

## **[H-Diplo Roundtable XVIII, 4 on Uncle Sam's Policemen: The Pursuit of Fugitives across Borders \[26 September 2016\]](#)**

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### **Roundtable Review**

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Introduction by Christopher Capozzola

**Katherine Unterman. *Uncle Sam's Policemen: The Pursuit of Fugitives across Borders.***

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Introduction by Christopher Capozzola, Massachusetts Institute of Technology

*Uncle Sam's Policemen* uncovers the hidden history of America's rise to power. Katherine Unterman shows how bank managers and hoodlars, Pinkertons and anarchists built the U.S. state at its borders

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and how, a century later, we still live in their shadows. Like the respondents in this roundtable (along with scholars such as Benjamin Allen Coates, Andrew Wender Cohen, and Gautham Rao), Unterman brings historical perspective to contemporary concerns about policing, rendition, and deportation.<sup>14</sup> She suggests new ways of thinking about the relationship between law and U.S. foreign relations, and draws our attention to the period before World War I, challenging assumptions that the U.S. was neither a great power nor much involved in world affairs.

Metaphors of fluidity jump out from the exciting contributions to this roundtable. Daniel Margolies sees “fluid and constant change” and “malleability” along with “contradictions, inconsistencies, and exceptions” that were “highly variable and contingent.” Mary Dudziak observes a “legal borderland, a fluid space” in which rendition “produced the legal regime and the very nature of the border at the turn of the century,” while Mathieu Deflem writes of “blurriness.” But what did this fluidity look like for someone like Frederick Ker, whose challenge to rendition reached the U.S. Supreme Court in 1886? Or Mattie Rich, extradited from the U.S. to Mexico in 1899? Or Geronimo? Or Butch Cassidy and the Sundance Kid? Should we read this as a sign of power’s flexibility, or of law’s incomplete reach? Roundtable participants offer divergent perspectives.

If fluidity emerges predictably from a roundtable on *Uncle Sam’s Policemen*, technology comes as something of a surprise. Unterman tells us about telegrams and steamships, of course, but she does more than that. She also charts how extradition, which Deflem calls “the legal instrument that regulated rendition,” functioned as what Margolies describes as “a technology of the state.” This is a promising (if inadvertent) line of inquiry, one that suggests that historians of U.S. foreign relations should turn to some of the critical concepts within the field of history of technology (technical choice, path dependence, and tacit knowledge, to name just a few) in order to take a serious approach to thinking about extradition and similar legal instruments as technologies.

*Uncle Sam’s Policemen* opens many avenues for further research. A rich opportunity awaits scholars who can bridge the disciplinary divides that continue to separate historians, legal scholars, and sociologists—as the more quarrelsome comments below reveal. Some call for more theoretical investigation, others for a more comparative perspective. Likewise, the historical roots of current policy gain valuable attention, but need more. Extraordinary rendition—the rendering of a suspect to a third country to face interrogation but not legal process—was surely a present-day instigation of *Uncle Sam’s Policemen*. Thanks to Unterman’s research, we now understand that extraordinary rendition’s origins as a political practice long predate the counterterrorism efforts that followed September 11. For scholars and citizens who live in the shadows of Uncle Sam’s policemen, Unterman’s historical inquiry sheds valuable light indeed.

### Participants:

**Katherine Unterman** is an assistant professor of history at Texas A&M University. She received her Ph.D. in history from Yale in 2011 and her Master’s in Legal Studies from Stanford Law School. Her research has received funding from the National Endowment for the Humanities, the Library of Congress, the American Historical Association, and the Miller Center. Her first book is *Uncle Sam’s Policemen: The Pursuit of Fugitives across Borders* (Harvard University Press, 2015). Her current

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project focuses on the aftereffects of the infamous *Insular Cases* in America's territories over the course of the twentieth and twenty-first centuries.

**Christopher Capozzola** is Associate Professor of History at the Massachusetts Institute of Technology. He is the author of *Uncle Sam Wants You: World War I and the Making of the Modern American Citizen* (Oxford University Press, 2008), and is currently writing *Brothers of the Pacific*, a history of Filipinos in the U.S. armed forces.

**Mary L. Dudziak** is the Asa Griggs Candler Professor of Law at Emory University School of Law. Her books include *War-Time: An Idea, Its History, Its Consequences* (Oxford University Press, 2012); *Exporting American Dreams: Thurgood Marshall's African Journey* (Oxford University Press, 2008); *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton University Press, 2000, 2nd ed. 2011); and two edited collections: *Legal Borderlands: Law and the Construction of American Borders*, co-edited with Leti Volpp (Johns Hopkins University Press, 2006); and *September 11 in History: A Watershed Moment?* (Duke University Press, 2003). She received her A.B. from the University of California, Berkeley, and her J.D. and Ph.D. from Yale University. She is currently Vice President of the Society for Historians of American Foreign Relations.

**Daniel Margolies** is Professor of History at Virginia Wesleyan College. In 2016 he is a Visiting Scholar at the Center for the Study of Law and Society, School of Law, University of California, Berkeley. He is the author of *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (University of Georgia Press, 2011) and *Henry Watterson and the New South: The Politics of Empire, Free Trade, and Globalization*, (University Press of Kentucky, 2006) and editor of *A Companion to Harry S. Truman* (Wiley-Blackwell, 2012). He is currently editing a book on extraterritoriality in historical and theoretical perspective and writing a book entitled "Zones of Sovereignty and Exception: United States Foreign Trade Strategies through the Law of the Sea Conventions."

