficulties were best exemplified in a 1935 article by Hermann Mannheim, a former Judge of the Court of Appeal and Professor of Criminal Law in Berlin and now a researcher at the London School of Economics.\footnote{Mannheim, Hermann. ‘Some Recent Problems in the Law of Extradition’. Transactions of the Grotius Society 21 (1935), 109–125.} In this article, also pronounced as a conference in the Grotius Society on 10 October 1935, the German legal scholar argued that ‘the law of Extradition is at present facing a serious crisis.’\footnote{Ibid., 109.} In order to substantiate his claim, Mannheim argued that the number of transnational political crimes was increasing, but the courts continued to operate under strictly national criteria. As examples, Mannheim used the case of the assassination of King Alexander of Yugoslavia and of Louis Barthou at the hand of two Croats called Pavelitch and Kvaternik, residing at that time in Italy, to argue in favour of the institution of an International Penal Court for the trial of persons accused of certain acts of terrorism. For the German legal scholar and prominent anti-Nazi activist, it was essential to restore a balance in the application of extradition law. Extradition is based, Mannheim
explained, upon the confidence of every member of the community of nations in the administration of criminal justice in other states. If this confidence is shaken, he continued, it may happen that not only the requested state may refuse to grant extradition, but also that any state which finds itself distrusted in this matter may try to gain custody over any person it may want to punish without a formal procedure. In brief, Mannheim was showing how the progressive decline of liberal principles across the board was making extradition law increasingly difficult to apply.59

Liberal democracies worldwide were thus confronted with a dilemma which persists today: there was, according to Mannheim, a growing tendency to extend the scope of extradition treaties by developing the doctrine that such treaties were, in case of doubt, to be construed in favour of extradition. As a result, states could abuse that prerogative and unduly persecute certain persons. That was the case with authoritarian regimes who had been trying to use extradition law to capture political enemies. Accordingly, Mannheim argued that ‘In an extradition case more hesitancy [sic] may be shown in adopting a “liberal” construction, lest it should overthrow the safeguards which have been set up by the [sic] municipal law for the protection of both nationals and aliens.’60

The project by the IPPC, despite not acted upon at the time, was recovered in the aftermath of the Second World War by the Commission internationale de police criminelle (CIPC). The organization, ancestor of Interpol created in 1923 to facilitate international police cooperation, became convinced that the new context emerging after the Second World War would allow for the removal of most of the obstacles that had prevented the ratification of an international convention in the field of extradition in the past. Indeed, the organisation now led by the French Director of the Judiciary Police, Louis Doulclocoux, decided to submit the IPPC project for discussion with very few changes after a conference held in Prague in September 1948.61 Although the project still met with resistance by certain governments, especially the British one, it decisively contributed to bring the discussion back to life within Europe.62 In this case, however, it would be the Council of Europe the organism in charge of taking the

59 Ibid.
60 Ibid., 110.
62 Ibid.
initiative up and drafting a European Convention on Extradition which would eventually be signed by all its members in December 1957.\textsuperscript{63}

In the meantime, South American countries continued to advance in the multilateral regulation of extradition and on 4 August 1939, adopted the Treaty on Asylum and Political Refuge.\textsuperscript{64} It stipulated that states which granted diplomatic asylum had no obligation to admit refugees into its territory except where the refugees are not given admission by other states.\textsuperscript{65} It also limited the scope of diplomatic asylum to embassies, legations, men-of-war, military camps, or military airplanes, and to persons pursued for political crimes which were not extraditable.\textsuperscript{66} Asylum would not be granted to persons accused of political offenses who had been indicted or condemned previously for common offences.\textsuperscript{67} States that permitted territorial asylum had to prevent refugees from committing acts which would endanger the public peace of the state from which they came.\textsuperscript{68}

Developments in Latin America highlights the importance of focusing on non-Western contributions to the development of extradition law, the growing role of multilateralism within the transnational community of legal scholars, and the need for legal historians to trace the circulation of these new ideas and practices in the area of extradition at a global level.

