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).

The plaintiff, a theatre owner, applied for an injunction to restrain the defendant from interfering with the bank night scheme operated by the plaintiff. As in the bank night scheme described above, all persons were entitled to participate whether or not they had paid for admission to the theatre. In addition, it was shown that while the performance on bank night was two hours in length and consisted of one feature picture, the performance on other nights was thirty minutes longer and consisted of two feature pictures. *Held*, application for injunction denied. "Bank night" is a scheme in the nature of a lottery and does not warrant the extension of equitable relief to the plaintiff. *Central States Theatre Corp. v. Patz*, 11 F. Supp. 566 (Iowa 1935).

These two cases illustrate the opposing attitudes courts have taken toward bank night schemes. Both cases agree that of the three elements of lottery, prize, chance and consideration, the former two are clearly present; they disagree as to the existence of consideration. The consideration required for the designation of a scheme as a lottery differs in some respects from the consideration required to support a simple contract. "Consideration" is here used in the former sense. Compare 1 Williston, Contracts § 102a (1920) with Pickett, Contests and Lottery Laws, 45 Harv. L. Rev. 1196, 1207 (1932). But in both situations there is an element of bargain. 1 Rest., Contracts § 75 (1932); *People v. Mail and Express Co.*, 179 N.Y.S. 640 (1919), aff'd, 231 N. Y. 586, 132 N.E. 898 (1921); *Cross v. People*, 18 Colo. 321, 32 Pac. 821 (1893). The courts have generally found consideration for the opportunity of participating in schemes where *every* contestant spends money, even though such contestant pays no more for both the chance and the merchandise than he would have paid for the merchandise alone. *Carl Co. v. Lennon*, 86 Misc. 255, 148 N.Y.S. 375 (1914); *State v. Powell*, 170 Minn. 239, 212 N.W. 169 (1927); *Stranger v. State*, 107 Tex. Crim. 574, 298 S.W. 906 (1927). Consequently, bank night schemes (such as are operated in the city of Chicago) in which the promoters permit participation only of those who have paid admissions to the theatre are clearly lotteries. In some lottery schemes, however, the problem is more difficult because participation and eligibility for the prize are open not only to those who pay for admission but also to those who do not. Some courts, when confronted with similar situations, have held that the existence of the alternative method of obtaining a chance without cost precluded the finding of consideration in the payment for the entertainment or merchandise by those who received a chance. *People v. Mail and Express Co.*, 179 N.Y.S. 640 (1919) aff'd, 231 N.Y. 586, 132 N.E. 898 (1921) (newspaper scheme); *Cross v. People*, 18 Colo. 321, 32 Pac. 821 (1893) (merchandise scheme); *Yellow-Stone Kit v. State*, 88 Ala. 196, 7 So. 338 (1890) (merchandise scheme); *Post Pub. Co. v. Murray*, 230 Fed. 773 (C.C.A. 1st 1916) (newspaper scheme). Other courts, however, have insisted that despite the presence of the free alternative, payment of money was induced by the chance of receiving a prize and that, therefore, there was consideration for the chance. *General Theaters Inc. v. Metro-Goldwyn-Mayer Distributing Corp.*, 9 F. Supp. 546 (Colo. 1935) (bank night); *Willis v. Young*, [1907] 1 K. B. 448 (newspaper scheme); *State v. Danz*, 140 Wash. 546, 250 Pac. 37 (1926) (theatre scheme); *Featherstone v. Independent Service Ass'n*, 10 S.W. (2d) 124 (Tex. Civ. App. 1928) (drawings for automobile).

It is clear that the bargaining element must exist to sustain a finding of consideration. For that element to be present, the theatre-goer must bargain for the chance in exchange for the payment of at least part of the admission price. Likewise, the theatre owner must be induced to part with the chance in exchange for such payment. That

theatre owners do not offer bank night prizes without hopes of some return benefit is obvious; bank night schemes are designed to add to the profits of the owner. Time Magazine, p. 57 (Feb. 3, 1936). It might be argued that, in light of the free alternative, the chances are given away merely as part of an advertising scheme; that the theatre owner bargains not for the present payment of the admission price, but bargains only for the presence of potential patrons in front of the theatre. See *Cross v. People*, 18 Colo. 321, 32 Pac. 821 (1893). This argument seems tenuous; it is more probable that the theatre owner does bargain for the admissions paid partly in exchange for the prize-offer. The inference that theatre-goers bargain for the chance in exchange for their payments is supported by the fact that attendance increases on bank nights, even though the entertainment is usually shorter and of a poorer quality. *Central States Theater Corp. v. Patz*, 11 F. Supp. 566 (Iowa 1935); New Republic, May 6, 1936, p. 363. The opportunity to obtain a chance without cost is little more than illusory. Realistically, the physical and psychological discomfort of waiting outside the theatre for the results of the drawing to be announced tends to restrict the class of participants to those inside the theatre. While some participants may take advantage of the free offer and some theatre-goers who pay may not bargain for the chance, it seems likely that enough of the theatre-goers bargain for the chance in exchange for at least part of the admission price to make the scheme a lottery.

Torts—Liability of Negligent Manufacturer to Remote Vendee—the Rule of *Winterbottom v. Wright*—[English].—The plaintiff bought woolen underwear from a retailer who had purchased it from the defendant manufacturer. As a result of negligence in the course of the pre-shrinking process, deleterious chemicals were left in the underwear. These chemicals were found to have been the cause of a severe case of dermatitis which the plaintiff developed after he wore the underwear. The Supreme Court of South Australia entered judgment for the plaintiff against the manufacturer. From a reversal by the High Court of Australia, the plaintiff appealed to the Judicial Committee of the Privy Council. *Held*, the plaintiff had a cause of action against the manufacturer in tort, despite the absence of contractual privity. *Grant v. Australian Knitting Mills, Ltd.*, [1936] A. C. 85.

Until *Donoghue v. Stevenson*, ([1932] A. C. 562) the English courts in striking contrast to the American courts had fairly consistently followed the rule of *Winterbottom v. Wright* (10 M. & W. 109 (1842)), restricting the liability of manufacturers to persons in contractual privity with them. In the *Donoghue* case, the House of Lords decided that a manufacturer of ginger beer was liable to the remote consumer for injury caused by the manufacturer's negligence in allowing a decomposed snail to be bottled in the beer. To what extent this case had narrowed the scope of the *Winterbottom* doctrine was uncertain. While the majority opinions in the *Donoghue* case expressed impatience with the privity doctrine, on the facts a similar decision would have resulted even in those American courts which profess to support the *Winterbottom* rule, for they have long held the manufacturer of foods and drinks to be under an exceptional duty of care to remote users. See note, 17 A. L. R. 688 (1922). The instant case dissipated the uncertainty left by the *Donoghue* case by indicating a clear intention to abandon the *Winterbottom* rule, with its numerous and irrational exceptions. The Judicial Committee has thus established the liability of manufacturers for bodily harm to consumers