



Prime Minister Blair's disquieting decision in August to alter British policy with regard to the deportation of so-called 'preachers of hate' does not come as much of a surprise to anyone with the most superficial sense of history. It is the usual story: tragedy strikes, government responds and the respect for law quietly corrodes. Plutarch's ragged dictum again rings true, that "the law spoke too softly to be heard amidst the din of arms". While "the rules of the game" may be changing, these, however, are not the laws. However discomfiting to the government, the latter remain unchanged.

Extradition is executed pursuant to written and ratified treaties that provide extensive details on the methods and procedures by which one may be rendered from one jurisdiction to another. It is the practice of British courts, as with nearly all courts in the world, to recognise these treaties as the sole grounds for the extradition of alleged criminals, so as to ensure consistency, fairness and due process of law. In relation to extradition law, this is known as the principle of exclusivity.

A second principle of extradition is the requirement of dual-criminality – that is to say where the given act for which one is rendered is codified as a crime in both the sending and receiving countries. Thus, one may not be haphazardly or

## And the gloves came off

**Following the London terrorist attacks in July, UK Prime Minister Tony Blair announced that "the rules of the game are changing" and extended powers will be brought in to deport or exclude foreigners who encourage terrorism. But what do such measures mean for the rule of law relating to extradition and human rights?**

**DOUGLAS C MCNABB and MATTHEW R MCNABB argue that Britain is following the United States down the wrong path**

indiscriminately sent to foreign jurisdictions.

So when a state expressly ignores treaty law in favour of expediency, the action troubles most reasonable peoples of Europe and around the globe. In the aftermath of 9/11, the scope of what is considered permissible, for many within the American Executive branch, has become grossly expanded – whatever the law. Cofer Black, former head of the CIA's Counterterrorism Center, perhaps expressed it most coherently when he said: "Let's just say that there was a before 9/11 and an after 9/11 – and after

9/11, the gloves came off." Since then, we have begun to see just what this 'tough' approach can mean.

What is particularly troubling is to witness the British government progressively follow suit, in the wake of its own experience of terrorist attacks in July. Mr Blair's decision to deport Islamist extremists who will subsequently be tried in the criminal courts of whatever jurisdiction they are to be rendered to is an overt and flagrant attempt to skirt the law of extradition. The principle of exclusivity would have it that the due process provided for by the treaty must

be followed for an extradition. So why not extradite? Namely, because most of those actions for which Mr Blair wishes to expel these people simply are not criminal. Thus, the principle of dual-criminality is not met.

In order to skirt the principle of exclusivity Mr Blair will rely upon a 1960s case of an American who held dual-citizenship with Israel. Robert Soblen, the defendant, was charged and sentenced out of the United States for the crime of espionage, but prior to being taken into custody, Mr Soblen fled to Israel, where he was immediately rejected and put on a plane back to the US. Unfortunately for American authorities, the flight was not a nonstop: en route to New York the plane touched down in London where, hoping to gain an opportunity to escape, Mr Soblen slit his wrists. He was taken to the hospital and claimed – correctly – that he could not be extradited to the US because, according to the treaty at the time, espionage was a non-extraditable offence. However, wanting to get Mr Soblen back into American custody, the British Home Secretary claimed that he could be deported, rather than extradited. The claim, in essence, was that Mr Soblen was – in a very general sense – simply an undesirable presence within the United Kingdom and could be deported as such. That he was ever charged out of the US, the Home Secretary contended, was immaterial to the deportation.

Recognising the conflict between deportations and extradition, the UK Court of Appeal concluded that judges lack the particular competence that the government has to make a determination as to whether Mr Soblen was being deported to skirt the extradition treaty or simply to remove him from the country for other unidentified reasons. Cue Mr Blair's contemporary decision.

While the Prime Minister may see some individuals within the United Kingdom as enemies of the state, out of concern for the human and civil rights of its citizens, Parliament has made the cogent choice not to criminalise most forms of speech. However, as Mr Blair is

Mr Blair's decision to deport Islamist extremists who will subsequently be tried in the criminal courts of whatever jurisdiction they are to be rendered to is an overt and flagrant attempt to skirt the law of extradition

most certainly aware, other states in the Middle East are not so concerned for those rights – and so, in skirting the law of extradition, the decision has been made to claim ignorance as to what might occur to the suspect once rendered. Those states to which suspects would be sent represent a veritable 'who's who' of world torturers and human rights abusers and the Prime Minister has apparently been conscious enough of their post-deportation status to acquire agreements from those countries that the given individual is not to be treated inhumanely.

Avid news junkies, and others who follow the Global War on Terrorism devotedly, could note the keen parallel with American policy. For the past few years – even pre-dating 9/11 to some extent – the Central Intelligence Agency (CIA) has been in the business of rendering terrorism-related suspects to places like Egypt, Jordan, Syria, Saudi Arabia, Afghanistan and Uzbekistan, for

the purposes of harsh interrogation. To provide an ostensible waiver from criminal culpability, in what reportedly has been a series of interrogations most accurately described as mental and physical torture, the CIA secured the same kinds of agreements.

The Torture Convention, to which nearly every civilised nation in the world is a member, expressly states that "no state shall expel, return ('refouler'), or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture". As to what constitutes 'substantial grounds', according to the convention it is based upon a finding of "the existence in the state concerned of a consistent pattern of gross, flagrant, or mass violations of human rights". No doubt, nearly all of the nations to which both the CIA and Mr Blair have or intend to render supposed suspects are covered under this definition. The agreements, according to sources in the CIA, attempt to waive these objections, as with any further human rights concerns related to torture. But, in earnest, how believable are these pacts? In most countries, as report after report illustrates, agreements of this kind are generally considered illusory. When it is in the national security interest of a state which apparently regards torture as yet another tool of its security apparatus, it seems unrealistic to assume that torture will never be the result, as the law demands.

And so we are witnessing a counterterrorism policy which reacts by shirking both the law of extradition and that of torture, in pursuit of expedient solutions. Mr Blair's actions are not a surprise, but they are no less shocking, for those who believe that the greatest threats to freedom exist both externally from terrorists and also from the internal corrosion of the rule of law. Many in Europe stand aghast at the willingness of the American government to step down the long and troubled path of imperial vindictiveness and now too the first steps down that same road have been taken by one of their own. ■