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It is difficult to know in what terms to judge this book. The Acknowledgements section describes the book's genesis: the yearly Sokol Colloquia at the University of Virginia School of Law, "bringing together distinguished scholars, practitioners and government officials from here and abroad to present papers and share ideas," and the understandable desire to preserve and disseminate what the Colloquia produced — for the first two years by publishing "many" of the papers together in a law review symposium format, moving in the third year to a hardcover edition of that year's "principal" papers, and arriving in the fourth year at this hardcover edition of "all" the papers delivered at the 1980 Colloquium on "International Aspects of Criminal Law". The first thing to realize, with regard to this book, is that colloquia being what they are, "all" is probably too many of any such group of papers to publish. Unevenness (in terms of utility to the neophyte, of sophistication, of breadth of perspective, of quality of reasoning, of familiarity with analogous areas) which may be tolerable or even desirable under live conditions becomes inappropriate and disruptive when papers are published in a collection (however clearly they are labeled). A reader has a right to expect more of what is published, and the disappointment one feels by the end of this book infects even the best papers with frustration.

More than anything else, these writers needed to be forced to interact with one another; at the very least, they needed to be encouraged to live up to common standards regarding documentation and reasoning, addressing themselves to a common audience, so that the reader could attempt the interaction which the book fails to provide. The areas the book covers (which are better described in

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2. Id. at vii.
3. Id.
5. FOURTH SOKOL, supra note 1, at vii.
7. FOURTH SOKOL, supra note 1, at vii.
the Foreword and in the chapter headings than in the title) — that is, the ways in which nations try to enforce their own criminal laws outside their national boundaries (or choose to enforce each other’s) — are surely areas of interest to a wide variety of readers, from international legal scholars to lawyers interested in tales like “The French Connection” and “Midnight Express” to law school professors with an eye out for material suitable for a course in comparative criminal procedure. To the book’s (or the Colloquium’s) credit, it does bring together a good range of interested and interesting persons (from a Wellesley College Political Science Professor to a couple of Assistant Legal Advisors from the State Department to a practicing District of Columbia lawyer to a variety of law school professors) — but it brings them together only physically, not intellectually. The authors seem to feel entirely free to decide how much they will interact with each other (if at all), and over what, and even whether they will speak a common language (so that an energetic reader can at least attempt some of the synthesis which the authors have sidestepped.) Now I am not saying that I would relish the job of trying to bring such an interaction about, or that it would make it easy to get people to agree to be colloquium participants, if such interaction were required. Nevertheless, having chosen to publish these papers, it seems to me (in my admittedly safe role as exacting reader) the more editorial leadership could have greatly improved this book, and it is a major disappointment that this did not happen.

Let me begin with the question of to whom this book is addressed, and let me assume that, in the absence of any disclaimer to the contrary, it ought to be accessible to the intelligent and educated neophyte. For this neophyte reader, the quality of the footnotes is one thing which becomes crucial. Good footnotes keep the reader from being confounded by the writer’s assumptions about his knowledge (of the cases, of the terms, of the events); they help the reader understand and assess some otherwise inscrutable or bald conclusions in the text; they alert the reader to opposing views in disputed areas, or to common confusions which might interfere with understanding the text; and they provide the rudiments of a bibliography for exploring particular areas further. Many of these articles provide footnotes along just these lines; the first article, for example, by Professor Evans, thoughtfully includes quick factual summaries of the cases cited, and short descriptions of events or of sequences of events with which the reader might be unfamiliar, which help provide a context in which to understand what is being discussed in the text. Similarly, the article by Professor

