The Ottoman Empire, the United States, and the legal battle over extradition: the "Kelly affair"

Berna Kamay

Abstract

This article examines extradition in nineteenth-century Ottoman diplomacy by exploring an illustrative legal conflict between the Ottoman Empire and the United States. The Kelly affair, which revolved around the murder of an Ottoman subject by an American sailor in Smyrna (Izmir) in 1877, sparked a diplomatic dispute that lasted for several decades. The controversy stemmed from conflicting interpretations of the treaty of commerce signed in 1830. The inability to reach a consensus pushed the parties to resort to the 1874 Extradition Treaty, which was the only official Ottoman extradition agreement. The Kelly affair poignantly illustrates how extradition, an issue of international law that touched on territorial jurisdiction and subjecthood, was a complicated and ill-defined matter when addressed in practice. By investigating the confrontation between the Ottoman Empire and the USA, both putative secondary powers on the international stage at the time, this article challenges the existing historical narratives on interimperial relations that highlight Europe as the locus of power and agency. Even though ad hoc political actions overshadowed the binding force of the treaty text, it demonstrates how both governments adopted a political strategy that moved beyond the intrinsic arguments and logic of the capitulations to embrace a novel legal discourse.

Keywords: *Ottoman legal diplomacy; extradition; territorial jurisdiction; international law; US foreign policy*

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Introduction

On February 14, 1877, Ottoman authorities received word that an American had murdered the Ottoman citizen Tahir, an officer of a customshouse in Smyrna (modern-day Izmir). The accused, Patrick Kelly, was a crew member of the USS *Vandalia*,[1] a warship docked in the harbor at the time of the incident. As soon as the Ottoman police arrested him they notified the consulate in İzmir. After the initial inquiry the police handed Kelly over to diplomatic agents who were to detain him in a consular prison until a local court hearing. However, in a departure from the customary practice capitulatory states usually observed, on May 15, 1877 the American consul-general in İstanbul, Horace Maynard, granted the US consul in İzmir, Enoch Joyce Smithers, permission to hold an independent consular trial. Convinced of Kelly's innocence, they released him without informing the Ottoman government.[2]

The consular judgment to acquit Kelly unilaterally was an unprecedented event and no legal provision for this was outlined in the capitulations. The capitulations were an amalgam of laws that granted certain privileges to foreign citizens in the Ottoman Empire. Originally termed *ahidnâme* (the Ottoman concessions), they initially functioned as legal tools to regulate the alien status and were an integral part of the Ottoman legal system, and the judicial system frequently used the treaty clauses as official legal codes to clarify foreign legal status. Over time the capitulations assumed an extraterritorial function. Technically the consular courts were able to hear criminal cases between their citizens or different foreign residents.[3] In practice, however, crimes involving foreign and Ottoman subjects were directly referred to Ottoman justice. Most European states had long abided by this arrangement.[4]

The US diplomats involved in the Kelly affair thus acted against customary procedure when they carried out a separate trial for Kelly. The Ottoman refusal to recognize the consular court ruling did not discourage the consuls from acting on their own. The parties involved found it difficult to resolve the

1 The USS *Vandalia* was a United States navy warship. It sank in a location close to the Samoan Islands in the South Pacific Ocean in 1899 as a result of a hurricane. See, Rear Admiral Lewish Ashfield Kimberly, *Samoan Hurricane* (Washington, DC: Naval Historical Foundation, 1965).

2 *Devlet Arşivleri Başkanlığı, Osmanlı Arşivleri* (hereafter BOA) HR.H 232/4 (February 14, 1877).

3 Edhem Eldem, "Capitulations and Western Trade," in *The Cambridge History of Turkey*, Vol. 3, *The Later Ottoman Empire, 1603–1839*, ed. Suraiya Faroqhi (Cambridge: Cambridge University Press, 2006), 295 and Edhem Eldem, "Foreigners at the Threshold of Felicity: The Reception of Foreigners in Ottoman İstanbul," in *Cultural Exchange in Early Modern Europe: Cities and Cultural Exchange in Europe, 1400–1700*, ed. Donatella Calabi and Stephen Turk Christensen (Cambridge: Cambridge University Press, 2007), 117.

4 For the legal status of the foreigner in the Ottoman Empire, see Halil Cemaleddin and Hırant Asadur, *Ecânibin Memâlik-i Osmaniye'de Haiz Oldukları İmtiyaz-ı Adliye* (İstanbul: Hukuk Matbaası, 1331 [1915]) and Pierre Arminjon, *Étrangers et Protégés dans l'Empire Ottoman* (Paris: Librairie Maresco, 1903).

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jurisdictional conflict, in large part due to the disputed translation of Article 4 of the 1830 treaty, which oversaw US citizens' sojourning rights and legal status in the Ottoman lands.[5] By the time the Ottomans took steps to rearrest him, Patrick Kelly had already disappeared. His whereabouts would become a critical facet of the subsequent conflict between Washington and İstanbul.

In the context of Kelly's extradition, this study will consider the important legal issue of *iade-i mücrimin* (extradition) practice in the Ottoman Empire by focusing on the legal intricacies apparent in the Kelly affair. Ottoman legal history is significantly silent about the notion of extradition, literally the return of criminals.[6] An issue of international law, the practice was frequently resorted to in order to address transnational crimes in the nineteenth century. Based on a treaty system, the practice depended primarily on a mutual accord between two states. Whereas most European states signed bilateral treaties, the Ottoman Empire did not have any official treaty except for the 1874 Extradition Treaty with the United States. This was mainly due to the capitulations and extraterritorial jurisdiction that were treated as law and which indirectly sabotaged the prospect of an extradition treaty. However, European negotiations were likewise subject to conflict due to inconsistent jurisdictional competency, and the principle of reciprocity, the most valued criteria of extradition, was often overshadowed by judicial variances.[7]

In this respect the Kelly affair case was not an anomaly. The increasing cross-border mobility at the Ottoman frontiers required frequent cooperation to exchange criminals. The diplomatic correspondences stored in the Ottoman archives show an abundance of extradition negotiations. They form a valuable source of data, since extradition was not just a diplomatic tool used to prevent overseas impunity, but it was used to express territorial jurisdiction with equal force. The Ottoman officials echoed those considerations in their reports, highlighting the shifting Ottoman perception of territorial law. Thus, the consideration of extradition practice moves beyond the capitulatory regime and its judicial predicaments and opens up a new avenue to discuss the notion of jurisdiction in the Ottoman legal system and its engagement with international law.

