

## International Judicial Assistance

By Bruno Ristau (vols. 1 & 2, Civil and Commercial, 1984) and Michael Abbell & Bruno A. Ristau (vols. 3-6, Criminal, 1990). Washington, D.C.: International Law Institute, looseleaf, supplemented. Vols. 1 & 2, \$220.00; vols. 3-6, \$440.00; complete set of 6 volumes, \$595.00.

The general or even specialized practitioner faces serious difficulties as the world shrinks and the practice of law frequently transcends international boundaries. In the civil and commercial arena, issues of discovery and service of documents abroad, others relating to judicial assistance from foreign courts, available to American courts or individual litigants, and assistance available from American courts for foreign governments and individual litigants, can be mind-boggling. In an age where transnational litigation (that is, domestic litigation that touches upon one or more foreign jurisdictions) is rapidly increasing, counsel could be guilty of malpractice if counsel takes action abroad that proves ineffective and that causes substantial expense. Counsel must be sure what to do and what not to do to remain properly within the law of the foreign state. Failure to meet this standard may not only produce the repercussions of malpractice; it may even produce criminal liability in the foreign country. American lawyers all too often overlook the fact that foreign law may well have a bearing on acts and procedures taken abroad. Aside from the fact that some procedural acts performed on behalf of American litigants abroad may violate the foreign state's criminal laws, sometimes acts performed solely in accordance with American procedural rules may be without legal effect as a matter of foreign law. Hence, volumes 1 and 2, authored by Bruno Ristau, are essential, as they provide understanding insight necessary to avoid the pitfalls and to ensure efficient, ethical, and safe transnational practice in the civil and commercial arena. Michael Abbell does the same for the practitioner of criminal law in volumes 3-6. I am not an expert on civil or commercial litigation, and those chapters were reviewed eminently, in 1986, by David Otis Fuller, Jr.,<sup>1</sup> so I will not dwell thereon.

A couple of points are worth making, however. Bruno Ristau, the author of volumes 1 and 2 (civil and commercial judicial assistance), in the early 1960s was put in charge of the Department of Justice's foreign litigation. He organized an office in the Department that assumed the responsibility for executing judicial assistance requests from foreign tribunals. Since then, in his government and private career, he has been in the forefront of transnational and international litigation in civil and commercial matters. Volumes 1 and 2 were published by the International Law Institute in 1984.<sup>2</sup>

1. David Otis Fuller, Jr., Book Review, 18 N.Y.U. J. INT'L L. & POL'Y 753 (1986) (reviewing BRUNO RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE (CIVIL AND COMMERCIAL) (1984)).

2. 1 & 2 BRUNO RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE (CIVIL AND COMMERCIAL) (1984).

Volumes 1 and 2 gather the relevant treaty provisions, conventions, and domestic legislation bearing on international judicial assistance in civil matters. The volumes are in a binder format, so that they may be updated continually. They also discuss the machineries established under the relevant conventions and give guidance for the preparation of judicial assistance requests where the conventions apply. Some of the foreign so-called "blocking legislation," which restricts access by American litigants or authorities to witnesses, documents, or information located abroad, are reproduced. Guidance is provided on the preparation of judicial assistance requests to countries with which the United States has treaty arrangements and for those with which there are none. While Mr. Ristau notes that the treatise is not a treatise of foreign law, which it is not, it provides the practitioner with the wherewithal to deal with virtually any problem that may arise in transnational litigation.<sup>3</sup>

Volumes 1 and 2 also address the current practices of United States courts regarding foreign requests for assistance. This is important, because American practitioners are called upon with increasing frequency to render services in connection with requests for judicial assistance emanating from foreign tribunals.

