Psychiatric and Legal Issues surrounding the Extradition of WikiLeaks Founder Julian Assange: The Importance of Considering the Diagnosis of Autism Spectrum Disorder

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Abstract

Julian Assange is an Australian national and the founder of WikiLeaks, a non-profit organisation that publishes news leaks and classified information provided by anonymous whistle-blowers. In May 2019, a United States (US) federal grand jury returned an eighteen-count criminal indictment against Assange. If convicted, Assange could face up to ten years of incarceration for each Espionage Act (1917) charge and up to five years for conspiracy to access a government computer network. Due to Assange's current physical location in the United Kingdom (UK), the US has requested extradition. However, to date, there has been limited scholarly discussion of the relationship between Assange's autism spectrum disorder (ASD) diagnosis, and his potential extradition and lengthy pre-trial or post-conviction imprisonment in the US. This article will explore the psychiatric submissions from Assange and the US in light of available evidence on ASD and the risk of suicide amongst people who are imprisoned. The analysis will focus on common misperceptions about ASD, the particularly detrimental impacts of the prison environment on individuals with ASD, the varying opinions of Assange's ASD diagnosis, and the importance of considering Assange's risk of suicide in the context of ASD. From a human rights and individual fairness perspective, a complete understanding of the significance of these issues which does not minimise a diagnosis of ASD is paramount for Assange and any future case with similar elements.

Keywords: Autism spectrum disorder; extradition; prison; self-harm; suicide

Introduction

Julian Assange is an Australian national and the founder of WikiLeaks. The WikiLeaks website was launched in 2006 from Sweden because of its strong domestic laws protecting anonymous sources (Restrepo, 2021). WikiLeaks' history of releasing classified documents is extensive. As per the second superseding indictment from 2020 (United States of America v. Assange, 2020), this includes hundreds of thousands of United States (US) documents associated with military operations in Afghanistan and Iraq, such as the "Afghan War Diaries" and the "Iraq War Logs". Whilst a statement by WikiLeaks said that thousands of documents were not published as part of a "harm minimization process", media reporting indicated some material included the unredacted names of Afghan and Iraqi citizens who were cooperating with US and coalition forces (Ross, 2020, p. 750).

The US has issued three indictments against Assange since 6 March 2018 (United States of America v. Assange, 2018; 2019; 2020). Each alleges Assange encouraged other members of a global online hacking network to provide classified information to WikiLeaks for open publication. Also mentioned is his close association with former US intelligence analyst Chelsea Manning (Rothe & Steinmetz, 2013), which led to the exchange of an extensive range of US government files classified under an executive order as SECRET that included "approximately 90,000 Afghanistan war-related significant activity reports, 400,000 Iraq war-related significant activities reports, 800 Guantanamo Bay detainee assessment briefs, and 250,000 US Department of State Cables" (United States of America v. Assange, 2019, para. 12). Manning was convicted by a US military tribunal and sentenced to "a dishonourable discharge, confinement for thirty-five years, forfeiture of all pay and allowances" while receiving credit for 1,293 days of pre-trial confinement (United States v. Manning, 2018, p. 2). After several lengthy appeals for clemency and pardon, Manning was

released from military custody in May 2017 after receiving a commuted sentence from President Barak Obama (Kube & O'Hara, 2017; McFadden et al., 2017).

The second superseding indictment against Assange (United States of America v. Assange, 2020) the US government alleges that in November 2010, it learned that WikiLeaks was intending to release a further 250,000 US State Department cables, half of which were classified. Legal counsel for the State Department forwarded a letter to Assange warning that disclosing these cables would "[p]lace at risk the lives of countless innocent individuals—from journalists to human rights activists and bloggers to soldiers to individuals providing information to further peace and security" (Reuters Staff, 2010). This included confidential sources in Syria, Iran, and China. Despite this warning, the entire database of unredacted cables was released over the course of 11 months. Prior to the public release of these cables, five news organisations were given access to this information by WikiLeaks. These organisations published independent articles which evaluated the content of the cables and ensured the information was widely disseminated (Ross, 2020). From the outset, this behaviour by WikiLeaks "was met by increasing levels of angry vitriol" from politicians and the media throughout the US (Benkler, 2013, p. 313). However, WikiLeaks justified its publication strategy as a form of "'principled leaking' … to fight government, individual and corporate corruption" (Karhula, 2021, p. 1), which was considered an innovative form of journalism due to "the careful work done by WikiLeaks itself as well as its media collaborators in the process of verifying and releasing documents" (Wahl-Jorgensen, 2014, p. 2585).

The eighteen-count criminal indictment returned by the US federal grand jury on 23 May 2019 (United States of America v. Assange, 2019) included specific charges accusing Assange of conspiracy to receive national defence information, obtaining and disclosing

national defence information, and conspiring to commit computer intrusion. With the exception of count 18 which was an alleged violation of the Computer Fraud and Abuse Act (1986), all counts alleged violations of the Espionage Act (1917). This World War I–era legislation was enacted to protect sensitive information and safeguard national security. If extradited and convicted on these charges, Assange could face up to ten years of incarceration for each of the Espionage Act (1917) charges and up to five years for the conspiracy to commit computer intrusion (Ross, 2020). Initially, UK courts blocked Assange's extradition January 2021 because the court found his surrender to be potentially oppressive due to his mental condition (The Government of the United States of America v. Assange, 2021a). However, after several assurances from the US, this decision was overturned in December 2021 (The Government of the United States of America v. Assange, 2021b).