5 Sinan Kuneralp has analyzed the diplomatic exchanges related to Article 4 of the 1830 treaty and their relevance to the Kelly affair in depth. See, Sinan Kuneralp, "Ottoman Diplomacy and the Controversy over the Interpretation of Article 4 of the Turco-American Treaty of 1830," in *The Turkish Yearbook of International Relations XXXI* (Ankara: 2002): 7–20. I express my thanks to Kuneralp for kindly permitting me to broaden the legal scope of the Kelly affair.

6 The following work recounts the discussions on Edward Joris's extradition. See, Houssine Alloul, Edhem Eldem and Henk de Smaele, eds., *To Kill a Sultan: A Transnational History of the Attempt on Abdülhamid II (1905)* (London: Palgrave, 2018).

7 Charles Calvo, *Le Droit International Théorique et Pratique*, Vol. 2 (Paris: Guillaumin, 1887), 454–62 and Pasquale Fiore, *Traité de Droit Pénal International et de l'Extradition*, trans. Charles Antoine (Paris: G. Pedone-Lauriel, 1880), 455–8.

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The volume of scholarship regarding the capitulation system has only lately been challenged and supplemented by alternative readings, which offer a critical revisit of the extraterritorial interpretation. Some have analyzed this narrative on theoretical grounds by looking at the European political discourse reproduced for non-European states. They argue that European international law promoted a positivist understanding that relied on an East–West dichotomy. The idea of a standard of civilization that inherently prevented non-Europeans from meeting the standard justified the capitulations.[8] As is well illustrated in the recent volume, *The Subjects of Ottoman International Law*, other scholars have approached the matter by deconstructing the potent myth created around the capitulations and depicting a more complicated Ottoman legal realm shaped by different agents and daily politics.[9]

This study joins those works by addressing the gap between legal theory and its on-the-ground practice. The debates regarding Kelly's extradition demonstrate that Ottoman justice was a contested arena in which the empire and foreign powers constantly maintained legitimacy claims. To further illustrate this point I place my research particularly among the works that establish a closer dialogue with the text of law and its practice by providing a solid historical context. A few outstanding examples of this methodology include the work of Minawi, which ably demonstrates the "interimperial" competition between the Ottoman Empire in the Sahara and Hijaz regions after 1878, and how efficiently they made use of the Act of Berlin when addressing the geography's tangled colonial politics. Hanley, on the other hand, investigates the persecution of Joris, the Belgian journalist, through the exhaustive legal debates exchanged by Ottoman and European legal scholars. Lastly, Lévy-Aksu's study on *idare-i örfiyye* (the state of siege) regulation of the 1876 Constitution (*Kanun-i Esasi*) elaborately scrutinizes the

8 See, Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2014); Jennifer Pitts, *Boundaries of the International: Law and Empire* (Cambridge: Cambridge University Press, 2018); Umut Özsu, "The Ottoman Empire, the Origins of Extraterritoriality, and International Legal Theory," in *The Oxford Handbook of the Theory of International Law*, ed. Florian Hoffmann and Anne Orford (Oxford: Oxford University Press, 2016), 123–37; Eliana Augusti, "From Capitulations to Unequal Treaties: The Matter of an Extraterritorial Jurisdiction in the Ottoman Empire," *Journal of Civil Law Studies* 4 (2011): 285–301; and Maria Tait Slys, *Exporting Legality: The Rise and Fall of Extraterritorial Jurisdiction in the Ottoman Empire and China* (Geneva: Graduate Institute Publication, 2014).

9 See, Lâle Can, Michael Christopher Low, Kent F. Schull, and Robert Zens, eds., *The Subjects of Ottoman International Law* (Bloomington: Indiana University Press, 2020); Lâle Can, "The Protection Question: Central Asians and Extraterritoriality in the Late Ottoman Empire," *IJMES* 48 (2016): 679–99; Daniel-Joseph MacArthur-Seal, "Resurrecting Legal Extraterritoriality in Occupied İstanbul, 1918–1929," *Middle Eastern Studies* 54, no. 5 (2018): 769–87; and Ziad Fahmy, "Jurisdictional Borderlands: Extraterritoriality and Legal Chameleons in Pre-colonial Alexandria," *Comparative Studies in Society and History* 55, no. 2 (2013): 305–29.

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organic relationship between "making of law" and "law in action" in the changing Ottoman politics.[10]

In the same vein, the legal diplomacy the Ottoman state adopted during the Kelly affair is an indication of the laborious process in which they tried to exercise treaty agreements while also frequently manipulating them due to political concerns. The conflict is illustrative as the first testing ground for the 1874 Extradition Treaty. In a distinct contribution, this study also uniquely focuses on two non-European middle powers who stood on equal footing. The conflict between the USA, a power on the rise, and the Ottoman Empire, an old empire with a resolution to survive, puzzled the interimperial relations that privileged Europe as the locus of power.

The first section of this study analyses extradition as a legal practice and the formulation of the 1874 Extradition Treaty in its historical context. The second section then considers the legal conflict that arose from Kelly's extradition, and the final section offers a broader historical analysis of Ottoman–US foreign policy.

Extradition practice and the 1874 Extradition Treaty

Extradition is a legal process by which a state jurisdiction ensures the return of a person convicted or accused of a crime to another jurisdiction, which holds/claims the right of trial. As a political tool and courteous gesture between rulers, the practice has existed – albeit irregularly – since ancient times.[11] While it maintained a bilateral approach, extradition proceedings were far from a well-established practice in the nineteenth century.[12] The domicile determined a person's legal status before the law and remained legally binding for jurisdictional and civil matters. In addition to this, judicial variances and the territorial law meant that extradition proceedings often faced difficulties.[13] After all, extradition was an issue of territorial sovereignty.[14] However, the practice

10 See, Mostafa Minawi, *The Ottoman Scramble for Africa: Empire and Diplomacy in the Sahara and Hijaz* (Stanford: Stanford University Press, 2016); Will Hanley, "Extraterritorial Prosecution, the Late Capitulations, and the New International Lawyers," in *To Kill a Sultan: A Transnational History of the Attempt on Abdülhamid II (1905)*, ed. Houssine Alloul, Edhem Eldem, and Henk de Smaele (London: Palgrave, 2018), 163–92; and Noémi Levy-Aksu, "An Ottoman Variation on the State of Siege: The Invention of the *Idare-i Örfiyye* during the First Constitutional Period," *New Perspectives on Turkey*, 54 (2016): 1–24.

11 See, Christopher Blakesley, "The Practice of Extradition from Antiquity to Modern France and the United States: A Brief History," *Boston College International and Comparative Law Review* 4, no. 1 (1981): 39–60.