8. Id. at v.
9. Id. at 229.
10. Id. at 1–14.
11. See, e.g., id. at 4 n.12, which describes who was fleeing where in each case cited involving prosecution of military personnel stationed abroad.
12. See, e.g., id. at 9 n.35, regarding the abduction of Adolf Eichmann from Argentina.
Saltzburg offers its analogies to issues in American criminal procedure with sufficient footnoting to enable a non-specialist to follow his reasoning to his detailed proposals and conclusions. However, instances of less helpful approaches are found sprinkled throughout the book. Professor Nanda's article, for example, refers to the Ker-Frisbie doctrine without explanation; surely this is not such a major doctrine that every reader would have instant recall of its substance without assistance. And Professor Paust, who so consistently provides alternative perspectives to those which other authors have taken for granted, fails to use some of his footnotes to maximum advantage as well. For example, as he is calling attention to the somewhat ambiguous quality of the "protection" offered American citizens under the exchange of prisoner treaties, he footnotes his mention of diplomatic protection thus: "In no case has diplomatic protection included actual incarceration. Moreover, diplomatic protection is a process which occurs at the international level. It has nothing to do with domestic incarceration." Now while this offers the reader an interesting thought, it offers him no means of exploring it further; if it occurred in the text, it would require a footnote — as a footnote, it passes by in this conclusory and unsubstantiated condition. (It is only a partial consolation, in this situation, that most of Professor Paust's footnotes are much more helpful.)

It is this freedom to take unsupported potshots (or to ignore the conflicts or inconsistencies that might have inspired them) which makes this kind of book frustrating. For example, Professor Paust surely raises an interesting point when he suggests that the pro-prisoner exchange treaty writers have become so entranced with their ends (bringing the Billy Hayes of this country back from Turkish prisons even if to American prisons) that they have tended to gloss over the means. Ignored, he says, is the question of whether our federal government has the power, under our Constitution, to imprison persons who have been prosecuted, "not for a violation of our law, but for a violation of foreign law in a foreign tribunal using foreign procedures." What Professor Paust then proceeds to do, however, is to concentrate on the means (which he finds unconstitutional) without ever addressing the ends — which the readers may find as frustrating as the reverse. Similarly, Professor Paust questions whether the

13. Id. at 107-54.
14. See, e.g., id. at 131 n.98, which describes the exclusionary rule; and id. at 136 n. 115, which lists the exceptions to the warrant requirement regarding searches.
15. See the two-pronged analysis proposed (regarding the applicability of constitutional standards to conduct abroad) (Id. at 147) and illustrated by application to a specific fact situation (ld. at 149-51).
16. Id. at 170. Contrast Professor Evans' succinct reference to the same doctrine. Id. at 8 n.31.
17. Id. at 209 n.14.
19. Fourth Sokol, supra note 1, at 204.
20. Id. at 206-07. He asserts the means are unconstitutional because the Constitution does not grant any power to the executive to imprison for violation of a domestic law not authorized by Congress in a tribunal not authorized by Congress.
federal government can really so blithely disassociate itself from the means used to secure the foreign convictions which, after the prisoner is exchanged, result in incarceration in this country. Is it really so obvious, as Professor Stephan concludes, that "the Court's pronouncements establish as a bedrock principle that the United States does not violate the Constitution when it accepts custody of a person knowing he has been abused by a foreign sovereign?" The two authors never really engage. Professor Stephan footnotes Professor Paust's position, dismissing him summarily: "I do not understand him to argue seriously that Supreme Court authority supports his all-encompassing notion of complicity, as a matter of logic and policy his interpretation seems insupportable." Professor Paust never mentions Professor Stephan, and himself avoids much of the issue by phrasing his questions in terms of U.S. government "involvement" in foreign state "illegalities" (by this latter he seems to mean foreign state behavior which would violate our Constitution if our government engaged in it). The reader is left with the impression of two shadow boxers unwilling to come out and contest each other directly.

There are many instances of failure to engage throughout the book, on many different levels. One question frequently raised, for example, is who does (or should) our Constitution protect? Part of one's reasoning with regard to this question will depend on one's view of the Constitution; is it "a compact between the people of the United States and its government, creating enforceable rights and duties running between each of the parties"? Or is it a "limit on the power of the central government" which "controls the activities of U.S. law enforcement officers wherever they occur"? Professor Saltzburg, who unilaterally does most of the interacting that is done in this collection, refers briefly to Professor Stephan's position but no real debate ever takes place.

