

INTERNATIONAL EXTRADITION AND THE AMANDA KNOX CASE: WHAT IS A “CONVICTION” ANYWAY?

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Abstract

Americans have always expressed fond memories about their travels to Italy—exceptional cuisine, superb wine, the Tuscan hills and the Amalfi coast. . . But recently, in light of the international media sensation over the Amanda Knox murder case, there has been a slight but noticeable shift in their attitudes. While these individuals still hold on to their romantic imagery, they now have a glimpse into a cultural aspect of Italy that most Americans had no previous knowledge about; the Italian criminal justice system.

With the trial court’s conviction, the appellate court’s reversal, and the subsequent order for a retrial by Italy’s Highest Court, a bifurcated outlook over the Amanda Knox murder case has emerged. Many Europeans hold the opinion that Amanda Knox is a sexually deviant individual who committed and got away with a heinous murder.[1] On the other hand though, many Americans believe she is an innocent, young woman who suffered at the hands of a corrupt, flawed, and inferior foreign criminal justice system.[2] Conflicting views like these will always be a hurdle in the field of comparative law when examining two distinctly different penal systems and international extradition between the two. By examining and analyzing the Italian criminal justice system and the possible extradition issues that may arise under it with regards to the Amanda Knox case, this paper aims to lower that hurdle.

The Italian criminal justice system is a unique blend of an inquisitorial-type system, similar to those found in France and Germany, and an adversarial-type system like our own American counterpart.[3] Utilizing the Amanda Knox case as a guiding example, this article aims to explore the comparative law issues the Italian criminal justice system poses in the arena of international extradition from the United States. In its analysis, this paper explores the legal understanding of “conviction” and “acquittal” in the United States versus the understanding of those terms in Italy, and how they comport with the United States’ “Double Jeopardy” doctrine.[4]

Since Gonzaga Law School offers a summer study abroad program in Florence, and Amanda Knox is from Seattle and attends the University of Washington, her legal dilemma in Italy felt like an appropriate topic for the Gonzaga Journal of International Law. This paper hopes to provide an educational insight into the workings of International Extradition practices by the United States and the challenges it faces when it involves a different and unique criminal justice system like that in Italy.

I. INTRODUCTION

In 2011, after serving approximately four years in an Italian prison for the murder of Meredith Kercher, an Italian appellate court reversed Amanda Knox's conviction and set her free.^[5] Following the appellate court's decision, the Seattle native was practically carried out of the courtroom, her eyes flooded with tears.^[6] Amanda Knox's murder trial and subsequent conviction received widespread international media attention, attention that has recently been renewed after the Italian Court of Cassation, Italy's highest court, reversed the appellate court decision and ordered a retrial.^[7] The Court of Cassation's decision has left many lingering questions with those unfamiliar with international law and the Italian criminal justice system.^[8] Probably the most frequent question by Americans though, given the adherence of the United States to the legal doctrine colloquially known as "Double Jeopardy,"^[9] is whether Amanda Knox could be extradited back to Italy to serve out a murder sentence.

Part II of this article will review the current international extradition practices in the United States. Specifically, it will examine the policies and procedures behind extraditing American nationals to foreign nations where they are charged with criminal offenses. The section concludes by focusing on the current extradition treaty binding the United States and Italy. Part III of this article examines the American "Double Jeopardy" doctrine, tracing its development throughout history, and giving a broad overview of the Italian criminal justice system in comparison. Subsection C of Part III then recounts Amanda Knox's murder trial and aims to provide an explanation for the public's response to her conviction, reversal, and eventual reversal and remand. Finally, utilizing the background of Italy's criminal justice system and the extradition laws of the United States, Part IV will analyze in depth the question of Amanda Knox's extradition, the comparative law issues it presents, and the possible repercussions on United States' foreign relations. This paper will argue that, despite the United States' adherence to the constitutional principle of "Double Jeopardy," the meaning of "acquittal" and "conviction" under the Italian criminal justice system may create a perplexing situation for United States' officials if Italy seeks for Knox's extradition. The resolution of her extradition is not necessarily "clear-cut."

II. THE UNITED STATES' EXTRADITION PRACTICES

A. The United States' Law on the Extradition of American Citizens: Treaties Govern

Federal law provides:

If the applicable treaty or convention does not obligate the United States to extradite its citizens to a foreign country, the Secretary of State may, nevertheless, order the surrender to that country of a United States citizen whose extradition has been requested by that country if the other requirements of that treaty or convention are met.^[10]

According to the United States Attorneys' Criminal Resource Manual, international extradition is defined as, "the formal process by which a person found in one country is surrendered to another country for trial or punishment."^[11] While there exists some guidance under Title 18 of the United States Code,^[12] the federal government's law for the procedures of international extradition of American citizens is governed predominately through treaties made with foreign governments.^[13] This is not to say the treaty is unable to exempt the contracting nations' own citizens from extradition. However, absent a provision stating otherwise, the United States may not refuse to extradite fugitives wanted by foreign nations simply on the basis that they are American citizens.^[14] "[Therefore], a treaty mandate to extradite 'persons' without exception requires the extradition of American citizens."^[15]