**Mathieu Deflem**, Ph.D. Sociology (University of Colorado, 1996), is currently Professor Sociology at the University of South Carolina. His main research and teaching areas are sociology of law and social control, counter-terrorism, popular culture, and social theory. He has published dozens of articles and three books, including *Policing World Society: Historical Foundations of International Police Cooperation* (Oxford University Press, 2002) and *The Policing of Terrorism* (Routledge, 2010).

Review by Mathieu Deflem, University of South Carolina

In *Uncle Sam's Policemen*, Katherine Unterman traces the history of the legal regulation of extradition concerning the rendition to the United States of fugitives from its justice. As becomes a historian, Unterman has written her book chronically, but rather than following certain periodizations, her narrative reveals themes, problems, and shifts in how legal rendition has been organized from the middle of the nineteenth century until the advent of World War II.

Unterman's book by with highlighting the role of technology in enabling an ever-smaller world during the nineteenth century. Advances in the technologies of transportation affected the nature of

criminality and law enforcement alike as international movements across borders became more possible and likely. Under these circumstances, national laws had to be applied to essentially transnational phenomena of crime. The newly emerging crimes in the United States, Unterman argues, were not only increasingly international but also different in other qualitative respects as they were intrinsically tied up to developments of modernization and urbanization. International fugitives were typically far removed from the violent offenders of old as they were thought to be cunning in illegally exploiting economic opportunities, such as through embezzlement.

Most of Unterman's focus in this book is on extradition as the legal instrument that regulated rendition, i.e. the transfer of a criminal suspect across jurisdictional borders. Extradition treaties with the U.S. developed very slowly after 1840, when there were none, through the turn of the century, when the United States had signed some 58 treaties with 36 nations, and thereafter when the international extradition system expanded greatly. The expansion of extradition treaties changed how the United States related to and was conceived of in relation to the rest of the world.

Unterman unravels the history of extradition on the basis of an analysis of legal rulings and selected case studies. The majority of cases, not surprisingly, pertain to Canada, but Mexico and to some extent even Europe are involved as well. Most fugitives from American justice were on the run for having committed economic crimes. Their policing across borders provided a role in the protection of capitalism, although arguments of morality were used as well in order to highlight the justice concerns in bringing rule violators to trial. The primary role in international policing in the United States in the nineteenth century was fulfilled by private detectives, especially the famous Pinkerton National Detective Agency. Such detectives could legitimately pursue a fugitive from justice across the border, but were legally not allowed to engage in arrests on foreign soil. Cleverly, private detectives would lure fugitives back to the United States on the basis of false promises.

In 1886, the U.S. Supreme Court ruled in *Ker v. Illinois* that a fugitive from justice returned to the United States could stand trial even if the return was made possible by a kidnapping. Involving the abduction of a fugitive by an agent of the Pinkerton agency on behalf of the federal government, the case showed how non-state actors involved with formal policing duties effectively blurred the distinction between public and private law enforcement. Inasmuch as international police work with U.S. involvement was in these early years developed, the Pinkertons as a result came to be equated with American police even though they mostly acted on the basis of private clients.

In the early part of the twentieth century, more and more extradition treaties were passed, and the notion came to be defended more and more resolutely that there should be no place to hide from the increasingly longer arm of American law. Unterman suggests that developments in technology and intelligence work had a role in this ever expanding international system of law enforcement, but also that there was an imperial logic at work. Additionally, the borders of the United States itself were increasingly closed as the notion of the new world as a nation of asylum waned. While the formal notion that fugitives could not be returned for political crimes prevailed, concerns over disorder and crime increased as well and often interfered with the traditional ideal of the United States as the land of the free. Anarchist and other radicals could be and therefore were deported as a form of camouflaged extradition as long as they could be connected to criminality.

As the twentieth century unfolded, extradition and international police work moved steadily towards

greater participation by federal government agencies, especially the Federal Bureau of Investigation (FBI). Founded in 1908 as the Bureau of Investigation, the agency especially took on more and more powers after the appointment of J. Edgar Hoover as Director in 1924 and given the combined impact of the gangster era and the reform movement of the 1930s. From then on, developments continued steadily in the direction of an ever-increasing expansion of international police work to the point, Unterman argues, that in the post-9/11 world the United States government has created an empire of control and law enforcement that at times even positions itself above the law.

Reviewing the merits of Unterman's historical work, my ideas here are expressed from the background of my expertise in the sociology of law and social control, especially the historical conditions of international policing and the origins of international police organizations. As such, it will cause no surprise that my own take as a sociologist is more theoretically inclined than is expected of a historian like Unterman. The obvious differences in perspective and method between the historian of society and the historical sociologist need not be recounted. However, Unterman does provide food for thought on the explanatory mechanisms of what drives the internationalization of crime and its policing, specifically by highlighting the role of technology, modernization, urbanization, and capitalism. No elaborate arguments are made on how these issues played a role in advancing the development of extradition. Instead, Unterman posits correlations, such as that between the monetary nature of international crimes and their policing by private detectives. The author makes similar arguments about the role of international extradition in advancing American power in terms of a global empire. A comprehensive theory of the relation between economy, politics, and law must underlay such claims, but Unterman does not develop it in this work.

