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The Trial of Amanda Knox In A Kangaroo Court: The United States' Constitutional Ban On Double Jeopardy, Bilateral Extradition Treaty Obligations, And The Vindication Of The Gallina Dicta

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INTRODUCTION

Amanda Knox is home. For almost two years now, Knox has woken up each day in the United States. She has resumed her studies at the University of Washington in Seattle. Knox has been able to see her family and friends; she has been able to live freely. Over the past four years, Knox has endured an existence devoid of liberty. How Knox returned to the United States is a complicated story, but explaining how she wants to live each day going forward is quite simple: she wants to have a choice in the matter.

On November 2, 2007, Meredith Kercher, a British study abroad student, was found on the floor of her bedroom, lying lifelessly in a pool of her own blood. Police arrived promptly at the scene of the crime, and, then, just as quickly, targeted Amanda Knox, a twenty-year-old American study abroad student who shared a flat with the victim and two other young women, as a suspect. In 2009, Knox was tried for the murder of Kercher before a jury in the Court of Assize of Perugia. On December 4, 2009, the jury convicted Knox on all charges. Knox's attorneys then filed an appeal in the Assize Court of Appeal. In 2011, the Assize Court of Appeal ruled on the merits of the case, reversed the decision of the lower court, and entered an order of acquittal on all charges. After Knox was acquitted, she was immediately released from prison, and she returned home to the United States.

Thousands of miles of separation from Knox did not, however, prevent the public prosecutor in Italy from filing an appeal in Italy's Supreme Court, the *Corte di Cassation*, opposing the Assize Court of Appeal's judgment of acquittal. On March 26, 2013, the Italian Supreme Court reversed the judgment of the Assize Court of Appeal and entered

an order remanding the matter for the retrial of Knox and her former boyfriend Rafaele Sollecito on the same offenses comprising the original indictment. The retrial of this matter commenced on September 30, 2013. A verdict is expected in early January 2014. If Amanda Knox is ultimately convicted, and Italy requests extradition, the United States government will face novel circumstances giving rise to rather delicate issue: when our bilateral extradition treaty with Italy is pitted against Amanda Knox's fundamental constitutional rights, what is the proper course of action?

In the event that the Italian court decides to convict Knox (*in absentia*, as she is currently in Seattle) this Note argues that we should not extradite her to Italy. Part I of this Note sets forth a highly abridged version of the written decisions of the Italian courts in this matter, totaling in excess of one thousand pages. Factual discussion will be limited to the extent necessary to enable the reader to gain an appreciation for the novel circumstances that Knox's case presents, and also to understand the extent to which Italy's course of performance in the Knox case is at odds with the rights American citizens deem essential to the concept of ordered liberty.

Part II of this Note takes the position that if Italy requests the extradition of Knox, the fundamental rights that the United States Constitution affords to its citizens compel one, and only one, result: a non-negotiable denial of the request through the proper diplomatic channels. The 1984 United States-Italy Bilateral Extradition Treaty irreconcilably conflicts in this case with the ban the Fifth Amendment places on successive prosecutions for the same offense. Secondly, basic legal maxims in both Italy and Europe as a whole provide further support a decision to not extradite in this situation.

Part III of this Note then sets forth a proposal about how to most effectively address the potential fallout that could result from the United State's failure to comply with its treaty obligations with Italy. The author contends the Knox case presents a compelling opportunity to attempt to negotiate a modification to the parties' certain treaty. This Note predicts that Italy would be amenable to hearing such a proposal at the very least for reasons that will be discussed herein.

