The Decline of the Political Offense Exception in a Globalized World

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Adam D. Auerbach

Mentor: Professor Maria Zaitseva, Political Science

I. Introduction

The international system is constantly evolving. As new diplomatic and economic relationships are formed and technological advances are made, the global community becomes increasingly connected. This process, known as globalization, has reached all corners of the earth and continuously impacts how states interact with one another.[1] Though globalization has undoubtedly brought with it numerous benefits, connecting the international community like never before, it has had negative consequences as well. For one, experts have cited the new globalized world as a major contributor to the sharp rise in terrorism that has been seen in recent years.[2] As such, the international legal system has needed to grow and develop to accommodate the rapid changes which have forever transformed the international system. The legalities that were created for a world in which America remained a ship's voyage from Europe, and the fastest form of communication were letters, simply could not suit today's interconnected world. One area of law to which this is uniquely relevant is that of international extradition.

While the underlying principle of extradition agreements can be traced back to ancient history,[3] it was not until relatively recently that bilateral extradition agreements began to be signed between nations.[4] Since their inception, these treaties have provided the framework through which countries can assist one another in punishing criminals who have fled the land of their crimes. These treaties allow for countries to request that criminals be sent back to the state's legal jurisdiction so that they may stand trial for the crimes they have committed.[5] Currently, the

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[1] Pamela K. Starr, *Globalization, Interdependency and Public Diplomacy,* USC Center on Public Diplomacy, https://uscpublicdiplomacy.org/pdin_monitor_article/globalization-interdependency-and-public-diplomacy.
[2] Audrey K. Cronin, *Behind the Curve: Globalization and International Terrorism*, 27 International Security 30 (2003).
[3] M. Cherif Bassiouni, International Extradition: United States Law and Practice, 2 (6th ed. 2014).
[4] *Id.*
[5] 18 U.S.C. §3184

United States is party to over one hundred treaties that provide for the extradition of foreign criminals.[6] Yet, many qualifications must be met for the accused to be legally extradited from the United States, one of which is that the crime committed may not be a political offense.[7] This provision, known as the political offense exception to extradition, intends to protect those whom a country wishes to prosecute for revolutionary actions taken against the reigning regime.

The political offense exception is undoubtedly an important tool used to shield political activists from oppressive regimes. However, recently there has been a decline in the application of this exception in U.S. federal courts.[8] As globalization has intensified and expanded political relationships across the globe,[9] and terrorist attacks have become an unwelcome aspect of our society's collective reality, it appears that federal judges have started to apply this exception more sparingly, with motivation for these rulings possibly not only legal in nature.[10] While many have discussed the decline in the application of the political offense exception, few have detailed the cause of this negative trend. The goal of this paper is to explain the decline in the hope that it will aid legal scholars in determining how the political offense exception can better be used in today's globalized world. This paper will argue that the complex interdependencies and rising violence of the globalized international system necessitated increased predictability and expectations of reciprocity between foreign allies, transforming extradition requests into politically charged considerations and thus resulting in the increasingly rare application of the political offense exception in American courts.

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[6] Michael J. Garcia and Charles Doyle, *Extradition To and From the United States: Overview of the Law and Contemporary Treaties* (98-958), Congressional Research Service, 1 (2010).
[7] *Id.*
[8] Christina Piemonte, *Meza v. US Attorney General: Motivation is Fickle in the Application of the Political Offense Exception to Extradition,* 21 Tul. J. Int'l & Comp. L. 617, 630 (2013).
[9] Starr, *supra* note 1.
[10] Piemonte, *supra* note 8, at 630.

In demonstrating the decline of the political offense exception and its cause, this paper explores the history of American extradition treaties and the establishment of the Anglo-American incidence test used for determining whether the alleged offenses of the accused qualify for protection under the political offense exception. This is accomplished through looking at the cases of *In Re Castioni* [11] and *In Re Ezeta.*[12] Brief overviews of the third wave of globalization and the interplay between this phenomenon and terrorism are then provided before the diminishing application of the political offense exception is illustrated through a sampling of both historical and contemporary extradition cases. An analysis of these cases follows, using the courts' decisions to assert that a U.S. desire to engender reciprocity from its allies in future extradition proceedings coupled with the nation's dedication to bringing fugitive terrorists to justice are what has caused this trend.

II. Background

A. Historical Overview of Extradition

The formal practice of extradition dates back to some of the world's first civilizations.[13] In its earliest days, the extradition process followed strict rules of procedure and closely adhered to ideals set forth in pacts and treaties between nations.[14] While the delivery of an individual was certainly done on the basis of these existing treaties, underlying these interactions was an understanding that it would be mutually beneficial to both parties, and that reciprocal actions would be taken if necessary.[15] Therefore, this process was a sign of affable relations between autonomous groups and, at times, individuals would be extradited even without the request of a

