In 1891, John Bassett Moore published *A Treatise on Extradition and Interstate Rendition*, a two-volume, 1556-page opus that for decades remained the preeminent source on extradition. Moore had just spent six years handling extradition cases in the State Department, first as a law clerk, then as Third Assistant Secretary of State, and would go on to have a long and distinguished career as an international lawyer, law professor, and diplomat. His *Treatise* delved into case precedents, parsed treaty language, and explained domestic and foreign legal codes. But this magisterial work gave no sense of how rendition worked on the ground. The recovery of fugitives, for Moore, occurred in courtrooms and foreign ministries.1

Yet extradition treaties were simply hypothetical unless they could be enforced. The mere presence of a treaty was hardly tantamount to apprehending a criminal; fugitives first had to be discovered, identified, and caught. Treaties were pledges of cooperation at the highest levels of government, but they depended on ground-level structures of law enforcement. The diplomat needed the detective.

The realities of rendition at the turn of the twentieth century often looked little like the highly structured procedures that Moore described in his *Treatise*. Rendition means the transfer of a fugitive from one jurisdiction to another. Extradition, a set of legal procedures governed by treaty and statute, was simply one form of rendition. Other methods for


2 See M. Cherif Bassiouni, “Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition,”
bringing back fugitives included abduction or informal surrender outside the terms of a treaty, practices sometimes called “irregular rendition.” The phrase is a misnomer, though: “irregular” forms of rendition were as common in the late nineteenth century as “regular” extradition.

During the 1880s and 1890s, American law enforcers vastly expanded their reach into foreign countries, particularly in Latin America, through such “irregular” means. They frequently brought fugitives back to the United States without going through a tribunal, and sometimes by force. Rather than observing the formal channels of extradition, they employed informal tactics that often bypassed any diplomatic or judicial supervision. Crossing lines of sovereignty, they began to go in and take people instead of waiting for states to hand them over.

The 1886 Supreme Court case of *Ker v. Illinois* was critical in giving these detectives wide latitude to operate with impunity across borders. The precedent set by that case—that international kidnappings do not violate U.S. law—has been used in the twentieth and twenty-first centuries to justify cross-border abductions by the Drug Enforcement Agency and the Central Intelligence Agency. Dozens of law review articles have analyzed the modern implications of the case, but none has examined its nineteenth-century context. The

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3 In 1952, *Ker* was further clarified by the case *Frisbie v. Collins*, 342 U.S. 519, so that the current precedent is known as the Ker-Frisbie Doctrine. One of the most famous cases to cite Ker-Frisbie was *United States v. Alvarez-Machain*, 504 U.S. 655 (1992), in which DEA agents kidnapped a member of a drug cartel from Mexico. The doctrine has also been invoked in the seizure of Manuel Noriega from Panama in 1989, and in the abduction of terror suspects from Europe over the past decade.

full story of a fugitive named Frederick Ker and a detective named Henry Julian—as told in newspapers, extradition files, legal briefs, and the papers of the Pinkerton National Detective Agency—illuminates the key role of private detective agencies in developing the on-the-ground practice of rendition.

John Bassett Moore’s account of extradition put the state at the center of the action; however, in reality, non-state actors like the Pinkertons operated with little oversight by the State Department. Private actors concerned with making a profit, not Moore’s idealized law of extradition, governed the expansion of international rendition at the end of the nineteenth century. At a time when federal and municipal law enforcement in the United States was weak, private detectives like the Pinkertons were the most effective means of pursuing fugitives who crossed borders. Their paying clients determined their agendas, and these patrons were most often banks and companies who wanted to recover stolen funds from embezzling employees.

These chases sent an important message about the Gilded Age economic order. The Pinkertons’ clients considered embezzlement so dangerous that they sometimes lost money financing international pursuits, in order to set the example that fleeing thieves and embezzlers could not get away with their crimes. Banks and companies desperately needed clerks, cashiers, and other employees to believe that stealing was too risky: no matter how far they ran, they would be caught. Corporate executives might have amassed their fortunes in ways that were hardly more honest or honorable, but they had the law on their side. Supporting this vision of the difference between licit and illicit capital accumulation, court
decisions like *Ker v. Illinois* gave the green light to private detectives’ improvisational but effective tactics for ensuring that money stay in its “proper” place.\(^5\)

On January 23, 1883, a week after Frederick Ker left on vacation, the Chicago banking firm of Preston, Kean, & Co. received the letter in the mail. “I am not able to return to my post,” Ker wrote, “in consequence of some disastrous speculations.” Ker held what partner Samuel Kean called “a sort of general position,” filling in for absent clerks, assisting the cashier, and often doing the general bookkeeping. In his letter, Ker listed the funds he had taken from the bank, totaling $55,000, but pleaded with his employers not to look for him. The money was all gone, he explained, and “I have very little left except my almost worn-out frame and mind.” However, the end of the note took a more threatening turn. Ker claimed he was safe in a distant place and all would be well if there were no attempt to expose him. But “if you decide to give the details of this affair to the public,” he warned, his friends would spread rumors that would cause a run on the bank and “have the effect of finishing the bank’s existence.”\(^6\)

The letter did not intimidate the bankers; it only angered them. First, they sought an indictment from a grand jury. Next, they called upon the Pinkerton National Detective Agency. “I never saw a man more determined to bring a rascal to justice than these gentlemen,” Chicago superintendent William Pinkerton later told reporters. “They absolutely put no limit on us. We could have chartered steamers or anything else, and they would never

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\(^6\) Testimony of Samuel A. Kean; Entry 857, Box 15, Extradition Case File, Frederick Ker; Records of the State Department, RG 59, NARA II.
have murmured.” In the end, the *Chicago Tribune* estimated, the firm spent “in the neighborhood of $10,000” in its pursuit of Ker.

As soon as the detective agency accepted Preston, Kean, & Co.’s case, the Pinkerton machine kicked into action. The agency telegraphed Ker’s description to chiefs of police from Maine to California and in the principal cities of Canada, with the order to arrest him at once, “regardless of consequences.” In case Ker had traveled east to take a steamship to a foreign country, founder and president Allan Pinkerton directed his New York and Philadelphia agencies to search the passenger lists of vessels that had recently sailed, and to inspect every one about to sail. The agency even sent a man undercover to take a room at the West Side boarding house where Ker had lived, hoping for some clue as to where he might have fled.

Neither municipal police departments nor other detective agencies could have carried out so wide a search. Pinkerton’s was able to call upon hundreds of agents around the country at a moment’s notice. The agency employed a daily force of 2,000 and claimed that it could call upon reserves of 30,000—more than the entire standing army of the United States. Unlike the New York Police Department, which also searched for Ker, Pinkerton’s could put enough men out on the New York docks to interview every sailor who passed through.