Moreover, federal law affords the Secretary of State a great deal of discretion in extradition procedures absent a treaty or a provision in a treaty exempting United States citizens.^[16] This means the Secretary of State may make the decision to extradite an American citizen if "national interest dictates."^[17] Despite this wide latitude in discretion bestowed upon the Secretary of State, the United States' government cannot surrender American citizens unless the treaty contains a "positive grant of authority" permitting it to do so.^[18] With this premise, if the treaty contains limiting extradition language such as "neither [country] shall be bound to deliver up its own citizens," and also lacks the requisite grant of authority language, the United States must deny a request to extradite a American citizen based wholly on the fugitive's citizenship.^[19] An example of limiting extradition language with the proper grant of authority allowing for the Secretary of State in his or her discretion to extradite a U.S. national is "neither of the contracting parties shall be bound to deliver up its own citizen under the stipulations of this [treaty], but the executive authority of each shall have the power to deliver them up, if, in its discretion, it is deemed proper to do so."^[20]

B. The Procedure for Extraditing Wanted Persons from the United States

When a foreign government makes a formal request for extradition to the U.S. Department of State, such requests are forwarded to the Office of International Affairs' ("OIA") Criminal Division for review.^[21] After reviewing the sufficiency of each request to ensure it complies with federal law and/or the applicable treaty, the OIA hands the matter over to the United States Attorney's Office, which then seeks to obtain an arrest warrant from a federal magistrate or district judge.^[22] Additionally, the federal government opposes bond for all fugitives arrested for extradition.^[23] However, all fugitives arrested are entitled to a hearing, which may be waived, before the court that issued the warrant, where the judge reviews the matter and determines if the government may be allowed to extradite the person.^[24] If the court finds the fugitive is subject to extradition, it may issue a non-appealable order to the Secretary of State allowing for extradition.^[25] The Secretary of State may then choose whether to extradite the fugitive pursuant to his or her own discretion mentioned above.^[26] If the court issues an order for extradition, the fugitive may nevertheless petition for a writ of habeas corpus to the district court for a stay on extradition.^[27] The district court's decision whether to issue the writ is appealable by the wanted individual.^[28]

C. T.I.A.S. 10837: Extradition between the United States and Italy

As recent as 2002, the United States has entered into bilateral extradition treaties with 109 foreign nations, Italy being one of them.^[29] President Ronald Reagan signed the treaty with Italy on October 13, 1983, and it entered into force on September 24, 1984.^[30] This treaty obligates both Italy and the United States to extradite those persons found in their respective countries who are sought either to stand trial for an offense, or who have already been sentenced for an offense.^[31] In order for the crime to be an extraditable offense however, both Italy and the United States must recognize the act or conduct as punishable under their respective laws.^[32] Additionally, the treaty contains no limiting extradition language, meaning neither country shall deny an extradition request on the basis that the fugitive is a citizen of the "Requested Party."^[33]

Another important aspect of this treaty (indeed probably the most important considering the criminal proceedings taken against Amanda Knox) is the "*Non Bis in Idem*" clause contained in Article VI.^[34] This provision provides the caveat, "[e]xtradition shall not be granted when the person sought has been *convicted, acquitted* or pardoned, or has served the sentence imposed, by the Requested [Country] for the same acts for which extradition is requested."^[35] This provision, though straightforward from an American attorney's point of view,^[36] should be examined with more scrutiny. As will be discussed below, the notions of acquittal and

conviction have different meanings within the context of the Italian criminal justice system than under its American counterpart.

III. ITALY v. THE UNITED STATES: COMPARING AND CONTRASTING CRIMINAL JUSTICE SYSTEMS

A. The Principle of “Double Jeopardy”

The Fifth Amendment to the United States Constitution provides that “[no] person [shall] be subject for the same offence to be twice put in jeopardy of life or limb.”^[37] This provision, colloquially referred to as the “Double Jeopardy” Clause, has been an axiomatic doctrine in American jurisprudence.^[38] However, its roots in the English Common Law are unknown.^[39] While the Magna Carta and the English Bill of Rights of 1689 greatly influenced the drafting and subsequent adoption of many of the other amendments in the Bill of Rights, neither contained any protection against multiple prosecutions for the same crime.^[40] It was not until much later during the seventeenth and eighteenth centuries when the two renowned English legal scholars Lord Coke and Lord Blackstone mentioned the concept of protections against “Double Jeopardy” in their summaries of the English Common Law.^[41]

However, despite the lack of historical precedence in English legal history, protections against “Double Jeopardy” emerged in early American colonialism, appearing first in the Colony of Massachusetts and being subsequently adopted by the codes of many of the other colonies.^[42] After the American Revolution however, very few states included in their state constitutions a bar against Double Jeopardy, the exception lying with New Hampshire.^[43] It was not truly considered to be a fundamental constitutional principle in American jurisprudence until after the adoption and ratification of the United States Constitution and Bill of Rights.^[44] Ultimately, the “Double Jeopardy” Clause came to be interpreted as a protection against three improper government procedures: (1) Multiple prosecutions for the same offense after an acquittal, (2) multiple prosecutions for the same offense after a conviction, and (3) multiple punishments for the same offense.^[45] When examining the Italian criminal proceedings against Amanda Knox, it is important to keep in mind the United States’ historical development of the “Double Jeopardy” doctrine and the underlying principles and policy objectives it seeks to accomplish. As will be predicated in Part IV below, these are relevant factors United States’ officials may have to weigh in determining Amanda Knox’s possible extradition.

