

THE CIRCULATION OF TRANSNATIONAL CRIMINAL LAW BETWEEN THE AMERICAS AND GERMANY (1848-1914) IN EXTRADITION TREATIES, JURIDICAL DISCOURSES AND INTERNATIONAL ASSOCIATIONS

A CIRCULAÇÃO DO DIREITO CRIMINAL TRANSNACIONAL ENTRE AS AMÉRICAS E A ALEMANHA (1848-1914) EM TRATADOS DE EXTRADIÇÃO, DISCURSOS JURÍDICOS E ASSOCIAÇÕES INTERNACIONAIS

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ABSTRACT

The article observes the circulation of transnational criminal law in the period from 1848 to 1914 by analysing the extradition treaties concluded between states in Germany and the Americas. By looking at these countries separated by a vast distance, one can observe the expansion of the international circulation of criminal law and the variety of international actors between the European Revolutions of 1848 and the outbreak of World War I, which marked a pivotal time span for the formation of transnational criminal law. Specific attention is paid to the issues of ‘transnational crime’ and ‘political offences’ as well as to the question how the international circulation of criminal law shaped legal concepts and narratives of ‘international crime and security’. The analysis includes the juridical discourses, international conferences and organisations insofar as they dealt with extradition, transnational and political crime as well as formed a part of the international circulation of transnational criminal law. An important aim is to show that Latin American countries such as Argentina, Brazil, Paraguay and Uruguay participated in the international circulation of transnational criminal law through extradition treaties, multilateral conventions and national extradition laws, not to mention influenced the legal concepts of transnational political and international crime.

RESUMO

O artigo observa a circulação do direito criminal transnacional no período entre 1848 e 1914 analisando os tratados de extradição firmados entre Estados na Alemanha e nas Américas. Ao olhar para esses países, separados por uma vasta distância, pode-se observar a expansão da circulação do direito criminal e a variedade de atores internacionais entre as Revoluções Europeias de 1848 e a deflagração da Primeira Guerra Mundial, que marcou um período primordial para a formação do direito criminal transnacional. Atenção específica é dada aos problemas de “crimes transnacionais” e “infrações políticas”, bem como à questão de como a circulação internacional do direito criminal moldou conceitos legais e narrativas acerca de “crimes internacionais e segurança”. A análise inclui discursos jurídicos, conferências e organizações internacionais na medida em que lidaram com extradições, crimes transnacionais e políticos e tiveram parte na formação da circulação do direito criminal transnacional. Um objetivo importante é demonstrar que países latino-americanos como Argentina, Brasil, Paraguai e Uruguai participaram da circulação internacional do direito criminal internacional através de tratados de extradição, convenções multilaterais e leis de extradição nacionais, além de terem influenciado os

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conceitos jurídicos de crime político e crime transnacional.

PALAVRAS-CHAVE: *Direito criminal transnacional. Crimes políticos. Crimes internacionais. Exatridição.*

SUMMARY: Introduction: transnational criminal law. Extradition treaties. International Discourses, Associations and Conferences. Pan-American Extradition Conventions and the Treaty between Paraguay and the German Empire. Conclusions.

INTRODUCTION: TRANSNATIONAL CRIMINAL LAW

When it comes to the international circulation of law in the modern period, transnational criminal law seems to be a prime example. However, recent research has characterised the current state of transnational criminal law as unsystematic, and most authors agree that the existing norms, procedures and practices of transnational criminal law do not form a coherent normative order.¹ As a fairly new juridical concept, in comparison to ‘international criminal law’, ‘transnational criminal law’ forms a much broader “system that attempts to suppress harmful activity that crosses borders or threatens to do so”.² This is also the result of historical developments that can be conceptualised as the transnationalisation of criminal law and can be traced back to the shift from the universal (and thus ‘international’) European *ius commune* to national criminal justice systems in the Age of Enlightenment and Revolution.³ Although the formation of nation states with ‘national’ legal systems represents a fundamental precondition, the transnationalisation of criminal law manifested in various transnationally agreed upon norms and treaties as well as international juridical-political discourses and organisations and a variety of transboundary procedures and practices. These range from the informal coordination of actions to formal cooperation of more than one state “against harmful activity that affects a given state but occurs in part or whole beyond the state’s territory”.⁴ Hence, the transnationalisation of criminal law was also essentially based on

1 See BOISTER, Neil; CURRIE, Robert J. (eds.). **Routledge Handbook of Transnational Criminal Law**. London/New York: Routledge, 2015. BOISTER, Neil. **An Introduction to Transnational Criminal Law**. Oxford: Oxford University Press, 2012.

2 BOISTER, Neil; CURRIE, Robert J. Introduction. In: BOISTER, Neil; CURRIE, Robert J. **Handbook**. pp. 1-7, cit. p. 1; see also BOISTER, Neil. The concept and nature of transnational criminal law. In: BOISTER, Neil and CURRIE, Robert J. **Handbook**. pp. 11-26.

3 See HÄRTER, Karl; HANNAPPEL, Tina; TYRICHTER, Jean Conrad (eds.). **The Transnationalisation of Criminal Law in the Nineteenth and Twentieth Century: Political Crime, Police Cooperation, Security Regimes and Normative Orders**. Frankfurt am Main: Klostermann, 2019.

4 BOISTER, Neil. **Introduction**. p. 2.

the international circulation of law, provisions, principles, ideas and practices by a variety of ‘actors’ ranging from nation states to juridical experts.

The following article strives to outline the circulation of transnational criminal law for the period from 1848 to 1914 by using the example of German and American states and, in particular, analysing the extradition treaties concluded between the German Confederation (1815-1866/1870) respectively the German Empire (1871-1918) and the United States of America, Brazil, Uruguay and Paraguay. The example of these very distant countries allows one to observe the expansion of the international circulation of criminal law and the variety of international actors between the European Revolutions of 1848 and the outbreak of World War I, which marked a pivotal time span for the formation of transnational criminal law. Special attention will be paid to the issues of ‘transnational crime’ and ‘political offences’, which the extradition treaties addressed and, beyond that, are of general interest for the question of how the international circulation of criminal law shaped legal concepts and narratives of ‘international crime and security’.⁵ This will be expanded to include juridical discourses, international conferences and organisations insofar as they dealt with the topics of extradition, transnational and political crime, as well as influenced the respective circulation of criminal law between German and American states.

Given the scope and the explorative character of this survey, it is not possible to cover the full extent of the doctrinal debate on international criminal law. Hence, the approach aims not to thoroughly reconstruct the development of basic legal concepts in the growing international doctrinal discourse in which Latin America increasingly participated.⁶ Rather the article is conceptually designed as an exemplary case study which integrates different fields of transnational criminal law to demonstrate the interdependencies in the circulation of transnational criminal law. In this respect, the empirical analysis draws on printed sources, mainly the extradition treaties, the records of international congresses and associations, as well as selected works from contemporary Latin American and German criminal jurisprudence. Regarding the approach and the methods, the case study is based on the broader research project ‘The Formation of Transnational Criminal Law Regimes in the

5 For the current state of historical research, see KNEPPER, Paul. *Future Agendas for the Study of International Crime. Crime, Histoire & Sociétés / Crime, History & Societies*. Genève/Paris, vol. 21, n. 2, pp. 135-142, 2017.

6 For an overview see OBREGÓN, Liliana. Identity formation, theorization and decline of a Latin American international law. In: WOJCIKIEWICZ ALMEIDA, Paula; SOREL, Jean-Marc (eds.). *Latin America and the International Court of Justice. Contributions to international law*. London: Routledge, 2017, pp. 3-14; ABELLO-GALVIS Ricardo; ARÉVALO-RAMÍREZ, Walter. The influence of the Latin American doctrine on International Law: The rise of Latin American doctrines at The Hague Academy during the early twentieth century. In: *ibid.* pp. 15-27.

Eighteenth and Nineteenth Century’, and the resultant publications.⁷ Against this background, I am confident that it will provide some general insights into the transnationalisation and circulation of transnational criminal law as a fruitful field of research within the context of global legal history.⁸

Concerning the state of research, only a few comprehensive studies treat the history of transnational criminal law, and their spatial focus is often on Europe or the more powerful states. In comparison to recent international criminal law, the body of transnational criminal law seems to be a much more heterogeneous, historically developed aggregation of various ‘shared’ norms and principles.⁹ These norms and principles were established and developed since the eighteenth century by transnational actors (mostly nation states) that concluded agreements and treaties on mutual legal assistance and extradition or enacted national laws dealing with transnational criminal matters. Over the course of the nineteenth century, jurisprudence, too, gradually developed an interest in transnational criminal law; it compared, systematised and further refined its principles and established an international discourse. As a result, the emerging transnational criminal law was characterised by an increasing circulation and ‘normative sharing’ as well as by legal pluralism and a low level of juridification in comparison to the codification of criminal law in many nation states.¹⁰

This ambiguous body of transnational criminal law dealt with a variety of transnational and political crimes. Since the French Revolution and the dissolution of the Holy Roman Empire of the German Nation in 1806, the number of groups and activities that were politically motivated, challenged the political order, operated transnationally and had cross-border effects increased considerably. Political dissidence with a transboundary dimension was also perceived as a form of cross-border and therefore ‘transnational crime’, which

7 HÄRTER, Karl; DE GRAAF, Beatrice (eds.). *Vom Majestätsverbrechen zum Terrorismus: Politische Kriminalität, Recht, Justiz und Polizei zwischen Früher Neuzeit und 20. Jahrhundert*. Frankfurt am Main: Klostermann, 2012. HÄRTER, Karl. *Security and Cross-border Political Crime: The Formation of Transnational Security Regimes in 18th and 19th Century Europe*. *Historical Social Research*. Special issue: Security and Conspiracy in History, 16th to 21st Century. Ed. by ZWIERLEIN, Cornel/DE GRAAF, Beatrice. Köln, 38, pp. 96-106, 2013.

