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Ethan A. Nadelmann, Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement

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Ethan A. Nadelmann, *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement*

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Abstract

This book review asserts that *Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement* ("Cops Across Borders") is the first book to attempt a systematic analysis of the role that the United States has played in the field of international law enforcement. For that reason, the book represents a major step forward in understanding this rapidly evolving area. While many people have examined different aspects of international law enforcement, such as extraterritorial jurisdiction, extradition, and international evidence gathering, not until this book has the entire field been subjected to historical and scholarly research. Mr. Nadelmann's book has forged a new road in this rapidly growing, but often confusing, area. The book is not without defects, however. The basic problem with *Cops Across Borders* is that the general theme of international law enforcement is not strong enough to hold together the different chapters to form a cohesive whole. Each chapter is a self-contained study of a particular facet of law enforcement, and the reader is left with the feeling that Mr. Nadelmann has forced the parts together to form a single text. Given the importance of his endeavor, however, the effort can be readily defended as the exercise of justifiable force. Indeed, the sections of the book are well-suited to use in an academic setting as the basis for an extended study of the issues raised.

BOOK REVIEW

COPS ACROSS BORDERS: THE INTERNATIONALIZATION OF U.S. CRIMINAL LAW ENFORCEMENT. By Ethan A. Nadelmann. Pennsylvania State University Press, University Park, Pennsylvania, 1993. 523 pp. ISBN1-85800-0246 paper, ISBN 0-271-01094-0 cloth. US\$16.95.

*Reviewed by Richard A. Martin**

INTRODUCTION

The recent discovery of a blackmarket smuggling operation that was dealing in nuclear weapons grade plutonium stolen from Russia,¹ and the less recent invasion of Panama and arrest of Manuel Noriega² should be sufficient to persuade even the most skeptical observer of the threat of international crime and the importance of international law enforcement. With less drama, criminal organizations like the Cosa Nostra, the Russian Mafia, the Colombian cartels, and the Chinese Triads, to name just a few, evade national borders every day and routinely defy the jurisdiction of single states. Through the use of standard and cellular telephones, telefaxes, computers, and air travel, these and other groups are easily able to maintain a vast, illicit,

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1. Peter Goodspeed, *Pakistan and India Spar Over Bomb, Kashmir Row Triggers Nuclear Brinkmanship*, TORONTO STAR, Aug. 31, 1994, at A12.

2. Although the question of whether Noriega was arrested, taken prisoner, or merely removed to the United States for trial was the subject of extensive litigation, he was convicted in 1992 of eight counts of drug trafficking, racketeering, and money laundering. David Margolick, *Judge Rules Noriega is Prisoner of War*, N.Y. TIMES, Dec. 9, 1992, at A18; *Noriega Appeals Against Sentence*, XINHUA NEWS AGENCY, Apr. 1, 1994. He is presently serving a 40-year sentence in Miami and he has appealed his case. David Lyons, *CNN Charged in Contempt; Court Ban in Noriega Case Allegedly Broken*, HOUS. CHRON., Mar. 31, 1994, at 10.

and international commerce. That commerce and those groups have placed an enormous burden on governments and police agencies of all nations whose job it is to protect their citizens from them.

The importance of having an effective system of international cooperation as an essential part of every nation's law enforcement system is self-evident. Yet, while criminal groups find no difficulty in operating internationally, nations have found it very difficult. And, while it is easy to understand the importance of enhancing international law enforcement, in reality this ideal has suffered from a chronic lack of coordination and common goals. Finally, despite its increasing importance, thorough analysis of the U.S. policy on international law enforcement has been virtually ignored as a subject of serious study.

Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement ("Cops Across Borders") is the first book to attempt a systematic analysis of the role that the United States has played in the field of international law enforcement. For that reason alone, the book is an important achievement, representing a major step forward in understanding this rapidly evolving area. While many people, including myself, have examined different aspects of international law enforcement, such as extraterritorial jurisdiction, extradition, and international evidence gathering, not until this book has the entire field been subjected to historical and scholarly research. Mr. Nadelmann's book has forged a new road in this rapidly growing, but often confusing, area.