12 See, William Beach Lawrence, *Études sur la Juridiction Consulaire en Pays Chrétiens et en Pays non-Chrétien et sur l'Extradition* (Leipzig: F.A. Brochaus, 1880).

13 Pericles Polyvios, *La Condition Légale de Sociétés Étrangères Dans L'Empire Ottoman* (Paris: A. Rousseau, 1913), 25.

14 George Cornewall Lewis, *On Foreign Jurisdiction and the Extradition of the Criminals* (London: J.W. Parker and Son, 1859), 57.

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remained a diplomatic linchpin that encouraged many states to implement an international penal code and extradition legislation. In the case of the Kelly affair, which occurred in an age that faced "a crisis of mobility,"[15] transnational crimes were considered an abuse of justice and a crime against humanity.[16]

The Ottoman Empire had no extradition agreement with Europe as the latter relied on their consular jurisdictions. Several European states erroneously believed that the empire had been blind to the territoriality of law and unaware of the encroachments on its jurisdiction system.[17] As such, they believed they had to secure the rights of their nationals. However, this belief existed alongside the problems created by the capitulations. The European states frequently faced a dilemma when trying to define the capitulatory regime. Were they the basis of centuries-long relations with Europe, which determined the reciprocal rules of law and diplomacy, or were they the regulations whose "peculiar features revealed an anomalous and inferior form of interstate law?"[18] Ultimately the legal discourse formulated as customary practice generated a more powerful consensus on the capitulations. The extraterritorial jurisdiction in the Ottoman lands also added a distinct dimension to the idea of the fugitive in extradition practice. Extradition was possible if there was a fugitive, and the principal purpose of surrendering her/him was to punish the criminal in the place the crime was committed. If there was no escape, there was no need for an extradition. Lack of reciprocity arrangements excluded any solutions in the cases where an Ottoman criminal had escaped to another country.

Despite the absence of a treaty Ottoman officials had a keen interest in extradition. The state had engaged in a series of abortive attempts to reclaim fugitive criminals and prevent impunity.[19] Rich in content, the diplomatic correspondence in the Ottoman archives contains various debates related to extradition.[20] Most of them reveal the complexity of considering extradition, jurisdiction, and capitulations.[21] Ottoman legal scholars demonstrated similar

15 Unterman uses the phrase in her work on the extradition of embezzlement crime in the USA. See, Katherine Unterman, "Boodle over the Border: Embezzlement and the Crisis of International Mobility, 1880–1890," *The Journal of the Gilded Age and Progressive Era* 11, no. 2 (2012): 151–89.

16 Fiore, *Traite Droit Pénal*, Vol. 1, 44.

17 Francis Clifford Jones, *Extraterritoriality in Japan and the Diplomatic Relations Resulting in Its Abolition, 1853–1899* (AMS Press: 1970), 3.

18 Pitts, *Boundaries of the International*, 35.

19 The negotiations with England were in 1875, with Italy in 1880 and 1901, and with Austria in 1865. There were negotiations with Russia, Bulgaria, and Greece from the 1880s onwards and with Iran in 1914.

20 Extradition was identified as one of the key issues on which the Office of Legal Counsel should offer their expertise. BOA: HR. HMŞ.İŞO 109/10, Mayıs 15, 1313 (May 28, 1912).

21 After the Russo–Ottoman War (1877–8) the negotiations for an extradition treaty led to talks on revising the Ottoman penal codes to regulate the provisions for the crimes the Ottomans committed abroad. BOA: HR.SYS 1282/1 (August 24, 1879) and BOA: HR. HMŞ.İŞO 6/24, Zilkâde 17, 1321 (February 4, 1904).

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arguments. Kirkor Zohrab, for example, treated the extradition under the penal codes.[22] On the other hand, Servet believed that the absence of legislation and a treaty left the extradition practice in an ambiguous state.[23]

The 1874 Extradition Treaty was the only agreement officially signed by the Ottoman state in the nineteenth century.[24] Comprising eight articles, the treaty existed within the same context as the treaties signed by the European powers in the same epoch. The Ottoman government had previously agreed on protocols for prisoner exchange, as demonstrated in the 1774 Treaty of Küçük Kaynarca with Russia and the 1746 Treaty of Kurdan with Iran. However, they were substantially different in form and content compared to the nineteenth-century treaty models.[25]

The 1874 Treaty of Extradition had deep historical roots in US–Ottoman relations. Extradition negotiations first came up in the context of the issue of subjecthood. The increasing number of Ottoman subjects, mainly from the Armenian population, who sought US naturalization while keeping their Ottoman identity by birth, posed a threat from the Ottoman perspective. Several felons, who were judicially in limbo on both sides due to their ambiguous legal status, avoided punishment. For this reason an extradition treaty was enacted alongside the 1874 Naturalization Act, which intended to resolve the nationality problem for American and Ottoman subjects. The 1874 Naturalization Act was drawn up in striking resemblance to the similar agreement between the USA and Germany.[26] The extradition treaty, remodeled after the American–Italian treaty example in 1868, came into force quickly.[27]

22 Kirkor Zohrab, *Hukuk-u Ceza* (İstanbul: Ahmed Şaki Bey Matbaası, 1909), 86.

23 Servet, *Hukuk-ı Ceza: Malumat-ı Umumiye ve Kısm-ı Cürm* (Dersaadet: İkdam Matbaası, 1327 [1910]), 84.

24 A treaty was signed with Switzerland in 1917, and with Germany and Austria in 1918. These were outcomes of a wartime alliance. See, BOA: HR. HMŞ.İŞO 155/10, Rabiulahir 3, 1334 (February 8, 1916), BOA: HR.SYS 2282/4 (March 15, 1918), and BOA: HR.SYS 1881/18 (April 9, 1917).

25 Will Smiley, "The Burden of Subjecthood: The Ottoman State, Russian Fugitives, and Interimperial Law, 1174–1869," *International Journal of Middle East Studies* 46, no. 1 (2014): 73–93; and Ernest Tucker, "The Peace Negotiations of 1736: A Conceptual Turning Point in Ottoman–Iranian Relations," *The Turkish Studies Association Bulletin* 20, no. 1 (1996): 16–37. I express my thanks to Ebru Sönmez for calling attention to the Treaty of Kurdan.