After nearly a month of diligent searching, a Pinkerton operative in New York finally got a lead: an officer on the steamship *City of Para* confirmed that he had taken a man resembling Ker to Panama. The passenger who matched Ker’s description had traveled

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7 *The Advance*, May 10, 1883, 816.
8 “Defaulter Ker,” *Chicago Tribune*, Jul. 18, 1883, 8.
9 Allan Pinkerton, *A Double Life and the Detectives* (New York: G. W. Carleton, 1884), 188.
10 This statistic has been reprinted extensively. Its original source was probably Arthur Gordon Burgoyne, *Homestead: A Complete History of the Struggle of July, 1892* (Pittsburgh: Rawsthorne Engraving and Printing Co., 1893).
under the name Alfred Perrott, but it did not take long to verify that he was indeed the wanted man. He had given the officer his coat, remarking “that he would not need it, as he was going to a warm climate.” In the loop underneath the collar of the jacket was clearly written the name Frederick Ker.¹¹

The *City of Para* was part of the fleet owned by the Pacific Mail Steamship Company, which transported not only the mail but also cargo and passengers from New York to points west. The trip from New York to the port of Aspinwall, Panama, took nine days, then one more to cross the isthmus via railroad. From there, the company operated routes north to San Francisco and even as far as Alaska; south to Peru and Chile; and, from San Francisco, west to Yokohama, Hong Kong, and Shanghai.¹² Ker might have escaped to any of these destinations.

The Pinkerton agency now called upon its international networks. Within days, thanks to operatives already on the ground in Panama, the Chicago office learned that Ker had boarded a ship headed for Peru three weeks earlier. A report from one hotel even claimed that Ker, now going by the name Warren Start, represented himself as a Pinkerton agent. “The effrontery and impudence of this young man … gave an added zest to my desires to effect his capture,” seethed Allan Pinkerton, writing about the case a year later.¹³

Pinkerton chose Henry Julian to follow Ker’s trail. The twenty-eight-year-old had worked closely with the agency’s president for several years, assisting in operations that required particular shrewdness and caution. He spoke French fluently and, usefully, could

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¹³ Pinkerton, *A Double Life and the Detectives*, 209.
understand conversations in Spanish. Moreover, he was inconspicuous. Newspapers agreed that Julian looked “about as much unlike the traditional, smuggling detective as one could imagine.” The Chicago Tribune described Julian as “a small, black-bearded gentleman, whom one would hardly take for a detective,” while the New York Herald likened him to “a very bright young Episcopalian minister.” Julian departed for Peru on February 20, exactly a month behind Ker.

The Pinkertons were an example of a private police: a non-state, profit-seeking organization that filled a void in governmental law enforcement. Before the FBI was created in 1908, the Pinkerton National Detective Agency was the closest thing the United States had to a national police force, able to coordinate operations across borders. Its motto was “We Never Sleep,” printed underneath a large, glaring eye (figure 1)—a slogan that some believe gave rise to the phrase “private eye.” If a fugitive escaped across a state boundary, hiring a Pinkerton was the most effective way to catch him. If a fugitive escaped across an international boundary, it was practically the only way to catch him.

Although these detectives were not representatives of the state, they wielded a quasi-police power that included the ability to make arrests. But they also acted in ways that official

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14 Ibid., 210.
18 The other common story is that the phrase is short for Private Investigator, or “Private I.”
police departments could not, thanks to their highly coordinated network of offices around the United States, as well as their willingness to employ techniques of questionable legality. Sometimes their actions were blatant violations of the law, but more often they acted in a gray area that had not yet been designated as legal or illegal—what might be called the extralegal realm.19

The Pinkertons had a long history as agents of capital. Founded by Allan Pinkerton in 1850, the agency was routinely hired to provide background checks, infiltrate unions, and break strikes, most infamously during the Homestead Strike of 1892. They hunted down jewel thieves, railroad bandits, and union leaders such as the IWW’s Big Bill Haywood. Catching embezzlers like Ker was simply one more service rendered on behalf of banks and corporations. The agency charged a fixed rate per detective, affordable only to those with substantial means. In the Ker case, each man cost between six and twelve dollars per day, plus expenses, depending on the agent’s experience. For especially difficult or delicate cases, the charge was even higher.20 The detectives drew the line at only one thing: searching for evidence of adultery. Founder Allan Pinkerton refused to let his agency take divorce cases.21

The Pinkerton agency was involved in cross-border work from its earliest days. Working on behalf of the Union during the Civil War, Allan Pinkerton sent his men across the lines, posing as Confederate soldiers, to obtain military intelligence. In their first

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20 “It cost three dollars a day to hire an ordinary operative, eight dollars for a supervisor, while Pinkerton himself received twelve dollars.” Sigmund A. Lavine, *Allan Pinkerton: America’s First Private Eye* (New York: Dodd, Mead, 1963), 21. The client paid the agency a per diem agreed on in advance. During the period covered by this paper, the amount varied from six dollars daily to eight dollars, although in cases of extreme delicacy or difficulty the per diem might rise. David R. Williams, *Call in Pinkerton’s: American Detectives at Work for Canada* (Toronto: Dundurn Press, 1998), 36.

international arrest, the Pinkertons caught the notorious Midwestern train robbers known as the Reno Brothers Gang in Windsor, Ontario, in 1868. Soon the agency was operating throughout North America. During his twenty-two-year career, Pinkerton detective Charles A. Siringo took assignments from British Columbia to Mexico City. The agency’s first major trans-Atlantic triumph came in 1873, when it cracked a forgery ring that had counterfeited more than one million pounds in Bank of England notes. The Pinkertons and Scotland Yard together apprehended members of the ring in London, New York, and Havana, in one of the most far-reaching criminal investigations to date.

In Europe, centralized federal police forces performed the work of chasing fugitives, both nationally and internationally. The model for police bureaus around Europe was France’s Sûreté Nationale, founded by criminologist Eugène François Vidocq in 1812. Vidocq was inspired by Napoleon’s centralization of the French gendarmerie into a single Ministry of Police, devoted specifically to protecting the security of the state. In 1832, he also helped to redesign Great Britain’s Metropolitan Police, better known by the name of its administrative headquarters: Scotland Yard. By the end of the century, Scotland Yard employed more than 13,000 officers, all operating under a single head. Because of the proximity of European countries, police forces developed a tradition of cooperation, sharing information, and coordinating international pursuits. Most of the European cooperative

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22 Box 153, Reno Brothers Gang Case File; Criminal Case Files, 1853-1992; Pinkerton National Detective Agency Papers; Manuscript Division, Library of Congress.


efforts were aimed at immobilizing common threats to the state, such as the anarchist movement, rather than petty criminals.25

By contrast, nineteenth-century Americans opposed a formal, centralized police precisely because they associated it with the autocratic, repressive political regimes of Europe. L. C. Baker, the former head of the United States Secret Service, wrote in 1867 that a federal police bureau was “contrary to the spirit of our republican institutions.” Monarchs feared the people and constantly kept watch for popular uprisings, he explained, but in the United States there was no such danger, because the people governed.26 The idea of a federal police came before Congress in 1870, when the Department of Justice was created, but was swiftly voted down.27

The few federal law enforcement agencies that existed before the FBI’s creation in 1908 were limited in scope and ability. There was the U.S. Customs Service, formed in 1789 to uphold tariff laws; the Post Office Inspectors; and the Secret Service, created in the Treasury Department in 1865 to combat counterfeiting. The only group with an explicitly international role was the U.S. Marshals Service, which had the authority to go to foreign countries to bring back fugitives from justice. In practice, though, its efforts beyond U.S. soil focused almost exclusively on the bordering nations of Mexico and Canada.28 Along the Mexican border, deputy marshals tracked and captured suspects—especially those that brought in rewards—but they rarely carried out these activities beyond the borderlands.