The book is not without defects, however. The basic problem with *Cops Across Borders* is that the general theme of international law enforcement is not strong enough to hold together the different chapters to form a cohesive whole. Each chapter is a self-contained study of a particular facet of law enforcement, and the reader is left with the feeling that Mr. Nadelmann has forced the parts together to form a single text. Given the importance of his endeavor, however, the effort can be readily defended as the exercise of justifiable force. Indeed, the sections of the book are well-suited to use in an academic setting as the basis for an extended study of the issues raised.

Mr. Nadelmann's book is remarkable for several reasons. First, as a former prosecutor in the United States and a representative of the Department of Justice overseas, I can confirm the

book's premise that international law enforcement is an area familiar only to a small group, comprised primarily of law enforcement agents and attorneys in the U.S. Departments of Justice and State. To my knowledge, the principal repositories of information about matters such as extradition and mutual assistance lie within the Office of International Affairs at the Department of Justice, and a similar but smaller office within the Legal Advisor's Office of the State Department. While those offices are charged with the responsibility of directing the United States efforts at coordinating international law enforcement overseas, outside of Washington, and for that matter, outside of their own agencies, these offices and the work they perform are virtually unknown. As a result, most prosecutors and agents who become involved in international criminal matters do so with little familiarity beforehand.

Prosecutors confronted with applications for extraditions made to the United States or who are seeking extradition from foreign countries of U.S. fugitives often find treaties difficult to understand, and the layers of responsibility leading back to the U.S. Departments of Justice and State in Washington frustrating. At least as confusing are the different provisions, based upon the nation where evidence is located, for obtaining information and evidence from a foreign country. The process of letters rogatory is quite slow and, even though mutual legal assistance treaties often expedite the delivery of information, the use of these mechanisms is frequently perceived as an additional burden that prosecutors simply do not choose to bear to gather information. While this attitude is clearly changing, and the number of extraditions and applications for mutual assistance is growing rapidly, it is still true that information about the processes of conducting rogatory examinations or preparing extradition requests is often passed from individual to individual as a sort of oral history. *Cops Across Borders* captures the sense of a new and confusing frontier that international criminal matters present to many law enforcement officers without succumbing to that confusion or sacrificing the discipline of analysis simply to recount old war stories.

The book is also remarkable because it bridges the gap between the world of police officers and federal agents, and the refined world of law reviews and academics. This is a particularly impressive achievement because normally those police officers

and prosecutors knowledgeable about the practice of international law enforcement regard anyone outside their realm with great skepticism, frequently dismissing their inquiries as a waste of time. Likewise, academics have traditionally eschewed reliance on law enforcement sources as being unscientific, biased, or both. Mr. Nadelmann has overcome these limitations, as the vast number of sources relied upon in his work — legal, historical, and anecdotal — proves. Nadelmann's use of those sources, coupled with a rare capacity to express the opinions and goals of those sources accurately,³ enables him to explain in detail the way in which international law enforcement has actually been carried out.

EARLY HISTORY OF U.S. INTERNATIONAL ACTIVITY

Cops Across Borders begins with a review of the early history of the U.S. involvement in criminal matters that extended beyond its borders. Like the book itself, this history is valuable on its own, but is particularly interesting when contrasted with succeeding events. In the years preceding the Civil War, and even as late as the outbreak of World War II, the United States adopted an international policy almost precisely the opposite of that which it has pursued in more recent times. That is, in its early history, the United States resisted the creation of a national police force, and made no effort to transform or "Americanize" the laws of other countries to conform to its own. Moreover, because most crime was local in nature, law enforcement was viewed as the obligation of cities and states, not the federal government. Throughout that time a national police was perceived as posing a threat of centralized oppression.

