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Value-free extradition? Human rights and the dilemma of surrendering wanted persons to China

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ABSTRACT

A key tool for fighting crime, international extradition raises human rights concerns: The wanted person might suffer rights violations in the country to which he or she is extradited. How do countries balance the need to bring offenders to justice with the need to respect their rights? Conventional wisdom suggests that human rights concerns receive growing emphasis in extradition treaties, legislation, and case law. This article, however, shows that the commitment to human rights in extradition is quite shaky, even among countries that are strongly committed to human rights. This finding results from an analysis of the Australian and Canadian debates over the signing of extradition treaties with China. In Australia, government lawyers and the foreign ministry did not consider China's human rights record as an obstacle to extradition. In Canada, the government argued that extradition to China was consistent with human rights standards. In both countries, the interest in strengthening relations with China outweighed the commitment to human rights. Overall, this article advances our understanding of the status of human rights in criminal justice policy; it also contributes to the analysis of human rights engagement with China.

Criminal justice potentially raises serious human rights concerns. From lack of due process through harsh interrogation techniques to excessive punishment and poor prison conditions, the criminal justice process is prone to abuses that might affect the life, liberty, and physical integrity of individuals (Bassiouni 1993). These concerns are particularly potent in the context of extradition, a key tool of international cooperation against crime. Extradition places an individual in the hands of a foreign legal system whose commitment to human rights may be weaker than one's own. A country that respects human rights might find itself surrendering a person to a country that uses torture or the death penalty. For this reason, “[t]he human rights movement ... has in recent years turned its attention to extradition” (Dugard and Van den Wyngaert 1998: 187). An increasing number of treaties, laws, and judicial decisions seek to strike an appropriate balance between law enforcement and cooperation in the suppression of crime, on one hand, and respect for human rights, on the other. A recent assessment concluded:

Over the past quarter-century, human rights considerations have increasingly influenced extradition determinations, primarily building upon such seminal conventions as the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1984 Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the 1950 European Convention for Human Rights and Fundamental Freedoms (ECHR), as well as counterpart provisions found in domestic legislation. (Sadoff 2016: 291)

But how robust is the commitment to protecting human rights in extradition?

China's determined pursuit of extradition treaties with Western democratic countries brings this dilemma into sharp relief. By entering such treaties and helping China's anticorruption campaign, these countries could boost their relations with a major power and an important trade partner. Yet this would come at a heavy price: surrendering a person to a legal system in which human rights violations are pervasive and a fair trial is unlikely. How states handle this dilemma can teach us much about the actual weight given to human rights in extradition compared to the competing goals of crime suppression and friendly international relations.

We focus our analysis on two countries that have strong human rights records: Australia and Canada. Given their commitment to human rights domestically and internationally, one might have expected these countries to decline the Chinese request for an extradition treaty. This was indeed the demand of human rights groups, lawyers, the media, and certain politicians, who maintained that extradition to China cannot be reconciled with respect for human rights. Yet the Australian and Canadian governments thought otherwise, arguing that an extradition relationship in no way requires equivalence between justice systems and that Chinese assurances can be trusted. In 2016, the Australian government sought to ratify an extradition treaty with China, whereas the Canadian government announced its intention to begin negotiations of such a treaty. This record demonstrates that human rights still enjoy limited weight in extradition and might be trumped by political interests.

Through a nuanced analysis of the controversies over extradition to China, this article offers an important correction to the literature that highlights the growing impact of human rights on extradition (Shea 1992; Dugard and Van den Wyngaert 1998; Rose 2002; Sadoff 2016). It suggests that governments still regard extradition as a tool of law enforcement that may serve to enhance relations with foreign countries, and are less than fully committed to the protection of human rights in this context. At the same time, the analysis offers an interesting perspective on the domestic political debate over human rights engagement with China. It shows that domestic actors may vary significantly in their human rights expectations for China and in their willingness to trust Chinese authorities.

Human rights in the extradition process

At the heart of the extradition process stands an individual, a person whose surrender is requested in order for him or her to be criminally prosecuted or punished. Given the far-reaching implications of this process for the requested person, extradition treaties have traditionally included a set of safeguards. The political offense exception allows states to refuse extradition the purpose of which is to prosecute a politically motivated crime; the principle of specialty guarantees that the extradited person will only be tried for the crime for which he or she was extradited; and the double-criminality requirement ensures, among others, respect for the principle of *nullum crimen sine lege*. Yet overall, respect for human rights has played a modest role in the traditional paradigm of extradition. The aforementioned rules and requirements, in fact, do not serve only—or even primarily—to secure the rights of the individual; they protect the interests of states as well. The political offense rule, for example, allows the requested state to avoid becoming embroiled in a political dispute in the requesting state. Furthermore, other practices and procedures favor the requesting state and prevent the individual from invoking human rights concerns as a bar to extradition. Key among those is the rule of noninquiry, which stops the requested person from supplying evidence to show that he or she might face discrimination, unfair legal process, or inhuman treatment in the requesting state. Indeed, this rule is not absolute and may not be followed in egregious cases (Dugard and Van den Wyngaert 1998: 188–191). Yet by and large, “[t]he assumption that the requesting state will give the fugitive a fair trial according to its laws underlies the whole theory and practice of extradition” (*Argentina v. Mellino* 1987). Such an

assumption tilts extradition proceedings in favor of upholding the extradition request. Similarly, courts tend to interpret extradition laws and treaties in favor of enforcement. These biases reflect the primary interests and motivations underlying the traditional model of extradition: fighting crime and facilitating friendly international relations, based on respect for state sovereignty. Respect for human rights occupies a much smaller role in this model (Dugard and Van den Wyngaert 1998: 189; de Felipe and Martín 2012: 590).

Yet the traditional model of extradition has been modified over the past three decades, incorporating human rights as a central concern. Harbingers of this change appeared as early as the 1950s. The 1957 European Convention on Extradition allows extradition to be refused if the requesting state retains the death penalty and fails to provide assurances that this penalty will not be imposed if the person is extradited (Article 11). That same convention also bars extradition if the request “has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons (Article 3(2)). Yet it is the European Court of Human Rights’ decision in the case of *Soering v. United Kingdom* that is heralded as the human rights’ turn for extradition. In its 1989 decision, the Court ruled that the extradition of a person who would be put on death row in the United States—taking into account the conditions and length of detention prior to execution—constituted inhuman or degrading treatment, in violation of the European Convention on Human Rights’ Article 3. The Court further determined that the requested state would bear responsibility if it extradited the person despite the foreseeable rights violation.

Following *Soering*, human rights concerns have received growing emphasis in various treaties as well as in extradition legislation and case law. Examples abound. Article 3(f) of the 1990 UN Model Treaty on Extradition prohibits extradition:

If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14.

The Charter of Fundamental Rights of the European Union prohibits extradition if there is a serious risk that the person “would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (Article 19(2)). Section 21 of Britain’s Extradition Act, as amended in 2003, expressly links extradition to human rights: The judge is required to decide whether the requested person’s extradition would be consistent with the European Convention on Human Rights within the meaning of the Human Rights Act 1998. Drawing on legislative provisions, constitutional safeguards, or general notions of fairness and justice, courts in various countries have considered human rights claims in extradition proceedings and at times refused to grant extradition on these grounds (e.g., *Magee v. O’Dea* 1994; *Norris v. United States of America* 2010).

