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EXTRADITION AND PROTECTION AGAINST ANARCHY.

It is not surprising that a Pan-American Conference which met but a few weeks after the assassination of President McKinley, by an anarchist, should give special attention to questions raised by such an act. That such was the case is not an evidence of hysterical temperament, but rather of practical common-sense. Nor is it surprising that the question should have come up in connection with that of extradition. For, unless the Conference intended to concern itself with a revision of the Penal Codes of the various countries, which is not at all probable, the question would naturally come up when extradition was discussed. In other words, as the Conference dealt with crime in its international rather than its local aspect, it is natural that the question of how anarchistic crimes are to be dealt with should have been considered in connection with extradition, which has to do with crime in its international aspect.

The Committee on Extradition and Protection against Anarchy consisted of the following members: Francisco A. Reyes, Chairman; Joaquin Walker Martinez, Alfredo Chavero, Juan Cuestas. This committee submitted the following report: "The Second International American Conference recommends to the republics represented the execution of a treaty in the following terms:

Article I. The High Contracting Parties agree to deliver reciprocally the persons accused or sentenced by competent authority, provided there exist the following circumstances:

I. That the demanding State who presents the demand of extradition has jurisdiction to proceed against the offender.

II. That the commission of an offense of common order which the laws of the demanding State, and the State upon which the demand is made, punish with a greater penalty than imprisonment of two years, be duly invoked.

III. That the demanding State present documents which, according to its laws, authorize the provisional arrest and the legal commitment of the offender.

IV. That either the offence, or penalty, has not prescribed in conformity with the respective laws of the contracting countries.

V. That the offender, if already sentenced, has not served his sentence.

Art. 2. Extradition cannot be granted for political offenses or for acts connected therewith. Even though the offender may allege a political motive or purpose, if the offense for which he is demanded constitutes principally a common offense, the extradition will then be granted on that account.

The acts of anarchists directed against the basis of social organization shall not be considered as political.

Article 3. None of the contracting parties shall be obliged to deliver its own citizens by virtue of the provisions of this Convention, but the executive of each nation shall have the right to deliver them, if he deems it proper.

Article 4. If the person whose extradition is demanded is subject to penal proceedings, or is detained for having committed an offense in the country where he has sought refuge, his delivery shall be delayed until the end of the proceedings, or until he has served his sentence.

Civil obligations contracted by the accused in the country of refuge shall not be an obstacle to his delivery.

Article 5. Extradition, when granted, does not authorize the trial and punishment of the party surrendered, for a crime different from the one that may have served as ground for the corresponding demand, unless it has connection therewith and is founded upon the same proof as that of the demand.

Article 6. If another State, or States, by virtue of stipulation in treaties, should ask for the surrender of the same individual, for different crimes, the demand of that country in which, in the opinion of the State wherein the request was made, the greatest offense should be considered of the same enormity, preference shall be given to the State that shall have priority in the demand for extradition, and, if all the demands bear the same date, the country upon which the demand is made shall determine the order of delivery.

Article 7. The requests for extradition shall be presented by the respective diplomatic or consular agents; and, in the absence of these, directly by one government to another, and they shall be accompanied by the following documents:

I. In regard to alleged delinquents, a legalized copy of the Penal Law, applicable to the offense for which the demand is made, and of the commitment and other requisites referred to in Clause III of Article 1 shall be furnished.

II. With regard to those already sentenced, a legalized copy of the final sentence of condemnation.

All data and antecedents necessary to prove the identity of the

person whose surrender is asked for, shall also accompany the demand.

Article 8. In cases of urgency, the provisional detention of the individual asked for may be granted on a telegraphic request, from the demanding government to the Minister of Foreign Affairs of the country upon which the demand shall be made, and wherein a promise shall be made of sending the documents mentioned in the foregoing article; but the person detained shall be set free, if such documents are not presented within the term that may be designated by the nation on which the demand has been made, provided such terms shall not exceed two months, to be counted from the date of the detention.

Article 9. The demand for extradition, in so far as the procedure is concerned, the determination of the genuineness of its origin, the admission and competency of the exception with which they can be opposed by the criminal, or other fugitive demanded, shall be submitted, whenever they do not conflict with the prescriptions of this treaty, to the decision of the competent authorities of the country of refuge, which shall proceed in accordance with the legal provisions and practices established for such a case, in said country. The fugitive criminal is guaranteed the right of *habeas corpus* or the protection of his individual guarantees.