These legal claims by the US follow a protracted campaign for Assange to be surrendered by England to Sweden under a European Arrest Warrant (EAW) to face interrogation for one charge of unlawful coercion, two charges of sexual molestation and one charge of rape (Assange v. Swedish Prosecution Authority, 2011, para. 3). It has been argued using an EAW for the purposes of interrogation only is disproportionate and unlawful (Hagenmüller, 2013, p. 100; O'Shea & Robinson, 2011). Nevertheless, a finalised ruling on this issue was not possible, because after two lengthy appeals in English courts that favoured surrender (Assange v. Swedish Prosecution Authority, 2011; 2012; Warren & Palmer, 2015, pp. 372-380) and pending a potential appeal to the European Court of Human Rights (ECtHR), Assange sought diplomatic asylum in the Ecuadorian Embassy in London (Värk, 2012), where he remained confined under heavy police guard for over seven years. The decision to enter the embassy ultimately resulted in Assange being convicted in the Southwark Crown Court on 1 May 2019 and sentenced to 50 weeks imprisonment for

violating his bail conditions pending the outcome of the EAW hearings in 2012 (R v. Assange, 2019). Importantly, none of these earlier proceedings reviewed the prospect that Assange might have been experiencing an autism spectrum disorder (ASD) or any other serious mental conditions that could have mitigated the effects of his conduct or magnified his fears of surrender either to Sweden or any other country seeking him for alleged criminal conduct associated with WikiLeaks. However, this issue has been prominent in court arguments regarding his possible extradition to the US.

After outlining previous research on ASD, criminal behaviour, and its high association with the risk of suicide for those who are imprisoned, this paper explores concerns about the relevance and application of arguments regarding mental health during extradition proceedings. The specific legal arguments and psychiatric evidence raised during Assange's surrender case are then examined. Throughout, we focus on how the extensive research on ASD confirms the potential high-risk of suicide that stems from the social disruption associated with extradition, and the difficulty experienced by Assange when attempting to have this formally recognised by courts. In addition, we suggest that the Assange case places enormous pressure on English courts to make enforcement decisions to uphold US legal interests, as it is unlikely that the UK's forum bar rule would apply as there is no evidence the alleged US offences occurred on English territory. We conclude by suggesting these vagaries of domestic extradition laws and criminal processes are unsuited to dealing with the Assange case, and require a more transnationally neutral approach to examining the WikiLeaks saga if formal legal proceedings are to continue.

Prior research on ASD, suicide risk, and imprisonment

Autism spectrum disorders (ASD) are early onset, pervasive, and lifelong neurodevelopmental disorders characterised by impairments in social communication and repetitive, restricted behavior patterns, as well as atypical response to sensory stimuli (American Psychiatric Association[APA], 2013). The fifth edition of the Diagnostic Statistical Manual (DSM-V) (APA, 2013) defines two core domains of impairment associated with ASD. These two core domains are “persistent deficits in social communication and social interaction” and “restricted, repetitive patterns of behavior, interests, or activities” (APA, 2013).

The leading study on the mental health of prisoners with ASD is in line with extensive findings on the relationship between ASD, mental health, and the risk of suicide. Chaplin et al. (2021) compared the mental health characteristics of prisoners with autistic traits and those of neurotypical inmates. A total of 240 male prisoners from a London prison were recruited and screened for ASD using the 10 item or 20 item version of the Autism Quotient (AQ). Diagnostic assessment for ASD was carried out using the Autism Diagnostic Observation Schedule (ADOS) (Lord et al., 1989). To assess for depression, anxiety, self-harm behaviour, and suicide, the Mini International Neuropsychiatric Interview was used. Of the 240 prisoners, 46 participants screened positive for autistic traits, with 12 participants scoring positive on the ADOS and meeting the diagnostic threshold for ASD. Prisoners who screened positive to autistic traits were significantly more likely than neurotypical participants to report having thought about self-harm or suicide in the month prior to the research assessment. Additionally, prisoners who screened positive to autistic traits were significantly more likely to report having attempted suicide during their lifetimes (64.9%) when compared to their neurotypical peers (11.6%) and ADOS positive prisoners (45.5%). An increased risk of co-occurring mental disorders was also found in prisoners who

exhibited elevated levels of autistic traits. Specifically, major depressive episode, generalized anxiety disorder, social phobia, and anti-social personality disorder. There have been a number of systematic reviews (Hannon & Taylor, 2013; Richa et al., 2014; Segers & Rawana, 2014; Zahid & Upthegrove, 2017; see also Hedley & Uljarević, 2018). The findings from these reviews suggests that when compared to the general population, there is a very apparent overrepresentation of suicidal ideation, behaviour, and deaths amongst individuals with ASD. Kõlves et al. (2021) have also found that psychiatric comorbidity to be a significant risk factor, with more than 90% of those with ASD who attempted or died by suicide having another co-occurring condition. Kõlves et al. (2021) also found higher rates of suicide attempt and suicide among those with high-functioning ASD only. This finding is consistent with other studies (see Hirvikoski et al., 2016; Hirvikoski et al., 2020; Lai et al., 2011).

Prison can be more challenging and distressing for individuals with ASD due to isolation, prisoner politics and aggression or violent relationships, the disruption to or of prison routines, and sensory sensitivities within the prison environment (Allely, 2015a; 2015b; Robertson & McGillivray, 2015). Newman et al. (2019) have noted there is growing recognition that adults with ASD who are in prison are potentially more vulnerable to bullying, social isolation, sexual victimisation, exploitation, and confrontations with other inmates (see English & Heil, 2005; Gómez de la Cuesta, 2010; Lewis et al., 2015; Michna & Trestman, 2016). Some individuals with ASD may be at greater risk of victimisation because they have impaired ability to develop and maintain normal social interactions and relationships. They may also have issues understanding the behaviour and intentions of others (Frith & Hill, 2004), reduced communication abilities and stereotyped behaviour and

interests (Haq & Le Couteur, 2004; Van Roekel et al., 2010). Individuals with ASD may also experience less empathy from correctional staff (Glaser & Deane, 1999; Shively, 2004).