My area of interest is international criminal law and procedure, so that is where I will focus. I have indicated at length elsewhere, that in the criminal law and procedure arena the problems have become widespread, significant, and even dangerous, for the basic business person, banker, and their attorneys.<sup>4</sup> Extradition, for example, has become a matter of increasing concern for executives of companies and banks with transnational business interests, as several recent trends in criminal law have emerged. First, governments both in the United States and abroad have increasingly criminalized financial misconduct and directed significant enforcement resources toward its prosecution. Second, a number of commercial or tort disputes involving foreign nationals or foreign companies have been treated as criminal matters by their countries, apparently, at least to some degree, in order to obtain more favorable resolution of related civil litigation.<sup>5</sup> Third, extradition law, itself, has recently evolved in such a way as to create the real possibility that an American business person or banker could be extradited abroad to face criminal charges, for what he or she might consider to be ordinary business conduct.<sup>6</sup>

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3. Note also that Michael Abell has written a chapter in another work on how to find and work with foreign counsel. Michael Abell, *Locating, Retaining, and Working with Criminal Defense Counsel Abroad*, in *INTERNATIONAL TRADE: AVOIDING CRIMINAL RISKS* ch. 21 (Hannay ed. 1991) [hereinafter *INTERNATIONAL TRADE*].

4. Christopher L. Blakesley, *International Extradition for Business Crimes*, in *INTERNATIONAL TRADE*, *supra* note 3, ch. 17, from which portions of the two following paragraphs were adapted.

5. See, e.g., Victor E. Schwartz, *The Bhopal Tragedy: Interface and Conflict Between Criminal and Tort Law Abroad*, in *INTERNATIONAL TRADE*, *supra* note 3, ch. 12. Note, however, that the Indian Supreme Court recently reversed the part of the settlement agreement that related to the promise not to seek criminal sanctions against the president and other officials.

6. Blakesley, *supra* note 4, at 17-2.

For example, many countries have sought to draw their business communities, either willingly or unwillingly, into the "war" on drugs and on organized crime. Within the past five years, the United States Congress has promulgated several antidrug laws<sup>7</sup> and amended the Bank Secrecy Act<sup>8</sup> to require detailed reporting and even criminal referrals by financial institutions in order to attack money-laundering. The effect of these new statutes is to criminalize a significantly greater range of activity than heretofore had been the case. Foreign financial institutions and their officials, accountants, and lawyers thus may find themselves in trouble in the United States, perhaps even extraditable, merely by operating in a traditional manner to safeguard client confidentiality. United States business people, in turn, face possible extradition to a foreign country because other nations<sup>9</sup> have begun to adopt similar requirements.<sup>10</sup> The United States Government is now entering into extradition treaties in which extraditable offenses are not listed, and thereby limited, but are determined by virtue of the punishability for a minimum amount of time by the parties.<sup>11</sup>

Thus, more conduct is being condemned as criminal and more types of criminal conduct are being made extraditable or punishable via transfer of proceedings treaties. Also, so-called defenses or exceptions to extradition, such as the "double criminality" principle and the rule of specialty are being restricted or effectively eliminated.<sup>12</sup> With the atmosphere generated by the war on drugs and other crimes and the increased attention to financial crimes at home and abroad, there is no doubt that an ounce of prevention at the business stage (based on proper advice of counsel) is worth a great deal more than a pound of defense at the extradition or prosecution stage. Counsel's or other officials' failure to ask probing questions, failure to record proper information or to transmit it to the government, or failure to verify answers received when they or their clients are entering into transactions can lead to criminal charges and extradition proceedings.<sup>13</sup> Thus, volumes 3-6 of *International Judicial Assistance*, especially Part

7. See, e.g., Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, §§ 1351-1367, 100 Stat. 3207, 3218-38 (codified variously throughout 12 U.S.C., 18 U.S.C., and 31 U.S.C.); the Money Laundering Control Act; Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (codified variously throughout 12 U.S.C., 18 U.S.C., and 31 U.S.C.); both cited and discussed in detail in Bruce Zagaris, *Dollar Diplomacy: International Enforcement of Money Movement and Related Matters—A United States Perspective*, 22 GEO. WASH. J. INT'L L. & ECON. 465 (1989).