Which human rights concerns might serve to block extradition? As extradition subjects the requested person to a criminal trial or punishment by a foreign legal system, it potentially threatens a variety of human rights. We may broadly distinguish between three sets of rights concerns (Dugard and Van den Wyngaert 1998: 195–205; Sadoff 2016: chap. 7).

A common concern is that the extradited person might experience torture or another kind of abusive treatment, such as harsh interrogation techniques, corporal punishment, or poor detention conditions. The *Soering* case belongs in this category, as do other cases in which extradition was challenged on the grounds of detention conditions or execution methods (e.g., *Ng v. Canada* 1994). Indeed, the Convention against Torture explicitly prohibits the extradition of a person to a country where they might be subjected to torture (Article 3(1)).

Another concern arising frequently is that the extradited person would not receive a fair trial. As noted, the UN Model Treaty on Extradition requires the requesting state to provide minimum guarantees in criminal proceedings as stipulated by the ICCPR’s Article 14. These include, among

others, “a fair and public hearing by a competent, independent and impartial tribunal established by law”; presumption of innocence; adequate time and facilities for the preparation of one’s defense; a trial without undue delay; not to be compelled to testify against oneself or to confess guilt; and a right to appeal the conviction and sentence. Also in this category of unfair trials are cases in which the requested person has already been convicted *in absentia* by the requesting state, and the latter is unable or unwilling to retry him or her (European Union 2002: Article 5), as well as cases in which the prosecution or court in the requesting state might discriminate against the requested person or prejudice him or her on the basis of race, nationality, or other factors.

The third set of concerns revolves around the excessive nature of the punishment. Most countries of the world have abolished the death penalty, and they tend to include provisions in their domestic legislation, as well as in international agreements they negotiate, to bar extradition to countries in which the death penalty might be imposed, unless the requesting state provides assurances that such punishment will not be implemented (see, for example, Israel’s Extradition Law, Article 16; Extradition Treaty between the Government of the United States of America and the Government of the United Kingdom (2003), Article 7). Some countries also consider a life sentence as an excessive punishment. The Inter-American Convention on Extradition, for example, prohibits extradition if the death penalty, life imprisonment, or a degrading punishment might be imposed (Article 9).

Overall, human rights concerns have become an important consideration in extradition proceedings that might militate against surrendering the requested person. Human rights are weighed against the competing interests that push in favor of extradition: the suppression of crime as well as the maintaining of friendly international relations and the keeping of international commitments (de Felipe and Martín 2012: 590). As the British Parliament’s United Kingdom House of Lords, House of Commons Joint Committee on Human Rights recognized in its report on *The Human Rights Implications of UK Extradition Policy*: “It is important, however, to balance the need to return alleged offenders to the country in which the crime took place with the need to respect the rights of those requested for extradition” (United Kingdom House of Lords, House of Commons Joint Committee on Human Rights 2011: 7). Yet exactly how to weigh and balance these conflicting interests may prove controversial. The Joint Committee’s report suggested that Britain’s extradition arrangements leaned too heavily toward facilitating extradition and provided inadequate human rights protection (United Kingdom House of Lords, House of Commons Joint Committee on Human Rights 2011: 3); a government-appointed panel that looked at the same arrangements concluded that they did provide appropriate protection against human rights violations (Government of the United Kingdom 2011: 318).

A similar controversy presents itself in the case of China. The Chinese criminal justice system raises the three concerns identified above: abusive treatment, including the use of torture; unfair trials; and the death penalty. Should these concerns prevent the extradition of wanted persons to China? The following sections examine two countries’ struggle with this dilemma.

China’s pursuit of extradition treaties with Western countries

Chinese efforts to conclude extradition treaties with the West began in the mid-2000s as part of the country’s large-scale anticorruption campaign. This campaign cracked down on government officials, executives of state-owned companies, high-ranking military officers, and other office holders. Some of those sought refuge abroad, prompting efforts by the Chinese government to seek their return—efforts that significantly intensified under President Xi Jinping and came to be known as “Operation Fox Hunt.” In some cases, the return of the wanted persons could be arranged on the basis of an extradition treaty. Beginning in 1993, China signed a set of extradition treaties with developing countries and could now use them to have persons surrendered from countries such as Cambodia, Indonesia, and Uganda. Many of the wanted officials, however,

fled to Western countries, with the United States, Canada, and Australia as the three most popular destinations (*China Daily* 2006; Wee 2014).

Western countries had long refused to enter into extradition treaties with China, citing concerns about human rights violations and the unfairness of the Chinese justice system (Bloom 2008). In the absence of extradition treaties, the Chinese government resorted to other instruments to bring about the return of wanted persons. “Persuasion”—in fact, coercion—served as a primary tool. Chinese agents entered the United States, Canada, and Australia undercover, targeted wanted individuals with intimidation tactics, including threats to harm the person’s family in China, and offered incentives, such as a promise of leniency if the person returned to China (Vanderklippe 2016). Many of the wanted persons ultimately agreed to return to China “voluntarily.”¹ *Ad hoc* extradition or deportation served as another alternative to a treaty. By negotiating for individual surrenders on a case-by-case basis, the United States and Canada could exercise more control over the terms of the person’s return and receive assurances for his or her treatment, without establishing a legal commitment to extradite (Bloom 2008: 199). One of the most notable cases of such *ad hoc* extradition was that of Lai Changxing, the leader of a smuggling ring who was at the top of China’s most-wanted list. Canada extradited him in 2011, following several years of legal proceedings, after China promised that he would not be executed (Wee 2011).

The Chinese government recognized, however, that its anticorruption campaign required a more efficient, streamlined, and reliable process of surrender from developed countries: “a global extradition net” of extradition treaties “to bring back corrupt officials who have fled abroad” (*China Daily* 2006). The first Western country to join this net was Spain.² Its extradition treaty with China was signed in November 2005 and entered into force in April 2007. In January 2007, China signed extradition treaties with France and Portugal. Whereas the treaty with Portugal came into force in July 2009, the one with France only entered into force in July 2015. The extradition treaty between China and Australia was signed in September 2007, but it has not come into effect as of this writing. In October 2010, China signed an extradition treaty with Italy, which entered into force in December 2015. In September 2016, Canada agreed to begin the negotiations of an extradition treaty with China, but no such treaty has been signed to date.

Of the various countries with whom China has sought to conclude an extradition treaty, we focus on Australia and Canada: two primary destinations for the individuals sought by the Chinese government. Furthermore, the two countries demonstrate a strong commitment to human rights and the rule of law, both internationally and domestically.

Australia has taken a leading role in the efforts to promote human rights worldwide since the dawn of the human rights era in the aftermath of World War II. Indeed, it was a member of the UN committee that drafted the Universal Declaration of Human Rights. And Australia’s strong involvement with the international human rights regime continues to this day. In seeking a seat on the Human Rights Council for 2018–2020, Australia launched a five-pillar campaign that emphasizes the rights of women, good governance, freedom of expression, the rights of indigenous peoples, and strong national human rights institutions (Government of Australia Department of Foreign Affairs and Trade 2017).