[11] *In re* Castioni, (1891) 1 Q.B. 149 (Eng).
[12] *In re* Ezeta, 62 F. 932, 974 (N.D. Cal. 1894).
[13] Garcia, *supra* note 6, at 1.
[14] Bassiouni, *supra* note 3, at 5.
[15] *Id.*

sovereign as a friendly gesture. Extradition was performed in this way until the 18th century, a time in which treaty-making flourished throughout Europe. At this point, extradition became primarily concerned with those who had committed military crimes, rather than political and religious offenses as had previously been the case.[16] These developments even spread across the sea to America, and the first U.S. extradition treaty was signed with Great Britain in 1794.[17] It was during this shift that the potential for extradition to be used as a tool for international cooperation was realized.[18] This allowed extradition to be used to combat crime, as opposed to exclusively serving the needs of monarchs and their political and religious interests.[19]

The changing perspective on extradition slowly spread across the globe before fully coming to fruition in 1948, a point at which all extradition treaties acknowledged a global concern for suppressing international criminal activity.[20] Since 1948, developments in extradition have focused on concerns regarding the human rights of extradited individuals.[21] Additionally, this period of advancement has raised awareness as to the importance of having international law regulate international relations.[22] It is clear that as the world has become more interdependent and nations have become more interconnected, extradition has been forced to evolve to accommodate the ever-changing international system. And, as the institution of extradition itself has been reevaluated over the years, so too have many of the exemptions commonly found in extradition treaties, including the political offense exception.

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[16] *Id.*
[17] Garcia, *supra* note 6, at 2.
[18] See Bassiouni *supra* note 3, at 5, for detailed account of this shift in thinking as it relates to Enlightenment thinkers and European development.
[19] *Id*. at 6.
[20] *Id.*
[21] *Id*.
[22] *Id*.

B. Development of the Political Offense Exception and Political Incidence Test

In contrast to international extradition, the political offense exception is relatively new. The framework for the exception was born out of 18th century Enlightenment thinking, with its then-radical new ideas of democracy, individual liberties and the right to stand up against oppression.[23] These ideas can be found in the works of many Enlightenment thinkers, such as John Locke,[24] and this zeitgeist is credited with helping to incite the successful American and French revolutions. Yet not every revolution was successful, and nations began to receive numerous requests to deliver failed revolutionaries to stand trial under the regimes they had rallied against.[25] However, these requests were met by concerns that the nations requesting extradition were taking advantage of existing treaties and political relations in order to exact revenge on those who instigated acts of rebellion.[26] In an effort to resolve these issues, countries began to codify laws protecting those who committed crimes that were political in nature, with Belgium being the first to do so in 1833.[27] Similar laws were quickly adopted by countries throughout Europe and subsequently by the United States in 1843.[28] Collectively, these laws would come to be regarded as the political offense exception to extradition.

Essentially, the political offense exception is a provision within an extradition treaty which allows a country to refuse an extradition request if the crimes of the accused were politically motivated. The determination of what constitutes a political offense is left to the courts, however the at-times subjective nature of such decisions has proved quite complicated. In

[23] David M. Lieberman, *Sorting the Revolutionary from the Tenorist: The Delicate Application of the "Political Offense" Exception in U.S. Extradition Cases,* 59 Stan. L. Rev. 181, 186 (2006).
[24] See Locke's "Two Treatises of Government" as just one example.
[25] Lieberman, *supra* note 23, at 186.
[26] *Id*.
[27] *Id*.
[28] *Id*.

their analysis, courts have distinguished between "pure" and "relative" political offenses.[29] Pure political offenses are those in which a government official or an acting political regime is the target,[30] or crimes which are obviously political in nature such as treason and espionage.[31] Relative political offenses are not as easily defined. These offenses are common crimes, not targeting politicians, but which are politically motivated.[32] Due to the more subjective nature of determining what constitutes one of these relative offenses, cases involving this category of crimes have been highly controversial. The international community is still grappling with this issue, and while advances have been made, a universal definition for a political offense committed against civilians has remained elusive.

As such, courts began to look for a set of standards to determine when to apply the political offense exception to relative political offenses. The Anglo-American political incidence test was the result of this effort.[33] The Anglo-American political incidence test was first established in *In Re Castioni,*[34] a case which considered the Swiss request to England for the extradition of Angelo Castioni, a man accused of shooting a government official during an attack on the Swiss Palace.[35] The court ruled to deny the extradition of Castioni, citing that his actions were "incidental to and formed a part of political disturbances, and therefore was an offence of a political character within the meaning of the statute."[36] This was a landmark decision for it was the first to establish that a murder, an offense which had the characteristics of a common crime,

[29] Manuel R. Garcia-Mora, *The Nature of Political Offenses: A Knotty Problem of Extradition Law,* 48 Va. L. Rev. 1226, 1230 (1962).
[30] Duane K. Thompson, *The Evolution of the Political Offense Exception in an Age of Modern Political Violence,* 9:315 Yale J. World Pub. Ord. 315, 317 (1983).
[31] Piemonte, *supra* note 8, at 621.
[32] *Id*.
[33] *Id*. at 622.
[34] *Castioni, supra* note 11.
[35] *Id.*
[36] *Id*.

could be considered a political offense should it be committed in the course of an uprising.[37] Four years later, the reasoning found in *In Re Castioni* was adopted by the United States in the Court of the Northern District of California.[38] In the case of *In Re Ezeta,*[39] the court cited the ruling of *In Re Castioni* in its decision to deny the El Salvadorian government's extradition request for military personnel whose alleged crimes were committed during an attempt to quell a civilian uprising. In its decision, the *Ezeta* court explains that since the soldiers' actions were associated with "the actual conflict of armed forces," they were therefore "of a political character."[40] Taken together, these two cases are considered to have established a two pronged incidence test; one in which to qualify for the political offense exception crimes must have been committed during a political uprising and must be considered incidental to the advancement of said uprising.[41] This reasoning, which has become known simply as "the incidence test," was later adopted by the United States Supreme Court,[42] and has since become the standard practice through which U.S. courts apply the political offense exception.[43]

