immediate expulsion would seem to be that the presence of the alien has become so undesirable or dangerous that a continuance of the residence although for a limited time would injure the public to such a degree that it could not well be granted. And, finally, the reason should be communicated to the government whereof the expelled alien is a citizen, for an injury to the citizen is an injury to his state, for which reason it is that an insult to the citizen is an insult to the state, and may, unless redressed, possibly lead to redress by force.

Treaties of international law are in accord with this doctrine and supply apt illustration. Decisions of courts of arbitration have given full effect to these principles and have assessed damages against the offending state. Reference is especially made to the Buffalo Case as decided by Mr. Ralston and reported by him in the Venezuelan Arbitrations of 1903. After citing the various authorities, for example, the opinion of Rolin-Jaequemyns in the Revue de droit international, vol. 20, p. 498; Bluntschli's Droit international Codifié, articles 383, 384; Professor von Bar, Journal de droit international privé, vol. 13, p. 6; Woolsey's International Law, §63, p. 85; Hall's International Law, p. 24, the learned umpire summed up his conclusion as follows:

1. A state possesses the general right of expulsion; but,
2. Expulsion should only be resorted to in extreme instances, and must be accomplished in the manner least injurious to the person affected.
3. The country exercising the power must, when occasion demands, state the reason of such expulsion before an international tribunal, and an inefficient reason or none being advanced, accept the consequences.

This case is heartily commended to any who may wish to consider a concrete case in detail.

TRANSIT IN EXTRADITION CASES

Opportunities for the criminal of the present day to escape the consequences of his crime by removal to foreign parts are becoming gratifyingly few. Governments are every year seeing more clearly the wisdom of the conclusion of liberal extradition treaties and of a liberal spirit in their interpretation. Every year new treaties are being made or supplementary treaties entered into covering new crimes, the prevalence of which is a result of the commercial, industrial or political activity of the past two or three decades.

In marked contrast with the present practice is the attitude of the United States government during the first half century of its growth.

With one inadequate and temporary exception[1] the United States had not negotiated a single extradition treaty prior to 1842. To such an extent did our forefathers carry their theory of human liberty that they allowed this country to become a sanctuary for offenders from Europe who fled to our shores. Rightly or wrongly, they held the political systems of Europe responsible to a considerable extent for the criminal conditions there existing, and resolved not to deliver to a supposedly doubtful justice an offender who had escaped from its oppressiveness and had found a refuge where the rights of man were held sacred; and even after the adoption of the early treaties it was often still the policy of our executive and judicial authorities to give to a treaty of extradition the narrowest construction consistent with our treaty obligation and resolve any doubt in favor of the fugitive. But as international relations have become more intimate and the necessity of the suppression of crime has become more urgent, a feeling of mutual confidence in the government and institutions of our foreign neighbors has succeeded to that of suspicion, and the courts very generally, as well as the executive, have inclined to a more liberal and enlightened policy of surrender wherever possible. The result has been to cause the prospective malefactor of today, who has a care for his future immunity, to look well to the maps, to the treaties, to foreign laws and even to foreign practice before he begins to plunder.

To have the United States among the foremost of the powers in its attitude toward a liberal and enlightened system of extradition has been the object of the department of state for many years. Its efforts have been reasonably successful most of the time; but some problems still remain which it would be highly desirable to solve, and which, in some cases, are comparatively easy of solution.

Among these problems is the question of transit. When a fugitive is being returned from the surrendering to the demanding government, it not infrequently happens that it is convenient and sometimes necessary that he be taken through the jurisdiction of a third country. The question immediately arises, by what authority of law is he restrained of his liberty while in the country of transit? In the United States, where the territorial theory of crime prevails, as distinguished from the personal jurisdiction theory, a person cannot lawfully be deprived of his liberty except on account of a violation of law of the United States or of the states or territories of the Union, or by virtue of treaty stipulation. A

[1] The twenty-seventh article of the treaty of 1794 with Great Britain provided for extradition for the crimes of murder and forgery, but this provision expired by limitation in 1807.

treaty of extradition between the United States and a foreign country is the only authority for the detention of a foreign fugitive from justice, and our treaties will be found to look merely to the extradition of a person who has taken refuge here, and take no account of his status if he is merely passing through the United States in the custody of an officer.

An exception to the usual practice seems to have been contemplated in the negotiation of our treaty with Mexico of 1899, and it is provided therein (Article XVI) that a fugitive not being a citizen of the country of transit, who has been surrendered by one of the contracting parties to a third power, may be conveyed in transit across the territory of the other contracting party upon complying with certain formalities. The article, however, provides that it shall not take effect until the congress of each country shall by law authorize the transit, and the congress of the United States has never enacted such legislation to carry this treaty provision into effect. Hence under the conditions now obtaining in the United States, even though the government to which the fugitive is being returned may have a treaty in force with the United States covering the crime for which he is being surrendered, this government may surrender such person only upon compliance with the treaty requirements, which are not fulfilled in the ordinary case of transit through its territory. The only manner in which a prisoner under such circumstances can, in the full strictness of the law, be conveyed across United States territory is for the demanding government to institute formal extradition proceedings in this country in accordance with treaty requirements.