25 For histories of European international policing, see Deflem, Policing World Society; Peter Andreas and Ethan Nadelmann, Policing the Globe: Criminalization and Crime Control in International Relations (New York: Oxford University Press, 2006).
27 Deflem, Policing World Society, 87; Nadelmann, Cops across Borders, 16.
region. They lacked the resources, and often the incentive, to engage in more distant chases.29

During the 1860s and 1870s, the U.S. Marshals’ two biggest international arrests were more a matter of luck than keen detective skills. John Surratt, accused of conspiracy in the assassination of President Lincoln, escaped to Canada, then sailed to England under an assumed name. For a year and a half, American authorities had no trace of him. The break in the case came when an old acquaintance of Surratt’s recognized him serving in the Papal Guard in Vatican City. A short chase later, he was caught in Alexandria, Egypt, in November 1866, and extradited to the United States.30 The other major international capture was that of William M. “Boss” Tweed in 1876. In 1873, Tweed was convicted of fraud and imprisoned, but he escaped to Cuba, where he boarded a ship to Spain. He was caught when a Spanish customs officer who spoke no English recognized him, based on a cartoon by illustrator Thomas Nast.31

Municipal police forces also struggled to carry out international work effectively. The first public detective branches were created in Boston in 1846, New York in 1857, Philadelphia in 1859, and Chicago in 1861, but were plagued in their early years by corruption scandals.32 Despite their growing professionalization at the end of the century, these detective forces still had trouble carrying out faraway investigations. First, they ran into jurisdictional problems; outside of a circumscribed area, their badges had no force. Second, they suffered from limited resources and a lack of connections to foreign law enforcement agencies. When alleged bank wrecker Gideon Marsh escaped the country in 1891,

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32 Nadelmann, Cops across Borders, 82.
Philadelphia police simply gave up the chase. Detective Frank A. O'Brien explained that “it would take considerable diplomacy and no little money” to bring the fugitive back to Philadelphia, so, in effect, he was beyond their reach. The most effective transnational public detective force took shape after Thomas Byrnes was appointed chief of New York City’s Detective Bureau in 1880. Byrnes built a book of photographs of more than 7000 known criminals, European as well as American, which he called the Rogues’ Gallery.

The Pinkertons had advantages in cross-border work that state actors lacked. First, they had offices in all of the major cities of the United States, as well as in Canada and Mexico, and by 1890 had opened branches in Europe. As soon as they received the description of a suspect, they could telegraph it to their operatives around the world in a matter of minutes. Second, while traveling around Europe in pursuit of transnational criminals, the Pinkertons developed contacts and friendships with foreign police agencies. Founder Allan Pinkerton and his sons Robert and William frequently exchanged correspondence with the heads of police in Canada, Great Britain, and France. They shared an informal pool of information about suspects, creating what one later observer called “a crude but effective Victorian Age Interpol.”

The agency became so well known abroad that some Europeans conflated the name Pinkerton with all American police. In Giacomo Puccini’s 1904 opera Madama Butterfly, the Japanese protagonist marries an American naval lieutenant named Benjamin Franklin.

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35 Box 22, Branch Offices; Administrative File, 1857-1999; Pinkerton National Detective Agency Papers; Manuscript Division, Library of Congress.
37 Correspondence in Family Directors File, 1853-1990; Pinkerton National Detective Agency Papers; Manuscript Division, Library of Congress.
38 Nadelmann, Cops across Borders, 56-57; Horan, Pinkertons, 255.
Pinkerton—a name meant to epitomize Americanism. But while the Pinkertons may have symbolized American power, they did not take their orders from the State Department. They acted in the interest of their paying clients, who might include foreign banks, companies, and even governments.

The clients determined whom the Pinkertons pursued, and these clients were most often banks, insurance companies, and railroads who wanted to retrieve stolen funds from thieves and embezzlers. As a result, far-flung chases usually involved crimes against property, not crimes against the person. This was reflected in the extradition records for the years 1883 through 1899. Of the 296 requests that the United States made to foreign countries, often at the behest of private agencies, 77 percent were for financial crimes (embezzlement and forgery), while only 20 percent were for violent crimes (murder, attempted murder, rape, and arson). A murderer was far more likely to find refuge abroad than an embezzler. If Ker had taken a life rather than taking $55,000, he might have lived the rest of his days undisturbed in South America. Instead, he became an object lesson in the depth of a scorned bank’s pockets, and the lengths to which the Pinkertons would go for a paying client.

Armed with Ker’s photo (figure 2) and a sample of his handwriting, Henry Julian discovered his man among the expatriate community in Lima. Posing as a foreign investor, he took a room in Ker’s hotel and befriended him. For the next month, the two were inseparable: they played billiards, smoked cigars, attended the opera, studied Spanish, took

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40 The Canadian government often called upon the Pinkertons. See Williams, Call in Pinkerton’s.
41 The other three percent were for crimes like perjury that did not fall into either category. These statistics were calculated from Entry 859, Warrants of Arrest and Extradition, 1843-1930; Records of the State Department, RG 59, NARA II.
walks on the plaza, and admired what one newspaper called “the limpid eyes of the Lima
beauties.”

Julian was biding his time, waiting for the proper extradition papers to arrive from
the State Department. The United States and Peru had concluded an extradition treaty in
1874, and this was the fourth time it was invoked. The delay was not the only problem,
though. For the previous four years, Peru and Chile had been engaged in a dispute over
ownership of the mineral-rich Atacama Desert region, in a conflict known as the War of the
Pacific. In early 1883, when Ker and Julian were in Lima, Chilean troops occupied the
capital, and the Peruvian government had moved to the city of Arequipa, 600 miles to the
south. The United States had no extradition treaty with Chile. Either Julian needed to go to
Arequipa to instigate formal extradition proceedings, or he had to bring Ker home without
them. He decided on the latter. With the informal consent of General Patricio Lynch, the
Chilean commander in Lima, Julian arrested Ker and took him back to the United States.

Newspapers around the United States celebrated Ker’s capture and cast Julian as a
hero. The *San Francisco Chronicle* asserted that “the arrest is certainly a very flattering
testimonial of Detective Julian,” and the *New York Herald* agreed that “his energy, sagacity,
coolness and pluck merits much praise from all who are interested in bringing these too
numerous defaulters to justice.” Regarding the rumor that there was a $10,000 reward for
Ker’s capture, the *Herald* declared that Julian “certainly deserves it, having periled his own
life in the adventure.”

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This was the first time that the Pinkertons brought back a fugitive from so far away, and the agency made the most of the publicity. Before Ker even reached Chicago, William Pinkerton issued a lengthy press statement, printed verbatim in newspapers. On July 16, the day after Ker’s arrival in Chicago, both Julian and Pinkerton superintendent Frank Warner, who accompanied the men from San Francisco, gave interviews to the press. The story got the most circulation a few months later, when the agency published *A Double Life and the Detectives*, a “true crime” novel about its detectives’ most exciting pursuits. Allan Pinkerton (or his ghost writer) used the Ker case as the basis for a chapter entitled “From the Bank to the Prison.” Although he altered the names slightly—Frederick Ker became Frank Curran, Henry Julian became Henry Judson—the details of Julian’s pursuit and Ker’s capture were otherwise nearly identical.