Part IV of this Note centers on the nightmare trial of Amanda Knox, subsequent acquittal by Italy's appellate court, and ultimate order to retry Knox for the same offense. This Note argues that the trial of Amanda Knox comprehensively, and convincingly, demonstrates the pressing need to implement the above-discussed changes in the areas of criminal constitutional modeling, treaty negotiation, and transnational constitution protection of criminal rights. If Knox is convicted after retrial, Italy will request that the United States extradite Knox. This Note concludes that the United States must deny the extradition request in order to facilitate the changes previously discussed, and which will be explained in further detail below. The United States' continued practice of forcing Knox, and countless others, to forfeit their fundamental constitutional rights guaranteed under the United States constitution as soon as they set foot outside United States borders is inimical to the American concept of ordered liberty. Further, this practice is growing increasingly anachronistic in light of modern developments in transnational constitutional practices in the context of criminal justice, and, therefore, must be discarded in order to preserve the stability of rule of law, and, most importantly, to protect the legitimacy of

the United States Constitution and, in turn, its ability to serve as a constitutional model that other countries can emulate or look to for guidance.

I. BACKGROUND

In 2007, Amanda Knox, a twenty-year-old American undergraduate student at the University of Washington, arrived in the idyllic hillside town of Perugia, Italy. Knox hoped to “expand her horizons” and learn how to live “without a safety net” while studying abroad for a year.¹ Right after she set foot on Italian soil, Knox stumbled upon a room for rent in a cottage at 7 Via della Pergola. Wrapped up in the moment and feeling thrilled that she found and subleased a “cute house” all on her own, Knox failed to notice the backdrop of undulating mountains, obstructed sky, and cypress trees.² Knox would forever remember 7 Via della Pergola for its famous view, one that invited the promise of infinite possibility.

Fast forward to December 5, 2009. Amanda Knox still had a view of a cypress tree, but only one; she was able to see it through the bars of a small window in her prison cell—her only view to the outside world.³ December 5, 2009 was Knox’s second day at her new home—in Capanne prison. A court found Knox guilty of murder and sentenced her to twenty-six years in prison. 7 Via della Pergola is no longer Knox’s oasis; rather, it is a heart-wrenching reminder of the place where her friend, Kercher, was brutally murdered. It is the place where, according to an eight-person jury, Knox slashed

¹ Nathaniel Rich, *The Neverending Nightmare of Amanda Knox*, ROLLING STONE (June 27, 2011), <http://www.rollingstone.com/culture/news/the-neverending-nightmare-of-amanda-knox-20110627>.

² *Id.*

³ *Id.*

Kercher's throat and left her there to die.⁴ The cottage was where Knox's nightmare began; today, more than five years have passed since police opened what amounted to a severely flawed investigation. Feeling the pressure of the worldwide captive audience tracking every development in this case, the police and public prosecutor set out to hold someone (really, anyone) accountable for Kercher's death, and, judging from the management of the investigation and the subsequent (and still ongoing) adjudication of this matter, they were willing to obtain a guilty verdict, no matter what the cost.⁵ The police and public prosecutor trampled on several constitutionally guaranteed rights, overtly failed to preserve the crime scene from the outset, cross-contaminated DNA evidence, and developed a theory of the case that was so bombastic and out of touch with the evidence (or, more appropriately, lack thereof) that the trial of this matter has reeked of bad faith every step of the way.⁶ Knox's fate still hangs in the balance of what this author contends can fairly be described as a "kangaroo court."

Kercher lived at 7 Via della Pergola with three other women: Knox, and two Italian natives, Laura Mezzetti and Filomena Romanelli.⁷ Kercher's bedroom was located on one end of the apartment, and Knox occupied the bedroom in the middle of the apartment.⁸ Kercher and Knox shared a bathroom, which was located close to Kercher's

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Sentenza della Corte d'Ass., 4 Marzo 2010, n. 7/2009, 1, at 24 (It.), available at <http://www.perugiamurderfile.org/download/file.php?id=1902&sid=a1344c3d364ff8cc7fdce0344d2abd30>. The sentencing court issued a four-hundred-twenty-seven-page opinion recounting a summary of all the evidence presented and the jury's process in deliberating. *Id.*

⁸ *Id.* at 24–25.