8. The Currency & Foreign Transactions Reporting Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) [hereinafter Bank Secrecy Act] (codified variously, and recently significantly amended, in 12 U.S.C. §§ 1730d, 1829b, 1951-1959, 31 U.S.C. §§ 321, 5311-5324, and throughout 15 U.S.C.); discussed in Zagaris, *supra* note 7, nn.16-89, 163-68, and accompanying text; and in Charles Thelen Plambeck, *Confidentiality and Disclosure: The Money Laundering Control Act of 1986 and Banking Secrecy*, 22 INT'L LAW. 69 (1986).

9. See, e.g., John Clitheroe, *Investigation and Prosecution of Business Crime in the United Kingdom: The Changing Climate*, in INTERNATIONAL TRADE, *supra* note 3, ch. 4.

10. See generally Blakesley, *supra* note 4.

11. See generally CHRISTOPHER L. BLAKESLEY, *TERRORISM, DRUGS, INTERNATIONAL LAW AND THE PROTECTION OF HUMAN LIBERTY* ch. 4 (1992); Blakesley, *supra* note 4.

12. BLAKESLEY, *supra* note 11, ch. 4; Blakesley, *supra* note 4, at 17-21 to 17-30.

13. Blakesley, *supra* note 4, at 17-3 to 17-4.

XIII, on International Extradition, are invaluable for counsel to any business with any extent of transnational operation.

In addition, the comprehensive coverage of international judicial assistance in criminal matters is essential for any prosecutor, judge, other governmental official, or defense attorney, who must face issues relating to the five types of international judicial assistance in criminal matters: obtaining evidence, extradition, transfer of sentenced persons, or other forms of judicial assistance, such as transfer of proceedings or transfer of supervision of paroled or otherwise released offenders. These are all analyzed comprehensively, efficiently, and coherently by Michael Abbell, who provides the conceptual and mechanical wherewithal for a practitioner to resolve most transnational criminal law and procedure problems.

Mr. Abbell was the Director of the Office of International Affairs, Criminal Division, of the United States Department of Justice, from 1979-1982. In that capacity he negotiated and supervised the negotiation of several international treaties of extradition, transfer of sentenced individuals, judicial assistance, and various matters of international mutual assistance in criminal matters. He also drafted domestic legislation in these areas and testified often before Congress on matters related thereto. He now practices privately in these same areas and is one of the foremost practitioners in the field, participating in colloquia and serving as counsel in many major cases. He is chair of several American Bar Association Section subcommittees on these subjects and is chair of the Committee on International Law, Extradition and Representation Abroad of the National Association of Criminal Defense Lawyers. He has also written extensively in the legal periodical literature and has produced several chapters in books in the arena of international criminal law.

Volume 3 includes a very efficient overview of judicial (or mutual) assistance in criminal matters and then focuses on obtaining evidence in criminal investigations and proceedings. Chapter 1 provides the history of judicial assistance in a manner that gives the reader a foundation to understand the evolution and the concepts at work. An academic might have wished to have more philosophical, conceptual, and historical detail, but that would perhaps not be necessary or desirable for the audience to which the work is addressed.

A general overview of international mutual assistance from the police level, where the assistance is not actually "judicial," at least from the Anglo-American viewpoint, to the prosecutorial and judicial levels is also provided. While police-level mutual assistance does not require any form of "judicial" assistance, many forms of assistance at the prosecutorial level—such as obtaining the testimony of witnesses, securing the production of documents, and obtaining a search and seizure—either always or frequently require the assistance of the courts of the requested country. Assistance at the judicial level in criminal proceedings is provided primarily pursuant to letters rogatory by which a court in one country asks the assistance of a court in another country at the request of

a prosecutor, grand jury, investigating magistrate or judge, or defendant. These are all considered in turn. The analysis is comprehensive and incisive. The appendices include the statutes, rules, and treaties relating to mutual assistance in criminal matters; a sample multilateral treaty; a sample bilateral mutual assistance agreement; the European Convention on Mutual Assistance in Criminal Matters; a sample narcotics assistance agreement; a list of nations with which the United States has similar agreements; and the United States Attorneys' Materials on Mutual Assistance in Criminal Matters, which is most instructive and helpful.