8 DUVE, Thomas. *Global Legal History: Setting Europe in Perspective*. In: PIHLAJAMÄKI, Heikki; DUBBER, Markus D.; GODFREY, Mark (eds.). *The Oxford Handbook of European Legal History*. Online Publication Date: Aug 2018. Available at <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198785521.001.0001/oxfordhb-9780198785521-e-5>. Accessed on: 03/09/2018.

9 Cf. BOISTER, Neil. *The concept and nature of transnational criminal law*. In: BOISTER, Neil; CURRIE, Robert J. *Handbook*. pp. 11-26. BOISTER, Neil. *Transnational Criminal Law? European Journal of International Law*. Oxford, vol. 14 n. 5. pp. 953-976, 2003; BRAUM, Stefan. *Historische Modelle transnationalen Strafrechts*. In: KESPER-BIERMANN, Sylvia; OVERATH, Petra (eds.). *Die Internationalisierung von Strafrechtswissenschaft und Kriminalpolitik (1870-1930). Deutschland im Vergleich*. Berlin: BWV, 2006. pp. 111-125.

10 Cf. for a general overview MASFERRER, Aniceto (ed.). *The Western Codification of Criminal Law. A Revision of the Myth of its Predominant French Influence*. Cham: Springer, 2018.

referred to different types of criminal activities as well as to specific ‘international perpetrators’ and networks that operated secretly and across borders to elude national prosecution. Moreover, other criminal activities that had a cross-border dimension, a foreign connection or a transboundary effect (such as illegal immigration, smuggling, piracy, drug and human trafficking) also increased and were considered an international crime.¹¹ As a result, the threat or narrative of international and political crime intensified the need for transnational cooperation, under the condition that the nation states established national criminal law systems based on the principles of sovereignty, territoriality and a monopoly on power and criminal jurisdiction.¹²

As a result, the international circulation of transnational criminal law in the long nineteenth century was also shaped by various transnational practices that can be defined as modes of procedural cooperation commonly used in the suppression of transnational crime that aimed to overcome “the limitations of sovereignty through cooperation against harmful activity that affects a given state but occurs in part or whole beyond the state’s territory”.¹³ From a narrower legal perspective, these practices are conceptualised as mutual legal assistance and judicial cooperation in criminal matters, which are based on respective laws (or legal principles) and involve judicial as well as administrative procedures. Most of them were established over the course of the nineteenth century and, finally, regulated through national legislation (for instance, extradition laws).¹⁴ The transnationalisation of these practices was still influenced by the *ius commune* principles of *aut dedere, aut iudicare* – the legal obligation to extradite or to prosecute crimes and the principle of compensatory justice.¹⁵ In the age of the nation state, however, compensatory justice, the delegation of criminal

11 INGRAHAM, Barton L. *Political Crime in Europe. A Comparative Study of France, Germany, and England*. University of California Press: Berkeley et al., 1979. ROSS, Jeffrey Ian. *The dynamics of political crime*. Thousand Oaks: Sage, 2003. ROSS, Jeffrey Ian. *An Introduction to Political Crime*. Bristol: The Policy Press, 2012. KNEPPER, Paul. *The Invention of International Crime. A Global Issue in the Making, 1881-1914*. London: Palgrave Macmillan, 2010.

12 Cf. HÄRTER, Karl. Die Formierung transnationaler Strafrechtsregime: Auslieferung, Asyl und grenzübergreifende Kriminalität im Übergang von gemeinem Recht zum nationalstaatlichen Strafrecht. In: *Rechtsgeschichte*, Frankfurt am Main, 18. pp. 36-65, 2011. HÄRTER, Karl. Legal Responses to Violent Political Crimes in 19th Century Central Europe. In: HÄRTER, Karl; DE GRAAF, Beatrice (eds.). *Vom Majestätsverbrechen*. pp. 161-178. HÄRTER, Karl. Legal Concepts of Terrorism as Political Crime and International Criminal Law in Eighteenth and Nineteenth Century Europe. In: MASFERRER, Aniceto (ed.). *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism*. Dordrecht: Springer, 2012. pp. 53-75.

13 BOISTER, Neil; CURRIE, Robert J. *Introduction*. pp. 2 s.

14 VERVAELE, John A.E. Mutual legal assistance in criminal matters to control (transnational) criminality. In: BOISTER, Neil; CURRIE, Robert J. *Handbook*, pp. 121-136.

15 Cf. MAIERHÖFER, Christian. “Aut dedere - aut iudicare”: Herkunft, Rechtsgrundlagen und Inhalt des völkerrechtlichen Gebotes zur Strafverfolgung oder Auslieferung. Berlin: Duncker&Humblot, 2006.

prosecution and the extraterritorial application of national criminal law acquired only a minor role, whereas extradition became the primary practice of mutual legal assistance in criminal matters. During the nineteenth century, many states all over the world increasingly concluded extradition treaties that established the basic legal principles of extradition and that, thus, can be characterised as an essential medium of the circulation of transnational criminal law.¹⁶

EXTRADITION TREATIES

Early extradition treaties date back to the eighteenth century and concern deserters, military offenders and ‘mobile’ criminals, acting in groups and crossing borders (‘robber gangs’). With the French Revolution, political asylum, extradition and penal law all changed. The French Republic not only promulgated a new criminal code (that was perpetuated with the *Code pénal* of 1810), but it also declared its intention to grant political asylum and, subsequently, established the principle that political crimes should be treated differently than conventional crimes. The privileging of political crime implied the non-extradition of political refugees/offenders, which was adopted by many European states in the first half of the nineteenth century, and eventually resulted in the so-called political offence exception.¹⁷ The latter was expressed for the first time in the Belgian Extradition Law of 1833, which stated that “no foreigner may be prosecuted for any political crime antecedent to the extradition, or for any act connected with such a crime”, and from then on it was included in various Belgian and French extradition treaties.¹⁸ In the second half of the nineteenth century, more and more extradition treaties included or referred to the so-called Belgian *attentat* or assassination clause of 1856. This stipulated that the murder or attempted murder of the head of a foreign state or of members of his family (and later other state officials) “shall not be considered as a political crime or as an act connected with”¹⁹, and therefore exempted the respective perpetrators (despite the political nature of such crimes) from the privilege of non-extradition or political asylum. Furthermore, many extradition treaties adopted additional

16 For an overview, see SHEARER, Ivan A. *Extradition in international law*. Manchester: Manchester University Press, 1971. HARRINGTON, Joanna. Extradition of transnational criminals. In: BOISTER, Neil; CURRIE, Robert J. *Introduction*. pp. 153-166.

17 On its history and nature, see: VAN DEN WYNGAERT, Christine. *The political offence exception to extradition*. The delicate problem of balancing the rights of the individual and the international public order. Deventer: Kluwer, 1980, here pp. 11-18. STEIN, Torsten. *Die Auslieferungsausnahme bei politischen Delikten. Normative Grenzen, Anwendung in der Praxis und Versuch einer Neuformulierung*, Berlin et al.: Springer, 1983, here pp. 4-10.

18 *Loi sur les extraditions, 1.10.1833*. In: *Pasinomie, ou collection complète des lois, décrets, arrêtés et règlements généraux qui peuvent être invoqués en Belgique*. Bruxelles, 1833. pp. 239-244. English version quoted from ZANOTTI, Isidoro. *Extradition in multilateral treaties and conventions*. Foreword and update by Edgardo Rotman. Leiden: Martinus Nijhoff Publishers, 2006. p. 57.

19 Quoted from ZANOTTI, Isidoro. *Extradition in multilateral treaties*. p. 57.

norms such as the principles of reciprocity, identical norm, speciality, lenity and the non-extradition of nationals, whereas the political offender exception was altered through the *attentat* and later the ‘anarchist clause’.²⁰

During the nineteenth century, the number of extradition treaties grew considerably, and they gradually formed a global network of transnational criminal law in which European powers, ‘weaker’ states as well as many American countries participated and influenced the transnationalisation of criminal law. Up to the middle of the nineteenth century, only a few individual German states had concluded extradition treaties with neighbouring European countries, but none with the Americas. The conventions that Baden (June 27, 1844), Prussia (June 21, 1845) and Bavaria (March 23, 1846) concluded with France stated the exception of political offences and acts connected therewith, and, as in the case of Bavaria and Prussia, explicitly differentiated between ordinary extraditable crimes and political and therefore non-extraditable crimes.²¹

This changed after the revolution of 1848, since many German political dissidents/refugees emigrated, which amplified a more general increase in migration to the Americas. The first German-speaking country to conclude an extradition treaty with the United States of America was the Swiss Confederation on 25 November 1850. The Convention on Friendship, Commerce, and Extradition agreed to “deliver up to justice persons” who had committed one of the crimes enumerated within the jurisdiction of the requiring party, albeit with the exception of “those of a political character”. As a result, the political offence exception was introduced for the first time in a treaty between a German-speaking and an American state. The convention listed the following crimes as extraditable: “Murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder; rape; forgery, or the emission of forged papers; arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried to the detriment of their employers, when these crimes are subject

20 Cf. HÄRTER, Karl. Asyl, Auslieferung und politisches Verbrechen in Europa während der “Sattelzeit”: Modernität und Kontinuität im Strafrechtssystem. In: SCHNEIDER, Ute; RAPHAEL, Lutz (eds.). *Dimensionen der Moderne. Festschrift für Christof Dipper*. Frankfurt am Main et. al.: Peter Lang, 2008. pp. 481-502. NUNES, Diego. Extradition and Political Crimes in the ‘International Fight against Crime’: Western Europe and Latin America 1833 – 1933. In: HÄRTER, Karl; HANNAPPEL, Tina; TYRICHTER, Jean Conrad (eds.). *The Transnationalisation of Criminal Law*. pp. 41-63. HANNAPPEL, Tina. Extradition and Expulsion as Instruments of Transnational Security Regimes against Anarchism in the late Nineteenth Century. In: *ibid.* pp. 65-97.