All of these accounts glossed over a pivotal event in the story, the moment when Julian actually took custody of Ker. But Ker’s lawyer, C. Stuart Beattie, wanted to make sure the issue was not overlooked. Speaking to a *Chicago Tribune* reporter, Beattie demanded that the public know the truth: Ker “was not extradited when taken from Peru. He was kidnapped.”

During Ker’s trial in Chicago three months later, both sides agreed on the events of April 3, 1883. In the middle of his Spanish lesson, a dozen local men stormed into Ker’s hotel room. Under Julian’s supervision, the men forcibly transported him to Callao Harbor, where the naval ship *U.S.S. Essex* was docked. Ker never stood before any court or tribunal to determine whether he should be extradited, and Julian never presented his extradition

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45 “Ker Has Come,” *Chicago Tribune*, Jul. 17, 1883, 8.
47 Pinkerton, *A Double Life and the Detectives*.
papers to any Peruvian authority. For more than three months, Julian kept Ker prisoner—first, as the *Essex* sat at Callao for two weeks; then as it sailed to Honolulu; and finally as a second ship, the *City of Sidney*, made the journey from Honolulu to San Francisco. When the captive demanded a lawyer, his requests were ignored. When he asked for consular representation—Ker had been born in Canada, and thus was a British citizen—he was again rebuffed. On July 9, the ship reached San Francisco, where police were waiting on the docks to arrest Ker and bring him back to Chicago to stand trial. 49

Ker did not proclaim his innocence. Instead, his defense hinged on challenging the validity of his arrest. When prisoners were unlawfully detained, courts could issue a writ of *habeas corpus* (Latin for “you shall have the body”) to order their release. 50 Ker’s lawyers petitioned for the writ, first in the Criminal Court of Cook County, then to the Supreme Court of Illinois, and finally, three years later, before the U.S. Supreme Court. They argued that Julian, “without any warrant or authority whatsoever from the government of Peru, or any officer or diplomatic agent thereof, forcibly assaulted, arrested, and imprisoned this defendant.” 51

Ker’s lawyers were Robert Hervey and C. Stuart Beattie, two respected figures in the Chicago legal community who had known the defendant before his arrest. Hervey, a native-born Scotsman, was one of the founding members of the Chicago Bar Association. He was renowned for his gentlemanly demeanor and dramatic courtroom gesticulations: in his *Sketches and Notices of the Chicago Bar*, Franc Bangs Wilkie described how Hervey “buttons his coat across his well-shaped chest, closes his eyes as if in a rhapsody, thrusts one hand into

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49 Transcript of Record, *Frederick M. Ker vs. The People of the State of Illinois*, Supreme Court of the United States, October Term, 1885, 11-13 (hereafter Ker Transcript).

50 For a history of the writ, or legal action, of *habeas corpus* in the common law courts, see Paul D. Halliday, *Habeas Corpus: From England to Empire* (Cambridge: Harvard University Press, 2010).

51 Ker Transcript, 11.
his bosom, and gracefully emphasizes with the other.”\textsuperscript{52} Beattie, though less well known, was a skilled trial lawyer. This was his first time arguing before the U.S. Supreme Court, but not his last.\textsuperscript{53}

Their argument centered on the fact that Ker had not been formally extradited. In the extradition process, there were certain procedural steps that needed to be followed, including a formal identification and the presentation of evidence of guilt. Ker should have had the opportunity to consult a lawyer and present his case before a Peruvian tribunal. But none of this had occurred. He had been brought back to the United States “without due process of law,” his attorneys argued. If Ker possessed certain rights under the formal extradition process, how could he lose those rights simply because his captors decided to ignore the rules? “Now as this treaty inhibits the right to extradite—to deliver up to justice—lawfully, without obeying these provisions,” they reasoned, “it necessarily inhibits the right to kidnap—to deliver up to justice—unlawfully, without obeying these provisions.”\textsuperscript{54}

Ker’s attorneys insisted that Julian was bound to follow the terms of the treaty and did not have the option of deviating from it. A treaty was not a suggestion: according to Article 4 of the Constitution, it was the “supreme law of the land,” with the same force as any act passed by Congress. But Julian had behaved as if the treaty and its terms were discretionary. “Is this treaty a law to be enforced by the courts,” the lawyers rhetorically asked, “or simply an international compact, to be obeyed or waived at pleasure, by the

\textsuperscript{52} Franc Bangs Wilkie, \textit{Sketches and Notices of the Chicago Bar} (Chicago: Henry A. Sumner, 1871), 19.

\textsuperscript{53} Beattie argued before the U.S. Supreme Court at least one more time, in \textit{Wilson v. U.S.}, 140 U.S. 60 (1893), and appeared many times before the Illinois Supreme Court and Seventh Circuit Court of Appeals over the next twenty years.

\textsuperscript{54} Robert Hervey and C. Stuart Beattie, \textit{Brief and Argument for Plaintiff in Error}, 119 U.S. 436, October Term 1885, 22.
contracting parties?" If formal extradition was optional, what was the point of having a treaty at all? Hervey and Beattie argued that the treaty gave Ker a “right of asylum”—outside of its terms, he could not be touched.

On December 6, 1886, the Supreme Court handed down its decision: it rejected Ker’s *habeas corpus* petition and upheld the trial court’s sentence of ten years. First, the Court rejected Ker’s argument that he had been denied due process of law. The Fourteenth Amendment had no validity upon Ker’s arrest in Peru, wrote Justice Samuel Freeman Miller. Ker could not claim violation of his rights under the Constitution for acts that occurred abroad. Second, the Court denied that formal extradition was the only way to bring a fugitive back from a foreign country. Miller did not go so far as to endorse Julian’s behavior; he recognized that this was “a clear case of kidnapping.” However, Julian’s bad acts were not reason enough to release Ker without a trial. For the purpose of the proceedings, they were but “mere irregularities in the manner in which he [was] brought into the custody of the law.”

Miller did not intend for his decision to sanction international abduction. Criticizing Julian’s behavior, the judge even suggested some remedies that Ker might seek against Julian in the Peruvian courts, such as bringing suit for trespass and false imprisonment. The key, however, was that this could only be done under the laws of Peru. Miller subscribed to the idea of strict territoriality: a nation’s laws applied exclusively on that nation’s territory. Since the kidnapping took place in Peru, only Peruvian law was relevant; U.S. law did not start to apply to Ker until his feet touched American soil.

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55 Ibid., 9.
57 Ibid., 440.
As a result, the means by which Ker entered the country were irrelevant. If he was physically located on American soil, even unwillingly, he was subject to arrest and prosecution. The irregular manner of his rendition did not affect his status in court, as the Constitution did not extend extraterritorially. There were no consequences for bypassing the formal extradition process and instead violently seizing him—a decision that implicitly, if inadvertently, sanctioned abduction. Peru might choose to prosecute Julian for kidnapping, if it could get its hands on him, but the United States would turn a blind eye to his tactics.

