Extradition law

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Reviewing Grounds for Refusal from the Classic Paradigm to Mutual Recognition and Beyond

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Propositions*

1. Objectivity is hard to be attained in normative research, but carefully devised methods can reduce meaningfully the room for subjectivity.

2. As important as objectivity is transparency: it enables the reader to uncover possible biases or flaws on the part of the researcher and, therefore, to position him/herself straightforwardly in respect of the merits of the research.

3. At least insofar as ordinary criminality is concerned, supranational criminal law oscillates between an outdated paradigm which continues to place excessive emphasis on national conceptions of criminal justice, and a new approach which excessively disregards national perspectives; it may however be possible to strike a balance, pursuant to a notion, not of mutual recognition, but of mutual respect among States.

4. Extradition law should be conceived of, not simply as a part of international law nor simply as a prolongation of national criminal law, but as a composite discipline where those legal areas (and yet other disciplines) converge in such a manner as to produce a qualitatively specific result.

5. Paradoxical as it may seem, at present, globalisation requires even more emphasis on territorial jurisdiction, which for extradition law means conferring more preponderance on the State that requests extradition.

6. While in the field of extradition the duty of non-interference is generally honoured in its negative dimension only, as a prohibition to unilaterally seize individuals located in other States, it should be accredited a positive role, as a duty to grant extradition where this is necessary for another State to assert its sovereignty over acts of which it was the main injured party.

7. The two foregoing propositions should, but should only, be disregarded where required by international law (notably, by human rights), or where they would carry a sacrifice of other fundamental guarantees or core values of the requested State's legal system.

8. Although individuals targeted by extradition requests face adverse conditions which justify specific protections, many of the grounds for refusal currently in place do not in fact protect relevant individual rights, but rather ethnocentric interests of the requested State.

9. A distinction should therefore be drawn between the secondary values of a legal system and its core values (or 'ethos'), such that the former cease to prevent cooperation; this distinction can be effected based on concepts developed in private international law and on the axiological framework provided by the constitutional law of that legal system.

10. The views defended in this thesis could be considered by States when enacting or reviewing legislation or treaties on extradition; it would be particularly impactful if they were considered in a future update of the UN model legal instruments on extradition.

11. It can be quite hard to write a thesis, however fragile, and quite easy to depreciate it, however solid; think well before doing either.

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* In compliance with the Regulation Governing the Attainment of Doctoral Degrees at Maastricht University (resolution of the Board of Deans from 12 May 2003, as last amended in 24 January 2018: Arts. 7 (1) (d), 22 (6) and 23 (1)): propositions 1 to 3 are related to the field of science of the doctoral candidate, but not directly to the topic of the dissertation; propositions 4 to 9 are directly related to the topic of the dissertation; proposition 10 is related to the valorisation opportunities for the topic of the dissertation; proposition 11 is related to none of the above.