

# THE LAWYER'S BOOKSHELF

REVIEWED BY BRADFORD TREBACH

## *Extradition, Politics, and Human Rights*

By Christopher H. Pyle. Temple University Press, Philadelphia, Pa. 456 pages. \$29.95.

Christopher H. Pyle, a professor of politics at Mount Holyoke College, is angry about the path that extradition law is taking in this country. He objects to efforts by recent administrations to modify extradition law in ways that he says make the United States complicit in foreign injustice. And he is frustrated that the few members of Congress who are inclined to be actively concerned about civil liberties find extradition law too complicated, too technical and too arcane.

In his book, *Extradition, Politics, and Human Rights*, Mr. Pyle, who tries to avoid the "relentlessly academic" treatment that extradition often receives, puts forward a detailed framework for reform. Along the way, he textures his analysis by exploring the story, themes and people behind the legal issues.

Mr. Pyle's focus is on international extradition in American practice. Extradition is the treaty-based process by which one nation, at the formal request of another, surrenders an individual who stands accused or convicted of a crime. The term is often used to embrace rendition, which is the non-treaty-based transfer of fugitives between members of the British Commonwealth, or between states or territories of the United States.

The author begins by examining how, in the 1670s, officials in colonial America resisted the British crown's demand for the return of the "regicides" who signed the death warrant of King Charles I. He then provides an astute analysis of the Anglo-American practice of treating aliens and citizens alike for extradition purposes.

Mr. Pyle notes that in the early days of the American republic, many in the young nation had little curiosity about the criminal pasts of new arrivals. The U.S. was, after all, a "nation of asylum," where many people were refugees from tyrannies of one sort or another. It was not until the late 1700s that border-jumping by criminals and ship-jumping by sailors drove Americans to consider extradition.

Mr. Pyle skillfully recounts how the 1799 extradition and hanging of a hapless seaman named Thomas Nash was transformed into the "martyrdom" of Jonathan Robbins. The Nash-Robbins affair, which contributed to the defeat of President John Adams in the election of 1800 and helped destroy the Federalist Party, established important principles that would inform the national debate on extradition for decades to come.

The author is equally adept in his treatment of the 1839 uprising by the enslaved Africans aboard the Spanish ship *La Amistad* off the coast of Cuba. When the "black schooner" wound up in U.S. waters, the Africans were taken into custody and forced to stand trial to determine if they were murderers and pirates, merchandise returnable to their owners or free men and women wrongfully seized and held captive.

Spain quickly demanded the extradition of these African "assassins" so they could be prosecuted by the Spanish authorities in Cuba. The case set off an intense legal, political and popular debate over slavery, culminating in the 1841 U.S. Supreme Court decision to free the Africans.

The author notes that until modern police departments were organized in the 1830s, there was little demand for the return of fugitives to stand trial. By the 1840s, the U.S. began signing extradition treaties with foreign nations. And by the 1860s, it was entering into such agreements rather indiscriminately.

Mr. Pyle explains in detail how the desire to minimize the potential for foreign injustice inspired a group of exceptions and rules in extradition law. Under the "double criminality" principle, for example, extradition is not allowed unless the accused committed an offense that is recognized as a crime under the laws of both nations concerned. Another safeguard is the rule of "specialty," which prohibits trying the accused for crimes other than those for which he was extradited.

Highly contentious is the "political-offense exception," which states that a fugitive cannot be extradited for crimes that are considered to be purely political in nature. Here, Mr. Pyle tackles the prickly question of when, if ever, fugitives who attack presumptively innocent people should be protected by the political-crimes defense.

To illustrate the danger of allowing the Justice Department to represent foreign regimes in extradition cases, the author devotes two chapters to the federal government's long legal battle against John Demjanjuk. The Ukrainian-born Demjanjuk, a retired Cleveland auto worker, was alleged to be "Ivan the Terrible," the sadistic gas-chamber operator at the Treblinka death camp in Nazi-occupied Poland during World War II.

Mr. Pyle is vehemently critical of the Justice Department's Nazi-hunting Office of Special Investigations, which was found by the U.S. Court of Appeals in Cincinnati to have seriously mishandled the case over the years. During the past two decades, Mr. Demjanjuk was stripped of his citizenship, extradited to Israel, convicted of crimes against humanity by a Israeli court and sentenced to death. But Israel's Supreme Court freed him in 1993 after concluding that Ivan the Terrible was likely someone else, a Ukrainian named Ivan Marchenko.

Although a federal court revoked the original denaturalization order in 1998, the Justice Department has since filed a new suit to strip Mr. Demjanjuk of his citizenship and deport him. It alleges that he served as a guard in other Nazi camps and lied about it to obtain a visa and citizenship after the war.

Devoting two chapters to the "law of stolen people," the author examines the history of judicial tolerance for kidnapping defendants abroad. One of the cases he reviews is that of General Manuel A. Noriega, the drug-running Panamanian dictator who was captured by a U.S. invasion force in January 1990.

Mr. Pyle argues that when you subordinate means to ends by arbitrarily snatching suspects from foreign territory without permission, it amounts to "lawless law enforcement" and "government by James Bond." He insists that that abductions cannot be illegal for some purposes but not others. And, he notes, abductors violate federal and state laws the moment they bring their captives into U.S. territory.

The book ends with a set of sound proposals for an omnibus federal extradition statute. If such comprehensive legislation cannot be agreed upon, Mr. Pyle outlines some creative fallback proposals and strategies for reform.

Marshaling an impressive array of evidence, the author shows that extradition law "is one of those judicially protected guarantees of liberty and fairness that the executive is forever trying to erode."

At a time when the nation is debating how best to balance "homeland security" against respect for civil liberties, Mr. Pyle reminds us of the harm already caused by repeated instances of "judicial myopia and executive misconduct." He argues persuasively that the core tenets of our legal system demand that people who arrive in this country are treated fairly and that those who are likely to be persecuted abroad are protected and not put on the first plane back.

Mr. Pyle has written a probing, well-researched and steadily informative book on an important subject that gets only superficial or cursory treatment at many American law schools. His in-depth and reasoned analysis can be confidently recommended to members of the bench and bar. And it should be required reading for those extradition policy makers who lack not only a sense of the past but also the imagination to foresee the consequences of their actions.

Bradford Trebach is a lawyer in New York.