26 Germany encountered similar problems when implementing the extradition convention because of the controversy over naturalized Americans in the German army. BOA: HR. İD 139/3 (June 6, 1868), BOA: HR.İD. 139/17 (December 29, 1874), and BOA: HR.İD. 139/35 (October 1, 1875). The US government followed an identical pattern while drafting a naturalization treaty with other states. However, Germany encountered similar problems when implementing the extradition convention because of the controversy over naturalized Americans in the German army

27 The extradition treaty was first signed on August 11, 1874, by the minister resident of the United States of America, George H. Boker, and the Ottoman foreign minister, Aarifi Pasha. It was ratified by the Ottoman government in the following September and by President Ulysses Grant in January 1875, and the agreement came into full force in April 1875. BOA: A.) DVN.NMH 21/8, Recep 17, 1291 (August 30, 1874) and 21/10, Şaban 3, 1291 (September 15, 1874), BOA: MHD 265 and 269. BOA: HR.ID 139/15 (August 11, 1874).

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However, the US Senate never ratified the 1874 Naturalization Act officially, due to long-term disagreements regarding the treatment of subjects naturalized before the 1869 Ottoman Nationality Law.[28] Instead, both states recognized it informally until the Ottomans unilaterally reneged on the convention in the early 1890s. Paradoxically the large number of migrants who had been the pressing reason for the convention became the biggest political obstacle in the way of its enactment.[29] The abeyance of the naturalization question directly affected the fate of the extradition treaty. After the Kelly affair Ottoman resentment regarding the failed negotiations on naturalization persisted. The procedural requirements imposed by Washington only continued to prevent a successful extradition practice. Ad hoc political actions further complicated the negotiations.

Legal battle over extradition

> William Evarts: What do you want to do? Patrick Kelly is gone.
> Grégoire Aristarchi: No, he did not run away; your agents let him go.
> Evarts: As long as he is out of Ottoman territory, it is no longer important. I do not see another solution except for the extradition treaty. The United States Government has no right to use executive power against Kelly. Now, if you think you have the right to complain to us about this because of the claims that our agents helped the fugitive to leave, you could ask for satisfaction by the way of extradition.
> Aristarchi: We believe that the extradition convention applies only to those who escape on their own. Patrick Kelly does not belong in this category. Your government is responsible for his disappearance. Besides, he is not in the United States now. He is traveling in the waters of the Levant aboard the "Vandalia," and the criminal has returned several times to Smyrna.
> Evarts: Why did you not stop him, then?
> Aristarchi: Because we are discussing the matter with your government, and because the American captains are somewhat hot-headed, and they could have threatened to bombard Smyrna, as they once threatened to do in Tripoli.[30]

28 The 1874 Naturalization Act was first officially negotiated on August 11, 1874. Renewed negotiations in February 1889 did not result in success. BOA: A.) DVN.NHM. 21/8, Receb 17, 1291 (August 30, 1874).

29 The political conflicts arose because of the Ottoman fear that some Armenian groups could instigate subversive activities. BOA: HR. İD 140/16 (November 20, 1893). Most of them were seen as political criminals and the extradition was not an option for them, bar voluntary expulsion. Gutman recounts the problems engendered by the naturalization draft and the governments' switching policies. See David Gutman, *The Politics of Armenian Migration to North America, 1885–1915* (Edinburgh: Edinburgh University Press, 2019), 124–43.

30 BOA: HR.H 232/4 (April 2, 1878). My translation from French.

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The conversation between the US secretary of state, William Evarts, and the Ottoman minister in Washington, Grégoire Aristarchi (Aristarchi Bey), is testament to the sophisticated diplomatic advances and parries employed by both states during the Kelly affair. When referring to the threat of naval bombing against Tripoli, Aristarchi Bey referenced the series of conflicts that had come to a head in two wars fought near North African shores between the US and the suzerain powers of the empire. Known as the Barbary Wars in the West, these campaigns took place between 1801–5 and 1815–16.[31] The larger-scale imperialist ventures the United States would undertake overseas in the future had not yet taken place. Additionally, the threat of bombing can be attributed to instances of American captains' imprudent blustering, instead of a general US policy of encroachment. However, it was apparent to Ottoman observers that American diplomacy was utilizing the carrot-and-stick policy as a strategic tool throughout the world at the close of the century.[32] Aristarchi Bey's emphasis on the Barbary Wars, which had occurred more than half a century earlier, should therefore be read in this light.

His words were also testament to his discretion as a seasoned Ottoman diplomat who had weighed the strengths and weaknesses of his opponent. He acknowledged the need for a delicate balance in the Ottoman state's diplomacy with the USA. It would not be incorrect to situate Aristarchi Bey as a key actor in the Kelly affair. Serving as the Ottoman representative in Washington (1873–83), he was an Ottoman diplomat of Greek descent and had many years of experience.[33] Aristarchi Bey was more than a career diplomat, however, and he also undertook education as a jurist and served in various provinces.[34] He was also the author of the legal collection *Législation ottomane*.[35]

The Ottomans did not sweep the Kelly affair under the diplomatic rug due to fear or threats. On the contrary, the Sublime Porte conducted a long-winded

31 See Frank Lambert, *The Barbary Wars: American Independence in the Atlantic World* (New York: Hill and Wang, 2005).

32 Thomas Bender, *A Nation among Nations: America's Place in World History* (New York: Hill and Wang, 2006), 183.

33 After 1883, he was dismissed from his post due to reasons that are unclear. See Sinan Kuneralp, "The Last of the Phanariotes: Grégoire d'Aristarchi Bey (1843–1914), an Ottoman Diplomat and Publicist in Search of Identity," in *The Greek World under Ottoman and Western Domination*, ed. Dimitris Arvanitakis and Paschalis M. Kitomilides (New York: Alexander S. Onassis Public Benefit Foundation, 2008).

34 Johann Strauss, "A Constitution for a Multilingual Empire: Translations of the *Kanuni Esasi* and Other Official Texts in Minority Languages," in *The First Ottoman Experience in Democracy*, ed. Christoph Herzog and Malek Sharif (İstanbul: Orient Institute, 2016), 27.

35 Aristarchi Grégoire Bey, *Législation Ottomane; ou Recueil des lois, règlements, ordonnances, traités, capitulations et autres documents officiels de l'Empire Ottoman* (Constantinople: Imprimerie Frères Nicolaïdes, 1873/1874/1878/1881).

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and efficient campaign of legal diplomacy that reflected their confidence in the developing judicial system.

It is crucial to remember that the initial conflict had erupted over the jurisdictional right of trial. The Ottoman state had granted the United States the most favored nation title, much like their European counterparts, and the US claims rested upon it. Where Ottoman subjects were part of criminal cases, however, the so-called privilege of extraterritoriality was never officially accorded to American nationals, in a manner similar to the way it was withheld from other European powers. Aristarchi Bey referred to it as an "imaginary feature" in one of his dispatches, implying that the supposed privilege was not reflecting practice in the least.[36] In any case, the American consular representatives attempted to distort the terms of the capitulatory agreement. They solicited every means to push the extraterritorial limits, occasionally by referencing the discrepancies in Article 4 of the 1830 treaty.