Given the strong emphasis on human rights in its foreign policy, one might expect Australia to consider human rights in extradition relations, which are part of its foreign policy. A similar expectation arises from Australia’s domestic human rights record. That record came under criticism in recent years, especially concerning the harsh treatment of asylum seekers and refugees (e.g., Cohen 2016). Yet overall, and from a global perspective, Australia still has a strong human rights record. In its 2017 *Freedom in the World* report, Freedom House noted, “Australia has a long history of respect for political rights and civil liberties” and gave it a score of 98/100 for its human rights performance (in comparison, the United States received a score of 89; France, 90;

and Germany and Britain, 95 each). Australia's rule of law received a score of 15/16 from Freedom House (Freedom House 2017).

On another rule of law measure, that of the World Justice Project, Australia similarly has received a high score, ranking eleventh out of 113 countries (World Justice Project 2016). Given its own respect for the rule of law, one would expect Australia to select extradition partners that follow rule-of-law fundamentals. Extraditing persons to a country that fails to conduct a fair legal process would go against Australia's own practice of guaranteeing basic rights and fairness in the criminal justice system. It might result in a political blowback against the government, which might be criticized for hypocrisy and failing to uphold fundamental norms (Efrat and Newman 2016).

A similar expectation applies to Canada. Like Australia, Canada has participated in and contributed to the international human rights regime since its inception, including a central role in drafting the Universal Declaration of Human Rights. Today, Canada's foreign policy puts strong emphasis on the protection of human rights worldwide, and the country is involved in a variety of international initiatives, including in the areas of gender equality, freedom of religion, LGBT rights, and persons with disabilities (Government of Canada 2017). In terms of its domestic record of human rights and the rule of law, Canada ranks high. In 2017, Freedom House gave Canada a score of 15/16 for its rule of law and an overall score of 99/100 for its human rights record. The World Justice Project ranks Canada at twelfth out of 113 countries on its Rule of Law index. Given Canada's emphasis on human rights in its foreign policy, and given the strength of its rule of law, one would expect Canada to ensure that its extradition partners observe human rights and the rule of law.

Note that we do not assume or imply that either Australia or Canada has a perfect human rights record. Yet both countries have a record that is strong enough to create tensions and raise concerns when considering cooperation with a foreign legal system that falls far below local standards. The following analysis reflects these tensions and concerns. Each case study lays out the arguments made by opponents of an extradition treaty with China, followed by the justifications that treaty defenders offered. Our goal is to provide a rich and nuanced picture that reflects the diversity of views and allows us to assess the relative weight given to the conflicting goals: crime suppression versus human rights protection.

Australia

As one of the primary destinations for persons sought by Chinese authorities, Australia ranked high on China's priorities for an extradition treaty. Australia's expected benefits from the treaty were largely indirect: The treaty was expected to enhance and improve Australia's relations with a major trade partner. It was also hoped that a commitment to return wanted persons to China would motivate Chinese authorities to stem the flow of illegal drugs from southern China to Australia (Smyth 2016). Yet China's poor human rights record raised deep concerns, especially given Australia's self-image as a leader and promoter of international human rights. These concerns account for the considerable delay in the ratification of the treaty by Australia. The treaty was signed on September 6, 2007, when Liberals held power in Australia. It was quickly ratified by China's parliament—the National People's Congress—on April 24, 2008. Yet Australia's Labor government, which came to power in December 2007, shelved the treaty, and it was only the Liberal government of Malcolm Turnbull that resurrected the treaty and began the process of bringing it into force. The treaty was tabled in Parliament on March 2, 2016, and brought before the Joint Standing Committee on Treaties for consideration (Wen 2016; Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016c: 19). A heated debate ensued, in the press and before Parliament, exposing the delicate balance between human rights and crime suppression.

The staunchest opposition to the treaty came from Australia's legal community, with lawyers accusing the government of attempting "to appease China, to gift it with a right of extradition and to abandon any citizen to the fate of a criminal justice system that lacks the most basic protections" (Lennox 2017), an act of "supine compliance" motivated by the importance of the Chinese market for Australia (Patterson 2017). The Law Council of Australia, which represents the legal profession at the national level, expressed the profession's collective view. In a scathing report, and before the Joint Committee on Treaties, the Law Council highlighted the role of human rights in extradition. Although recognizing the need for an effective extradition regime, the Law Council emphasized that "Australia must adhere to fundamental rule of law principles and remain compliant with its international human rights obligations." Indeed, the Council argued that ensuring respect for human rights in the administration of justice is a matter of national interest, to be balanced against the interest in enforcing laws and bringing criminals to justice. Although suggesting that it did not oppose an extradition treaty between Australia and China *per se*, the Council expressed serious concerns about China's respect for human rights, the rule of law, and procedural fairness in criminal proceedings, "rais[ing] questions about whether the proposed Treaty is indeed in Australia's national interest" (Law Council of Australia 2016: 3–4).

The Council's litany of concerns included corruption within the Chinese judiciary; political interference, prejudgment, and bias in trials; denial of procedural fairness (due process), such as the preventing of challenges to evidence by not providing it to defendants; physical abuse of prisoners; use of torture to extract confessions; and poor prison conditions. Of particular concern for the Law Council was the ill-treatment of the legal profession in China, including denial of lawyers' access to suspects, detention and interrogation of lawyers, and revocation of lawyers' licenses. The Law Council therefore concluded that ratification of the treaty "will be likely to expose a person extradited to denial of the right to a fair trial in China" and urged nonratification "in the absence of sufficiently robust protections to the right to a fair trial." The Council particularly highlighted a safeguard that is often included in Australia's extradition treaties: the ability to refuse an extradition if it is unjust or oppressive, providing grounds for the refusal of extradition due to the denial of a fair trial. Yet the words "unjust and oppressive" were omitted from the Australia–China treaty (Law Council of Australia 2016: 3, 6–10, 11–13).

The Law Council also criticized the treaty's no-evidence approach, which means that an extradition request needs to be supported by a statement of the offense and the applicable penalty and a statement setting out the requested person's alleged conduct, but does not require evidence—such as witness statements—to prove the alleged offense. Such an approach, the Law Council argued, is appropriate for rule-of-law democracies:

However, where there are very substantial concerns about the rule of law and the ability of a State to afford those charged with a criminal offence a right to a fair trial then the adoption of the "no evidence rule" is very likely to compromise the human rights of an extradited person. (Law Council of Australia 2016: 18)

Given these concerns, the Law Council made a set of recommendations, including several proposed treaty amendments and the establishment of a monitoring requirement to ensure that the extradited person is not subjected to the death penalty or to torture. The Council also highlighted the fact that China is not a member of the International Covenant on Civil and Political Rights and called on Australia to "only ratify the Treaty subject to China ratifying the ICCPR" or, at least, to encourage Chinese ratification of the ICCPR (Law Council of Australia 2016: 27–29). To further buttress its argument, the Council pointed out that most Western countries have been unwilling to enter into bilateral extradition treaties with China (Byrnes 2016).