Aside from specific issues which are never debated, there are a number of underlying themes about which the authors clearly have very different assumptions, but which they do not directly address. An example of this kind of subsurface tension may be found in the ways in which the authors refer to the executive, the judicial and, to a lesser extent, the legislative branches, and to the balance of power or expertise among them. Mr. Fields, an Assistant Legal Advisor at the Department of State, predictably takes the view that U.S. magistrates (when deciding whether an accused may appropriately avail himself of the

21. Id. at 221.
22. Id. at 58.
23. Id. at 58 n.60.
24. Id. at 205.
25. E.g., id. at 36; "I. Who Enjoys Constitutional Protection?"
26. Id. at 45 (Professor Stephan).
27. Id. at 109 (Professor Saltzburg).
28. Id. at 113 (Professor Saltzburg).
29. Id. at 114-15 nn.29 & 30.
"political offense" exception to extradition) need the assistance of official government witnesses\(^{30}\) (such as himself) in order to reach a correct and informed decision. Curiously then, although Mr. Fields goes to great lengths to praise a particular magistrate's willingness to accept and be guided by such testimony, and indeed quotes a full four pages from her opinion,\(^{31}\) there is an underlying patronizing tone to his praise. His efforts to commend her ability to distinguish between conclusions (which are hers to draw) and evidence (which witnesses might appropriately give) break down when one notices that the excluded area cited (regarding the existence of a political conflict in the Middle East\(^{32}\)), while it might be seen as conclusory, is hardly less so than the admitted area cited (Mr. Fields' testimony that the State Department viewed the act in question as a common crime and not as one of a political character\(^{33}\)).

Professor Stephan may be seen as expressing similar views more directly; he sees the Executive and Congress as best able to assess certain factors which in his view necessarily become involved as soon as other countries become involved,\(^{34}\) and for this reason he opposes judicial oversight of certain government actions (those in a hostile host country, for example), arguing that the government ought to be free to engage in "irregular," \(i.e.,\) unconstitutional, behavior abroad, if that seems necessary to protect U.S. interests.\(^{35}\) Admittedly this is a very different context from the magistrate's hearing above; yet the theme, that the executive is better fit to make certain determinations, and should be permitted to do so (whether by offering a conclusory expert opinion in a judicial proceeding or by elimination of judicial examination of an issue in the first place), is surely similar. Furthermore, in neither case is there a full discussion of why the executive is so clearly better suited to make which kinds of decisions (whether covertly or overtly) or of what might be lost by permitting it to do so.\(^{36}\) Professor Stephan suggests, for example, that "one hardly can imagine a less appealing spectacle than that of judges weighing and balancing the worth of particular foreign policy objectives in a given case."\(^{37}\) Aside from one's concern for the nascent condition of Professor Stephan's imagination, is this so clearly an outrageous activity for judges to be engaging in? It is precisely the kind of activity the magistrate engages in in deciding the political offense question, except that in that instance

30. Id.
31. Id. at 25-30.
32. Id. at 24-25.
33. Id. at 23.
34. Id. at 49.
35. Id. at 44.
36. E.g., the benefits of separation of powers, whatever they are; a less immediately political assessment of questions which are arguably legal, not political; and whatever protection court scrutiny allegedly provides from government excesses or politically motivated judgments. The rest of this paragraph discusses possible losses which are dismissed (not discussed) by the authors.
37. Fouth Sokol, supra note 1, at 49.
the magistrate is weighing and balancing the objective of the PLO, for example, or of the Provisional Wing of the Irish Republic (sic) Army, rather than that of the U.S. government. Is it so clear, as Professor Stephan argues, that government misconduct abroad will not "infect" domestic government behavior? Or that our citizens living abroad do not need judicial oversight of our government's behavior with regard to them, because "far greater threats to their civil liberties often are faced in their country of residence than those posed by our government"?

Naturally, not all the authors in this volume share this preference for executive control of decision-making. Professor Paust, for example, suggests that: "any attempt by the Executive and the Senate to force a judicial recognition of all relevant foreign penal judgments through a treaty provision should be struck down as an indelicate attempt to interfere with judicial powers." Although he frames his remarks in terms of what is constitutionally permissible, he appears to make some underlying assumptions. Since the debate is carried on at the level of assumptions and rhetoric, the reader has little ground on which to begin making rational judgments and distinctions.