On the same day as the Ker decision, the Supreme Court handed down another opinion about extradition, with a seemingly opposite message about the necessity of following strict rules. The case of United States v. Rauscher involved William Rauscher, the second mate of the American ship J. F. Chapman, who had executed a member of the crew. The United States extradited him from Great Britain on the sole charge of murder, but later, the American prosecutor wanted to add the charge of inflicting cruel and unusual punishment. Justice Miller ruled that it would be a violation of the extradition treaty to try Rauscher for any additional offense. Since the treaty was the “supreme law of the land,” the second charge must be dropped.58

Justice Miller distinguished the two cases by pointing out their fundamental difference: Rauscher had been formally extradited, while Ker had not. The key was that, even though Julian held extradition papers, “the treaty was not called into operation, was not relied upon, was not made the pretext of arrest.”59 The treaty triggered certain rights and protections for Rauscher, but “it is quite a different case when the plaintiff in error comes to this country in the manner in which [Ker] was brought here, clothed with no rights which a proceeding under the treaty could have given him, and no duty which this country owes to Peru or

59 Ker v. Illinois, 443.
By sidestepping the extradition treaty, Julian had effectively stripped Ker of any legal protections.

There was another difference between the two cases: Ker had been abducted by a private detective, while Rauscher had been brought back by representatives of the state. Were state agents limited by constitutional constraints in ways that non-state actors were not? Justice Miller could have distinguished the two cases on those grounds, but he opted not to draw a distinction between the capabilities of private versus governmental actors. This left the door open for state agents to invoke Ker to excuse extraterritorial abductions in the future. In the twentieth century, the Ker decision permitted state-sponsored kidnapping, while in its nineteenth-century context, it helped to give private detectives the latitude to fill in the void left by weak state law enforcement.

The rule upheld by the Supreme Court was called *male captus, bene detentus*, a Latin phrase meaning “wrongly captured, properly detained.” The Ker case established that U.S. courts would give actors like the Pinkertons broad discretion to use whatever tactics they wanted to reach into foreign countries and bring back fugitives. Previously, international borders had constrained policing, but now they actually facilitated it, because they gave law enforcers more power to act outside the country than they had within it. The laws and constitutional constraints that restrained police at home—such as the Fourth Amendment’s restrictions on search and seizure, and the Fourteenth Amendment’s requirement of due process—did not hold back American agents operating abroad.

*Ker v. Illinois* would have broad implications in the future, as it permitted the Pinkertons and other detectives to regularize tactics of irregular rendition. After Ker,

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American agents started to go into foreign countries even in the absence of an extradition treaty or permission from the local government. Banks, corporations, and insurance companies hired detectives to find thieves and corrupt employees and to bring them back to the United States. Knowing that there were no domestic consequences for their actions abroad, private detectives improvised tactics that were much more flexible than those of the State Department.

The State Department’s policy in the 1890s was straightforward: it would only pursue extradition when there was a treaty in place. Under U.S. law, the United States could only hand a fugitive to a foreign country under the terms of a treaty, and as John Bassett Moore explained in his 1890 Treatise, “Since the government of the United States does not grant extradition in the absence of a treaty, it refrains from demanding it under the same circumstances.”61 In his capacity as Assistant Secretary of State, Moore applied that principle the same year, in the case of Major E. A. Burke, a former Treasurer of Louisiana who fled to Honduras with state funds. Because Honduras had no extradition treaty with the United States, Moore refused to demand Burke’s surrender.

Private detectives, however, were not constrained by the State Department’s rules, as they had discovered in Ker. During the 1890s, they frequently bypassed the formal extradition process and brought fugitives back from countries that lacked treaties with the United States. In 1890, the Pinkerton National Detective Agency made headlines when Robert Pinkerton himself traveled to Honduras to bring back Edward Sturgis Crawford, who had taken $41,000 from the American Exchange Bank in New York.62 Occurring just months after Assistant Secretary Moore refused to pursue Major Burke’s extradition, the

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61 Moore, Treatise, vol. 1, 40.
New Orleans Picayune noted the inconsistency of the situation. Burke “is in Honduras whence Crawford was brought. Then why not Burke?” it asked. The difference was that the Louisiana authorities went through governmental channels, whereas the American Exchange Bank hired private detectives to bring Crawford back.

Detectives created their own diplomacy, carrying out negotiations directly with foreign governments. In 1894, Pinkerton superintendent W. F. Forsee appealed personally to Guatemalan President José María Barrios to hand over Joseph J. Hahn, without going through any type of a hearing or judicial process. After Barrios consented, Forsee complimented him as “the most Americanized man in Guatemala.” The State Department was not completely absent from this transaction, but its role was limited to the mere formality of authorizing Forsee to act in the capacity of a U.S. Marshal.

Perhaps most famously, the American Bankers’ Association hired the Pinkertons to catch Robert Leroy Parker and Harry Longabaugh—better known as Butch Cassidy and the Sundance Kid—in South America in 1903. The hunt for the infamous bank and train robbers demonstrated the Pinkertons’ international networks, the flexibility and informality of their methods, and the centrality of money as a motivating factor in the pursuit of international fugitives.

The Pinkertons had been on the trail of the Wild Bunch for years when Butch, Sundance, and Sundance’s girlfriend Etta Place fled to Argentina. Pinkerton operative Frank Dimaio had just finished an assignment in Brazil, and he immediately turned his attention to

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63 “Why Not Burke?” Daily Picayune, May 7, 1890, 4.
64 The Pinkertons apprehended Crawford in Honduras, but did not succeed in bringing him back. On the night before an American ship was scheduled to transport him back to the United States, Crawford escaped from the hotel room where he was being held. For weeks, detectives and soldiers searched for him, but he was never recovered. It was believed that he had escaped to Guatemala. However, a few years later, reports surfaced that Crawford was back in the United States and living in Brooklyn, running another criminal ring.
65 “Hahn is Extradited,” San Francisco Chronicle, Feb. 12, 1894, 10.
66 Entry 857, Box 38, Extradition Case File, Joseph J. Hahn; Records of the State Department, RG 59, NARA II.
the two ringleaders of the Wild Bunch. He printed a circular in Spanish with descriptions and photos of the fugitives (figures 3 and 4). American vice consul George Newbury recognized the trio and informed the Pinkerton Agency that they were residing on a sheep ranch in the Cholila Valley. Although he lacked the proper extradition papers, Dimaio rounded up a posse to catch the outlaws. However, the rainy season rendered their ranch inaccessible, and the trio escaped before Dimaio could capture them. The Pinkertons offered to continue the search for Butch and Sundance, which they estimated at $5000, but neither the railroad companies nor the American Bankers’ Association were willing to continue financing the hunt. After all, if brought back to the United States, the robbers might escape and again threaten U.S. banks and railroads—thus, it was preferable that they remain far away in South America. With no funding, the Pinkertons abandoned the search. After a crime spree crisscrossing the Andes, the desperados known as “los Bandidos Yanquis” were reportedly killed by the Bolivian army in a shootout in 1909.67

New private detective agencies ventured into international law enforcement, though none came close to the Pinkertons’ size and scope until the William J. Burns International Detective Agency was founded in 1909. Thiel’s Detective Service Company, a competing agency started by a former Pinkerton employee, had its most celebrated international success in the capture of Christopher A. Larrabee in 1896. Larrabee’s disappearance from Chicago, with $25,000 of his employers’ money, garnered particular press attention for two reasons: he was the nephew of the ex-governor of Iowa, and he reportedly committed the crime for the benefit of “a West Side woman of much beauty and many alluring qualities.”68 The pursuit took more than a year, and according to one account, inspectors and detectives

hunted him in twenty-five states. Thiel’s finally traced him to Monterrey, Mexico, where he was selling fish in a town market. Detectives lured him onto U.S. soil and arrested him.69 Trickery and fraud, like kidnapping, were not grounds for dismissal in the United States, thanks to Ker v. Illinois.