C. The Third Wave of Globalization

As illustrated by the development of the political offense exception, international law is forced to grow and evolve in response to changes in the international system. And, perhaps no change has had as significant an impact as has globalization. Globalization refers to the process in which the modern world has become interconnected. As a theory, it truly encompasses all aspects of contemporary life. It has transformed the way in which business is conducted,

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[37] Piemonte, *supra* note 8, at 622.
[38] *Id*.
[39] *Ezeta*, *supra* note 12.
[40] *Id.* at 999.
[41] Piemonte, *supra* note 8, at 624.
[42] The U.S. Supreme Court adopted the incidence test in *Ornelas v. Ruiz* 161 U.S. 502, 510-12 (1896).
[43] Lieberman, *supra* note 23, at 188.

governments interact, and how citizens view their homelands in relation to the greater international community.[44] In many aspects, it has united the world into one community, through a process of "…international integration arising from the interchange of world views, products, ideas and mutual sharing, and other aspects of culture."[45]

There have been three distinct waves of globalization, each with its own unique sociological advancement which has allowed for increased connection between foreign actors. The first wave was characterized by inventions such as electricity and the telegraph whereas the second had jet planes and television.[46] The third wave is said to have begun in the 1980s and is still ongoing.[47] Marked by the creation of the internet and communications technologies such as the cellphone,[48] this wave has arguably had the greatest impact on the interconnectivity of the international system. These technological advancements have allowed for the growth of international commerce, improved communication between governments,[49] and enhanced activist mobilization due to increased information-exchange across borders.[50]

This shortening of the metaphorical distance between countries has significantly impacted the realm of foreign relations. In the globalized system, nations rely on one another in matters involving trade, migration, environmental concerns, and bringing international fugitives to justice.[51] As such, one misstep involving foreign policy could have dire consequences for an international actor, both domestically and abroad. Consequently, stability of the international

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[44] Joseph N. Ogar and Thomas E. Ogar, *An Appraisal of Globalization and its History,* 11 COGITO: Multidisciplinary Res. J. 182, 184 (2019).
[45] *Id.*
[46] Anders Johnson, *The Three Waves of Globalisation,* Nordregio, https://archive.nordregio.se/en/Metameny/About-Nordregio/Journal-of-Nordregio/2008/Journal-of-Nordregio-no-1-2008/The-Three-Waves-of-Globalisation/index.html.
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] Valentine M. Moghdam, *What Was Globalization,* Globalizations, 3 (2020).
[51] Starr, *supra* note 1.

system is of paramount importance in the globalized world. Reliant upon each other for so much, predictability of behavior has become critical in any international partnership as international actors must be confident that their foreign partners will provide them with that which they require. It is in this way that the interconnectivity and interdependence of today's globalized world has increased the need for foreign officials to cooperate, and, even more importantly, to take actions which will be viewed favorably by international allies.[52] In this third wave of globalization, every decision a state makes—such as whether to grant an extradition request—must be made with the forethought and insight as to how it will affect and be perceived by other members of the international system, and the consequences this will have.

Though many have welcomed the changes brought about by the third wave of globalization, there are those who have not taken as kindly to the shifting dynamics of the international system. The Islamic world in particular has shied away from both the technological and ideological innovations that have rapidly spread around the globe.[53] Globalization as manifested in forms of Westernization, secularization, democratization and consumerism has proven particularly offensive to many in the Muslim community, as it runs counter to the traditional culture and beliefs of the religion.[54] As a result, globalization has been met with much anger in the Islamic world, driving some to carry out terrorist attacks targeting the West in the name of their religion and the values upon which it stands.[55] Furthermore, the improvements in weapons and communications technologies have allowed terrorists to plan more efficiently and

[52] *Id*.
[53] Cronin, *supra* note 2, at 45.
[54] *Id.*
[55] Brenda J. Lutz and James M. Lutz, *Globalisation and Terrorism in the Middle East,* 9 Perspectives on Terrorism 27, 29 (2015).

act more effectively, while the open borders of the globalized world have allowed them to travel to their intended targets and establish international cell networks with relative ease.[56]

Statistical analysis has shown that the relationship between these two global phenomena does in fact exist, though it is quite nuanced. Not all forms of globalization were found to have had the same impact on rates of terrorism, however, the data generally demonstrates a high correlation between those countries in the Middle East most exposed to the social impacts of globalization and an increase in fatal terrorist activity.[57] This correlation is particularly apparent in the 1970s and 1980s,[58] the period in which the third wave of globalization began to take hold in the international system.

