

Extradition Law and Practice in the Crucible of Ulster, Ireland and Great Britain: A Metamorphosis?

by
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INTRODUCTION

The cases of Gerard Tuite, Dominic McGlinchey, Seamus Shannon and, potentially, Evelyn Glenholmes, are milestones as regards Anglo-Irish relations in the difficult area of extradition between Eire and the two constituent parts of the United Kingdom — Ulster and Great Britain. Some would say these cases represent a notable step forward in the application of the principle *aut dedere, aut judicare* (extradite or prosecute) to Irish Republican ‘terrorists,’ while others would insist that these same cases contain an odious reversal of Ireland’s historical policy of granting asylum to Irish ‘patriots.’

To understand and appreciate fully the significance of these decisions, it is initially necessary to outline the Irish and British positions on the extradition of fugitive political offenders. This paper then considers the practical application of these positions following the renewal of civil conflict after 1969. The effect of the ‘flanking movement’ contained in the extra-territorial legislation of 1976 is detailed while other suggested solutions to the extradition problem such as an all-Ireland Court are covered briefly. The period after 1981 is examined, particularly in relation to the aforementioned cases. Conclusions drawn from these cases along with the recent signing of the European Convention for the Suppression of Terrorism (ECST) by Ireland provide some signposts regarding the future direction of extradition among the three parties.

BACKGROUND PRE-1969

The Irish Republic occupies as peculiar a place in British political culture as does Ulster in its relationship to Eire. Ireland is a sovereign republic, yet its citizens enjoy the British franchise.¹ Ulster, according to Article 2 of the Irish Constitution, is an integral part of Eire, yet this is without practical effect due to the partition of 1921. This situation is characterized by the number of citizens of each state resident in the other. According to 1979 figures approximately 34,000 Irish citizens were usually resident in Ulster, and calculations based upon the 1971 census indicate 26,183 Ulstermen and 84,038 persons born in Great Britain were resident in Eire.² This interpermeability of populations suggests the historical ties in the triangular relationship better than any historical review.

The peculiarity of the relationship is also manifest in the rendition of fugitive offenders among the three. To speak of extradition, as it occurs between other sovereign, foreign states, is somewhat misleading since the return of fugitives between Eire and the U.K. occurs under a

system of 'backing of warrants.' The system operates not by treaty but under reciprocal legislation and with validated warrants endorsed in Ireland as capable of enforcement in the U.K. and vice versa.³ Although initiated when Ireland was a British colony, the practice was maintained after the Anglo-Irish Treaty (1921). It lasted until 1964 between Eire and Great Britain but broke down as early as 1929 between Eire and Ulster due to a decision of the Dublin High Court that there was no authority for such a practice.⁴ Authorities in Northern Ireland reciprocated by refusing to endorse Irish warrants and from 1930-1965 there was no formal rendition between the two constituent parts of Ireland.⁵ That the relationship between Eire and Great Britain worked more smoothly is illustrated by the 109 Irish warrants executed in Great Britain and 89 British warrants executed in Eire during 1957.⁶ However, in 1964 the practice ended when decisions in the House of Lords stopped endorsement of Irish warrants in Britain, and an Irish Supreme Court ruled that the process of backing of warrants was repugnant to the Constitution.⁷ Thus, in 1964, all three jurisdictions were potential havens from extradition.

Even while the original system was in place, it contained several points of departure from normal extradition procedure. With no judicial control, the accused was protected by none of the normal safeguards. Particularly significant to this study, was an absence of the 'political offence exception.' Nonetheless, these points did not prove the major barrier to the operation of the system possibly for two reasons. Firstly, within Ireland the system ceased operation within a decade of the founding of the Irish Republic while, secondly, the British authorities attempted to be circumspect in advancing warrants with political overtones, as evidenced in a 1923 Home Office circular urging restraint.⁸ This demonstrates an acute awareness on the part of the British that rendition of fugitive political offenders, while legally feasible, could prove politically difficult.

British extradition law was codified in the 1870 Extradition Act, and the definition of the political offence developed from case law dating to the 1890s. In *Castioni* (1891), the court ruled that to benefit from the exception to extradition, the offence must not only be incidental to and part of political disturbances, but must also be in furtherance of the same. In *Meunier* (1894), the requirement that there be two parties vying for control of the state was added.⁹ These two cases form the basis of the British approach, the 'political incidence' theory.¹⁰ It concentrates on the offence and the context of the offence rather than on the offender and his motive, a distinction clearly made in the case of *Schtraks v. The Government of Israel* by Viscount Radcliffe:

In my opinion the idea that lies behind the phrase 'offence of a political character' is that the fugitive is at odds with the State that applies for his extradition on some issue connected with the political control or government of the country... . There may, for instance, be all sorts of contending political organizations or

forces in a country and members of them may commit all sorts of infractions of the criminal law in the belief that by so doing they will further their political ends: but if the central government stands apart and is concerned only to enforce the criminal law that has been violated by these contestants, I see no reason why fugitives should be protected by this country from its jurisdiction on the ground that they are political offenders.¹¹

This is how British law stood in the mid-1960s when the Irish Republic formulated its own Extradition Act.

Faced with the breakdown of the old system, authorities on both sides of the Irish Sea worked out a new arrangement, known in the U.K. as the Backing of Warrants (Republic of Ireland) Act 1965, and in Eire as Part III of the Extradition Act, 1965. The terms of the Irish legislation were heavily influenced by the 1957 Council of Europe Multilateral Extradition Convention. Lacking the requirement of a *prima facie* case,¹² which the British use in dealing with other states, the Irish legislation differs significantly from British law. O'Higgins suggests that Irish insistence on dropping such items was due to a desire to harmonize the Anglo-Irish practice with the extradition procedures followed with other states.¹³

More significant, for the purpose of this paper, is the discrepancy in the statement of the 'political offence exception' contained in the two pieces of legislation. The British law refers to denial of surrender for an "offence of a political character" while the Irish act refers to "a political offence or an offence connected with a political offence."¹⁴ Therefore, two pieces of legislation existed which intended to impose identical and reciprocal obligations and which, by their wording, might not. The two phrases do not, necessarily, define the same offence. Certainly in 1965, it was unclear whether the Irish courts would turn to British case law for a definition of political offences or, given the central role of the 1957 Convention, to European examples. In his commentary, written the year after the 1965 Act came into being, O'Higgins opined that, "... the Irish courts in interpreting this provision will not be able to rely upon Anglo-American decisions... . They will have nothing to guide them as to the meaning of 'political offence'."¹⁵

The wider interpretation given by the Irish courts in their developing case law from 1965 until 1970 prior to the onset of the latest manifestation of 'The Troubles' is best displayed in two cases. *Bourke v. the Attorney-General*, and *The State (Magee) v. O'Rourke* resulted in Supreme Court decisions and both contained a noteworthy dissent by Mr. Justice Fitzgerald, who later held the post of Chief Justice briefly in 1973-74. In the former case, the defendant assisted the escape and sheltering of a Soviet spy jailed in England. The Supreme Court ruled this offence was connected with a political offence, and stated that the 'connected offence' itself did not have to be political in character. Chief Justice O'Dalaigh argued that the connection must be "spelt out by the

courts in the widest possible manner.”¹⁶ In his dissent Justice Fitzgerald noted it was the spy’s original offence which was political, not his offence of escape; therefore, Bourke’s offence of assisting the escape could not be connected with a political offence. However, the majority of the court disagreed with Fitzgerald’s view.

In the latter case extradition was requested for blatantly non-political crimes, but the appellant claimed he might be charged with political offences if returned. In support he produced affidavits concerning his role in a 1963 IRA raid on a British military barracks in Ulster, and the fact that he had been questioned about it by the Royal Ulster Constabulary (RUC). The Chief Justice gave the court’s opinion that due to the appellant’s virtual admission of complicity in the political offence of the raid, Magee had brought himself within the purview of S.50(2)(b) of the Irish Act. This limited application of the specialty rule in Anglo-Irish law disallows extradition if there are ‘substantial grounds’ for belief that, once returned, a fugitive will be tried for a connected offence or a political offence. In the early 1970s the Irish Supreme Court was evidently willing to impute bad faith to the prosecuting authorities of Ulster. This is explicit in Justice Fitzgerald’s dissent with which Justice Teevan was in accord. They felt that Magee failed to produce the necessary ‘substantial grounds’ and were unwilling to speculate that the Ulster authorities might not adhere to the limited specialty rule.¹⁷ Only two of the five judges of the Irish Supreme Court were willing to extend the benefit of the doubt to the judiciary in Northern Ireland.

While the British position regarding the political offence exception prior to 1970 can be characterized as ‘political incidence’ theory, the Irish position is less easily defined. Clearly Irish courts do not apply the British approach, but, as various commentators note, there have been too few published cases to determine the Irish position absolutely, beyond its tendency toward the more broadly defined European approach.¹⁸

As the Irish Supreme Court worked toward defining its position, the conflict in Ulster was coming to a head in 1969-70. Concomitantly, the British courts maintained their adherence to their stated position when faced by Irish extradition requests for two Irish gunmen. Patrick Dwyer was held in England after jumping bail on a charge of shooting at officers of the Garda Síochána. The gunfire allegedly came from a car transporting arms and came in an attempt to evade arrest. Dwyer claimed membership of a group splintered from the IRA. In his ruling granting extradition, Lord Parker stated he was not satisfied that shooting at police officers was a political offence.¹⁹ It is probable, given the decisions in the cases of Bourke and Magee, that an Irish court would have decided otherwise.

Of equal import is the case of Patrick F. Keane accused in Eire of two bank robberies and the murder of a Garda during the commission of one robbery. He claimed membership of Saor Eire which had acknowledged it carried out several similar actions with the purpose of providing arms for comrades in Ulster.²⁰ Keane had been a member of

the IRA until 1964, served time for an attack on the governing Fianna Fail party office in 1967, and was often questioned about other occurrences by the Garda. This information was given as background to his application for a writ of *habeas corpus* from the High Court, claiming he feared that if returned for a non-political offence he would be detained or tried for a political offence under S.2(2)(b). Again Chief Justice Lord Parker refused the application stating that Keane had failed to prove 'substantial grounds' for his claim.²¹ This decision was upheld unanimously by the Law Lords to whom Keane was given leave to appeal because the matter rested on a point of law of general public import. In giving the decision of the Law Lords, Lord Pearson noted two affidavits from the Irish Attorney General stating Keane would only be tried on the offences cited in the warrant:

assurances such as are contained in these two affidavits are properly admissible and can properly be taken into account under S.2(2)(b) of the Act, although, in view of the uncertainty of future developments and the possibility of new political situations and exigencies arising, they should not be regarded as conclusive.²²

The Keane decision was completely opposite the highest Irish court's ruling in the Magee case. While the Irish Supreme Court apparently attributed actions of 'bad faith' to the courts in Northern Ireland, the highest British court was unwilling to do so in regard to courts in the Republic. A clearer division cannot be found.

'THE TROUBLES' REVISITED

The first British military fatality in the renewed conflict in Northern Ireland came in February 1971, quickly followed by the introduction of internment without trial by authorities in Belfast. In the context of the worsening situation, the RUC began to request the return, from Eire, of those who had committed offences in Ulster. Due to the lack of centralized collection of statistics and the inevitable discrepancy among sources, it is practically impossible to determine an exact figure for the number of returns sought by the Ulster authorities in these early years. In November 1972 Joint Minister of State for Northern Ireland David Howell claimed that extradition was sought from Eire in 31 cases during 1971.²³ A second source claims the same figure of 31 warrants for 'subversive activities,'²⁴ but a third, by far the most well-documented source, claims only 15 and lists the individuals by name and by the date the warrant was forward to Eire.²⁵ It must also be pointed out that there are instances of more than one request being forwarded for specific individuals. This should be taken into account when considering any claim concerning the number of unsuccessful extradition applications made by the RUC. A further point to note is the number of fugitives who, after a warrant was forwarded to Eire, were subsequently apprehended in Northern Ireland. A more detailed examination of these statistics is found in the final section of this paper.