For many individuals with ASD, the noise within the prison environment may be experienced as particularly overwhelming and distressing due to sensory sensitivities. Sensory hyper-and hypo-sensitivities are common in individuals with ASD and are now included as criteria for the classification of ASD in the DSM-V (APA, 2013). A sensitivity to sound is one of the most common sensory sensitivities reported by individuals with ASD (see Haesen et al., 2011; Jones et al., 2009; Kern et al., 2006). Certain sounds, such as a computer fan, overhead lights, and rain on a window, may be experienced by individuals with ASD as intense and extremely distressing. Whilst neurotypical individuals may become used to these sounds via a process known as habituation, those with ASD can struggle to do so (Robertson & McGillivray, 2015). Therefore, many individuals with ASD may be unable to habituate to the noise of the prison environment, including alarms, the slamming of doors, shouting, and din of TVs and radios, which can all be amplified within the contained environment. As noted by Green et al. (2016), studies have found that as many as 65-95% of individuals with ASD report experiencing atypical responses to sensory stimuli (see Lane et al., 2014; Leekam et al., 2007; Tomchek & Dunn, 2007; Zachor & Ben-Itzchak, 2014). These experiences have also been found to be associated with anxiety (see Ben-Sasson et al., 2008; Wigham et al., 2015) and depression (see Bitsika et al., 2016).

In addition to noise within the prison, the strong odorous smells from cleaning products and meal preparation can be distressing for those with sensory sensitivity (Donson, 2020; Slokan & Ioannou, 2021). Sensitivity to light is also common in individuals with ASD and can cause distress. This issue is aptly illustrated by statement from an individual reported in a study by Slokan and Ioannou (2021, p. 12).

> They had a guy who'd come in and he'd spent most of his life wearing sunglasses because of sensitivity to light. They took them off him when he came, because they can't wear sunglasses, you have to see their eyes. This was a major challenge and he wouldn't leave his cell at all. He actually tried to spend all his time under his blanket, day and night, and was being told that this was not acceptable. The occupational therapist had asked the governor if they could get permission for him to wear sunglasses and was told no, it's not their decision, it's a MoJ [Ministry of Justice] order. They contacted the MoJ and said look we've got this situation and we actually won't be able to do anything with this guy, unless we find some way to address this.

Whilst this body of research highlights psychological and psychiatric concerns regarding ASD, mental health, and imprisonment, the application of this research and knowledge to the process of extradition is relatively recent and limited. Key cases (discussed below) have begun to explore these issues judicially and have become more relevant due to the highly publicised nature of the Assange case.

Extradition, individual rights, and mental health

International extradition is a critical transnational justice cooperation process that aims to transfer individuals accused or convicted of criminal offences to the prosecuting jurisdiction. The objective is to pursue national, transnational or global crime control and enforcement objectives that are otherwise unmet, because the suspect is considered a fugitive from the jurisdiction laying the criminal charges (Bassiouni, 2008; Cullen & Burgess, 2015; Forstein, 2015; Griffith & Harris, 2005; Miller, 2016; Nanda, 2000; Rose, 2002; Van Cleave, 1999). Whilst several legal theories are relevant for discussions about extradition, such as treaty compliance theory (Guzman, 2002; 2005), transnational criminal law (Boister,

2003; 2015), 'rule *with* law' (Bowling & Sheptycki, 2015), and extraterritoriality (Bassiouni, 2014; Blakesley, 2008; Raustiala, 2009), conventional criminological theories cannot fully explain cases such as Assange that involve alleged offences that simultaneously involve multiple countries and justice systems (Loader & Percy, 2012). There is also no single transnational criminological theory that encompasses domestic and international justice administration processes across various legislative, executive, and judicial domains (Forst, 2001). This suggests criminology and other related fields are "theoretically and methodologically … ill-equipped for analysing and researching the relevance of the emerging 'space of flow'" regarding extradition and most other transnational criminal justice issues (Aas, 2007, p. 296). Consequently, these approaches offer limited insight into the reasons behind extradition decisions and how broader criminological concepts impact specific cases. This lack of clarity adds to the overall complexity of extradition and the continued need for further research using individual case studies (Boister, 2017; Kennedy & Warren, 2020; 2022), or, where possible, identifying common trends amongst similar cases (Mann et al., 2018).

The rules, principles and regulations associated with extradition are generally negotiated during bi- or multi-lateral treaty development processes. However, political, diplomatic, and economic relationships between treaty partners, as well as global crime control objectives, can be powerful influences on extradition decisions. This often occurs at the expense of an extraditee's individual human rights (Anderson, 1983; Andreas & Nadelmann, 2006; Kennedy & Warren, 2022; Klein, 2011; Magnuson, 2012; Sheptycki, 2011; Warren & Palmer, 2015). For example, Bifani (1993) has argued extradition treaty compliance favours maintaining an international political reputation through cooperation, agreeing to certain policy objectives, and promoting efficiency in the surrender of fugitives

at the expense of protecting individual rights. This is due to a general pattern in extradition law, where states continue to introduce “new, efficiency oriented instruments on cooperation” (Gless, 2013, p. 108). The EAW procedure that applies to the Member States of the European Union can be considered an example of this type of efficiency-based streamlining (Warren & Palmer, 2015). Despite these issues, extradition can become a complex, legally technical and protracted process that can take decades to finalise, especially if the extraditee is located offshore at the time of the alleged offending, or if other antecedents raise serious concerns about the physical or medical well-being of the person sought for surrender (Kennedy & Warren, 2022; Mann et al., 2018).

The geographic location of criminal conduct is the driving force behind justice administration in English-speaking common law countries (Abbell, 2010, p. 77). This principle is reinforced in the logic behind extradition. However, the advancement of the internet and globalised digital environments add intricacy and complexity to determining the geographic limits of criminal jurisdiction, as the impacts of the alleged criminal conduct can readily extend across multiple jurisdictions across incredibly short time spans (Mann et al., 2018; Sassen, 2013). Consequently, the enforcement of many aspects of contemporary criminal “law has ‘spilled out’ beyond the borders of the nation-state” (Cotterrell, 2012, p. 500) due to the existence of a technological or online component to the activity. Despite increasing interconnectedness, globalisation has not created an “integrated world system” (Aas, 2007, p. 297) for the resolution of transnational criminal justice disputes. These hinge on the contemporary structure of extradition, which involves a complex maze of international agreements and domestic laws that reinforce the primacy of resolving many international and transnational legal problems through national legal procedures (Boister, 2015).