The Pinkerton National Detective Agency had many imitators, but the most blatant impersonator was called Pinkerton & Co., United States Detective Agency. (Ironically, despite the domestic bent to the two agencies’ names, they both operated internationally.) Its founder, Matt W. Pinkerton, bore no relation to the family that started the original agency, but his distinctive name gave him a leg up in the detective business.70 In the case of Pinkerton v. Pinkerton, which languished in the Chicago courts for nearly a decade, Allan and William Pinkerton sought an injunction to prevent Matt from using the Pinkerton name in the title of his agency.71

Private detectives could cause diplomatic headaches for the State Department. The Mexican Foreign Minister objected to Secretary of State James Blaine in 1891, when Matt Pinkerton “extradited” an accused railroad thief named T. J. Latner by seizing him in Nuevo Laredo, Mexico, then forcibly transporting him across the border to Laredo, Texas. Charles W. Zaremba, director of the American and Mexican Investment Company, assisted Pinkerton in the seizure.72 Mexican officials went on to imprison Zaremba for participation in the capture, which a judge from Nuevo Laredo deemed a kidnapping.73 But from the

69 “Christopher A. Larrabee Captured,” Chicago Tribune, Apr. 11, 1896, 1.
71 Part A, Reels 9 and 10, Pinkerton v. Pinkerton, 1904-1905; Pinkerton National Detective Agency Papers; Manuscript Division, Library of Congress. See also Bulletin of the National Association of Credit Men, Oct. 15, 1912, 853.
point of view of U.S. courts, Pinkerton and Zaremba had done nothing wrong. In Texas, police custody over Latner was just as secure as if he had been formally extradited.

The Ker legacy also affected the right of individual bounty hunters to abduct suspects from foreign countries. In the 1869 case of Reese v. U.S., the Supreme Court had ruled that the authority of bounty hunters and bail bondsmen stopped at the international border. Once a bondsman posted bail, the bounty hunter “may at any time arrest [the defendant] upon the recognizance and surrender him to the court, and, to the extent necessary to accomplish this, may restrain him of his liberty. This power of arrest can only be exercised within the territory of the United States.” Technically, Ker did not increase the legal rights of bounty hunters, but in effect it did. Even though bounty hunters still lacked authority to operate internationally, there would be no consequences within the United States if they crossed borders.

Private detectives and bounty hunters regularly bypassed formal extradition, but this did not render extradition treaties irrelevant. For the sake of maintaining good relations with foreign police departments and governments, extradition was sometimes the preferred method of bringing fugitives back to the United States. During the 1890s, the State Department made an average of twenty extradition requests per year, often on behalf of the Pinkertons and other private actors. Detectives extradited if possible, but turned to informal methods of rendition when necessary.

Standing on a prime piece of real estate at the intersection of Broadway and Wall Street, the American Surety Building was the tallest edifice in New York City when it was

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completed in 1896. At 312 feet and 21 stories, the structure surpassed the spire of Trinity Church, which had previously dominated the skyline of Lower Manhattan. *Munsey's Magazine* called the American Surety Building “nothing more or less than a tower,” but within a few years, another word would commonly be used to describe this new type of steel-skeletoned giant: skyscraper.76 Looming above Wall Street, it reminded potential fraudsters of the far-reaching gaze and the tremendous financial resources of the company whose name it bore.77

The American Surety Company was the first U.S. firm to offer insurance against the dishonesty of employees.78 It was founded in 1884 by Richard Allison Elmer, who, as Assistant Postmaster General under the Garfield administration, earned a reputation for eliminating corruption, mismanagement, and waste.79 Just as fire or life insurance provided a safety cushion in case of calamity, American Surety reimbursed companies if their employees stole from them. Not only private employees, but also executors, administrators, guardians, trustees, and later public employees paid a bond to the insurance company, usually as a condition of employment. In exchange, the company promised to pay an indemnity to the employer if that employee mismanaged or embezzled the money. Known as surety or fidelity insurance, this model was so successful that, within a decade, a dozen more surety companies went into the business of insuring the honesty of American employees. The most


78 For descriptions of how fidelity insurance worked, aimed at late-nineteenth-century audiences, see “To Guarantee Character,” *New York Times*, Jul. 20, 1884, 7; “Can You Give a Guarantee?” *Omaha World Herald*, Jun. 1, 1890.

prominent were the Fidelity and Deposit Company of Maryland, the National Surety Company, and the United States Fidelity and Guaranty Company.

The surety companies’ business model hinged on the ability to find fleeing employees, no matter where in the world they went. Insurance providers faced large liabilities if fugitives ran off to countries where embezzled funds could not be retrieved. They staked their professional reputations on the surveillance of employees, not only in the workplace but during their leisure time as well. If anyone dared to steal the money and run, the surety companies vowed, he would be tracked down and brought back. While extradition agreements smoothed the process, it was critical to these agencies to be able to recover fugitives even without a treaty. The *Ker* decision allowed these businesses to thrive.

Louis Armstrong Hilliard, the former cashier of the *Chicago Tribune*, could attest to the surety company’s reach. Hilliard had embezzled $15,000 from his employer, but American Surety held the ultimate financial responsibility for his crime. In September 1893, the company sent thousands of circulars “to chiefs of police in the United States, Canada, Mexico, and Europe, to Postmasters, government officials, tourist agencies, and United States Consuls … from Siberia to the Cape of Good Hope.” At the top of the circular was a photogravure image of Hilliard, followed by a description of the wanted man in four languages. The campaign worked: two months later, a U.S. consul in Spain reported that Hilliard had been apprehended in Seville and most of the stolen funds recovered.80

The ability to retrieve fugitives was so integral to their livelihood that some surety companies even employed their own staff of detectives. American Surety was the first firm to maintain its own detective corps, which received press attention for catching fugitives in

