

notwithstanding the requirement of publicity, the Government of the United States has entered into all treaties which have seemed to be necessary to the protection of its interests. Other countries may do so, if it be their desire. Publicity cannot be expected to prevent wars, but publicity can prevent the negotiation of treaties which, if concluded and ratified by the nations, bind them to go to war. There is perhaps no one method to preserve peace, but there are many approaches, and the publication of all agreements is one of the steps toward the goal which we should have, and which it is to be hoped we will have more clearly before our eyes than ever in the past.

Of a truth, "The old order changeth, yielding place to new."

JAMES BROWN SCOTT.

EXTRADITION TREATIES AND THE DEATH PENALTY

Attached to the extradition treaty between the United States and Costa Rica, signed November 10, 1922, and since ratified, there was an exchange of notes concerning the death penalty which seems to be of sufficient interest to draw attention to certain developments in this type of international agreement. The essential portions of these notes are as follows. In answer to the statement of the Costa Rican Minister of Foreign Relations "that it is understood that the Government of the United States of America gives assurance that the death sentence will not be passed upon criminals surrendered by Costa Rica to the United States of America for any one of the crimes enumerated in the said treaty, and that that assurance will form an effective part of the treaty and that it will be so mentioned in its ratification," Mr. Davis, American Minister at San José, in repeating the words just quoted, added: "In order to make this assurance in the most effective manner possible, it is agreed by the United States, that no person charged with crime shall be extraditable from Costa Rica upon whom the death penalty can be inflicted for the offense charged by the laws of the jurisdiction in which the charge is pending."¹

Of the extraditable crimes listed in the treaty none is punishable by the death penalty in Arizona, Kansas, Maine, Michigan, Missouri, North Dakota, Oregon, Rhode Island, South Dakota, Washington, and Wisconsin. Treason, punishable by death in Arizona and Michigan as well as by Federal law, is not an extraditable offense. With the exception of the states listed murder, arson, and rape are generally punishable by death throughout the United States, and together with piracy, under the Federal statutes. Noth-

¹ SUPPLEMENT to this JOURNAL, Vol. 17 (1923), pp. 221, 222. See upon this subject generally, J. Saint-Aubin, *L'Extradition et le droit extraditionnel*, Vol. I, pp. 695-703; Maurice Travers, *Le droit pénal international*, Vol. III, pp. 313-322; and P. Leboucq, "Influence en matière d'extradition de la peine applicable dans le pays requérant," *Clunet*, Vol. 38 (1911), pp. 437-449.

ing, therefore, in the reservation is in conflict with the systems of penal law prevailing in the eleven states above named. For capital crimes under the laws of the United States and territories and of thirty-seven of the forty-eight states, the effect of the reservations is to eliminate the most serious crimes, namely, first degree murder, rape, and generally arson from the list of extraditable offenses. International extradition being wholly a Federal matter, the validity of such a provision, whatever be the theory of constitutional limitations upon the treaty-making power, is unquestionable.

The notes exchanged are in identical language with those previously exchanged and attached to the extradition treaty between the United States and Portugal of May 7, 1908, negotiated by Secretary Root. The provision appears in the Senate resolution consenting to ratification and in President Roosevelt's proclamation of that treaty. A similar provision appears in the body of the extradition treaty between England and Portugal of October 17, 1892.

These reservations appear to be in the nature of concessions made by the United States in favor of the prevailing sentiment in Portugal and Costa Rica (with neither of which had the United States previously had extradition treaties) against capital punishment which Portugal had abolished in 1867 and Costa Rica in 1880. The other Latin-American states which have abolished the death penalty are Venezuela (1864), Guatemala (1889), Colombia (1890), Brazil (1891), Nicaragua (1893), Honduras (1894), Ecuador (1897), Panama (1917), and Uruguay (1918).

Similar legislation has taken place in Europe, viz., San Marino (1848), Roumania (1864), Portugal (1867), Holland (1870), Italy (1888), Norway (1895), and in fifteen of the Swiss cantons since 1896. In the Swiss cantons and in some of the Latin-American states statutory provisions have been made limiting extradition so as to avoid surrender where the death penalty might follow. Others again have attempted unsuccessfully through diplomacy to condition surrender upon the promise of the demandant state that the death penalty would not be inflicted notwithstanding the unreserved terms of the extradition treaty involved. Such was the position taken by Portugal against France in the Albertini case, and by Argentina against the United States in the Damiano case.²

The policy of states which have abolished capital punishment came to be expressed in extradition treaties in a fairly uniform manner, the provision being that when an individual accused or condemned of crimes which according to the legislation of the demandant state involve the death penalty, shall be delivered on condition that the death penalty be commuted. This was the line taken in the treaty between Spain and Brazil (1872), in that between Portugal and Switzerland (1873), and in many others, to most of which a Latin-American state is a party. Usually the stipulation is to commute the death penalty to the next inferior punishment. This provision is

² This JOURNAL, Vol. 3 (1910), p. 694.

derived from the draft multilateral conventions on extradition of which the first (excluding the Lima draft of 1877) was that of Montevideo in 1889. The extradition convention of the Central American republics of 1907, the draft convention of the International Commission of Jurists held at Rio in 1912, and that of the Central American extradition convention signed at Washington in February, 1923, follow the Montevideo form. The United States has never adopted it. There may be constitutional difficulties so far as this country is concerned which would make its adoption awkward. The Root reservation now copied into the Costa Rican convention avoids this awkwardness, but Portugal and Costa Rica might seem to be indicated as havens of refuge for certain fugitives from justice from those states of the Union which retain the death penalty for murder, arson, and rape. However, no one is likely to venture to predict a wave of violent and atrocious crimes in those states because of the Portuguese and Costa Rican reservations.

J. S. REEVES.

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BARON SERGE A. KORFF

A bare statement of the record of Baron Korff reveals the achievement of his life. Born in Russia March 4, 1876, he received his early education in that country. He was a graduate in law of the University of St. Petersburg, 1899. He served in the Russian Ministry of Finance and was sent on numerous missions to Paris, Berlin and London between 1899 and 1901. He was one of the secretaries of the International Red Cross Conference at St. Petersburg in 1902. He was sent by the Russian Ministry of Finance to Manchuria, China, and Japan in 1902. In 1906, the University of St. Petersburg conferred upon him the degree of Master of Constitutional Law, In 1906 and 1907, he gave courses on Russian law at the University of Helsingfors; and he was Titular Professor of Russian law and history in that University from 1908 until 1917.

In 1908, he delivered a course of lectures at Johns Hopkins University. In 1909 and 1910, he was Professor of both Constitutional and International Law at the College for Women, St. Petersburg. In 1910, he received the diploma of Doctor of Constitutional Law from the University of Dorpat. He became Executive Secretary of the International Red Cross Conference at Washington in 1912.

In 1917, Baron Korff became Lieutenant Governor General of Finland. He spent several months at the Peace Conference at Paris with the Russian delegation. Baron Korff returned to the United States in 1918, and thereafter became engaged in active academic work until his untimely death March 7, 1924. He was on the staff of Georgetown University School of Foreign Service. Simultaneously he was Professorial Lecturer at Johns Hopkins University, and in 1923-1924 a member of the faculty of Political