

**GARY BOTTING, *EXTRADITION BETWEEN CANADA
AND THE UNITED STATES* (ARDSLEY:
TRANSNATIONAL PUBLISHERS, 2005)**

*By Robert J. Currie**

Both domestic and international laws regarding the extradition of fugitive criminal offenders are in a state of flux throughout the world. The current legal landscape reflects tension between the interest of state authorities in promoting “security,” on the one hand, and increasing recognition that human rights obligations are at play, on the other. Gary Botting’s book, *Extradition Between Canada and the United States*, successfully addresses this tension by way of a detailed examination of what is probably the most integrated extradition partnership outside the European Union.

Rather than being a typical legal text, this book is in content more directly in line with what one might expect from its title. It is a scholarly, historically-based examination of the extradition partnership between Canada and the United States. The authors cover both its legal and political manifestations, with a particular emphasis on Canadian law. At the time of publication of the book, Botting was the Paetzold Fellow at the Faculty of Law of the University of British Columbia. However, as Botting’s preface indicates, he is also an experienced defence-side extradition lawyer who served as counsel on several prominent Canadian extradition cases. He has authored one of the only two up-to-date Canadian extradition texts currently in circulation,¹ and it is perhaps some testament to the quality of his contributions to the literature that *Extradition Between Canada and the United States* has already been cited in a recent decision by the Supreme Court of Canada.² Botting’s defence-side orientation is evident, and the tone of the book is highly critical of the manner in which extradition law has developed, particularly in recent years.

Though this is not made explicit by the author, the book comprises four roughly distinct parts. The first part is contained in Chapter 1, which starts by tracing in broad strokes the historical flavour of extradition between Canada and the U.S. and flags a few significant features of each state’s legal regime. It then sets out the key terminology of extradition law and practice. The second part of the book encompasses Chapters 2 through 6, which survey the historical development of each state’s extradition law, and extradition relations between them.

Chapter 2 focuses on the short life of the Jay Treaty of 1794 and covers the War of 1812 and subsequent developments until about 1840, including an interesting account of the attempted extradition of William Lyon Mackenzie. Chapter 3 describes the development and initial operation of the Webster-Ashburton Treaty of 1842,

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¹ Gary Botting, *Canadian Extradition Law Practice 2005*, Markham, LexisNexis Canada Inc., 2005. See my review at 37:1 *Ottawa Law Review* (forthcoming).

² *United States v. Ferras*; *United States v. Latty*, [2006] 2 S.C.R. 77, 2006 SCC 33 at para. 41.

which remained in force until 1976, and covers both the American Civil War and post-Confederation developments in Canada. Chapter 4 deals with the earliest years of the 20th century, when landmark cases on either side of the border began to shape what would become modern extradition law in both countries. Chapter 5 traces the development of some of the building blocks of extradition law, but placed within the context of the concurrent development of extensive executive discretion. Chapter 6, entitled “The Death and Resurrection of Extradition,” reviews the significant dip in extraditions taking place during the Cold War era, followed by renewed interest with the negotiation of the first Canada-U.S. extradition treaty in the early 1970s and other cooperative ventures.

The third part of the book, and the real heart of Botting’s work, is contained in Chapters 7 through 9. Chapter 7 reviews the various features of the “new” extradition treaty in its updated versions³ and examines both judicial interpretation and governmental policy regarding the Treaty with what could only be called a highly critical eye. A similar approach is taken in Chapters 8 and 9, which together review Canadian extradition law and procedure under the recent *Extradition Act*.⁴ The review is detailed and the tone critical, but the central point is to illustrate the significant shift in Canadian extradition law from judicial oversight of the process to executive discretion. A large portion of the chapter is spent reviewing the way in which powers historically reserved to the courts have been shifted to the Minister and Department of Justice, and illustrating how the government has taken an increasingly pro-international criminal cooperation stance at the expense of the protection of the individual.

The latter theme is re-emphasized in the fourth part of the book, Chapter 10, entitled “Extradition in the New Millenium,” which reviews the growth of concern in Canada regarding terrorism and a new focus on cooperation in the suppression of international terrorism – a perspective Botting attributes to pressure from the U.S. This final chapter is followed by three useful appendices: the current Canadian *Extradition Act* (Appendix A), American extradition statutes (Appendix B), and the Canada-U.S. Extradition treaty which incorporates the Protocols (Appendix C).

Botting’s methodological approach is, to this reviewer, slightly odd. He has chosen to present a very colourful and detailed account of extradition relations between these two countries solely through the twin lenses of history (both by way of historical texts and media accounts) and case law from both sides of the border. The case law surveyed is certainly rich and varied, and is very complete to the extent of containing various sets of unpublished reasons from governmental decision-makers. In general, as a historical account, the book is practically minute-by-minute and very thorough.

However, in a book that necessarily engages a great deal of the *international* law of extradition – the principles of specialty, double criminality, and the like – one would expect to find some engagement with the legal literature on the subject.

³ Protocols amending the Treaty were negotiated in 1988 and 2003.

⁴ S.C. 1999, c. 18.

Instead, there is almost no reference to the extradition literature whatsoever, and the few legal authorities cited are typically commentators, albeit distinguished, on domestic law. This has the effect of de-contextualizing the discussion somewhat; departures from the traditional protections for the individual in Canadian law is a dominant theme that is carefully considered, but might be better understood against the backdrop of current international law developments.

However, the book's central thesis – that Canada's eagerness to facilitate international criminal cooperation has led to a deepening of executive discretion and corresponding dilution of human rights protections – is very effectively illustrated. While Botting's tone is rancorous and the prose occasionally falls over into rhetoric, this may be counter-balanced for the reader by the importance of the issues and the current lack of serious scholarly inquiry on the issue.

