University of Michigan Law School
University of Michigan Law School Scholarship Repository

Articles | Faculty Scholarship

1922

The 'Hot Trail' into Mexico and Extradition Analogies

Edwin D. Dickinson
University of Michigan Law School

Available at: https://repository.law.umich.edu/articles/1232

Follow this and additional works at: https://repository.law.umich.edu/articles

 Part of the Criminal Law Commons, and the Transnational Law Commons

Recommended Citation
Dickinson, Edwin D. "The 'Hot Trail' into Mexico and Extradition Analogies." Mich. L. Rev. 20 (1922): 536-7.

This Response or Comment is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE "HOT TRAIL" INTO MEXICO AND EXTRADITION ANALOGIES.—The recent decision of the Texas Court of Criminal Appeals in *Dominguez* v. *State*, 234 S. W. 79, has given us an important precedent and also a valuable example of the solution of novel problems by means of analogies. A detachment of the military forces of the United States had been authorized by the War Department to enter Mexico on the "hot trail" in pursuit of bandits. While following a "hot trail" this detachment arrested Dominguez, a native citizen and resident of Mexico, and returned with him to the United States. It developed later that he was not one of the bandits who made the "hot trail." Dominguez was thereupon turned over, without his consent, to the authorities of Texas, and was indicted and convicted for a murder previously committed in Texas. It was held upon appeal that the prisoner might resist trial for the offense charged in the indictment until such time as he should voluntarily subject himself to the jurisdiction of the United States or until the consent of the Mexican government to his trial should be obtained.

There was no precedent in the decided cases. Counsel argued for the application by analogy of the principles which control in the decision of extradition cases. In reliance upon the extradition analogies the case was decided.

In general, apart from treaty, independent states are said to be under no international obligation to surrender fugitives from justice. HYDE, INT. LAW, I, § 311; MOORE, DIGEST, IV, 245; MOORE, EXTRADITION, I, 21 ff. The facility with which criminals may find asylum in other countries has led most states to conclude treaties in which provision is made for the extradition of fugitives charged with any one or more of an enumerated list of crimes. See the Extradition Treaty with Mexico of 1899, art. 2, and the Supplementary Extradition Convention of 1903, MALLOY, TREATIES, I, 1184, 1193. See also HYDE, I, §§ 313 ff. The extradition of fugitives is thus a concession and compromise defined in treaties, a mitigation of strict right in the common interest of all civilized states. Comity and good faith among nations require that the concession should not be overtaxed or abused. It follows, according to the rule generally approved, and expressly affirmed by the Supreme Court of the United States, that "a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty, can only be tried for one of the offenses described in that treaty, and for the offense with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given

HeinOnline -- 20 Mich. L. Rev. 536 1921-1922

him, after his release or trial upon such charge, to return to the country from whose asylum he has been forcibly taken under those proceedings." *United States* v. *Rauscher,* 119 U. S. 407, 430. See HYDE, I, § 322; MOORE, EXTRADITION, I, 219 ff. See also *Johnson* v. *Browne,* 205 U. S. 309. Compare *Collins* v. *O'Neil,* 214 U. S. 113.

While the rule of the *Rauscher* case has frequently been so stated as to emphasize the extradited prisoner's *right* to resist trial upon any other charge than the one upon which he was extradited, it is submitted that the prisoner's right is only incidental and a convenient safeguard against the possibility that the confidence of the state of asylum may be abused. See *United States* v. *Rauscher,* 119 U. S. 407, 419-22; *Ker* v. *Illinois,* 119 U. S. 436, 443; MOORE, EXTRADITION, II, 1042. This analysis finds strong support in the circumstance that the rule of the *Rauscher* case does not apply between the several states of the United States where considerations of international comity and good faith are not involved. *Lascelles* v. *Georgia,* 148 U. S. 537; MOORE, EXTRADITION, II, 1035 ff. See 20 MICH. L. REV. 449. It is further supported by the circumstance that the rule does not apply where the prisoner has been abducted or kidnapped from the state of asylum. See *Ker* v. *Illinois,* 119 U. S. 436, decided at the same time as the *Rauscher* case. HYDE, I, § 321; MOORE, EXTRADITION, I, 294 ff. The abduction or kidnapping, as in the *Ker case,* is a violation of jurisdiction of which the asylum state may justly complain; but it seems clear that the recognition of a right in the prisoner to resist trial, so far from operating to prevent a breach of faith between nations or to afford the affronted state adequate satisfaction, would only add insult to injury.

If the prisoner is regularly extradited, therefore, as in the *Rauscher* case, he may be tried only for the offense for which he is extradited; but if he is kidnapped, as in the *Ker* case, considerations of international comity and good faith afford him no protection. Of these two rules, entirely consistent if the reasons therefor are understood, which is the better suited to the novel situation presented in *Dominguez* v. *State?* Viewing the situation superficially, an analogy with the *Ker* case would have been more plausible. Inasmuch, however, as the pursuit and arrest of bandits in Mexico without the consent of the Mexican government would have been a gross violation of Mexican jurisdiction, the Court indulged the presumption—with entire propriety, it is submitted—that instructions from the War Department to follow the "hot trail" were issued pursuant to some kind of agreement with Mexico. This presumption brought the case within the reason and hence within the rule of *United States* v. *Rauscher.* Considerations of international comity and good faith are quite as important in case of the pursuit and capture of bandits pursuant to agreement as in case of extradition under treaty. Had one of the bandits pursued been captured, he should not have been tried for any other offense than that which started the "hot trail." No greater right was acquired as regards Dominguez, who was wrongly arrested on the mistaken assumption that he was one of the bandits pursued.

E. D. D.

HeinOnline -- 20 Mich. L. Rev. 537 1921-1922