21 Extradition treaties between Baden and France 27.06.1844 (art. VI), Prussia and France 21.06.1845 (art. 8) and Bavaria and France, 23.03.1846 (art. 8). In: OLSHAUSEN, Justus von (ed.). *Die Auslieferungs- und Konsularverträge des Deutschen Reichs. Nebst einem Anhang, enthaltend die Auslieferungsverträge Deutscher Bundesstaaten mit ausländischen Staaten*. Berlin, 1903. pp. 148 ss. *Der Auslieferungs-Verkehr zwischen Baden und Frankreich*. Karlsruhe: C. F. Müller, 1899. pp. 3 ss. *Die Staats-Verträge des Königreichs Bayern [...] von 1806 bis einschließlich 1858*. Regensburg: Pustet 1860. pp. 53 ss.

to infamous punishment.”²² Interestingly, assassination and embezzlement by public officers – which under certain circumstances could be crimes of a political nature – were included among the extraditable crimes as well as the international crime of piracy. In this regard, the convention already showed the first signs of an impending problem of transnational criminal law: the (legal) definition and interpretation of international crimes and political offences in the context of extradition.²³

One motivation for this convention seems to be the fact that after the revolution of 1848/49, German political refugees had fled to Switzerland but were more or less forced to leave and often emigrated to America. The German government considered this increase in the migration of political refugees to countries in the Americas a security threat, since criminals and dissidents escaped criminal prosecution.²⁴ This was also a major reason for the German Confederation and nine individual German states to enter into extradition conventions with the United States of America (Confederation/Prussia 1852, Bavaria 1853, Bremen 1853, Mecklenburg-Schwerin 1853, Mecklenburg-Strelitz 1853, Oldenburg 1853, Württemberg 1853, Schaumburg-Lippe 1854, Hanover 1855, Baden 1857).²⁵ The United States had already adopted the non-extradition of political offenders in the extradition treaty concluded with France in 1843 (similar to the provisions in the above-mentioned French treaties with the German states): “The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offence of a purely political character.”²⁶ This was confirmed in further conventions with France (1845, 1858, 1909), and the United States included the non-extradition of political offenders in other extradition treaties, in particular with Latin American states such as Ecuador (1872), Colombia (1888), Argentina (1896), Brazil (1897), Mexico (1899), Bolivia (1900) and Uruguay (1905).²⁷

22 *Treaties and conventions concluded between the United States of America and other powers since July 4, 1776 [...]*, compiled by John H. HASWELL for the Department of State. Washington, D.C.: U.S. Government Printing Office, 1889. pp. 1072-1077, here article XIII and XVII. For an overview on the Swiss extradition law, BERNEY, Jacques. *De la procédure suivie en Suisse pour l’extradition des malfaiteurs aux pays étrangers [...]*. Basel, 1889.

23 Cf. SHEARER, Ivan A. *Extradition in international law*. pp. 166-193.

24 See REITER, Herbert. *Politisches Asyl im 19. Jahrhundert. Die deutschen politischen Flüchtlinge des Vormärz und der Revolution von 1848/49 in Europa und den USA*. Berlin: Duncker&Humblot, 1992.

25 *Treaties and other international agreements of the United States of America 1776-1949*. Compiled under the direction of Charles I. BEVANS. Washington, D.C.: U.S. Government Printing Office, 1968 ss., v. 8, pp. 1-117.

26 Extradition of fugitives from justice. November 9, 1843, article 5. In: *Treaties and conventions*. pp. 348 ss.

27 “Political Offence” in Extradition Treaties between the United States and Other Countries. In: *The American Journal of International Law*. Washington, D.C., v. 3, n. 2, 1909. Supplement:

The conventions “for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States, on the one part, and Prussia and other states of the Germanic Confederation”, and the nearly identical treaties of the individual German states, however, were different, albeit they stipulated the basic principles of reciprocity, speciality (only the crimes enumerated were extraditable) and nationality (“none of the contracting parties shall be bound to deliver up its own citizens or subjects”).²⁸ The convention enumerated the following as extraditable crimes: “murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys committed within the jurisdiction of either party”. Similar to the Swiss convention, a few crimes that threatened the security of the state or acquired a transnational dimension (forgery of official papers, circulation of counterfeit money, piracy) were included, but the treaty did not explicitly list political offences nor did it, on the contrary, stipulate the political offence exception as in nearly all other extradition treaties concluded by the United States and the German treaties with France before 1848.

Although the nine treaties of the individual German states almost completely adopted the treaty of 1852, the last drafted convention of the more liberal Grand Duchy of Baden differed regarding the crucial issue of political offences and stated as an appendix to article I: “Nothing in this article contained shall be construed to extend to crimes of a political character”.²⁹ Moreover, already in 1856, Austria, which had also been affected by the revolution and the exodus of political refugees, and was still a member of the German Confederation, concluded an extradition treaty with the United States. This treaty also stipulated the political offence exception: “The provisions of the present Convention shall not be applied, in any manner, to the crimes enumerated in the First Article, committed anterior to the date thereof; nor to any crime or offence of a political character”.³⁰ This clearly demonstrated that – with regard to political offences – the circulation of extradition law had not even resulted in a homogenisation

Official Documents, Apr. 1909. pp. 144-152.

- 28 Conventions for the mutual delivery of criminals, fugitives from justice, in certain cases, concluded between the United States, on the one part, and Prussia and other states of the Germanic Confederation, signed at Washington June 16, 1852, entered into force May 30, 1853. In: **Treaties and other international agreements of the United States of America**. pp. 105-108, here: art. I, II, IV.
- 29 Conventions for the mutual delivery of criminals, fugitives from justice, in certain cases, between the United States, on the one part, and the Grand Duchy of Baden on the other part, signed at Berlin January 30, 1857, entered into force April 21, 1857. In: **Treaties and other international agreements of the United States of America**. pp. 1-3, here: art. I.
- 30 Convention for the extradition of criminals, fugitives from justice, concluded July 3, 1856, art. I. In: **Treaties and conventions**, pp. 29-31.

of transnational criminal law in the German-speaking countries; an interesting point, given that the treaties had indeed established a stable group of crimes threatening transnational and state security (including forgery of official papers, circulation of counterfeit money and piracy).³¹

The treaty of the German Confederation with the United States of America was extended to the German Empire, which concluded further conventions with three other states in America prior to World War I, namely in 1877 with Brazil, in 1880 with Uruguay, and in 1909 with Paraguay. Again, this might have been motivated by the increase in migration from Germany to these countries, but the growing transnational trade and political interest, in particular on the side of the American countries, also played a role.³² Extradition treaties allowed Latin American states to participate in a growing international network and to contribute to the formation of transnational criminal law. This was paralleled by various attempts to reform and codify penal law and the concomitant differentiation of criminal jurisprudence in countries such as Brazil and Argentina, both of which showed increasing interest in European and transnational criminal law as well as its international circulation.³³ In this context, in the last third of the nineteenth century, extradition and political crimes gained in importance, since immigrants as well as indigenous groups were affected by socialism, communism and anarchism, which American governments perceived as a transboundary threat to the political order and (trans)national security.³⁴

31 On the history of these transnational crimes, see: BRUINSMA, Gerben (ed.). *Histories of Transnational Crime*. New York: Springer, 2015.

32 For the interdependence between extradition and migration, see OLTMER, Jochen. *Migration und Politik in der Weimarer Republik*. Göttingen: Vandenhoeck & Ruprecht, 2005, pp. 56-63; LESSER, Jeffrey. *Immigration, Ethnicity, and National Identity in Brazil, 1808 to the Present*. Cambridge: Cambridge University Press, 2018, pp. 24 ss.

33 SONTAG, Ricardo. *Código Criminológico? Ciência Jurídica e codificação penal do Brasil 1889-1899*. Rio de Janeiro: Editora Revan, 2014. DUVE, Thomas. ¿Del absolutismo ilustrado al liberalismo reformista? La recepción del Código Penal Bávaro de 1813 de P.J.A. von Feuerbach en Argentina y el debate sobre la reforma del derecho penal hasta 1921. In: *Revista Historia del Derecho*. Buenos Aires, 27, 1999. pp. 125-152. NUNES, Diego. The 'Code Pénal' in the Itinerary of the Criminal Codification in America and Europe: 'Influence' and Circularity of Models. In: MASFERRER, Aniceto (ed.). *The Western Codification of Criminal Law*. pp. 281-295, here: pp. 286-291. AGÜERO, Alejandro; ROSSO, Matías. Codifying the Criminal Law in Argentina: Provincial and National Codification in the Genesis of the First Penal Code. In: *ibid.* pp. 297-322. NÚÑEZ, Jorge A. From Free Will to Social Defense (or from Cesare Beccaria to Cesare Lombroso): Julio Herrera and the Criminal Law Codification in Argentina (1903–1922). In: *ibid.* pp. 323-339.

