authorized act of taking was accompanied by a mistaken assertion of a paramount right in the government. *Tempel v. U.S.*, 248 U.S. 121 (1918); *Hill v. U.S.*, 149 U.S. 593 (1893). This unfortunate result would have been avoided if the courts had recognized "claims founded upon the Constitution of the United States" as a separate category under the Tucker Act. See minority opinions in *Hill v. U.S.*, 149 U.S. 593, 600 (1893), and *U.S. v. Lynah*, 188 U.S. 445, 474 (1903).

Extradition—Immunity of American Citizens under Treaty with France—[Federal]. —The relators, citizens of the United States, had fled from Paris to the United States to avoid arrest in connection with allegedly illegal financial operations. Upon the request of the French authorities, they were taken into custody by the respondent, a United States commissioner. The case came before the Circuit Court of Appeals on appeal from a ruling of the district court dismissing writs of *habeas corpus*. Article 5 of the treaty with France declares: "Neither of the contracting Parties shall be bound to deliver up its own citizens or subjects under the stipulations of this covenant." 37 Stat. 1530 (1911). *Held*, this treaty does not give the Secretary of State authority to deliver up an American citizen to France. Judgment of the district court reversed. *United States ex rel. Neidecker v. Valentine*, 81 F. (2d) 32 (C.C.A. 2d 1936).

When an extradition treaty exists with a foreign country, and upon complaint by the proper foreign authority, any United States commissioner is empowered under the United States Code of Criminal Procedure (31 Stat. 656 (1900), 18 U.S.C.A. §651 (1927)) to arrest and conduct hearings for persons charged with crime in the foreign country and, upon deeming the evidence sufficient to sustain the charge, to certify the case to the Secretary of State for a surrender to be made according to the terms of the treaty. The sole question presented in the principal case was whether the treaty with France authorized the Secretary of State, under any circumstances, to surrender American citizens who have been charged with extraditable crimes in France and have taken refuge in the United States. The factor which appears to have been chiefly instrumental in this decision is the persistent refusal of the French government to surrender its nationals to the United States under the same treaty. France has considered that she is doing her part by prosecuting her nationals for crimes committed abroad. This procedure is not possible under the Anglo-American territorial concept of legal jurisdiction. 1 Bishop, Criminal Law § 109 (9th ed. 1923). Therefore, the question of reciprocity seems to have been given much more weight by the court than a rational consideration of the merits of the case would warrant. After an attempt to justify its decision on the basis of the existing authority, *i.e.*, chiefly, the opinions of two secretaries of state and the district court case of *Ex parte McCabe* (46 Fed. 363 (D.C.Tex. 1891)) which involved a similar treaty with Mexico, the court proceeded to reveal the true basis of its decision in these words: ". . . . nationalism is not dead, and most nations have shown a persistent repugnance to submit their citizens to foreign courts. We have indeed an honorable record; but it is uncertain how far our diplomacy is prepared to give where it does not receive." Unfortunately it is true that most nations have adopted this attitude. 93 Just. P. 822 (1929). It is even less justifiable in the case of the United States, which does not punish its citizens for crimes committed abroad. In the only Supreme Court decision on the subject it was held that a refusal by Italy to deliver up her citizens under a treaty not excepting nationals, although ground for a

rescission of the treaty by the United States, did not automatically have the effect of relieving the United States of its duty to comply with it. *Charlton v. Kelly*, 229 U.S. 447 (1913). If lack of reciprocity was not a sufficient basis for refusal of extradition by the United States in that case, it is difficult to see how it can be said to justify a denial of authority here.

The obvious construction of the words "neither . . . . shall be bound," as used in the treaty with France, is that the government is to have discretion to decide in each case whether or not it will grant extradition. This natural construction should not be discarded because of nationalistic spite, or in deference to the dubious authority of a district court decision. The relators contended that if the treaty gave the executive department discretion to surrender citizens, it would be an unconstitutional delegation of power depriving such citizens of liberty without due process of law. It was unnecessary for the majority to consider this problem because they held that the treaty gave no authority. The dissenting judge, in supporting executive discretion under the treaty, expressly repudiated the relators' contention on the ground that the treaty-making power is not limited anywhere in the Constitution. The dissenting opinion in the principal case is based on foreign authority, American *dicta*, and a seemingly irrefutable argument of policy. "An offender is not entitled to any protection at the hands of his own government against the consequences of his unlawful acts. The only protection which the common standards of justice extend to him is that of a fair and impartial trial in the jurisdiction where he has offended." Manton, Extradition of Nationals, 10 Temple L. Q. 12, 24 (1935) (written by the dissenting judge in the principal case). Whatever nationalism may require in the way of disregarding recognized principles of human justice, it seems both unnecessary and unprofitable to go as far in that direction as did the principal case. Great Britain, a nation noted for stubborn protection of its national honor, has not allowed its citizens to go unpunished for their crimes in countries which see fit to try their own nationals at home, but has granted extradition where the words of the treaty were substantially similar to those in the principal case. See *In re Galwey*, [1896] 1 Q.B.D. 230. Moreover, it is not the function of the courts to correct inequalities in the results of governmental diplomacy, but rather to give effect to the law, including the treaties entered into by Congress and the Executive.

Lotteries—Consideration—Operation of Bank Night Schemes in Theatres—[Iowa]. —The defendant, owner of a motion picture theatre, operated a "bank night" scheme. He maintained a large registration book in the lobby of his theatre as well as in several other places in the town. All persons were permitted, without charge, to register their names in these books. Numbers were assigned to registrants and a weekly drawing from among all the assigned numbers took place on the stage of the theatre. Persons outside, as well as inside, the theatre were eligible to win the prize provided that the winner appeared on the stage within two and one-half minutes after his name was announced both from the stage and at the front door of the theater. Neither possession of an admission ticket nor the payment of any fee was a condition to participation in the scheme or to the winning of a prize. For distributing hand-bills announcing the operation of this scheme, the defendant was convicted of advertising a lottery. On appeal, *held*, reversed; bank night is not a lottery and the advertising of such a scheme is not criminal. *State v. Hundling*, 264 N.W. 608 (Iowa 1936).