Chapter 2 covers the laws affecting obtaining evidence from abroad by cooperative methods for use in the United States. Provisions in the United States Constitution, including the confrontation clause, the compulsory process clause, and the search and seizure clause are analyzed. Also analyzed are federal statutes covering, among other things, the transmittal of letters rogatory issued by U.S. courts, admission of foreign business records pursuant to commission or certification of custodian, depositions before U.S. consular officers, suspension of statutes of limitation or prescriptive periods to permit evidence to be obtained, service in the United States of pleadings and documents filed in foreign countries opposing U.S. evidence requests, and transfer of witnesses in custody in a foreign country to the United States. The Federal Rules of Procedure and Evidence relevant to foreign depositions are considered. State and foreign laws relevant to obtaining evidence from abroad are also analyzed.

With regard to obtaining evidence from abroad when no mutual assistance treaty exists, chapter 3 covers assistance at the police level, the deposition on commission, and letters rogatory. It also focuses on some case-specific agreements, such as narcotics agreements, tax treaties, and mutual assistance provisions in extradition treaties and multilateral conventions.

Chapter 4 covers the use of mutual assistance treaties in criminal matters to obtain evidence from abroad for use in the United States. This chapter shows how mutual assistance treaties interact with other forms of assistance in the criminal arena. It analyzes the types of assistance, including, among other things, locating persons, service of documents, production and authentication of government documents, obtaining testimony in a foreign country, search and seizure, transfer of a person in custody, obtaining testimony in the United States, transfer of an in-custody witness to the United States to testify, and the immobilization and forfeiture of criminally obtained assets. It also covers the rights of the requested and the requesting country, rights of the accused or the target of the investigation, including suppression or exclusion of evidence for violation of the treaty, and the use of the treaty to obtain evidence. Finally, the responsibility, procedure, and function of governmental authorities in judicial assistance are covered.

Chapter 5 considers the use of coercive methods to obtain evidence from abroad for use in the United States, including the production of the defendant, witnesses, and evidence, among other things. Chapter 6 covers the laws affecting

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U.S. assistance to foreign authorities and defendants seeking evidence from the United States, pursuant to the United States Constitution and federal and state statutes. Chapter 7 covers that topic when there is no treaty of mutual assistance in criminal matters, while chapter 8 covers the use of mutual assistance treaties in criminal matters to obtain evidence from the United States.

Volume 4 covers extradition, the international rendition of fugitives sought for trial on an extraditable offense or sought for punishment after already having been convicted.<sup>14</sup> This volume is comprehensive and incisive. Extradition is available only when formal charges have been brought by the requesting government or an actual conviction has been rendered for an extraditable offense. It is not appropriate to obtain custody of a person whose presence is desired as a witness or to enforce a civil judgment.<sup>15</sup> These latter needs for mutual or judicial assistance are covered in chapters 1, 2, and 3. All aspects of international extradition are covered in detail: its history, U.S. statutes covering extradition, applicable treaties, all of the basic extradition treaty provisions, and the problem areas of extradition, such as the political offense exception, dual criminality, provisional arrest, probable cause, the rule of specialty, among others, are analyzed in depth and in detail. The operation in practice of extradition from the United States is analyzed in chapter 3. This chapter covers all the defenses and procedures needed in prosecuting or defending the extradition request. Chapters 4 and 5 do the same for extradition to the United States from abroad.