In Latin America, international extradition law was increasingly codified across a range of technical issues and significant sensitive areas like asylum and political offences. While several legal scholars outside this region largely treated extradition as too insurmountable a problem for codification, on the basis of arguments about the difficulty of subordinating ‘less advanced’ legal systems to ‘more advanced’ ones. This narrative, where allegedly all of the ‘most civilised’ nations of the time were, simply hides the dysfunctional political stakes of legal cooperation in the continent behind a technical obstacle (lack of harmonisation). The dysfunction continued to be largely ignored during the Second World War, given the emergency of the conflict. But its consequences


\textsuperscript{64} Irrizarry y Puente, Julius. ‘Treaties on Private International Law: Introduction’. \textit{American Journal of International Law} 37(3) (1943), 95–99. See also Treaty on Asylum and Political Refuge, 4 August 1939, Montevideo, available at: https://www.refworld.org/docid/3ae6b9833.html (last accessed on 7 December 2022).

\textsuperscript{65} Treaty on Asylum and Political Refuge, 1939 (n. 58), art. 1.

\textsuperscript{66} Ibid., art. 2.

\textsuperscript{67} Ibid., art. 3.

\textsuperscript{68} Ibid., art. 5.
became particularly apparent at the end of the Second World War, when large numbers of war and other criminals needed extraditing to account for the conflict’s atrocities and generalised upheaval.

4 The Impact of the Second World War

As the war was coming to an end, Allied powers started to devise what Mark Mazower labelled as the blueprints for the golden age; that is, modelling a new international system which was to avoid the issues that brought the world to the 1939–1945 conflict. One of these lessons had to do with preventing the spread of impunity across Europe, which was enabled by a lack of concerted multilateral efforts in relation to extradition. In this regard, restoring the ‘rule of justice’ and prosecuting the crimes committed during the war became two of the top priorities. At the same time, the Allies were worried about respecting the rule of law and the rights of the accused. In the words of the British authorities in charge of the prosecution of war criminals, ‘The object of this procedure [setting of multilateral extradition laws] was on the one hand to see that war criminals were punished, and on the other hand to ensure that justice was done and that persons were not extradited mistakenly.’ Furthermore, the Allied authorities were well aware of the political nature of the proceedings, since ‘extradition may be used as cover by certain powers to obtain persons in whom we are interested.’

Overall, setting new multilateral rules to regulate extradition was not an easy task, because the lines between war crimes and political crimes had become increasingly blurred, underscoring the need for concerted action in understanding the scope and reach of the political offence exception contained in bilateral extradition treaties. Specifically, the Allies were confronted with the challenge of balancing the occasions when criminal and indeed violent actions may be an acceptable means of political activity, with protection which must be afforded by the international community to individual rights,

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71 NAUK, Extradition of Alleged War Criminals, FO1032/2213, 24 September 1948, Telegram from the Control Commission in Germany to the British Legal Adviser.
embodied in the principle of the political offence exception. As a result, diplomats and lawyers in Washington, Moscow, Paris, and London rushed to create mechanisms that would allow for the administering of justice. However, this effort clashed with a crucial problem: a substantial number of the alleged war criminals had managed to flee their countries of origin and were now in hiding, hoping that the different legal systems would protect them from potential extradition. In this sense, the signalling of difference that underpinned the failure of harmonisation efforts in European extradition law, indicated in the previous section, made the holes in the weave of the multitude of bilateral extradition treaties more apparent, and exploitable by war criminals themselves.

Well-aware of these escapes as well as of the shortcomings of existing extradition laws, the Allies started, as early as June 1943, to warn neutral countries


not to grant asylum to fascist leaders and war criminals. These initiatives crystallised in a series of joint declarations issued by the U.S., Britain, and the Soviet Union between the northern hemisphere summers of 1943 and 1944. These declarations were an attempt to ‘secure the maximum authority and publicity for the statement and avoid giving the neutral governments any further opportunity to enter unprofitable argument upon the legal aspects of the question.’

It is relevant to note that the declarations did not actually refer to the case of the so-called ‘Quislings’, traitors who collaborated with forces occupying their countries. Except where Quislings had been charged with committing a war crime, their offences were interpreted as having been committed against the laws of their own country and had to be judged domestically.