B. Italy’s Criminal Procedure

In 1989 Italy, dissatisfied with its current inquisitorial style criminal justice system, enacted its current Criminal Procedure Code (*Nuovo codice di procedura penale*) by incorporating adversarial aspects into it, similar to those in the United States.^[46] In inquisitorial justice systems, judges have considerable control entrusted to them over the case and “ ‘[t]he involvement of the [] prosecutor and defense attorney [is] generally limited to asking occasional follow-up questions or suggesting other lines of inquiry.’ ”^[47] However, the new Code adopted adversarial methods of inquiry to “create a ‘clear-cut separation between the body responsible for investigating and prosecuting a crime and the body responsible for adjudicating the case’ ” in an effort to stamp out corruption.^[48] As a result, current Italian criminal proceedings may be broken up into three separate phases: “ ‘(1) the preliminary investigation phase (*indagini preliminari*); (2) the preliminary hearing phase (*udienza preliminare*); and (3) the trial phase (*dibattimento*).’ ”^[49] In order to better understand the legal proceedings against Amanda Knox, an in depth review of each phase is warranted.

i. The Investigation Phase: indagini preliminary

Unlike in the United States, investigatory duties in Italy are the responsibilities of the prosecutors rather than the police.^[50] After a crime is reported to the police, the prosecutor is notified within 48 hours and, from the time of being notified, has six months to collect evidence and complete an investigation.^[51] During his or her investigation, if a witness or witnesses are not able to testify at trial, the prosecutor can ask for an “incidente probatorio,” allowing the prosecutor to take the witness’ testimony and place it in a file to be used in future trial proceedings.^[52] During this phase, prosecutors gather evidence proving guilt as well as exculpatory evidence to present to the judges in the preliminary hearing phase.^[53] Once the prosecutor has concluded the investigation, the defendant is given notice of the charges brought against him or her.^[54] The defendant may then hand over exculpatory evidence to the prosecutor or ask for a further investigation by the prosecution for an additional thirty days.^[55]

While the prosecutor is given great discretion and control over the investigation phase, “[a] preliminary investigation judge (*giudice per le indagini preliminari*, or “gip”) is assigned to each investigation.”^[56] The gip ensures necessary precautions are taken such as whether the defendant should remain in jail during the investigation and whether the prosecutor is abusing his or her discretion in violating the defendant’s rights.^[57] Furthermore, “[s]ince the Italian system requires mandatory prosecution, a prosecutor must explicitly request a dismissal from [the gip] if they believe the case is weak.”^[58] This dismissal, however, does not prevent the case from being reopened at a later date.^[59] After the investigation phase is complete, all of the gathered evidence is placed into a file and the parties proceed to the preliminary hearing phase.^[60]

ii. The Preliminary Hearing Phase: udienza preliminare

During the preliminary hearing phase, the gup is relieved and a new judge is appointed to the case (*giudice per l'udienza preliminare*, or “gup”).^[61] If the prosecutor believes there is enough evidence to reach a conviction, he or she will make a formal request to the gup to proceed to trial.^[62] “At this moment, under Italian law (art. 405 c.p.p.) the person under investigation formally becomes a ‘defendant’ (*imputato*).”^[63] After receiving the prosecutor’s request, the gup then examines all of the evidence gathered and put together in the case file by the prosecutor and determines if the case should proceed to trial, the charges be dismissed, or whether more information is needed by the judge to make a decision.^[64] Before the hearing is held, the prosecutor discloses all of the evidence and the defendant and his or her counsel are allowed to inspect it.^[65]

After the defendant has had a chance to inspect all of the evidence, the parties attend the hearing where a debate takes place as to whether the case should go to trial.^[66] This hearing has three goals: (1) to select the charges to go to trial (a defendant may have more than one charge against him or her), (2) to allow the defendant to offer any exculpatory evidence he or she has gathered to prevent the case from going to trial, and (3) to permit the parties to negotiate other alternative resolutions without proceeding with a trial (equivalent to plea bargaining in the United States).^[67] If no plea deal is reached and the “gup” grants the prosecutor’s request, then the parties move on to the trial phase.^[68]

iii. The Trial Phase: dibattimento

Under inquisitorial-type systems, typically there are no juries but only a judge or judges who decide the outcome.^[69] The Italian courts have created a hybrid judicial deliberation system for serious offenses such as murder.^[70] For these crimes, there is a panel of two judges and six civilians (*giudici popolari*), randomly selected from electoral lists, who sit as the jury for the trial.^[71] All eight determine the factual and legal issues of the case.^[72] Once a conviction or acquittal has been made by a majority of the panel, the judges and civilians produce a “[written] ‘opinion that reviews the evidence and explains in detail the grounds (*motivazione*) for the decision.’”^[73] These opinions can span hundreds of pages and detail the deliberations for the appellate courts.^[74]

Once the “gup” approves the prosecutor’s request for a trial, he or she prepares a new file for the trial judges and civilians containing all of the gathered evidence in its original form; the prosecutor’s investigation and preliminary hearing file is unavailable to them.^[75] This new procedure requires that the parties present the evidence at trial,^[76] much like our American adversarial-trial system. The theory

behind this principle is to ensure the investigation file does not unduly influence the trial judges and that they approach the case as a “*tabula rasa*,” unbiased by the prosecutor’s sources of information.^[77] The notion is based on the “principles of orality.”^[78] which provide that the judges should receive the produced evidence in court and decide the case on its merits from that production and not on out-of-court evidence.^[79]

With the new code incorporating adversarial methods like in the American trial system, an Italian trial starts with first resolving preliminary matters such as procedural errors.^[80] After these have been resolved, the parties then present their opening statements with the prosecutor going first.^[81] Once opening statements are complete, the prosecutor presents evidence first to the court, and the defendant goes last.^[82] However, since the prosecutor need not prove a prima facie case, “[the] order of evidence production may be subject to derogation upon agreement by the parties.”^[83] Finally, after the parties produce all evidence before the court, they present their closing arguments in the same order as the opening statements.^[84] “[Thus,] [w]hile judges used to lead the proceedings and the introduction of evidence, the [revised] rules have the parties present opening statements, introduce witnesses and evidence, cross-examine witnesses, and provide closing statements”,^[85] forcing the parties to argue and convince the court in their favor.