The entirety of volume 5 is devoted to the appendices to volume 4, on extradition. The appendices are invaluable. They include all U.S. statutes regulating extradition from the United States; the statutes and Executive Order regulating extradition to the United States; the very helpful United States Attorneys' Manual Materials on Procedures for Requesting International Extradition; the Department of State Form Surrender Warrant; the Department of State Certification Form for Foreign Extradition Documents; the Department of State Form Authorization for a United States Agent to receive an extraditee from abroad; and the European Convention on Extradition, its First and Second Additional Protocols, and a list of the parties to each. It should be noted that all extradition treaties to which the United States is a party are found in *Treaties in Force*, a United States Department of State publication.

Volume 6 covers international transfer of sentenced persons and other forms of international judicial assistance in criminal matters, such as the international transfer of proceedings in criminal matters and the international transfer of supervision of offenders sentenced to probation or released under supervision. With regard to the international transfer of sentenced persons, when an individual from one country is convicted and sentenced in another country, he or she may be transferred to his or her own country to serve out his or her sentence. The

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14. See generally BLAKESLEY, *supra* note 11, ch. 4; Blakesley, *supra* note 4, at 17-4.

15. See *Terlinden v. Ames*, 14 U.S. 270, 298 (1902); Blakesley, *supra* note 4.

courts of the country of nationality are the ones ultimately responsible for ruling on the lawfulness of the enforcement of the transferred sentence if a transferred offender challenges either the legality of the transfer or the enforcement of the sentence. It has been suggested recently that U.S. governmental abductions from abroad have undermined the effectiveness of these potentially very important treaties.<sup>16</sup>

The international transfer of proceedings (part XV of volume 6) involves the transfer of actual criminal proceedings from the country in which the alleged criminal conduct occurred to the country of which the offender is a national. It is quite an interesting institution, into which one is provided a glimpse by volume 5.<sup>17</sup> While the practical aspects from the point of view of the American practitioner are presented in part XV, chapter 1, more detail on this interesting phenomenon might be in order. For example, transfer of proceedings, called by various names abroad, including the vicarious administration of justice by Germany, is a growing phenomenon in Europe, being promoted vigorously by some nations, such as Germany. The current desire to find solidarity among nations attempting to combat international and transnational crime would suggest that we are ready for the vicarious administration of justice. *Aut dedere aut punire* (or *aut iudicare*) requires that if the United States refuses to extradite a person who has committed an offense against the law of a foreign (extradition requesting) nation, then the United States ought to prosecute that person if the conduct committed constituted a crime under U.S. law. This is the notion of the vicarious administration of justice,<sup>18</sup> which provides that, when a nation refuses to extradite an individual, that nation shall prosecute that individual, as long as the conduct involved serious, punishable (otherwise extraditable) behavior in the place in which it occurred.<sup>19</sup> Perhaps the notion

16. Abraham Abramovsky, *Transfer of Penal Sanctions Treaties: An Endangered Species?*, 24 VAND. J. TRANSNAT'L L. 449 (1991).

17. Mr. Abbell notes that this form of international judicial assistance, like the transfer of supervision, are currently "of little importance to the United States, although they may be of some potential use to it in the future." (vol. 3, p. 5) It is true that most U.S. policy makers are opposed to them at the current time, but as they take hold in Europe, more interest might be engendered. For more detail, see Christopher L. Blakesley & Otto Lagodny, *Finding Harmony Amidst Disagreement Over Extradition, Jurisdiction, the Role of Human Rights, and Issues of Extraterritoriality Under International Criminal Law*, 24 VAND. J. TRANSNAT'L L. 1, 36-44 (1991), from which the following relevant paragraphs are adapted.

18. Jürgen Meyer, *The Vicarious Administration of Justice: An Overlooked Basis of Jurisdiction*, 31 HARV. INT'L L.J. 108 (1990). See generally HANS-HEINRICH JESCHECK, LEHRBUCH DES STRAFRECHTS 143-64 (4th ed. 1988); D. OEHLER, INTERNATIONALES STRAFRECHT 413-15 (2d ed. 1983); Albin Eser, *Abschnitt Das Strafgesetz*, in A. SCHÖNKE & H. SCHRÖDER, STRAFGESETZBUCH KOMMENTAR 56-85, §§ 3-7 (Lenckner, Eser, Cramer & Stree eds., 23d ed. 1988); Albin Eser, *Die Entwicklung des internationalen Strafrechts im Lichte des Werkes von Hans-Heinrich Jescheck*, in 2 FESTSCHRIFT FÜR HANS-HEINRICH JESCHECK 1353-77 (1985); Hans-Heinrich Jescheck, *Gegenstand und neueste Entwicklung des internationalen Strafrechts*, in FESTSCHRIFT FÜR REINHART MAURACH 579 (1972).