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Canada, Mexico, South America, and Europe.\footnote{“American Surety Company as a Detective,” \textit{Indicator, National Journal of Insurance}, May 1893, 315; “An Embezzler Captured in Canada by the American Surety Company of New-York,” \textit{New York Times}, Apr. 15, 1887, 5.} In May 1893, the \textit{Indicator}, the National Journal of Insurance, carried an article entitled “American Surety Company as a Detective,” describing some of the company’s captures in the United States, England, and Latin America. “Men who contemplate becoming defaulters would do well to avoid securing indemnity bonds in the American Surety Company,” the article began, “for they are all but certain to be caught eventually. The company has some twenty expert inspectors in its employ and defaulters are hunted down relentlessly and with a persistence which is pretty certain to result in their apprehension no matter where they flee to.”\footnote{“American Surety Company as a Detective,” \textit{Indicator, National Journal of Insurance}, May 1893, 315.} By 1896, American Surety had a staff of twenty-four inspectors, including two stationed in Mexico City.\footnote{The \textit{Insurance Year Book}, vol. 24 (New York: The Spectator Company, 1896), 294.} A decade later, all of the major surety companies employed staffs of “man-hunters.”\footnote{“Dealers in Human Honesty,” \textit{Moody’s Magazine}, May 1907, 694.}

Insurers were willing to go to extreme lengths to catch a fugitive. Sometimes this meant losing money to gain reputation. Charles E. Schick, the Secretary of Illinois Surety of Chicago, wrote a widely reprinted article that essentially served as a lengthy advertisement on behalf of the surety companies. Emphasizing that they would stop at nothing to pursue a fugitive, he vowed:

The defalcation may amount to $50. The chase may begin in Chicago, extend to San Francisco, into Mexico, thence to South America, across a continent to Rio Janeiro, on to New Orleans, to Kansas City, thence to New York, up into Manitoba, back to Buffalo, to New York again, then London, Paris,
Madrid, St. Petersburg—it makes no difference. The loss was $50. The chase may cost $5,000. But in the end the man will be caught.\textsuperscript{85}

The capture of Augustus Kerr (no relation to Frederick) in October 1892 affirmed this seemingly hyperbolic claim. American Surety detective Joel W. Bowman chased the Kansas City clerk, charged with stealing $25,000, through Canada, France, Norway, Sweden, Denmark, Germany, and Italy, before finally capturing him in Liverpool, England.\textsuperscript{86}

The most celebrated American Surety detective was Captain Charles E. Henry, a former U.S. Marshal and postal inspector who received national attention when he retrieved two American embezzlers from Brazil in 1893. Henry initially set out in pursuit of Harpin A. Botsford, accused of embezzling $20,000 from a Cleveland lumber firm. On the steamship to South America, Henry became suspicious of a fellow American passenger. Wiring the company upon his arrival in Brazil, he discovered that the man was Albert A. Cadwallader, a former bank president from Superior, Wisconsin, who had defrauded bank investors out of at least $100,000.\textsuperscript{87} When Henry arrived back in New York in April 1893, four months after he had departed, American newspapers marveled at the detective who set off for one fugitive and came back with two.\textsuperscript{88}

This case confirmed to surety companies that pursuing fugitives as far as South America was worth their while. When Henry arrived in Brazil bearing only a photograph of Botsford and a sample of his handwriting, the U.S. Minister in Rio de Janeiro skeptically


\textsuperscript{86} “Comes in Shackles,” \textit{Chicago Daily Tribune}, Dec. 8, 1892, 8.

\textsuperscript{87} Henry to American Surety Company, Rio de Janeiro, Mar. 1, 1893; Box 4, C. E. Henry’s Notes On His Mission of Extradition To South America, December, 1892 – March, 1893; C. E. Henry Papers; Hiram College Archives.

called the mission “a needle in a haymow job.”\(^89\) (Ironically, the handwriting sample came from a note Botsford left his employers, in which he taunted, “Your purse is not long enough to catch me.”)\(^90\) Henry’s manhunt ended up costing more than $5000, but it was money well spent. Nearly all the funds that Botsford took were recovered, including money he had invested in a Brazilian coffee fazenda.\(^91\) Cadwallader turned out to be an even more lucrative catch for American Surety; he had been bonded by them for $18,000.

Henry reaffirmed that it was possible to bring men back from a country that lacked an extradition treaty with the United States. In previous attempts to retrieve American fugitives from Brazil, extradition agents came home empty handed. The captain of the steamship that took Henry and his two prisoners to New York joked that “he had brought down criminals escaping from our country, but he had never taken any of them back.”\(^92\)

Henry’s biggest challenge was to win the assent of the Brazilian government, so he looked for ways around it. Brazilian officials offered to surrender Botsford voluntarily if the United States promised to do the same in the future; Henry, however, was under strict orders not to promise reciprocity. In Cadwallader’s case, moreover, he lacked all of the proper diplomatic papers to request his surrender. “The Brazilian authorities are very particular on this point involving personal liberty,” Henry complained.\(^93\) Ultimately, he tricked Cadwallader into getting onto a steamship departing for the United States through an elaborate ruse involving a yellow fever scare.\(^94\) This tactic worked so well that Henry tried it

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\(^89\) Henry to Family, Rio de Janeiro, Jan. 31, 1893; Box 4, C. E. Henry’s Notes On His Mission of Extradition To South America, December, 1892 – March, 1893; C. E. Henry Papers; Hiram College Archives.


\(^91\) Ibid., 471.

\(^92\) Ibid., 467.

\(^93\) Ibid., 458.

\(^94\) At Cadwallader’s trial, Henry testified that formal extradition had not been used. Ibid., 466.
again the next year, when the Costa Rican government similarly refused to let him bring home fugitive Robert Huntington due to the lack of an extradition treaty.95

Whether a representative of the American Surety Company or a Pinkerton operative, private detectives concerned with profits normalized “irregular” rendition in the last decades of the nineteenth century. What started off as legal improvisation—doing whatever it took to get their man—became, in effect, a legitimate way of conducting business. When the Supreme Court affirmed that kidnappings, ruses, and other deviations from formal extradition would not affect a court’s ability to exercise jurisdiction over an individual, it effectively created a new business model for private detective agencies and surety companies. While the State Department continued to negotiate more treaties, those with the means to fund their own international manhunts hammered out their own norms, which were not dependent on two nations reaching an accord.

The American courts were not alone in upholding the principle of male captus, bene detentus. Great Britain had an even longer tradition of permitting extraterritorial abductions. The 1886 Ker opinion, in fact, cited the 1829 case of Ex parte Scott as a precedent. Fugitive Susanna Scott, wanted in England for perjury, was apprehended in Belgium and brought back to her homeland by an English police officer. Although her arrest violated Belgian law, Lord Chief Justice Tenterden held that “the court would not divest itself of jurisdiction.” Acts that occurred in a foreign country were irrelevant. Scott could bring action against the police officer for wrongful arrest, but for the sake of her perjury charge, the court would not

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95 Box 4, Letters Written By C. E. Henry Concerning Costa Rica Extradition Mission, January through November, 1894; C. E. Henry Papers; Hiram College Archives. The Huntington case is also discussed in Chapter Four.
consider the circumstances under which she came to find herself on English soil. The English courts affirmed the *Scott* decision in *Regina v. Sattler* in 1858 and *Ex parte Elliott* in 1949. However, an 1890 Scottish case set a limit to the rule established by *Scott*: courts might consider how the defendant returned to the country when there was “substantial infringement of right.” Although this phrase was not defined, the Scottish court nevertheless acknowledged the potential for abuse of power in the late nineteenth century, while American courts did not do so until 1974.