A more consistent level of interaction might also have forced the authors to back up their arguments in more detail, and to incorporate more arguments by analogy to other areas, especially criminal procedure areas. Many of the important areas discussed — when does the government's indirect involvement become substantial enough to invoke constitutional protections; how meaningful is a waiver given under conditions of mental and physical stress; what are the arguments in favor of excluding inappropriately obtained evidence in court; what is meant by deterrence, or by protection of judicial integrity and what are the alternatives — have analogs or counterparts, which would provide a starting point from which to assess the options in these emerging and relatively unexamined situations. Too often, such analogies remain undisussed (and therefore, one fears, unrecognized) and even where mentioned may be so superficially dealt with that anyone familiar with their complexities must cringe. For example, when Professor Stephan cites the so-called silver platter cases as a model for how to deal with the question of government complicity, one familiar with their place in the evolution of fourth amendment law will be inclined (as Professor Saltzburg is 87 pages later) to dismiss not only his support of his position but, as

38. As in the Abu Eain case, described in id. at 21.
39. As in the McMullen case, described in id. at 20.
40. Id. at 44. See analogously Elkins v. United States, 364 U.S. 206, 80 S. Ct. 1437, 4 L. Ed. 2d 1669 (1960), which discusses the frustration of state policy which occurs when a federal court admits evidence lawlessly obtained by state agents; presumably this tolerance in a federal forum "infects" state agent behavior in the state context as well, or there would be no "frustration" of state policy.
41. FOURTH SOKOL, supra note 1, at 44.
42. Id. at 218.
43. Id. at 58 n.59.
44. Id. at 145-46 n.142.
a result, his position itself — the silver platter doctrine worked so poorly that it became an important motivating factor in the adoption of the exclusionary rule.

Another even more intrusive example of what appears to be naivété comes when Professor Stephan makes the following statement: "the truth-finding process will be unimpaired no matter how violent the defendant's capture may have been." This statement appears to assume that truth-finding is the goal of the criminal proceeding. While it may be a goal, and while debate continues over whether it ought to be made more of a goal, one wonders how much familiarity an author can possibly have with the Bill of Rights to imagine that there are not a variety of other values being protected by our criminal process — values which might easily be implicated in the violent capture of the defendant. Later, in Professor Paust's discussion of waiver (in the context of the exchanged prisoner agreeing to waive his right to contest his foreign conviction, and consenting to his transfer to a U.S. prison to serve his sentence), comparison with other situations involving waiver and consent seems called for. Professor Paust states that "an individual cannot grant a power to the federal government that does not exist" by virtue of a waiver — or by any other means. It is difficult to understand what he means by this, absent any illustration: one may consent to a search of one's home when the government has failed to procure a warrant, even if the failure is not simply a matter of procedure, i.e., that the government could have obtained a warrant but has not, but rather a matter of impossibility, i.e., where the government possesses no grounds on which to base an application. Surely, in a narrow sense, both consents give the government a power that does not otherwise exist.

45. Id. at 62.
46. See, e.g., Frankel, The Search for the Truth: An Umpireal View, 123 U. Pa. L. Rev. 1031 (1975). "Many of the rules and devices of adversary litigation as we conduct it are not geared for, but are often aptly suited to defeat, the development of the truth." Id. at 1036. Judge Frankel then goes on to suggest alterations in the presently defined roles of prosecution and defense which could encourage more of a search for truth, although he closes with the caution that one might ultimately have to choose between truth and liberty. Id. at 1059. See also Curtis, The Ethics of Advocacy, 4 Stan. L. Rev. 5 (1951). "Justice is something larger and more intimate than truth. Truth is only one of the ingredients of justice." Id. at 12.

47. See also Packer, Two Models of the Criminal Process, from The Limits of the Criminal Sanction 149 (1968), who contrasts a crime control model of criminal justice with a due process model, neither model interestingly enough, having truth as its primary objective.

48. FOURTH SOKOL, supra note 1, at 219.
(and in the second situation substantially so). If Professor Paust had been forced into more discussion and less rhetoric,\textsuperscript{50} the reader might have ended up less aggravated and more informed.