Despite this use of an adversarial-type procedure in trials, Italian courts still maintain and incorporate inquisitorial methods into their system.^[86] For example, after direct and cross-examination, the judges are given the power to question witnesses on the stand and direct the parties to inquire into new issues they feel need to be addressed.^[87] Additionally, under *dichiarazioni spontanee dell'imputato*, the defendant is allowed to speak out and challenge a witness’ testimony at any time during the trial.^[88]

iv. The Italian Appellate System

Italian appellate review plays a core function in the country’s criminal justice system.^[89] Unlike the American appeals process where trials can only be appealed on narrow questions of law,^[90] Italian intermediate appellate courts (*corte di assise d'appello*) review de novo both questions of fact and of law.^[91] The Italian intermediate appellate courts act as “a second complete adjudication of both the factual and legal issues.”^[92] Thus, the appellate court, if it so chooses, may conduct a completely new trial in which it is not bound by the trial court’s findings, both factually and legally, and may issue a decision with a completely different outcome.^[93] Additionally, this appellate procedure is available to both the defendant

and the prosecution, even in cases of a not guilty verdict, a practice that does not square away with the American principle of “Double Jeopardy.”^[94]

Following review by the *corte di assise d’appello*, a subsequent inquiry may be made by the Court of Cassation (*corte di cassazione*), the equivalent to the United States Supreme Court and the judicial body empowered with ultimate review of all criminal cases.^[95] However, unlike the intermediate appellate courts, all inquiries made by the Court of Cassation are limited to questions of law.^[96] The Court of Cassation may overturn, fully or partially, the lower courts’ decisions and remand the case back down for a retrial.^[97] Should the case be remanded for retrial, the lower courts must abide by the legal conclusions of the Court of Cassation.^[98]

C. The Amanda Knox Trial

i. Background Information

On November 2, 2007, twenty-one-year-old British student Meredith Kercher was found in her Perugia, Italy apartment strangled, with her throat slashed, and her body wrapped up in a duvet.^[99] The murder shocked the village of Perugia, a small college town in the heart of Italy, and the international community.^[100] At the time of her murder, Kercher was living with three other women—two Italian legal assistants in their late twenties and a twenty-year-old American student named Amanda Knox.^[101] Since it was a national holiday weekend, both Kercher’s Italian roommates were out of town on the night of the murder.^[102] Only Knox and her then boyfriend, Raffaele Sollecito, whom she had only known for a week before the murder, were in Perugia.^[103] Given their perceived bizarre behavior by the Italian authorities following the incident, the couple soon became the primary suspects and were eventually charged with Kercher’s murder.^[104]

ii. The Evidence

The prosecution presented four critical pieces of evidence during the initial trial: (1) contradictory testimony given by Knox and Sollecito, (2) eyewitness’ testimony, (3) electronic usage evidence, and (4) DNA evidence.^[105] Many American analysts, even though it was considered to be convincing enough by the trial court to find a conviction, have scrutinized the reliability of all four.^[106] Each critical piece presented during the trial is discussed below.

Initially, the authorities perceived Knox and Sollecito’s reactions to the discovery of Kercher’s body as suspicious.^[107] Knox first gave the alibi that she stayed at Sollecito’s house on the night of the murder, and that she did not leave until 10:30 a.m. the next morning to change clothes.^[108] She claimed that, “the two had cooked

dinner around 9 p.m., watched a film, smoked marijuana, had sex, and gone to bed.”[\[109\]](#) However, after several days of interrogation, in a second interview, Knox signed a statement telling the police an inconsistent story claiming she was in the apartment the night of the murder and that her boss and night club owner, Diya Lumumba, was responsible for Kercher’s death.[\[110\]](#) Following up on this account, the police investigated Lumumba, but eventually ruled him out as a suspect since he was able to corroborate his alibi.[\[111\]](#)

Adding more holes to Knox’s alibi were eyewitness’ testimony and electronic evidence regarding Sollecito’s computer and phone.[\[112\]](#) Contradicting Knox’s account that she remained at Sollecito’s, a homeless man named Antonio Curatolo testified that he saw the couple at a local square the night of the murder sometime between 9:30 and 11 p.m.[\[113\]](#) Furthermore, a store owner named Marco Quintavalle stated that he saw Knox come into his store around 7:35 a.m. the morning after the murder, conflicting with Knox’s statement that she did not leave until 10:30 a.m.[\[114\]](#) Additionally, electronic records for Sollecito’s computer showed that it was not used after 9:15 p.m. until around 5:30 a.m. to play music,[\[115\]](#) and that his phone was turned back on at around 6 a.m., showing that he was awake before 10:30 a.m.[\[116\]](#) All this evidence was used by the prosecution to challenge Knox and Sollecito’s alibi.[\[117\]](#)