34 Cf. DÍAZ COUSELO, José María. Origen de la extradición en la Argentina (1852-1885). Su regulación de fondo. In: *Revista de Historia del Derecho*, Buenos Aires, 13, pp. 31-60, 1985; YÁÑEZ ANDRADE, Juan Carlos. Tratado de extradición y protección contra el anarquismo (1901-1902). In: *Relaciones. Estudios de historia y sociedad*, v. XXXII, n. 125, pp. 125-136, 2011; ZARAGOZA, Gonzalo. *Anarquismo argentino, 1876-1902*. Madrid: Ediciones de La Torre, 1996. pp. 23-30; ALBORNOZ Martín; GALEANO, Diego. Anarquistas y policías en el atlántico

The extradition treaty that Brazil concluded with the German Empire in 1877 exhibited the first signs of these developments. The first article provided a comprehensive and detailed list of eighteen crimes and delicts (“crimes e delictos”) for which extradition could be requested regarding convicted, indicted or prosecuted (through an arrest warrant) perpetrators as well as accomplices (“condenados ou pronunciados, ou contra os quaes houver mandado de prisão ..., como autores ou complices de algum dos crimes ou delictos”); the first twelve (more serious) crimes also extended extradition to attempted crimes (“tentativa dos crimes designados nos números 1 e 12 do presente Artigo”). Hence, the treaty was based on general principles and the trinity of punishable offences (*crimes, délits, contraventions*), which had been established by the French Penal Code of 1810 and – following the common practice – excluded contraventions from extradition. Some of the extraditable offences the treaty listed can be qualified as crimes against the state or having a transboundary dimension such as the forgery and fraudulent distribution of official documents (passports), seals, stamps, money, bonds, shares and telegrams, criminal acts of skippers and ship crews, piracy, as well as the damaging of railways, steam engines and telegraph facilities. The proceedings were also regulated in detail in accordance with the common international practice: request by the governments through diplomatic channels (without the involvement of courts), the possibility of immediate provisional arrest in urgent cases, the exchange or delivery of evidence and witnesses (including interrogation and confrontation), and the exchange of verdicts and the practical application of delivery. The treaty stipulated the general principles of reciprocity, identical norm, speciality and the non-extradition of nationals, but it included the opportunity to extradite nationals of other countries in case they had committed a crime within the territory of Brazil or Germany; this was clearly hinting at ‘international’ political offenders. However, Article 6 stated the political offence exception (including ‘related offences’) – “as disposições do presente Tratado não são applicaveis aos crimes ou delictos politicos ou aos factos connexos com elles” – but limited the provision by including the Belgian *attentat* clause and determining that assassination attacks against the head of a government or members of his family could not be considered as political offence if they could be classified as homicide or murder (“não se considera crime ou delicto politico nem facto connexo com elle o attentado contra o Chefe de um Governo estrangeiro ou qualquer Membro da sua família, quando este attentado constituir o crime de homicidio voluntario ou assassinato”).³⁵

sudamericano: una red transnacional, 1890-1910. In: *Boletín del Instituto de Historia Argentina y Americana “Dr. Emilio Ravignani”*, Tercera serie, núm. 47, segundo semestre de 2017, pp. 101-134..

35 Tratado de extradição entre a Allemanha e o Brazil. De 17 de Setembro de 1877 / Ausliefere-

The treaty between Uruguay and the German Empire, concluded in 1880, followed the same pattern, albeit differentiating and expanding, in particular, the list of crimes against the state, political offences and crimes with a transboundary dimension, such as the child abandonment, the formation of criminal gangs (“formar una asociacion ilegal”), the procuring of minors, the bribery of public officials, and the destruction of public transport and public facilities. While the extradition proceeding and principles stipulated were similar to the convention with Brazil, the political offence exception was more precisely determined and prohibited that a perpetrator extradited for common crimes could be additionally prosecuted for prior political offences he had committed before (“no son aplicables las disposiciones de este Tratado á los que hayan cometido algun crimen ó delito político. La persona entregada por uno de los crímenes ó delitos comunes enumerados en los artículos 1º y 2º no podrá, por consiguiente, de ningun modo, ser encausada ni castigada en el pais al cual se concede su entrega por un crimen o delito político cometido antes de la extradicion”). However, the convention also included the Belgian *attentat* clause, identical to the Brazilian provision.³⁶

The treaties with the German Empire served as blueprints for the conventions Brazil and Uruguay concluded with Austria some years later on May 21, 1883 and June 25, 1887. They comprised similar provisions and followed the same patterns, in particular regarding crimes against the state, the transnational dimension and political offences. Hence, they also included the political offence exception and the Belgian *attentat* clause, which were also adopted in the extradition treaties of many Latin American states.³⁷ Moreover, in August 1885, Argentina passed the comprehensive *ley de extradicion*, which, after the Belgian extradition laws of 1833 and 1856, was among the first national extradition laws of the nineteenth century.³⁸ Because of its importance for the

rungsvertrag zwischen Deutschland und Brasilien, 17. September 1877. In: *Deutsches Reichsgesetzblatt* 1878, n. 30. pp. 293-306. Available at: https://de.wikisource.org/wiki/Auslieferungsvertrag_zwischen_Deutschland_und_Brasilien. Accessed on 01/09/2018.

36 Tratado de extradicion entre el Imperio Aleman y la República Oriental del Uruguay. De 12 de Febrero de 1880 / Auslieferungsvertrag zwischen dem Deutschen Reich und dem orientalischen Freistaat Uruguay, 12. 02. 1880. In: *Deutsches Reichsgesetzblatt* 1883, n. 22. pp. 287-301. Available at: https://de.wikisource.org/wiki/Auslieferungsvertrag_zwischen_dem_Deutschen_Reich_und_dem_orientalischen_Freistaat_Uruguay. Accessed on 01/09/2018.

37 Cf. NUNES, Diego. Extradition and Political Crimes. BRIGGS, Arthur. *Extradição. Tratados vigentes entre o Brasil e outros paizes*. Rio de Janeiro: Imprensa Nacional, 1909.

38 *Ley de extradicion. República Argentina*. Ministerio de relaciones exteriores. Buenos Aires: J.A. Alsina, 1885. On the law as well as on the Argentinian extradition treaties see DÍAZ COUSELO. Origen de la extradición en la Argentina. Another example of a national extradition law in Latin America that aimed to unify the transnational norms and to regulate the extradition of nationals is the Brazilian Regula a extradição de nacionaes e estrangeiros e o processo e julgamento dos mesmos, quando, fóra do paiz, perpetrarem algum dos crimes mencionados nesta lei, 28. Junho 1911, online: <http://www2.camara.leg.br/legin/fed/lei/1910-1919/lei->

extradition practice and transnational criminal law, the Swiss government published a German translation in the official law gazette *Foglio federale (Bundesblatt)* as a binding norm for all future extradition procedures.³⁹ The legal discourse in Europe also took note of the Argentinian extradition law; in his influential work, Heinrich Lammasch drew a favourable comparison, but he critically noted that the law would hinder Argentina from including the *attentat* clause in its future treaties.⁴⁰ In comparison with the treaties the German states had concluded with the United States between 1852 and 1857, the conventions with the Latin American states were more precise, detailed and comprehensive, thus they reflected the development of national criminal jurisprudence in the respective countries as well as the increasing international circulation of transnational criminal law. Specifically, this concerned the political offence exception, which, on the one hand, was enhanced through the inclusion of ‘related offences’ (*délit connexe*) and the prohibition of prosecuting political offences if the extradition had been granted for ordinary crimes, and, on the other, was limited through the adoption of the Belgian *attentat* clause with which the development commenced to differentiate political offences and to exclude specific forms related to political violence.⁴¹

INTERNATIONAL DISCOURSES, ASSOCIATIONS AND CONFERENCES

The extradition treaties with several European powers evince that Latin American states and their legal experts participated in the growing international circulation of transnational criminal law that, at the same time, manifested in international juridical expert discourses, international congresses and the establishment of international associations such as the *Institut de Droit International* and the *International Union of Penal Law*.⁴² In this communication context, issues of transnational criminal law and extradition gained in importance as the growing number of legal publications by American, French, British, Spanish, Italian, German and authors from other countries as well as translations of ‘important works’ demonstrate. The *Tratado*

2416-28-junho-1911-579206-publicacaooriginal-102088-pl.html. On this law and the state of research cf. NUNES, Diego. Extradition and Political Crimes, n. 63.

39 Foglio federale/Bundesblatt 1886 v. 1, n. 11, pp. 379-387.

40 LAMMASCH, Heinrich. *Auslieferungspflicht und Asylrecht. Eine Studie über Theorie und Praxis des internationalen Strafrechtes*. Leipzig 1887, pp. 875-889, here p. 878.