This article appeared differently in the Ottoman-Turkish and English treaty versions. Whereas the English translation stated that the rights of trial and punishment were the judicial prerogative of the American consul-general, the original Ottoman-Turkish text touched only slightly upon the point of judicial competency, thus leaving the door open to American claims of Ottoman misinterpretation.[37] Using the excuse of difference in translations, the American authorities pressed their right to try Kelly.

Smithers articulated another excuse for freeing Kelly. Refusing to acknowledge the Ottoman legal competency, he added: "I wish your excellency to understand that I claim not only to be present at the Tribunal regularly instituted but also claim an indispensable right to give my voice to the judgment."[38] He rendered this justification apparent by demanding an "extraordinary" tribunal rather than leaving the case to the Ottoman court of appeal (*Temyiz Mahkemesi*).[39] The attitude of the American representative reflects a widely shared European bias against the Ottoman judiciary system. Most thought that the concept of territorial sovereignty had not yet entirely established the power of sanction in the Ottoman lands, which frequently brought extraterritoriality into question.[40] As Shih-Shun Liu

36 BOA: HR.H 232/4 (July 20, 1877).

37 For the American translation, see Charles Irving Bevans, *Treaties and Other International Agreements of the United States of America, 1776–1949* (Washington, DC: United States Government Printing Office, 1968–76), 621; and for the original Ottoman Turkish text see, "Devlet-i Aliye ile Düvel-i Mütehabbe Beynlerinde Teyemmüna Mün'akid olan Muahedât-ı Atika ve Cedideden Memurîn-i Saltanat-ı Seniyyeye Müracaatı Lâzım Gelen Fukarat-ı Ahdiyeye Mutazammın Risaledir," *Resail-i Ahdiye Mecmuası* (İstanbul: Matbaa-i Âmire, 1284 [1867]).

38 BOA: HR.H 232/4 (March 1878).

39 BOA: HR.H 232/4 (February 20, 1878).

40 M. Féraud-Giraud, "De La Juridiction Française Dans Les Échelles Du Levant," *Revue Historique De Droit Français et Étranger* 1 (1855): 579–608, 581.

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argues, "extraterritoriality was nothing but a legacy of the undefined or vaguely defined status of the alien in the ancient world, and a survival of the medieval theory of the personality of laws, which was once prevalent everywhere in Europe."[41] However, its centuries-long survival as a legal phenomenon was particular to a select few countries, among which the Ottoman Empire was the most prominent.[42]

Smithers' excuse did not have any proper legal basis in the Ottoman justice system. First, the other European powers mostly conformed to the Ottoman juridical approach, albeit with reluctance.[43] Additionally, the investigative courts (*tahkik meclisleri*) were established in 1854 to function similarly to that of a mixed court, hearing correctional and criminal cases involving Ottoman and foreign subjects in the provinces. These trials would begin in the presence of a dragoman and continue in line with the existing treaties.[44] The consuls had only limited adjudication for criminal matters, especially for those involving Ottoman subjects. The Ottoman legal experts ardently supported the Ottoman penal codes, which were emblematic of territorial law. According to Zohrab, the penal codes were the sole authority in criminal cases and needed to be implemented in every corner of the empire, including consular institutions.[45] As Hüsrevyan Hamayak argued, they knew that the European powers flouted the jurisdictional rights of the European subjects. The lack of regulations in the codes concerning territorial jurisdiction eventually presented occasions in which justice could be manipulated.[46]

In the Kelly affair the question of who had the right to preside over a trial ended in deadlock over the controversial Article 4. The Ottoman government was insistent on its jurisdictional rights. The situation compelled Washington to seek other legal openings through which to maneuver, and they proposed extradition. The proposal took the Ottoman authorities by surprise, as the relevant treaty terms were not applicable to the case. The extradition proceedings initially required that Kelly be sent back to the empire for a fair trial, but they could not find him anywhere. Additionally, no country would extradite their own citizen. For these reasons the Ottoman authorities had already written off the notion of extradition as a diplomatic solution.

41 Shih Shun Liu, *Extraterritoriality: Its Rise and Decline* (New York: Columbia University Press, 1925), 229.

42 Özsu, "The Ottoman Empire," 129.

43 Ahmed Cevdet, *Tezakir I–II* (Ankara: Türk Tarih Kurumu Basımevi, 1986), 62.

44 Baron de Testa, *Recueil de Traités de la Porte Ottoman avec Les Puissance Étrangères*, Vol. 5 (Paris: Amyot, 1864), 153. Although their impact remained mostly limited to some regions, the courts' initial objective was to enforce the Ottoman penal code, against which the consulates often raised complaints. BOA: HR.MKT 328/79, Şaban 19, 1276 (March 12, 1860) and BOA: HR.H. 426/28, Şaban 20, 1279 (February 10, 1863).

45 Zohrab, *Hukuk-u Ceza*, 95.

46 Hüsreyvan Hamayak, *Hukuk-u Hususiye-i Düvel* (İstanbul: Edeb Matbaa ve Kütüphanesi, 1331 [1913]), 181; Philip Marshall Brown, *Foreigners in Turkey, Their Juridical Status* (New Jersey: Princeton University Press, 1914), 62.

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Instead the Ottoman officials laid out a strategy to adhere to a strict interpretation of the treaty stipulations. The Ottoman minister for foreign affairs, Mehmed Esad Safvet Pasha, issued a rather shrewd answer, stating that they could not extradite the accused as he was not legally defined as a fugitive. He was a suspect under charge who had been released by the American consular agents in an action of malfeasance. Only Kelly's intent to escape had made the extradition demands negotiable. Safvet Pasha was directly quoting the relevant articles of the 1874 Extradition Treaty. He further strengthened his claims by highlighting another obstacle to the notion of extradition. Even if Patrick Kelly had fled by his own means, his extradition would not have been a viable legal option as there was no intentional murder. Supporting this argument, Article 2 of the treaty reads as follows:

> Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes: murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning and infanticide, and *the attempt to commit murder*.[47]

Safvet Pasha pointed out that the murder of Tahir did not conform to the treaty stipulations. Patrick Kelly was very inebriated on the day of the attack and had smashed a bottle on Tahir's head, who eventually died. The circumstances of the incident clearly demonstrated that it was not a premeditated crime. Instead it fell within the purview of involuntary homicide. Thus, the extradition process could not be started as there was no mention of involuntary homicide in the treaty.[48]