The companion side to Unterman's historical outlook is the book's focus on the legal dimensions of extradition. Thus, we learn much about the development of the laws and constitutional regulation of extradition treaties and their assumed repercussions for the relevant practices of private and public detectives. Yet a very strong assumption is hereby implied by Unterman but neither explicitly addressed nor clarified, as she assumes a rationality model based on an efficient calculation of means to account for the relation between international criminality and its enforcement. In Unterman's book, the notion is present, though not presented, that detectives not only act on behalf of wealthy clients but also do their work because of monetary considerations, that laws are made as instruments necessary to effectively respond to the increasing threat of international crime, and that detective agencies are in their international work guided by whatever legal provisions are in place. These are very strong claims that must be formulated and analyzed more precisely.

At the very least, one can ask questions that might lead to answers that would not be supportive of some of Unterman's implied claims. Much sociological work, for example, has been developed to show that the construction of law in the form of legislation and judicial decision-making serves many purposes, not all of which are tied to immediate and explicitly stated legal goals, but that can also be of a political or cultural nature and even be influenced by purely situational factors. The implied rationality model in Unterman's work can also be questioned from an institutional perspective of policing. In my own research, for example, I have shown that international police work is guided by the internal dynamics of highly bureaucratized organizations that become independent from their political roots and can act outside of the constraints of legal provisions.

<sup>14</sup> Absent such a clearly defined organizational focus, Unterman's work occasionally lacks clarity about the relevant actors, whether they are individuals, legal institutions, political offices, and/or police organizations. Most

strikingly, the author repeatedly speaks of ‘Americans’ without a specification of who these might be, whether they are a specific set of powerful and influential actors or the majority of the American citizenry.<sup>14</sup>

A different history will be presented of cross-border policing when the focus of the social-science scholar of policing shifts from a purely legal and doctrinal plane to the level of institutions that enact international police practices on the ground. In this respect, a relatively straightforward illustration related to Unterman’s research is the fact that international police work in Europe was more developed during the nineteenth century than in the United States, not only because of the proximity of states on the European continent, but also, and more importantly, because Europe’s nations had well-developed and gradually more and more bureaucratizing systems of central and national police agencies. Such conditions of advanced professional law enforcement did not exist in the United States until well into the twentieth century. In other words, an institutional history must at least complement, and might possibly alter, the picture presented in Unterman’s legal history.

However, regardless of any theoretical issues and differences in perspective, much useful information is presented in this book. As an archeology of the legal history of extradition in the United States, Unterman’s work surely has much to offer, not least of all because the multiple histories of aspects of law enforcement, especially on an international scale, are still not widely known among historians and social scientists with a more generalist or different focus. No scholar of society, regardless of specialty, can legitimately get away with not knowing about the usual big issues of politics and economy, but, even in our post-9/11 world, an ignorance about law enforcement is still all too common and all too routinely excused. For excavating important elements in the history of international policing as well as for its attention to historical detail, I therefore welcome Unterman’s engaging book.

Review by Mary L. Dudziak, Emory University School of Law

In *Uncle Sam’s Policeman*, Katherine Unterman tells the story of Mattie Rich, who was a suspect in her husband’s shooting in Mexico in 1899. When Rich’s husband was moved to Texas for treatment, she was barred from his hospital room, but climbed on the outside windowsill to see him. After his death, Rich became the first U.S. citizen formally extradited to a foreign country. Crossing the border, in custody, she draped herself in an American flag. Rich explained the gesture in her jailhouse poetry. The flag was solace for the memory of when “my country gave me clean away” (159).

A forced border crossing ultimately made Mattie Rich a convict in a Mexican jail. The episode also shows the way American and Mexican authorities, and also Mattie Rich herself, produced the legal regime and the very nature of the border at the turn of the century.

Unterman’s fine book keeps its focus on rendition, but this episode and others reveal a broader set of questions. Policing of criminal border-crossers was not just the management of traffic across the stable edges of two countries. Law, law enforcement, and its contestation helped make the border

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what it was: a legal borderland, a fluid space within which law, national identity and human agency were configured and contested.<sup>44</sup>

Unterman uses compelling stories as snapshots to reveal the complicated history of American rendition. International lawyer John Bassett Moore laid down the legal basis for capturing U.S. suspects across the border in a two-volume treatise in 1891. The formal legal process of extradition had a limited effect, in part due to weak law enforcement. Instead, private police forces, especially the Pinkerton National Detective Agency, were more effective. But the line between public and private was fuzzy. The Pinkertons were 'private' actors who sometimes carried state documents, like extradition papers, and relied on government assists, like passage on a naval vessel to bring a suspect home. The role of private companies in doing the government's dirty work parallels the heavy reliance on government contractors today. The consequence, Unterman argues, was that "the profit motive, rather than Moore's legal principles, governed the expansion of international rendition at the end of the nineteenth century" (48).