19. Meyer, *supra* note 18, at 115.

ought to apply when the conduct occurred in a manner or place that would provide the nation prosecuting it jurisdiction to do so.

Vicarious administration of justice is quite common in Europe and even has been adopted in several extradition treaties,<sup>20</sup> although many U.S. commentators and government representatives have difficulty accepting jurisdiction being based solely on the basis of a refusal to extradite. True, the United States has always taken *aut dedere aut punire* less seriously than has Europe.<sup>21</sup> Nevertheless, perhaps jurisdiction on this theory could be based on the refusal to extradite and an applicable theory of jurisdiction under U.S. law. This might be a somewhat limited version of continental vicarious administration of justice, but, with the recent significant expansion of U.S. prescriptive jurisdiction,<sup>22</sup> we may find that there really is not much functional difference.

I have written extensively elsewhere to show that U.S. law has been vigorously expanding extraterritorial jurisdiction.<sup>23</sup> The question is whether principles of jurisdiction extant in U.S. law today will accommodate extradition to a state having jurisdiction under its law, based on the nationality or active personality principle, the passive personality principle, the protective principle, or the universality theory. Certainly in the arena of terrorism and under circumstances where the passive personality principle converges with policies relating to the universality and protective principles, the notion of "vicarious administration of justice" may already have a viable analogue in U.S. law. If a person were not extraditable to Germany because of some prohibition in the extradition treaty, he or she could perhaps be prosecuted in the United States.

Although some U.S. officials do not accept the notion of jurisdiction being based on the refusal of extradition, they may accept prosecution for conduct in the United States or in circumstances under which some U.S. theory of jurisdiction would apply. This would be true even if the impetus for prosecution were the request for extradition by the foreign country, its refusal, due to a prohibition to extradite in the treaty or extradition law, and the request, therefore, to prosecute. With the expanded principles of jurisdiction in U.S. law, there is no reason for this not to work.

**Rapprochement:** The law relating to jurisdiction over extraterritorial crime and extradition in the United States, at least in the area of terror-violence, is not as incompatible with that in European countries, as many commentators have suggested. Reciprocity is important from the German law standpoint, but not important for that of the United States. The nationality principle (active personality) is not a primary basis of asserting jurisdiction under U.S. law, but it is not wholly anathema either. The conjunction of the expanding nationality, protective

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20. Eser, *Common Goals and Different Ways in International Criminal Law: Reflections from a European Perspective*, 31 HARV. INT'L L.J. 117, 119 (1990).

21. See Ethan A. Nademann, *The Role of the United States in the International Enforcement of Criminal Law*, 31 HARV. INT'L L.J. 37, 69 (1990).

22. BLAKESLEY, *supra* note 11, ch. 3.

23. See, e.g., *id.*; Blakesley & Lagodny, *supra* note 17, at 36-44.



principle, and universal jurisdictional bases in U.S. law with the reality that the United States often does not require reciprocity in the manner demanded by German law, accommodates many of the difficulties presented by the European commentators.