41 SHEARER, Ivan A. *Extradition in international law*. pp. 11-16, does not mention them in his chapter on America.

42 HENZE, Martina. Crime on the Agenda. Transnational Organizations 1870-1955. In: *Historisk Tidsskrift*. Kopenhagen, 109, pp. 369-416, 2010. BECKER, Peter; WETZELL, Richard F. (eds.). *Criminals and their scientists. The history of criminology in international perspective*. Cambridge: Cambridge University Press, 2006. KESPER-BIERMANN, Sylvia; OVERATH, Petra (eds.). *Internationalisierung von Strafrechtswissenschaft und Kriminalpolitik (1870-1930)*.

de derecho penal internacional y de la extradición (1880) by the Italian jurist Pasquale Fiore, the monograph by the German jurist Carl Ludwig von Bar on *International Law, Private and Criminal* (1883), and the comparative survey on *La legislación penal comparada* published by Franz von Liszt on behalf of the *International Union of Penal Law* in 1894/99 may serve as examples of the growing internationalisation and circulation of the legal discourse on matters of criminal law.⁴³ The increasing translation of these and other works facilitated the circulation of transnational criminal law, but could also alter the meaning and interpretation of legal concepts and, thus, could produce varied knowledge. The tradition of the *ius commune*, on the other hand, still provided a common ground of understanding and knowledge that particularly helped to translate the works of continental European authors into Spanish.⁴⁴

Jurists from Latin America not only received these and other works dealing with criminal law and extradition,⁴⁵ but they also actively participated in the circulation of transnational criminal law. In 1885, Demetrio Porras, a lawyer at the Catholic University of Bogota and member of the commission to reform and codify penal law, published a treatise on *extradición y los delitos políticos* in which he referred to the resolution on extradition and political offences the *Institut de Droit International* had proposed in its Oxford meeting in 1880.⁴⁶ At the turn of the century, more specific monographs on extradition by Latin American jurists were issued in Guatemala (1896), Mexico (1897, 1904), and Brazil (1909);⁴⁷ most of them explicitly referred to the international

43 FIORE, Pasquale. *Trattato di diritto internazionale pubblico*, Torino 1879, translations: *Traité de droit pénal international et de l'extradition*. Paris, 1880. *Tratado de derecho penal internacional y de la extradición*. Madrid, 1880. BAR, Carl Ludwig von. *International law, private and criminal*. Boston 1883/Edinburgh, 1883. LISZT, Franz von; CRUSEN, Georg (eds.). *Die Strafgesetzgebung der Gegenwart in rechtsvergleichender Darstellung / La législation pénale comparée*, im Auftrag der Internationalen kriminalistischen Vereinigung. Berlin/Paris/Rome/Lisbonne, 1894/99, 2 volumes. Spanish translation: *La legislación penal comparada, publicada por acuerdo de la Unión internacional de derecho penal, con el concurso de eminentes penalistas, por el doctor Franz von Liszt [...]*, traducido de la edición francesa por d. Adolfo POSADA, Madrid, 1896.

44 The issue of translation would constitute a fruitful approach to study the circulation of transnational criminal law and the production of knowledge; however, in this limited article it is not possible to follow this path, since this would require extensive source studies. As an example cf. KEARLEY, Timothy G. *Lost in Translations: Roman Law Scholarship and Translation in Early Twentieth-Century America*. Durham, 2018.

45 For instance: BONAFOS, Henri. *De l'extradition*. Lyon, 1866. BILLOT, Albert. *Traité de l'extradition, suivi d'un recueil de documents étrangers et des conventions d'extradition conclues par la France et actuellement en vigueur*. Paris: E. Plon, 1874. RENAULT, Louis. *Des Crimes politiques en matière d'extradition*, Paris 1880; Paul Bernard, *Traité théorique et pratique de l'extradition*. Paris, 1883. DE MENA Y ZORRILLA, Antonio. *Estudio sobre la extradición y los delitos políticos*. Madrid, 1887.

46 PORRAS, Demetrio. *De la extradición y los delitos políticos*. Bogota, 1885, here p. 10.

47 GODOY, José F. *Tratado de la extradición*. Guatemala: E. Goubaud y cia, 1896. DE LA BARRA, Francisco L. *Estudio sobre la ley mexicana de extradición / discursos pronunciados*. Mexico

legal discourse on extradition and the extradition treaties Latin American states had concluded with other countries.⁴⁸ The comparative work issued by the *International Union of Penal Law* not only annotated the works of Porras and other Latin American jurists, but it also included twelve reports on criminal law in Argentina, Chile, Ecuador, Venezuela, Peru, Uruguay, Paraguay, Columbia, Mexico, Central America, Bolivia and Brazil; some of them authored by experts from the respective countries like Norberto Piñero (University of Buenos Aires), Robustiano Vera (advocate and public prosecutor in Santiago de Chile), Francisco Ochoa (Maracaibo/University of Zulia), Martín C. Martínez (Montevideo), and João Vieira de Araújo (Pernambuco).⁴⁹

Moreover, jurists from Latin American countries participated in the international discourses on criminology and prison reform,⁵⁰ as well as they became members of the *Institut de Droit International* and the *International Union of Penal Law*, the two pivotal international associations that dealt with criminal and international law. The former was founded in 1873 by eleven renowned international jurists, among them the advocate David Dudley Field (1805-1894) from New York City and Carlos Calvo (1824-1906) from Argentina, who had published an influential work on international law⁵¹ and was also employed in the diplomatic corps of Paraguay. Up to 1883, the *Institut* had grown to 47 members and 35 *Associés*; most of them originated from Germany, but three came from the United States of America and three from South America: Calvo, Paul Pradier-Fodéré (1827-1904), who at the time of his appointment held a professorship for constitutional law at the

City: Imprenta del Gobierno Federal, 1897. DE GRACIA Y PAREJO, Rafael. *Código de extradición, ó Colección de leyes y tratados sobre entrega de reos entre los estados de la Republica Mexicana y entre ésta y las potencias extranjeras, ordenada y anotada por Francisco Pascual Garcia*. Mexico City: Herrero hermanos, 1904. BRIGGS, Arthur. *Extradição*. On the further development of the legal doctrine on extradition, see GONZÁLEZ, Eugenio Gaete. *La extradición ante la doctrina y la jurisprudencia (1935-1965)*. Santiago: Andrés Bello, 1972.

48 For instance, DE LA BARRA, Estudio, referred to the above-mentioned works of Fiore, Billot, Bernard, Calvo, and extradition treaties Mexico had concluded with Spain and Belgium; GODOY, José F. *Tratado*. pp. 135-162, gives a comprehensive overview on the extradition treaties and practices in Europe.

49 LISZT, Franz von; CRUSEN, Georg. *Die Strafgesetzgebung der Gegenwart, v. 2: Das Strafrecht der außereuropäischen Staaten*. Berlin, 1899. pp. 1-193.

50 See, for example, SALVATORE, Ricardo D. *Positivist Criminology and State Formation in Modern Argentina, 1890-1940*. In: BECKER, Peter; WETZEL, Richard F. *Criminals and their scientists*, pp. 253-280; SOZZO, Máximo. *Los usos de Lombroso. Tres variantes en el nacimiento de la criminología positivista en Argentina*. In: SOZZO, Máximo; CAIMARI, Lila (eds.). *Historia de la Cuestión Criminal en América Latina*. Rosario, 2017. pp. 27-70.

51 CALVOS, Carlos. *Derecho internacional teórico y práctico de Europa y América*. Paris: D'Amyot, 1868, 2 vol. French translation: *Le droit international théorique et pratique. Précédé d'un exposé historique des progrès de la science du droit des gens*. 4th edition. Paris: Guillaumin, 1887/88, 6 vols.

University of Lima, and Onésimo Leguizamón (1839-1886).⁵² In 1892, Calvo and Pradier-Fodéré were still members and three new associates from Latin America had been appointed: Almancio Alcorta (1842-1902) from Argentina, Manuel María de Peralta y Alfaro (1847-1930) from Costa Rica and Rafael Fernando Seijas (life data unknown) from Venezuela. Moreover, two further jurists from the United States joined the *Institut*: John Forrest Dillon (1831-1914), as a member, and John Bassett Moore (1860-1947), as an associate.⁵³ In his influential work *Derecho internacional teórico y práctico de Europa y América*, that was translated into French and published in extended form in 1887, Calvo dedicated a full paragraph to the extradition of criminals and a few others to issues of transnational criminal law such as piracy, criminal groups (*bandidos*) and foreign jurisdiction.⁵⁴ Other founder members of the *Institut* had also published on these topics, like the above-mentioned Pasquale Fiore, Carl Ludwig von Bar or Auguste de Bulmerincq; the latter had written one of the first specific monographs on the history and importance of asylum according to international law.⁵⁵

Although the focus of the *Institut* was on other issues, it also dealt with inter- and transnational criminal law, particularly at its meeting in Oxford in 1880 in which it discussed extradition and political crime. After hearing the reports by Carl Ludwig von Bar, Charles Brocher, Louis Renault and Caspar Bluntschli, the *Institut* passed the following resolution:

13. Extradition cannot take place for political acts.

14. It is for the requested State to decide whether in the circumstances the act on account of which extradition is demanded has a political character. In considering this question it should be guided by the two following ideas:

(a) Acts combining all the characteristics of crimes at common law (murders, arsons, thefts) should not be excepted from extradition by reason only of the political purpose of their authors;

(b) In passing upon acts committed during a political rebellion, an insurrection, or a civil war, it is necessary to inquire whether they are excused by the customs of war.⁵⁶

52 Cf. the biographical notes on Calvo and Pradier-Fodéré. In: *The American Journal of International Law*. Washington, D.C., v. 1, n. 1, pp. 137 s., 1907; *The American Political Science Review*. Washington, D.C., v. 2, n. 2. pp. 245-254, 1908.