Amnesty International Australia criticized the proposed treaty along similar lines. Although acknowledging that the treaty contains human rights safeguards—including the refusal of extradition due to the death penalty or torture—Amnesty questioned the effectiveness of these safeguards. One cause of concern for Amnesty was the secrecy shrouding executions in China. According to Amnesty, China likely executes thousands of people every year—including for

economic crimes—yet very little information about these executions is available. This would undermine any Chinese assurances regarding the nonimposition of the death penalty on extradited persons: “How would Australia monitor to ensure the Chinese government is upholding its undertaking? ... Without this transparency, diplomatic assurances regarding the death penalty may not be reliable, effective, and enforceable.” Amnesty also invoked Australia’s opposition to the death penalty and its advocacy for the abolition of that penalty worldwide: “[T]his treaty’s ratification could undermine Australia’s unequivocal opposition to the death penalty” (Amnesty International Australia 2016).

Amnesty further questioned the effectiveness of the bar against extradition due to the possibility of torture or abusive treatment. Given the high prevalence of torture and other ill-treatment in the Chinese legal system, Amnesty argued, it would be extremely difficult to ensure that extradited persons were not mistreated, and any assurances from the Chinese government would be insufficient. Other attributes of China’s legal system also raised Amnesty’s concern: a nonindependent judiciary; the inability to access legal counsel, especially in politically sensitive cases; and forced “confessions.” All of these cast doubt on the likelihood of a fair trial for the extradited person (Amnesty International Australia 2016).

Against these criticisms, the Attorney-General’s Department (AGD) set out to defend the treaty and push for its ratification. This push began with the Department’s National Interest Analysis (NIA), which explained why Australia should bring the treaty into effect. According to the NIA, the treaty would promote Australia’s ability to combat domestic and international crime through a responsive, streamlined extradition system; specifically, it would facilitate closer cooperation between law enforcement authorities in China and Australia and assist their efforts to bring criminals to justice. The NIA further highlighted the treaty’s consistency with Australia’s domestic extradition arrangements under the Extradition Act and the “range of human rights safeguards” the treaty includes: Extradition must be refused if the extradited person might be subjected to torture or other inhuman treatment, if the extradition is sought for a political offense or for prosecuting the person on account of religion or political opinion, or if the offense for which extradition is sought carries the death penalty, unless the requesting state promises that the death penalty will not be implemented. These safeguards, according to the NIA, are consistent with Australia’s international human rights law obligations. Also consistent with international standards, the NIA maintained, is the treaty’s adoption of the no-evidence rule for extradition requests: Such a simplified evidentiary approach conforms to the UN Model Treaty on Extradition and to other extradition treaties that Australia had signed (Government of Australia Attorney-General’s Department 2016), and a more rigorous evidential standard is unnecessary (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016a: 13; 2016b: 5).

Before the Joint Committee on Treaties, representatives of the AGD emphasized that the treaty does not provide an automatic process for extradition and continued to insist that its safeguards guarantee adequate human rights protections. In particular, they argued that the treaty, in conjunction with the Extradition Act, does provide a basis to refuse extradition if the extradited person might not receive a fair trial, for example, through the minister’s general discretion under the Act to refuse extradition based on any relevant circumstances. Furthermore, the Australian government may require Chinese authorities to provide fair-trial assurances on a case-by-case basis. AGD representatives also expressed confidence in the credibility of Chinese assurances not to carry out the death penalty or use torture, if such concerns would arise in specific cases. Whereas the Law Council warned that such assurances are not enforceable—indeed, were “a joke”—the AGD insisted that noncompliance would carry consequences and would negatively affect anti-crime cooperation between the two countries as well as the broader bilateral relationship. “It would be quite extraordinary if a country were to breach an undertaking that it had made on a government-to-government basis” (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016a: 8, 12–16; 2016b: 3, 6, 8, 14, 16–17).

Overall, the AGD claimed that human rights concerns receive considerable weight in extradition decisions and that “extradition relationships in no way require equivalence between justice systems ... there is no requirement that another country apply the same standards as Australia.” In its defense of the treaty, the AGD received support from the Department of Foreign Affairs and Trade (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016a: 14; 2016b: 8, 10).

In the course of two hearings on the treaty, members of the Joint Committee on Treaties made comments and asked questions that reflected the conflicting incentives: crime suppression versus human rights protection. One committee member from the Liberal party expressed discomfort with a position that places human rights above the need to fight crime and might result in the harboring of criminals:

The price we pay is to provide safe haven indefinitely to someone who we are 90 percent sure has committed a crime. Because they are going to be subjected to the death penalty or whatever it might be from the list you have given us, we will just provide protection and haven and we will not agree to extraditions. It is a pretty high price to pay for our community. (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016a: 10)

Other committee members, however, expressed concern about extradition to a country that does not observe the rule of law and does not guarantee a fair trial, where executions are shrouded in secrecy: “[H]ow could we as a government be assured that ... [the death penalty] will not in fact be carried out and hidden from us?” (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016b: 16). One member asked pointedly:

When did we change, from the system of never extraditing people or having arrangements with countries that had these peculiar judicial systems, to the belief that our principal ethical attitude ought to be that we are determined not to allow people to evade justice by being in another jurisdiction? ... Are you saying now that Australia takes a value-free attitude towards a country like China, where, if they say they are not going to execute the person, we do not make any judgment about their whole judicial system before we contemplate making such an arrangement, such a treaty with them? (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016b: 8–9)

The Committee’s report, submitted in December 2016, demonstrated a similar duality, emphasizing that “Australia does not wish to become a safe haven” for criminals, but also that cooperation against crime should not come at the expense of human rights. Given the lack of transparency in the Chinese legal system and the use of the death penalty and torture, the Committee found the treaty’s grounds for refusing extradition insufficient and argued that “more needs to be done to take into consideration the conditions existing within the system as a whole in order to strengthen the protection of individual human rights.” To that effect, the Committee made a set of recommendations. It recommended that extradition decisions should take into account governmental and nongovernmental reports on human rights and the rule of law in China’s criminal justice system; that undertakings to provide a fair and open trial should be routinely included in agreements to surrender an individual to China; and that the Australian government should enhance its monitoring of the welfare of individuals postextradition. Subject to these recommendations, the Committee expressed support for the treaty and recommended its ratification (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016c: 35–36, 38–39).

The Labor members of the Committee did not join the latter recommendation. In a dissenting report, they argued that Australia’s legislative framework for extradition provides inadequate human rights protection, and that these general concerns take on particular potency in the context of the treaty with China. In particular, the dissenting members emphasized the treaty’s omission of an important safeguard: the ability to refuse an extradition request that is unjust or oppressive. They agreed with the Law Council that this omission casts doubt on the ability to refuse extradition due to fair trial concerns. Whereas the AGD’s defense of the treaty highlighted

the assurances that China may be asked to provide in the extradition process, the dissenting Labor members argued, “Australia has a moral obligation to protect the human rights of extradited persons beyond simply accepting the undertakings of countries making extradition requests.” In light of these doubts and concerns, they recommended that ratification of the treaty be delayed until after a review of Australia’s extradition arrangements to ensure adequate protection of the rule of law and human rights (Government of Australia, Senate and House of Representatives Joint Standing Committee on Treaties 2016d: Art. 1.6, 1.8–1.14, 1.19–1.21, 1.27).