Because criminals were quite well-informed about the limitations of law enforcement and the corresponding opportunities those limitations presented to them, they sought to use national borders to defeat the efforts of local authorities to bring them to trial. That pattern of law enforcement authorities always having to catch up to the advances of a well-informed adversary is one which continues through the entire history of international law

3. For example, I am sure that many people whom Mr. Nadelmann interviewed, especially the DEA agents whose work he presents so fairly, would be greatly surprised to learn that he is a proponent of the legalization of drugs, albeit in a controlled manner and with clear limitations.

enforcement. The vacuum created by the absence of a federal police agency in the United States and other international forms of cooperation was initially filled by private detective agencies that were called upon to pursue investigations internationally, often with the help of local police. Despite the passage of time and the present involvement of organized law enforcement agencies overseas, the methods our earliest representatives used to persuade their foreign colleagues to cooperate are little changed.

It is also essential for anyone seeking to gain a thorough understanding of the development of international policy in the area of law enforcement to recall that during the first 100 years of U.S. history, a major part of U.S. interaction with foreign countries involved efforts to capture fugitive slaves. Those efforts generated decades of conflict, particularly with Mexico and Canada. That protracted dispute between the United States and its neighbors had a very negative effect on the attitude of most nations towards U.S. law enforcement efforts for many years. For modern observers it is difficult to imagine the United States, albeit through the efforts of individual slave states, as a nation that used its legal system and diplomatic influence to seek the return of slaves. Equally difficult to accept is the principle, applied in those states where slavery was legal, that slaves were property, over which, as opposed to whom, no legitimate claim could be asserted by the slave himself, or any foreign power. For such states, of course, the question of the individual rights of slaves simply did not exist. Those legal principles were not shared by most nations, and U.S. extradition requests of Mexico, Canada, England, and Spain were routinely rejected, unless the fugitive slave had committed a crime during the course of his escape for which he could be legitimately prosecuted. That saga, in which the United States found itself consistently on the morally wrong side, formed a basis for the development of several limitations on extradition and cooperation which have continued to the present.

Following the end of the Civil War, the United States began the slow process, almost always carried out on an individual basis, of developing mechanisms to obtain information from other police services and to request the arrest and return of fugitives. Even though U.S. policies were vastly different and the methods employed now seem antiquated, the work of those involved in

international law enforcement has striking parallels to present times. As Nadelmann observes:

A student of contemporary international law enforcement would observe that although the scope and magnitude of U.S. involvement in international law enforcement have expanded greatly, the fundamental obstacles, dilemmas, and nature of that involvement have not changed all that much. The very nature of the enterprise requires that law enforcement agents of one nation either depend on the resources of their foreign counterparts or else act unilaterally with a large measure of discretion. Like private detectives, they are largely deprived of the sovereign powers that normally accrue to the police agents of a state. They must rely on their own skills at cultivating personal relationships with foreign police, developing informant networks, and running undercover operations across or outside U.S. borders, and only occasionally on the diplomatic leverage of their government. They are rarely welcomed by the State Department's representatives abroad, and often viewed warily by local government officials, including many law enforcement agents. All this was true during the early years of U.S. involvement in international law enforcement, and all of it remains true today. The accretion of dozens of extradition and other law enforcement treaties, of internal agency guidelines for operating overseas, and of sophisticated telecommunications links among national police agencies have added new dimensions to the internationalization of law enforcement, but the basics of criminal investigation across and beyond national borders have remained more or less the same.⁴

POST-WAR DEVELOPMENT OF U.S. INTERNATIONAL CRIMINAL POLICY

After describing the early history of international activity by the United States in the area of law enforcement, *Cops Across Borders* recounts the development of United States drug enforcement policy, the expansion of other agencies in the international arena, and the use of treaties, new laws, and other methods of furthering law enforcement goals overseas. Nadelmann's review of the development of the numerous agencies entrusted

4. ETHAN A. NADELMANN, *COPS ACROSS BORDERS: THE INTERNATIONALIZATION OF U.S. CRIMINAL LAW ENFORCEMENT* 101 (1993).

with international law enforcement authority is painstakingly detailed and provides precisely the type of record which is needed to understand how so many agencies with similar or overlapping authority now find themselves in embassies and consulates around the world. *Cops Across Borders* not only traces the growth of the agencies and the development of their particular missions abroad, but also succeeds in relating the problems that each of them has encountered in attempting to carry out its mission. These problems arise not only from the difficulties of gathering evidence and attempting to act as police overseas, but also from the conflicts that exist between the U.S. agencies and how those conflicts affect their work abroad.