These considerations are evident in the cases of two groups of Provisional IRA (PIRA) fugitives who escaped custody in Ulster in late 1971.

Of seven individuals who broke out of Belfast's Crumlin Road Jail on November 16, 1971 and whose extradition was requested, five were eventually recaptured in Ulster.²⁶ A further three who escaped on December 2, 1971 and whose return was requested on December 15, 1971 illustrate both points mentioned above. Martin Meehan was recaptured in Belfast in August 1972, and there was a second extradition request made for Anthony 'Dutch' Docherty in January 1972.

Other problems encountered as the requests multiplied, due to the violence in Ulster, are illustrated by two of the first applications before the Irish courts in 1971. Edward MacDonald, Thomas McNulty and Edward Hamill came before Monaghan District Court in September. The extradition warrant listed a charge of possession of explosives in County Tyrone in early 1971. The judge, who was the only Protestant district justice in Eire, held that there was insufficient evidence before the court to identify the three as those named in the warrant and he discharged them after commenting he was not satisfied with the *de jure* status of the requesting state, Northern Ireland.²⁷ A similar breakdown in the process occurred with the request for Sean Gallagher. He was detained in October on a warrant alleging murder of an RUC constable but released by Killybegs District Court. The court claimed, as in the previous case in a different court, insufficient identification evidence.²⁸ However, in answer to a parliamentary question in London, a government minister noted that a photograph, full description, details of tattoo marks, fingerprints and a witness were available. The Minister of State for the Foreign & Commonwealth Office outlined the British position on such decisions:

... the Executive has no power to interfere in the actions of the judiciary. For this reason, it would serve no useful purpose to raise officially with the Government of the Irish Republic decisions made by the courts of that country. On certain occasions, however, there have been puzzling features about such decisions in extradition cases, for example, refusal to accept apparently conclusive identification evidence, and we have asked the authorities of the Irish Republic to explain them.²⁹

Through 1972 the situation remained static. While British Ministers claimed there were approximately 155 persons wanted by the RUC for questioning and known to be in Eire, according to figures released in Parliament, only sixteen requests for extradition were made to Eire throughout 1972.³⁰ In Eire itself the government clampdown on the IRA (Provisionals and Officials) was strengthened in May with the formation of the non-jury Special Criminal Court (SCC). It was to try 'scheduled offences' under the Offences Against the State Act 1939 and various arms and explosives offences. In October 1972 Irish Justice Minister O'Malley noted that the bulk of those convicted before the SCC were from north of the border.³¹ Noteworthy as well was the apparent tightening of the Irish government's attitude towards extradition. Several of those released by the district courts in 1971 were rearrested in 1972, often at the instigation of the Irish authorities. In many of these cases the

district courts then granted the extradition requests and those affected appealed to the High Court in Dublin.

This apparent tightening of attitude on the part of the Irish authorities, as distinct from the judiciary, may be attributable in part to the increase in violence in Eire directly linked to the conflict in Ulster. Furthermore, in 1972-73 the Republic itself was beginning to request the return, from Ulster, of fugitives involved in acts committed in Eire in the context of the overall conflict. In October 1972 seven Republicans detained in Curragh Camp in the Republic escaped from custody. Four of the group were from Ulster and on November 11, 1972 one, Thomas Corrigan, was recaptured there. He was extradited to Eire two days later by a court in Armagh and chose not to appeal the decision.³²

In another case a Protestant gunman, Robert Taylor, was accused by Irish police of the murder of a couple in County Donegal on January 1, 1973. Ordered extradited by a court in Northern Ireland, he appealed. He claimed the benefit of the 'political offence exception' alleging that one of the victims was affiliated with the PIRA. This was not accepted in the Queen's Bench Divisional Court and a writ of *habeas corpus* was denied. The only evidence offered in support of Taylor's claim was his personal assertion and an affidavit which stated that he had received information that one of the victims was a Provisional. In dismissing the application Lord Chief Justice Lowry found the evidence "totally imprecise and lacking in detail" and further it was

impossible to find any other judicial pronouncement which would support a definition of the phrase 'an offence of a political character' wide enough to assist the present applicant.³³

Taylor was extradited to Eire in June, in an atmosphere of widespread Loyalist demonstrations orchestrated by the Ulster Defence Association (UDA) and threats of disruption and worse if Taylor were returned to Eire for trial. Ironically, the SCC acquitted the defendant after his extradition, ruling that there were irregularities in the only major piece of evidence against him, namely, his own confession.³⁴

During this period the appeal procedure in the Republic was proving extremely lengthy. The three applications before the courts in December 1972 rose to ten by July 1973.³⁵ However the Irish government pressed the rules committee of the High Court to devise a speedier procedure so that cases would be heard by the High Court within three months of a lower court extradition order. By November 1973 a total of eleven persons were appealing extradition orders³⁶ and the first High Court decision on these matters came in December. Anthony Francis Shields was charged with possessing ammunition in Belfast in 1971 and fled south while on bail. He admitted membership of an illegal organization and claimed the RUC had threatened him with charges over the attempted murder of several British soldiers. In quashing the extradition order, Justice Butler based his findings on Shields' evidence of IRA membership. He noted that it had not been challenged, adding he

could come to no other conclusion but that the offence charged in this case was a political offence and that if the plaintiff did have possession of the ammunition, it was to be used in furtherance of IRA activities.³⁷

This decision accepted that activities engaged in by the IRA would be considered political by the second highest court in the Irish Republic. The Shields ruling was soon buttressed by two more involving much more serious charges. In both cases the High Court's opinion was given by Mr. Justice Finlay who was to become Chief Justice in 1985. Sean Gallagher was detained on the second warrant for his return. His alleged murder of the RUC constable was deemed political based on previous cases and Justice Finlay stated that if an offence was committed by someone seeking to change by force the government then that crime was a political offence.³⁸ It is also worth noting the comments of Justice Finlay in the case of James 'Seamus' O'Neill. He was accused of an RUC station bombing which killed two passersby and had been ordered extradited for the murder of one of them. On appeal, the murder was ruled a political offence. In so ruling Mr. Justice Finlay stated,

I am not entitled to have any regard to the fact that the admitted activities of the present applicant seemed to breach any concept of humanity or any civilized form of conduct.³⁹

These two cases reinforced the position of the Irish courts that, however serious the offence and whatever its effects on the victims, so long as the applicants could prove a connection with the activities of the IRA, their crimes would be ruled political offences. This was taken even further in the ruling in the case of Roisin McLaughlin. The crime alleged was the murder of three unarmed, off-duty British soldiers, lured into an ambush in which the plaintiff took part. Following the district court decision to allow extradition, there were rallies in Eire, similar to those in Ulster over the Taylor case. Provisional Sinn Fein Vice-President Maire Drumm issued the thinly-veiled threat that if McLaughlin were extradited to Northern Ireland, the conflict there could spread into the Republic.⁴⁰ McLaughlin's appeal was heard in December 1974 and was remarkable in that, unlike previous appeals, the appellant neither gave evidence nor admitted or denied commission of the offence. This removed the usual statement of motive before the court and a political link had to be built through the evidence of others. McLaughlin's husband claimed the RUC had informed him they believed she was involved in the ambush in her role as a PIRA intelligence officer. Mr. Justice Finlay ruled out any likelihood of a personal motive of revenge or robbery due to the number of people involved in the ambush, the degree of organization, and the obvious intent to kill all the soldiers involved. Echoing his previous findings he wrote,

There could be no doubt that even murder, and even such a dastardly murder as that described ... in this case, if carried out by an organization which, by such methods, sought to overthrow the government of a country by force, was a political offence.⁴¹

The fullest expression of the Irish position concerning fugitive political offenders at that stage came in the case of a Catholic priest accused of handling explosives in Scotland. Michael Farrell characterizes the decision as remaining "for almost a decade ... the key pronouncement on the political offence exception in relation to the IRA and the Northern Troubles."⁴²

In the case of Father Bartholemew Burns, as in the others, there was no doubt concerning his involvement in the offence charged. Two Irishmen convicted in Glasgow of the same explosives offence implicated the priest⁴³ and he himself admitted the offence in his appeal. Along with the appeal Father Burns was also reported to be attempting to challenge the constitutionality of the Extradition Act.⁴⁴ It is necessary to quote directly certain segments of Mr. Justice Finlay's upholding of the appeal for two reasons: to reinforce points made in previous rulings, and to facilitate a comparison with his decisions made over a decade later when he became Chief Justice of the Irish Supreme Court.

Justice Finlay noted that the only issue necessary for this determination was whether the safekeeping of explosives for the PIRA, which was engaged in the attempt to "overthrow and change the political structures of a country by the use of violence," was an offence connected with a political offence or was, in itself, a political offence.⁴⁵ Referring to the Castioni decision and the political incidence theory of the U.K., he stated,

It seems again to me impossible to categorize the existing situation in Northern Ireland and Britain ... as being otherwise than a political disturbance part of and incidental to which is the keeping of explosives for the organization known as the IRA.⁴⁶

This was the sole question on which Justice Finlay was required to rule by his own determination and he pronounced himself satisfied that the offence was political. However, Justice Finlay went a step further and stated his belief that the same conclusion would be reached by a common sense appraisal of what constituted a political offence.⁴⁷

While the aforementioned cases primarily concerned offences alleged to have been committed in Northern Ireland, other requests from Great Britain for a number of individuals accused of involvement in bombings in England fared as poorly. The first concerned Patrick Joseph Gilhooley, accused of planting a bomb at Aldershot station. He was detained in Eire on an extradition warrant on leaving Portlaoise Prison on December 1, 1975 on completion of a sentence for IRA membership.⁴⁸ Extradition was granted by a lower court and appealed to the High Court.

In the interim, the case of Margaret McKearney occasioned a series of confused moves in London and Dublin but never reached the actual state of the forwarding of a warrant to Eire. She was the subject of an April 1975 arrest warrant in Hampshire and in September became the center of a burst of media speculation. The commander of the Scotland

Yard Bomb Squad claimed that an application for her extradition was likely, and the police issued an unusually detailed account of her alleged activities as a courier of arms and explosives, and her involvement in several shootings. Police sources were quoted as believing there was little chance of a successful extradition, but felt that the widespread publicity would neutralize her further usefulness to the Provisionals. On November 29th she was detained by the Irish Special Branch under the 1939 Act but was released within 48 hours due to a lack of evidence. Scotland Yard was then reported to have officially requested her detention pending the forwarding of an extradition warrant which was said to be with the Director of Public Prosecutions (DPP). However the application was never sent to Dublin and there was media speculation that the British were awaiting the outcome of the Gilhooley appeal, then before the High Court in Dublin.⁴⁹ This reticence, especially following British police claims in September, caused not a little uncertainty and anger in the Irish capital. The result was a report that "there is now widespread feeling in the Irish coalition Cabinet that the police in Britain do not possess enough evidence to support the charges they made against Miss McKearney in two press conferences."⁵⁰

Whether or not this was the case, if the major reason for the delay was to await the outcome of Gilhooley's appeal the British were to be disappointed. In line with previous decisions, the High Court ruled the offence political, in spite of the 'disagreeable' nature of the offence according to Mr. Justice McMahon. Gilhooley's statement in court claiming IRA membership indicates why a court in Eire would have little difficulty in finding that his crimes were political offences. He states,

The IRA is an organization, one of the aims and objectives of which is, by the use of armed force if necessary, to secure radical change in the continued government of that part of Ireland not yet reintegrated with the remainder.⁵¹

Finally there was the case of Brendan Swords linked to an IRA arsenal unearthed in London in April 1976.⁵² Arrested in Eire in February 1977 on IRA membership charges he was acquitted in March. Soon after, Scotland Yard applied for his extradition charging involvement in a series of bombings. On appeal to the High Court his offences were, as usual, ruled political and he was rendered immune from extradition. The timing of the offences proved crucial. When a Bomb Squad officer appeared before the district court in July 1977, he stated the warrant was for conspiracy to cause explosions and that a series of sixteen incidents "obviously committed by the same team"⁵³ was under investigation. This particular offence was the only one under the new Criminal Law (Jurisdiction) Act which, if committed in Great Britain, could be tried by the courts in Eire. Unfortunately for the British police, the extra-territorial legislation was not retrospective and the offences were committed prior to the CL(J)A coming into force. Swords joined Gilhooley, McKearney and others as beneficiaries of the asylum Eire was granting Irish Republican bombers and gunmen through the actions of her courts.