room.⁹ All of the occupants of the building were interviewed by the investigative police. The investigative police learned from Knox that she had returned to her apartment the morning of November 2, to shower and change her clothes.¹⁰ She had spent the previous evening at the apartment of her new boyfriend, Raffaele Sollecito.¹¹ Romanelli told the police that Knox had called her earlier that same morning to report that there might be something wrong at their apartment because the front door was open and no one appeared to be home.¹² Knox entered the apartment and went to the bathroom to have a shower, and noticed that there were traces of blood in the bathroom.¹³ She also noticed that in Romanelli's room the windowpane was broken and the room had been left in a state of disarray.¹⁴ Finally, she noticed that Kercher's room was locked.¹⁵

Knox and Sollecito called the police to report a break-in at the cottage at 7 Via della Pergola. Police arrived, broke down the locked door to Kercher's room, and found her, "under a blood-soaked duvet cover . . . with her throat slashed," lying lifelessly in a pool of her own blood on her bedroom floor in Perugia, Italy.¹⁶ Six people, in addition to two policemen, were present in the apartment at the time Kercher's body was discovered.¹⁷ The police ordered everyone out of the house and no one was allowed to

⁹ *Id.* at 24.

¹⁰ *Id.* at 35

¹¹ *Id.*

¹² *Id.* at 29–30.

¹³ *Id.* at 30.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ian Fisher, *Grisly Murder Case Intrigues Italian University City*, N.Y. TIMES (Nov. 13, 2007), <http://www.nytimes.com/2007/11/13/world/europe/13perugia.html>.

¹⁷ *Sentenza della Corte d'Ass.*, 4 Marzo 2010, n. 7/2009, at 25 (It.), available at <http://www.perugiamurderfile.org/download/file.php?id=1902&sid=a1344c3d364ff8cc7fdce0344d2abd30>.

enter the bedroom.¹⁸ Shortly after the grizzly discovery, the investigative unit of the Perugia police arrived. Kercher's body was removed from the apartment and her bedroom was secured until the scientific police had completed their investigation. After examining the body, the coroner estimated the time of death somewhere between 10:00 p.m. on November 1 and 4:30 a.m. on November 2, 2007. The cause of death was strangulation due to the crushing of the hyoid bone and the slitting of the throat area with a knife. The wound on the left side of the neck was very deep and wide, indicating a cut with a large, sharp knife. However, the wound on the right side of the neck was much smaller, indicating the width of the blade to have been about three centimeters. The victim also suffered sexual violence, indicative of non-consensual sexual intercourse.

Cell phones had been found near the scene of the crime, one of which belonged to Filomena Romanelli, and the police had traced a call made to one of the cell phones to Amanda Knox's phone.¹⁹ Romanelli identified the two found cell phones as belonging to Kercher.²⁰ The police learned from Kercher's other girlfriends that they had eaten dinner with Kercher at her apartment on November 1, and they left at about 9 p.m.²¹ They also said that Kercher had been seeing one of the boys living downstairs named Giacomo Silenzi.²² Silenzi admitted to having a romantic relationship with Kercher; but he also told the police that Rudy Guede, someone he had played basketball with near the house, had expressed interest in Knox and had previously come over to the girls' apartment.²³

¹⁸ *Id.* at 32-33.

¹⁹ *Id.* at 26.

²⁰ *Id.*

²¹ *Id.* at 36.

²² *Id.* at 38.

²³ *Id.* at 39, 42.

Guede was not originally a suspect. However, upon learning that he was interested in Knox, the police named him as a suspect and then searched his apartment.²⁴ The police obtained Guede's DNA from his apartment on November 20.²⁵ The DNA found in Kercher's vagina, on her bra strap, the cuff of her sweatshirt, and on her purse was then matched to his DNA.²⁶ Further biological traces of Guede were located on the toilet paper in the front bathroom of the girls' apartment.²⁷ The bloodstained footprints coming from Kercher's room were later connected to a pair of Guede's shoes that were also found in his apartment. It should be noted that Sollecito also wore the same type and size shoes and the footprints were at an earlier time attributed to him.²⁸ By the time of the trial, the prosecutor presumed that Guede was the perpetrator of the murder. However, the prosecutor reasoned that Guede had assistance from Knox and Sollecito because there was very little evidence that Kercher had struggled.²⁹

Other non-DNA evidence also implicated Rudy Guede. Four days prior to the murder, on October 27, 2007, Guede was charged with breaking and entering into a nursery school in Milan in which he stole a jack-knife and money.³⁰ This knife matched the type of knife used to cut Kercher's throat. Guede had also broken into a law office some days prior into by throwing a rock through the window in the same way that Kercher's apartment was broken into.³¹ Two other knives were also attributed to the

²⁴ *Id.* at 39-40.