Finally, the prosecution heavily relied on DNA evidence to convince the Court of Knox and Sollecito’s involvement in Kercher’s murder.[\[118\]](#) This was the most damaging evidence to question Knox’s defense at her first trial, even though none of Knox’s DNA was found in Kercher’s room where the murder occurred.[\[119\]](#) The only other DNA besides Kercher’s that was found in the room was that of Rudy Guede, an Ivory Coast native, who was also found guilty of Kercher’s murder and sentenced to sixteen years.[\[120\]](#) The prosecution ultimately argued that Guede, Knox and Sollecito were all three accomplices in the murder.[\[121\]](#) Despite this lack of evidence though, what the Court relied very heavily on was the DNA recovered from a knife found in Sollecito’s house.[\[122\]](#) The prosecution alleged that Kercher’s DNA was found on the tip of the knife, and that Knox’s DNA was recovered from the handle.[\[123\]](#) Relying on this evidence, the trial court found both Knox and Sollecito guilty of murder and sentenced them to twenty-six years and twenty-five years in prison respectively.[\[124\]](#)

iii. Amanda Knox’s Appeal

Following her trial court conviction, Amanda Knox’s appeal to the *corte di assise d’appello* began in December of 2010 and ended with an acquittal on October 3, 2011.[\[125\]](#) As is allowed and mentioned above as standard procedure, this appeal was a total review of both the factual and legal conclusions reached by the trial court.[\[126\]](#) The appellate court allowed for new evidence concerning the testing of the

DNA to be introduced, several witnesses to re-testify, and new witnesses to testify, leading to their reversal of the conviction and acquittal of Amanda Knox.[\[127\]](#)

Among some of the most important new evidence presented was that of independent forensic experts who retested the DNA evidence from the first trial.[\[128\]](#) This new evidence concluded that the DNA results from prior testing were likely derived from contamination by improper care and collection from the police.[\[129\]](#) Furthermore, Curatolo's eyewitness account was discredited through his additional testimony that was inconsistent and evidence concerning his history with drug addiction. Finally, Knox's defense provided testimony from Rudy Guede's prison-mate, Mario Alessi, that Guede told him he committed the murder with different accomplices, not Knox and Sollecito.[\[130\]](#) In its decision for acquittal, the appellate court concluded that this new evidence was highly persuasive, "finding that the original DNA evidence was 'compromised by substandard police and forensic work' and that prior testimony by witnesses like Curatolo was not credible."[\[131\]](#)

IV. ANALYSIS

Amanda Knox's acquittal by the appellate court was subsequently overturned by the Court of Cassation and ordered the case remanded for retrial.[\[132\]](#) If Italy seeks Knox's extradition and a conviction *in absentia* is reached,[\[133\]](#) this reversal may pose several difficult legal questions for United States authorities. Specifically, they will be faced with adjudicating whether to consider her acquittal by the Appellate Court final where Double Jeopardy attaches. This decision can implicate several foreign and domestic responses.

A. What Does "Conviction" and "Acquittal" Mean in Italy?

In the United States' criminal justice system, persons accused of crimes are presumed innocent until proven guilty.[\[134\]](#) Under this foundation, since the trial courts in the United States act as the only adjudicator of facts in criminal proceedings, the legal understanding of what a "conviction" and "acquittal" mean to American lawyers is more definitive.[\[135\]](#) This is apparent due to the American appellate structure where only questions of law may be appealed.[\[136\]](#) Indeed, if the appellate court finds the trial court did not properly apply the law to its proceedings, for example, when there is an evidentiary error, the case is remanded back down to the trial court to re-adjudicate the facts with specific instructions as how to apply the law.[\[137\]](#)

On the other hand, while Italy applies the same presumption of innocence until proven guilty,[\[138\]](#) under its unique structure for criminal proceedings, a trial court's and

even an intermediate appellate court's "conviction" or "acquittal" does not carry the same meaning as in the United States.[139] This difference in the legal significance of both terms lies in the difference of each country's respective appellate structures.[140] In contrast to its American counterpart, Italy's intermediate appellate court acts as a second trial court, often referred to as the *processo in secondo grado*, or the trial at the second level.[141] Even after both the trial court's and the intermediate appellate court's decision, a defendant in Italy is still presumed innocent until a "definitive conviction," or *condanna definitiva*. [142] Thus, a conviction or acquittal in Italy becomes definitive or "irrevocable" once all legal means of appeals have been exhausted.[143] This occurs when the Court of Cassation upholds a conviction or acquittal in its entirety, or neither party makes an appeal within the allotted time frame for doing so.[144]

Applying this to Amanda Knox's criminal proceedings then, under Italian law, because the Court of Cassation has upheld neither a conviction or an acquittal,[145] there has been no definitive adjudication of her case and she is still presumed innocent of Meredith Kercher's murder, despite having spent three years in an Italian prison.[146] Thus, the best analogy to help Americans to understand Knox's situation is to view it as though she is still in the middle of a trial and the jury has yet to reach a verdict. Therefore, looking at her case from this perspective, she has neither been found guilty nor acquitted of the murder for Meredith Kercher. As will be pointed out below, this unique situation poses an unusual and curious issue when considering her international extradition, one that United States authorities may be faced with resolving in the future.

B. Applying United States Extradition Laws: Will Amanda be Extradited to Italy?

Previously discussed, Italy and the United States entered in to a bilateral extradition treaty in 1983.[147] That treaty provides in its "*Non Bis in Idem*" clause that extradition will not be granted when the wanted individual has been convicted, acquitted, or already served their sentence for the crime for which he or she is being extradited.[148] While this provision parallels the American prohibition against "Double Jeopardy,"[149] given Italy's criminal procedure, the question in determining whether Amanda Knox is extraditable is whether she was in fact ever acquitted or convicted.[150] Under Italian law, because the Court of Cassation upheld neither of the lower courts' decisions, Amanda Knox is still presumed innocent and Double Jeopardy may not necessarily attach.[151] But will this be a convincing enough argument to the State Department to validate her extradition, or will United States authorities consider her acquittal sufficiently final for Double Jeopardy to attach?[152]

The Knox case poses a host of legal complexities for the State Department as it considers her extradition. The likely result is that she will probably never have to return to Italy to serve jail time. Since Italy allows defendants to be tried regardless of their presence at court, what is referred to as “*in absentia*,”[\[153\]](#) Italian authorities, thus far, have not requested her extradition for her retrial before the intermediate appellate court. Furthermore, given the weakness of the prosecution’s evidence, which was made very apparent during her first appeal,[\[154\]](#) the court again will most likely reach an acquittal that will be upheld by the Court of Cassation if the law is properly applied in her retrial. However, should her retrial result in a conviction, then the legal and international relations issues will have to be resolved by the State Department.