Article 10. All property which may be found in the possession of the accused, should he have obtained it through the perpetration of the act of which he is accused, which may serve as a proof of the crime for which his extradition is asked, shall be confiscated and delivered up with his person. Nevertheless, due recognition shall be given to the rights of third parties to the confiscated articles, provided they are not implicated in the accusation.

Article 11. The transit through the territory of one of the contracting States of any individual delivered by a third country to another State not belonging to the country of transit, shall be granted on the simple presentation, either of the original, or of a legalized copy of the resolution granting the extradition, by the government of the country of refuge.

Article 12. All expenses connected with the extradition of the fugitive shall be for the account of the demanding State, with the exception of the compensation to the public functionaries who receive a fixed salary.

Article 13. The High Contracting Parties agree that the propagation of anarchism is to be considered a crime punishable by their respective legislations. The extradition of any individual who may have propagated anarchism can therefore be demanded from the

date on which punishment therefor may have been decreed by the nation demanding the extradition. In such case, it shall be granted, although the individual whose extradition be demanded may be liable to imprisonment of less than two years.

Article 14. The Contracting Governments agree to submit to arbitration all controversies which may arise out of the interpretation, or carrying into effect of this treaty, when all means for a direct settlement by friendly agreements shall have failed.

Each contracting party shall name an arbitrator, and the two shall name an umpire, in case of dispute. The Committee of Arbitration shall adopt rules for the arbitration proceedings in every case.

Article 15. The present treaty shall remain in force for five years, from the day on which the last exchange of ratifications shall have been made, and shall remain in force for another lapse of five years, if it should not have been abrogated twelve months before the expiration of that period. In case any government or governments should abrogate it, it shall remain in force among the other contracting parties. This Convention shall be ratified, and the ratification shall be exchanged in the city of Mexico within one year from the time of its being signed. *Debates and Resolutions*, p. 184; *Actos y Documentos*, Sess. Dec. 23, p. 10.

The report being adopted as a whole, it was taken up by articles. It was pointed out by Mr. Elmore that the provision in Article 1 for extradition in a case of a greater penalty than two years' imprisonment, would, in many cases, mean three years, he therefore moved that it be amended so as to read "for not less than two years." This amendment was accepted by the committee. *Debates and Resolutions*, p. 187. It was also pointed out by Mr. Leger that, as some countries used the term "offense" and others "crime," the words "or crime" be added after the word "offense." This amendment was accepted by the committee. *Debates and Resolutions*, p. 188.

The first real clash came over the question as to whether or not the "offenses or crimes" for which fugitives were to be extradited should be named specifically in the treaty or merely referred to in general terms. Mr. Buchanan called attention to the fact that our State Department had always refused to extradite for any crimes not specifically mentioned in the extradition treaties and that, in view of this well-established usage, the delegation from the United States would be compelled to refrain from voting if a rule contrary to this were insisted upon. Mr. Chavero, on behalf of the committee, explained that the rule adopted by the United States was far more

difficult of operation, owing to the danger of mistake in drafting treaties and failing to name all crimes for which persons should be extradited; that the provision as to penalty was a sufficient safeguard against abuses of the treaty. The reason for the United States' rule is the need of taking precaution against persons being extradited for crime and then being tried for political offenses. The danger of this has led our State Department to transfer into the field of diplomacy the old maxim of the common law that it is better that ninety-nine guilty men escape than that one innocent man be punished. The idea of the committee on this point was approved by all save the United States and Venezuela. *Debates and Resolutions*, p. 188. Though the delegation of the latter manifested some feeling in the matter, that of the former did not. Mr. Buchanan explained that, though the "delegation is in entire and cordial accord with the commission in its work, it merely feels that, knowing as it does, the policy of the State Department in matters of this kind, and which are of a very delicate nature, we would prefer to abstain from voting upon this one article of the proposed convention." *Ibid*, p. 188.