The Allies’ subsequent declarations, though, did not stop war criminals from fleeing their countries of origin and taking refuge in other countries (not necessarily neutral). These escapes were the beginning of a long diaspora that was both human and political, and posed to Allied powers the thorny question of how to capture these criminals without breaking existing laws. It should be clarified, though, that war criminals did not always escape to neutral countries. For example, there were several cases of individuals that, due to the circumstances of the war, ended up being captured in Germany, a territory occupied and administered by the Allies since April 1945. The situation was made more complicated by the fact that, unlike after the First World War, in 1945 there was no German government in place. Accordingly, the duty of preventing German nationals from leaving German territory fell upon the Allied authorities. Specifically, it was the responsibility of the supreme authority in the four different zones. The complexity of the situation was adeptly summarised by the Research Branch at the Office of the Chief of Staff when it confessed that it was not ‘possible to guarantee that German ex-officers will not find their way abroad and some perhaps may have done so before frontier and border control could be instituted in the British Zone, or they may have escaped from other Zones.’

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74 NAUK, Correspondence about War Criminals, Traitors and Collaborators, dated 1949. Relates to the Extradition of War Criminals and Provides Details of Several War Crimes. No Reference to Cultural Property, FO 1030/424/1, 1949.

75 Ibid.


77 Examples of these cases can be found in the folder from the British archives: NAUK, War Criminals: Procedure for Disposal and Processing of an Extradition vol. I, FO 1060/823, September 1947-March 1948.

78 NAUK, Extradition of Alleged War Criminals FO1032/2213, 1948 (n. 65), Memorandum for the Legal Division, by the Research Branch at the Office of the Chief of Staff.
Confronted with this situation, many lawyers and diplomats working for the Allies confirmed what they already suspected: that the tools they had at their disposal were not up to the task given the changing realities of the post-war world. In many cases, extradition was still regulated by bilateral agreements signed in the nineteenth century. These were of very little use at that moment since many of the cases under study involved at least three countries (for instance, a German soldier who had committed a crime in Belgium and had fled to Spain). Instead, a multilateral approach was more needed than ever. As a result, extradition law came to the forefront of the Allies’ prosecution of war criminals; the many developments introduced during the following years after long and arduous negotiations thus represent a watershed in the conception and implementation of extradition. In this context, international law became a law of encounter between different legal traditions, between criminals and justice-seekers, between winners and losers of conflict.

At the centre for the multilateral approach to the problem of extradition of war criminals was Law No. 10 passed by the Control Council for Germany on 20 December 1945. This piece of legislation, entitled ‘Punishment of persons guilty of war crimes, crimes against peace and against humanity’, contained an entire article (article 4) that set the basis for future extradition procedures (even if the word extradition was never mentioned). Indeed, the law stipulated that

> When any person in a Zone in Germany is alleged to have committed a crime, as defined in Article II, in a country other than Germany or in another Zone, the government of that nation or the Commander of the latter Zone, as the case may be, may request the Commander of the Zone which the person is located for his arrest and delivery for trial to the country or Zone in which the crime was committed.

To facilitate the implementation of Law No. 10, the Allies supported the creation of the United Nations War Crimes Commission (UNWCC), that investigated

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79 Just to give an illustration of the magnitude of the problem, the British authorities drafted at least 20 different sets of instructions on how to deal with extradition procedures at the end of WWII.


81 Law No. 10 passed by the Control Council for Germany on 20 December 1945. This law also addressed potential conflict situations in which different countries might be requesting the extradition of the same criminal, thus establishing an order of priority actors with the United Nations at the top.
allegations of war crimes committed by Nazi Germany and the other Axis powers in the Second World War. The Commission was supposed to gather and record evidence of war crimes, identifying where possible the individuals responsible. Further, it should report to the concerned governments cases in which it appeared that adequate evidence might be expected to be forthcoming. As the British Legal Advisors elucidated,

... listing by the UNWCC was taken as evidence of prima facie case, and in general, was accepted as sufficient evidence, but the Military Governor, owing to his ultimate responsibility for all extraditions from the British Zone, reserved to himself the right to make further enquiries in any case where any doubt appeared to exist.82

Besides Law No. 10 and the UNWCC, the Allies could also resort to traditional diplomatic and intelligence channels, especially for these countries like Spain, Portugal or Argentina, which had remained neutral for most of the war, and had received many war criminals since the end of the war. As the Research Branch at the Office of the Chief of Staff told the Legal Division, 'The only course in these above cases would seem to be the application of Allied diplomatic or other pressure on the country concerned.'83 The objective of these newly elaborated procedures was on the one hand to see that war criminals were punished, and on the other hand to ensure that justice was done and that persons were not extradited mistakenly.84