These political tensions associated with cross jurisdictional forms of justice administration means that international human rights protections within extradition treaties are generally limited, or remain secondary to the requested nation's due process rules and procedures (Anderson, 1983; Bloom, 2008; Boister, 2003; Henning, 1999). Therefore, it is difficult for human rights mechanisms to play a significant practical role during an extradition hearing, as the purpose of these procedures is to determine if the requested state has the obligation to transfer the extraditee in light of the substance and form of the extradition request, not whether the individual has a right to avoid surrender (Anderson, 1983; Arnell, 2013; Henning, 1999; Piragoff & Kran, 1992; Quigley, 1990). This means extradition is often thought of as:

> an aspect of international relations in which states, not individuals, are the only rights holders. This nation-centered, and therefore executive-centered, approach ha[s] the unfortunate effect of denigrating the extent to which surrender of persons to foreign governments also raises issues of judicial independence, executive authority, individual liberty, and due process of law. (Pyle, 2001, p. 2)

Consequently, extradition decisions often involve the "subordination of individual rights to policy interests" (Bifani, 1993, p. 630) or become a "rubber-stamp judicial procedure" for governments with strong political ties to exchange suspects with minimal consideration of their personal wellbeing (Bassiouni, 2003, p. 401). Historically, there is a very low success rate and rare acceptance of human rights claims against surrender (Anderson, 1983; Arnell, 2013; Harrington, 2005; Merry, 2006; Piragoff & Kran, 1992) and the potential negative treatment of the extraditee that could contravene their protected human rights must either be extreme or contradict broad national values of decency and

good conscience before protective judicial intervention occurs (Bassiouni, 2014; Dugard & Van den Wyngaert, 1998; Harrington, 2005). Most concerns regarding the welfare of an extraditee are dealt with during the criminal trial following extradition. This means the individual has limited authority or power during the surrender process (Arnell, 2013; Magnuson, 2012; Ross, 2011), despite a recent push towards global uniformity of human rights protections and enforcement and defendant-centred approaches which prioritise consideration of the needs and protection of individuals (Gless, 2015; Magnuson, 2012).

For suspects located in England or Wales, the Extradition Act (2003) allows an extraditee to challenge surrender on the grounds of oppression, human rights, and forum bar (Arnell, 2013; Arnell & Forrester, 2021b; Efrat, 2017; Mann et al., 2018). The rejection of an extradition request is possible if it is established that it would be unjust or *oppressive* to surrender the individual on account of their mental health. This can take into account the nature of any mental health condition(s) and the perceived degree of any associated risks, such as suicide (Arnell, 2019). A *human rights bar* enables extradition to be blocked if surrender could violate an extraditee's human rights by exposing them to cruel, inhuman and degrading treatment and punishment, or undue interference with their private and family life (Arnell, 2013). Finally, the *forum bar* is possible in cases where the extraditee was located in the UK at the time of the alleged offending in the requesting foreign country (Arnell & Davies, 2020; Mann et al., 2018; Efrat, 2017). An extradition case may be considered by the courts under one, two or all three grounds.

Several key cases in the UK have involved individuals with a diagnosis of ASD and a high risk of suicide where extradition has been blocked because the courts recognised surrender would be oppressive and contrary to the interests of justice. Common to these cases is an online component that has in some way infringed US criminal laws or national

security. As detailed by Davies (2018), Arnell and Forrester (2021a; 2021b), and Mann et al. (2018), in the Lauri Love case all three challenges on mental health grounds were made, with two of the three accepted to block his extradition to the US. Love, a 33-year-old man with both British and Finnish nationality, was charged on three indictments alleging that between October 2012 and October 2013, he committed a number of cyber-attacks on the computer networks of private companies and US government agencies with the intention of stealing and publicly disseminating confidential information. Love's extradition was ordered by the UK Home Secretary on 14 November 2016. However, during a judicial appeal two expert witnesses, Professor Kopelman and Professor Baron-Cohen, gave evidence against Love's surrender. Professor Baron-Cohen testified that Love was high functioning and had the capacity to participate in court proceedings and provide instructions to his legal representative. However, both expert witnesses expressed the opinion that Love would attempt suicide prior to being extradited to the US. The stability of Love's mental health also depended on him remaining in England near his parents and not being subjected to the prospect of indefinite detention. The High Court eventually declined to extradite Love because this would be oppressive and contrary to the interests of justice. The forum bar also allowed for the prosecution of Love in England, which was the geographic source of his alleged offending (Mann et al., 2018).

The Love case also provides an important example of how detrimental incarceration can be for an individual with ASD and how a court can be assisted by high quality diagnostic evidence (Freckelton, 2020). As the case records (Love v. The Government of the United States of America and Liberty, 2018) and Freckelton (2020) both emphasise, Professor Baron-Cohen explained that Love would be extremely vulnerable in a US prison because he could not read cues in social behaviour, understand other people's behaviour and social

expectations, or conform to social norms. Love would be socially naïve, obsessive, and have poor decision-making capabilities. This would make it difficult for him to cope with prison hierarchies, personalities, gangs, and the prison system more generally. Love would face unrelenting stress and be at a greater risk of segregation for his own safety or for repeated breaches of prison rules. Mental health support would also be difficult to access due to overcrowding and staff shortages, which are well-recognised problems in US prisons (Bierie, 2012; Simon, 2018; Steiner & Wooldredge, 2015). Love would also have no external support structure, visits from his family would be rare because of the expense of regular travel to the US, and telephone calls were also of limited value and financially costly. Importantly, Professor Baron-Cohen did not accept that the protocols for care within the US prison system were sufficient to support an extraditee diagnosed with ASD and depression who posed a very high suicide risk.