The government accepted some of the Standing Committee’s recommendations while rejecting the dissenting report’s call for a review of the country’s extradition arrangements prior to the ratification of the treaty (Callick 2017). In March 2017, preparing to ratify the treaty, the government tabled in Parliament the regulations required to bring the treaty into effect, only to meet an unexpected revolt. The Labor party and the Greens refused to back the treaty, and several members of the Liberal party—the ruling party—threatened to withhold their support as well. Another prominent Liberal voice—former Prime Minister Tony Abbott—argued against the treaty: “In my judgment, China’s legal system has to evolve further before the Australian government and people could be confident that those before it would receive justice according to law” (Murphy 2017a, 2017b). This backlash against the treaty was inspired, at least partly, by the case of Chongyi Feng, which took place at the same time. A Chinese-born professor working at an Australian University and critical of China, Feng was held and questioned by Chinese authorities on his trip there, reinforcing doubts about China’s legal system (Riordan 2017). Ultimately, the government had to cancel the Senate vote and withdraw the treaty, while vowing to continue working on ratification (Murphy 2017a, 2017b). Foreign Minister Julie Bishop came out forcefully in defense of the treaty and denounced ratification opponents. She argued, “It is in Australia’s national interest to ensure that we can send back to China those who have committed crimes, subject to the significant safeguards that we have in place” (Cave 2017).

Overall, the Australian debate over extradition to China demonstrates the tension between the competing imperatives: human rights and crime suppression. The balance between the two varies across actors: The institutional actors—the AGD and Foreign Affairs Department—placed greater emphasis on cooperation against crime and the benefits it may bring (Chan 2017). They did not consider China’s standards of justice as an obstacle to such cooperation, and expressed willingness to accept Chinese assurances of respect for human rights in criminal proceedings. The legal profession and human rights community, however, held the opposite view and emphasized China’s lower standards of justice: “The rule of law which is fundamental here in Australia is not understood in the same way in China” (Dziedzic 2016). They argued that China’s human rights record is a major obstacle for extradition, one that cannot be easily removed through Chinese assurances. The politicians in this debate expressed views in accordance with their political leanings. Liberal members of Parliament supported the Liberal government’s pursuit of treaty ratification, whereas Labor MPs opposed ratification due to the gravity of human rights concerns.

Canada

Canada has cooperated on a case-by-case basis with China’s efforts to repatriate suspects. Yet Beijing has long sought to replace such *ad hoc* cooperation with a formal extradition agreement. In September 2016, shortly after the visit of Canadian Prime Minister Trudeau to Beijing, Canada and China agreed to begin negotiations over an extradition treaty (Levin 2016). The news about the intended treaty met with wariness and skepticism and generated a barrage of criticism from human rights advocates, lawyers, academics, the media, and politicians outside the ruling Liberal party. The points made by the critics echoed those raised by their Australian counterparts. It was argued that China is “a country where trials are politicized, confessions are secured through torture, defense lawyers are harassed and detained, and the death penalty is applied for a wide

variety of crimes,” including white-collar crimes (Byers 2016). In the absence of due process and fair trial rights, “Defendants in China have no opportunity to challenge the ‘evidence’ against them. The Canadian government, or a Canadian judge, would be similarly unable to evaluate the evidence behind an extradition request. By negotiating a treaty, the Canadian government is indicating a willingness to take Chinese prosecutors at their word” (Byers 2016; see also Fife 2016; Tremonti 2016). It was also argued that persons requested by China may actually be political dissidents, rather than criminals (Caplan 2016).

In another similarity to the Australian debate, Canadian critics doubted the effectiveness of Canadian monitoring of extradited persons. Canadian authorities, they suggested, would lack the capacity to monitor transferred suspects to make sure they are not abused or executed (Byers 2016; Fife 2016; *Star* Editorial 2016; Tremonti 2016). Critics also suggested that Chinese assurances are not credible and should not be believed: After all, China ratified the Convention against Torture yet continues to engage in torture (Byers 2016; Tremonti 2016; Vanderklippe 2016). A member of the New Democratic Party argued that “[s]ince the rule of law in China is a sham,” Chinese promises not to carry out the death penalty “would hardly be worth a red yuan” (Caplan 2016). Ultimately, argued a prominent lawyer, Canada cannot accept the Chinese justice system as fair “when it is manifestly not so” (Chase and Fife 2016). The popular newspaper *The Globe and Mail* declared: “Our courts and government could find themselves regularly asked to ship offenders across the Pacific to the care of a legal system that does not meet our standards” (*Globe and Mail* Editorial 2016).

Critics also repudiated the argument that an extradition treaty would motivate China to improve its human rights practices:

Prime Minister Justin Trudeau is naive if he thinks an extradition treaty with China could respect human rights. He is even more naive if he thinks that, by negotiating such a treaty, he can exert a positive influence on China—somehow forcing police, prosecutors and judges there to comply with international norms. (Byers 2016)

Furthermore, the result would betray Canada’s own ideals and commitments. According to Amnesty International, “It’s impossible to imagine how you would have an extradition treaty that would line up with Canada’s obligations to not send people to face the death penalty” (Russell 2016). Conservative MP Jason Kenney argued that an extradition treaty with China would breach the Canadian Charter of Rights and Freedoms and give a seal of approval to China’s judicial system where executions, torture, and political imprisonment are rife, in violation of Canada’s belief in the rule of law and human rights (Chase and Fife 2016; Kupfer 2016). By entering into an extradition treaty, Canada would damage its reputation as a defender of human rights and “ensnare [itself] in the controversial workings of an audacious Chinese global dragnet” (Byers 2016; Vanderklippe 2016). It would strengthen China’s hand, while failing to protect Canadian interests and values (Levin 2016).

Critics also questioned the benefits that Canada would reap from the treaty, arguing that the treaty would primarily benefit China (*Globe and Mail* Editorial). Conservative leader Rona Ambrose called the government’s approach “shockingly naive” and exhorted Prime Minister Trudeau: “Canadians expect the prime minister to act in our national interest. What possible benefit to Canada would an extradition with China provide us?” (Kupfer 2016). Others charged that an extradition treaty with China would not serve to enhance Canadian law enforcement. Instead, it aims to achieve quite different goals. At the immediate level, critics argued, Canada promised the extradition treaty as a *quid pro quo* in exchange for the release of a Canadian missionary who was jailed in China on trumped up spying charges (this was denied by the Canadian government; Fife 2016; Levin 2016; *Star* Editorial 2016). More broadly, the treaty is a “bargaining chip for trade access” (Tremonti 2016). “China will promise to open up its markets to our goods and services to a larger extent than they are open now” (Tremonti 2016).