However, the system put in place already in 1945 quickly showed major shortcomings. The problem with Control Council Law No. 10, Article IV was that it remained the only published law in force providing for extradition from the Allied zones of Germany. All other extraditions had to be ordered under the Authority of the Military Governors, but not in pursuance of any ordinance or any other legislation. Accordingly, German lawyers representing war criminals started sending petitions against refusals by the High Court to

82 NAUK, Extradition of War Criminals FO1060/1108, 1947–1949 (n. 64), Notes of a Conference held on the 17th of December 1947 on the occasion of the visit of the Netherlands Officials from the Ministry of Justice and others concerned with the extradition of war criminals and traitors.

83 NAUK, Extradition of Alleged War Criminals FO1032/2213, 1948 (n. 65), Memorandum for the Legal Division, by the Research Branch at the Office of the Chief of Staff.

84 NAUK, Extradition of War Criminals FO1063/1108, 1947–1949 (n. 64), Notes of a Conference held on the 17th of December 1947 on the occasion of the visit of the Netherlands Officials from the Ministry of Justice and others concerned with the extradition of war criminals and traitors.
make orders in the nature of Habeas Corpus. And, on reading the petitions and affidavits filed in these proceedings, and after hearing the arguments of various attorneys appearing for the petitioners, the Allies’ legal services began to feel that the ordering of extradition without a law governing the matter was ‘having certain undesirable results’ since it showed the difficulty to reconcile these extraditions with the rule of law. ‘All this, in our opinion, creates a genuine perplexity for the German lawyers and does not help to build up respect for and confidence our administration of justice.’

As for the UNWCC, one of the most important issues was that the Commission had no power to prosecute criminals by itself. It merely reported back to the governments of UN member states. Moreover, there was the issue of how to label a war criminal: in many cases, the distinction between a Quisling and a war criminal was very tenuous. Finally, there was the issue of speed. As the Chief of the Legal Division of the Headquarters of the Control Commission for Germany wrote to the Chief of the Norwegian Military Mission, Major-General CJ Helgeby, in March 1948

Extradition proceedings of necessity are slow. In particular is this the case where the initial information supplied by the demanding Power does not provide sufficient material for me or my advisers to decide whether a case for extradition has been made out, and further information needs to be called for.

As a result of these inconsistencies, the prosecution and extradition of war criminals after the war registered some successes but also resounding failures.

Accordingly, the Allies held many meetings between 1947 and 1948 in order to smooth things over. In the case of Britain, the first comprehensive instructions were drafted in the German city of Lubbecke in June 1947. It was agreed that individuals listed as war criminals by the UNWCC should be arrested before the case against them was investigated. At first, arrest and extradition of war criminals was partly in the hands of the Intelligence Services. However, this situation changed in 1947, when it was established that the Control Commission must be informed when important people are arrested:

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85 Ibid., Letter to the Principal Legal Adviser in Berlin from Graham Rogers, and LM Inglis, Judges in the Court of Appeals, 6 May 1949.
87 Plesch, Human Rights after Hitler 2017 (n. 7).
‘Where there are likely to be political repercussions’.\textsuperscript{88} Extradition had now to be authorised by an Order similar to a Deportation Order to be framed by Legal Division, and signed by the Chief Commander of the Zone. Further, it was established that ‘War Criminals wanted by Americans could be extradited and an amendment should be sent out to the previous “stop” order, lifting it for all American requests.’\textsuperscript{89} Another change was that whereas before Allied War Crimes Missions submitted applications to War Crimes Groups (NWE) who, after scrutiny, passed such applications to Legal Division, now, applications are submitted directly to Legal Division by Allied Missions with a copy to the North-West Europe War Crimes Group (NWE).\textsuperscript{90} Finally, the Allies came with a system to divide the individuals subject to extradition requests, being divided into seven categories, namely war criminals, traitors, persons accused of crimes against humanity, dangerous persons, Category I Nazis, escaped POW’s, and Soviet citizens liable to compulsory registration.\textsuperscript{91}