> The programme seemed to be based on those with educational impairments, which was not Mr Love. His issues would include not being able to share a cell, sensory hyper-sensitivity, difficulties adjusting to unexpected change, risk of being bullied and obsessive interests. He needed to be in an environment which understood Asperger Syndrome. “Depression in someone with Asperger Syndrome is very different from depression in someone without Asperger Syndrome.” His unique combination of mental and physical conditions “makes him much more high-risk than prisoners who only suffer from one of these conditions.” (Love v. The Government of the United States of America and Liberty, 2018, para. 81)

Similarly, as per Arnell and Reid (2009) and Sharpe (2013), Gary McKinnon, a Scottish systems administrator and computer hacker, also fought extradition to the US where the authorities commenced criminal proceedings for his activities in gaining unauthorised access

to 97 government computers between 1 February 2001 and 19 March 2002. McKinnon claimed he sought to uncover hidden evidence of suppressed use of US government surveillance technologies in detecting UFO activity, while denying any malicious intent. McKinnon was formally diagnosed with Asperger's syndrome on 23 August 2008 after being first arrested on 19 March 2002. When asked about his computer hacking, McKinnon began a discussion about his narrowly focused interest of finding evidence of UFOs in government files (Mann et al., 2018). If this hyper-focus was not understood within the context of his ASD, he would be inaccurately perceived as being highly narcissistic and unwilling to accept the wrongfulness of his behaviour (Weiss, 2011). As with the Love case, autism expert Professor Baron-Cohen spoke in McKinnon's defence, stating "[McKinnon] believes that what he was doing was right because he believes he was trying to uncover truth and he believes that the pursuit of truth was the right thing to do" (Ballard, 2009). However, several years of judicial scrutiny declined to accept McKinnon's ASD was sufficient to bar his extradition under English and Welsh laws that predated the introduction of a forum bar test (Mann et al., 2018). Ultimately, on 16 October 2012, the UK Home Secretary Theresa May made an executive decision not to extradite McKinnon to the US on the basis of his poor health (xxx, 2017).

In addition to these protective judicial blocks on extradition under UK law, recent cases, including Assange's, have garnered widespread public criticism due to concerns about an extraditee's mental health and risk of suicide. This is particularly salient for individuals with a diagnosis of ASD . For example, Amnesty International (2021b, p. 2) has petitioned the Australian Prime Minister to "pressure the US to drop the charges" due to Assange's important role in promoting "media freedom and the public's right to information about government wrongdoing" and his potential exposure to "the risk of serious human rights

violations" if surrendered to the US given the severity of the charges against him. On 22 November 2019, a group of more than 60 medical doctors known as Doctors for Assange wrote to the UK Home Secretary expressing serious concerns regarding Assange's physical and mental health (Hogan et al., 2020). This letter documented his history of "denial of access to health care and prolonged psychological torture" during seven years of isolation while in diplomatic asylum in the Ecuadorian embassy in London (Frost et al., 2020, p. 44). The letter concluded:

> it is our opinion that Mr Assange requires urgent expert medical assessment of both his physical and psychological state of health. Any medical treatment indicated should be administered in a properly equipped and expertly staffed university teaching hospital (tertiary care). Were such urgent assessment and treatment not to take place, we have real concerns, on the evidence currently available, that Mr Assange could die in prison. The medical situation is thereby urgent. There is no time to lose. (Doctors for Assange, 2019)

Despite this level of activism to protect extraditees with mental health concerns, Arnell (2019, pp. 339, 343) has demonstrated that questions regarding mental illness and suicide are "not consistently addressed" in extradition cases and legal systems generally fail "to systematically recognise and coherently" manage these issues. This is reinforced by the detailed examination of legal cases involving suspects involved in offshore online offending against US interests with well-documented histories of ASD, who often experience years of uncertainty as challenges to extradition are heard in domestic English and Irish courts (Mann et al., 2018). More broadly, "there is an undoubted gap in knowledge and understanding where mental health and extradition law and practice intersect" (Arnell & Forrester, 2021a, p. 84). This includes many "unorthodox and difficult evidential challenges"

that can “contribute to the complex and seemingly random nature of the law in this area” (Arnell, 2019, p. 359). Whilst some jurisdictions, such as England and Wales, have specific rules to help inform courts about how mental health and the risk of suicide should be managed, conflicting and highly technical arguments associated with their application can result in courts setting “the bar so high that only in the rarest of cases will [the relevant legal threshold] be met” (Arnell, 2019, p. 365). Therefore, claims about mental health and risk of suicide often have limited relevance in these complex offshore cases, except in political determinations that are only made after years of judicial examination (Mann et al., 2018). This makes the initial English court ruling denying the US request for Assange on the grounds of his poor mental health and high risk of suicide a rare exception that warrants in-depth analysis of the complex relationship between the criminal laws and enforcement powers of the requesting nation, and the capacity of requested nations and extraditees to contest these issues.

Assange and the US extradition request

Due to the nature of his alleged offending, his personal circumstances, and the array of conflicting issues that emerge in jurisdictional theories, at least five sovereign states could have potential authority over Assange. These include Australia due to Assange’s citizenship, Ecuador after his time in the embassy, Sweden as a result of the sexual assault allegations (although these cases have subsequently lapsed due to the passage of time), the UK because of his physical location, and the US due to the location of the alleged crimes (Restrepo, 2021; Thebes, 2012). However, due to the power of the US within the global political and criminal enforcement environment, particularly regarding offences with digital elements such as digital piracy and the policing of the dark web, the US has a sophisticated

surveillance and investigative infrastructure that gives it a certain priority over any other jurisdictional claims regarding Assange (Andreas & Nadelmann, 2006; Mann & Warren, 2018; Nadelmann, 1990). This also ensures arguments to block extradition using the forum bar raises several contentious evidentiary considerations that are unlikely to receive judicial support as it is unclear whether the alleged US offences occurred while he was located in the UK.