Treaty opponents pointed to “peer countries”—the United States, Britain, Australia, and New Zealand—which have not established extradition treaties with China. According to the popular daily *The Star*, “All these countries prize judicial independence and the rule of law, and aren’t prepared to turn Chinese citizens accused of economic or political crimes over to the vagaries of that country’s legal system.” Canada should follow these countries, or “run the risk of making Canada complicit in the worst aspects of China’s inconsistent, politicized and often brutal judicial system” (*Star* Editorial 2016; Kupfer 2016). According to Human Rights Watch, a treaty with Canada would provide China with “a veneer of legality for fundamentally abusive tactics. Beijing will then also be able to say to other governments, ‘Canada signed one, why won’t you?’” (Levin 2016).

Defenders of the treaty made several arguments. The Ministry of Foreign Affairs said the promotion and protection of human rights were a priority in Canada’s relationship with China and that the extradition discussions emphasized Canada’s high standards (Levin 2016). Prime Minister Trudeau similarly highlighted Canada’s “extremely high standards on extradition treaties” that the treaty with China would maintain, as well as the “very, very rigorous process that conforms with the expectations and the values of Canadians.” He suggested that a fugitive facing the death penalty would not be extradited to China (Chase and Fife 2016; Kupfer 2016; *Star* Editorial 2016; Vanderklippe 2016).

Treaty supporters also pointed out that Canada has extradition treaties with other countries that practice the death penalty, including the United States, as well as countries with human rights records that are weaker than Canada’s. They noted that other rule-of-law countries, including France and Spain, did sign an extradition treaty with China (Duhaime 2016; Stephens 2016).

Another line of argument highlighted the treaty’s benefits for Canada. At the broader level, as Prime Minister Trudeau emphasized, the extradition treaty was meant to be a part of a high-level security dialogue that would enhance Canada’s relations with China (Chase and Fife 2016; Kupfer 2016). Other benefits included the establishment of a firm and transparent legal framework to deal with China’s surrender requests—a move that may facilitate Canadian–Chinese cooperation in other areas, preventing Canada from serving as a safe haven for corrupt Chinese officials and laundered money, and sending a message of Canadian commitment to the rule of law and the fight against corruption. Whereas critics argued that the treaty would do little to raise China’s human rights standards, supporters argued that “it will have helped nudge China closer to international judicial standards” and “move [China] into the international law arena” (Stephens 2016; Tremonti 2016; Vanderklippe 2016). They suggested that it is better to engage with China on the basis of Canadian interests and values, rather than “decrying the Chinese system, but doing nothing about it” (Stephens 2016).

Yet, given the political controversy, the Canadian government hesitated to formally begin discussions of the treaty. In early April 2017, Canada’s ambassador to China declared, “We are a long, long way from negotiations, let alone agreeing to such an agreement” (Vanderklippe 2017). It is possible that Australia’s repudiation of its treaty with China in March 2017 also gave Canada pause. As *The Globe and Mail* declared, “Australia’s stern rebuke to China serves as a warning to Canada and other Western countries about the merits of co-operating with an autocratic regime whose judicial system condones torture and is susceptible to political interference” (Chase, Fife, and Vanderklippe 2017).

Lessons and conclusions

China’s pursuit of extradition treaties with Western countries put these countries’ human rights commitment to a real test: Will they be willing to disregard their ideals in order to curry favor with a major power that does not respect the rule of law and human rights? Do the political and economic benefits of improved relations with China trump human rights concerns? The answer,

apparently, is a qualified yes. In Australia and Canada, two countries with a strong record of respect for human rights and the rule of law, a heated debate did take place: Certain actors denounced the proposed treaty as a betrayal of these ideals. In both cases, however, the government rejected this criticism and supported the extradition treaty, which, it insisted, would live up to human rights standards. It is interesting to note that the embrace or rejection of the treaty was not linked to political orientation: In Australia, it was a right-wing government that sought to ratify the extradition treaty against opposition from the left; in Canada, a left-leaning government agreed to negotiate an extradition treaty against protest from the right.

Support for the treaty came not only from politicians seeking closer engagement with China but from the bureaucracy as well. The primary task of the Ministry of Foreign Affairs is to enhance and improve a country's relations with foreign countries. In both Australia and Canada, the Foreign Affairs Ministry prioritized the relations with China over human rights and expressed support for an extradition treaty. In Australia, the treaty's chief proponent was the AGD: For this department, the protection of human rights took a back seat to the need to cooperate against crime by returning alleged offenders to the country they fled.

As of this writing, Australia and Canada do not have extradition treaties in force with China. Canada has not officially begun the negotiations of such a treaty; the Australian government failed to bring the treaty it had signed into effect, although indicating its intention to continue working toward the ratification and implementation of the treaty. On one hand, this record indicates the weight of human rights concerns and how they might scuttle an extradition agreement that does not live up to a country's human rights standards. In both countries, the government's intention to enter into an agreement inconsistent with human rights brought fierce criticism from human rights groups, politicians, lawyers, and the media. Yet the fact that two countries with strong human rights records seriously considered an extradition treaty with China shows that the status of human rights in extradition is still shaky. Governments may be committed, as a matter of policy, to protecting the human rights of extradited persons; yet this commitment is malleable and flexible. Given the right incentives, such as the promise of better relations with a major power or trade access, governments may be willing to accept partners with lower standards of justice and weaker human rights protections. A set of arguments can justify such willingness: Extradition partners need not have the same standards as one's own; it is better to engage with a country that violates human rights and push it to improve; assurances that the partner provides should be trusted. As we have seen, critics are quick to point out the weaknesses of such arguments, but governments may still employ them to rationalize the pursuit of extradition relations with human rights violators.

Writing nearly twenty years ago, Dugard and Van den Wyngaert argued, "Human rights law is a major feature of contemporary international law. Extradition is not immune from the impact of this branch of the law. Increasingly, governments and courts are acting in accordance with this reality" (1998, 212). As this article has shown, governments still do not fully act in accordance with that reality. They may acknowledge the role of human rights in shaping cooperation against crime, but they do not necessarily give human rights a decisive weight. For the sake of law enforcement cooperation and improved foreign relations, human rights might take a back seat. This increases the importance of regional human rights systems that may pressure governments to respect human rights in extradition proceedings (Shea 1992). Yet international norms develop and mature gradually. It is possible that the domestic contention surrounding extradition to China will actually *enhance* the impact of human rights on extradition. The Australian and Canadian cases demonstrate that extradition without due regard for human rights might be unpopular domestically and bring governments under heavy criticism. This may serve as a warning for other countries that are contemplating extradition to human rights violators.

From a different perspective, this article provides us with a unique window into human rights engagement with China, and how it plays out in the domestic politics of Western democracies. Western governments have expressed their commitment to promoting human rights in China,

but their track record of doing so is less than fully consistent. Through a combination of threats and rewards, China has often prevented these governments from raising human rights issues (Martin 2000: 103–110; Cardenas 2009; Kinzelbach 2013). This study shows that governments' decisions to engage with China despite human rights concerns may prove extremely controversial domestically, especially when the engaging country itself might become implicated in and responsible for human rights violations, for example, by handing over wanted persons to China. In these cases, domestic audiences may oppose cooperation with Beijing as inconsistent with a genuine commitment to human rights. While governments may insist that it is possible to cooperate with China without compromising one's human rights standards, domestic resistance could make the establishment of cooperation significantly harder.