While British authorities were singularly unsuccessful in securing the return of fugitives charged with offences committed in Great Britain, in contrast, the British courts continued to return fugitives accused of committing offences in Eire which were part of the Irish conflict. Space does not permit detailed examination though two distinctive reasons can be considered.

In the celebrated case of the Littlejohn brothers, wanted for armed robbery in Ireland, the brothers claimed the political offence exception stating that they had been working in the Republic for British Intelligence as agents provocateurs. The Ministry of Defence admitted contact with the pair but dismissed claims that offences committed in Ireland were at their behest. Following extradition proceedings held *in camera*, the two were returned to Eire in March 1973 and subsequently convicted by the SCC. One year later they escaped and Kenneth Littlejohn made it back to England. He was rearrested there in December 1974 and during these extradition proceedings the details of the secret 1973 proceedings were revealed. In the earlier court case the applicants claimed that the robbery was a political crime within S.2(2) of the 1965 Act due to their links with the IRA. This connection was not doubted by the court, nor was it disputed that the raid was to obtain funding for the IRA. However in 1973, Lord Widgery CJ referred to Viscount Radcliffe's dictum of 1962 regarding the court standing apart from the political issues. In summary he wrote,

Thus one reaches the stage now on the weight of authority ... that an offence may be of a political character, either because the wrongdoer had some direct ulterior motive of a political kind when he committed the offence, or because the requesting state is anxious to obtain possession of the wrongdoer's person in order to punish him for his politics rather than for the simple criminal offence referred to in the extradition proceedings.⁴⁴

Neither of these conditions pertained in 1973 so the brothers were extradited. The only new element injected into the proceedings in 1975 was Kenneth Littlejohn's claim that trial by the SCC after their initial extradition indicated their crime was a political offence under S.2(2)(b). Lord Widgery examined the establishment of the SCC under the 1939 Act and could find no acknowledgement that trial before this non-jury court meant the offence in question was necessarily political. Extradition was therefore granted. Had the brothers carried out their robbery in Ulster on behalf of the IRA it is likely that an Irish court would have refused their extradition to Ulster based on a reading of the same facts. The key difference is that in this hypothetical reverse situation it could be argued that the suspects were at odds with the government in Ulster and were engaged in an attempt to change it by obtaining funds for the IRA. By no means could the brothers be conceived of as attempting to overthrow the Irish government in the case, despite their acknowledged links to British Intelligence.

The second instance also involved an alleged link to British Intelligence and is noteworthy because it referred to an alleged abduction in

Eire, the first of several. William Poacher failed in an attempt before the High Court in Great Britain in December 1973 to stop his extradition to Eire. He claimed to fear for his life because of his participation in the suspected abduction of a senior PIRA member, Sean Collins, from Eire to Ulster. Lord Widgery stated that it was apparent the appellant had infiltrated the PIRA to act as an informant at the behest of the British security forces. The fact that he feared for his life as result was not grounds on which the court could act.⁵⁵ The abduction to which Poacher alluded occurred in January 1972 in Dundalk and also allegedly involved Kenneth Littlejohn. Collins' solicitor claimed that a man resembling Littlejohn abducted his client at gunpoint in the Republic on January 13, 1972 and drove him into Ulster where he was delivered into the custody of the British Army.⁵⁶

If these claims were valid, this case marks a descent into illegality by elements of the security forces in Ulster, a move which can be traced to frustration over the lack of success in extradition from Eire. Other incidents have recently come to light which suggest that the alleged Collins kidnapping was not an isolated incident.⁵⁷

Several points emerge from an examination of Anglo-Irish extradition practice in the period up to the mid-1970s and the enactment of the aforementioned extra-territorial legislation. First, and most compelling, is the difference in the interpretations of the political offence exception between the Irish and British courts. Courts in the U.K. maintained a strict adherence to the political incidence theory and the related idea that the fugitive must be at odds with the requesting state over some issue connected with the governance of the country. The Irish courts have followed a broader interpretation, though it is clear that the cases studied, in some instances, could also be defined as political under the British interpretation. Recalling Mr. Justice Finlay's words, they could also be considered political under any 'common sense' interpretation of the term and as several Irish judges maintained, this was the only issue before them for a judicial decision. The judges had no authority to comment upon the morality, or lack of morality in what were, in many cases, heinous crimes of murder and mutilation involving innocent civilian bystanders.

While the courts limited their attention to strictly legal determinations, it can in no way be said that the Irish authorities were 'soft' on the IRA. The IRA had been a proscribed organization in Eire well before being so designated in Ulster. Further, under the amended 1939 Act, the unsupported assertion by a police officer that he believed the defendant to be a member of the IRA provided all the evidence necessary for conviction in the Irish Republic on that charge. These are not the acts of a government lax in its concern with the IRA. Perhaps the position of the Irish coalition government in power in the mid-1970s is best summarized in the following statement of the Minister of Justice before the Dáil in April 1975:

I feel that there is well nigh universal embarrassment in this country at the predicament in which our judges find themselves, being constrained as they are in ...

extradition applications to release persons accused of most serious crimes. This widespread embarrassment is compounded by the knowledge that the release of these fugitives is a matter of grave scandal in Northern Ireland where our fellow Irishmen have suffered so much in their persons and properties at the hands of these people.⁵⁸

EXTRA-TERRITORIAL JURISDICTION — A FLANKING MOVEMENT

The deterioration in the security situation and the inability of the Ulster authorities to secure extradition of Republican gunmen occurred in the context of the changing political situation in Ulster and Eire. On 'Bloody Sunday' January 1972, the shootings by the Parachute Regiment in Londonderry crystallized anti-British feeling among large segments of the Nationalist minority hitherto unmoved by the situation. Two months later, in March, the Stormont government was suspended and direct rule from London was instituted. In Eire, the Garda arrested Provisionals, seized arms and on December 22, 1971, had its first serious confrontation with the PIRA when the arrest of three members in County Donegal occasioned serious riots.⁵⁹ At the 'Ard Fheis' of Provisional Sinn Fein in October 1973 Vice-President David O'Connell reiterated the threat that Dublin would not remain immune in the event of extradition of Republicans to Ulster.

It was in this atmosphere that representatives from London, Dublin and Belfast met at the Sunningdale Conference in December 1973. The main aim was to structure a power-sharing executive but conference members also discussed the idea of a common law-enforcement area to bypass the problems of extradition. Dublin's ideas had been put to the Northern Ireland Secretary, William Whitelaw, in November by Irish Foreign Minister Dr. Garrett Fitzgerald. The conference led to the formation of an eight-man⁶⁰ legal commission to examine various alternatives. All parties at Sunningdale had agreed,

... that persons committing crimes of violence, however motivated, in any part of Ireland should be brought to trial irrespective of the part of Ireland in which they are located.⁶¹

The Commission examined four alternatives: all-Ireland Court, extradition, extra-territorial jurisdiction, and mixed courts. The first was dispensed with as being too involved to deal quickly with the problem as the Commission was ordered.⁶² The idea of amending extradition procedures by appending a list of scheduled offences for which the political offence exception could not be claimed was discussed but discarded as the Commissioners could not agree on the legal validity of extraditing those who, at present, enjoyed immunity contingent upon the exception. The concept of mixed courts containing judges from both jurisdictions was debated, however, it was found to provide no legal or procedural advantage over purely domestic courts for the purposes of extra-territorial jurisdiction.

Both parties were able to agree upon the use of extra-territorial jurisdiction. Those opposed to extradition, the Irish jurists, favored it above all other methods, while the British jurists found it worthy of recommendation where extradition was unavailable. Further, the speed with which extra-territorial jurisdiction might be implemented was a matter of prime consideration for the Commission.

Two specific points were stressed by the Commissioners in choosing this method. First, its success depended upon measures designed to secure evidence and testimony and move it between jurisdictions. Second, it would only apply to a schedule of offences comprising crimes of violence, a list appended to the report.⁶³

Even prior to the formation of the Commission, some crimes had fallen under extra-territorial jurisdiction. On December 20, 1973 the Irish government revived the dormant S.9 of the Offences Against the Person Act, 1861,⁶⁴ allowing the prosecution of an Irish citizen in Eire for the crime of murder committed in Ulster. The change was followed by a sweep of IRA suspects in Eire and the first official meeting of RUC and Garda chiefs to take place in years. However, the legislation was not retroactive and no cases were known to be prosecuted under its terms. Reportedly, an Irish government official remarked,

The fact that this exceptional legal provision has never been invoked shows clearly that there has been no evidence available against anyone resident in the Republic during the past two years ... that is not the impression given recently by some spokesmen in London and Belfast.⁶⁵

Yet, the Irish courts dealt promptly with Republicans guilty of crimes within Eire. From the May 1972 introduction of the SCC to February 1974, a total of 338 persons were convicted of 'IRA offences' primarily related to arms and explosives.⁶⁶

The collapse of the power-sharing executive left the agreement on extra-territorial jurisdiction as the only matter of substance to survive from the Sunningdale talks. The two parliaments drafted implementing legislation, adding only the offence of causing explosions in Great Britain in response to the mainland bombing campaigns; this was achieved by amending the Explosive Substances Act, 1883.⁶⁷ Legislation passed smoothly through Westminster but not through the Dáil. The opposition Fianna Fail fought it as unconstitutional,⁶⁸ preferring the all-Ireland Court option. However, the Criminal Law (Jurisdiction) Act, 1976 passed with a small majority in March 1976 to become law on June 1, 1976, concurrent with the British Criminal Jurisdiction Act, 1975. Former Chief Justice, now President, O'Dalaigh referred the Act to the Supreme Court for a ruling on its constitutionality and it had been pronounced legal and valid.⁶⁹ Following its enactment, the PIRA retaliated with a threat against any "Free State civil servant, court official, solicitor, counsel, judge or police officer"⁷⁰ administering the law, breaking the precedent set by the original IRA, dating to 1963, of not considering

members of the Irish security forces as legitimate targets. In making this threat the PIRA demonstrated the extent which it feared successful implementation of the Act. During the election campaign of 1977, Fianna Fail leader Jack Lynch hinted his party would scrap the law if elected:

I have already said that I regard it as unworkable. We will look at it again. Our preference is for all-Ireland courts operating on both sides of the border.⁷¹

Fianna Fail won the election but left the CL(J)A in place. The legislation has thus far proved of limited use. As far as can be ascertained, there have been only a few cases in Eire and perhaps two in Ulster, undoubtedly due in part to the problems of obtaining evidence and witnesses just as the Commission predicted. As has been repeatedly noted, some 90% of terrorist-type convictions in Ulster are the result of suspects incriminating themselves during interrogation which can last up to seven days.⁷² The RUC cannot interrogate suspects in Eire or even be present at their questioning by the Garda. Due to the insufficiency of forensic evidence in such cases confessions are often the key to conviction. Understandably, there is a wariness concerning police methods of interrogation. In Eire, Amnesty International, and in Ulster, both Amnesty and the European Commission on Human Rights, have discovered evidence of maltreatment of suspects by the police.⁷³ Given this, it is perhaps surprising that there have been any prosecutions at all under the legislation and it is worth examining them in closer detail to ascertain their special features.