The initial US request for Assange was received by the UK under the Extradition Act (2003), which was enacted following the September 11 terrorist attacks. This request was certified as valid on 29 July 2020, which resulted in several evidentiary hearings during 2020, amidst persistent concerns with the global Covid-19 pandemic. Assange's continued detention during this period has been labelled "arbitrary" (Amnesty International, 2020; 2021a; Human Rights Council Working Group of Arbitrary Detention, 2016) and raises concerns about the lack of availability of bail during extradition proceedings (Kennedy & Warren, 2022). There are also questions about whether the Australian Government has "unlawfully declined to intervene with the British and US authorities to secure the release of Assange or protect him from being extradited" (Head, 2021, pp. 118-119). The tensions regarding the denial of bail, potential arbitrary detention, and Assange's need for protection as a vulnerable individual remain key problems with contemporary extradition law more generally (Cullen & Burgess, 2015; Hogan et al., 2020).

Assange raised several concerns against surrender alongside a specific claim that extradition would be unjust and oppressive due to his mental condition and high risk of suicide. The grounds to contest extradition included:

- The offence was political, and the court lacked jurisdiction.

- The allegations did not meet the dual criminality requirement.
- Extradition would be unjust and oppressive due to the lapse of time from the original alleged offences until the US claim.
- Extradition was barred due to extraneous considerations.
- Extradition would be a breach of Articles 3, 6, 7 and 10 of the European Convention on Human Rights (ECHR).
- Extradition would be an abuse of process because the request misrepresents the facts, is being pursued for ulterior political motives and is not in good faith.

On 4 January 2021, after taking into consideration all the psychiatric evidence, District Judge Vanessa Baraitser found "the mental condition of Mr. Assange is such that it would be oppressive to extradite him to the US" (The Government of the United States of America v. Assange, 2021a, para. 363). This decision was appealed by the US and the High Court which ultimately overruled Judge Baraitser's initial ruling (The Government of the United States of America v. Assange, 2021b).

The psychiatric evidence

Three experts gave medical evidence in support of Assange (Professor Kopelman, Dr Crosby and Dr Deeley). Table 1 provides a summary of their findings as they appear in the two main UK rulings dealing with Assange's extradition status (The Government of the United States of America v. Assange, 2021a, paras. 312-364; 2021b, paras. 8-20 and 63-93).

Table 1. Medical evidence supporting Assange and block on surrender

Clinician	Reports and contact	Diagnosis	Risk of suicide
Professor Kopelman	Professor Kopelman prepared two reports dated 17 December 2019 and 13 August 2020. Professor Kopelman saw Assange between 30 May 2019 and November 2019 for his report of 17 December 2019. He also saw him on 31 January 2020 and 3 March 2020 (and briefly on 13 February 2020) for his report of 13 August 2020.	Report 1: • Recurrent depressive disorder (severe in December 2019) • Psychotic features, including hallucinations • Ruminative suicidal ideas • PTSD related to an incident as a 10-year-old • Generalised anxiety disorder (symptoms overlapping with features of the depression and PTSD) • Traits of ASD Report 2: • Depression subsided to 'moderate' severity • Auditory hallucinations not as prominent or concerning • Somatic hallucinations absent	• Symptoms included loss of sleep, loss of weight, impaired concentration, on verge of tears • State of acute agitation involving pacing cell until exhausted, punching head or banging it against a cell wall • Reported suicidal ideas during this period - Life was not worth living - Had been thinking about suicide "hundreds of times a day" - "constant desire" to self-harm or commit suicide - Called the Samaritans almost every night - When the Samaritans not available, made superficial cuts to thigh and abdomen in order to distract from sense of isolation • Abundance of known risk factors indicating very high risk of suicide - Intensity of suicidal preoccupation - Extent of his preparations • Imminence of extradition or extradition itself would trigger the attempt, cause would be clinical depression
Dr Crosby	Between October 2017 and January 2020, Dr	• Major depression, possibly with psychotic features • Symptoms of depression have become severe	• Extremely high risk of self-harm or completed suicide if continued confinement in current conditions or extradition to the US.

	Crosby conducted six clinical interviews and evaluations of Assange.		
Dr Deeley	Observed Emma Woodhouse conduct an ADOS assessment 17 January 2020. Telephone assessment 9 July 2020 (6 hrs)	• Moderate depressive episode • Met the diagnostic criteria for an ASD	• Methods employed in US jails to prevent suicide, like being placed in a restraining jacket, would be intolerable • Propensity for analytic and systematic thought, with extreme focus results in minute consideration of likely sequence of events and would suicide rather than face these events • Absence of serious suicide attempts at HMP Belmarsh should not be taken as evidence that risk of suicide is low or could be adequately managed • If extradited to the US, the risk of attempted suicide would be high

Two experts gave evidence in support of the extradition request on behalf of the US (Dr Blackwood and Professor Fazel). A summary of their evidence contained in the two key UK rulings on Assange's extradition status is provided in Table 2.