More broadly, this article emphasizes the importance of domestic political constraints as countries grapple with a crucial strategic question: how to handle the rise of China. A rising China poses a particularly crucial dilemma for Australian foreign policy. On one hand, Australia belongs in the U.S.-led camp of Western democracies and is a military ally of the United States. On the other hand, China is a great power in Australia's neighborhood and also Australia's largest trading partner. Should Australia remain in the American orbit, gravitate toward China, or perhaps position itself in between the two powers? Various analysts have tried to identify the best policy for Australia or to characterize the policy that Australia is actually pursuing. Some describe the Australian response to the rise of China as accommodation: cooperation with China on a number of issues and acceptance of certain Chinese demands in a strategically selective manner, while at the same time maintaining the security ties with the United States (Manicom and O'Neil 2010; He 2012). He (2012: 61) observed that domestic politics plays an important role in constraining accommodation policy: Parliamentary opposition, NGOs, and the media may pressure the government to take a tougher approach toward China. The debate over extradition demonstrates this dynamic at work and serves as a cautionary tale for governments that are considering a closer alignment with China.

Finally, this article enriches our understanding of the domestic politics of extradition. A large body of international relations scholarship examines how domestic politics shapes foreign policy choices in matters of war and peace or in the economic realm. In recent years, scholars have begun to explore the domestic origins of cooperation against crime (Efrat 2012). Yet the analysis of international extradition still "relies on state-centric models of international relations ... overlook[ing] the important ways in which domestic politics shapes and influences state behavior" (Magnuson 2012: 839). This article has shown that extradition is not an arcane, technical issue that can be analyzed in terms of unitary state interests. Indeed, it may trigger a heated domestic debate that can scuttle cooperation, as the Australian and Canadian cases demonstrate. Examining such domestic controversies is crucial for improving our understanding of law enforcement in a globalized world.

Notes

1. It should be noted that the Chinese government resorted to forced repatriation outside its anticorruption campaign. Examples include the deportation of Uighurs from Thailand, Cambodia, Malaysia, and additional countries (Schiavenza 2015) and the abduction of Chinese dissidents from Thailand and Hong Kong (Demick 2016).
2. The extradition treaty with Spain was preceded by extradition treaties with three Eastern European countries: Bulgaria, Romania, and Lithuania.

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References

- AMNESTY INTERNATIONAL AUSTRALIA. (2016) Letter to MP Luke Hartsuyker, Chair of the Joint Standing Committee on Treaties, March 24.
- ARGENTINA v. MELLINO. (1987) 1 S.C.R. 536 (Canadian Supreme Court).
- BASSIOUNI, Cherif M. (1993) Human rights in the context of criminal justice: Identifying international procedural protections and equivalent protections in national constitutions. *Duke Journal of Comparative and International Law*, 3(2), 235–298.
- BLOOM, Matthew. (2008) A comparative analysis of the United States' response to extradition requests from China. *Yale Journal of International Law*, 33(1), 177–214.
- BYERS, Michael. (2016) Extradition treaty with China would be an affront to human rights. *Globe and Mail* (September 20).
- BYRNES, Andrew. 2016. Letter to MP Stuart Robert, chair of the Joint Standing Committee on Treaties, November 25.
- CALLICK, Rowan. (2017) Australia's extradition treaty with China a done deal. *The Australian* (March 4).
- CAPLAN, Gerald. (2016) No 'sunny ways' for Canadian extradited to France, so how fair will China be? *Globe and Mail*. (October 12).
- CARDENAS, Sonia. (2009) Demoting human rights. *New York Times* (December 4).
- CAVE, Damien. (2017) Australian vote on extradition treaty with China is canceled. *New York Times* (March 28).
- CHAN, Gabrielle. (2017) Tony Abbott lashes ministers over China extradition treaty fiasco. *The Guardian* (March 31).
- CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION. (2012) 2012/C 326/02.
- CHASE, Steven, and FIFE, Robert. (2016) Justin Trudeau defends extradition treaty talks with China. *Globe and Mail* (September 21).
- CHASE, Steven, FIFE, Robert, and VANDERKLIPPE, Nathan. (2017) Former CSIS directors question Canada's pursuit of extradition treaty with China. *Globe and Mail* (March 28).
- CHINA DAILY. (2006) China widens net for fugitive fraudsters. *China Daily* (April 29).
- COHEN, Roger. (2016). Australia's offshore cruelty. *New York Times* (May 23).
- DE FELIPE, Miguel Beltrán, and MARTÍN, Adán Nieto. (2012) Post 9/11 trends in international judicial cooperation: Human rights as a constraint on extradition in death penalty cases. *Journal of International Criminal Justice*, 10(3), 581–604.
- DUGARD, John, and VAN DEN WYNGAERT, Christine. (1998) Reconciling extradition with human rights. *American Journal of International Law*, 92(2), 187–212.
- DUHAIME, Christine. (2016) An extradition treaty with China sends a message about corruption. *Globe and Mail* (September 26).
- DZIEDZIC, Stephen. (2016) Parliamentary committee recommends extraditing criminals to China despite human rights concerns. *ABC News* (December 16). [Online]. Available: <http://www.abc.net.au/news/2016-12-16/committee-recommends-extraditing-criminals-to-china/8128394> [1 October 2017]
- DEMICK, Barbara. (2016) Why did China kidnap its provocateurs? *The New Yorker* (February 16).
- EFRAT, Asif. (2012) *Governing Guns, Preventing Plunder: International Cooperation Against Illicit Trade* (New York, NY: Oxford University Press).
- EFRAT, Asif, and NEWMAN, Abraham L. (2016) Deciding to defer: The role of fairness in resolving transnational jurisdictional conflicts. *International Organization*, 70(2), 409441.
- EUROPEAN UNION. (2002) Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA).
- EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, signed March 31, 2003. TIAS 07-426.
- FIFE, Robert. (2016) Ottawa to negotiate extradition treaty with China. *Globe and Mail* (September 20).
- FREEDOM HOUSE. (2017) Freedom in the world 2017. [Online]. Available: <https://freedomhouse.org/report/freedom-world/freedom-world-2017> [1 October 2017]
- GLOBE AND MAIL EDITORIAL. (2016) China wants an extradition treaty. Ottawa should say no. *Globe and Mail* (September 20).
- GOVERNMENT OF AUSTRALIA ATTORNEY-GENERAL'S DEPARTMENT. (2016) National Interest Analysis [2016] ATNIA 6: Treaty on Extradition Between Australia and the People's Republic of China.
- GOVERNMENT OF AUSTRALIA DEPARTMENT OF FOREIGN AFFAIRS AND TRADE. (2017) Australia's candidacy for the United Nations Human Rights Council 2018–2020. [Online]. Available: <http://dfat.gov.au/international-relations/international-organisations/Pages/australias-candidacy-for-the-unhrc-2018-2020.aspx> [1 October 2017]
- GOVERNMENT OF AUSTRALIA, SENATE AND HOUSE OF REPRESENTATIVES JOINT STANDING COMMITTEE ON TREATIES. (2016a) Committee Hansard. Canberra (May 2).