An alternative to this enforced interaction might have been to separate the subject matters of the articles (it is their overlap which is most revealing of their unevenness) or, at least, to label them more clearly. Mr. Timberg's article, for example, on \textit{Obtaining Foreign Discovery and Evidence in U.S. Antitrust Cases: The Uranium Cartel Maelstrom} is a pleasure to read not only because it is well written and incorporates a variety of perspectives, including a critical slant on each, but also because it benefits from its failure to overlap (especially if it is without engaging) any of the other articles. A collection of similarly isolated articles would place the authors' failure to interact in a different posture altogether. An article like Mr. Dalton's, which reports a fair amount of interesting information but does very little synthesizing,\textsuperscript{51} suffers by not being labeled as reportage, and by being placed in close proximity to Professor Paust's article covering much of the same material, though from a far more critical perspective. Professor Nanda, who begins an interesting discussion of what he has been describing (Enforcement of U.S. Laws at Sea — Selected Jurisdictional and Evidentiary Issues) ever so tentatively during his one page conclusion,\textsuperscript{52} needed to be encouraged to do more. In addition, Nanda suffers from his proximity to and overlap with Professor Saltzberg's article, \textit{The Reach of the Bill of Rights Beyond the Terra Firma of the United States}, particularly when the reader necessarily contrasts his summary treatment of the \textit{Warren} case, for example,\textsuperscript{53} with Professor Saltzburg's in depth treatment of the same case thirty pages earlier.\textsuperscript{54} Similarly, editorial intervention might easily have improved the quality of Mr. Fields' article, \textit{Bringing Terrorists to Justice — The Shifting Sands of the Political Offense Exception}. Although it begins fairly strongly and objectively, it degenerates in Part II (which does not follow any officially designated Part I) into what is really a pitch for a redefinition of "political" along lines he likes better, without discussion of the alternatives\textsuperscript{55} and which culminates in a melodramatic, and arguably racist,\textsuperscript{56} conclusion: "we can conclude that the sands of the political offense exception are definitely

\textsuperscript{50} He is fond of phrases such as "any child might know" (\textsc{Fourth Sokol, supra} note 1, at 226), or "as any perceptive child might point out" (\textit{id.} at 211), and refers twice in 13 pages to Humpty Dumpty. (\textit{Id.} at 212 and 222).

\textsuperscript{51} The closest he comes is a kind of "on the one hand, on the other hand" sequence. \textit{Id.} at 191.

\textsuperscript{52} \textit{Id.} at 176-77.

\textsuperscript{53} \textit{Id.} at 157.

\textsuperscript{54} \textit{Id.} at 116-28.

\textsuperscript{55} \textit{E.g.}, discussion of an objective or subjective standard by Professor Carbonneau, \textit{Id.} at 69, which might have been further enriched by a comparison with other objective or subjective standards, \textit{e.g.}, regarding custody. See \textit{United States v. Mendenhall}, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed. 2d 497 (1980).

\textsuperscript{56} The author seems to locate heinous terrorism in robed men in sandy places.
shifting away from the terrorist who seeks to cloak his heinous act with the robe of political justification.\textsuperscript{57}

Would I recommend this book? To a reader who is able to accept its modestly stated goal (to “stimulate future research and reform in the areas discussed”\textsuperscript{58}), yes — I learned a good deal from it, in spite of its frustrations, and it has left me with a number of questions and angles I would like pursue. However it would be a mistake to imagine that it represents a unified effort at a comprehensive and critical exploration of the areas named. Should one attempt to read it as one would a treatise, it will disappoint; should one attempt to read it as a casebook, it will provide plenty of struggle, but without the sense that there is a set of integrated aims being served by that struggle — a condition under which one’s expectations are bound to feel betrayed. One might well have enjoyed attending the conference which begat this book, (where, after all, one is free to choose to ask a speaker to confront that which he appears to be avoiding) without recommending that too much more than browsing, introductory attention be given to its transcript.

\textsuperscript{57} \textit{Fourth Sokol, supra} note 1, at 33.
\textsuperscript{58} \textit{Id.} at vii.