Although Unterman weaves her way through the development of the legal doctrines of rendition, this is no dry tome. Her narrative is driven by intriguing tales of private eyes chasing fugitives around the world, resulting in both landmark legal rulings and sensational press coverage. Media coverage of cross-border pursuits aided government objectives, for the purpose of rendition was not simply to catch the thief, but to show bank clerks and cashiers that crime would not pay.

The story at the heart of the book is the case of Frederick Ker, a clerk and bookkeeper for a Chicago banking firm. When he departed on vacation in January of 1883, he left a note that his "disastrous speculations" left the bank short of \$55,000 (50). Pinkerton detective Henry Julian set out to get his man. Julian not only pursued Ker to Peru, but also befriended him. The men played pool together, went to the opera, studied Spanish and more, while Julian waited patiently for extradition papers that ultimately never arrived. Finally, in the absence of legal authority, Julian accomplished his goal without it: he kidnapped Ker and forcibly brought him back to the United States. This set up a crucial question: whether an otherwise lawful prosecution could proceed when the defendant's presence was unlawfully procured.

Ker challenged his arrest as illegal, filing a *habeas corpus* action, and arguing that his due process rights under the U.S. Constitution were violated. The Court disagreed, finding that U.S. constitutional rights did not apply outside the country's borders. Justice Samuel Freeman Miller acknowledged that the case involved "a clear case of kidnapping," but that did not invalidate his prosecution. It was simply an "irregularity" in the way the defendant had been brought to trial (60-61).<sup>45</sup> An improper capture did not divest the Court of jurisdiction to try the defendant. If Ker had a remedy for his abduction, he had to pursue it under Peruvian law.

*Ker v. Illinois* had broad implications.<sup>46</sup> If the constitution had no extraterritorial application, then the implications of the case went far beyond the actions of private detective agencies. Government agents were bound by treaties when they pursued a fugitive across a border, but the Ker ruling opened the door for government agents to follow Julian's example when a treaty did not apply. And as Unterman shows in the book's epilogue, the United States government went even further with 'extraordinary rendition' after September 11, 2001. Rendition was no longer limited to producing a suspect who would be tried in court. It was used to capture subjects for interrogation, and they would

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be detained without charges, sometimes in countries known for brutal interrogation practices.

*Uncle Sam's Policemen* shows that law was an essential feature of the United States' role in the world in the early twentieth century. Unterman adds to the literature on extraterritoriality, though she does not fully engage it. The idea that the constitution did not 'follow the flag' mattered to different areas of legal doctrine including the *Insular Cases*, which determined the legal status of American territories,<sup>12</sup> and the use of consular courts to police Americans abroad in China and elsewhere.<sup>13</sup> Late nineteenth century immigration cases were also affected by the idea that the Constitution did not apply outside the borders.<sup>14</sup> Unterman's book is in harmony with this broader literature, which shows that restraining the reach of American constitutional rights and duties enabled the expansion of American power in U.S. territories and elsewhere in the world.

*Uncle Sam's Policemen* does more than illustrate the way rendition is an important part of the history of the United States and the world. The book also shows the way concerns about international fugitives mattered outside of courtrooms and cases. Political figures and opinion leaders emphasized rendition as important to the global spread of American law and power. Businesses argued that they needed it to have control over employees outside the United States, and reformers saw it as a way to protect law and order at home by eliminating safe havens abroad.

President Theodore Roosevelt backed reform efforts, insisting in 1903 that "It should be the policy of the United States to leave no place on earth where a corrupt man fleeing from his country can rest in peace" (91). Harry Pratt Johnson, President of the University of Chicago, reinforced this idea in a commencement address on education and world progress at the University of Michigan in 1911. The world's progress involved the spread of "civilization" to the world's peoples. The proliferation of extradition treaties greatly aided this effort. "International extradition covers the habitable earth with law" (80).

American extradition treaties were only with 'civilized' countries, Unterman writes. So how would the United States use law as a civilizing force in the countries not thought to measure up? The limits of law simply would not apply when it came to efforts to return fugitives. For American nationals, the United States used American diplomats as enforcers, so that the U.S. Consul in Morocco took custody of an American embezzler until it could hand him over to the district attorney from Atlanta, Georgia.

Through the history of rendition, the categories of federal and state, public and private, collapsed and were remade in the porous legal space of American borders. Borders are more than geographic lines on maps. They have physical properties, like a fence or a checkpoint. They also exist in treaties and other documents which demarcate more than territory. They ascribe identities to human beings. Individual people give meaning to these categories by contesting or enforcing them.

Unterman's stories show that governments could not monopolize the border's meaning, any more than they could 'secure' it. From an embezzler in flight like Frederick Ker, to a murder suspect like Mattie Rich, crossing borders could lead to liberation or incarceration. Rich's rendition meant that she lost her liberty, but wrapped in the flag, she insisted on framing her own identity, and that of her nation.

Review by Daniel Margolies, Virginia Wesleyan College

Historians of American foreign relations have recently begun to return to the study of law and the policy structures and systems created by it, which is a welcome and overdue development. Katherine Unterman's quickly paced *Uncle Sam's Policemen* contributes to this turn through study of the American legal, diplomatic, and sociocultural responses to the problem of international fugitive flight. Unterman focuses on the ways policymakers tried "to apply *national* laws to increasingly *transnational* people." As she puts it, "the problem, in short, was jurisdiction" (3) as "strictly territorial thinking evolved into a more expansive notion of jurisdiction" (10).