²⁵ *Id.* at 195.

²⁶ *Id.* at 195.

²⁷ *Id.* at 43-44.

²⁸ *Id.* at 333-34.

²⁹ *Id.* at 45.

³⁰ *Id.* at 47.

³¹ *Id.* at 45.

crime. One was a knife found in Sollecito's kitchen and the other was a knife found in the girls' kitchen. However, the coroner was unable to determine which of the three knives was the actual murder weapon.³²

From November 2, 2007 to November 6, 2007, police subjected Knox to forty-three hours of coercive interrogation, with the final eight hours conducted overnight without food or water.³³ Knox finally broke and signed a document that accused Diya "Patrick" Lumumba (who owned a pub where Knox sometimes worked) of murdering Kercher. Knox later recanted this statement, and Lumumba provided the police with an alibi that they were able to corroborate. On November 20, 2007, the police released Lumumba from custody.

According to the testimony of both Knox and Sollecito, they spent the entire evening of November 1 at his apartment having dinner, watching movies, and smoking marijuana.³⁴ Knox testified that when she took a shower in her bathroom she noticed some blood on the sink and a drop or two on the bathmat. She assumed that the blood was from one of the roommates. After her shower Knox dressed in her own bedroom and blow-dried her hair in the front bathroom. At that time she noticed that someone had failed to flush the toilet.³⁵

Further police investigation of the neighborhood revealed additional information that was used at trial. A nearby neighbor heard a loud, long scream from a woman

³² *Id.* at 172.

³³ Scott O. Lilienfeld & Robert Byron, *Your Brain on Trial: Lessons from Psychology Could Greatly Improve Courtroom Decision Making, Reducing Racial Bias, Eyewitness Errors and False Confessions*, SCIENTIFIC AMERICAN MIND (Jan./Feb. 2013), at 51.

³⁴ *Id.* at 65.

³⁵ *Id.* at 65.

coming from Kercher's apartment at approximately 11:30 p.m. on November 1. She also heard someone running down the metal stairway and along the path.³⁶ Another witness confirmed that she too heard running steps on the pathway at about the same time. However, she was unsure whether there could have been more than one person running.³⁷ A homeless drug addict named Antonio Curatolo testified that he saw Knox and Sollecito near the murder scene on November 1, 2007—he thought that he remembered seeing Knox and Sollecito in a square located between Knox's and Sollecito's apartments between 9:30 and 11:30 p.m. on the evening prior to the murder.³⁸

After several lengthy police interrogations, both Knox and Sollecito had inconsistencies in their testimonies. For example, Sollecito claimed that Knox was not with him the whole evening. Knox also reported visions that implicated her boss, Patrick Diya Lumumba in the murder. Sollecito's computer indicated that he was not asleep in the morning as he stated because music was being playing from his computer. In addition, the computer records also indicated that the computer had been turned off between the hours of 9 p.m. and 5 a.m. Knox was further implicated as an accomplice because she removed the mop from her apartment and had allegedly purchased bleach in the morning of November 2. There were also other reasons both Knox and Sollecito were implicated in assisting Guede with murdering Kercher (i.e., an eyewitness account placing them near the scene of the crime at the time of the crime and a presumed motive of a possible sex orgy).

³⁶ *Id.* at 96.

³⁷ *Id.* at 97.

³⁸ *Id.* at 78–79.

II. ANALYSIS

If Amanda Knox is convicted at retrial, Italy will request through the appropriate diplomatic channels specified in the Bilateral Extradition Treaty that the United States extradite her to Italy to serve her sentence of incarceration.³⁹ For the reasons that follow, the United States should deny the request.