C. Possible Repercussions on Foreign Relations

Should a conviction be found after Amanda Knox’s retrial and her extradition is sought, or if extradition is sought for her retrial, United States authorities will be faced with making a decision in light of several possible repercussions. The State Department will have to consider whether the Italian Criminal Procedure violated Amanda Knox’s rights guaranteed to her under the United States Constitution, specifically the Fifth Amendment prohibition against “Double Jeopardy.”[\[155\]](#) Should extradition be refused on this principle alone, the United States may be viewed as uncooperative in the arena of foreign relations and disrespectful toward Italian Jurisdiction over crimes committed on their soil[\[156\]](#) Such results could strain relations between the United States and Italy in future extradition proceedings.

On the other hand though, United States authorities have their own constituents’ reactions to consider. If extradition is granted, many Americans may view this as a step toward disregarding American principles and constitutional rights to appease foreign relations.[\[157\]](#) This could result in a public relations nightmare for those involved in the decision whether to extradite Knox.

V. CONCLUSION

The Amanda Knox case creates quite a legal predicament with regards to comparative law. Should one view the Knox case through the lens of the Italian Code of Criminal Procedure and Italian law, one may reach the conclusion that she has neither been convicted or acquitted and thus extraditable. Looking at the proceedings through the lens of the American criminal justice system, however, many may find that her extradition would violate the long-standing and fundamental constitutional right against “Double Jeopardy.”[\[158\]](#)

For Amanda Knox, and conversely for United States officials as well, the best possible outcome would be for her to be tried *in absentia* resulting in an acquittal upheld by the Court of Cassation. This would relieve the United States government from having to determine whether to extradite her and face the political and international backlash from their decision. In the worst-case scenario, Amanda Knox could be convicted *in absentia* and Italy may seek her extradition, forcing the United States to deal with legal issues on which there is no current consensus.^[159] Only time will tell what lies beyond the legal horizon.

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[1] See Michael S. James & Elizabeth Vargas, *A Tale of Two Cultures: Amanda Knox Case Reveals a Stark Divide*, ABC News (Dec. 6, 2009), <http://abcnews.go.com/WN/AmandaKnox/amanda-knox-case-reveals-cultural-divide/story?id=9263616>.

[2] See *id.*

[3] Julia Grace Mirabella, Note, *Scales of Justice: Assessing Italian Criminal Procedure Through the Amanda Knox Trial*, 30 B.U. Int'l L.J. 229, 232 (2012).

[4] I should point out here that, while I will use the American system's legal terminology throughout this paper, the Italian system might not recognize or utilize these terms for the same or equivalent situations. They are being used strictly to aid the American readers of this article in understanding the Italian criminal justice system.

[5] Elisabetta Provoledo, *Amanda Knox Freed After Appeal in Italian Court*, N.Y. Times (Oct. 3, 2011), http://www.nytimes.com/2011/10/04/world/europe/amanda-knox-defends-herself-in-italian-court.html?ref=amandaknox&_r=0.

[6] *See id* (photo by Tiziana Fabi).

[7] Elisabetta Provoledo, *Italy's Highest Court Overturns Acquittal of Amanda Knox*, N.Y. Times (March 26, 2013), <http://www.nytimes.com/2013/03/27/world/europe/amanda-knox-retrial-ruling.html?ref=amandaknox>.

[8] *Id.*

[9] *See* U.S. CONST. amend. V.

[10] 18 U.S.C. § 3196 (2006).

[11] U.S. Dep't of Justice, United States Attorneys' Manual § 9-15.100 (1997), available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/15mcrm.htm#9-15.100.

[12] *See generally*, 18 U.S.C. §§ 3181-3196 (2006).

[13] 18 U.S.C. § 3181(a) (2006); 18 U.S.C. § 3184 (2006); *see* 18 U.S.C. § 3196 (2006); *see also*, 9B Fed. Proc., L. Ed. § 22:2351(2005) (“[I]n the absence of a treaty authorizing extradition to the foreign nation . . . , federal authorities have no power to surrender to a foreign government a United States citizen whose extradition is sought, unless authorized by federal statutes.” (citing *Valentine v. U.S. ex rel. Neidecker*, 299 U.S. 5 (1936))).

[14] 9B Fed. Proc., L. Ed. § 22:2351 (“if the United States obliges itself to surrender all persons wanted by another nation, there is no basis for withholding the surrender of a United States citizen as opposed to an alien”).

[15] *Id.* (citing *Charlton v. Kelly*, 229 U.S. 477 (1913)).

[16] *See* 18 U.S.C. § 3196 (2006); *see also* 9B Fed. Proc., L. Ed. § 22:2351.

[17] 9B Fed. Proc., L. Ed. § 22:2351.

[18] *Id.* (citing *Valentine*, 299 U.S. 5).

[19] *Id.*

[20] *Id.* (citing *Gouveia v. Vokes*, 800 F. Supp. 241 (E.D. Pa. 1992)).