Unterman argues that the enhanced speed of international travel and the changing nature of crimes committed in the late nineteenth century combined with a new U.S. interest in pursuit of fugitives to produce a significant interventionism in foreign relations. The new approach was catalyzed by a "certain type of fugitive who evoked particular anxiety: those who stood as scapegoats for the social instabilities of the day" including embezzlers, "family deserters," and anarchists (4). This book posits "a new type of geographical and legal consciousness among late nineteenth-century Americans" as cities became borderlands of a globalized world, and the American public began to "view the entire world as legitimately subject to U.S. laws and norms." (7) Unterman examines "three categories: tactical, or the mechanics of manhunts, cultural, or the idea that there nowhere to hide from American law; and legal, or the court decisions that enabled law enforcers to reach across borders with impunity." (13).

The first chapter is an interesting account of "boodlers," embezzlers who escaped across international borders. Unterman calls this "the quintessential Gilded Age crime" (17) which produced agitation and even a financial panic. She connects the issue to a "late nineteenth-century crisis of mobility" (15). She argues the boodlers revealed the limitations of the existing legal authority and "exposed the drawbacks of rigid adherence to legal codes that could not keep pace with social transformation." (22)

Unterman then turns to the role of private detectives in pursuit of fugitives and examines topics such as the critical *Ker v. Illinois* case, the case of Major E.A. Burke, who stole public funds from Louisiana and escaped to Honduras, and the rise of surety insurance as protection for American business. This discussion links policing and economic interest and argues "the Pinkertons may have been nonstate actors, but in many ways they collapsed the distinction between corporate capitalist power and formal governmental power" (49). She argues that improvised efforts to nab fugitives abroad effectively legitimized a new extralegality, and helped to create "a new business model for private detective agencies." (71)

Unterman examines the connection between the network of extradition regimes for Latin America and "the larger goal of creating a Western Hemisphere friendly to the financial goals of the United States" (88). She illuminates the "rogues' colonies" where fugitives fled to non-extradition zones and looks at the relevant fiction of Richard Harding Davis and, interestingly, writer O. Henry, who coined the phrase "banana republic" to refer to one of these rogue zones in his fictional Anchuria.<sup>14</sup> These kinds of examples make the book an interesting cultural history for course adoption.

A contribution of this book comes in this discussion of fugitive escape to extradition havens, which Unterman plumbs in some detail to decode the logics of their existence in terms of financial self-interest of foreign nations and racialized categorization of fugitives by other nations. She looks at complex investors like Henry Mieggs and Major Edward A. Burke who “blurred the line between legal and illegal capital flows” (105) as they used ill-gotten ends for investment in their havens.

Unterman covers a large array of situations of fugitive flight and pursuit by state and non-state actors, touching on many related topics and choosing a handful to focus on in detail. The last section dealing with transformation from private police contractors to a Bureau of Investigations (which soon morphed into the Federal Bureau of Investigation, FBI) is interesting for the ways it demonstrates the continuous emphasis on the protection of property. But in bringing the story rapidly into the 1930s Unterman attempts to cover too much in this short book. This latter era is worthy of its own project, and could engage the interesting cases produced by the government’s attempts to govern prohibition violations over international borders and at sea, for example.

This book is based most heavily on U.S. archival and printed government sources as well the popular press and novels. Unterman includes some material from foreign archives, though those materials are supplementary rather than foundational. Her most creative digging comes in the cultural history of the events and in a detail-rich narrative approach. Unterman writes smoothly and her prose is free of jargon.

She effectively details the press response to the many contentious extradition situations she explores, and she has found some good cartoons. She tends to conflate the opinions of the many newspapers and other media sources she cites for the opinions of the ‘public’ or ‘the American people,’ and then draws conclusions about specific policy motivations from them. Using the press and other cultural products as markers of societal norms and attitudes sidesteps the issue of causation in policy formation. For example, she writes that “evolving ideas about criminality altered the international extradition regime. As Americans’ fears of crime and social instability grew, so too did their willingness to extradite first aliens then citizens” (158). She often uses phrases like “the public looked to the courts expectantly” (170) and “Americans looked to the courts for consensus” (173). But her evidence presented is less a measure of public opinion than of editors’ and cartoonists’ opinions, which in turn reflected specific regional, commercial, and partisan interests, which are not explored.

Extradition was a policy choice made by government officials and jurists according to carefully delineated protocols and court decisions, and was not a response to attitudes of the ‘public.’ Unterman’s frameworks for describing the construction and operation of the extradition regimes she describes, and especially for broader issues of causality, are not well developed theoretically. Unterman mentions policy in her case studies, but her story generally traces events on a cultural scale rather than closely evaluating the systemic and evolving policy choices which in turn led to extradition decisions.