53 See the list of members and associates in the yearbook of the institute: *Annuaire de Institut de Droit International*. Paris, 1877, v. 1 ss.

54 CALVOS, Carlos. *Derecho internacional*. Vol. 1, paragraphs 200-209. pp. 314-327.

55 BULMERINCQ, August von. *Das Asylrecht in seiner geschichtlichen Entwicklung. Beurtheilt vom Standpunkte des Rechts und dessen völkerrechtlicher Bedeutung für die Auslieferung flüchtiger Verbrecher*. Dorpat 1853.

56 *Annuaire de Institut de Droit International*. Brussels, 1882, v. 5. pp. 127-130, here 128 s. English translation: *Resolutions of the Institute of International Law dealing with the law of nations, with an historical introduction and explanatory notes*, coll. and transl. under supervision of and ed. by James BROWN SCOTT New York: Oxford University Press, 1916. pp. 44.

The resolution clearly adopted the Belgian *attentat* clause, which was further differentiated and integrated into the burgeoning international juridical discourse on transnational law. With the increase of political assassination attempts since the late nineteenth century, which many states perceived as a transboundary threat of anarchist violence and an international anarchist conspiracy,⁵⁷ the discourse and the international associations placed even greater emphasis on extradition and political crime. In its meetings in 1891 and 1892, the *Institut de Droit International* discussed once more the nature of political crime with regard to its ‘non-political’ elements, relative political offenses and violent acts such as assassination attempts or violent insurrection/overthrow.⁵⁸ The meeting in Geneva finally adopted the proposal of the *rapporteur* Albéric Rolin and revised its resolution from 1880 as follows:

“Extradition is inadmissible for purely political crimes or offenses (Art. 1) and could not “be admitted for unlawful acts of a mixed character or connected with political crimes” (Art. 2). However, this was restricted “in the case of crimes of great gravity from the point of view of morality and of the common law, such as murder, manslaughter, poisoning, mutilation, grave wounds inflicted wilfully with premeditation, attempts at crimes of that kind, outrages to property by arson, explosion or flooding, and serious thefts, especially when committed with weapons and violence” (Art. 2). Moreover, Article 4 stated that “criminal acts directed against the bases of all social organization, and not only against a certain State or a certain form of government, are not considered political offenses in the application of the preceding rules.”⁵⁹ Although ‘anarchism’ is not explicitly mentioned, the provision was clearly aimed at anarchists and other international revolutionary movements as well as related violent acts, and it conceptualised (or labelled) them as ‘non-political’, international social crimes that would threaten more than one state, government or jurisdiction.⁶⁰ Hence, the resolution constituted a new exception to the political offence exception. It proposed excluding violent political crimes and anarchist deeds from political

57 See JENSEN, Richard Bach. *The International Campaign Against Anarchist Terrorism, 1880-1930s*. In: *Terrorism and Political Violence*. Abingdon-on-Thames, 21, pp. 89-109, 2009. JENSEN, Richard Bach. *The Battle against Anarchist Terrorism. An International History, 1878-1934*. Cambridge: Cambridge University Press, 2014.

58 *Annuaire de Institut de Droit International*. Brussels, 1892-1894, v. 12. pp. 156-183.

59 English translation of the resolution: *Resolutions of the Institute of International Law*. Brussels, 1916. p. 103.

60 On the concept of social crime, see: JENSEN, Richard Bach. *The Rise and Fall of the ‘Social Crime’ in Legal Theory and International Law: The Failure to Create a New Normative Order to Regularize Terrorism, 1880-1930s* (January 2018). In: *Max Planck Institute for European Legal History Research Paper Series*. Frankfurt am Main, v. 2018-02, 2018. Available at SSRN: <https://ssrn.com/abstract=3100744>. Accessed on 01/09/2018.

asylum as well as including them as extraditable transnational crimes in extradition conventions, later referred to as the ‘anarchist-clause’.⁶¹

The relation of extradition and transnational political crime, and the anarchist clause in particular, was further developed at the *International Conference of Rome for the Social Defence Against Anarchists*. Held shortly after the assassination of Empress Elisabeth of Austria, the conference took place in November and December of 1898 in Rome and included delegates from twenty-one countries. The conference also discussed the issue of extradition and referred to the resolution of the Institute of International Law in defining all acts with the aim to destroy all social organisation (order) by violent means as ‘anarchist acts’, and excluded them, as well as attempts to kill or kidnap a sovereign, head of state or state official, from asylum and the political offence exception: “les faits anarchiques ne soient pas considérés comme délits politiques au point de vue extradition”. The final protocol of the conference proposed to include these provisions in extradition conventions and national extradition laws.⁶²

The *International Union of Penal Law*, which was founded in 1889, took a somewhat different approach.⁶³ Franz von Liszt, one of the founder members, had already presented an influential report on the question of common principles of international criminal law in which he discussed the Oxford-resolution proposed by the *Institut de Droit International*, which he regarded as the only appropriate provision in matters of extradition.⁶⁴ Liszt, and other members of the Union, were particularly concerned with the threat of ‘international crime and criminals’, and he developed the concept of ‘international legal goods/rights’ that criminal law should protect. This involved transnational criminal activities threatening common assets, such as international money transactions or transport, and could require transnational cooperation and mutual assistance in matters of transnational criminal law, such as extradition.⁶⁵ Liszt and other

61 See NUNES, Diego. *Extradition and Political Crimes*. HANNAPPEL, Tina. *Extradition and Expulsion*.

62 The original French version is printed in: KINNA, Ruth (ed.). *Early Writings on Terrorism*. London: Routledge, 2006, v. 3, pp. 326-329, here Art. II, p. 326: “Est considéré comme acte anarchique, au point de vue de résolutions de la Conférence, tout acte ayant pour but la destruction, par des moyens violents, de toute organisation sociale.” Cf. JENSEN, Richard Bach. *The Battle against Anarchist Terrorism*. pp. 366-371. JENSEN, Richard Bach. *The International Anti-Anarchist Conference of 1898 and the Origins of Interpol*. In: *Journal of Contemporary History*. New York, v. 16. p. 323-347, 1981.

63 BELLMANN, Elisabeth. *Die Internationale Kriminalistische Vereinigung (1889-1933)*. Frankfurt am Main et. al.: Peter Lang, 1994.

64 LISZT, Franz von. *Sind gleiche Grundsätze des internationalen Strafrechts für die europäischen Staaten anzustreben und eventuell welche? Gutachten, i. A. d. ständigen Deputation d. dt. Juristentages erstattet*. In: *Zeitschrift für die gesamte Strafrechtswissenschaft*. Berlin, 1882, 2. pp. 50-81.

65 Cf. HERRMANN, Florian. *Das Standardwerk. Franz von Liszt und das Völkerrecht*. Baden-

members introduced these ideas in the meetings of the *International Union*, which was dominated by German- and French-speaking experts, but also had members from the Americas (in 1900: one from Argentina, three from Brazil and eleven from the United States). Van Hamel, another founder member, noted in 1911 that “in late years we find an interesting movement to obtain efficient international relations for mutual assistance of police authorities, extradition, and other measures, necessitated by the growth of international crime; defraudations; prostitution; ‘white slave trade,’ etc.”⁶⁶ In its meeting held in Brussels in 1910, the *Union* discussed the topic of extradition and political offences for the first time. Garrot (Lyon) and Liepmann (Kiel) reported on the international regulation of extradition, also referring to the political offence exception and the clauses. The report, the propositions by Liszt, van Calker and van Hamel, and the discussions were all in agreement on one point: regarding extradition and political crime, transnational criminal law was inconsistent and heterogeneous. Hence, the Union adopted the proposition that it would “charge son Bureau de faire les démarches utiles pour que l’un des gouvernements intéressés prenne l’initiative de l’établissement de règles communes en matière d’extradition.”⁶⁷

However, these proposals did not immediately result in an appropriate adjustment of the extradition treaties and extradition laws of most European countries, including the German Empire. The international circulation of these principles and provisions rather took a different, transatlantic direction. Although no delegates from Latin American countries directly contributed to the above-mentioned conferences and proposals, it seems that jurists and governments observed these developments and strived to establish a more homogeneous Latin American extradition law through multilateral treaties and the inclusion of the *attentat* and anarchist clauses. Towards the end of the nineteenth century, some Latin American governments seemed to be concerned that anarchist immigrants from Europe would enter their country and spread anarchism and political violence.⁶⁸ Hence, transnational political crime and extradition became an issue

Baden: Nomos Verl.-Ges., 2001. pp. 217-226.

66 VAN HAMEL, Joost Adriaan. The International Union of Criminal Law. In: *Journal of the American Institute of Criminal Law and Criminology*. Chicago, 1911, Vol. 2, No. 1. pp. 22-27, quote: p. 26.

67 *Mitteilungen der Internationalen kriminalistischen Vereinigung / Bulletin de l’Union internationale de droit pénal*. Berlin, 1910, 17. pp. 174-181, 533-559, 559-569, quoted: p. 568.