Despite media speculation that a charge was likely against a gunman recovering in Dundalk after a border gunbattle, the first prosecution occurred in Ulster. Five men were charged with kidnapping British army intelligence officer Captain R. Nairac in Ulster and murdering him across the border in Eire in May 1977. On December 15, 1978 they were sentenced to terms ranging from three years to life on a variety of charges including abduction, murder, manslaughter and firearms offences.⁷⁴

The case was noteworthy in that a Garda officer gave evidence in a Belfast court on the murder which was the only extra-territorial offence committed.⁷⁵ Yet both sides initially displayed some reticence. A sixth person, Liam Townson, was charged in Eire with the murder, convicted on November 8, 1977 and given a life sentence. While a British officer travelled to Dublin and gave evidence, Townson's defence team was denied access/use to statements taken from the other five in Ulster by the RUC.⁷⁶ When the trial began in Ulster in February 1978, it was temporarily adjourned because the Irish would not release certain exhibits from the Townson trial for evidence, claiming that the exhibits would be needed at some unspecified future date for Townson's appeal.⁷⁷ Despite these problems, the authorities won convictions in both trials.

As far as can be determined there has been only one other prosecution in Ulster under the Criminal Jurisdiction Act 1975. Former Stormont Speaker Sir Norman Stronge and his son were murdered in Northern Ireland on January 21, 1981 and Owen McCartan Smyth was

charged in Northern Ireland with their deaths. However he was charged under the CJA with counselling and procuring the murder in Eire as he did not take part in the actual murder, which occurred in Ulster and thus was not extra-territorial. Two points of interest came out of the trial. First, court proceedings temporarily transferred to Dublin to enable Justice Hatton to hear evidence there, and Smyth was taken to that city under guard. Despite a separate hearing in Dublin's High Court, where he claimed a right to stay in Eire, he was returned to Ulster. Smyth further claimed he had not been offered the option of trial in Eire, but Justice Hamilton ruled this not to be the case and ordered his return to Ulster.⁷⁸ The second point worthy of comment actually caused the abandonment of the charges. Under S.6(3) of the CJA the initiation of extra-territorial proceedings must have the consent of the Attorney-General. The Northern Ireland court ruled that since such consent had not been obtained the charges were therefore null and void.⁷⁹ Seemingly, this is indicative of a basic ineptitude on the part of the prosecutors which can only be partially excused by their lack of familiarity due to the infrequency of cases under the CJA.

The situation south of the border presents more evidence from which one can draw tentative conclusions concerning the efficacy of the extra-territorial laws. Press speculation mounted in 1979 that Desmond O'Hare was to be tried under the CL(J)A for crimes committed in Ulster but such a line was not pursued, perhaps because he was jailed for nine years under the 1939 Act on November 11, 1979.⁸⁰ The first actual prosecution in Eire came in 1980 and concerned the murder of a former Ulster Defence Regiment (UDR) officer in Ulster. Three men were charged and, with the absence of confessions, the case hinged upon forensic evidence. It took the SCC just thirty minutes to acquit the suspects. Mr. Justice Hamilton explained the court's reasoning, citing the purely circumstantial character of the forensic evidence. It could not be proven beyond a reasonable doubt that mud and hay on the defendants' clothing, while matching that found at the crime scene, could have come only from the crime scene. Further, though firearms discharge residue on their clothes connected them to the firing of a gun, it did not necessarily connect them with the murder in question.⁸¹ The court had no option but to acquit.

The next case in Eire produced a conviction but was overturned on appeal. Again, the crime was the murder of a former UDR officer and while it occurred this time in Eire, the accused's guilt or innocence hinged upon his gathering information about the victim in Ulster. The basis for conviction was a confession in an unsigned statement. The Court of Criminal Appeal quashed the conviction on July 28, 1981, ruling that although there was no breach of fair procedure while the statement was taken, the defendant had been held for twenty-two hours of almost continuous interrogation by that point. Mr. Justice Griffin gave the court's opinion that this went beyond the bounds of fairness. The confession should not have been admitted in evidence and without it there was insufficient evidence to convict.⁸²

During the same period the Irish authorities lost another case under the CL(J)A. An RUC reservist was kidnapped in Eire and murdered in Ulster in an exact reversal of the circumstances of the Nairac case. The defendant's lawyer, Sean McBride, argued that his client had not been given the option of trial in the jurisdiction in which the crime was committed as offered in the extra-territorial law. Justice Hamilton agreed that this was correct; the court had failed to meet its statutory obligation and thus must disavow jurisdiction and dismiss the case. The defendant, Seamus Soroghan, was later convicted for firearms offences and sentenced to five years.⁸³ Ironically, the option that Soroghan was not offered amounts, in effect, to an invitation to extradition and is unlikely to be taken up by many of those charged under the CL(J)A. The error, however, indicates that an unfamiliarity with the provisions of the legislation was not confined to the authorities in Ulster.

Two further cases appear involving individuals from the same group who escaped from Crumlin Road Jail in June 1981. In the first instance, Michael Ryan had been awaiting trial for a 1979 murder and Robert Campbell was actually on trial when they escaped. Campbell was sentenced *in absentia* to life on a murder charge June 12, 1981. A total of twelve RUC personnel gave evidence concerning the escape and the ensuing gunbattle during the recapture in Eire. Ryan and Campbell pleaded not guilty to a charge of escaping lawful custody, attempted murder and firearms possession. Acquitted of the attempted murder charge they were convicted of escape and sentenced in December to ten years each.⁸⁴ In that month and in January 1982 a number of their fellow escapees were also apprehended in Eire. Four of them went on trial in Dublin on similar charges and were convicted and sentenced on February 25, 1982.

These later cases illustrate the efficiency of the extra-territorial laws when used in trials requiring no civilian witnesses and with offences, such as escape, which are easily proved. A somewhat more complex case, and the first CL(J)A case to concern offences committed in Great Britain, concerned Gerard Tuite. He had been arrested originally in England but escaped Brixton Prison while on remand. He was charged with offences in relation to bombings in Great Britain in 1978-79. British police flew to Dublin to give evidence once he was rearrested.⁸⁶

In the first trial Tuite was found guilty in July 1982 of possessing explosives in England. Mr. Justice Hamilton also proclaimed himself satisfied that Tuite had hired the automobiles used in two London car bombings. A second trial for conspiracy to cause explosions in Great Britain was deferred while the first conviction was appealed.⁸⁷ The appeal failed and Tuite was refused leave to go before the Irish Supreme Court. There were seven grounds for appeal including a claim that the SCC lacked jurisdiction to try extra-territorial cases. Irish legal commentators proclaimed the decision,

an effective tightening up of the ... legislation that could pave the way to greater utilization of the law aimed at stopping fugitives gaining a safe haven from United Kingdom justice in the Irish Republic.⁸⁸

The Tuite case indicated that the CL(J)A could and would be used to cover scheduled offences committed in Great Britain if the fugitive were apprehended in the Irish Republic. The Appeal Court ruling reinforced the legal standing of the legislation. However, the extra-territorial laws were not designed as a total replacement for extradition of fugitive political offenders. As the Law Enforcement Commission had emphasized the laws were an interim measure. Developments were to take place in the 1980s which would increase the likelihood that fugitive political offenders would face justice either through the extra-territorial laws or via extradition.

THE NEW ERA

By no means did all the terrorism flow in one direction in Ireland. Various Protestant Loyalist paramilitary groups, the UDA as well as the Ulster Volunteer Force (UVF) and the Ulster Freedom Fighters (UFF), claimed responsibility for a series of bombings in Eire through the mid-1970s.⁸⁹ Some of these bombers appeared before the Irish courts but the majority avoided detection. This led to an intriguing irony. On November 29, 1975, for example, a bombing at Dublin Airport, claimed by the UDA, killed one and injured several others. The Irish Foreign Ministry lodged an official complaint with the British Embassy alleging that the North was being used as a sanctuary for Loyalist terrorists.⁹⁰ Given recurrent claims in Ulster concerning the alleged immunity of PIRA bombers and gunmen in Eire, the irony in such an allegation was undoubtedly intentional. However, as with the previously mentioned Taylor case, the courts in Northern Ireland were prepared to extradite such individuals when presented with valid warrants.

Whatever the problems in the extra-territorial method, the Ulster authorities continued to make extradition applications to the Republic. In the 69 months from June 1976 to February 1982 there were a total of 141 warrants forwarded by the RUC with 34 of these, just under 25%, related to terrorist-type offences.⁹¹ The extradition success rate, as before June 1, 1976, was non-existent, but by 1982 changes were occurring in judicial and political areas which would affect this situation. Providing the context for these changes were the public attitudes toward the situation in Ulster and Eire.

Using an ESRI Survey for Eire and the 1978 Northern Ireland Attitude Survey as the data base two facts of particular interest emerge.⁹² Two Likert items produced the following results:

Question	Response		Eire
	Northern Ireland Protestant	Catholic	
The Irish government should agree to extradition, that is, to agree to hand over to the authorities in Northern Ireland or Britain, people accused of politically motivated crimes in Northern Ireland or Britain.	98%	67%	46%

Question

Response

	Northern Ireland Protestant	Catholic	Eire
	91%	41%	45%

The Irish government is not doing its best to ensure that the IRA is unable to operate from the Republic's side of the Border.

While the strength of Protestant feeling in Northern Ireland is unsurprising, the fact that 67% of their fellow citizens of Catholic background, the traditional IRA constituency, believe the Irish authorities should extradite is. It is also worth nothing that 46%, or just under half, of the Irish respondents were also in favor of this point, though the Irish government remained opposed, most commonly using the argument that a change in policy would conflict with the Constitution. This argument was based on Article 29.3 which stated that Ireland accepted the generally recognized principles of international law as ruling its conduct in international relations, further claiming that one of these principles was non-extradition of political offenders. This position was reaffirmed when Eire refused to sign the ECST. The Foreign Affairs Department's legal advisor stated,

We have no alternative but to refuse because the generally recognized principles of international law do not allow a country to extradite someone wanted by another country for a political crime. For us the matter is closed unless these should change in the next five or ten years.⁹³

Less than decade later Ireland signed the ECST.

The first change came when Dublin signed the Agreement Concerning the Application of the ECST, henceforth referred to as the Dublin Agreement.⁹⁴ Born of a meeting in December 1979 of the nine European Economic Community (EEC) Justice Ministers, the Dublin Agreement obligates non-signatories of the ECST, or those who have imposed reservations on the ECST, to submit for prosecution under their own law those whom they refuse to extradite. The necessary machinery for prosecution already existed between Eire and the U.K. in the form of the CL(J)A. The purpose of the Dublin Agreement was to act as an interim measure among the nine countries, preparatory to the full ratification, without reservation, of the ECST by all twenty members of the Council of Europe.