Table 2. Medical evidence supporting extradition

Clinician	Reports and contact	Diagnosis	Risk of suicide
Dr Blackwood	Contact on 11 and 18 March 2020 (4hrs)	• Moderate depression • No evidence of marked somatic syndrome or psychotic symptomatology	• Some risk of a suicide attempt linked to extradition • Did not reach a "substantial risk"

		• Diagnosis of PTSD not warranted • Premorbid personality "rather self-dramatising and narcissistic" • Diagnostic threshold for a diagnosis of ASD not met.	
Professor Fazel	Interviewed on 16 March 2020 (2 hrs) Telephone assessment on 29 June 2020 (2hrs)	• Moderate depression • Depression not characterised as psychotic • Some autistic-like traits present	• Suicide risk "currently high"

When determining Assange's extradition eligibility in The Government of the United States of America v. Assange (2021a), Judge Baraitser rejected Dr Blackwood's assessment that favoured surrender to the US, by noting the limited nature and relative brevity of his examination of Assange (paras. 335-336). Judge Baraitser placed greater confidence on assessments that opposed extradition due to the more detailed knowledge they reflected of Assange's circumstances and the extensive time associated with these evaluations (para. 356). On this basis, Judge Baraitser was satisfied with the testimony of Dr Deeley's prognosis that the "extreme conditions of [the special administrative measures]" in the US could lead to the deterioration of Assange's mental health "to the point where he will commit suicide with the 'single minded determination'" (para. 355). This assessment emphasised that he also "has the intellect to circumvent … suicide preventive measures" (para. 359). Judge Baraitser determined there would be a "real risk that [Assange] will be kept in … near isolated conditions" (para. 357), which would remove various "protective factors" such as

access to family and friends, a Samaritans phoneline, and a very "trusting relationship" with his psychologist at the HMP Belmarsh in England (para. 358). Consequently, Judge Baraitser:

> accept[ed] that oppression as a bar to extradition requires a high threshold. I also accept that there is a strong public interest in giving effect to treaty obligations and that this is an important factor to have in mind. However, I am satisfied that, in these harsh conditions, Mr. Assange's mental health would deteriorate causing him to commit suicide with the "single minded determination" of his autism spectrum disorder. (para. 362)

Dr Deeley is a developmental neuropsychiatrist and the only expert specialising in autism spectrum conditions who provided submissions in Assange's case. In Dr Deeley's opinion, if Assange were extradited to the US, the risk of attempted suicide would be high. However, Dr Deeley's diagnosis of ASD was challenged by lawyers acting on behalf of the US, who argued the condition had not prevented Assange from operating WikiLeaks as a global enterprise, engaging in public speaking events, or presenting a television chat show in 2011 called The Julian Assange Show (para. 320). It was also argued Assange's diagnosis had not hindered or prevented him forming intimate relationships (para. 320). In closing submissions, the US argued:

> you do not have to be any sort of medical expert to know that the diagnosis of a trait based upon the hearsay evidence that as a child Assange would "look intently at the complex pattern scarves when she draped over the neck covering his crib in hot weather" is flawed. (para. 320)

Dr Deeley rejected the argument Assange's activities were inconsistent with a diagnosis of ASD as they were directly related to his ASD-related strengths. In interviews and

Q&A sessions, Assange is considered an expert and knows the expected format. As such, his social impairments associated with ASD would not be apparent. In order to hide their impairments of difficulties, research has shown that some individuals with ASD may engage in social camouflaging, masking, or compensation (Cook et al., 2021; Hull et al., 2017; Lai et al., 2017; Perry et al., 2021).

This dismissive challenge to Dr Deeley's diagnosis highlights one of many misperceptions about individuals with ASD. Many people do not understand or believe that someone who is well-educated, articulate, and possesses an average or above average intelligence can also be significantly impaired because of their ASD. It is common to think of an individual with ASD as simply being on a spectrum which ranges from severely impaired to mildly impaired. However, particularly in the legal context, it is more appropriate and accurate to consider each individual with ASD separately and identify their particular variations in ASD characteristics to create a unique profile of their strengths and weaknesses. For example, Individual A may be modestly impaired on communication but severely impaired on routine and repetitive behaviours. This might be considered a "mildly" autistic condition when compared to Individual B who has more severe interaction and communication impairments but is modestly impaired on routine and repetitive behaviours. Whilst Individual A might be articulate and communicative, severe impairment concerning routine and repetitive behaviours can be very detrimental (Allely, 2022).

Similar concerns exist regarding individuals who are categorised as "high functioning" as they can appear to be relatively unimpaired. However, there are some strengths in highly functioning individuals with ASD that can help mask significant weaknesses that can be detrimental in certain situations (Allely, 2022; Dickie et al., 2018). This includes the need for structure and routine, an ability to focus intensely on a task

without distraction, a detail-oriented focus, and the ability to closely follow rules. Such features of ASD can lead an individual to excel in certain career paths such as academia, banking, accountancy, engineering, and computer related careers such as software design. Therefore, people may assume that because these individuals are so successful and intelligent that they cannot be impaired in any way.

These nuances mean that categorising someone as “mild” on the ASD spectrum is not straightforward. Terms such as “mildly autistic” and “high functioning autism” without further expansion are unhelpful in a forensic context, grossly inaccurate, potentially misleading, and could be detrimental to a fair trial process. This indicates that attempts to contest Assange’s condition on crude clinical assessments without further insight into his current condition or the risks surrender and further incarceration in the US could pose, given he is most likely to be placed in isolated protective custody, are highly flawed.

Risk of suicide in the context of ASD

Psychiatric examinations presented during The Government of the United States of America v. Assange (2021a) also raised differing opinions on Assange’s risk of suicide. The findings of Professor Kopelman and Dr Deeley concerning Assange’s high risk of suicide and the impact of his ASD diagnosis are consistent with relevant literature because it is well-established that individuals with ASD have a considerably greater risk of suicide (Hedley & Uljarević, 2018).

Professor Kopelman highlighted that in 1991, Assange was admitted to hospital for a week after slashing his wrist (para. 315). Dr Blackwood, arguing for extradition, also noted that Assange’s history indicated a single episode of self-harming behaviour which involved cuts to the wrists as a young adult, but no broader pattern of suicidal behaviours (para.

323). However, it is important to acknowledge individuals who have self-harmed have been found to be at an increased risk of future episodes of self-harm and suicide when compared to the general population (Hawton et al., 2003). Therefore, the apparent minimisation by Dr Blackwood of a single episode of self-harming behaviour is concerning. A further example of potential suicide risk was brought to light during the extradition certification hearing when Mr. Guedalla, a solicitor, produced a copy of the prison adjudication report. This document confirmed that on 5 May 2019 at 15.30 hours a prison officer found half a razor blade in Assange's cell during a routine search (para. 328).