British newspapers likewise reported spectacular international captures, though not with the same frequency as their American counterparts. Perhaps the most dramatic story was the abduction of swindler Jabez Spencer Balfour from Salta, Argentina in 1895. Detective Frank Froest of Scotland Yard commissioned a private train, forced Balfour onto it, transported him to Buenos Aires, put him on a ship, and took him back to England. Froest returned home a hero, as well as Scotland Yard’s go-to man for international chases. “When the long arm of Scotland Yard has to be extended to the far parts of the earth, it is Mr. Frank Froest who … journeys across continents,” one story bragged. However, while accounts of irregular rendition were common among American detectives, Froest’s capture of Balfour was big news in Britain precisely because it was not so ordinary.

There was a difference between a Pinkerton operative like Henry Julian and a Scotland Yard detective like Frank Froest. Froest was an agent of the British government, rather than a private detective-for-hire, and this both empowered and circumscribed him. On the one hand, because he was not dependent on private clients to pay his salary, Froest

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97 *Sinclair v. H.M. Advocate*, 17 R. (Ct. of Sess.) 38 (H.C.J. 1890). *United States v. Toscanino*, 500 F.2d 267 (1974) affirmed that U.S. courts could not assume jurisdiction when the accused had been tortured. However, in recent decades, the *Toscanino* decision has been largely ignored.
could go after a wider range of malefactors than a Pinkerton could. He could pursue murderers as well as thieves across borders. On the other hand, as an agent of the state, Froest was more likely to be perceived as a challenge to a foreign government’s sovereignty. The Pinkertons could cross borders with much greater latitude because they were private rather than government investigators.100 Thus, stories of American private eyes informally taking custody of a fugitive were common, while tales of Scotland Yard detectives circumventing an extradition treaty were less frequent. Moreover, Scotland Yard often did not need to circumvent a treaty at all: many of its great “international” captures occurred within the British empire, where extradition was not necessary.101

Canadian courts also invoked the principle of male captus, bene detentus. The 1905 case of The King v. Walton initially looked like a model example of transnational police cooperation. A Buffalo, New York police officer received a telegram from Toronto stating that “a man named A. R. Walton … is wanted here in Toronto, secure him if possible.” Two American officers arrested Walton and took him to the police station in Buffalo, where he was searched and held until Detective Mackie of the Toronto police force arrived for him. However, Walton was transferred into Mackie’s custody and brought to Canada without being taken before any judicial authority. In language similar to that of Ker—and, indeed, citing both Ker and Scott—Justice Osler of the Court of Appeal for Ontario observed, “We cannot enquire into the circumstances under which he was brought into this country…. If he is found in this country charged with a crime committed against its laws, it is the duty of our courts to take care that he is amenable to justice.”102 Other commonwealth countries, such as

100 Nadelmann, Cops across Borders, 60.
101 Some of the most sensational captures within the British empire were the recovery of the Jameson Raiders from South Africa in 1896 and of wife-killer Dr. Hawley Harvey Crippin from Canada in 1910.
Australia, New Zealand, and South Africa, abided by the same principle, at least until the late
twentieth century.103 Israel, too, cited the Scott and Ker cases after Mossad agents kidnapped
Adolf Eichmann from Argentina in 1960.104

Paradoxically, the Supreme Court’s decision in Ker furthered the power of law
enforcement by limiting the reach of law. Initially, international boundaries had thwarted law
enforcement, preventing continued pursuit. Ker v. Illinois gave detectives the means to
circumvent these borders. Since law enforcers abroad were not held to the same
constitutional standards as at home, they had more tools at their disposal when they
operated internationally. A kidnapping that would have been illegal in the United States was
accepted by the courts if it took place abroad. The Supreme Court addressed a similar issue a
few years later, in the Insular Cases of 1901 to 1905, which asked whether the Constitution
followed the flag into territorial possessions.105 These cases affirmed that less American
sovereignty—and thus fewer constitutional restrictions—could actually mean more power.

The Pinkerton agency still exists today, but its name has been changed to Pinkerton
Consulting & Investigations and it functions primarily as a security consulting firm. Once the
embodiment of American power, it was bought by the Swedish conglomerate Securitas AB
in 1999.106 Yet its legacy in cross-border policing endures. The *male captus, bene detentus* rule
has been repealed in Britain and other commonwealth countries, but it perseveres in the

103 Paul Michell, “English-Speaking Justice: Evolving Responses to Transnational Forcible Abduction after
105 Literature on the Insular Cases includes Bartholomew H. Sparrow, *The Insular Cases and the Emergence of
American Empire* (Lawrence: University of Kansas Press, 2006); Kal Raustala, *Does the Constitution Follow the Flag?
The Evolution of Territoriality in American Law* (New York: Oxford University Press, 2009); Christina Duffy
Burnett and Burke Marshall, eds., *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution*
106 This information comes from the official website for Pinkerton Consulting & Investigations, at
United States. In recent decades, American lawyers have cited the *Ker* decision to justify everything from the kidnapping of drug traffickers in Mexico to the post-9/11 practice of extraordinary rendition. More than one hundred years later, the day of the marauding Pinkerton detectives may be no more, but their legacy is still going strong.
Figure 1: The logo of the Pinkerton National Detective Agency
Pinkerton Papers, Library of Congress

Figure 2: Photograph of Frederick Ker, carried by Pinkerton detectives
National Archives and Records Administration, College Park, MD
LOS RETRATOS, SEÑAS PERSONALES Y LA HISTORIA CRIMINAL DE CADA
UNO DE LOS INDIVIDUOS SOSPECHOSOS, SE
DAN Á CONTINUACIÓN.

NOMBRE: Harry Longbaugh, (a) “Kid” Longbaugh, (a) Harry Allen, (a)
FRANK JONES, (a) FRANK REDY, (a) el “Sundance Kid.”
NACIONALIDAD: anglosajona, americana.
OCCUPACIÓN CRIMINAL: Bandido, ladrón, asesino.
EDAD: 35 años.
ESTATURA: 5 pies 10 pulgadas.
PESO: 164 lbs.
COLOR: Tez en el rostro.
REPARTO: Traía armas.
DESECHANDO: El cuadro que muestra una escena de la vida del “Sundance Kid” y Etta Place.

OS OBSERVACIONES: Harry Longbaugh, como lo mencioné anteriormente, fue uno de los pioneros del cine de acción y aventuras. En su etapa temprana, Longbaugh fue un personaje de gran influencia en el mundo del cine, y su legado perdura hasta la fecha. En el año 1920, Longbaugh se asoció con el prolífico director/actor Harry Carey, y el resultado fue un éxito que ha perdurado a lo largo de los años. En 1921, Longbaugh y Carey se unieron para crear la compañía de producción de películas “Carey & Longbaugh.”

LA ESPOSA DE HARRY LONGBAUGH.

Figure 3: Wanted Poster in Spanish for the Sundance Kid and Etta Place
Pinkerton Papers, Library of Congress
Figure 4: Wanted Poster in Spanish for Kid Curry and Butch Cassidy
Pinkerton Papers, Library of Congress