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Extradition Between Friends

Dr Paul Arnell writing on the need to rethink the UK's extradition arrangements

"With friends like these, who needs enemies" is an epithet that appears to apply to the United Kingdom's extradition partners. Draconian sentencing policies, unjust plea bargaining, unlawful rendition, systemic judicial corruption, deficient medical treatment and inhumane prisons – all circumstances that have been argued in recent UK extradition cases. Political and media comment, referring to these arguments, has suggested the time is nigh to re-think the UK's extradition arrangements. This is simply wrong. The Extradition Act 2003 and the European Arrest Warrant address transnational criminality effectively and fairly in the vast majority of instances.

Extradition is the formal process governing the transfer of accused and convicted persons between countries. It is a linchpin in the system of international criminal justice. An effective and efficient system of extradition, all would agree, is important in the fight against transnational crime. It is so for the same reasons that apply domestically, such as deterrence, punishment and retribution. Importantly, extradition also serves to prevent the emergence of safe-havens where criminals are beyond the reach of the law.

The arguments in favour of extradition are strengthened where the countries involved share democratic ideals, the rule of law and human rights protection. This is because the law acts to uphold these common values, and because accused and convicted persons will be treated according to certain standards. The UK subscribes to this notion – extradition to friendly countries is simpler and faster. The *prima facie* evidence requirement, for example, has been done away with for a number of countries.

An important feature of extradition proceedings, applicable in all cases, is the existence of bars that will stop the transfer if met. Two of the most important are human rights and double criminality. All requested persons can argue that their human rights will be violated if extradited on account of the conditions overseas or their removal from the UK. The tests applied in such cases have been developed by the European Court of Human Rights. The double criminality rule ensures that persons will only be extradited for acts that are criminal within the UK.

The explanation of why the law is thought to need amendment is largely political and media-driven. The well-reported and strenuously-made criticisms of the law where it fails to operate effectively over-shadow the vast majority of cases where it does. Extradition coverage by the media

focuses on the "human-interest" and salacious details not the bigger picture. The rapid return of Jeremy Forrest to the UK is known for the teacher-pupil relationship underlying it, not for being an instance of efficient extradition. Admittedly, extradition proceedings can be lengthy indeed. This is appropriate in complex cases where it is important to ensure that the human rights of the accused are protected as far as it is possible to do so. The case of *Babar Ahmad* is one such example. Ahmad's extradition to the US on terrorism-related charges in 2013 followed eight years of litigation. His arguments on human rights grounds were thoroughly considered by a number of courts.

The extradition cases with the greatest notoriety include those of Gary McKinnon, Ian Norris and the "Nat West Three". Indeed, these cases have become standard bearers for the iniquity of extradition law and practice. Upon closer examination, however, concerns in these cases are not related to extradition law itself, but rather to differences in criminal justice policies and, in some quarters, national chauvinism – all of which have been magnified by public relations efforts and media sponsorship.

Extradition is important and necessary. Existing at the confluence of law and politics, crime and human rights, and national and international interests it engenders tension and conflict as a matter of course. The UK should continue to refuse to extradite without objectively justifiable reasons and due process. It should also, however, treat kindred friendly countries with the respect they deserve.

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