[21] U.S. Dep't of Justice, *supra* note 11, at § 9-15.700.

[22] *Id.*

[23] *Id.* (while the USAM does not specify a reason for this, it is probably due to policy considerations to ensure the fugitive wanted for extradition does not abscond after being arrested, thus ensuring better foreign relations with other countries).

[24] *Id.*; 18 U.S.C. § 3184 (2006) (“if, on such hearing, [the judge] deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, . . . he shall certify . . . to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person . . .”).

[25] *Id.*

[26] U.S. Dep’t of Justice, *supra* note 11, at § 9-15.700.

[27] *Id.*

[28] *Id.*

[29] *See* 18 U.S.C. § 3181 (2006) (contains a comprehensive list of the countries with whom the U.S. has extradition treaties with and the date they were entered into).

[30] *See* Treaty on Extradition Between the Government of the United States of America and the Government of the Republic of Italy, Oct. 13, 1983, T.I.A.S. No. 10837 (hereinafter “Extradition Treaty”).

[31] *Id.*

[32] *Id.*

[33] *Id.* (see Article VI).

[34] Extradition Treaty, *supra* note 30, at Article VI.

[35] *Id.* (*emphasis added*).

[36] Provision resembles closely the “Double Jeopardy” principle articulated in the United States Constitution. *See* U.S. Const. amend. V.

[37] U.S. Const. amend. V.

[38] See 1 Annals of Cong. 433-36 (Joseph Gales ed., 1834) (founding father James Madison stressed the adoption of “double jeopardy” protections in his proposals for the Bill of Rights).

[39] Barbara A. Mack, *Double Jeopardy—Civil Forfeitures and Criminal Punishment: Who Determines What Punishments Fit the Crime*, 19 Seattle U. L. Rev. 217, 220 (1996).

[40] *Id.* at 219.

[41] *Id.*; see also 4 William Blackstone, Commentaries at 329-330.

[42] Mack, *supra* note 39, at 221.

[43] *Id.* at 221.

[44] See *id.* at 222. (“After congress adopted and the states ratified this constitutional right, 120 years of judicial interpretation began”).

[45] *Id.* at 219.

[46] Mirabella, *supra* note 3, at 231-233.

[47] *Id.* at 233 (quoting William T. Pizzi & Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 Yale J. Int’l L. 1, 4 (1992)).

[48] *Id.* (quoting Ennio Amodio, *The Accusatorial System Lost and Regained: Reforming Criminal Procedure in Italy*, 52 Am. J. Comp. L. 489, 490 (2004)).

[49] *Id.* (quoting Stephen P. Freccero, *An Introduction to the New Italian Criminal Procedure*, 21 Am. J. Crim. L. 345, 362 (1994)).

[50] *Id.* at 234.

[51] Mirabella, *supra* note 3, at 234.

[52] *Id.* It is important to note here that, in the United States, this unique procedure would violate a defendant’s constitutional right to face their accusers contained in the Sixth Amendment’s Confrontation Clause. See U.S. Const. amend. VI (“[I]n all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him”).

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] Mirabella, *supra* note 3, at 234 (citing William T. Pizzi & Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 *Yale J. Int'l L.* 1, 4 (1992)).

[57] *Id.* at 234-235.

[58] *Id.* (citing generally Thomas Glyn Watkins, *The Italian Legal Tradition* (1997); William T. Pizzi & Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 *Yale J. Int'l L.* 1, 4 (1992)).

[59] Elisabetta Grande, *Italian Criminal Justice: Borrowing and Resistance*, 48 *Am. J. Comp. L.* 227, 234 (2000).

[60] Mirabella, *supra* note 3, at 234-235.

[61] *Id.* at 235.

[62] Grande, *supra* note 59, at 234.

[63] *Id.*

[64] Mirabella, *supra* note 3, at 235.

[65] Grande, *supra* note 59, at 234.

[66] *Id.* at 241.

[67] *Id.* at 242-43.

[68] *Id.* at 243 The preliminary hearing phase appears to function much like the probable cause hearings or their equivalents in the United States with slight variations. *See* Fed. R. Crim. P. § 5.1(e). There is a noticeable addition of adversarial methods in the Italian system during this phase.

[69] Mirabella, *supra* note 3, at 236.

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.* (citing William T. Pizzi & Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 *Yale J. Int'l L.* 1, 15 (1992)).

[74] Mirabella, *supra* note 3, at 236, 243 (“[T]he judges released an opinion to support their guilty verdict. At four hundred and twenty-seven pages, the opinion is a point-by-point recitation of the jury’s process and deliberations . . .”).

[75] Grande, *supra* note 59, at 243; *see also* Mirabella, *supra* note 3, at 235.

[76] Mirabella, *supra* note 3, at 235.

[77] *Id.*; *see also* Grande, *supra* note 59, at 243.

[78] Mirabella, *supra* note 3, at 235.

[79] Grande, *supra* note 59, at 243.

[80] *Id.* at 244.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.* at 247.

[85] Mirabella, *supra* note 3, at 235.

[86] *Id.*

[87] *Id.* (citing Grande, *Supra* note 59, at 245).

[88] *Id.* I find this aspect in the Italian system probably the most striking considering that the defendant is under no obligation to tell the truth. *See* Mirabella, *supra* note 3, at 236. In fact, even if it comes out that the defendant has lied to the court, because

they are not put under any oath, there can be no prosecution for perjury. Grande, *supra* note 59, at 245.

[89] Mirabella, *supra* note 3, at 253.