First, and most importantly, an extradition request given the particular facts and circumstances of this case runs impermissibly afoul of the Fifth Amendment's Double Jeopardy Clause. The Fifth Amendment to the United States Constitution contains a number of provisions, including the guarantee that no person "be subject for the same offense to be twice put in jeopardy of life or limb."⁴⁰ This is known as the prohibition against double jeopardy. The Double Jeopardy Clause contains three distinct guarantees; however, in the case of Knox, only one of these iterations is relevant for purposes of analysis. Specifically, the Double Jeopardy Clause places a ban on subsequent prosecution after an acquittal for the same offense.⁴¹

In Italy, there is no double jeopardy provision that operates on a national level so as to be properly considered as a direct analogue to the manner in which the United States has interpreted its double jeopardy provisions. However, Italy approves of the use of the maxim *non bis in idem*, which, in the international realm, provides a defendant with at least some level of double jeopardy protection insofar as it places a prohibition against

³⁹ Extradition Treaty Between the Government of the United State of America and the Government of the Republic of Italy, U.S.-It., art. X, Oct. 13, 1983, 1983 U.S.T. 421.

⁴⁰ U.S. CONST. art. I § 9, cl. 2.

⁴¹ *Green v. United States*, 355 U.S. 184, 188 (1957).

multiple prosecutions for the same offense.⁴² In fact, an example of Italy's endorsement of the *non bis in idem* principle is embodied in the bilateral extradition treaty that is operative between Italy and the United States.⁴³

The philosophical underpinning of *non bis in idem* is to ensure that a defendant is not tried for the same offense by country A and then again by country B. Distilling this principle further, *non bis in idem* rests on a simple belief: a defendant should not be tried for the same offense twice. Italy's clear endorsement in the international realm of the longstanding common-law principle of *non bis in idem* as a fundamental safeguard intended to protect a defendant against being tried twice for the same offense is not limited in its application to the provisions of its Bilateral Extradition Treaty with the United States. Italy has also approved of provisions including the maxim of *non bis in idem* in other treaties. Most notably, Italy is a signatory to the European Court of Human Rights.⁴⁴ After drafting its original treaty for the convention, the European Court of Human Rights penned one of several amendments ("optional protocols") to the original multilateral treaty; Protocol No. 7 explicitly provides for a prohibition on *double jeopardy*.⁴⁵ Italy not only signed off on the protocol without issue, but also ratified the protocol in a prompt fashion thereafter.⁴⁶

⁴² Dax Eric Lopez, *Not Twice for the Same: How the Dual Sovereignty Doctrine is Used to Circumvent Non Bis in Idem*, 33 VAND. J. TRANSNAT'L L. 1263 (2000).

⁴³ Extradition Treaty Between the Government of the United States of America and the Government of the Republic of Italy, U.S.-It., art. VI, Oct. 13, 1983, 1983 U.S.T. 421. Article VI of the Extradition Treaty states the following: "Non Bis in Idem: Extradition shall not be granted when the person sought has been convicted, acquitted or pardoned, or has served the sentence imposed, by the Requested Party for the same acts for which extradition is requested."

⁴⁴ COUNCIL OF EUROPE, Member States—Italy, available at <http://www.coe.int/en/web/portal/italy>.

⁴⁵ Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 4, Nov. 22, 1984, CETS No. 117, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/117.htm> (emphasis added). Article 4 of Protocol No. 7 reads as follows: "Article 4 – Right not to be tried or