68 Cf. YÁÑEZ ANDRADE, Juan Carlos. *Tratado de extradición*, p. 126: “El anarquismo había hecho su entrada en América Latina a fines del siglo XIX junto con la llegada de corrientes de inmigrantes europeos [...]”; see also CESANO, Jose Daniel; MUÑOZ, Dora Alejandra. *Inmigración, anarquismo y sistema penal: Los discursos expertos y la prensa Córdoba y Buenos Aires 1890/1910*. Córdoba, 2010.

of discussion at several Pan-American congresses and conventions, which also extended the international circulation of transnational criminal law.⁶⁹

PAN-AMERICAN EXTRADITION CONVENTIONS AND THE TREATY BETWEEN PARAGUAY AND THE GERMAN EMPIRE

Already between 1877 and March 1880, juridical experts and delegates from Argentina, Bolivia, Chile, Costa Rica, Guatemala, Ecuador, Peru, Uruguay and Venezuela convened in Lima as the *Congreso Americano de Jurisconsultos* to discuss matters of international criminal law. In particular, they focused on issues of extradition and proposed a common extradition convention.⁷⁰ On the basis of this proposal, on 27 March 1879, the plenipotentiaries of the “República del Perú, la Argentina, la de Chile, la de Bolivia, la del Ecuador, la de los Estados Unidos de Venezuela, la de Costa Rica, la de Guatemala y la Oriental del Uruguay” signed the (slightly modified) “tratado de extradición celebrado por el Congreso americano de jurisconsultos”, which was published in August 1879, but did not enter into force. This first-ever multilateral extradition convention of nine South American countries was based on well-established principles and explicitly stated the political offence exception without referring to the Belgian attentat clause: “No se comprenden en las disposiciones del presente Tratado, los delitos políticos.”⁷¹ In the following *Primer Congreso Sudamericano de Derecho Internacional Privado*, held in Montevideo between 1888 and 1889, Argentina, Bolivia, Paraguay, Peru and Uruguay adopted a treaty on international penal law on 23 January 1889. It included detailed provisions on extradition and political asylum, dealt with matters of jurisdiction in cases of transnational crimes that affected different states or the rights and interests guaranteed by the laws of another state, and criminalised international crimes such as offences committed on the high seas or on board of vessels, and acts of piracy.⁷²

Whereas the ‘First International Conference of American States’, held in Washington (1889-1890), had not agreed upon a common extradition

69 Overview: ZANOTTI, Isidoro. *Extradition in multilateral treaties*. pp. 4-10.

70 The project of the treaty is printed in: *Reglas de derecho internacional penal. Proyecto de decisiones redactado, por Santiago Vaca-Guzmán*. Buenos Aires: Pablo E. Coni, 1888. pp. 302-306.

71 *Tratado de extradición con las Repúblicas de Sudamérica, celebrado por el Congreso Americano de Jurisconsultos* (Argentina, Perú, Chile, Bolivia, Ecuador, Venezuela, Uruguay y Costa Rica), also referred to as *Tratado de extradición americana*, Firmado en Lima el 27 - III -1879, aprobado por la ley no 10 de 25 - VIII -1879, sancionado por el Poder Ejecutivo el 25 - VIII -1879. Available at: https://www.oas.org/juridico/mla/sp/traites/sp_traites-ext-cri-per-arg-chl-bol-ecu-ven-gtm-ury-ext1.html. Accessed on: 02/09/2018. Cf. ZANOTTI, Isidoro. *Extradition in multilateral treaties*. pp. 1-7; CHÁVES RAMÍREZ, Alfonso E. *La Extradición en Costa Rica*. San José: Ed. Nueva Década, 1989. pp. 190 ss.

72 *Tratado de Derecho Penal Internacional* (Montevideo, 23 de enero de 1889). Available at: <http://www.refworld.org/docid/4f3d15682.html>. English version: <http://www.refworld.org/docid/3ae6b3781c.html>. Accessed on 22.08.2018. Cf. ZANOTTI, Isidoro. *Extradition in multilateral treaties*. pp. 50 ss.

convention, in 1897, Brazil and Chile concluded a treaty that adopted the anarchist clause.⁷³ After the assassination of President McKinley in 1902, a *Second Pan American Conference*, in which sixteen Latin American states (among them Argentina, Brazil, Paraguay, Uruguay) and the United States, convened in Mexico between 22 October 1901 and 31 January 1902.⁷⁴ On 28 January 1902, they concluded the *Tratado de Extradición y Protección contra el Anarquismo*, which stated the political offender exception in Article 2 and added the anarchist clause: “Extradition shall not be granted for political offences or for deeds connected therewith. There shall not be considered as political offences acts which may be classified as pertaining to anarchism, by the legislation of both the demanding country and the country from whom the demand is made.” Although no definition of such acts was provided, the convention referred to the national penal law and stated in Article 13 that “extradition of any individual guilty of acts of anarchism can be demanded whenever the legislation of the demanding State and of that on which the demand is made has established penalties for such acts. In such case it shall be granted [...]” Hence, the provision somehow softened the principle of the identical norm and the convention amended (in Article 18/1) as extraditable crimes (related to political violence and anarchism) “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.”⁷⁵ All in all, the participating American countries had concluded the first multilateral extradition treaty that explicitly took aim at the anarchist threat and comprised

73 Cf. NUNES, Diego. *Extradition and Political Crimes*.

74 SCOTT, James Brown (ed.). *The International Conferences of American States, 1889 – 1928. A collection of the conventions, recommendations, resolutions, reports and motions adopted by the first six international Conferences of the American States, and documents relating to the organization of the conferences*. New York: Oxford University Press, 1931. pp. 51-109. MAXEY, Edwin. Extradition and Protection against Anarchy. In: *The Yale Law Journal*, New Haven, v. 17, n. 5. pp. 376-389, 1908; YÁÑEZ ANDRADE, Juan Carlos. *Tratado de extradición*.

75 Treaty for the Extradition of Criminals and for Protection against Anarchism. Mexico, Jan. 28, 1 1902, in: SCOTT, James Brown. *International Conferences*. pp. 83-88. Spanish version: “No podrá concederse la extradición por delitos políticos ó por hechos que les sean conexos. No serán reputados delitos políticos los actos que estén calificados de anarquismo por la legislación del país requeriente y por la del requerido”, *Tratado de Extradición y Protección contra el Anarquismo Segunda Conferencia Internacional Americana Ciudad de México 28 de enero de 1902*. In: *Régimen jurídico de la Extradición y del Asilo, Corte Suprema de Justicia, Comisión de la Unión Europea, Ministerio de Relaciones Exteriores*, Asunción 2000. Available at: http://www.pj.gov.py/ebook/libros_files/Regimen_Juridico_de_la_Extradicion_y_del_Asilo.pdf. pp. 33-45. Accessed on 24.08.2018. On the treaty and the policing of anarchists in Argentina see JENSEN, Richard Bach. Global Terrorism and Transnational Counterterrorism: Policing Anarchist Migration across the Atlantic: Italy and Argentina, 1890–1914. In: DIETZE, Carola; VERHOEVEN, Claudia (eds.), *The Oxford Handbook of the History of Terrorism*. Oxford: Oxford University Press, 2015, online: DOI:10.1093/oxfordhb/9780199858569.013.027. Accessed on: 01/02/2019.

some of the suggestions – notably the anarchist clause – discussed by the *Institut de Droit International* and the *International Conference of Rome*.⁷⁶

In contrast, the anti-anarchist conference held in St. Petersburg in 1904, with delegates from several European countries, did not agree on a common treaty. France, Italy, Great Britain and some others did not sign the *Secret Protocol for the International War on Anarchism* (mostly dealing with transnational police measures); the government of the United States had refused to participate from the very beginning.⁷⁷ However, another multilateral extradition convention was concluded by five Central American states in 1907 that largely followed the Pan-American treaty of 1902. It included the political offence exception and stated a basic combination of the *attentat* and anarchist clause: “The attempt against the life of the head of the Government or anarchistical attempts shall not be considered a political crime” (“no se considerara delito politico el atentado contra la, vida del Jefe de un Gobierno, ni los atentados anarquistas”).⁷⁸

These clauses and principles of extradition not only circulated in Latin America but took a detour of sorts back to Germany. Although the *Tratado de Extradición y Protección contra el Anarquismo* did not enter into force in each country, some governments used the convention or provisions for further extradition treaties with European states. In 1906 and 1909, Paraguay, which had signed the treaty of 1902, concluded such conventions with the Swiss Republic⁷⁹ and the German Empire. Already in 1902, Paraguay had rejected an extradition request by the German Empire, upholding the principle ‘no extradition without treaty’. Hence, the German government started negotiations in which Paraguay could successfully implement provisions from the Pan-American Convention and the extradition treaty with the Swiss Republic. The treaty of 1909 followed the patterns established in the conventions with Brazil and Uruguay and enumerated in twenty extraditable crimes in Article 2, among them some with a transboundary dimension (notably piracy) or a relation to political violence, such as the misuse of explosives and “actos voluntarios que tengan por resultado la destrucción o deterioro de vías férreas, vapores, postes, aparatos o conductores eléctricos”. In accordance with the multilateral treaty of 1902, Article 3 stated the political offence exception limited through the *attentat* and

76 Cf. NUNES, Diego. Extradition and Political Crimes. ZANOTTI, Isidoro. *Extradition in multilateral treaties*. pp. 8 s.

77 JENSEN, Richard Bach. The United States, International Policing and the War against Anarchist Terrorism, 1900-1914. In: *Terrorism and Political Violence*. Abingdon-on-Thames, 2001, 13. pp. 15-45.