The next question which caused a division of opinion was what constituted a sufficient definition of acts of anarchy. While all were agreed that acts of anarchy should be made extraditable offenses, yet there was fear upon the part of many lest, if left in this vague form, it would be made to cover political offenses. To Mr. Leger it did not seem sufficient to say that they were acts "directed against the social organization." To his mind, the acts of the robber, the incendiary, or the revolutionist, would come within this description. He suggested, as an amendment, "the acts of anarchism directed against the life of the chiefs of States, without a political motive, or from which results the death of one or various persons, shall not be considered as political crimes." *Debates and Resolutions*, p. 189. The trouble with this is that it is not sufficiently inclusive, as there are acts of anarchy not directed against the life of the chiefs of States; they may readily be directed against the judiciary or legislature. Furthermore, when we make motives the test, we are always on slippery ground, the assassin may always allege a political motive, and as one man cannot say what another man's motive is, how could his allegation be proven false? Mr. Leger's amendment was lost by a vote of 16 to 1. *Debates and Resolutions*, p. 190.

Against a danger of reaching a hasty conclusion upon this question the following warning was uttered by Mr. Foster: "The incident of the loss of our president no doubt inspires you all to a serious consideration of this great task of protecting in every way pos-

sible organized government. But there has been through all ages a contest between those who criticize and seek to reform and those who administer a government, and we therefore ask you that with calm, careful and sober consideration, you select language that does not put into the hands of the organized authority the right to oppress free innocent people. Your libraries are full of books which furnish you ample reference, and I ask you on this occasion that you select that language and those words that will perfectly describe the intent that is in your minds, and that, under the administration of free speech, we shall go on to greater things and to evolutions and reformations in all our affairs not hindered by the hand of anarchy. Let us deal with this matter in a dignified and calm manner and say nothing that we can possibly regret." *Debates and Resolutions*, p. 190.

Mr. Carbo argued that anarchy was a common crime and that, as it was excluded from the category of political offenses, adequate provision for the extradition of those guilty of acts of anarchy was already provided for in this and the preceding article. *Debates and Resolutions*, p. 190. The trouble with this is that as yet few states had defined it as a crime. And however criminal most of us might think it to be, if the Penal Codes did not define it as a crime, it would not legally be a crime. There are many things that are vicious, immoral and destructive, which are not legally crimes and hence, not extraditable, and will not be unless especially provided for. An amendment by Mr. Macedo, providing that the definition of what constituted acts of anarchism be left to the legislation of the various States rather than that the Conference attempt to define them, was unanimously adopted. As amended, the article reads as follows: Act II. "Extradition shall not be granted for political offenses or for deeds connected therewith. There shall not be considered as offenses acts which may be classified as pertaining to anarchism, by the legislation of both the demanding country and the country upon whom the demand is made." *Debates and Resolutions*, p. 192.

The proposition which provoked the most discussion was a substitute for Article 3, offered by Mr. Galavis, delegate from Venezuela. It reads as follows: Act III. "When the individual whose extradition is demanded has been accused of an offense which deserves capital punishment in the demanding country, or who has already been sentenced therefor, the government upon whom the demand is made may impose as a condition in order to grant the extradition, if its constitution contains the guarantee of the inviolability of life, that said penalty be commuted to the next one in a lower degree." *Debates and Resolutions*, p. 192. To Mr. Galavis

it seemed inconsistent that a State which guaranteed the inviolability of life at home should have to turn individuals over to others who would inflict the death penalty. And it must be admitted that, so far as the individual is concerned, the death penalty is about as objectionable, no matter who inflicts it; the pain is much the same and the mental anguish preceding the final blow is not affected materially by State lines.

The committee was strongly of the opinion that it would be no violation of the Constitution of Venezuela or Brazil, which guaranteed inviolability of life for such States, to surrender fugitives from justice to States which would inflict the death penalty, as the Constitution of a State is not operative beyond its borders and that hence, whatever was done in another State could not violate a law which was not operative there. They even went so far as to urge that it would be in derogation of the sovereignty of a State for another to say to it that it should not inflict the death penalty, if such were provided for by the laws. *Debates and Resolutions*, p. 193, *et seq.*

A great deal of this savors of sophistry. It reminds one of Turkish diplomacy which considered it unlawful to surrender Michael Koszta to the Austrians, but could see nothing unlawful about causing his boat to capsize where the Austrians could readily pick him up.