The fact that Italy has retained the common-law notion of *non bis in idem*, as a practical and necessary safeguard in the context of international adjudication as it relates to the *protection of defendants* in its dealings with the United States, and has also ratified, without issue, Protocol No. 7 to the multilateral treaty drafted by the European Court of Human Rights, which explicitly establishes the positive right that defendants are not to be tried or punished twice *upon acquittal*, only serves to bolster the United States' position that extradition of Knox is inappropriate. Italy plainly sees a considerable degree of merit in both the maxim of *non bis in idem* and the doctrine of double jeopardy as defined by Protocol No. 7, which reads almost identically to the American version of double jeopardy. Other factors, such as the explicit language of the bilateral treaty itself, strengthens the idea that protection against double jeopardy is an integral part of a constitutional society, and is fundamental to the liberty interests of the people.⁴⁷

punished twice: No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

⁴⁶ *Id.*

⁴⁷ It is beyond the scope of this paper to discuss matters pertaining solely to principles of construction and interpretation of treaties, but it is worth noting that the explicit text of the Bilateral Extradition Treaty between the United States and Italy is also favorable to the position that the United States would not be required to extradite Amanda Knox. For example, Article I of the treaty between the United States and Italy reads as follows:

ARTICLE I—Obligation to Extradite

The Contracting Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities of the Requesting Party have charged with or found guilty of an extraditable offense.

A strict reading of the treaty would permit the conclusion that the United States has no basis to extradite pursuant to the express language of the treaty alone. Since Article II makes clear that the question as to whether a given offense is extraditable is to be determined under “the laws of both Contracting Parties,” and the treaty makes no distinction between substantive criminal law and procedural criminal law, following the standard rule of broad treaty construction and interpretation, it is undoubtedly the case that the retrial of Knox in Italy following her acquittal was a violation of her double jeopardy rights under United States law. Again, since the treaty does not distinguish between substantive and procedure law when

Aside from the above-discussed maxim and the constitutionally protected ban on double jeopardy, there are limited, but still persuasive, United States based case law where the judges plainly contemplate the fact that the foundation of our laws is unique to us, and uniquely valuable. More specifically, our government should at least attempt to value and vindicate its citizens' fundamental rights guaranteed by its Constitution; the story of Amanda Knox underscores the importance of the government to reevaluate the ambit of constitutional liberty as applied to its citizens. For example, in *Reid v. Covert*,⁴⁸ the United States Supreme Court discussed the propriety of the suggestion that "only those constitutional rights which are 'fundamental' protect Americans abroad."⁴⁹ The Court answered this question in the negative; the *Reid* court encouraged the government to utilize fairly expansive discretion to act outside of the continental United States to protect fundamental rights of its citizens.⁵⁰ The Court went on further to profess that the "concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our government."⁵¹ In

considering whether a given offense is extraditable, and it offends common sense to divorce substance from procedure in the context of criminal law to begin with, when the United States considers whether the offense is extraditable, it will realize that they must answer a question prior to the above-referenced question. More specifically, the United States must query, "is there an offense to be considered for purposes of extradition to begin with?" Since a request for extradition following a retrial after an acquittal plainly runs afoul of the ban on double jeopardy (again, a procedural rule in criminal law), then this necessary means that there is no offense to be considered at all. Simply put, the United States can choose to see the "offense" committed by Amanda Knox to be non-extraditable, since in the United States double jeopardy would protect her, and she would not be said to have committed an "offense."

⁴⁸ 354 U.S., 1 (1957).

⁴⁹ *Covert*, 354 U.S., at 9.

⁵⁰ *Id.*

⁵¹ *Id.* at 14.

Gallina v. Fraser,⁵² a case more factually apposite to the Knox matter, as the case involved an appeal from an extradition decision, the United States Court of Appeals for the Second Circuit expressed, in dicta, consternation over a hypothetical situation in which a person was headed to be extradited from the United States and, upon extradition, would “be subject to procedures or punishment so antipathetic to a federal court’s sense of decency as to require reexamination of the principle [that extradition should solely be handled by the Executive branch in all circumstances].”⁵³ If there was ever a case where the often cited *Gallina* court would be satisfied that it found its hypothetical defendant’s real world referent, it would be the case of Amanda Knox.