With this rapprochement in mind, it may or may not be necessary to develop a new institution such as vicarious administration of justice. It is necessary, however, for scholars, judges, and practitioners in the United States to come to grips with the notion. It behooves their continental counterparts to do the same with the expanding American notions of jurisdiction over extraterritorial crime and with the sometimes countervailing importance of procedure as a repository for the protection of human rights. Vicarious administration of justice may be a notion of significant benefit. German criminal law apparently applies in some instances to offenses committed outside Germany by foreigners, as long as some theory of jurisdiction, including vicarious administration of justice, covers the conduct and as long as the conduct constitutes an offense under German law.<sup>24</sup> Apparently, the instances in which vicarious administration of justice will apply are those wherein extradition was not requested by the state in which the conduct occurred or was refused by Germany or was otherwise not feasible. It appears that principles similar to those of double criminality and the special use of double criminality are at work in the notion of vicarious administration of justice.

For prosecution and punishment to be allowed in Germany, the conduct must be punishable by the law of the place in which it occurred (unless no criminal law enforcement exists there at all).<sup>25</sup> Moreover, the conduct must be such that it would permit extradition under a treaty or relevant law of each state for the particular offense involved, but for the technical blockage. Apparently, this means that the offense must be grave enough and incur sufficient punishment in each state to make it extraditable. It must also not be an offense of a political nature.

Vicarious administration of justice is subsidiary to extradition; it will not apply unless there is some treaty or legally based bar to extradition. In addition, even though German law applies to the prosecution and punishment, the punishment may not exceed that provided by the law of the place in which the conduct occurred; the parameters of punishment are controlled by the state in which the offense occurred. This accommodates notions of legality and double criminality.

Vicarious administration of justice would resolve situations in which one state would not be able to extradite. It seems that the concept of vicarious administration of justice is already functioning to a significant degree. If a nation refuses to extradite a national, it has the obligation under international law, and probably under its own domestic law, to seek prosecution of that person and to impose appropriate punishment, if appropriate under domestic law and procedure. An interesting difference between vicarious administration of justice and what is

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24. The following paragraphs on vicarious administration of justice rely on Meyer, *supra* note 18, at 115-16.

25. *Id.*

currently the functioning law in the United States is that the former recognizes limits to its application of its own criminal law. Prosecution requires accommodation of each state's interests and values, as well as international values relating to human rights. If extradition and the alternative vicarious administration of justice were allowed to incorporate these values directly, and to function in tandem, it would certainly work to diminish the size of the world in terms of protection of rights and cooperation in matters of criminal law. The principle of vicarious administration of justice may make denial of extradition more palatable to nations that request it.

Perhaps the underlying questions of law in this arena can be reduced to the problems of *dedere punire iudicare*, the basic national tools of international law enforcement, from the still valid distinction made by Grotius to paraphrase the two ways to deal with escaped offenders. There are, in principle, only two legal ways to resolve problems that arise in a manner that interrelates the substantive and procedural penal law of more than one nation. One is for a state to assert prescriptive jurisdiction, although the human behavior in question occurred outside the asserting state. One could call this the essence of *punire* or *iudicare*. Grotius noted that this was part of the (still existing) dichotomy of national power and authority to punish a wrongdoer for transnational conduct.

The second is where one nation assists others through mutual assistance in the largest sense. Abbell notes that the first three of these forms of international judicial assistance in criminal matters (obtaining evidence, extradition, and transfer of sentenced persons) are of rapidly increasing importance to the United States. The treatise focuses on these forms of judicial assistance from the perspective of the United States as the requestor and provider of such assistance. Part XII (volume 3) of the treatise discusses the laws, treaties, and practices relating to the manner in which the United States seeks investigative information and evidence from abroad for use in U.S. criminal investigations and proceedings, and the assistance the United States provides to foreign countries seeking such information and evidence from the United States. Part XIII (volumes 4 and 5) covers extradition to and from the United States, other means by which the United States secures the presence of persons in this country for purposes of prosecution or service of sentence, and the effect of extradition and other means of securing the presence of persons from abroad on subsequent prosecution in the United States. Volume 6 describes the United States statutory and treating provisions governing the transfer of sentenced persons.

This set of volumes on international judicial assistance is a gold mine of fact, process, and insight into the workings of international mutual and judicial assistance. It is essential for anyone venturing into those rough waters.

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