The criminal's current whereabouts was also an important prerequisite for an official extradition request. Only after Kelly's location had been established could the authorities begin the process. What happened then, in accordance with the regulations, when a suspect or convict had escaped from the Ottoman Empire? If the crime was committed in a province, the claim of extradition would come from the district (*liva*) of that province. Once the authorities had determined the fugitive's whereabouts abroad, the local public prosecutor (*müdde-i umumi*) would submit an official request to the public prosecutor at the court of appeal (*istinaf müdde-i umumisi*). The public prosecutor would then send the official reports from the district administration, which were attached to the court order (*mahkeme ilâmı*) and the arrest warrant (*tevkif müzekkeresi*) of the investigating judge, to the Ministry of Justice as a last resort. Only after the legal arrangements had been completed would the Ottoman representatives abroad resort to diplomacy.[49]

47 Bevans, *Treaties*, 643 and BOA: İ.HR 264/15815, Cemazeyilahir 4, 1291 (July 19, 1874), my emphasis.

48 BOA: HR.H 232/4 (February 28, 1878).

49 Servet, *Hukuk-ı Ceza*, 90. Also see, Ahmet Şuayb, *Hukuk-ı Umumiye-yi Düvel* (İstanbul: Matbaa-i İkbal, 1328 [1912]), 26.

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In the case of Patrick Kelly the Ottoman authorities could not enforce these regulations. As made clear by Aristarchi Bey, the convict had not yet set foot on American soil. The rumors that he was traveling onboard the USS *Vandalia* offered additional proof of this. This American warship had become internationally famous for its expedition along the Mediterranean shores between 1876 and 1878.[50] While the implicit threat of an attack by unruly American captains prevented the Ottomans from chasing Kelly via the ports, the presence of American President Ulysses Grant on the ship might be another reason for the Ottoman hesitations. Importantly, his visit to İstanbul was a grand occasion, as evinced by the foreign press of the time.[51] Adherence to the treaty would not support any chance of extraditing Kelly as there were no regulations allowing an arrest of the convict on the open seas.[52] Evarts also clarified that they would not attempt to reclaim Kelly if he took refuge in a third state.[53]

Perceiving the difficulties of arresting Kelly and the procedural obstacles preventing his extradition, İstanbul at last turned to diplomatic means. It is particularly clear that they were determined to handle this conflict by adopting the legal parlance of the time, and the language used in their correspondence is indicative of this. As Maurus Reinkowski has aptly remarked, the regular flow of Ottoman correspondence was a remarkable manifestation of the imperial "political idiom" and "rhetoric of power" of its time.[54] Reflective of Reinkowski's words, one of the most effective weapons of the nineteenth century were the references made to international law. Although the European states frequently bent international

50 www.ibiblio.org/hyperwar/OnlineLibrary/photos/sh-usn/usnsh-v/vandla2.htm, accessed February 12, 2019.

51 *Daily Levant Herald*, 1878. "General Grant in Constantinople," March 5 and March 7.

52 Jurisdiction at sea is another topic that is worth considering. For a comparative example, the Lady Hughes affair of 1784 is an illustrative case. The controversy between the British Empire and China at sea represents the downfall of extraterritoriality. The incident paved the way for the 1889 Chinese Extradition Ordinance a century later. See, Li Chen, "Law, Empire and Historiography of Modern Sino–Western Relations: A Case Study of Lady Hughes Controversy in 1784," *Law and History Review* 27, no. 1 (2010): 1–54; and "Chinese Extradition Ordinance," in *Laws of Hong Kong* (Hong Kong: Hong Kong Government, 1964).

53 BOA: HR.H. 232/4 (March 30, 1878). In the 1874 Extradition Treaty, there was no clause related to fugitives who escaped to a third location. We can analyze the case of Nicholas Cusma in the Ottoman context. Cusma, an Austrian subject, committed forgery in Alexandria, Egypt, and escaped to Italy. The Austrian authorities, instead of the Ottomans, asked for his extradition as a third power because of extraterritoriality. See, Paul Bernard, *Droit international*: *Traite Théorique et Pratique de l'Extradition Comprenant l'Exposition d'un Projet de Loi Universelle sur l'Extradition, Deuxième Partie* (Paris: Librairie Nouvelle de Droit et de Jurisprudence, 1883), 187.

54 Reinkowski underscores the power of daily correspondences in the Ottoman bureaucracy for an understanding of its political discourse. I apply his arguments to Ottoman foreign relations in the nineteenth century to demonstrate how international law transformed the discourse of the state. See Maurus Reinkowski, "The State's Security and the Subjects' Prosperity: Notions of Order in Ottoman Bureaucratic Correspondence (19th Century)," in *Legitimizing the Order: The Ottoman Rhetoric of State Power*, ed. Maurus Reinkowski and Hakan Karateke (Leiden: Brill, 2005), 195.

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law to extend their reach overseas, the Ottoman Empire, similarly and to the best of its abilities, made use of the same tool.[55]

The Ottoman government learned through bitter experience how the European powers had intervened in the affairs of the Ottoman Empire throughout the previous hundred years. Using the euphemism of humanitarian intervention, European nations frequently cried out when Ottoman domestic crises (often instigated by foreign agents) erupted, including the Cretan Question and the 1860 Intervention in Lebanon.[56] The Bulgarian massacres of 1876 and the forthcoming Berlin Conference certainly further enhanced the Ottoman understanding of nineteenth-century international politics, increasingly guided by Machtpolitik. Pushing back against this order, Ottoman officials availed themselves of the international law the European powers used to carry out their "dual civilizing mission," which brought "peace and order within the European system" but used "force to (civilize) outsiders."[57] Ottoman legal advisors had been advising the state departments since the Crimean War. The establishment of the Ottoman Office of Legal Counsel (*Hukuk Müşavirliği İstişare Odası*) in 1883 ushered in a new era for scholarly discussions in law. Despite criticisms that the Ottoman state was not an acknowledged member of the family of nations, the office resorted to the formidable legal corpus they had accumulated over years.[58] By 1908 there was a significant proliferation of publications in international law in the Ottoman state.[59] In this way Ottoman bureaucrats increasingly leveraged international law in their foreign relations.[60]

From the earliest days of the Kelly affair, Safvet Pasha claimed that due to the international character of the crisis it could not remain among only the American and Ottoman parties.[61] Aristarchi Bey shared the same opinion and did his best to draw the attention of an international audience. The illegal attempt to judge and release Kelly was against the principles and spirit of the

55 Aimée Genell, "The Well-Defended Domains: Eurocentric International Law and the Making of the Ottoman Office of Legal Counsel," *Journal of the Ottoman and the Turkish Studies Association* 3, no. 2 (Nov. 2016), 256.