"Turf battles," which often exist between law enforcement agencies in the United States, become even more complicated overseas because the number of agencies with potential jurisdiction over any particular crime is much greater, and the goals of those agencies are often diverse. Thus, while a particular crime might be investigated in the United States by the Federal Bureau of Investigation, the Drug Enforcement Agency ("DEA"), the Customs Service, and local authorities, overseas the same crime might also be investigated by the Department of State, the Central Intelligence Agency, and the military investigative services (the Naval Investigative Service, the Air Force Office of Special Investigations, and the Military Police). Indeed, any incident involving attacks on American citizens or American property is often the subject of overlapping investigations by U.S. State and Defense Department units, as well as traditional law enforcement agencies of the U.S. Department of Justice.⁵ The problems which derive from the different goals of the agencies — obtaining information for intelligence rather than preserving the same information for use as evidence in a criminal trial — present a continuing dilemma that the United States has not resolved.

Mr. Nadelmann's decision to detail the evolution of the Drug Enforcement Administration from its predecessor agencies and to review the U.S. efforts to combat drug trafficking internationally is quite appropriate. The DEA is by far the largest overseas law enforcement agency, with offices in fifty countries and

5. Richard A. Martin, Address, *Problems in International Law Enforcement*, 14 *FORDHAM INT'L L.J.* 519 (1991).

seventy-three cities,⁶ and its enforcement efforts raise the greatest number of issues regarding cooperation, evidence-gathering, extradition, and foreign policy. By focusing on the difficulties DEA agents have encountered in attempting to carry out their job and the continuing progress they have made in "Americanizing" law enforcement around the world, Mr. Nadelmann effectively describes the problems facing all law enforcement.

By "Americanization," Mr. Nadelmann means to describe the process by which, during the past twenty years, the United States has succeeded in modifying the laws of many other nations. In particular, American law enforcement techniques such as the use of undercover agents, controlled narcotics deliveries, application of conspiracy concepts, and development of money laundering offenses have been adopted in many countries that had previously rejected them. Thus, over time and through persistent effort, many nations have abandoned concepts of "agent provocateur" and older concepts of drug violations that prevented police officers from possessing the drugs or participating in any way in the perceived crime. These changes have paid great rewards in combatting organized drug trafficking and money laundering, and reflect a gradual standardization of techniques shared by law enforcement agencies worldwide. At the same time, however, the efforts of DEA and other agencies are constantly at risk in those countries where their fellow agents are not well paid and where corruption exists.

The ultimate lesson that Mr. Nadelmann teaches, however, is that despite all of the advances and exchanges of formal and informal agreements, it is almost always the personal relationship that agents and to a lesser extent, prosecutors, are able to develop with their counterparts that creates the basis for success. Simply put, in the absence of that cooperation, no agency can succeed. With cooperation, any agency can achieve outstanding results regardless of formal treaties or other mechanisms. Indeed, frequently treaties have been signed and put into use after a strong basis of cooperation has been established. The treaties thus serve to solidify a basis of trust and render earlier cooperative efforts more effective. Obviously, no treaty can create cooperation. Treaties simply make the work of law enforcement easier where that cooperation exists.