The cultural-history approach does not consistently provide clear causal explanations for the exercise of American power in these extradition regimes or for the ways in which policymakers and the judiciary specifically configured these issues in each binational or regional context. Unterman cites many cases and archival extradition files, but her narrative and anecdotal emphasis skirt the legal details which both linked and differentiated the cases. This emphasis would have clarified policy

more than the emphasis on the sociocultural response. Then again, the approach to these issues can be pitched at multiple levels, and this book's narrative presentation is an accessible one

One example is in Unterman's deep reading of the Mattie Rich extradition, which involved the first citizen extradited to Mexico. She has uncovered a significant amount of detail on Rich's life. In the end the book ties the case, without specific evidence, into a broader dialectic at work between alien and citizen produced by overseas empire as the U.S. began to rule new imperial subjects. Unterman here dissolves the uniqueness and complexity of the borderland situation into the broader U.S. imperial jurisdictional project. They are surely related. But the differences were of causative significance that helps to clarify the operations of both. Importantly, the extradition situation between the U.S. and Mexico stood in contrast to the relationship which was developed with other nations, and the Rich case came not just at the beginning of the overseas imperial moment, but as part of a long stream of jurisdictional conflicts stretching back decades in the borderlands. The true significance of the Rich case is obscured by the deep but narrow episodic approach. Unterman does not note that the changes in the citizenship issue in U.S.-Mexico extradition relations which the Rich case highlighted were in effect purchased with a negotiated and final end to Mexican extraterritorial jurisdiction claims. Both changes were enshrined in the new extradition treaty. This had been a sharply contested issue for decades and an end to extraterritorial assertions was of greater interest to the state than Rich's individual fate.

The argument of the book is sensible and accurate, and it serves the aim of giving a narrative arc to the illustrative cases over time. Unterman has a clear sense for the significance of change over time in U.S. treatment of fugitives. Yet her argument could have been enhanced with a more nuanced approach to the nature and uses of jurisdiction.

For example, Unterman rightly frames her discussion by calling it a problem of jurisdiction. But she does so without exploring the complicated textures and flexibilities of the many varieties of jurisdictional frames that were utilized and theorized at this time by U.S. policymakers. These were built both to pursue criminals but, arguably more importantly, also to pursue American interests in a wide variety of locales and fields. Jurisdiction was utilized as a technology of the state in ways that were sometimes contradictory yet congruent, depending on region and interest. The book does not directly delve into the complexities of the ways jurisdiction created, animated, and alternatively projected or constrained power in foreign relations. U.S. extradition regimes were highly varied in time and space for a wide variety of reasons. There are doctrinal and theoretical conceptions of authority underlying these differences, but they are not the focus of this book.

Unterman writes that "circa 1880, American jurists and law enforcers were paralyzed because they viewed the international border as a rigid jurisdictional boundary. U.S. law was absolute on one side and nonexistent on the other, and their authority seemed to stop at the international line" (9-10). But this simplifies the situation. For example, paralysis did not exist at the U.S.-Mexican border. Instead there was fluid and constant change. Jurisdictional lines were drawn on paper but very often ignored in policy and practice. The borderlands were a principal arena of fugitive flight and extradition controversy, and jurisdiction in the region was anything but rigid. And in cases like the Ord Order of 1877, the U.S. Army was expressly authorized to pursue at will fugitives outside of U.S. jurisdiction across the Mexican border. Similar forces were at work in the transborder capture of Geronimo in 1886. In other interesting cases involving both citizen and non-citizen criminals outside of borders, it

was constitutional rights which were limited to territory rather than all jurisdictional claims, and certainly not authority or the foreign affairs power.

The book would have been strengthened by consideration of the doctrine of hot pursuit over borders, which is oddly mentioned only once in passing despite its relevance to pursuit of fugitives. This was (and remains) a critical exercise of state power projection that has received little attention except from Nicholas Poulantzas.<sup>14</sup> Approached in this way, Unterman's discussion of the Punitive Expedition of 1916-1917 would have had deeper roots and more coherent connectivity to the overall continuities she indicates.

Unterman presents other frames for her narrative which are also logically and appropriately utilized, but left rather uncomplicated. These include her use of the concepts of 'empire', 'justice', and 'asylum'. "Empire was implicitly part of this new consciousness" (8) wherein the U.S. saw itself as a rising power, she writes. "International manhunts enabled the United States to project global power without the formal trappings of territorial imperialism. It was a dominion not of territory but of justice, wherein the reach of American law extended far beyond the nation's geographical borders." She notes that "other great powers had territorial empires; the United States had an empire of justice" (8).

These are neat turns of phrase, but they obscure the way that American empire was articulated not on the basis of a sense of 'justice,' but of power applied via jurisdictional assertions over territorial, extraterritorial, and non-territorial (regulatory) spaces. Contemporary uses and understandings of 'justice' in the terms of the book are left unchallenged and used in a facile way. 'Justice' was often, at best, a rhetorical device. People in and out of government certainly used the term constantly, but what did it truly mean, in context? What was the relation between rhetoric of 'justice,' and pursuit of interest, for example? Was invocation of 'justice' casual in producing action? In some instances, 'justice' meant not extending jurisdiction extraterritorially, which effectively freed both the foreign affairs power and capital from restraint. This was also an imperial form made accessible by law, the use of power in service to a constrained sense of 'the legal'. How did justice vary in different regions according to hierarchies of interest, ideology, and state and private-sector ambition?