It was accepted by Dr Blackwood that there was some risk of a suicide attempt associated with extradition, but this did not reach a threshold of "substantial risk" (para. 323). Dr Blackwood considered that "Assange's current mental state did not remove his capacity to resist the impulse to commit suicide and even in a worsened depressive state he would still retain this capacity" (para. 323).

Professor Fazel, also arguing for the US, concluded differently, and considered Assange's suicide risk was "currently high" (para. 326). However, this risk was tempered by Professor Fazel's view that Assange's capacity to self-manage, including phoning the Samaritans, taking his medication, and engaging with psychological treatment, is inconsistent with the idea that his mental condition is so severe that he would be unable to resist the impulse to commit suicide (para. 326). However, neither Dr Blackwood nor Professor Fazel independently evaluated a diagnosis of ASD, and relevant statements in the rulings indicate Assange was only formally diagnosed with ASD for the first time by Emma Woodhouse, as observed by Dr Deeley, using the ADOS in January 2020. These considerations about Assange's risk of suicide would not account for the significant impact or contribution that any diagnosis of ASD would have on his wellbeing or potential risk of

harm and even death from surrender to face justice and a potential indeterminate sentence in the US.

Conclusion

The views of the "oppressive" impact on Assange's mental health of surrender and potential extended periods of protective custody in the US were upheld in the appeal ruling by the Queen's Bench Division of the High Court of Justice in December 2021 (The Government of the United States of America v. Assange, 2021b, para. 9). However, the appeal court emphasised how Professor Kopelman's evidence "has been subject to substantial criticism" (para. 13), due to the view that he had misled the court about the existence of a close relationship between Assange and Ms Stella Morris, with whom Assange had conceived two children while in confinement in the Ecuadorian Embassy. Professor Kopelman chose not to disclose this relationship, or its significance to Assange's wellbeing, in order to preserve Ms Morris' privacy. On learning about the relationship through the media, US authorities argued its significance to Assange's mental health negated the credibility of any of Professor Kopelman's testimony during the proceedings before Judge Baraitser. The appeal court did not strike the testimony but agreed with arguments presented by the US that Professor Kopelman's conduct was "misleading and inappropriate" and contravened "his obligations to the court" (para. 81).

The High Court of Justice ultimately accepted the US appeal and the legality of Assange's surrender. It also accepted a "package of assurances" from the US government submitted on appeal that sought to convince UK authorities that, if surrendered, Assange would be treated appropriately and with due concern for his welfare (paras. 22, 30). This included an assurance Assange would not be exposed to any special measure or

imprisonment in the Administrative Maximum Facility (or supermax prison) in Colorado during any pre-trial or post-conviction incarceration. Assange would also be offered post-conviction transfer to serve any sentence in Australia if this is considered agreeable to the Australian government. Finally, the US also ensured appropriate receipt of "any such clinical and psychological treatment as is recommended by a qualified treating clinician employed or retained by the prison where he is held in custody" (para. 30). At the time of writing, this decision is subject to further legal appeals to the UK Supreme Court or diplomatic resolution.

This paper has illustrated several concerns raised by the Assange case regarding the treatment of individuals suffering from serious mental illness, including that associated with ASD, whilst awaiting extradition. This extends to the possible availability and quality of ongoing care or protection following their surrender. The psychiatric evidence presented on Assange's behalf demonstrated that removing him from the UK would also eliminate various protective factors such as visits from his partner, children, father, and other relatives. When viewed in conjunction with his ASD diagnosis and other mental health issues, extradition to the US would be extremely detrimental and appreciably increase his risk of suicide. Additionally, it has been argued by Restrepo (2021, pp. 154-155) that the UK's jurisprudence against extraditing individuals for computer hacking offences, coupled with acknowledgement of how WikiLeaks has promoted a new form of digital freedom of press as a fundamental right (Wahl-Jorgensen, 2014), provide strong legal and political grounds to refuse the extradition request. However, at the time of writing neither of these elements have resulted in a definitive rejection of the extradition request by the UK judiciary.

The conflicting view of expert witnesses were based on vastly different exposure to Assange and diagnoses of his mental health after protracted periods of confinement in the

Ecuadorian Embassy, and subsequent incarceration for his 2012 bail violation. Therefore, the relationship between his legal rights and psychiatric welfare are subject to cursory treatment in US arguments given the limited contact between Assange and US-employed experts. This is concerning as the acceptance of the extradition request in December 2021 appears to disregard the countervailing prognosis from experts who had more contact and intimate knowledge of Assange's ASD and suicide risk. This means the December 2021 UK court ruling has been more reliant on international comity between the UK and the US, by emphasising the political assurances offered to secure Assange's surrender. This emphasis occurs at the expense of clear psychiatric evidence that highlights the risk of surrender to Assange's mental and physical health.

This paper also reinforces the view that protective factors in serious cases of online offending where the alleged crimes are committed offshore raise highly problematic human rights issues where there is evidence the suspect has ASD or other complex psychiatric conditions (Arnell, 2009; Freckelton, 2020; Mann et al, 2018). Any protective factors aligned with human rights requirements appear secondary to the interests of international comity that promote surrender in the name of justice according to standards determined by the US. This raises important and ongoing questions about whether justice in complex transnational online cases requires jurisdictionally neutral procedures (Boister, 2015; Warren & Palmer, 2015), given broader concerns that many other nations could have equal jurisdictional claims to those of the US regarding any potentially unlawful conduct by Assange or WikiLeaks. This article highlights how the specific legal and psychiatric concerns about Assange's online activities reinforce many larger questions about the neutrality of contemporary methods of transnational justice administration through national legal processes (Boister, 2017).

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