6. NADELMANN, *supra* note 4, app. A.

Those chapters on international evidence-gathering and extradition that discuss the U.S. efforts over the past twenty years to conclude modern extradition and exchange of evidence treaties ("mutual legal assistance treaties" or "MLATS") demonstrate the validity of this observation. Those chapters are the most technical in the book and present both a very good history of the advances over time in the areas of extradition and mutual assistance, as well as an excellent review of the problems that have developed in the application of those treaties. Naturally, in a work that attempts to focus on the broader issues of internationalization of law enforcement, it is not possible to focus on the numerous legal and policy problems inherent in both the operation of MLATS and extradition treaties. However, Mr. Nadelmann's understanding exceeds that of any simple text and is itself a very useful primer on the operation of such treaties.

His discussion of the issues affecting extradition, such as dual criminality, extraterritorial jurisdiction, and, in particular, the no-political offence exception, demonstrate Nadelmann's facility with complex legal questions, and his ability to present them in a clear and direct fashion. Although Nadelmann warns the reader that his chapters on extradition and mutual assistance are more technical than the others, they merit attention because they contain essential information about the development of modern extradition and mutual assistance treaties. Similarly, his discussion of the continuing problems that certain intractable political conflicts, such as that in Northern Ireland, present to treaty partners is quite well informed.

In the discussion of mutual legal assistance treaties, Mr. Nadelmann describes the efforts of the United States to use those agreements to facilitate the swift exchange of evidence between governments. Far less cumbersome than the rogatory request, requests for assistance under MLATS are handled directly by law enforcement authorities, and, whenever possible, are prepared in a form acceptable to the evidentiary requirements of the requesting party. The MLAT has now become a standard tool which the United States promotes to enhance cooperative efforts that have already taken root between individuals.

In understanding the process of the development of these treaties, there are two facts that U.S. readers should recall. The first is that, in the eyes of most of the world, it is the U.S. system that is unusual. Most countries, of course, have civil and crimi-

nal code systems that differ markedly from our own common law, accusatorial system. For this reason and because of certain unique requirements of the U.S. Constitution, such as probable cause, it is more difficult for the United States than it is for other nations to find common ground in defining the basis for treaties. As a consequence, our treaties are often the result of extensive negotiations aimed at bridging the requirements of different legal systems.

Secondly, it is worth noting that it is not always the United States that has pressed for law enforcement cooperation. In the case of Italy, for example, Italian law enforcement officials, in particular the late investigating magistrate Giovanni Falcone, sought to develop mechanisms for greater cooperation with the United States in the battle against organized crime and drug trafficking. Together with a core of dedicated police officials and a "pool" of investigating magistrates in Palermo, Falcone led the efforts at exchanging mutually useful information in organized crime and narcotics cases. The treaties that were later enacted between the United States and Italy served to provide permanent legal support for the efforts that he had initiated.

One shortcoming of Mr. Nadelmann's work, in my opinion, is the shortage of attention given to the contribution that the Criminal Division of the U.S. Department of Justice has made to the development of international law enforcement policy. The Office of International Affairs within the Criminal Division, as well as the more recently formed office by the same name that reports directly to the Attorney General, have given continuing guidance to the process of pursuing U.S. law enforcement goals overseas. The Office of International Affairs not only negotiates extradition and mutual assistance treaties, but also provides guidance to prosecutors throughout the United States regarding extradition requests and requests for gathering information from, or providing it to, foreign nations. That Office, together with other, equally dedicated professionals within the Department, has continued to provide leadership and coordination to all of the Department's international efforts.

CONCLUSION

U.S. policy is being made every day in the area of international law enforcement by individuals who work for a large

number of different agencies with different and sometimes conflicting goals. Too frequently, these individuals lack the support and guidance that the United States devotes to other areas of equal or less significance. Despite the excellent work done by many agents, attorneys, and leaders such as Dick Thornburgh, whom Nadelmann quotes at the beginning of the book together with Thomas Jefferson, international law enforcement still receives too little attention. Let us hope that Mr. Nadelmann's work can serve not only as the basis for study in the academic community but also in the law enforcement and policy-making community. International crime is growing so rapidly that we cannot afford to treat the field as haphazardly as we have in the past.