Their argument as to the limitation which is put upon the sovereignty of the demanding State is equally fallacious. If the criminal were already in the State which is to try him, then it would manifestly be an interference with its sovereign powers for another State to say that when the criminal has been tried and convicted, the penalty provided by its laws shall not be inflicted. But when they do not have the accused in their custody the case is a different one. Until they get him into their possession they can neither try nor punish him. Their ability to do anything at all depends upon the act of another State. If that other State can say that he shall not be tried for a political offense or that he shall not be tried for any other offense than that for which he has been extradited, if it may, without violating the sovereign rights of a State, attach these conditions as a pre-requisite to the opportunity of trying him at all, why may it not, without doing violence to the constitution or sovereignty of the demanding State, require an agreement as to the form of punishment which shall be inflicted? As there is, apart from treaty, no legal obligation to extradite, it would be a strange principle of public law that would prevent a State from refusing to enter into a treaty unless it contained what is considered a neces-

sary provision for the protection of the lives of its citizens or others within its custody. To refuse, would certainly be no attack upon the sovereignty of a State seeking such a treaty. Nor would such a treaty, as was argued, compel the courts of a State to violate its laws by sentencing one person to a lighter punishment than another guilty of a like offense. The courts might pronounce the same sentence, but the executive always has the power to commute the sentence, and in such cases would be under treaty obligations to do so.

After prolonged discussion the substitute article offered by Mr. Galavis was approved by a vote of eleven to six. Those voting in the affirmative were: Argentine, Bolivia, Costa Rica, Ecuador, United States, Hayti, Honduras, Nicaragua, Paraguay, Peru and Venezuela. In the negative: Colombia, Chili, Dominican Republic, El Salvador, Mexico and Uruguay. The delegation from the United States later changed its vote and that from Hayti did the same. This left but nine affirmative votes—not a majority of the Conference. The Chair ruled that a measure once adopted, and the minutes of the proceedings approved, became the final act of the Conference. The ruling of the Chair was appealed from, but, to avoid voting on this, a motion to reconsider was made and carried. Upon reconsideration the substitute was lost. *Debates and Resolutions*, p. 192-217.

The next proposition which caused a division was that to make a distinction between the obligation of a State to extradite its own citizens and that to extradite others who may have sought refuge within it. This distinction rests upon sentimental grounds. If there is a substantial reason why one State should assist another in enforcing its laws by surrendering to it one who has violated them, this same reason holds, no matter what the citizenship of the offender may be. The States that hold to this distinction usually claim jurisdiction to try their own citizens for crimes committed abroad. This claim rests upon the paternal idea of government and can not be held constitutional under our modern ideas of sovereignty. Its laws have not been violated. Therefore, it must either try the offender for an act which was not a violation of its laws, because its penal laws were not operative where the crime was committed, or attempt to apply the laws of a foreign State which presumably could be better applied by the tribunals which are constituted for the purpose of applying those laws.

In the ultimate analysis the distinction must rest upon a distrust of the fairness, and efficiency of the tribunals of all other States. For, unless a State believes that its citizens ought not to be punished at all for crimes committed against the laws of another State,

which is hardly supposeable, all it has a right to expect is that they receive a fair trial. States which hold to the local character of crime, as do the United States, Great Britain, etc., will, of course, not attempt to punish their citizens for crimes committed abroad. The central idea of our system of jury trial is that the accused be tried by a jury from the vicinage of the crime. On the other hand, it is not unusual for those States which hold to the personal character of crime, as do most Catholic countries, to try their citizens for crimes committed abroad.

All amendments affecting the principle of this distinction were defeated. As passed, the article leaves the extradition of its own citizens optional. *Debates and Resolutions*, p. 217. The work of the Conference on extradition after this went smoothly.

The article forbidding the trial of one who has been extradited for any crime different from that for which he was extradited was amended as follows: "This stipulation is not applicable to crimes and felonies committed after extradition." This amendment was made to cover the case, supposed by Mr. Leger, that one might commit a crime immediately after being brought to the demanding State.