56 See, Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire, 1815–1914* (Princeton: Princeton University Press, 2012).

57 Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (Oxford: Oxford University Press, 2016), 12.

58 Aimée M. Genell, "Autonomous Provinces and the Problem of 'Semi-Sovereignty' in European International Law," *Journal of Balkan and Near Eastern Studies* 18, no. 6 (2016), 534.

59 Ibid., 544.

60 Mustafa Serdar Palabıyık, "The Emergence of the Idea of International Law in the Ottoman Empire before the Treaty of Paris (1856)," *Middle Eastern Studies* 50, no. 2 (2014), 241; also see, Berdal, "The Ottoman 'School of International Law as Featured in Textbooks," *Journal of the History of the International Law* 18 (2016): 70–97.

61 BOA: HR.H 232/4 (April 9, 1877).

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highly esteemed law of nations.[62] The US government ignored the protests and cloaked their arguments behind a mask of so-called amicable relations maintained reciprocally between the two governments. Aristarchi Bey remarked that if the American government insisted on referring to extradition, then the Ottomans would appeal to the Ottoman parliament (*Meclis-i Mebusan*). He asserted that the American government, a burgeoning constitutional power, would be embarrassed by the resulting international reactions. Founded just two years earlier, the parliament already symbolized widely held hopes for a representative government. Ottoman officials were eager to prove both "the actual value of Ottoman institutions" and expose "the abuses of foreign agents" in the empire. Aristarchi Bey blamed the consulate agents, who made claims without any concrete evidence or consulting lawyers.[63]

The Ottoman engagement in international legal discourse and holding forth the treaty text indicated a novel diplomatic direction. Aristarchi Bey noted that there was an official Ottoman trust in the judiciary system and domestic legal formalism. His point was egregious, however, since the Ottoman state had relied considerably on the opinions of the lawyers as of late. Nevertheless, neither the Ottoman nor the American officials spoke or acted without prior consideration in the Kelly affair. The Sublime Porte pursued legal diplomacy only to the extent permitted by pragmatic concerns. While rebuffing the extradition demands with the excuse that the 1874 Extradition Treaty was inapplicable to involuntary homicide, they were primarily occupied with the costly consequences the extradition process would engender. Amounting to 40,000 to 50,000 francs, these expenses were too high to cover for each extradition proceeding. Aristarchi Bey reported that many other states also abandoned reclamations of even the most offensive fugitives out of economic concerns.[64]

Washington remained distrustful of the Ottoman state's judicial competency. Otherwise, knowing as they did that it could not be applied under the circumstances, they would not have insisted on the extradition. Within the American system official treaties were highly valued as they were Congress Acts. The extradition treaties, in particular, were drafted to conform to the principles of statutory laws.[65] Thus, they could have surrendered Kelly to the Ottoman authorities rather than essentially warding off the extradition treaty. In the same decade Horace Maynard stated that there would be an

62 BOA: HR.H. 232/4 (February 20, 1878).

63 BOA: HR.H 232/4 (February 20, 1878).

64 BOA: HR.H 232/4 (May 31, 1878).

65 Henry Wade Rogers, "Supreme Court of the United States and Rauscher," *The American Law Register (1852–1891)* 35, no. 4. Vol. 26 (April 1887), 227; Charles Cheney Hyde, "Notes on Extradition Treaties of the United States," *The American Journal of International Law* 8, no. 3 (July 1914), 488.

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"unwillingness [to depart] from this policy of jurisdiction" in negotiating with non-Christian powers, "whose modes of justice and forms of punishment" were unlike theirs. He was elucidating the US policy adopted generally for those countries at the time.[66]

The obstacles barring extradition and a just trial of Kelly proved to be a considerable vexation for the Ottomans, who feared that this incident would cause impunity. In the end the American government assented to give $1,200 to Tahir's family in 1878. Aristarchi Bey stated that they would accept the payment to end the crisis.[67] However, the reasons the Ottoman state spent so much time and effort waging a legal battle against the American legation only to accept a pecuniary compensation at the expense of a territorial right of jurisdiction should be considered within the broader historical framework of US–Ottoman interstate politics.

Ottoman justice on the slippery grounds of foreign politics

> It is constantly said that justice should be rendered everywhere as it is in Turkey. Can it be that the most ignorant of all peoples have seen clearly the one thing in the world that is most important for men to know? [. . .] If you examine the formalities of justice in relation to the difficulties a citizen endures to have his goods returned to him or to obtain satisfaction for some insult, you will doubtless find the formalities too many; if you consider them in their relation to the liberty and security of citizens, you will often find them too few.[68]

Montesquieu's words refer to the perception that Europe had long held regarding the Eastern societies. According to this understanding, the rule of law, necessary for the advancement of an ideal state, was one of the ultimate criteria for civilization. The Ottoman Empire, which was deemed semi-civilized by the Europeans, was supposedly devoid of the traits attributed to the rule of law. An assumed arbitrariness of justice and inefficient legal system was the best evidence for such European accusations. Unfamiliarity with an empire perceived as alien due to geographic and cultural differences only exacerbated the assumptions and criticisms. According to most European legal scholars the Ottoman Empire fitted perfectly into the picture of Oriental despotism.[69]

66 BOA: HR.H 346/19 (May 14, 1880).

67 BOA: HR.H 232/4 (February 20, 1878).

68 Montesquieu, *The Spirit of Laws*, ed. and trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (New York: Cambridge University Press, 1989), 74.

69 Pitts, *Boundaries*, 35.

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As the Kelly affair demonstrates, one should approach these self-evident truisms with a great deal of caution, if not eschew them altogether. Undeterred by occasional failures along the way, the empire refashioned its judicial system along modern lines by enacting a series of legal reforms that arrived in leaps and bounds. The Penal Codes of 1840, 1851, and 1858, the Civil Code of 1877, the new courts and tribunals, the 1876 Constitution, and procedural laws do not even scratch the surface of the reforms.[70]

By introducing international law the Ottoman Empire built further upon the aforementioned legal reforms. Just a few decades earlier European diplomats had looked down on Ottoman officials for their ignorance. In 1836 William Churchill, an English journalist living in İstanbul, killed an Ottoman boy by accident in the Belgrade forest. His arrest and trial were hotly disputed among diplomatic circles. When Yusuf Halis Efendi, an official of the Translation Office, mentioned a famous book on the law of nations during one of these discussions, Frederick Pisani, the chief dragoman of the English embassy, turned a deaf ear to the comments, determined that international law was not fit for the Ottomans.[71] A lot changed after the Crimean War. In 1856 the Ottoman state's participation in the Paris Peace Conference and the Reform Edict (*Islahat Fermanı*) redefined its position in the international arena. The increasing engagement with international law transformed the state's asymmetrical relations with Europe. However, the capitulations, like the sword of Damocles, remained ever-present. During the Paris Peace Conference Ali Pasha indignantly blamed the extraterritorial evil, which "constitute[d] a multiplicity of governments within the government, and an insuperable obstacle to all improvements."[72]