78 Extradition Convention by Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador, December 20, 1907, art. III, printed in: *The American Journal of International Law*. Washington, D.C., 1908, Vol. 2, No. 1/2, Supplement: Official Documents. pp. 243-251, here p. 245.

79 Tratado de extradición con la Confederación Suiza, concluded 30.06.1906, approved Asunción, Agosto 17 de 1907, entró en vigor el 26 de octubre de 1910, in: *Régimen jurídico de la Extradición y del Asilo*. Accessed on 24.08.2018.

anarchist clause which stipulated that “el atentado contra el Jefe Supremo de un Estado o contra los miembros de su familia no será considerado como crimen o delito político ni como hecho conexo con él, cuando tal atentado constituya el hecho de homicidio o asesinato”, and further excluding “crímenes o delitos anárquicos” from the political offence exception. Furthermore, Paraguay and the German Empire agreed to exchange information on every criminal sentence (without exempting political crimes) concerning the nationals of the other party (article 17). The treaty was approved by the Paraguayan government in 1914 and by the German imperial diet in 1915; the latter added an explanatory memorandum in which the Pan-American Extradition Convention of 1902 was explicitly mentioned as the legal basis for the inclusion of the anarchist clause.⁸⁰ This clearly demonstrates the circulation of transnational criminal law and the possibilities it provides for Latin American states to partly assert their legal opinion in negotiations with European countries, such as the German Empire.

In 1917, the German legal expert for extradition and political crime Wolfgang Mettgenberg published an ambivalent comment, criticising the treaty as ‘backward in parts’ and too strongly influenced by Paraguay, albeit not contrary to the German legal opinion, since most provisions were more or less in line with the German extradition principles. However, the adoption of the anarchist clause and, as a result, the exception of anarchist offences from political asylum would introduce an entirely new principle into German transnational criminal law. Mettgenberg, who had intensely published on the political offence exception, was well aware that the anarchist clause had been adopted from the provisions of the Pan-American *Treaty for the Extradition of Criminals and for Protection against Anarchism* and the subsequent extradition convention by five Central American states, which he both quoted and had even commented on in an earlier article. He concluded that it was simply not possible that the German side had introduced this clause, thus confirming the international circulation of extradition law. However, his own interpretation of ‘anarchist acts as political crimes’ differed and partly followed the concept of Franz von Liszt, insisting that such criminal acts could only be defined objectively on the basis of the ‘legal goods or rights’ they would violate and not by the subjective political aims of elusive movements such as anarchism. Mettgenberg, on the other hand, admitted that the anarchist clause would fit the extradition practices of the American states and to some extent the requirements

80 Tratado de extradición entre la República del Paraguay el Imperio Alemán, 26.11.1909, German and Spanish version in: *Reichsgesetzblatt* 1915, Nr. 123. pp. 571-582, and (with the memorandum) in: *Verhandlungen des Reichstags*. XIII. Legislaturperiode. II. Session, Band 315, Berlin 1914/18, Nr. 54. pp. 1-16; cf. also *Régimen jurídico de la Extradición y del Asilo*. pp. 313-323. Accessed on 24.08.2018

of transnational law with regard to transboundary political crime.⁸¹ According to his understanding, the best solution would be to develop a more precise legal concept to criminalise anarchist acts as political or ordinary crime, which should result in an appropriate amendment of the *attentat* clause.⁸²

These questions had already become a controversial issue within the international legal discourse on transnational criminal law, in which the American treaties were discussed as significant examples.⁸³ However, with the onset of World War I and the shift from anarchist to international crime, the problem was transferred to another level: the question of extradition and terrorism and the legal definition of the latter as a transnational crime.⁸⁴ In this regard, the multilateral American conventions from 1902 and 1907 as well as the treaty between Paraguay and the German Empire represented the final stage of the international circulation of the anarchist clause as a temporal element of transnational criminal law. A comprehensive overview on the principles of international extradition in Latin America, published in 1930, still discusses the political offence exception and the *attentat* clause with regard to the various Latin American treaties, but it does not even mention the anarchist clause.⁸⁵

CONCLUSIONS

The international circulation of transnational criminal law in the long nineteenth century evolved as an entangled global communication network in which states from Europe and the Americas, not to mention jurists and associations, participated and developed the concepts and narratives of transnational and political crime as well as the principles and practices of extradition. Although the extradition treaties between the Americas and the German-speaking states served as a pivotal medium, the circulation of

81 METTGENBERG, Wolfgang. Der Auslieferungsvertrag zwischen dem Deutschen Reich und Paraguay. In: *Zeitschrift für die gesamte Strafrechtswissenschaft*. Berlin, v. 39, pp. 27-44, 1917. See also METTGENBERG, Wolfgang. Die Auslieferungsvereinbarung der mittelamerikanischen Republiken vom 20. Dezember 1907. In: *Zeitschrift für die gesamte Strafrechtswissenschaft*. Berlin, v. 28, pp. 849-860, 1908. METTGENBERG, Wolfgang. *Die Attentatsklausel im deutschen Auslieferungsrecht*. Diss. iur. Tübingen: H. Laupp, 1906.

82 METTGENBERG, Wolfgang. Die Auslieferung anarchistischer Verbrecher nach deutschem Recht, in: *Deutsche Strafrechtszeitung*. Leipzig, v. III, pp. 326-328, 1916.

83 See, for example, DIENA, Giulio. Les délits anarchistes et l'extradition. In: *Revue générale du droit international public*. Paris, n. 2, pp. 306-336, 1895. LAMMASCH, Heinrich, Über die Auslieferung wegen anarchistischer Verbrechen. In: *Deutsche Juristen-Zeitung*. Berlin, v. 4, pp. 5-8, 1899.

84 SAUL, Ben. Terrorism as a transnational crime. In: BOISTER, Neil; CURRIE, Robert J. *Handbook*. pp. 394-408.

85 PENTE, Julius I. Principles of International Extradition in Latin America. In: *Michigan Law Review*, Ann Arbor, v. 28, n. 6, pp. 665-722, 1930, here pp. 713 ss. On the development of the discourse, see: VAN DEN WYNGAERT, Christine. *The political offence exception to extradition*. pp. 135-140.

transnational criminal law was also influenced by other international actors and communications: associations such as the *Institut de Droit International* and the *International Union of Penal Law* as well as international and Pan-American conferences. In this setting, the circulation of transnational criminal law was by no means only dominated by the ‘powerful’ European states and the treaties they concluded with other states. In particular, the Latin American countries participated as (more or less) equal parties, which could influence the provisions of the bilateral treaties and, beyond that, played a vital role for the further development of transnational criminal law. This holds true above all with regard to the development of international and political crime in the context of extradition as well as the establishment of multilateral conventions and national extradition laws, as the Argentinian extradition law of 1885, the multilateral conventions of 1902 and 1907 and the Paraguayan treaty of 1909 clearly evince. These examples also demonstrate that states and jurists in Latin America were well aware of the discourses and concepts international associations and European jurists had developed. Moreover, this meant that they were in a position to adopt notions of transnational crime or the anarchist clause even before European states had implemented them. Although promoting the international fight against anarchism, the German Empire implemented the anarchist clause for the first time through the extradition treaty with Paraguay, based on the Pan-American conventions.

From the viewpoint of European legal dogmatics, the anarchist clause might have exacerbated the contradictions between political crime and extradition. But regarding legal history, the transatlantic circulation of transnational criminal law demonstrates the influences of narratives and practices that responded to security threats such as ‘transboundary political violence’, ‘the international anarchist conspiracy’ or ‘international crime’. The extradition treaties and the accompanying juridical discourses, as observed in this case study, demonstrate the criminalisation and differentiation of political dissidence as a transnational crime manifesting in concepts such as non-extraditable ‘pure’ political offences and ‘related’ acts (which could be interpreted as legitimate protest and resistance), ‘relative’ or ‘complex’ offences (involving political and ordinary criminal behaviour), and ordinary crime (which required the depoliticisation of anarchism as a ‘social crime’). The international circulation of criminal law neither invented political nor international crime, but it substantially contributed to their legal conceptualisation and influenced the concomitant narratives, practices and concepts with regard to their transnationalisation and internationalisation. As a result, various manifestations of transborder political dissidence and criminal behaviour – in particular political violence and anarchism – were constructed as a transnational security threat and triggered responses on the transnational level as well as within the national criminal law systems, as the examples of

the investigated extradition treaties and laws demonstrate. However, this did not result in a coherent normative order based on the rule of law, but rather can be conceptualised as the formation of transnational criminal law regimes. They were comprised by a variety of actors and experts as well as discourses and practices and were characterised by various judicial and administrative procedures, legal pluralism, normative collisions, and conflicts of jurisdiction. In the long term, such transnational regimes could extend punishability, policing and social control as well as could impede the juridification of transnational criminal law. The international discourse was well aware of these developments, and both the *International Union of Penal Law* and the German jurisprudence requested comprehensive national extradition laws as well as a homogenisation and juridification of the transnational practices, notably regarding the procedures dominated by governments, administrations and diplomats with almost no participation of judicial institutions/courts. In this regard, the presented case study also demonstrates the fragmented circulation of transnational criminal law, which can hardly be interpreted as a coherent historical development. Even today, transnational criminal law is still characterised by ambivalences, regime-collisions and a low degree of juridification. This also has to do with the increasing international circulation of criminal law over the course of the long nineteenth century, which produced concepts, normativities, narratives and practices that are still of relevance for the analysis of transnational criminal law from the perspective of global legal history.

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