There was also increasing bipartisan support in Eire for the concept of the all-Ireland Court so beloved of Fianna Fail. When that party regained power in June 1977, it was given increased prominence. Foreign Minister O'Kennedy claimed,

An all-Ireland court is the most effective way, because you have a representative court supervising the activities of the police force and army on both sides, and the

court is the guarantor that the army and police, on whatever side, will act within the terms of the law ... any citizen breaking the law is made amenable to the court, and any citizen has the right to go to the court in the event of infringement of the law by the institutions of the state.⁹⁵

By 1981 the new Fine Gael-Labour coalition government was also reported to be favoring the concept. The institutional arrangements would provide three judges, one from each jurisdiction and the third from the locus of the crime, to sit wherever the need arose. Interrogation would be covered by a set of common rules enforced by the court and prosecution would be conducted by an all-Ireland prosecutor. In an interview in November 1981 Taoiseach Fitzgerald stated,

The fact is that the problem is an all-Ireland one. They step across the border; but far from being a problem of fugitive offenders down here who can't be got at, the more crucial problem is the no-go area in Northern Ireland, in South Armagh — from which criminals operate into the Republic, and through the Republic into Northern Ireland, coming in and out again.⁹⁶

Fitzgerald went on to explain that there would have to be an institutional umbrella, such as an Anglo-Irish Council, under which the court could function. It is this feature that causes Ulster Loyalists to be unremittingly opposed to any such arrangement for fear that it will impinge on their sovereignty and will eventually lead to the absorption of the Six Counties by the Twenty-Six. These fears are summarized in a pamphlet by the late Edgar Graham, dedicated Ulster Unionist:

By setting up all-Ireland courts the Irish Republic would be invoking Articles 2 and 3 of the Irish Constitution which asserts the right of the Irish Parliament to legislate for Northern Ireland. Those articles have always been deeply offensive to Unionists in Northern Ireland. But worse than that they have always given a legitimacy to the IRA who claim to be fulfilling the constitutional claim by fighting for re-unification.⁹⁷

While such ideas were discussed in political circles, the Irish courts continued to refuse to extradite those deemed political offenders. In some cases the connection between the political cause and the alleged offence was extremely tenuous. In July 1978 Francis Heron successfully resisted extradition on a warrant charging that he had caused grievous bodily harm to a woman in County Tyrone, claiming the crime was the result of a punishment beating ordered by the PIRA. The High Court refused to sanction extradition and though counsel for the state labelled the action "an unconventional form of political activity," the decision was not appealed.⁹⁸

Not all the RUC requests during the 1970s were refused on grounds of the political offence exception, nor did these refusals necessarily

protect the accused from justice. While bearing in mind the above-mentioned strictures concerning statistics, some intriguing facts do emerge from a compilation of extradition requests for Republican fugitives in the period 1971-80.⁹⁹ Some eighty requests are listed with four pending for a total of 76 requests. Of these, eleven were withdrawn by the RUC (14.5%), and eighteen individuals were apprehended in the United Kingdom after their warrants had been sent to Eire (23.7%). Some of those individuals later detained in the U.K. may have been the beneficiaries of refusals to extradite by the Irish courts but the compilation does not reveal this. It does reveal that there were 45 refusals (59.2%) to extradite: 34 refused on the ground of the political offence exception (44.7%); nine refused on the grounds of there being no comparable offence in Eire (11.8%); and two granted writs of *habeas corpus* by the courts. This accounts for 74 cases. Of the two remaining, one individual was actually extradited and the other was in prison in Eire for offences committed in that country at the time of the request. Of those whose extradition was requested for terrorist-type offences almost 25% were subsequently apprehended in the U.K., weakening Loyalist assertions that all Republican bombers and gunmen were totally immune from prosecution due to the sanctuary they enjoyed in Eire.

In 1976 a lower Irish court agreed to what became the only extradition of an alleged political offender on record until the 1980s. Patrick Damien McCloskey was returned to face arson charges in Ulster, but it was not until 1981 that the Irish Supreme Court was again called upon to further delineate the Irish position. In 1971 the Supreme Court ruled on an IRA case in *Magee v. O'Rourke*, and in 1981 the case under consideration dealt with an offence which occurred ten years earlier. Mauric Hanlon, charged with handling stolen explosives in England, had been arrested there in January 1972, and then fled to Eire in March 1972 while on bail.¹⁰⁰ As indicated by the hiatus between the granting of bail in January and the fugitive's flight three months later, it seems unlikely that Hanlon was a professional Provisional bomber. Detained in Eire and ordered extradited by a district court, he appealed to the High Court which reserved judgement in April 1975. This judgement was not delivered until October 1980 when the Court held that the appellant should be denied relief on any and all of the three grounds he claimed: inordinate delay, no comparable offence, and/or commission of a political offence or an offence connected with a political offence. Hanlon then appealed to the Supreme Court.

By this point, Ireland's highest court had undergone personnel changes. The liberal interpretations of the political offence in the cases of Bourke and then Magee had appeared under Chief Justice Cearbhall O'Dalaigh, who retired in 1973 and was replaced by W. O'B. Fitzgerald in 1973-74. Fitzgerald, in turn, was replaced by Thomas O'Higgins who held the position until January 1985. The family background of Chief Justice O'Higgins was strongly anti-IRA and the Chief Justice himself had lost both a grandfather and an uncle to IRA assassins in the 1920s.¹⁰¹ However, the Supreme Court of 1981 still had in its ranks two judges,

Walsh and Henchy, who had put the Irish position against extradition while serving on the Law Enforcement Commission. The court's character had altered significantly but not completely.

In its decision on the Hanlon case in October 1981 the Supreme Court held that the High Court had been correct in its original finding. Mr. Justice Henchy declared his acceptance of the High Court's reasoning by agreeing

that there is no acceptable evidence to satisfy ... that any of the proceeds of (the accused's) criminal activities was used for the purposes of the IRA in such a way as to lend political colour to the offences.¹⁰²

However, Mr. Justice Henchy went an important step further, and with the concurrence of Chief Justice O'Higgins and Mr. Justice Griffin, stated:

even if it had been found as a fact that the explosive material mentioned in the charge ... had been intended for transmission to the IRA, it would not necessarily follow that the accused would be exempt from extradition on the ground that the offence charged is a political offence, or an offence connected with a political offence. There has been no decision of this court on such a point. It must be left open for an appropriate case.¹⁰³

Mr. Justice Henchy also criticized the loophole provided by the idea of corresponding offences and called for the negotiation of new extradition arrangements designed to specify offences for which extradition would be granted. This is worth noting in light of the statistical analysis mentioned earlier.

The Hanlon decision signalled the changing nature of the political offence in Irish jurisprudence, leaving the door open for an 'appropriate case' to test the new parameters. Such a case came before the Supreme Court in Dublin in late 1982. During that year the climate of opinion in Eire regarding bombers and gunmen had grown increasingly hostile. In March the annual meeting of the Association of Sergeants and Inspectors of the Garda Síochána reflected this mood. The Association's General Secretary called for joint questioning of suspects to bolster the extra-territorial laws. He also supported the view of former Attorney-General Lord Robinson that the definition of a political offence should be reconsidered and added that the Irish government should initiate an international debate aimed at a more precise definition.

Nowadays, so called political crimes very often involve murder or injury to completely innocent people... . How long can we allow the most vile criminals to live freely and openly in this country when we know, and in some cases they have publicly admitted, that they have committed all forms of crime including the murder of our colleagues in the North, the destruction of property and the killing and maiming of innocent civilians.¹⁰⁴

Dominic McGlinchey seemed to fit just such a characterization. Interned in the early 1970s, he served time for arms possession in Ulster and formed part of an Active Service Unit (ASU) which terrorized south Londonderry through the mid-1970s. Arrested in Eire in September 1977 following a mail van robbery, he was sentenced for four years.¹⁰⁵ While in jail, a warrant was forwarded for his extradition, charging him with the murder of an elderly woman killed on March 28, 1977 in Northern Ireland when several gunmen sprayed her house with automatic weapons. Her only connection with the security forces was filial with a daughter in the RUC and a son in the RUC Reserve who was wounded in the attack.

Released from the original Irish sentence in January 1982, McGlinchey was immediately rearrested on the extradition warrant and ordered returned by a district court. He claimed the offence was political in an application for a writ of *habeas corpus* to the High Court. This claim was dismissed in May with Mr. Justice Gannon holding there was nothing in the appeal to connect the murder charged with a political offence.¹⁰⁶ McGlinchey then appealed to the Supreme Court. He dropped his claim under S.50(2)(a) that the crime was a political offence, although the crime had been acknowledged by the PIRA and McGlinchey himself claimed to have been on active service with the PIRA at the time. Instead he stated that, because he was wanted for other offences by the RUC he therefore fell under S.50(2)(b) and would be prosecuted or detained for a political offence in Ulster if he was returned for the non-political offence named in the warrant.

McGlinchey faced the same Supreme Court judges who had decided in Hanlon that the redefinition of the political offence awaited an appropriate case. Because the appellant had withdrawn his claim under S.50(2)(a) the court was not required to rule on whether the offence in question was itself political. Nevertheless Chief Justice O'Higgins, with the concurrence of the other justices, laid out what was obviously a departure from previous determinations concerning political offences. While stressing the fact that the victim was a civilian, the Chief Justice argued that civilian or not it would not necessarily follow that the offence could be categorized as political, even if the victim was killed or injured. He added,

The judicial authorities on the scope of such offences have in many respects been rendered obsolete by the fact that modern terrorist violence ... is often the antithesis of what could reasonably be regarded as political, either in itself or in its connections.¹⁰⁸

In discussing McGlinchey's claim under S.50(2)(b), Chief Justice O'Higgins developed the Irish position further. He used phrases such as "what could reasonably be regarded as political" and "the ordinary scope of political activity," alluding to a test of the political offence applied by a "reasonable man." He further spoke of the suffering caused by "self ordained arbiters" and argued that excusing offenders under the exception "is the very antithesis of the ordinances of Christianity and civilization and of the basic requirements of political activity."¹⁰⁹

The executive was absolved of the necessity of making an immediate decision on whether or not to return McGlinchey as he had jumped bail prior to the Supreme Court decision. Legal commentators characterized the ruling as a landmark decision, but also noted that further case law would be required to confirm its status.¹¹⁰ This was not long in coming but was not quite as straightforward as the authorities in the U.K. might have wished. Indeed developments from 1983-86 were strewn with basic technical errors, misjudgements and frequent recrimination on both sides of the border and the Irish Sea.

In May 1983 there were reports that Scotland Yard had identified John Downey as one of the perpetrators of the Hyde Park and Regent's Park bombings of 1982. Safely ensconced in Eire, Downey denied such action and there was no immediate attempt to extradite him perhaps because of insufficient evidence as in the McKearney incident.¹¹¹ In August, the Irish High Court granted a request for the return of Philip McMahon which was then appealed. He was one of a group which had escaped custody in Ulster back in March 1975. Jailed in Eire in October 1975 for a year term, the Ulster authorities were therefore aware of his location although they did not issue an extradition request until 1983 after the McGlinchey ruling.¹¹² The reasons became apparent in the Supreme Court appeal the following summer. In the interim, the High Court had ordered the extradition of Seamus Shannon (January 1984) with Attorney-General Peter Sutherland basing the state's argument on the McGlinchey ruling. The High Court judges agreed that the murders cited in the warrant were too 'heinous' to be reasonably described as political.¹¹³ Both the Shannon and McMahon appeals came before the Supreme Court in the summer of 1984.