The American policy adopted during the Kelly affair was reminiscent of a power long accustomed to capitulatory relations. In this respect, the US–Ottoman dispute allows the rapid change in American standpoints in the international arena to be traced. The founding fathers of the country had the foresight to forge a political system that relied on constitutional principles of a territorially defined power. The formation of the American state was fine-tuned to what Westphalian sovereignty envisioned.[73]

This legalist approach did not last long. The aggressive efforts to claim a place in the international political order reflected the vision of an aspiring world power, desirous of catching up with Europe. For the young republic,

70 See, Fatmagül Demirel, *Adliye Nezareti; Kuruluşu ve Faaliyetleri (1876–1914)* (İstanbul: Boğaziçi Universitesi Yayınevi, 2007).

71 Akif Paşa, *Tabsıra* (İstanbul: IQ Kültür Sanat Yayıncılık, 2004), 27.

72 Slys, *Exporting Legality*, 51.

73 Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), 176.

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the Ottoman Empire ostensibly could have served as one of the best arenas to test its strength and forcefully assert its overseas interests. The US was determined to compel the Ottomans to grant the same privileges accorded to Europeans under the guise of immunity. However, the American imperial gaze was not unique to the Ottoman Empire, and one can likewise point to the US influence that had already emerged in distant regions. A session of Congress, held on June 22, 1860, laid out the principles of foreign jurisdiction in China, Japan, Siam, and Iran. It specifically stated that,

> in regard to crimes and misdemeanors, the public functionaries are hereby fully empowered to arraign and try [...], all citizens of the United States charged with offences against law, which shall be committed in such countries, to sentence such offenders in the manner herein authorized.[74]

For those aforementioned countries, the civilization criteria seemed to determine the course of the US jurisdictional encroachment. In fact, the Europeans also felt the rising challenge posed by American statecraft. In the same decade as the Kelly affair another dispute over extradition, the Lawrence case (1876), created similar tensions between the US and British governments. Washington demanded Charles Lawrence's extradition, whom they accused of fraud against American interests. Ireland had extradited the convict earlier according to the 1842 Extradition Treaty. Yet his trial for more than one offense was against the treaty obligations and caused controversy regarding the agreement. Ignorant of British protests, the US authorities ardently supported the exceptionality of the Lawrence case. They strove with the same vigor to prevent British intervention. Unlike the Kelly affair, where the accused eluded justice, the British–American legal battle resulted in the severe punishment of Lawrence by the American justice system.[75]

The spirit of American diplomacy in the Lawrence affair bore a striking resemblance to the attitude adopted during the Kelly affair a year later. When analyzed through a comparative lens, the two cases demonstrate how the power structures in the international arena should be reevaluated beyond the established hierarchies which had for so long secured and defined their power in Europe.

After the Kelly affair the Ottoman government put aside the option of extradition due to the resentment directed at the unresolved naturalization question. In one of his dispatches Naum Pasha explicitly remarked that the treaty was not in use due to the naturalization quagmire, and the

74 www.loc.gov/law/help/statutes-at-large/36th-congress/session-1/c36s1ch179, accessed April 5, 2019.

75 Fiore, *Traité de Droit Penal*, 702–4.

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American side did not encourage any cooperation either.[76] When the Lebanese citizen Tammous Elias Fares killed another Lebanese citizen and escaped to the United States in 1893, Washington automatically rejected the Ottoman demands of delivery without resorting to the treaty. By raising additional procedural difficulties they evaded full implementation in a manner similar to the Kelly affair.[77] Two decades later the same problems arose again. In 1912 a certain Dikran from the Diyarbekir province killed another Ottoman and fled to New York. The Ottoman government, who demanded the return of the fugitive via diplomatic means, received the same reply.[78] While officially embracing the extradition treaty the US government again strayed from its regulations by demanding a court trial before an American magistrate.[79] Eventually these legal conflicts resulted in impunity. The 1874 Extradition Treaty officially remained in force yet was rarely used until the Republican period.[80]

Conclusion

Through this study I have examined *iade-i mücrimin* (the extradition) in the Ottoman Empire by delving into the 1874 Ottoman–US Extradition Treaty via a case study. By investigating the intricate relationship between extradition practice and territorial jurisdiction this research explored the particular historical background of the treaty. Indeed, the strenuous efforts of the two middle powers to resolve the legal conflict in the Kelly affair hinted at the changing diplomatic agenda that defined interimperial relations in the nineteenth-century. It demonstrated that the power balance would shift in perpetuity.[81]

Considered from this angle the Ottoman Empire is a distinct, although not entirely exclusive, example of how a state, particularly one that occupies a peripheral position in the geopolitical order, passed between the Scylla and Charybdis of sovereignty with political dexterity equal to the Great Powers. When the Ottoman state became attuned to international law and undertook legal reforms, the stringent diplomatic stance embraced by both parties throughout the entire conflict made it difficult for either side to breach the jurisdictional limits in place. The legal diplomacy the Ottomans adopted

76 BOA: HR.İD.140/10 (December 18, 1892).

77 Ibid.

78 BOA: HR.UHM. 127/42 (May 19, 1912).

79 Ibid.

80 The United States and Turkey signed an extradition treaty on August 6, 1923, and they renewed it on August 18, 1934. Bevans, *Treaties*, 642.

81 Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2004), 114–15.

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offered a new means for negotiations. It relied more on the jurisdictional power which moved beyond the capitulations.

The Kelly affair illustrates the tension between the text of the law and the practice that reformulated the former, perforce, out of political dynamics and sovereignty conflict. While this study shines a new light on the Ottoman attention to legal formalism, it also revealed that the treaty text was not the best solution to solve the jurisdictional problem. The American eagerness to be an active member among the capitulatory states considerably affected the process. The agreement's nuanced terms became an excuse for both governments to stand upon political claims, as the extradition demands in 1893 and 1912 further proved. By engaging in a micro-scale legal narrative this study demonstrated that the nineteenth-century Ottoman foreign relations were not limited to capitulations, political alliances, or economic interests, but that they evolved through diverse forms of dialogue framed by legal diplomatic discourse and everyday politics.

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