Therefore, the rise of international terrorism appears to be a secondary symptom of globalization. Just as communications technologies and a globalized economy have forced states to reconsider how they interact and engage with others on the world stage, so too has a shared goal to combat terrorism in all its forms. In a system in which terrorists can commit a crime in one territory and quickly slip across the border to another, international cooperation is needed in order to bring these criminals to justice. As such, states must be willing to help others in this common mission and trust that they will receive the same assistance in return. In theory, extradition treaties should allow for such trust to be established between the U.S. and its allies, allowing them to cooperatively bring terrorists to justice. However, as all terrorist attacks are political in nature, the political offense exception has complicated these efforts.[59] Consequently, as the United States has taken the helm of the global charge against terror, it seems that U.S.

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[56] Cronin, *supra* note 2.
[57] Lutz*, supra* note 55, at 33, 35, 40.
[58] *Id. at* 40.
[59]Antje C. Petersen, *Extradition and the Political Offense Exception in the Suppression of Terrorism,* 67 Ind. L.J. 767 (1992).

courts have sought to limit the use of the political offense exception, going so far as to revise international treaties to ensure that terrorists are made to stand trial for their crimes.[60] Globalization and the rise in terror it has caused have thus worked in conjunction to bring about a decline in the application of the political offense exception in U.S. courts. As the need for reciprocity and stability in the international system has risen—due to increased interdependencies and efforts to combat terrorism—the political offense exception seems to have been deemed impractical, a relic of the past which simply poses too great a risk to the globalized world.

III. Case Studies and Analysis

A. The Political Offense Exception in America: A Declining Trend

In the modern globalized world, as goods and people began to more easily cross international borders, so too did criminals. The increased interconnectivity of the international system has not only resulted in a rise in international criminal activity but has allowed criminals and terrorists to more easily flee the land of their crimes and find refuge abroad. This led to a significant rise in both the number of extradition requests and, subsequently, legal cases involving those who argued they were not legally extraditable.[61] Given the newfound complexities of the international system, such cases required delicate judicial reasoning, and the United States courts had to quickly adapt to the new international norms and expectations.

The Supreme Court's decision in *Ornelas v. Ruiz*[62] firmly established the two-prong incidence test as the American judicial standard for many years. However, the exact parameters of what constituted a political offense remained unclear. Consequently, as extradition requests

[60] *Id.*
[61] Lieberman, *supra* note 23, at 191.
[62] *Ornelas*, *supra* note 42.

and defenses based on the political offense exception began to significantly increase throughout the 1970s and 1980s,[63] judges began to question the effectiveness of the political offense exception and explored the need to adjust the application of the incidence test.[64] It is interesting to note that this growth in extradition requests, and reassessment of the incidence test, occurred just as the third wave of globalization was beginning.

Eain v. Wilkes (1981)

One of the first cases in which one can see this redefinition is that of *Eain v. Wilkes*.[65] In what some refer to as a "misapplication" of the incidence test,[66] the Court of Appeals for the Seventh Circuit upheld the decision to extradite Abu Eain, a member of the Palestinian Liberation Organization (PLO). Eain stood accused by Israel of exploding a bomb which left two dead and more than thirty injured.[67] The court, in an emotional and seemingly politically charged opinion,[68] rejected the petitioner's argument that his residence in the West Bank and membership to the PLO established his crime as a political offense.[69] In its decision, the *Eain* court employed a narrow definition of the incidence test's uprising requirement by creating a new distinction in the type of political violence under which the alleged crime occurred.[70] The court determined that to pass the incidence test, a case must involve "on-going, organized battles between contending armies," a requirement which the PLO did not meet given its "dispersed nature."[71]

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[63] Lieberman, *supra* note 23, at 191.
[64] *Id.*
[65] *Eain v. Wilkes*, 641 F.2d 504 (7th Cir. 1981).
[66] See James J. Kinneally III, *The Political Offense Exception: Is the United States-United Kingdom Supplementary Extradition Treaty the Beginning of the End?*, 2 Am. U. Int'l L. Rev. 203, 217 (1987). for a discussion of why the court erred in its decision here.
[67] *Eain*, *supra* note 65, at 507.
[68] Kinneally, *supra* note 66, at 217 ("In *Eain v. Wilkes,* the court failed to maintain the neutrality of the political incidence test").
[69] *Eain*, *supra* note 65, at 507.
[70] *Id.* at 519.
[71] *Id.*

The court went on to further distinguish between offenses which target the political structure of a nation and those aimed at a country's social structure, stating that due to the PLO's agenda and its targeting of civilians, should Eain's extradition be denied "nothing would prevent an influx of terrorists seeking a safe haven in America."[72] Ultimately, the *Eain* decision narrowed the scope of the political incidence test and placed new restrictions as to when the political offense exception could be used to deny a request for extradition. Writing at the time of the decision, one critic noted the "strong emotions which pervade the opinion," and voiced his concern that the more limited application of the exception would result in the denial of "the political offense exception to worthy individuals."[73]

The shift in judicial reasoning seen in *Eain* can almost certainly be tied to the changing geopolitics of the globalized international system. Although Eain's actions were perpetrated in what could easily be considered a political context, the court's narrowing of the definition of what constitutes a legitimate political offense allowed it to grant the extradition request of Israel, an important American ally in the Middle East. It also allowed the U.S. to stand upon the world stage and send a strong message, explicitly stating that the United States was not, and never would be, a place where terrorists would be granted asylum. This sentiment is clearly seen to have strongly influenced the court's decision, as the written opinion acknowledges the validity and utility of the political offense exception but ultimately comes to the conclusion that "it should be applied with great care lest our country become a social jungle and an encouragement to terrorists everywhere."[74] As future cases continued to reference the precedent set by *Eain,* as well as employ new restrictions of their own, the incidence test became increasingly restrictive,

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[72] *Id*. at 520.
[73] Bernie M. Tuggle, *Eain v. Wilkes: Establishing the Parameters of the Political Offense Exception in Extradition Treaties,* 10 Denver U. L. Rev. 596, 602 (1981).
[74] *Eain*, *supra* note 65, at 520.

resulting in a decline in the application of the political offense exception to deny extradition requests.