[90] *Id.*

[91] *Id.*

[92] Stephen P. Freccero, *An Introduction to the New Italian Criminal Procedure*, 21 *Am. J. Crim. L.* 345, 379 (1994).

[93] *Id.*

[94] *Id.*

[95] Freccero, *supra* note 92, at 381.

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] Rachel Donadio, *Details Only Add to Puzzle in Umbrian Murder Case*, N.Y. Times (Sept. 29, 2008), <http://www.nytimes.com/2008/09/30/world/europe/30perugia.html>; *see also* Mirabella, *supra* note 3, at 239.

[100] Mirabella, *supra* note 3, at 239.

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

[102] Candace Dempsey, *Murder in Italy: The Shocking Slaying of a British Student, the Accused American Girl, and an International Scandal*, 41 (2010).

[103] *Id.*

[104] Mirabella, *supra* note 3, at 239-240.

[105] *See id.* at 241-248.

[106] *Id.* at 245.

[107] See Nina Burleigh, *The Scapegoating of Amanda Knox*, L.A. Times (Oct. 4, 2011), <http://articles.latimes.com/2011/oct/04/opinion/la-oe-burleigh-knox-20111004>.

[108] Donadio, *supra* note 99.

[109] Mirabella, *supra* note 3, at 243.

[110] Fisher, *supra* note 101.

[111] Ian Fisher, *German Police Arrest Third Suspect in Perugia Murder Case*, N.Y. Times (Nov. 21, 2007), <http://www.nytimes.com/2007/11/21/world/Europe/21italy.html>. This accusation of Lumumba made by Amanda Knox would eventually turn into a civil suit for defamation. See Mirabella, *supra* note 3, at 241.

[112] See Mirabella, *supra* note 3, at 244.

[113] *Id.*

[114] *Id.*

[115] Mirabella, *supra* note 3, at 244-245.

[116] *Id.* at 245

[117] *Id.*

[118] *Id.* at 245 (“Ultimately, DNA evidence was central to the court’s conclusion that Knox and Sollecito were a part of the Kercher murder”).

[119] *Id.*

[120] *Timeline: Meredith Kercher murder case*, cnn (Mar. 26, 2013), <http://www.cnn.com/2011/09/28/world/europe/italy-amanda-knox-timeline/index.html>.

[121] *Id.*

[122] See Mirabella, *supra* note 3, at 245-46.

[123] *Id.*

[124] *Timeline: Meredith Kercher murder case, supra* note 120.

[125] Mirabella, *supra* note 3, at 253.

[126] *Id.* at 253-554.

[127] *Id.* at 254.

[128] *Id.*

[129] *Id.*

[130] Mirabella, *supra* note 3, at 253.

[131] *Id.* (quoting Barbie Latza Nadeau, *Judge in Amanda Knox Trial Publishes Reasoning Behind Acquittal*, *The Daily Beast*, (Dec. 15, 2011), <http://www.thedailbeast.com/articles/2011/12/15/>

[judge-in-amanda-knox-trial-publishes-reasoning-behind-acquittal.html](http://www.thedailbeast.com/articles/2011/12/15/judge-in-amanda-knox-trial-publishes-reasoning-behind-acquittal.html)).

[132] *Timeline: Meredith Kercher murder case, supra* note 120.

[133] *See generally* Alan Greenblatt, *Knox or Not: Plenty of Cases Are Tried Without a Defendant*, (Mar. 26, 2013), <http://www.npr.org/2013/03/26/175374848/knox-faces-a-new-trial-even-if-she-s-not-there> (*In absentia* convictions are explored below in Subsection B).

[134] *See Coffin v. United States*, 156 U.S. 432, 453-54 (1895).

[135] *See* U.S. Const. amend. V. (once an acquittal has been rendered in U.S. Courts, the prosecution may not seek to try the defendant again).

[136] *See* Alan Dershowitz, *Amanda Knox—Tabloid Sensation*, *Global Legal Bellwether*, *Wall St. J.* (Mar. 27, 2013), <http://online.wsj.com/article/SB10001424127887324789504578384871256488436.html>.

[137] *See id.*

[138] Freccero, *supra* note 92, at 359.

[139] See Dershowitz, *supra* note 136.

[140] Freccero, *supra* note 92, at 359.

[141] Freccero, *supra* note 92, at n. 267 (recalling that Italy's intermediate appellate court can accept new evidence and may adjudicate both questions of fact and questions of law, it is easy to see how it is often referred to as the second trial).

[142] *Id.* at 359.

[143] *Id.*

[144] *Id.*

[145] See Provoledo, *supra* note 7.

[146] Freccero, *supra* note 92, at 359.

[147] Extradition Treaty, *supra* note 30.

[148] *Id.* (see Article IV).

[149] *Cf.* U.S. Const. amend. V.

[150] See Dershowitz, *supra* note 136.

[151] *Id.* (“Ms. Knox's own Italian lawyer has acknowledged that her appellate ‘acquittal’ wouldn't constitute double jeopardy under Italian law since it wasn't a final judgment—it was subject to further appeal, which has now resulted in a reversal of the acquittal”).

[152] *Id.*

[153] Greenblatt, *supra* note 133.

[154] See Mirabella, *supra* note 3, at 254.

[155] See U.S. Const. amend. V.

[156] See Dershowitz, *supra* note 136 (“By becoming an exchange student in Italy, Ms. Knox subjected herself to Italian law”).

[157] See Vargas and James, *supra* note 1.

[\[158\]](#) *Id.*

[\[159\]](#) *See* Dershowitz, *supra* note 136.