Another major breakthroughs in multilateral treaty-making was the signing of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted unanimously by the General Assembly of the United Nations in Paris on 9 December 1948.\textsuperscript{92} Adding extradition to a broader treaty on crime, as opposed to a discrete instrument focused only on extradition, is in line with some of the developments in Latin America in the previous section, and marks an important shift in the use of extradition in international law-making, which centres extradition as an important element to enable and domestically entrench global ordering efforts.\textsuperscript{93}

The Genocide Convention defined genocide to mean certain acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. This convention also had implications for extradition law. Article VII creates an obligation on the Parties to extradite, ‘in accordance with their laws and treaties, persons accused of committing genocidal acts; none of such acts is to be considered a political crime for the purpose of extradition.’ This provision was a major breakthrough in that it made extradition

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\item \textsuperscript{88} NAUK. Extradition of War Criminals FO1060/1108, 1947–1949 (n. 64), Letter from the Allied Liaison Branch to the Allied Liaison and Protocol Section in Berlin, 30 December 1947.
\item \textsuperscript{89} Ibid.
\item \textsuperscript{90} Ibid.
\item \textsuperscript{91} Ibid.
\item \textsuperscript{92} Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277.
\end{enumerate}
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an important element for the pursuit of a broader international legal agenda, although it did not come without opposition in the form of reservations. For example, the US representative clarified that existing United States law provides for extradition only when there is a treaty in force between the United States and the demanding government. Only after Congress had defined, and provided for the punishment of, the crime of genocide, and authorised surrender therefor, would it be possible to give effect to the provisions of Article VII.94 Similar developments appear the following year in the 1949 Geneva Conventions on the conduct of warfare, in relation to war crimes. These developments thus cement a move towards multilateralization of extradition in response to international crimes first and foremost, bypassing as it were the issue of domestic sovereignty in the name of a commitment to prosecuting conduct to avoid the repetition of the legal loopholes associated with the immediate aftermath of the Second World War.

All in all, developments in the realm of extradition law during the years immediately after the end of the Second World War show major advances but also important limitations. To begin with, by the time the whole multilateral system of extradition was more or less set and giving results, it was dismantled. Key in this development was the unification of the Three Zones and the ensuing recovery of sovereignty by the Federal Republic of Germany. This development meant that the Allies were no longer in charge of dealing with war criminals residing in West Germany. Further, the UNWCC offices in London are closed down on 31 March 1948, showing that this institution was progressively losing relevance. And the reservations entered to the Genocide Convention reflected the reluctance of the international community to deal with the thorniest issues related to the extradition process. As the Policy Directive for the United States High Commissioner for Germany instructed, the extradition of persons wanted by other countries for trial as war criminals should be allowed only in certain exceptional cases, and not to permit at all the extradition of persons wanted for trial as traitors or collaborators, unless the requests for extradition and supporting evidence were received before a certain date.95 It was clear that the prosecution of Quislings was not a priority anymore. As

94 Genocide Convention, 1948 (n. 84). On the process of United States ratification of the Genocide Convention, as well as domestic political and legal debates around genocide more broadly in the country, see Power, Samantha. A Problem from Hell: America and the Age of Genocide (New York: Basic Books, 2002).

95 Foreign Relations of the United States, Council of Foreign Ministers; Germany and Austria, vol. 111, Page 323, Policy Directive for the United States High Commissioner for Germany (McCloy), 17 November 1949.
a result, no new initiatives to regulate extradition from a multilateral perspective would take place for decades, at least originating from the United Nations. A different story would unfold, once again, in Latin America, which would be at the centre of the most relevant developments in the next decade.

What the lessons of the Second World War highlight are the continuing difficulties to engage with non-Western successful practice in multilateral extradition law. Neglecting this past practice undermined United Nations efforts to prosecute war crimes. Key exceptions are the Genocide Convention and, following on its footsteps, the Geneva Conventions, reflecting some elements of Latin American practice in which extradition was tied to broader projects of international law-making. The failures of Eurocentric bilateral extradition law were not sufficient to dislodge the mainstream narrative about what extradition law is and how it operates. Our legal-historical narrative shows that extradition was still largely assumed to be a technical device, even though the failures to advance extradition law were grounded on the political stakes of extradition. To advance extradition law, much more forceful developments would be needed, with Latin America once again paving the way for the further development of the field.