In default, therefore, of both law and treaty sanctioning transit across our territory, it is clear that any fugitive being so conveyed may be set at liberty upon resort to *habeas corpus* proceedings. The same principles obtain in England.

The existence of this rule in other countries has sometimes worked considerable inconvenience to the United States and has necessitated the making of special arrangements for the return of a fugitive where the vessel conveying him must stop at an intermediate port. In a case occurring in 1904, where the department of state had requested an extradition from the authorities of Argentina and the vessel upon which the fugitive was to be conveyed to this country had to call at a port of Brazil, the department directed its ambassador to apply to the Brazilian government for the provisional detention of the fugitive in case he should attempt to secure his release upon *habeas corpus* or analogous proceedings. Once, in a case of transit across the Isthmus of Panama, the fugitive was permitted to escape altogether.

It would seem *a fortiori* to be beyond question that the territorial sover-

eign has the right to interfere upon its own account because of the violation of its jurisdiction, to effect the release of the person under arrest. But in practice a distinction is made between the existence of this right and its exercise by the United States. No government, by reason of a supersensitiveness of its rights of sovereignty should use its power to thwart the ends of justice by promoting the escape of a criminal. In these cases the department of state does not interfere to secure liberty for a prisoner by reason of a technical violation of its jurisdiction, but leaves the prisoner to avail himself of the remedy afforded by the laws of the country, without interference or suggestion upon its part. As an instance of this attitude it may be stated that twice in recent years, when application has been made by the British ambassador, on behalf of the Canadian authorities for leave to take prisoners through United States jurisdiction from one part of Canada to another, the department has stated that it was not disposed to object to such transit, but that it reserved entire freedom of action in case of appeal on behalf of the fugitive. The department has at other times stated that no action upon its part could prevent the recourse which the prisoner had to his writ of *habeas corpus*.

In many of the states of Europe and South America the custom exists of allowing transit upon more or less liberal conditions, and in most of them the practice is founded upon law and treaty. Some countries prescribe that the request shall be made through the diplomatic channel, and some require the presentation of the documents for extradition, such as a certified copy of the warrant of arrest, and some governments merely provide that a properly authenticated copy of the warrant of surrender shall be produced. Provisions or regulations for the return of fugitives in transit have been made by the Argentine Republic, Belgium, France, Italy, Japan, Luxemburg, Mexico, the Netherlands, Portugal, Russia, Spain, Sweden, and Turkey.

The question of the amendment of our extradition statutes so as to make suitable provision to preclude the escape of fugitives from justice in transit through the United States in process of delivery by one foreign government to another has been made the subject of recommendations to congress by two different presidents. In his second annual message of December 6, 1886, President Cleveland said:

> Experience suggests that our statutes regulating extradition might be advantageously amended by a provision for the transit across our territory, now a convenient thoroughfare of travel from one foreign country to another, of fugitives surrendered by a foreign government to a third state. Such provisions are not

unusual in the legislation of other countries, and tend to prevent the miscarriage of justice.

And President McKinley, in his second annual message of December 5, 1898, renewed the recommendation of his predecessor.

No legislative action has resulted from either of these recommendations, nor, in the case of our treaty with Mexico, where it was specially stipulated that a clause permitting transit rights should await the action of congress to make it effective, has any step been taken toward the desired end. It would seem useless to argue in favor of the advantages of such an enactment. It is hoped that in the near future, legislation with this object in view will become an accomplished fact. Let it not be said that the United States is behind other nations in the punishment of crime; and let it be made plain, that in the mind of all thinking people, a common criminal is an enemy of the human race, an international outlaw, to be seized wherever he may be found, and returned without let or hindrance by the most convenient way to the country against whose laws he has transgressed.

EXTRATERRITORIALITY AND THE UNITED STATES COURT FOR CHINA

In the western parts of the world, alien merchants mix in the society of the natives, access and intermixture are permitted; and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of the nation; they continue strangers and sojourners as their fathers were—*Doris amara suam non intermiscuit undam*—not acquiring any national character under the general sovereignty of the country. (Lord Stowell in the Indian Chief, 1801, 3 Charles Robinson, p. 12).

Extraterritorial jurisdiction is a survival of, or a reversion to, the time when sovereignty was personal rather than territorial, when there was a king of the English rather than a king of England. It means the establishment of an *imperium in imperio*. It means the legal recognition of the existence of a foreign colony in a native state whose members remain in the picturesque language of Lord Stowell, "immiscible," perpetuating their own institutions, governed by their own laws and responsible to their own officers.

Secretary Frelinghuysen in defining extraterritoriality with special reference to the practice of the United States described it as a condition in which

the national sovereignty of law is transferred bodily into a foreign soil and made applicable to citizens or subjects of its own nationality dwelling there. (Letter to