In the meantime, McGlinchey had been recaptured in Eire. His lawyers obtained an injunction to delay any handover to allow a challenge of the validity of the original extradition order but the Supreme Court over-ruled the challenge in an unprecedented Bank Holiday evening sitting. The panel hearing the argument was identical to that which granted the original extradition and the fugitive was placed in RUC custody at the border on March 18, 1984. In response to critics of the decision, Taoiseach Fitzgerald replied,

It is a sad kind of nationalism that thinks that people against whom there are charges of murder, would not be proceeded against by the normal processes of the law and that murder could be a political offence.¹¹⁴

In the cases of McMahon and Shannon the Supreme Court produced decisions with contradictory results. The order for McMahon's extradition was quashed in June, however there were special circumstances involved in the first, post-McGlinchey, ruling. Four of McMahon's fellow escapees had been apprehended in Eire in the year of their escape (1975) and their extradition had been refused on the grounds of the political offence exception. McMahon argued that his escape was a political act taken to enable him to continue the struggle. In a

unanimous decision the Supreme Court quashed the High Court order, basing the decision on the four previous cases.¹¹⁵ Chief Justice O'Higgins explained that an order to extradite in the McMahon case

would mean that contradictory declarations in relation to the same incident would have issued from our courts. If such occurred, respect for the administration of justice in our courts would surely suffer and the court's process would certainly have been abused.¹¹⁶

For the Irish Supreme Court, the McMahon decision can be categorized as a retreat. However, in the Shannon case the following month the judges circumscribed the political offence further. Following the McGlinchey ruling and expanding upon it, the judges were in total agreement on extradition but divided on the reasoning behind it. Two members of the Court, and its Chief Justice, were of like mind¹¹⁷ agreeing that,

the Provisional IRA have abjured normal political activity in favour of violence and terrorism, (and) the circumstances disclosed as to the murders in question here were so brutal, cowardly and callous that it would be a distortion of language if they were to be accorded the status of political offences or offences connected with political offences.¹¹⁸

It must be pointed out that while this opinion concentrated on the 'objective' circumstances, rather than the 'subjective' motivation of the offender, it went beyond the English political incidence theory which tended to avoid commentary on the morality of actions carried out incident to, or in furtherance of, a political disturbance. Mr. Justice Anthony Hederman, a former Fianna Fail Attorney-General, and defence counsel in the McLaughlin appeal, explicitly rejected the McGlinchey test of the 'reasonable man,' believing it 'could only create uncertainty' since political activities such as rebellion, assassination and other violent acts might be considered by many people to be unreasonable.¹¹⁹ Hederman noted the PIRA was engaged in just such a political struggle and that acts done in furtherance of this could be seen as relative political offences. However, he drew a fine distinction in the Shannon case — because the offences charged to Shannon were claimed as 'reprisals' by the Provisionals, they could not be considered part of the armed struggle to remove the British from Ulster. More significantly, Justice Hederman stated that "the decisive criterion ... is whether the perpetrator acted with a political motive or for a political purpose."¹²⁰ Since Shannon denied involvement in the offence, his motive could not be determined and he was thus eligible for extradition. This 'subjective' test creates its own problems, as Farrell notes. It requires self-incrimination which would operate against the person if he was extradited and puts innocent persons at a decided disadvantage since they could not give evidence of motive for something they did not do.¹²¹ Mr. Justice McCarthy rejected Hederman's approach and produced his own criterion for determining the political offence, combining both 'objective' and 'subjective'

features such as motivation, circumstances of the offence, identity of the victims, and the proximity of each specific feature to the alleged political aim which was objectively determinable.¹²² In Shannon's case McCarthy felt that the distance between the offence and the political purpose was sufficient to allow extradition. This approach is reminiscent of the Swiss proportionality or predominance theory,¹²³ and seems to combine the best features of both approaches, the one outlined in McGlinchey and supported by Chief Justice O'Higgins, and the other supported by Mr. Justice McCarthy.

Shannon had also challenged the constitutionality of Part III of the Irish Extradition Act but this challenge was denied by the court and he was returned in July 1984 to Ulster. In the meantime the Dublin High Court seemed to be backing away from the thinking of the Supreme Court, if only through negligence. Founder/member of the Scottish Republic Socialist Party, David Dinsmore, had been arrested in Eire in December 1983. Having fled Scotland while on bail on a letter-bomb charge, extradition of Dinsmore was granted by an Irish district court and he appealed. Incredibly, given the circumstances of his flight from Scotland, he was granted bail while awaiting his appeal in Eire and promptly decamped to Spain which had no extradition treaty with the U.K.¹²⁴ Such laxity did not encourage the belief of British authorities in the willingness of the Irish courts to return political terrorists. Nonetheless, in early September 1984, at a conference in London the DPP, the Attorney-General and the head of the Anti-Terrorist Squad (ATS) agreed to prepare papers for a series of extradition requests. The mistake in the Dinsmore case could not be taken as a deflection of the trend apparent in McGlinchey and Shannon.

In the challenge to the constitutionality of the 1965 Act in November 1984 Shannon's lawyers raised three substantive issues as well as a number of technical points. The substantive issues concerned the lack of necessity for a *prima facie* case under the backing of warrants system, the lack of a clause prohibiting return where the fugitive might be subjected to prejudice because of race, religion, nationality or political opinion, and that the interrogation, detention and trial of terrorist suspects in Ulster fell short of the minimum requirements of fair procedure in Eire.¹²⁵ In May 1984 High Court President, Mr. Justice Finlay, had rejected all three claims¹²⁶ and the Supreme Court held the same opinion. Both courts were, in effect, giving the Northern Ireland legal system what amounted to an explicit endorsement.

Contemporaneously, the British authorities attempted to secure the extradition of suspected PIRA bomber Evelyn Glenholmes, initiating a seventeen month catalogue of technical errors and misjudgements leavened by recrimination. In late October 1984 a magistrate in London issued warrants on the basis of information sworn under oath by an official of the DPP. They were taken to Dublin by an Inspector of the ATS, found to be faulty and returned to London and withdrawn. The errors were revealed by the DPP through a written reply in the House of Lords in March 1986 and consisted primarily of incomplete addresses of

the criminal incidents named in the warrants.¹²⁷ On November 6, 1984 the same magistrate issued new warrants but these were again technically faulty as was subsequently revealed. The suspect vanished on November 8th and reports which broke in the British press on the 11th caused a storm of criticism.¹²⁸ British authorities took considerable pains to ensure that none of this criticism would be directed towards the Irish authorities and the British Attorney-General even issued a statement absolving them of either negligence or bureaucratic foot-dragging.¹²⁹

During the sixteen months before Glenholmes was finally arrested, the Supreme Court continued to tighten the political offence exception under new leadership but the subordinate High Court seemed less eager to follow its lead. In January 1985 Chief Justice O'Higgins moved to the European Court and was replaced by former High Court President, Mr. Justice Finlay. In Finlay's first six months he and his fellow judges were faced with two more cases where the political offence exception was claimed in relation to alleged Republican activities.

John Patrick Quinn was wanted in England for passing stolen travellers' cheques and had been ordered extradited. In an appeal to the High Court, he submitted an affidavit that admitted the crime but claimed it was an attempt to raise funds for the Irish National Liberation Army (INLA) and was thus a political offence.¹³⁰ The High Court rejected this, stating that Quinn had not established sufficient connection between the crime and a political offence. He appealed to the Supreme Court which dismissed the appeal and ordered extradition in February 1985. In his judgement, the new Chief Justice went beyond the McGlinchey and Shannon decisions to what could be described as a 'new frontier' of the political offence in Irish jurisprudence. Quinn's affidavit said that the INLA, in which he claimed membership, aimed to create a Thirty-Two County Workers' Republic through armed action in Ulster, the Republic and elsewhere. Finlay declared that it must be assumed that the Dáil did not intend the Extradition Act to be interpreted in a manner which would offend the Constitution. Since achievement of the INLA objective would require the destruction of that Constitution by prohibited means, a member of the INLA could not escape extradition through the political offence exception.¹³¹ The Chief Justice was supported by Justices Hederman and McCarthy in separate judgements. Seemingly, this decision removed INLA members from the scope of the political offence exception because they were inherently opposed to the Irish government. Such a decision approaches that made nearly one hundred years previous by British courts in the Meunier case when it was decided that anarchists could not avail themselves of the exception because they were the enemies of all governments. The decision also demonstrates a change in thinking by Chief Justice Finlay. In 1974 in the case of Father Burns, Finlay had said the crime of keeping explosives "for an organization attempting to overthrow the state by violence is ... an offence of a political character."¹³² Just eleven years later, the Quinn decision seems to offer a virtual reversal of this position.

In June 1985 the High Court refused to order the extradition of

Clareman Gerard Maguire to England for a robbery he claimed to have undertaken on behalf of the PIRA. Mr. Justice Egan, in obvious reference to the Quinn decision, said he found nothing in Maguire's affidavit concerning the overthrow of the Constitution, therefore he was not prepared to hold that PIRA offences could not be considered political "until the Supreme Court tells me specifically."¹³³ The Supreme Court overturned this decision and ordered extradition in July 1985 but on the ground that there was not sufficient evidence to establish the robbery in question as an act of the PIRA. Mr. Justice Walsh did not comment on the question of whether or not PIRA offences would no longer be considered political and thus avoided Egan's request for a specific ruling.¹³⁴

The aftermath of the Quinn extradition had produced some tension between Dublin and London, mainly because of the errors on the part of the British prosecuting authorities which led to his release following extradition. As a result of mistakes by both Scotland Yard and the DPP, there were rumours that the British would abandon the charge for which Quinn was extradited and pursue trial on another offence. This caused the Irish Attorney-General John Rogers to phone his British counterpart and indicate that the Irish authorities would condemn, unreservedly, any such move. After the collapse of the case, Ireland lodged complaints with London,¹³⁵ demonstrating the sensitivity in Eire where political risks were being taken by the Executive in granting extradition orders, supported by the Supreme Court, only to see their efforts nullified by rudimentary mistakes on the part of the British.

Such mistakes were again apparent in early 1986 in the Glenholmes case though prior to this, in December 1985, the Dublin High Court again showed its tendency toward retreat. A district court had ordered the extradition of Brendan Burns, wanted in connection with the murder of five British soldiers in 1981 in a landmine explosion. In December 1985 the High Court upheld his appeal and quashed the extradition order, ruling that he had been held illegally and that the warrants were faulty. Apparently an RUC Inspector had not been under oath when the warrants were issued and thus they were null and void.¹³⁶ As with Quinn, basic errors on the part of the requesting authorities had allowed the fugitive to gain his freedom.

Incredibly a similar mistake features in the Glenholmes fiasco. Glenholmes was arrested in Dublin on March 3, 1986 on the basis of nine warrants issued in November 1984. However, during the proceedings on March 21st the ATS Inspector who had delivered the warrants in both instances was forced to admit that when the warrants had been revised in 1984, the evidence contained had not been re-sworn in front of the magistrate. Immediately, the defence counsel claimed this made them invalid pointing out that such warrants state they are issued as a result of information sworn before the magistrate "on this day."¹³⁷ The authorities were only able to gain a 24-hour adjournment and since they were unable to produce any further clarification, the fugitive was released. A new, corrected, warrant was issued by Bow Street magistrates in

London on the day Glenholmes was released but a second Irish district justice would not accept that a telephone call informing Irish authorities of the existence of the warrant was sufficient reason to detain the suspect until the warrant arrived in Eire.¹³⁸ The new warrant reached Dublin on the 24th, two days after Glenholmes' release and her subsequent disappearance underground.