IV. PROPOSAL

Given that the proposal of this Note is that, in the event that the Italian High Court convicts Knox, the United States should choose to *not* extradite her, one requirement of such a proposal is to deal with the fallout from such a decision. Given that the United States and Italy have an extradition treaty dating back to 1983, Italy will likely see a failure to extradite as directly contradicting that treaty. Additionally, Italy may view this action in the same manner that many European countries often view actions taken by the United States—a mere flexing of American muscle and imperial superiority. To Italy, Amanda Knox may be an American citizen, but she (allegedly) committed murder on Italian soil, and, thus, Italy possesses a strong interest in the security and protection of its citizens, as well as the enforcement of its criminal law. On the other hand, the decision

⁵² 278 F.2d 77 (1960).

⁵³ *Gallina*, 278 F.2d at 79.

not to extradite Amanda Knox may prove to be quite a favorable one in the international community outside of Italy. As discussed before, Europe is placing ever-increasing interest in advancing of a theory of global constitutional criminal law.

The Amanda Knox case presents a compelling opportunity to modify the extradition treaty between the United States and Italy (and extradition treaties with other nations as well) to solve a problem that is likely to arise again. As long as other countries around the world have constitutional principles and criminal justice models that differ from our own, the United States will continue to be put in situations where it is asked to extradite individuals to be subjected to criminal prosecutions that we find to be constitutionally abhorrent.

At first one might think that Italy, as well as most other countries, would not be amenable to hearing such a proposal. However, the major bargaining chip that the United States holds in modifying its extradition treaties is that the same principle argued in this Note could be applied to a reverse situation in which the United States is requesting that a foreign nation extradite an individual to the United States. Particularly salient with regards to this matter is the death penalty. Just as the United States Constitution forbids double jeopardy, and, thus, subjecting Amanda Knox to double jeopardy in Italy is constitutionally forbidden, the death penalty is constitutionally forbidden in many European countries, but not the United States. Thus, if we were to amend our extradition treaties with European nations, allowing modification of terms in connection with the imposition of the death penalty would permit refusal of extradition in cases in which the United States is seeking the death penalty. This sort of renewed engagement in treaty

negotiation, with an eye to more modernized societal norms and values, would likely benefit diplomatic relations

On a related note, the United States-Italy extradition treaty is outdated. The United States should offer the opportunity to execute a new, modified, treaty with Italy that would avoid circumstances like the present case. During the modification process, this Note suggests that the contracting parties contemplate the vast innovations in technology that have taken place over the last thirty years. A modified treaty should incorporate new innovations in technology insofar as such advances more effectively serve the purposes of the mutual assistance agreement under negotiation. This initiative will necessitate the United States to make certain concessions, but this Note contends that new treaty negotiation, when considered in light of modern domestic criminal practices, as well as the evolving interest in developing a global constitutional criminal law model, will not only mutually benefit the contracting parties, but will also enhance diplomatic relations. While the consequences of failing to honor our extradition obligations may place the United States in a bad light within the international community, this Note argues it is more likely that refusing to extradite Knox will garner international support.

V. CONCLUSION

The Amanda Knox case demonstrates that the United States needs to take a critical look at its extradition treaties with other nations. It is not enough anymore to say that our Constitution protects American citizens on American soil—for it is just as bad for the Federal Government to extradite an American citizen to be subject to abhorrent and unjust criminal procedures in another country, procedures that would violate the

Constitution if conducted in the United States. While the scope of this Note has focused solely on double jeopardy, any cursory reading of the plethora of news reports on Amanda Knox indicates that she was subjected to a whole host of Due Process violations: unlawful interrogation tactics, including the use of physical force, denial of counsel, precautionary detention. At one point, Knox's interrogators even lied and told her that she had contracted the HIV virus in order to get her to list all of her previous sexual partners. This Note has mentioned that there is a movement towards standardizing international criminal justice norms, but as long as there are foreign countries that engage in practices that we find to be objectionable under the U.S. Constitution, these extradition issues will continue to arise. The United States cannot just blindly extradite its citizens to be subjected to these procedures anymore. As such, this Note argues that the Amanda Knox case is the lightning rod necessary to draw attention to the need to modify our extradition agreements with other countries. Treaties are terminable—our Constitution is not.