Considering the different ideas of jurisprudence prevailing in the different States represented at the Conference, there was less feeling and friction developed upon the question of extradition than might have been expected. That something substantial was accomplished can scarcely be denied. Considerable advance was made by each toward getting the point of view of the other. The final agreement upon the subjects reported by this committee is as follows:

Article 1. The High Contracting Parties agree reciprocally to surrender persons accused or sentenced by the proper authorities whenever the following circumstances occur:

I. That the demanding State shall have jurisdiction to commit the delinquent who is in the cause of the demand of extradition.

II. That the perpetration of a crime or an offense of the common order which the laws of the demanding and the demanded State punish with the penalty of not less than two years' imprisonment, be duly invoked.

III. If by reason of the Federal form of government of some of the High Contracting Parties, it shall not be possible to determine the punishment corresponding to a crime for which extradition has been demanded, the following list of crimes shall be taken as a basis for the demand.

1. Murder, comprehending the crimes known as paricide, assassination, poisoning, infanticide.

2. Rape.
3. Bigamy.
4. Arson.
5. Crimes committed at sea, to wit:
 - (a) Piracy, as commonly known and defined by Law of Nations.
 - (b) Destruction or loss of a vessel, caused intentionally, or conspiracy and attempt to bring about such destruction or loss when committed by any person or persons on board of said vessel on the high seas.
 - (c) Mutiny or conspiracy by two or more members of the crew, or other persons, on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud, or by violence, taking possession of such vessel.
6. Burglary, defined to be the act of breaking and entering into the house of another in the night-time, with intent to commit a felony therein.
7. The act of breaking into and entering public offices, or the offices of banks, banking houses, savings banks, trust companies or insurance companies, with intent to commit theft therein, and also the thefts resulting from such acts.
8. Robbery, defined to be the felonious and forcible taking from the person of another of goods or money, by violence or by putting the person in fear.
9. Forgery, or the utterance of forged papers.
10. The forgery or falsification of the official acts of the government or public authority, including courts of justice, or the utterance or fraudulent use of any of the same.
11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, or other instruments of public credit; of counterfeit sales, bank-notes, stamps, dies and marks of State or public administration, and the utterance, circulation or fraudulent use of any of the above mentioned objects.
12. The introduction of instruments for the fabrication of counterfeit coin, or bank-notes or other paper current as money.
13. Embezzlement or malversation of public funds committed within the jurisdiction of either party by public officers or depositaries.
14. Embezzlement of funds of a bank of deposit, or savings bank, or trust company, chartered under the laws.
15. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

16. Kidnapping of minors or adults, defined to be the abduction or detention of a person, or persons, in order to exact money from them for the ransom or for any other unlawful end.

17. Mayhem, and any other wilful mutilation causing disability or death.

18. The malicious and unlawful destruction or attempted destruction of railways, trains, bridges, vehicles, vessels, and other means of travel, or of public edifices and private dwellings when the act committed shall endanger human life.

19. Obtaining by threats, or injury, or by false devices, money, valuables, or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when such crimes or offenses are punishable by imprisonment or other corporal punishment by the laws of both countries.

20. Larceny, defined to be the theft of effects, personal property, horses, cattle, money, of the value of at least twenty-five dollars, or receiving stolen property of that value, knowing it to be stolen.

21. Extradition shall also be granted for the attempt to commit any of the crimes and offenses above enumerated, when such attempt is punishable with imprisonment or other corporal penalty by the laws of both contracting parties.

IV. That the demanding State present documents which, according to its laws, authorize the provisional arrest and the legal commitment of the offender.

V. That either the offense or penalty has not prescribed in conformity with the respective laws of both countries.

VI. That the offender, if already sentenced, has not served his sentence.

Article 2. Extradition shall not be granted for political offenses or for deeds connected therewith. There shall not be considered as political offenses acts which may be classified as pertaining to anarchism, by the legislation of both the demanding country and the country upon which the demand is made.

Article 3. In no case can the nationality of the person accused prevent his or her surrender under the conditions stipulated by the present treaty, but no government shall be bound to grant the extradition of its own citizens, reserving to itself the right to surrender them, when, in its judgment, it is proper to do so.

Article 4. If the person whose extradition is demanded is subject to penal proceeding, or is detained for having committed an offense in the country where he has sought refuge, his delivery shall be delayed until the end of the proceedings, or until he has served his sentence.