Especially worth considering is the highly differentiated way that 'justice' for a specific crime from a specific region was not even pursued, while the same crime in another context could blow into a major diplomatic crisis. The contradictions, inconsistencies, and exceptions clarified the thin nature of justice as a causal force. In extraterritorial, so-called uncivilized realms, the concept of justice was even more explicitly subordinated to power. This kind of comparative approach of the structures of interest is obscured when the emphasis is on the response and the rhetoric rather than the causal frames. Crime and justice were temporally and spatially different in extradition relationships and treaties, dependent on a complex brew of interests from both parties in ongoing contestations.

Alongside these variations in the notions of 'justice,' in practice the United States constructed highly variable and contingent definitions of jurisdiction and territory and the ways both were mitigated by legal fictions like the notion of asylum. This was especially true at the end of the nineteenth century. Unterman uses 'asylum' to signal the security fugitives sought to not be returned, and she cites a generalized asylum conception as framed in earlier American history by Marilyn C. Baseler.<sup>15</sup> Yet asylum was a legal fiction that occupied a very contested category in law and policy in this era, and

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the complexities produced by this specific extraterritorial jurisdictional status are not signaled here.

One issue that would have been interesting to explore in a comparative transnational context afforded by the foreign archives Unterman consulted was how U.S. conceptions of its own justice and asylum policies via fugitive pursuit differed from the conceptions and practice of other nations.

Some of this book does not so much present newly unearthed material as it does freshly present some discussion of the extradition relations that have been recently explored in greater detail. I am thinking principally of Unterman's treatment of the political offenses exception to extradition, which was something I have written about at some length, and also her description of the Ker case. Unterman provides a thorough narrative of the case (again nicely supported by presentation of press coverage) and also uses the case to bookend her work. Unterman argues in her epilogue that in the *Ker v. Illinois* case, "a direct line can be drawn from nineteenth -to twenty-first century practices," (211). This is a correct description of the significance of the case, which astonishingly has been almost entirely overlooked by historians of American foreign relations (though not by legal scholars looking at rendition). I say "almost entirely overlooked" since I reached the identical conclusions presented here about the significance of the Ker case, and described its significance both in light of the late nineteenth century past and the future of U.S. foreign affairs, in the epilogue to my own book on the history of U.S. extradition regimes of this era, which was published in 2011.<sup>[1]</sup>

Unterman concludes that "instead of an empire of law Americans had created an empire that claimed to be above the law" (219). This is a neat balanced notion, as was her starting concept of the "empire of justice," but it again sidesteps the real operations of foreign affairs policy through the law. The complicated and challenging reality is that American policymakers have found that the law has a seemingly infinite malleability in service to the exercise of power, especially imperial power. Scholars across the political spectrum from Christina Duffy Ponsa to Jack Goldsmith have noted this fact. There is little need for the foreign-affairs power to step outside of the law when it so malleably and readily serves power. The historians' job is to clarify why and how these systems took shape.

Author's Response by Katherine Unterman, Texas A&M University

H-Diplo has chosen well. The diversity of intellectual viewpoints represented here makes for an especially stimulating discussion. Mathieu Deflem offers a sociologist's perspective on issues of law and policing. Mary Dudziak, as a legal historian, explores the intersection of constitutional law and American foreign relations. Finally, there are only a few of us historians out there who can claim to be experts on extradition (though hopefully this will change), and Daniel Margolies is one of them.

*Uncle Sam's Policemen* is not simply a policy history that traces the evolution of extradition law. Instead, I use the history of extradition—both as an idea and a political practice—to explore the expansion of U.S. power in the critical decades around the turn of the twentieth century. I trace the evolving mechanics of international manhunts—the treaties, technologies, and procedures that enabled American law to reach beyond its borders. Equally important, I also uncover the cultural ideas buttressing these practices. The public discourse surrounding the pursuit of fugitives encouraged Americans to view the entire world as legitimately subject to U.S. laws and norms. Many

of the ideas and practices established more than a century ago continue to guide U.S. rendition practice up to our own day.

These comprehensive reviews certainly provide food for thought. In particular, I am intrigued by Deflem's account of the rationality model. Throughout my book, I try to take into account political, cultural, and situational factors—in addition to so-called 'rational' ones—in the development of extradition law and practice. For example, the strength of Irish nationalism killed a proposed U.S.-British extradition treaty that went before the Senate in 1886. But certainly, familiarity with more of the tools of sociology would have made me more conscious of the places where I assume, as Deflem puts it, an "efficient calculation of means."

As a sociologist, Deflem is especially attuned to the importance of institutional studies. Indeed, as I was writing *Uncle Sam's Policemen*, I was surprised by the absence of a good institutional history of the Pinkerton National Detective Agency. Well known to labor historians, the Pinkertons are frequently remembered for their violent strikebreaking, especially at Andrew Carnegie's Homestead Steel Works in 1892. Yet the existing accounts of the agency tend to be hagiographical.<sup>14</sup> I hope that this too will change. The Library of Congress houses the Pinkerton papers, which offer a rich opportunity for a scholar to write a more complete and critical biography of the agency.

In her review, Dudziak highlights an important theme in the book: the legal borderland. My original conception of the project focused exclusively on rendition across the U.S.-Mexican and U.S.-Canadian boundaries, yet my sources inspired me to expand my narrative to include legal borderlands that exist between non-contiguous countries as well. The relationship between law and borders is more than simply a matter of the state demarcating, policing, and enforcing a physical line. Borders exist within a social and cultural context, as contested legal spaces where issues such as citizenship, sovereignty, and national identity are negotiated.