5 Researching Extradition Law

The history of the development of (multilateral) international extradition law does not end with the aftermath of the Second World War, of course. The timeline we present here, therefore, needs to be further expanded. What we have sought to show, rather than a full story, is the need to shift gears in how we think about the history of extradition law, the role of extradition law in constructing international legalities, and the need to integrate these accounts into ambitious narratives of transnational legal history. We show how sovereignty and human rights are negotiated time and time again via the seemingly mundane and aseptic field of extradition law, which, read through its historical development, shines a light on important battlegrounds for the making of international ordering.

The further development of international extradition law is marked by important moments in which the research agenda we present in this article intervenes, on the basis of the interwar and Second World War experiences. In fact, key events in the 1950s further strengthened the push for multilateral international extradition law in the Americas and even in Europe. In the Americas, the looming threat of communism further weakened the political
offence exception,96 while high profile cases pointed at the pervasive use of asylum mechanisms to elude extradition on a bilateral basis, which further strengthened calls for multilateral developments.97 These uneasy dynamics for once shifted the vanguard of multilateral extradition law to Europe, where extradition was made part of conversations about European integration, culminating in the 1957 European Convention on Extradition (and, in the 21st century, the European Arrest Warrant, as the culmination in Europe of the multilateralism trend started in the interwar period). This 1957 multilateral treaty was adopted under the auspices of the Council of Europe and is in force for all member states.98

Only by reading extradition law as an integral part of ambitious multilateral efforts running alongside the vast network of bilateral agreements can we understand how extradition law influenced the world order. We call in this article therefore for an ambitious research agenda that places extradition more firmly at the intersection of law and history, because this interdisciplinarity enables us to lift the veil of technique and peer into the mechanisms of global ordering that not only underpin extradition law, but in many respects are also shaped by it. Therefore, to ignore the development of extradition law from our accounts of world-making neglects an important aspect of the possible enforceability and therefore success of key international regimes, without which global ordering would not be as deeply entrenched in domestic and international law and politics as it is today. We can only undertake this project by, crucially, bringing to the fore the voices of the developing world, and shifting the received wisdom and accounts of extradition law away from their Eurocentric context. Expanding the timeline would be a tremendous aid in this respect.

The African continent, for instance, has been almost completely absent from international debates about extradition. At most, it has been a footnote in the discussions among colonial empires, as in the case of Belgium when it decided to include the Congo in the extradition treaties signed with other countries. However, this situation shifted in the 1960s, mainly due to the acceleration of the decolonisation process.99 Nonetheless, this history needs much

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further unpacking and exploration through the lenses of multilateralism, the intersection of law and politics, and the analytical possibilities of the political offences exception as a point of intersection of sovereignty, human rights, and the political causes that animated decolonisation.

Similarly, even as the 1970s and 1980s moved us closer to global efforts like the 1970 Hague Conference on terrorism and the hijacking of planes, Latin American voices were still prominent and essential to understand this treaty and its impact. A special session of the OAS General Assembly was convened in Washington on 25 January 1970 to consider a draft treaty on kidnapping and other acts of terrorism prepared by the Inter-American Juridical Committee at the request of the OAS General Assembly. Although no signatory government had any illusions that this international convention would provide a panacea for the problem of terrorism directed against foreign officials, it did have a considerable impact by aiding to classify such acts, including kidnapping, as ‘common crimes’ for purposes of extradition and asylum (therefore excluding the political offences exception). It also included an obligation to seek out, to detain, and to extradite or prosecute persons guilty of such crimes.

The advances in extradition as a result of the airplane hijacking problem moved further in 1973 with a new draft of the Inter-American Convention on Extradition (ultimately adopted in 1981). This treaty’s preamble reaffirmed American states’ goal of strengthening international cooperation in legal and criminal law matters, which was the inspiration for the agreements of Montevideo in 1889, Guatemala City in 1934, and again Montevideo in 1940. The treaty’s preamble also referred to the need to punish crimes and promote more mutual assistance than allowed by prior international law, but with due respect to the human rights embodied in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights. It hailed the fight against crime at the international level as a means to enhance the fundamental value of justice in criminal law matters, adopting what was then the most ambitious multilateral convention on extradition.