- GOVERNMENT OF AUSTRALIA, SENATE AND HOUSE OF REPRESENTATIVES JOINT STANDING COMMITTEE ON TREATIES. (2016b) Committee Hansard. Canberra (November 24).
- GOVERNMENT OF AUSTRALIA, SENATE AND HOUSE OF REPRESENTATIVES JOINT STANDING COMMITTEE ON TREATIES. (2016c) *Report 167 on China Extradition Treaty*. Canberra (December).
- GOVERNMENT OF AUSTRALIA, SENATE AND HOUSE OF REPRESENTATIVES JOINT STANDING COMMITTEE ON TREATIES. (2016d) Report 167 on China extradition treaty. Dissenting report by Labor members. [Online]. Available: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Extradition-China/Report_167/section?id=committees%2Freportjnt%2F024024%2F24319 [1 October 2017]
- GOVERNMENT OF CANADA. (2017) Canada's approach to advancing human rights. [Online]. Available: http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng [1 October 2017]
- GOVERNMENT OF THE UNITED KINGDOM HOME OFFICE. (2011) A review of the United Kingdom's extradition arrangements. [Online]. Available: <https://www.gov.uk/government/publications/independent-review-of-the-united-kingdoms-extradition-arrangements> [1 October 2017]
- HE, Baogang. (2012) Politics of accommodation of the rise of China: The case of Australia. *Journal of Contemporary China*, 21(73), 53–70.
- KINZELBACH, Katrin. (2013) Resisting the power of human rights: The People's Republic of China. In *The Persistent Power of Human Rights: From Commitment to Compliance*, Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.) (New York, NY: Cambridge University Press).
- KUPFER, Matthew. (2016) Trudeau says Canada has 'extremely high standards' for extradition treaty with China. *CBC News* (September 21). [Online]. Available: <http://www.cbc.ca/news/politics/trudeau-china-extradition-treaty-1.3772322> [1 October 2017]
- LAW COUNCIL OF AUSTRALIA. (2016) Treaty on extradition between Australia and the People's Republic of China (March 24). [Online]. Available: <https://www.lawcouncil.asn.au/resources/submissions/3131-treaty-on-extradition-between-australia-and-the-peoples-republic-of-china> [1 October 2017]
- LENNOX, Tom. (2017) Extradition treaty with China is a bad deal for justice. *The Australian* (January 27).
- LEVIN, Dan. (2016) Canada agrees to talk on extradition treaty with China. *New York Times* (September 20).
- MAGEE v. O'DEA (1994) 1 I.R. 500 Ireland High Court.
- MAGNUSON, William. (2012) The domestic politics of international extradition. *Virginia Journal of International Law*, 52(4), 839–901.
- MANICOM, James, and O'NEIL, Andrew. (2010) Accommodation, realignment, or business as usual? Australia's response to a rising China. *Pacific Review*, 23(1), 23–44.
- MARTIN, Lisa L. (2000) *Democratic Commitments: Legislatures and International Cooperation* (Princeton, NJ: Princeton University Press).
- MURPHY, Katherine. (2017a) Government withdraws China extradition treaty after party revolt. *The Guardian* (March 27).
- MURPHY, Katherine. (2017b) Australia 'committed to' China extradition treaty, but opposition has heard nothing. *The Guardian* (April 24).
- NG v. CANADA. (1994) Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (Human Rights Committee).
- NORRIS v. UNITED STATES OF AMERICA (2010) United Kingdom Supreme Court 9.
- PATTERSON, Malcolm. (2017) The folly of an Australian–China extradition treaty. *Sydney Morning Herald* (January 5).
- RIORDAN, Primrose. (2017) Chongyi Feng: Extradition treaty with China would be a fatal mistake. *The Australian* (April 3).
- ROSE, Thomas. (2002) A delicate balance: Extradition, sovereignty, and individual rights in the United States and Canada. *Yale Journal of International Law*, 27(1), 193–215.
- RUSSELL, Andrew. (2016) Canada–China extradition treaty: Here's what you need to know. *Global News* (September 21). [Online]. Available: <https://globalnews.ca/news/2953881/canada-china-extradition-treaty-heres-what-you-need-to-know/> [1 October 2017]
- SADOFF, David A. (2016) *Bringing International Fugitives to Justice: Extradition and Its Alternatives* (New York, NY: Cambridge University Press).
- SCHIAVENZA, Matt. (2015). Why Thailand forced Uighurs to return to China. *The Atlantic* (July 12).
- SHEA, Michael P. (1992) Expanding judicial scrutiny of human rights in extradition cases after Soering. *Yale Journal of International Law*, 17(1), 85–138.
- SMYTH, Jamie. (2016) Australia poised to sign extradition treaty with China. *Financial Times* (December 22).
- SOERING v. UNITED KINGDOM (1989). 161 European Court of Human Rights (ser. A).
- STAR EDITORIAL. (2016) Extradition treaty with China is a dangerous proposition. *The Star* (September 22).
- STEPHENS, Hugh. (2016) Why an extradition treaty with China is a good idea (October 12). [Online]. Available: available at <https://www.asiapacific.ca/op-eds/why-extradition-treaty-china-good-idea> [1 October 2017]

- TREMONTI, Anna Maria. (2016) The Current (September 22). [Online]. Available: <http://www.cbc.ca/radio/the-current/the-current-for-september-22-2016-1.3773673/september-22-2016-full-episode-transcript-1.3774619#segment1> [1 October 2017]
- UNITED KINGDOM HOUSE OF LORDS, HOUSE OF COMMONS JOINT COMMITTEE ON HUMAN RIGHTS (2011). *The Human Rights Implications of UK Extradition Policy*, 15th Report of Session 2010–2012 (HL Paper 156, HC Paper 767). [Online]. Available: <https://publications.parliament.uk/pa/jt201012/jtselect/jtrights/156/156.pdf> [4 November 2018].
- UN MODEL TREATY ON EXTRADITION. (1990) Adopted by General Assembly Resolution 45/116 (December 14).
- VANDERKLIPPE, Nathan. (2016) China's fox hunt in Canada strains trust that an extradition treaty is possible. *Globe and Mail* (September 23).
- VANDERKLIPPE, Nathan. (2017) McCallum: Canada 'a long, long' way from China extradition deal. *Globe and Mail*. (April 3).
- WEE, Sui-Lee. (2011) China hails Canada decision to extradite fugitive. *Reuters* (July 22).
- WEE, Sui-Lee. (2014) Corrupt Chinese hiding in Western nations elude Beijing's 'fox hunt.' *Reuters* (August 27).
- WEN, Philip. (2016) Federal government poised to ignore protests and ratify extradition treaty with China. *Sydney Morning Herald* (December 16).
- WORLD JUSTICE PROJECT. (2016) Rule of law index 2016 report. [Online]. Available: <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index%C2%AE-2016-report> [1 October 2017]