Quinn v. Robinson (1986)

The perpetuation of this negative trend can be seen in *Quinn v. Robinson.*[75] Although the *Quinn* court rejected the revised incidence test of *Eain,*[76] it did set new boundaries of its own. *Quinn* dealt with an extradition request from Great Britain for a member of the Irish Republican Army, Joseph Quinn, who was accused of murdering a London police officer and conspiring to cause explosions in London.[77] Hearing an appeal by the United States government on behalf of the United Kingdom, the United States Court of Appeals for the Ninth Circuit ruled that Quinn's offenses were not protected under the political offense exception and held that he must be extradited.[78] In *Quinn*, Judge Reinhardt reviews the history of the political offense exception and the incidence test and finds fault in how it has been applied. He rejects the incidence test as used in *Eain,* criticizing its subjective nature and writing that while some actions may be considered reprehensible by Americans "it is not our place to impose our notions of civilized strife on people who are seeking to overthrow the regimes in control of their countries in contexts and circumstances that we have not experienced."[79] In doing so, the *Quinn* court seeks a politically neutral incidence test, one in which the motives or methods of the accused are not judged by foreigners, but rather the context of the political uprising is the ultimate determinant.[80] While the goal of the court may have been to provide for a more uniform application of the incidence test,[81]

[75] *Quinn v. Robinson*, 783 F.2d 776, 806-07 (9th Cir. 1986)
[76] See *Id*. at 808.
[77] *Id.* at 781.
[78] *Id.* at 782.
[79] *Id*. at 804.
[80] Lieberman, *supra* note 23, at 191-192.
[81] Piemonte, *supra* note 8, at 625.

by refusing to consider the motivation and tactics of the accused judges effectively surrendered their ability to deliver nuanced decision on cases involving the political offense exception.[82] Additionally, the *Quinn* court ruled that "an uprising is not only limited temporally, it is limited spatially,"[83] continuing the trend of restricting the use of the political offense exception first seen in *Eain.*

The new approach of the *Quinn* court resulted in fewer individuals being granted protection under the political offense exception.[84] And, while the court certainly provided a legal basis for their revised understanding of what constitutes a true political offense, the political context of the time would suggest that these were not the only considerations that influenced the *Quinn* court's ruling. Until the *Quinn* decision in 1986, every member of the Irish Republican Army who faced extradition from the U.S. to Great Britain successfully sought protection under the political offense exception.[85] Offended and betrayed by these denials of their extradition requests, Britain responded in kind, refusing to extradite individuals whom the U.S. had requested.[86] While these fraying relations with a close ally were undoubtedly concerning, this crisis was exacerbated when other countries also began to deny U.S. extradition requests.[87] In light of this debacle, calls were made for a more narrow incidence test to be used in the hopes that doing so would mend ailing relations with international allies and ensure that criminals, namely terrorists, who committed crimes on U.S. soil would be brought to justice.[88] The *Quinn* decision thus answered these calls, allowing the U.S. to grant more extradition requests and reap the benefits of the reciprocity which underlies these diplomatic proceedings.

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[82] Lieberman, *supra* note 23, at 192.
[83] *Quinn*, *supra* note 75, at 807.
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.* at 192-193.

Meza v. U.S. Attorney General (2012)

The parameters of the political offense exception were once again called into question in the case of *Meza v. U.S. Attorney General*.[89] The Republic of Honduras requested the extradition of Carlos Alberto Yacaman Meza, a Honduran national accused of murdering Luis Rolando Valenzuela Ulloa, a fellow Honduran.[90] The murder was considered to have been committed in a political context because it involved the campaign of former Honduran President José Manuel Zelaya and the promise of a political appointment he made to Valenzuela in return for his solicitation of donations to the campaign.[91] Zelaya won the election and appointed Valenzuela as a minister in his administration, a position he held until the 2009 coup in which Zelaya was removed from office.[92] Following the coup, mass protests broke out and the country devolved into violence and unrest which only began to subside when a new president assumed office.[93] The unstable political climate of this period is the issue being analyzed in the case. Five years after the start of these events, Yacaman shot and killed Valenzuela over his alleged failure to follow through on government contracts for which Yacaman had bribed him.[94] Yacaman subsequently fled to the United States, where, after being detained, a magistrate judge issued a certificate of extraditability and ordered Meza be sent back to Honduras.[95] Yacaman's petition for a writ of habeas corpus was denied, but, on appeal, Yacaman made multiple arguments for why he should not be extradited, one of which was that he should qualify for the political offense exception.[96]

[89] *Meza v. U.S. Attorney General,* 693 E3d 1350,1353 (11th Cir. 2012).
[90] *Id*. at 1353.
[91] *Id*.
[92] *Id*.
[93] *Id*.
[94] *Id.* at 1354.
[95] *Id.* at 1354-1355.
[96] *Id.* at 1355.