Extradition received a further boost in the 1970s due to the rise to prominence of financial crimes, which underscored remaining loopholes in extradition law, and the opportunity to leverage these crimes as a means to boost the advancement of extradition law. Other crimes were subsequently added to the mix such as drug offences, and the United Nations finally came to the

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conversation about multilateral extradition law in the area of transnational crime. But these advancements at the UN did not happen in a vacuum, and would not have been possible without earlier discussions in the Americas and in Africa, which have shaped the possibilities of international extradition law in ways that will remain unaccounted and unappreciated unless we undertake more ambitious research in extradition law.

Therefore, by keeping in mind the intersections of law and history, human rights and sovereignty, technique and politics, bilateralism and multilateralism, the humble everyday and the ambition of global legal ordering, we can move to more critically appreciate the role of extradition as more than a witness, and in fact a maker, of the current international legal order. This research agenda is, in our view, both urgent and necessary, and this article, we hope, contributes some first steps towards its prosecution.

6 Concluding Remarks

The years between 1898 and the Second World War’s aftermath were particularly dynamic when it comes to extradition law. Contrary to what scholars have traditionally argued, extradition remained quite relevant in international law debates and some important developments did take place. We cannot understand major global breakthroughs without acknowledging the influence of regional initiatives in Latin America, and how they paved the way to tackling the thorny sovereignty and human rights issues surrounding the harmonisation of extradition law. These efforts lay bare the contingencies of international extradition law, placing it firmly in broader global ordering projects, and assert the role extradition plays not just as technical cooperation technique, but as a significant political enterprise.

At the same time, this article has evidenced how Latin American governments were constantly at the forefront of discussions on how to make extradition law more efficient and harmonious with increasingly complicated international dynamics, as early as the 1889 Montevideo treaty. These efforts underscore the need to think more broadly about international extradition law through the lenses of non-Western countries and initiatives, and support the advancement of a more ambitious research agenda that brings together legal and historical approaches to imagining the work extradition law in fact does

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in global ordering. More work is needed now in fleshing out the dynamic histories of specific extradition mechanisms, and we hope this article offers some elements to guide further work in the field.

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Archival Sources

Letter from the Chief of the Legal Division of the Headquarters of the Control Commission for Germany, to the Chief of the Norwegian Military Mission, Major-General CJ Helgeby, FO 1060/823, March 1948.
National Archives of the United Kingdom, Call by International Criminal Police Commission for international unification of rules: departmental views on proposed model extradition treaty, 1928–1953, folder HO45/24923.
National Archives of the United Kingdom, Correspondence about War Criminals, traitors and Collaborators, dated 1949, FO 1030/424/1, 1949.
National Archives of the United Kingdom, Extradition of Alleged War Criminals, FO1032/2213, 24 September 1948, Telegram from the Control Commission in Germany to the British Legal Adviser.


Bibliography


American Journal of International Law 29 (1935), Supplement: Research in International Law.


Letter to the Principal Legal Adviser in Berlin from Graham Rogers, and LM Inglis, Judges in the Court of Appeals, 6 May 1949.


ital.gob.ar/files/original/13/848/edicion-oficial_actas-sesiones-congreso-sudamericano
-derecho-internacional-privado_1889.1.pdf (last accessed on 06 December 2022).


opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e797?prd
=EPIL (last accessed on 06 December 2022).

Steinacher, Gerald. *Nazis on the Run: How Hitler’s Henchmen Fled Justice* (Oxford:

Stuart, Graham. ‘The Results of the Good Neighbor Policy in Latin America’. *World
Affairs* 102(3) (1939), 166–170.

Sutherland, Peter D. ‘The Development of International Law of Extradition’. *Saint Louis

Books, 2016).

Treaty on Asylum and Political Refuge, 4 August 1939, Montevideo, available at: https://
www.refworld.org/docid/3ae6b3833.html (last accessed on 06 December 2022).

Treaty on International Penal Law, 23 January 1889, First South American Congress on
Private International Law, available at: https://www.refworld.org/docid/3ae6b3781c.html (last accessed on 06 December 2022).


Vermeulen, Gert, and Tom Vander Beken. ‘New Conventions on Extradition in the