The catalogue of errors in both phases of the Glenholmes incident caused renewed criticism in Ireland. Irish Justice Minister, Alan Dukes, said that 'furious' was an accurate description of his government's reaction.¹³⁹ Again the British government was pushed into the position of explaining and rationalizing mistakes, while trying to defuse Dublin's anger. Northern Ireland Secretary, Douglas Hurd, maintained there was "no criticism of the cooperation we received from the Irish authorities," but added, "choosing my words with care, it would have been possible for the court to take a different decision."¹⁴⁰ Even such muted and implicit a criticism of the Irish courts is unhelpful in a situation which can only be characterized by terms such as delicate. The court in this instance was maintaining the letter of the law, if not the spirit as demonstrated in the Supreme Court decisions. After the errors in the cases of Burns and Quinn and the mistakes in the first Glenholmes warrants, it is nothing short of amazing that the second set would not have been checked more scrupulously for technical errors. In fact, one source reports that in November 1985 the Irish Attorney-General's office had requested just such a check.¹⁴¹ Following the Glenholmes failure the British Attorney-General, Sir Michael Havers, instructed the DPP for both Great Britain and Northern Ireland to

ensure personally that all outstanding warrants in respect of terrorist offences are checked at once for accuracy and sufficiency.¹⁴²

That the current Irish government has demonstrated the political will to try to extradite Republican terrorists to the U.K. is clear. Indeed, in February 1986 Dublin finally signed the ECST removing the political offence from a list of crimes and legislation is expected soon to place this on the Irish statutes. Coupled with the changes in the political offence exception delineated by the Supreme Court, outlined above, and the extra-territorial legislation, this means the bomber and the gunman in Ireland face ever greater difficulties.

The difference between 1975 and 1985 is striking in terms of the attitudes of the Irish judiciary and executive. Eire was increasingly affected throughout the period by the spillover of violence from Ulster carried out by both Loyalist and Republican extremists. There was also a growing realization that the Provisionals were unlike the old IRA in both their tactics — for example, the targeting of civilians — and in their goals, opposing Dublin as well as Belfast and being more than slightly Marxist in orientation. The INLA just exacerbated this difference. The realization of these differences is reflected in the shift in judicial opinions during those ten years. In 1974 High Court Justice Finlay commented in the

McLaughlin case that even such a "dastardly murder" as that committed by the appellant was to be considered political if committed by a group seeking to overthrow the government in Belfast by such means. In the O'Neill appeal of the same year, he shied away from commenting on activities which "seemed to breach any concept of humanity" and ruled they were political offences. Eleven years later the same judge, now a Supreme Court Chief Justice, signalled a complete reversal of his position in the Quinn decision, joined by all four Supreme Court Justices in his ruling.

Complacency on the part of observers would, however, be ill-advised. There is still much controversy in Eire surrounding the recent decisions of the higher courts. Furthermore it cannot be assumed that the political will to ensure extradition will always exist in Dublin. Following the Glenholmes incident the opposition leader, Charles Haughey, criticized both Dublin and London and stated his position on what he saw as a "catastrophic change" in extradition practices. He believed Glenholmes should not be returned if arrested and added:

In view of the serious doubts I have about the fairness of the trial they would get in British courts, anybody accused of these crimes should be dealt with before our courts so that we know at least they would get a scrupulously fair trial.¹⁴³

Haughey's doubts may be relieved by the fact that McGlinchey, on appeal, and Shannon were acquitted by Northern Ireland courts following their extradition.¹⁴⁴ As well, Northern Ireland Secretary Hurd has noted that of those who plead not guilty before the courts in Ulster, 50% are acquitted in jury trials, and a higher proportion, 53% are acquitted by the non-jury Diplock courts.¹⁴⁵ However it is unlikely that Fianna Fail will drop its opposition to extradition.

This makes it all the more necessary for the British authorities in both London and Belfast to encourage the recent shifts in opinion in Dublin. There must be a more careful attitude toward requests for extradition and the absolute assurance that human error is minimized in the issuing of new requests and in any prosecutions which may result. It is hoped that success in this field will improve the Ulster Unionists' acceptance of the Anglo-Irish accord agreed in November 1985. Advances such as this on the political front are much more likely to destroy the basis for terrorism than any movements in the criminal justice arena.

Endnotes

1. Representation of the People Act, 1949, c. 68, S. 1.
2. *Hansard*, 6th Series, vol. 6, col. 28, June 8, 1981, and vol. 52, col. 232, January 18, 1984.
3. Paul O'Higgins, "The Irish Extradition Act, 1965," *International and Comparative Law Quarterly*, vol. 15, no. 2 (April 1966), p. 370. Lists all statutory provisions for backing of warrants between England, Ireland, Scotland, Isle of Man and the Channel Islands. Warrants issued in the U.K. were endorsed by the Inspector-General of the Royal Irish Constabulary or his deputy and vice-versa.
4. O'Boyle and Rodgers v. Attorney-General O'Duffy, (1929) *Irish Reports*, p. 558. Counsel had argued that since Northern Ireland did not exist when the Petty Sessions (Ireland) Act 1851 came into effect there was no authority to extend it to the North and Meredith J. concurred. As has been since noted this was 'bad law' as the Irish government had made an order in 1924 which provided *inter alia* that provisions for execution of all U.K. warrants should also apply to warrants from Ulster. See also Michael Farrell, *Sheltering the Fugitive? The Extradition of Irish Political Offenders* (Cork and Dublin: The Mercier Press, 1985), p. 30, and Margaret McGrath, "Extradition: Another Irish Problem," *Northern Ireland Legal Quarterly*, vol. 34, no. 4 (Winter 1983), p. 295.
5. Informally, the RUC and the Garda engaged in what amounted to abduction until this was declared a 'contempt of court' in *The State (Quinn) v. Ryan*, (1965) *Irish Reports*, p. 70. See also Farrell, pp. 34-36, and 39; O'Higgins, *I&CLQ*, p. 370, fn. 15; O'Higgins, "Irish Extradition Law and Practice," *British Yearbook of International Law*, vol. 34 (1958), p. 294; Seamus Breathnach, *The Irish Police from Earliest Times to the Present Day* (Dublin: Anvil Books Ltd., 1974), p. 171; and Alexander McCall-Smith and Philip Magee, "The Anglo-Irish Law Enforcement Report in Historical and Political Context," *Criminal Law Review*, (1975), p. 205.
6. O'Higgins, *BYIL*, p. 305.
7. Metropolitan Police Commissioner v. Hammond, (1964) 2 *All England Reports*, p. 772; and *The State (Quinn) v. Ryan*, (1965) *Irish Reports*, p. 70.
8. Farrell, p. 29.
9. In re Castioni, (1891) 1 *Queen's Bench*, p. 149, and In re Meunier, (1894) 2 *Queen's Bench*, p. 415.
10. Christine Van den Wijngaert, *The Political Offence Exception to Extradition* (Deventer, Boston, Antwerp, London, Frankfurt: Kluwer, 1980), p. 111.
11. Schtraks v. The Government of Israel, (1962) 3 *All England Reports*, p. 540.
12. The British require a state requesting extradition to present enough evidence in the extradition hearing that could lead to committal for trial if the case were being tried by a British criminal court.
13. O'Higgins, *I&CLQ*, pp. 391-92.
14. S. 2(2) Backing of Warrants (Republic of Ireland) Act 1965, an identical phrase is employed in the Extradition Act 1870.
15. O'Higgins, *I&CLQ*, p. 382.
16. Bourke v. Attorney-General, (1972) *Irish Reports*, pp. 36-38.
17. *The State (Magee) v. O'Rourke*, (1971) *Irish Reports*, pp. 211 and 216.
18. Van den Wijngaert, pp. 119-20, and McGrath, *NILQ*, p. 303.
19. Re Dwyer, (1970) April 13 (unreported) DC, as cited in Ivor Stanbrook and Clive Stanbrook, *The Law and Practice of Extradition* (Chichester and London: Barry Rose Publishers Ltd., 1980), p. 111. See also *Guardian*, November 6, 1979, p. 5, and *Irish Press*, April 14, 1970, p. 3.
20. *New York Times*, December 6, 1970, p. 8.
21. R. v. Governor of Brixton Prison and another, ex parte Keane, (1970) 3 *All England Reports*, p. 745.
22. Keane v. Governor of Brixton Prison, (1971) 1 *All England Reports*, p. 1168.

23. *Hansard*, 5th Series, vol. 847, col. 109, November 28, 1972. Of these, nine warrants were executed, eight more were refused, nine were outstanding, and five referred to persons who could not be located in Eire or were subsequently arrested in Northern Ireland.
24. Farrell, p. 57.
25. Cleaver, Fulton & Rankin (solicitors), *Submission on Admissibility — Council of Europe, European Commission on Human Rights — Application No. 9360/81, Edith Elliot and others Against Ireland* (Belfast, February 1982), Appendix 3.
26. *Ibid.*, p. 67 Those recaptured were: Thomas Maguire, Thomas Keane, Peter Hennessey, James Storey and Terence Clarke.
27. Patsy McArdle, *The Secret War* (Cork and Dublin: The Mercier Press Ltd., 1984), p. 32; and Farrell, p. 57. There was no photographic or fingerprint evidence and no police witnesses travelled from Ulster to aid identification. Just over a year later they were re-arrested and the district court granted extradition but on appeal to the High Court the offences were ruled political and extradition refused.
28. *Times*, December 6, 1976.
29. *Hansard*, 5th Series, vol. 846, cols. 240-241, November 17, 1972, and vol. 829, col. 957, January 24, 1972.
30. *Hansard*, 5th Series, vol. 836, vol. 179, May 4, 1972, statement of David Howell, Joint Minister of State for Northern Ireland, and vol. 848, col. 597, December 14, 1972.
31. *Times*, October 16, 1972, p. 12. From 1973-76 a total of 25% of those convicted in the SCC were from Ulster. See M. Robinson, "The Special Criminal Court: Almost 10 Years On," *Fortnight*, no. 175 (March 1980).
32. Farrell, p. 58, and *Times*, November 18, 1972, p. 14. In a much larger escape nineteen men fled from Portlaoise Prison on August 18, 1974 and at least two were recaptured in the U.K. — Martin McAllister seized in Ulster on September 13, 1974 and Sean Kinsella in Liverpool on July 10, 1975.
33. In re Taylor, (1973) *Northern Ireland Law Reports*, p. 164.
34. *Times*, September 21, 1973, p. 2.
35. *Hansard*, 5th Series, vol. 851, col. 40, February 19, 1973, and vol. 860, col. 1600, July 25, 1973.
36. *Sunday Times*, September 30, 1973, p. 8. The eleven individuals and the decisions rendered on requests for their extradition follow:
 - Roisin McLaughlin — refused on grounds of political offence
 - James 'Seamus' O'Neill — refused on grounds of political offence
 - Marguerite 'Rita' O'Hare — refused on grounds of political offence
 - Anthony 'Dutch' Docherty — refused on grounds of political offence
 - Bernard Elliman — refused, granted habeas corpus
 - Thomas Fox — refused, granted habeas corpus
 - Peter Hennessey — arrested in Ulster
 - Edward McDonald — refused on grounds of political offence
 - Thomas McNulty — refused on grounds of political offence
 - Michael Willis — refused on grounds of no comparable offence
 - Anthony Shields — refused on grounds of political offence
- Details from Cleaver, Fulton & Rankin, pp. 67-69.
37. *Irish Press*, December 5, 1973, as cited in Farrell, pp. 59-60.
38. Edgar Graham, *Ireland and Extradition, A Protection for Terrorists* (Belfast: European Human Rights Act, Ulster Unionist Party, September, 1982), p. 3.
39. *Times*, July 30, 1974, p. 2.
40. *Economist*, June 16, 1973, p. 34.
41. *Irish Press*, December 21, 1974, as cited in Farrell, p. 63.
42. Farrell, p. 60.
43. *Times*, May 5, 1973, p. 2.
44. *Economist*, June 16, 1973, p. 34.
45. *Bartholemew Burns v. Attorney-General*, (February 4, 1974) (unreported) as cited in Farrell, p. 60.