In considering his claim, the court found that Yacaman did not qualify for the political offense exception.[97] The court's decision partially relied upon the judicial standard established in *Quinn,* holding that to qualify for the exception to extradition a relative political offense must be directly related to the political violence in question.[98] Yacaman's actions were determined to have been personally motivated, and not committed in the furtherance of any political activism.[99] The greatest piece of evidence supporting this assertion was the incongruity between the timeline of the Honduran coup d'état and the timing of Yacaman's actions; while the 2009 uprising certainly constituted a violent political disturbance, the murder of Valenzeula occurred "one year after the military toppled Zelaya," a point at which "even Yacaman's expert conceded that the violence had abated significantly…"[100]

Meza marks a departure from the political incidence test employed in *Quinn*, which argued that courts should not consider the motivations of the accused due to their subjective nature. The Meza court expressly took into account Yacaman's motivations for shooting Valenzuela and used this to help deliver its verdict. While this decision did not further narrow the scope of the incidence test per say, it marked a growing trend in the American judiciary to not apply the political offense exception to relative political offenses.[101] Seemingly no longer confined to having to consider actions in a strictly objective nature, *Meza* demonstrates the newfound ability of the courts to consider whatever factors they wish in determining when a relative political offense qualifies for the political offense exception. This more holistic examination of one's crimes has given courts more flexibility in their decisions, perhaps

[97] *Id.* at 1358-59.
[98] *Id.* at 1359.
[99] *Id*.
[100] *Id*.
[101] Piemonte, *supra* note 8, at 630.

allowing for considerations not purely judicial in nature to influence the outcome of cases involving the political offense exception.[102] It is in this way that *Meza* signifies a shift in judicial attitude towards cases involving the political offense exception, one in which, in response to the interdependency and interconnectivity brought about by globalization, international relations and the potential reciprocity of foreign nations is taken into account.[103]

Venckiene v. Unites States (2019)

The more subjective incidence test seen in *Meza* was once again employed in the case of *Venckiene v. United States.*[104] In *Venckiene*, Lithuania, sought the extradition of Neringa Venckiene so that she may be prosecuted over multiple alleged offenses related to a custody battle over her niece.[105] The case centers on the events which transpired after Venckiene's niece, who was then four years old, informed her grandmother that she was being sexually abused by three men.[106] These men were eventually identified as three public officials: an assistant to the Speaker of the Lithuanian parliament, a Kaunas Regional Court Judge, and the President of the Kaunas Regional Court.[107] Venckiene claimed that criminal proceedings over the pedophilia charges were purposefully delayed for political reasons, and she became an outspoken critic of corruption in the Lithuanian government.[108] After individuals connected to the case, including Venckiene's brother, the girl's father, were found dead, Venckiene was given custody of her niece and remained a vocal opponent of the government.[109] The events culminated after a court ordered Venckiene to return her niece to the custody of the child's mother. After multiple

[102] *Id*.
[103] *Id*. and Lieberman, *supra* note 23, at 183.
[104] *Venckiene v. United States*, 929 F.3d 843 (7th Cir. 2019).
[105] *Id*. at 847.
[106] *Id.* at 850.
[107] *Id*.
[108] *Id*.
[109] *Id.* at 851.

attempts in which the girl refused to return to her mother, police are said to have stormed Venckiene's residence and forcibly removed the girl.[110] A judge herself, Venckiene continued to criticize the corruption found in the Lithuanian government and court system, and eventually had her judicial immunity revoked.[111] Upon being notified that she was suspected of several crimes, Venckiene fled Lithuania and settled in the United States.[112] Five years after her arrival to the U.S., Lithuania formally requested the extradition of Venckiene,[113] and a magistrate judge certified Venckiene as extraditable.[114] In her habeas corpus petition, Venckiene claimed that the magistrate judge failed to apply the political offense exception to her case.[115]

The Court of Appeals for the Seventh Circuit found that Venckiene did not qualify for the political offense exception. Relying upon the definitions and rulings found in prior cases, the *Venckiene* court held that Venckiene did not meet the requirements set forth by the two-pronged incidence test for there was no violent uprising in which she could have acted in furtherance of.[116] In its decision the court notes that "Courts must look at both the subjective and objective nature of the alleged offenses," and therefore, while the court acknowledged that Venckiene's actions were at least partially politically motivated, the personal nature of the case precluded her offenses from being classified as political offenses.[117] As was seen in *Meza*, the court heavily factored in Venckiene's motivations when coming to a decision, thereby continuing the declining practice of employing the political offense exception in order to deny extradition requests. Succinctly summarizing its reasoning, in a statement which cuts to the core of the logic behind

[110] *Id*.
[111] *Id.* at 850-851.
[112] *Id*.
[113] *Id*. at 851.
[114] *Id.* at 847.
[115] *Id*.
[116] *Id*. at 854-858.
[117] *Id.* at 857.

the decreased use of this exception being applied, the court writes "To avoid a slippery slope, United States courts have confined the exception for relative political offenses to exceptional circumstances…"[118] The subjectivity introduced to the incidence test in *Meza* has subsequently allowed courts to make their own determinations as to what constitutes an "exceptional circumstance," and insists they keep in mind that the political offense exception cannot be applied to every act for which some political rationale can be found.[119]

The cases of *Eain, Quinn, Meza,* and *Venckiene* establish a clear decline in the application of the political offense exception in U.S. courts. The narrowing of the scope of the incidence test coupled with the addition of a subjective component to the courts' considerations has allowed the United States to extradite individuals who may have once been granted protection in this country under the political offense exception. In doing so, these decisions have enabled the U.S. to increasingly benefit from the quid-pro-quo nature of extradition proceedings, thereby helping to maintain the stability and predictability of state behavior that is critical in the globalized international system.