Dudziak also rightly recognizes the common themes between my work and the literature on extraterritoriality, consular courts, immigration, and the *Insular Cases*, the Supreme Court decisions that addressed the constitutional status of the United States's new territories after 1898. Writing *Uncle Sam's Policemen* left me with a deep interest in law and territoriality, and the variety of ways that the constitution does and does not "follow the flag."<sup>15</sup> In fact, these are some of the questions that fuel my next project, a study of how the precedents set by the *Insular Cases* affected people on the ground in America's territories over the course of the twentieth and twenty-first centuries.

Margolies and I have written two of only a few recent histories of U.S. extradition law and international rendition. I appreciate, and cite, his work on the U.S.-Mexican borderlands. Yet, as his review makes abundantly clear, we have barely scratched the surface. Extradition is a rich, important topic and there is a tremendous amount of additional research that remains for future scholars. (Graduate students looking for a dissertation topic, take note.) Margolies points out multiple places where the theme of extradition can be further explored: the pursuit of smugglers during the era of Prohibition, a policy-based analysis of the evolution of extradition treaties, and the extradition practices of other nations, just to name a few. I would also love to read a study that links the pursuit of fugitive slaves to later forms of rendition, or a deeper exploration of 'disguised rendition' (the use of deportation to move accused criminals across borders).

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Finally, Margolies is absolutely correct when he states that borders were far from rigid in the late nineteenth century. Despite the formal limitations of extradition treaties, law enforcers frequently breached the border. Not only did detectives pursue embezzlers, soldiers and Indian scouts often chased Native Americans into Canada and Mexico (sometimes using the ‘hot pursuit’ doctrine that Margolies mentions). As my book explains, law enforcers used a variety of informal means—including abduction, deportation, and informal prisoner exchange—to retrieve fugitives without going through the expensive, time-consuming, and unpredictable ordeal of an extradition hearing. The law was often slow to catch up with the realities of transnational mobility, and both fugitives and law enforcers took advantage of legal ambiguities along and across borders.

*Uncle Sam’s Policemen* shows that, in addition to its military and economic muscle, law served as a forceful and flexible instrument of U.S. international power. I hope that my book plays its part in helping to expand the historiography of American empire.

## Notes

[1] Benjamin Allen Coates, *Legalist Empire: International Law and American Foreign Relations in the Early Twentieth Century* (New York: Oxford University Press, 2016); Andrew Wender Cohen, *Contraband: Smuggling and the Birth of the American Century* (New York: W.W. Norton, 2015); Gautham Rao, *National Duties: Custom Houses and the Making of the American State* (Chicago: University of Chicago Press, 2016).

[2] Mathieu Deflem, *Policing World Society: Historical Foundations of International Police Cooperation* (Oxford: Oxford University Press, 2002); Mathieu Deflem, “Bureaucratization and Social Control: Historical Foundations of International Police Cooperation,” *Law & Society Review* 34:3 (2000): 601-640.

[3] For example, Unterman writes that changes in transportation evolved such that “Americans exhibited a novel style of geographical thinking” (7), and that increasing concerns over terror meant that “Americans loosened their practice of protecting individuals” (161).

[4] See Mary L. Dudziak and Leti Volpp, eds. *Legal Borderlands: Law and the Construction of American Borders* (Baltimore: Johns Hopkins University Press, 2006).

[5] *Ker v. Illinois*, 119 U.S. 436 (1886).

[6] The Supreme Court followed *Ker* in *Frisbie v. Collins*, 342 U.S. 519 (1952), a case involving a domestic abduction by state officers who transported the defendant across state lines.

[7] Christina Duffy Burnette, “Contingent Constitutions: Empire and Law in the Americas,” (Ph.D.

diss., Princeton University, 2010); Christina Duffy Burnette and Burke Marshall, eds., *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution* (Durham: Duke University Press, 2001) (the author's name is now Christina Duffy Ponsa).

[8] Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge: Harvard University Press, 2013); Eileen P. Scully, *Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844-1942* (New York: Columbia University Press, 2001). See also Daniel S. Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011).

[9] Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States* (New York: Oxford University Press, 2006).

[10] O. Henry, *Cabbages and Kings* (New York: McClure, Phillips, 1904)

[11] Nicholas M Poulantzas, *The Right of Hot Pursuit in International Law*, 2<sup>nd</sup> ed. (The Hague: Martinus Nijhoff, 2002).

[12] Baseler, *Asylum for Mankind: America, 1607-1800*. (Ithaca: Cornell University Press, 1988)

[13] Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877-1898* (Athens: University of Georgia Press, 2011), 323-334.

[14] See, for example, James D. Horan, *The Pinkertons: The Detective Dynasty that Made History* (New York: Crown, 1967); Frank Morn, *"The Eye that Never Sleeps": A History of the Pinkerton National Detective Agency* (Bloomington: Indiana University Press, 1982); Richard Wilmer Rowan, *The Pinkertons: A Detective Dynasty* (Boston: Little, Brown, 1931).

[15] Kal Raustiala, *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law* (New York: Oxford University Press, 2009).