Civil obligations contracted by the accused in the country of refuge shall not be an obstacle to his delivery.

Article 5. Extradition, when granted, does not authorize the trial and punishment of the party surrendered for a crime different from the one that may have served as ground for the corresponding demand, unless it has connection therewith and is founded upon the same proof as that of the demand.

This stipulation is not applicable to crimes and felonies committed after extradition.

Article 6. If another State or States, by virtue of stipulations in treaties, demand the surrender of the same individual by reason of different felonies, preference shall be given to the demand of the State in whose territory the greatest offense has been committed in the judgment of the State upon which the requisition has been made. If the felonies should be considered of the same degree, preference shall be given to the State having priority in the demand for extradition, and if all the demands bear the same date, the country upon which the demand is made shall determine the order of the surrender.

Article 7. The requests for extradition shall be presented by the respective diplomatic or consular agents, and, in the absence of these, directly by one government to another, and they shall be accompanied by the following documents:

I. In regard to alleged delinquents, a legalized copy of the Penal Law applicable to the offense for which the demand is made, and of the commitment and other requisites referred to in Clause IV of Article 1, shall be furnished.

II. With regard to those already sentenced, a legalized copy of the final sentence of condemnation.

All data and antecedents necessary to prove the identity of the person whose surrender is asked for, shall also accompany the demand.

Article 8. In cases of urgency, the provisional detention of the individual demanded may be granted on a telegraphic request from the demanding government to the Secretary of Foreign Affairs, or to the proper authority of the country upon which the demand is made, and wherein the promise shall be made to send the documents mentioned in the foregoing article; but the person detained shall be liberated, if such documents are not presented within the term that may be designated by the nation on which the demand has been made, provided such term shall not exceed three months, to be counted from the date of detention.

Article 9. The demand for extradition, in so far as the procedure

is concerned, the determination of the genuineness of its origin, the admission and competency of the exception with which they can be opposed by the criminal or fugitive demanded, shall be submitted, whenever they do not conflict with the prescriptions of this treaty, to the decision of the competent authorities of the country of refuge, which shall proceed in accordance with the legal provisions and practices established for such a case in said country. The fugitive criminal is guaranteed the right of *habeas corpus* or the protection (*recurso de amparo*) of his individual guarantees.

Article 10. All property which may be found in the possession of the accused, should he have obtained it through the perpetration of the act of which he is accused, which may serve as a proof of the crime for which his extradition is asked, shall be confiscated and delivered up with his person. Nevertheless, due recognition shall be given to the rights of third parties to the confiscated articles, provided they are not implicated in the accusation.

Article 11. The transit through the territory of one of the contracting States of any individual delivered by a third country to another State not belonging to the country of transit, shall be granted on the simple presentation, either of the original or of a legalized copy of the resolution granting the extradition by the government of the country of refuge.

Article 12. All expenses connected with extradition of the fugitive shall be for the account of the demanding State, with the exception of the compensation to the public functionaries who receive a fixed salary.

Article 13. The extradition of any individual guilty of acts of anarchism can be demanded whenever the legislation of the demanding State and of that on which demand is made has established penalties for such acts. In such case, it shall be granted, although the individual, whose extradition be demanded, may be liable to imprisonment of less than two years.

Article 14. The contracting governments agree to submit to arbitration all controversies which may arise out of the interpretation of carrying into effect of this treaty, when all means for a direct settlement by amicable agreements shall have failed.

Each contracting party shall name an arbitrator, and the two shall name an umpire in case of dispute. The Committee of Arbitrators shall adopt the rules for the arbitration proceedings in every case.

Article 15. The present treaty shall remain in force for five years from the day on which the last exchange of ratification shall have been made and shall remain in force for another term of five years

if it should not have been renounced twelve months before the expiration of that period. In case any government or governments should renounce it, it shall remain in force among the other contracting parties. This treaty shall be ratified and the ratification shall be exchanged in the city of Mexico, within one year from the time of its being signed.

Article 16. If any of the high contracting parties should have concluded treaties of extradition among themselves, such treaties shall be amended only in the part modified or altered by the provision of the present treaty.

Edwin Marey.