B. A Changing World, a Changing Political Offense Exception: Ulterior Motives to Extradite

It is clear that there has been a negative trend in the political offense exception's application in U.S. courts. And, while the cause of this decline is certainly complex and multifaceted, there appears to be a strong causal relationship between the rise of globalization, its subsequent impact on international terrorism, and the fall of the political offense exception.

The third wave of globalization is said to have begun around 1981,[120] the same year in which the Court of Appeals for the Seventh Circuit heard the case of *Eain v. Wilkes.* As

[118] *Id*.
[119] *Id*.
[120] Johnson, *supra* note 46.

discussed, *Eain* marked a paradigmatic change in the requirements of the incidence test and the application of the political offense exception. It is not by chance that this shift coincides with the start of the third wave of globalization. Globalization has resulted in increased interdependency between international actors.[121] With each state so heavily reliant upon one another for both economic and political needs, it became crucial that the actions of states become more predictable, and that foreign relations be kept cordial to ensure the delicate balance of the international system remain unharmed.[122]

Extradition has always been tied to international relations and reflected the level of kinship between countries. Even in its earliest days the level of formality found in the extradition proceedings between two states corresponded to the political closeness of the two nations.[123] States with friendly relations often opted to forgo the rigid formulas called for in extradition treaties and instead resorted to informal modes of extradition.[124] As globalization has placed a greater emphasis on relationships between states, the already evident sociopolitical underpinnings of extradition have only become more apparent. If extradition between states is an accurate portrayal of the diplomacy existent between the two actors involved, it is then logical that the United States would try to avoid a situation in which it angers its allies over matters of extradition. Such an attitude could clearly be seen in the backlash which preceded the *Quinn* decision regarding the overinclusive use of the incidence test that resulted in numerous extradition requests being denied and a subsequent deterioration of diplomatic relations with Great Britain.[125]

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[121] Starr, *supra* note 1.
[122] *Id*.
[123] Bassiouni, *supra* note 3, at 4.
[124] *Id.*
[125] Lieberman, *supra* note 23, at 192.

Extradition and international relations are so intertwined due to the implication of reciprocity which lies at the crux of all extradition agreements.[126] Today, when international law is still in its relatively early stages, the enforcement of extradition treaties must be grounded in good faith and confidence. Each treaty operates only within a specific country's national law, with no international law currently providing for a uniform way in which to enforce treaties between nations.[127] Therefore, while the United States itself requires the enforcement of extradition treaties under federal law, there is no guarantee that similar provisions to fulfill the guarantees of extradition treaties exist in other countries.[128] Consequently, whenever the U.S. denies an extradition request it runs the risk of having reciprocal actions being taken. Without uniform enforcement throughout the international system, the U.S. must always remain cognizant of the fact that a country may deny an extradition request to further its own agenda, without regard for international obligations. To avoid such a scenario, United States courts tread extremely carefully in their extradition decisions and have been increasingly wary of denying extradition requests on the basis of the political offense exception.

In the globalized, interdependent world of the 21st Century, decisions, such as whether to grant an extradition request, are more complex than ever. When determining if such a request should be denied, states must take into account a multitude of factors, including the reciprocal actions that may be taken. The inherent quid-pro-quo nature of extradition makes it necessary for the U.S. to act in ways which will engender favorable responses from other states, providing compelling incentive for the U.S. to grant extradition requests with the expectation that foreign actors will follow suit. It is for this reason that taking a more liberal and inclusive approach to

[126] Piemonte, *supra* note 8, at 631.
[127] *Id*.
[128] *Id*.

the incidence test and the political offense exception works against the United States' desire to encourage international cooperation and reciprocity in matters of extradition; thereby leading courts to shy away from denying extradition requests on these grounds, resulting in the decline of the political offense exception in the United States of America.