46. Farrell, p. 61.
47. *Ibid.*, pp. 12-62.
48. *Times*, December 3, 1975, p. 2.
49. *Times*, December 5, 1975, p. 2.
50. *Times*, December 16, 1975, p. 2.
51. *Times*, June 4, 1976, p. 5.
52. *Times*, April 23, 1976, p. 1. Swords was arrested along with eight others in Dublin in April 1983 but the SCC acquitted everyone of charges of IRA membership. *Keesing's Contemporary Archives*, 33482A.
53. *Times*, July 12, 1977, p. 2.
54. *R. v. Governor of Winson Green Prison, Birmingham, ex parte Littlejohn*, (1975) 3 *All England Reports*, pp. 211-12.
55. *Times*, December 22, 1973, p. 3.
56. *Times*, October 8, 1973, p. 2.
57. In 1976 Sean McKenna was allegedly abducted from Dundalk although an official Army Press statement says he "stumbled across" the border into a patrol. Even more conclusive evidence exists concerning the kidnap attempt on PIRA suspects Patrick McLoughlin and Seamus Grew on March 29, 1974. Grew's extradition had been requested in August 1973 on an attempted murder charge and refused. Three Ulster Protestants were arrested by the Garda on March 29, 1974 in possession of maps, details of Grew's movements and a plan indicating where to dump their victims in Ulster. The three initially pleaded not guilty to kidnap charges, but changed their plea on the lesser charge of conspiracy to assault. All received five years from the SCC. It has since been claimed that the plot was organized by Army Intelligence in Lurgan and one of the three has admitted this while refusing to identify the officers involved. See *New Statesman*, May 11, 1984, p. 12, and *Times*, June 15, 1974, p. 2. The DPP was considering allegations on two kidnappings by Army Intelligence officers in late 1984 as well. *Observer*, November 18, 1984, p. 6.
58. *Dail Debates*, cols. 450-51, April 24, 1975 as cited in McGrath, *NILQ*, p. 303.
59. *Keesing's Contemporary Archives*, 25108A.
60. Members were: Supreme Court Justice Walsh;
Supreme Court Justice Henchy;
T.A. Doyle, Esq., SC;
D. Quigley, Esq.;
Lord Chief Justice (Northern Ireland), Sir Robert Lowry;
Lord Justice Scarman;
Sir Kenneth Jones, Home Office Legal Advisor; and
J.B.E. Hutton, Esq. QC, Senior Crown Counsel, Northern Ireland.
61. *Report of the Law Enforcement Commission* (Cmnd. 5627) (London: HMSO, 1974).
62. *Ibid.*, p. 3. "... if time had been a less important factor, the all-Ireland court method would call for a more careful and detailed examination."
63. *Ibid.*, p. 42. The Scheduled offences listed below along with comparable sentencing details in Ulster and Eire:

Offence	Maximum term Ulster	Maximum term Eire
Capital Murder (Eire retained death penalty for certain categories of murder into the 1980s)	Not applicable	Death
Murder	Life	Life
Arson	Life	Life
Kidnap and false imprisonment	Life	Life
Offences against the person		
a) wounding with intent to cause GBH	Life	Life
b) causing GBH	5 years	5 years

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Explosives		
a) causing explosion likely to endanger life or property	Life	Life
b) attempting to cause an explosion likely to ... or possessing explosives with intent to ...	Life	Life
c) making or possessing explosives in suspicious circumstances	14 years	14 years
Robbery and Burglary		
a) robbery	Life	Life
b) aggravated burglary	Life	Life
Firearms		
a) possession with intent to endanger life or seriously damage property	Life	20 years
b) possession in suspicious circumstances	10 years	5 years
c) carrying with criminal intent	14 years	10 years
Hijacking of vehicles	15 years	15 years
Membership of illegal organizations	5 years	7 years
Inciting or inviting people to join illegal organizations	5 years	10 years

Taken from *Hansard*, 5th Series, vol. 918, cols. 473-74, November 1, 1976.

64. *Times*, March 7, 1985, p. 9, and January 3, 1974, p. 1.
65. *Times*, December 6, 1975, p. 2.
66. *Economist*, March 9, 1974, p. 47.
67. *Times*, December 9, 1974, p. 2; and Michael Hirst, "The Criminal Law Abroad," *Criminal Law Review*, (1982), pp. 503-04.
68. F.H.A. Micklewright, "Irish Criminal Law (Jurisdiction) Act," *New Law Journal*, August 26, 1976, p. 856.
69. In the matter of Article 26 of the Constitution and in the matter of the Criminal Law (Jurisdiction) Bill, 1975, (1977) *Irish Reports*, p. 129.
70. *Times*, June 2, 1976, p. 2.
71. *Times*, May 27, 1977, p. 2.
72. *Times*, February 8, 1981, p. 6; and *Daily Telegraph*, July 13, 1979, p. 8.
73. Farrell, p. 75 and 77.
74. *Daily Telegraph*, December 16, 1978, p. 3.
75. *Daily Telegraph*, July 13, 1976, p. 8.
76. *Times*, October 11, 1977, p. 4, and October 12, 1977, p. 4. See also *New Statesman*, October 21, 1977, p. 535.
77. *Times*, March 8, 1978, p. 2.
78. *Times*, May 18, 1982, p. 2.
79. McGrath, *NILQ*, p. 308, citing *R. v. McCartan Smyth* reported as *R. v. Smyth*, (1982) *Northern Ireland Law Reports*, p. 271.
80. *Daily Telegraph*, November 12, 1979, p. 2; and *Guardian*, November 30, 1979, p. 28.
81. *Times*, October 10, 1980, p. 6, and Graham, p. 11.
82. *Irish Times*, July 29, 1981, cited in Cleaver, Fulton & Rankin p. 77.
83. *Guardian*, July 21, 1981, p. 1.
84. *Times*, December 15, 1981, p. 2, and December 24, 1981, p. 2.
85. *Keesing's Contemporary Archives*, 31577A.
86. *Times*, March 8, 1982, p. 2, July 2, 1982, p. 3, and July 7, 1982, p. 2.
87. *Times*, July 14, 1982, p. 2.
88. *Guardian*, May 3, 1983, p. 2.

89. For a detailed survey see McArdle, Chapter 8 "Loyalist Attacks," pp. 57-60.
90. *Times*, December 4, 1975, p. 1.
91. *Hansard*, 6th Series, vol. 19, col. 296, March 8, 1982.
92. Cited in E. Moxon-Browne, "The Water and the Fish: Public Opinion and the Provisional IRA in Northern Ireland," *Terrorism*, vol. 5, nos. 1 and 2 (1981), p. 61.
93. *Times*, January 26, 1977, p. 2. The U.K. signed and ratified the ECST and implemented it by enacting the Suppression of Terrorism Act 1978.
94. *Bulletin of the European Communities*, vol. 12, no. 12 (1979), pp. 90-91.
95. Interviewed by BBC Northern Ireland Political Correspondent for Radio Ulster and interview printed in *The Listener*, September 15, 1977, p. 327.
96. *Sunday Times*, November 1, 1981, p. 16.
97. Graham, p. 13. He was former Chairman of the Ulster Young Unionist Council, honorary secretary of the Ulster Unionist Council, and was assassinated by the PIRA in December 1983.
98. Farrell, p. 93.
99. Cleaver, Fulton & Rankin, Appendix 3.
100. Hanlon v. Fleming, (1981) *Irish Reports*, p. 493.
101. Farrell, p. 94.
102. (1981) *Irish Reports*, p. 495.
103. *Ibid.*
104. *Times*, April 1, 1982, p. 2, and April 3, 1982, p. 7.
105. Details drawn from the following: *Times*, April 13, 1977, p. 2; *Observer*, July 17, 1983, p. 2; *Sunday Times*, October 16, 1983, p. 5; *Guardian*, March 12, 1986, p. 4; and Farrell, p. 96.
106. Farrell, p. 97, and McGrath, *NILQ*, p. 312, citing an unreported decision of the High Court.
107. McGlinchey v. Wren, (1982) *Irish Reports*, p. 154.
108. *Ibid.*, p. 159.
109. *Ibid.*, p. 160.
110. McGrath, *NILQ*, p. 314.
111. *Times*, May 27, 1983, p. 1, May 28, 1983, pp. 1 and 4, and May 31, 1983, p. 1.
112. Farrell, p. 100.
113. *Guardian*, January 28, 1984, p. 2. Owen McCartan Smyth had already been tried under the CJA for offences connected with this incident.
114. *Times*, March 19, 1984, p. 30.
115. *Guardian*, June 27, 1984, p. 4.
116. McMahon v. Governor of Mountjoy Prison and David Leahy, June 26, 1984 (unreported), cited in Farrell, p. 101.
117. Extradition cases can be heard by a three-man court as in McGlinchey but all subsequent decisions were heard by all five Supreme Court Justices.
118. Shannon v. Fanning, July 31, 1984 (unreported), cited in Farrell, p. 102.
119. *Ibid.*
120. *Ibid.*
121. Farrell, pp. 104-05.
122. Shannon v. Fanning, as cited in Farrell, p. 105.
123. For further explanation see Van der Wijngaert, pp. 126-32.
124. *Observer*, November 18, 1984, p. 6.
125. Shannon v. Ireland and the Attorney-General, S.C., November 16, 1984 (unreported), cited in Farrell, p. 111.

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126. *Shannon v. Ireland and the Attorney-General*, H.C., May 11, 1984 (unreported), cited in Farrell, p. 112.
127. Lord Glenarthur in the House of Lords, written reply, *Guardian*, March 27, 1986, p. 2.
128. For details of events and their chronological order see: *Sunday Times*, November 11, 1984, p. 1; *Times*, November 12, 1984, p. 1; *Guardian*, November 12, 1984, pp. 1 and 28; *Times*, November 13, 1984, p. 2; *Guardian*, November 13, 1984, p. 4, and November 21, 1984, p. 3; and *Sunday Times*, November 25, 1984, p. 4.
129. *Guardian*, November 12, 1984, pp. 1 and 28.
130. *Observer*, August 4, 1982, p. 3.
131. *Guardian*, March 1, 1985, p. 2; and Farrell, p. 118 citing *Quinn v. Wren*, S.C., February 28, 1985 (unreported).
132. *Batholemew Burns v. Attorney-General*, February 4, 1974 (unreported) cited in Farrell, p. 119.
133. Farrell, p. 120.
134. Farrell, p. 137 citing *Maguire v. Keane*, S.C., July 31, 1985, (unreported).
136. *Guardian*, February 16, 1984, p. 1; *Observer*, March 25, 1984, p. 2; and *Guardian*, December 14, 1985, p. 28, and March 25, 1986, p. 3.
137. *Guardian*, March 24, 1986, p. 3.
138. *Guardian*, March 25, 1986, p. 7.
139. *Guardian*, March 24, 1986, p. 1.
140. *Guardian*, March 25, 1986, p. 7.
141. *Observer*, March 30, 1986, p. 12.
142. *Guardian*, March 25, 1986, p. 7.
143. *Guardian*, March 25, 1986, p. 1.
144. *Guardian*, February 21, 1986, p. 4, and December 14, 1985, p. 28. Following acquittal McGlinchey was returned to Eire, tried on arms charges connected with his apprehension in Eire prior to extradition to Ulster, and jailed for ten years. See *Guardian*, March 12, 1986, p. 5.
145. *Hansard*, 6th Series, vol. 80, col. 1001, June 13, 1985.