The reciprocity and good will which the U.S. has wished to engender have only become increasingly important in the era of the war on terror. As the United States has assumed its place as a leader in the fight against terrorism, it is crucial that the country is able to work with others in the international system to bring about the capture and punishment of international terrorists. This has further motivated the U.S. to grant extradition requests, as doing so not only works to maintain collegiality with allies but also helps to ensure that U.S. extradition requests for those accused of carrying out terrorist activity will be granted.[129] Yet, the political offense exception has stood to hamper efforts to accomplish these goals.[130] As all terrorist activity is inherently political in nature, those committing acts of terror would seem to fall under the exception's protection, preventing them from being extradited to the jurisdiction in which their crimes were committed.[131] U.S. courts ruling on matters of extradition appear to have been aware of this issue and have therefore worked to narrow the incidence test and employ more subjective reasoning in order to avoid labeling terrorist activity as relative political offenses. Evidence for this assertion can be seen in the decision of the *Eain* court, in which a fear of America becoming a haven for terrorists is explicitly mentioned as a consideration in the court's reasoning.[132] Though they may lack the conventional weaponry with which to combat terrorism, the U.S. Courts hold in their

[129] John P. Groarke, *Revolutionaries Beware: The Erosion of the Political Offense Exception Under the 1986 United States-United Kingdom Supplementary Extradition Treaty,* 136 U. Pa. L. Rev. 1515 (1988).
[130] Petersen, *supra* note 59.
[131] *Id.*
[132] *Eain*, *supra* note 65, at 520.

possession something arguably more powerful: the ability to deny one's petition that the political offense exception be applied to their case. It is in this way that the second symptom of globalization—the rise in international terrorism—has further caused a decline in the political offense exception's application. Plagued by terror both at home and abroad, U.S. judges have been quick to use the tools at their disposal to make certain that those who sought to terrorize the international system are extradited and brought to justice in the land of their crimes.

IV. Conclusion

Extradition treaties have always been far more than just judicial documents. Since their inception they have been a sign of the intangible connections between global actors. Dating back to some of the world's earliest civilizations,[133] these agreements and the actions taken because of them have long come to represent closeness between nations, an indication that two autonomous states are aligned in their goals and beliefs. That is why, despite the international norms which seek to regulate these treaties, matters are ultimately determined by confidence in one's allies, and the belief that opposite and equal actions will be taken should the roles be reversed.

As the third wave of globalization has washed across the globe, the international system has become more complex than ever before. The contemporary global community is truly that: a global, unified community. It is one in which countries rely on one another for necessary resources and products and in which technological advances have united civilization, seemingly destroying the physical barrier of distance which once separated mankind. This new interdependency forced states to navigate an intricate tapestry woven of political, social, and economic needs. In the globalized world, each and every action's consequences must be considered before an international decision is made. One misstep could mean the shortage of a

[133] Garcia, *supra* note 6, at 1.

populations favorite import, or, in more dire scenarios, war. Extradition requests are no exception. Globalization has arguably made extradition treaties even more crucial, seeing as they provide the framework for international cooperation regarding some of the global community's most pressing matters, such as combatting terrorism. Yet, with reciprocity as the central motivation for granting extradition requests,[134] the interconnected nature of today's world has also made it necessary to act in ways which will engender favorable responses from allies, leading to courts thinking of extraditions in broader contexts.

The political offense exception has always been considered controversial.[135] The subjective nature of defining what constitutes a "relative" political offense has long plagued courts considering extradition cases, and certain U.S. court decisions on matters of extradition have been met with disappointment and anger from the other parties involved.[136] Fearing retribution doled out in the denial of American extradition requests, this backlash has led America to employ a more conservative approach to the political offense exception, using it sparingly to refuse to extradite alleged criminals.[137] The cases of *Eain, Quinn, Meza* and *Venckiene* clearly illustrate the negative correlation between the rise of globalization and the fall of the application of the political offense exception to extradition in United States courts. Beginning with *Eain's* narrowing of the scope of the incidence test—thereby limiting the application of the political offense exception—there has been a clear decline in the exception's use as globalization has continued to expand. As discussed, with each case came new restrictions to the political offense exception's implementation, be it through new specifications as to what constitutes a relative political offense or the increased use of subjective reasoning.

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[134] Piemonte, *supra* note 8, at 631.
[135] Lieberman, *supra* note 23, at 182.
[136] *Id.* at 192.
[137] *Id.* at 192-193.

From *Eain* through *Venckiene*, the political offense exception and the accompanying incidence test have seen significant revision. Being such a delicate matter of significant diplomatic importance, carrying with it the potential to upend the United States' ability to acquire criminals who have fled the country and to work with foreign allies to bring terrorists to justice, the decline in the political offense exception's application can be attributed to the rise of globalization and the more interconnected, interdependent world it has resulted in.

However, while there appears to be a strong causal link between the rise of globalization and the fall of the political offense exception, there are almost certainly additional factors which have contributed to this trend. Further research could seek to identify these cooccurring factors and examine the interplay between them and globalization. Additionally, having determined that political interconnectedness and the importance of maintaining cordial bilateral relations has largely contributed to the decline in the political offense exception's application in U.S. courts, one may hypothesize that the aforementioned trend would be more pronounced with the United States' closest allies. Further study could evaluate this claim and investigate whether this negative trend is in fact more apparent in extradition proceedings involving U.S. allies in contrast to those nations which are not considered formal allies, or even those which are regarded as adversaries.

Unquestionably, the political offense exception, in theory, is a crucial tool needed to shield political activists from oppressive regimes. However, the current trend, as illustrated in this paper, raises the concerning possibility that even those deserving of political protection under the exception will not receive it.[138] This paper has offered a potential explanation as to this declining trend. By doing so, it is the hope of the author that it will aid legal scholars in

[138] Tuggle, *supra* note 73, at 602.

determining how the political offense exception could once again be successfully used to protect political activists in the current globalized international system.

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